

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Judiciary & Hawaiian Affairs**

March 2, 2021

H.B. No. 535: RELATING TO MANSLAUGHTER.

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender, State of Hawai‘i (“OPD”) **opposes** H.B. 535 which seeks to amend HRS § 707-702 by adding subsection (c) to specify that a person commits the offense of manslaughter if the person causes the death of another person by recklessly operating a motor vehicle with 0.08 or more grams of alcohol per 210 liters of breath or 0.08 or more grams of alcohol per 100 milliliters or cubic centimeters of blood.

Proposed subsection (c) of this bill is duplicative and unnecessary. If a prosecutor is presented with sufficient evidence that a person under the influence of alcohol recklessly¹ causes the death of another person by recklessly driving while intoxicated, they can and will charge this individual with manslaughter pursuant to HRS § 707-702(a).

The OPD believes steps should be taken to prevent and reduce the number of duplicative and unnecessary statutes. While we believe this bill is well-intentioned, duplicative and unnecessary statutes may lead to confusion and misapplication.

Thank you for the opportunity to provide testimony in this matter.

¹ HRS § 702-206(3) defines recklessly as:

- (a) A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that the person’s conduct is of the specified nature.
- (b) A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.
- (c) A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.
- (d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 2, 2021
2:00 P.M.
State Capitol, Teleconference

H.B. 535
RELATING TO MANSLAUGHTER

House Committee on Judiciary & Hawaiian Affairs

The Department of Transportation (DOT) **supports** H.B. 535 relating to manslaughter. This bill specifies that a person commits the offense of manslaughter if the person causes the death of another person by recklessly operating a motor vehicle with .08 or more grams of alcohol per 210 liters of breath or .08 or more grams of alcohol per 100 milliliter or cubic centimeters of blood.

The DOT continues to support all efforts to prevent senseless deaths and injuries on our roadways, especially those caused by impaired drivers. This bill will encourage drivers to think twice about driving after drinking. It will also discourage recidivism for those who continue to drink and drive, knowing that the penalties are serious should they be involved in the traffic death of others.

The DOT urges your support in passing this bill as it will change behavior and reduce fatalities and injuries on our roadways by discouraging drivers from driving after drinking.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
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STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

March 2, 2021

RE: H.B. 535; RELATING TO MANSLAUGHTER.

Chair Nakashima, Vice Chair Matayoshi, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony supporting the intent of H.B. 535, with comments.

The purpose of H.B. 535 is to create an additional means of charging the offense of manslaughter (§707-702, Hawaii Revised Statutes (H.R.S.)) by way of recklessly operating a motor vehicle with .08 or more grams of alcohol per two hundred ten liters of breath; or .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

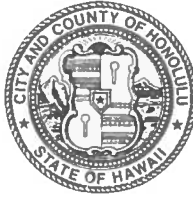
We note that manslaughter can already be charged under section 707-702 (a), H.R.S. when "the person recklessly causes the death of another person" which includes situations involving reckless driving combined with or without alcohol or drug impairment. In situations where alcohol or drug impairment is involved, that factor can be used as evidence to support recklessness, however, manslaughter through the use of a vehicle with a particular set of facts could be charged without any form of alcohol or drug impairment.

The Department is strongly concerned that as proposed, H.B. 535 would exclude cases where **drug** impairment is present which also involves the death of another person. Under the proposed language, section 707-702 (c)(A) and/or (B), H.R.S. would only encompass cases in which "alcohol" was involved and would inadvertently limit OVUII-related manslaughter charges to alcohol only. Additionally, with the creation of this new offense, this bill may have the unintended consequence of limiting OVUII-related manslaughter charges to only cases where there is a breath or blood result obtained.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu submits testimony supporting the intent of H.B. 535 with comments. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

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AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE

CT-LC

March 2, 2021

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 535, Relating to Manslaughter

I am Calvin Tong, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 535, Relating to Manslaughter.

The HPD supports this bill, which specifies that a person commits the offense of manslaughter if the person causes the death of another person by recklessly operating a motor vehicle with .08 or more grams of alcohol per 210 liters of breath or .08 or more grams of alcohol per 100 milliliters or cubic centimeters of blood.

The risks of impaired driving are widely known. Whenever an impaired driver gets behind the wheel of a vehicle, they are doing so recklessly, if not knowingly. Stiffer penalties that accompany a charge of manslaughter could be a deterrent for would-be violators. At the minimum, it shows that this issue is being taken seriously by our lawmakers. Any measure that could potentially keep impaired drivers off of our roads should be considered or implemented.

The Honorable Mark M. Nakashima, Chair
and Members
March 2, 2021
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The HPD strongly urges you to support House Bill No. 535, Relating to
Manslaughter.

Thank you for the opportunity to testify.

Sincerely,



Calvin Tong, Major
Traffic Division

APPROVED:



Susan Ballard
Chief of Police



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-6004
hi.state@madd.org

March 2, 2021

To: Rep. Mark Nakashima, Chair, House Committee on Judiciary & Hawaiian Affairs; Rep. Scot Matayoshi, Vice Chair; and members of the Committee

From: Arkie Koehl and Carol McNamee, Public Policy Committee - MADD Hawaii

Re: House Bill 535 – Relating to Manslaughter

I am Arkie Koehl, offering comments on behalf of the Hawaii Chapter of Mothers Against Drunk Driving on House Bill 535 – relating to manslaughter.

Although MADD takes no positions on specific sentencing in cases of injury or death caused by an impaired driver, MADD Hawaii is sympathetic to HB 535. Our organization supports the victim's family and their wishes for "justice". Some families are passionate about the kind of sentence they want to see from the Court. Other families choose not to focus on the offender's trial or its results. HB 535 presents an opportunity to address the human suffering issues, and to seek greater clarity in the legal reasoning, behind manslaughter vs negligent homicide sentencing.

However, MADD is concerned about the extreme differences which can occur in the Court's sentencing of impaired individuals who have caused a highway fatality. The offender in a 2019 Kauai case was charged with Manslaughter and the Court issued a sentence which included life-time imprisonment. On the other hand, in Honolulu Circuit Court, a judge who recently sentenced an offender with 5 years probation and only 30 days of actual prison time.

Yes, the specifics of these cases were somewhat different and the County Prosecutor's offices were different but it is still very difficult to understand this disparate sentencing. Although MADD understands the need to have flexibility in sentencing, this extreme situation moves us to consider support for a charge of Manslaughter for an alcohol and/or drug impaired driver who causes the death of an innocent person.

Thank you for this opportunity to submit testimony.

ADDRESS

3442 Wai'ālae Ave., Suite 1
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808-735-5756

**FAX**

808-735-7989

EMAIL

bicycle@HBL.org

March 1, 2021

Subject: Support HB535

Dear Chair Nakashima, Vice Chair Matayoshi, and members of the House Committee on Judiciary and Hawaiian Affairs,

The Hawaii Bicycling League strongly supports HB535 to define driving and killing another person while having a blood or breath alcohol level of .08 as manslaughter. Such behavior would not be just considered negligent, but would be considered reckless, and subject to the charge of manslaughter. Passing this bill is meant to deter people from drinking, driving and killing others by increasing the length of prison time. The drunk and reckless driver ends an innocent person's life forever. The purpose of this bill is not primarily to punish, but to deter reckless conduct by stopping drunk driving because of the threat of longer prison sentences. The reckless driver's life will not be ended, but the driver's freedom will be curtailed for a very long time.

Stricter laws with more consequences have proven to be effective in other countries, such as Japan. If we want our streets to be safe, and if we want to end senseless traffic violence, we need stronger laws to deter reckless behavior and support responsible behavior.

Kaulana Werner, Zach Manago, and so many others are no longer with us because of reckless, drunk drivers. Let's put a stop to drunk driving. This law change will work well with the current effort to drop the blood alcohol level to .05.

Thank you,

A handwritten signature in blue ink that reads 'Lori McCarney'. The signature is fluid and cursive, with a large loop at the end.

Lori McCarney
Executive Director

Erik K. Abe
55 South Kukui Street, #1606
Honolulu, Hawaii. 96813
Ph. (808) 537-3081. Cell: (808) 537-3081

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
TUESDAY, MARCH 2, 2021; 2:00 P.M.
STATE CAPITOL, CONFERENCE ROOM 325

RE: HOUSE BILL NO. 0535, RELATING TO MANSLAUGHTER.

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

My name is Erik Abe, and I am the Public Affairs and Policy Director for the Hawaii Primary Care Association (HPCA). However, I am testifying today solely in my capacity as a concerned citizen, and my views expressed do not necessarily nor officially reflect those of the HPCA.

I am testifying in **SUPPORT** of Senate Bill No. 2420, RELATING TO MANSLAUGHTER., and propose an **AMENDMENT** for your consideration.

As received by your Committee, this bill would:

- (1) Establish new actions of a crime that would constitute manslaughter -- recklessly operating a motor vehicle with .08 or more grams of alcohol per two hundred ten liters of breath, or with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood; and
- (2) State the Legislature's intent that when an offender chooses to drink to levels of intoxication and recklessly operate a vehicle in a manner that results in the death of another person, the offender has demonstrated reckless rather than negligent behavior, which should result in a charge of manslaughter.

Four years, I was requested by a friend, Mr. Ron Shimabuku, to assist his family draft legislation before the Hawaii State Legislature to strengthen Hawaii's laws applicable to driving under the influence of an intoxicant. At that time, Mr. Shimabuku informed me that his hanai brother, Kaulana Werner, was killed by an intoxicated driver in Nanakuli, Island of Oahu, and that his family wanted to change the laws to prevent similar situations from occurring in the future to ease the suffering of families of victims.

Testimony on House Bill No. 0535
Tuesday, March 2, 2021; 2:00 p.m.
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The Werner Ohana felt very strongly that the Office of the Prosecutor, City and County of Honolulu erred in charging the offender with Negligent Homicide in the First Degree (**See**, Section 7-7-702.5, Hawaii Revised Statutes (HRS)). This offense is a Class B Felony, the maximum penalty of which is 10 years in prison. Instead, they had wanted the offender charged with Manslaughter (**See**, Section 707-702, HRS), a Class A Felony, the maximum penalty of which is twenty years to life.

Accordingly, during the Regular Session of 2018, I drafted a bill for the family to add certain cases of negligent homicide to the felonies that may be subject to an extended term of imprisonment. With this Committee's assistance and the help of your colleagues, that bill was approved by the Legislature and signed into law. It became known as "Kaulana's Law".

However, shortly before the Adjournment Sine Die of the 2018 Regular Session, the Hawaii Supreme Court issued its decision in *Robert Flubacher v. State of Hawaii*, SCWC-15-0000363. To wit, the Court opined that ". . . any extended term of sentence imposed after June 28, 2000, in which the court, not a jury, found the fact of 'necessary for protection of the public'. . . is in violation of the Sixth Amendment as held in *Apprendi v. New Jersey*, 530 U.S. 466 (2000)."

Kaulana's Law was intended to provide a statutory mechanism that would have allowed the Court the discretion to extend the sentence of a person convicted if the crime warranted extra punishment because of the egregious actions of the person convicted of the crime. In light of *Flubacher*, this approach does not appear to be legally permissible.

In my research, I did not come across a single instance where the Prosecutor's Office under the previous administration had charged a person for Manslaughter when the offenders negligent actions involving a motor vehicle lead to the death of another. Recently, there have been numerous high-profile cases -- extremely egregious cases -- in which the Kaneshiro Administration failed to charge the offender with Manslaughter. These included:

- A commercial driver operating a loaded trolley in Kakaako runs over a pedestrian and drags him 100 feet. When authorities stop him, they find an open bottle of liquor and him smelling of alcohol. The driver was found to have a blood-alcohol level over the .08 threshold;
- A pedestrian in a crosswalk in Nanakuli was hit by a speeding motorist. The impact threw the pedestrian over 200 feet. The driver only stopped after the car shut down more than three-quarters of a mile from the point of impact. At the time the police confronted the driver, she was in the process of putting a tow cable

onto her car from a friends car. She was found to have a blood-alcohol level over the .08 threshold;

- A pedestrian was struck by a motorist on the North Shore. The driver failed to stop. After an extended search, the driver was found miles away in a vacant parking lot passed out drunk on the ground with the door left open. He was found to have a blood-alcohol level over the .08 threshold;

In all of these cases, the Kaneshiro Administration charged the offenders with Negligent Homicide in the First Degree rather than Manslaughter.

But this wasn't the case on the neighbor islands. Most recently, the Hawaii Supreme Court affirmed the decision in a Kauai case where a drunk driver involved in an accident that led to the death of another was convicted of Manslaughter.

The standard by which vagueness becomes unconstitutional is when ambiguity in the language of the statute leads to arbitrary enforcement. As a concerned citizen, I submit that the ambiguity of these statutes have seriously undermined justice in our State. It is my hope that this Committee will agree that these statutes need to be fixed and that this bill be approved for further consideration.

Consequently, the Werner Ohana met with the new Prosecutor of the City and County of Honolulu who pledged to do better than his predecessor. We discussed the latest version of the manslaughter bill with him -- Senate Bill No. 2420, Senate Draft, Regular Session of 2020, which is substantively similar to House Bill No. 0535. Prosecutor Alm raised concerns that the language as drafted was unclear on whether or not the Court would have to determine (1) that the offender was recklessly operating a motor vehicle; and (2) whether the person recklessly caused the death of another person.

This confusion appeared to have stemmed from "and" and "or" having the same meaning unless preceded with the clarifier "either". (**See**, HRS §1-16, attached.). As such, a proposed amendment was prepared and reviewed by Prosecutor Alm who stated that this would fix the problem and that his office would support this amendment.

Testimony on House Bill No. 0535
Tuesday, March 2, 2021; 2:00 p.m.
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This amendment also included revisions to the purpose clause to clarify the Legislature's intent that when an offender chooses to drink to levels of intoxication and operates a vehicle in a manner that results in the death of another person, the offender has demonstrated reckless rather than negligent behavior, which should result in a charge of manslaughter. Prosecutor Alm also agreed to this change.

A copy of the amended language is attached for your consideration.

With these amendments, I urge your favorable consideration of this bill.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact me.

attachments

§1-18 "Or", "and". Each of the terms "or" and "and", has the meaning of the other or of both. [PC 1869, c 1, §4; RL 1925, §15; RL 1935, §16; RL 1945, §15; am L 1945, c 233, §2; RL 1955, §1-23; HRS §1-18]

Case Notes

Applied: 230 F. Supp. 455; 17 H. 135, 141; 34 H. 935, 941.
"And" deemed conjunctive, not alternative. 33 H. 98, 101.
"Or" deemed alternative, not conjunctive, penal statute. 44 H. 601, 604, 359 P.2d 289.
Applied in substituting "and" for "or" in public accountancy statute. 51 H. 80, 452 P.2d 94.
"Or" deemed "and". 54 H. 356, 507 P.2d 169.
Use of word "and" is not necessarily decisive. 56 H. 675, 548 P.2d 268.
Cited: 52 F.2d 411, 414; 5 H. 52, 53; 19 H. 393, 397.

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[Vol01_Ch0001-0042F](#)

[Next](#)

A BILL FOR AN ACT

RELATING TO MANDSLAUGHTER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. the legislature finds that when an offender chooses to drink to levels of intoxication and operates a vehicle in a manner that results in the death of another person, the offender has demonstrated reckless rather than negligent behavior, which should result in a charge of manslaughter.

Accordingly, the purpose of this Act is to specify that a person commits the offense of manslaughter if the person recklessly causes the death of another person by operating a motor vehicle with .08 or more grams of alcohol per two hundred ten liters of breath or .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

Section 2. Section 707-702, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"§707-702 **Manslaughter** (1) A person commits the offense of manslaughter if either:

- (a) The person recklessly causes the death of another person; [~~or~~]
- (b) The person intentionally causes another person to commit suicide; or
- (c) The person recklessly causes the death of another person by operating a motor vehicle with either:
 - (A) .08 or more grams of alcohol per two hundred ten liters of breath; or
 - (B) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood;

provided that this section shall not apply to actions taken under chapter 327L."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

Report Title:

Manslaughter; Driving Under the Influence

Description:

Specifies that a person commits the offense of manslaughter if the person recklessly causes the death of another person by operating a motor vehicle with either .08 or more grams of alcohol per 210 liters of breath or .08 or more grams of alcohol per 100 milliliters or cubic centimeters of blood.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

Ron Shimabuku
ronkshimabuku@gmail.com
#808-295-4954

Testimony on House Bill No. 535
RELATING TO MANSLAUGHTER
Tuesday, March 2, 2021
2:00p.m.
VIA VIDEOCONFERENCE
Conference Room 325
State Capitol
415 South Beretania Street

Re: Supporting House Bill No. 535, Relating to Manslaughter

Chair Mark Nakashima, Vice Chair Scot Matayoshi, and Members of the Committee:

My name is Ron Shimabuku and I am the hanai brother and godparent to the late Kaulana Matthew Auwae Werner, who as you are aware was the victim of a drunk driving, hit-and-run crash which occurred on the evening of April 24, 2016 in Nanakuli, Hawaii. I am requesting that House Bill No. 535, also referred to as Kaulana's Bill 2.0, which requires manslaughter prosecutions for drunk driving crashes that results in the death of another person be passed into law.

As a concerned citizen of Hawaii and having lost a loved one to a drunk driver, **I strongly support this bill**. This bill adds to the deterrence for individuals who willfully drink, drive, and take innocent lives by way of reckless behavior. Further, the current criminal punishment for individuals convicted of this crime is not fitting and not just in the eyes of our community.

Our belief in the legislative process was realized through Kaulana's Law where our intent was to place the enhanced sentencing option for offenders convicted of Negligent Homicide and Failing to Render Aid with our judges who have the training, knowledge and expertise to make a just determination. On September 20, 2019, Kaulana's Law was put to the test and determined not to be applied as the evidence presented was insufficient. With this, we took the

drawing board once again to identify other areas of the law and process that could be challenged. We identified an opportunity to require the prosecuting attorney to charge Manslaughter at the forefront of the indictment.

Through informal research, we have compiled a list of drunk driving crashes that occurred in Hawaii over the course of several years. This is by no means a comprehensive nor exhaustive list, however, it reflects the concern that is presented through the intent of this bill; i.e. the seriousness of these crimes and the charge(s) that are applied by the prosecuting attorney. I would ask that as you review these cases take note of the charges brought up against these offenders by the prosecuting attorney at the time of the offense.

Date	Location	Charge	Case Result	Case Description
October 7, 2000	Oahu	Manslaughter	20-year sentence	Offender's Ford Thunderbird broadsided the victim's Honda Civic, killing the victim almost instantly. This is after the offender went on what prosecutors called a seven-hour drinking binge.
January 2, 2001	Oahu	Manslaughter	20-year sentence	Offender was driving while intoxicated, crossed the center line and hit another vehicle, killing its driver. Victim was heading to work.
July 22, 2008	Oahu	1. Negligent Homicide 2. Failing to render aid	1.5-year sentence	Victim died after a vehicle hit the victim bicycling home along Kamehameha Highway.
March 23, 2010	Oahu	1. Negligent Homicide 2. Failing to render aid	10-year sentence	Offender fled the scene after a motorcycle collided with the victim's truck on Farrington Highway near Waipahu Intermediate last December. The motorcyclist died.
December 17, 2010	Oahu	1. Negligent Homicide	10-year sentence	Victim was riding with a group of bicyclists on Kamehameha Highway near

		2. Failing to render aid		Leilehua Golf Course Road when the victim was struck from behind. The vehicle kept going.
November 20, 2011	Oahu	1. Negligent Homicide 2. Failing to render aid	10-year sentence	Victim was struck and killed in a crosswalk
April 11, 2012	Big Island	1. Negligent Homicide 2. Failing to render aid	10-year sentence	Offender struck and killed a bicyclist in Hilo.
June 20, 2015	Maui	Manslaughter (3 counts)	Pending	Three victims died after being ejected from the bed of a Dodge pickup truck in the collision on what was then Mokulele Highway and is now Maui Veterans Highway. The Dodge truck was turning left from the highway into the Maui Raceway Park entrance when it was hit by a white Toyota pickup truck that was traveling north on the highway, police said.
April 24, 2016	Oahu	1. Negligent Homicide 2. Failing to render aid	10-year sentence	Offender was driving under the influence, speeding, struck and killed a pedestrian, then fled the scene.
August 6, 2016	Oahu	1. Negligent Homicide 2. Failing to render aid	Pending	Offender hit and killed the victim who was trimming grass for an elderly woman who lived on Aiea Heights Drive.
April 27, 2017	Kauai	Manslaughter	Life sentence	Offender stole a bottle of vodka from the Big Save supermarket in Kapa'a, got drunk, walked to a nearby house, stole a truck parked out front, and drove down

				the highway at speeds approaching 90 miles an hour, swerving in and out of oncoming traffic, until he the victim's car head-on.
December 23, 2017	Oahu	1. Negligent Homicide (2 counts) 2. Failing to render aid (2 counts)	10-year sentence	Offender's sport utility vehicle was traveling Kahuku-bound on Kamehameha Highway when, for unknown reasons, crossed the center line and plowed into a bus stop on the opposite side of the road. The SUV struck a couple from Portland, Ore. who were sitting at the bus stop.
January 23, 2018	Maui	1. Negligent Homicide 2. Failing to render aid	Pending	The sedan hit the curb at the entrance to the parking lot, then struck the victim.
September 30, 2018	Oahu	1. Negligent Homicide 2. Failing to render aid	10-year sentence	The collision killed the victim while the victim was walking a dog along Farrington Highway.
January 28, 2019	Oahu	Manslaughter (3 counts)	Pending	Three victims died as the offender's truck veered across three lanes, climbed a traffic island, hit six pedestrians, and then crashed into another truck.

There are clearly inconsistencies in the charges applied in these heinous offenses. As an everyday citizen, one can only speculate a reason behind these determinations. However, as a victim having gone through the judicial process, we have reasons to question the process.

Lastly, it should be noted that how the laws of Negligent Homicide and Manslaughter are written in our state will certainly leave room for discretionary authority. Therefore, we

must address this by specifically stating that when an offender chooses to drink to levels of intoxication and operates a vehicle in a manner that results in the death of another person, the offender has demonstrated reckless rather than negligent behavior, which requires a charge of manslaughter, a Class A felony. It is simply unacceptable for offenders to be charged at the lesser crime of negligent homicide, a Class B felony.

Thank you for the opportunity to testify. Should you have any questions, please feel free to contact me.

HB-535

Submitted on: 2/27/2021 1:10:49 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Randi-Lynn Shimabuku	Individual	Support	No

Comments:

My name is Randi-Lynn Shimabuku (Tam) and I am ohana of the late Kaulana Werner. I am providing testimony in support of HB535, also known as Kaulana's Bill 2.0. I'm asking you to strongly consider mandating the proecuting attorney to charge Manslaughter for crimes involving drinking and driving deaths. 20-years to life should be the penalty, NOT a mere 10 years!

Thanks!

HB-535

Submitted on: 2/28/2021 4:43:15 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Shimabuku	Individual	Support	No

Comments:

To The House of Representatives and Respected Committee,

I believe it's time to take action to pass bill HB535. We all know society suffered from the deaths of Drunk Driving/driving under the influence. It's time to put "your" foot down and lay the consequences of the offense. The public has always read/heard the same o same o year after year of the injuries/deaths caused by Drunk Driving. Society, Government, etc. allows people to consume alcohol and there will always be that percentage of those who make the wrong decision to drink and drive. The consumer already knows the Laws/consequences of making that wrong decision before they consume the alcohol and our State Governing Body needs to put into Law, the punishment for Driving Drunk that takes a life of a bystander and that's not speaking of those who has already perished because of a Drunk. "Sober" Consumers know the consequences before they take a sip of alcohol, some may not care and there are a lot that do care BUT will make that wrong decision to drive under the influence and once they do consume alcohol it's already known they are not in their right mind. The Government allows alcohol consumption, warns consumers what not to do under the influence yet the Government still has reservations putting into Law the punishment for taking a live under the influence. It's time to pass Bill HB535 to send a message to consumers to not Drive while intoxicated. It's not the victims problem, it's the Sober minded consumer who decides to drink alcohol and making the wrong decision to Drive under the influence.

A concerned subject of the State of Hawaii,

Paul Shimabuku

HB-535

Submitted on: 2/28/2021 5:04:27 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Medeiros	Individual	Support	No

Comments:

Aloha,

Making the decision to drive after being intoxicated should have consequences. Taking a life because you made a poor decision should be at the very least manslaughter. I fully support this bill to bring justice to those who were lost because of drunk driving and to bring a better consequence to those who choose to drive while intoxicated.

Mahalo,

Richard

HB-535

Submitted on: 2/28/2021 8:12:28 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ian Kitajima	Individual	Support	No

Comments:

[COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS](#)

For Tuesday, March 2, 2021 a 2pm. Rm 325

Aloha Chair Nakashima, Vice Chair Matayoshi, and members of the Committee. Mahalo for the opportunity to submit testimony in **SUPPORT** of **HB535**.

Over the last few months, I have had the privilege to work with Eddie Werner, who's son Kaulana was tragically killed by a speeding drunk driver while he walked along Farrington Hwy across from their home in Nanakuli. Because we/Oceanit have been a part of a DOT highways traffic in 2020, and a speed project in 2021, we have spent many hours with Eddie to learn about their challenge to find justice for their son, but also to learn how frequent lives are lost in traffic accidents. For example, in the last six weeks of 2020, three people were killed in traffic accident in Nanakuli, one was a man killed while in the crosswalk.

The Werner Ohana is not against drinking. If you plan to drink, then have a plan to get home without driving drunk, e.g., take a taxi home. Their dream is for no family to suffer like their suffering. Mahalo for the opportunity to support HB535. Ian Kitajima, February 28, 2021.

HB-535

Submitted on: 2/28/2021 8:57:17 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shauna Kamaka	Individual	Support	No

Comments:

I support HB 535. Please pass this bill so we can save lives. Thank you for your time.

Mufi Hannemann

P.O. Box 459 • Honolulu, HI 96809

House Committee on the Judiciary & Hawaiian Affairs

House Bill 535 – Relating to Manslaughter

March 2, 2021

Aloha Chair Nakashima , Vice Chair Matayoshi , and members of the Committee.

I am testifying today in strong support of House Bill 535 which would specify that any person who causes the death of another by recklessly operating a motor vehicle while over the legal limit has committed manslaughter and therefore should be forced to face these charges. Should this measure pass, it would codify the rules and ensure equity across the board for all victims and perpetrators.

Therefore, I am testifying in strong support of House Bill 535.

Mahalo for the opportunity to testify.

HB-535

Submitted on: 3/1/2021 7:16:08 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamuela Werner	Individual	Support	No

Comments:

Aloha:

I support HB535.

Me ke aloha,

Kamuela Werner

HB-535

Submitted on: 3/1/2021 8:10:13 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Daphne Manago	Individual	Support	No

Comments:

I support HB535. We need to end the careless drinking and driving and save innocent lives. Kaulana Werner had a full life ahead of him and his death should never have happened. Drunk driving offenders must take responsibility for their reckless behaviors.

HB-535

Submitted on: 3/1/2021 9:52:59 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
JACQUELYN SATO	Individual	Support	No

Comments:

Punishment should fit the crime, especially if a life is lost because someone knowingly drank too much alcohol, and still decided to drive. As in the case of Mr. Ed Werner's son, that was a tragedy, and the woman had no remorse. Also Rep. Sharon Har was lucky not to cause any harm going opposite way on a one-way street, another unremorseful person that did not take responsibility. There is so much information and education on not drinking and driving, that punishment needs to be more severe.

Thank you for your time.

HB-535

Submitted on: 3/1/2021 9:59:14 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
HOKU WERNER	Individual	Support	No

Comments:

My name is Hoku Werner and I am the older siser of Kaulana Werner who was hit and killed on April 24, 2016 by a reckless Drunk Driver named Myisha Lee Armitage who was traveling at a high rate of speed down farrington hwy after having mulitple drinks and shots of alcohol. It was a decison that chose to make that forever ruined my families lives. People dont realize the damage that people like Myisha causes. Our lives are not the same. It never will be. We are so broken, Birthdays, Holidays, anniversary to the date of death its a feeling that no one should ever have to endure. My relationship with people has change draastically. I have absolutely no tolerance nor patience for anyone. I snap so easliy. I do blame her. There are times where i feel so out of it like im some type of phsycho person. I know my parents can totally relate. We are so damaged. She and many other people we know who casued damage to these families who are battling this horrifc nightmare due to "negligance" is just bullshit. NO amouunt of punishment will ever be enough for robbing my brohter of his life. But if we have to suffer they should to. A slap on the wrist is unexceptable. We beg of you. Things need to change there are to many lives being stolen and to be only charged with Negligent Homicide in the first degree is just ridiculous. manslaughter with a charge of an automatic 20 years in prison is lots of time for them to think twice about that person they killed. Please put yourself in our shoes. Kaulana was only 19 years old when he was killed, literally a kid tryinh to start his life. 5 years later we still fight for justice. Won't bring Kaulana back but we do it with high hopes in saving someone elses loved one.

HB-535

Submitted on: 3/1/2021 10:38:56 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rolando Celes	Individual	Support	No

Comments:

My name is Lando Celes Jr, BIL to Kaulana Werner who lost his life 5 years ago to a drunk driver who after 3.5 years of playing the waiting game was incarcerated a little over a year ago. ive witness the damaged Myisha Armitage has caused my family first hand. Drunk driving is 100% preventable. it happens so often with little reprecusions that people continue to do it. Why because the punishment is little less to nothing. Some people walk away with no punshiment at all. We on the other hand as afamily fought hard for changes. Today we still continue to push for harseher penalties. I support HB535 whoel heartdely. NO victim should ever have to suffer how Kaulana did that horrifc night. She left him all alone to die. How is that even humane? She has absolutely no remose for what she has done to him. i have no remorse for her bring exactly where she is today. She deserves to be there for a longer term than the one she was sentenced to. Its animals like her with no regards to hiuman life that continue to ruin families. At the end of thee day she wins. Eventually she will get to go home. Kaulana wasnt given the same faith, for he will never return to us. I hope you conisder how important this bill means to alot of families in similar situations.

HB-535

Submitted on: 3/1/2021 12:11:05 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laura S.	Individual	Support	No

Comments:

I am in support of House Bill No. 535 which requires manslaughter prosecutions for death caused by drunk driving be passed into law.

As a CONCERNED CITIZEN of Hawaii, I **am in strong support of this bill**. This bill ensures that prosecutions for individuals convicted of this crime are punished to the highest extent possible. My position is such that when an offender chooses to drink to levels of intoxication and operates a vehicle in a manner that results in the death of another person, the offender has demonstrated reckless rather than negligent behavior, which requires a charge of manslaughter, a Class A felony. It is simply unacceptable for offenders to be charged at the lesser crime of negligent homicide, a Class B felony.

For this reason, the current punishment does not fit the crime and I ask that **you support this bill**. Drunk driving is 100% preventable and without sticter laws in place to combat this disease, it will continue and we will always lose loved ones. This bill sends a strong message to those who consider drinking and driving and its detrimental ever lasting impacts.

Thank you for the opportunity to testify.

HB-535

Submitted on: 3/1/2021 12:51:42 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
joy baker	Individual	Support	No

Comments:

I feel that people who have taken innocent lives in this case should be accountable for their actions with stricter consequences. They don't go to prison right away they have the luxury of cruising still partying celebrating with friends and family when the family is mourning and grieving still until this day!!!! Our state needs to come up with wiser choices because what if it was your family always think about that what if it was your FAMILY!!!!

HB-535

Submitted on: 3/1/2021 8:50:39 PM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melissa-Iris Lau	Individual	Support	No

Comments:

As someone who lost my spouse instantly to an impaired driver, I support this bill because I understand that it increases the charge to a class A felony, and sentencing to 20 years per life taken.

Death is unfortunately permanent as we all know...My husband and the others who were killed on January 28, 2019 will never return and certainly never be able to carry on with their lives.

Kaulana Werner would still be here today if not for that impaired woman who hit him and fled the scene. When his killer gets out of prison in 10 or less years, she'll be able to continue on with her life. Is this justice? Will she have truly paid the price for what she did? What this just an accident or careless "oops"?

When someone chooses to drive impaired, he or she may not have the intent to kill another, but has decided at that point that they are okay with taking the risk of taking another life.

None of these victims are at fault, and all were in the right place. They also had no fighting chance of survival. And yet their killers will get to carry out their light sentence and continue life as normal.

Where is the justice for the victims, and what message does this say to would-be offenders?

As a victim, I feel completely helpless and hopeless and will never be able to have closure nor will I be able to really just "move on." This is a traumatic event that will forever affect me mentally, emotionally and physically. No amount of sorries will ever make this feel less awful.

My husband, Dr. Travis Lau was a highly skilled and talented physician whose life was taken in an instant. He contributed so much to his profession that I can only wonder what else he would have done if he was still here. You have no idea how much of a loss he is to society and healthcare.

And the same goes for Kaulana...as you read our testimonies, please reach deep down and think about your own family.

Are you okay with offenders getting off with a slap on the wrist? Are you okay with the fact that people think the penalties aren't stiff enough and you can practically get away with murder here?

You have the power to strengthen our laws and penalties. You have the power to make effective change. Please make the right decision.

Aloha,

Melissa Lau

HB-535

Submitted on: 3/2/2021 11:35:08 AM

Testimony for JHA on 3/2/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ke'ala Ragsdale	Individual	Support	No

Comments:

My name is Ke'ala Ragsdale. My younger brother Jonah Makua Ragsdale was struck and killed by Sierra Burns, a drunk driver. My brother Jonah was not the only victim of Sierra Burns. She killed a second young man, Daniel Mole, severely injured Dustin Rosario, and extremely traumatized a number of young adults who witnessed their close friends getting struck and laying for dead on the road while Sierra Burns ran away from her actions. Sierra Burns was only charged with negligent homicide and sentenced to 10 years TOTAL for killing TWO BOYS and injuring a third. I will never comprehend how that amounts to "justice". Our families will forever suffer the loss of our loved ones and are reminded daily of the hurt. Drinking and driving is a choice, and if irresponsible individuals CHOOSE to put not only their own life but other lives in danger, they MUST be held accountable for their actions. I am in full support of HB535.

Aloha my name is Nonohe Botelho. I am an Independent Consultant for Victims and Surviving Families of Homicide and other violent crimes. I am also affiliated with the National Organization of Parents of Murdered Children (POMC). I became the Contact Person for POMC in 2012, a year after my son was shot and killed in front of my home in Kaneohe in 2011.

I am writing in strong support of HB 535: Relating to Manslaughter. Specifically, HB 535 is asking that the legislature (Committee on Judiciary and Hawaiian Affairs) finds that when an offender chooses to drink to levels of intoxication and recklessly operates a vehicle in a manner that results in the death of another person, the offender has demonstrated reckless rather than negligent behavior, which should result in a charge of manslaughter.

First, it's important to note that Manslaughter under HRS 707-702 DOES allow for the element of Recklessness, stating that, "(1) A person commits the offense of Manslaughter if: (a) the person recklessly causes the death of another person." In addition, in a Cross Reference Commentary in the same section it states that, "Manslaughter is traditionally considered as an offense less heinous than murder, principally because the actor's state of mind is less culpable. The Code has followed the lead of other recent criminal law revisions in "making recklessness the standard of culpability for this offense." Second, there is the issue as to whether to raise the standard of culpability from negligence to recklessness. Under the law, recklessness is defined as a "conscious disregard of a substantial and unjustifiable risk to others." There are questions that need to be asked regarding recklessness, including Did the offender drink to intoxication over the legal amount under the law? Did the offender operate a vehicle while intoxicated? Did the offender speed while intoxicated? Did the offender hit another person which resulted in death? Did the offender stop to render aid and identify themselves as the driver? Did they flee the scene? Did the offender recklessly endanger other passengers in their own vehicle? Did the offender leave a bar (after hours of drinking), drive in their vehicle, subsequently ending in a head-on collision resulting in a death of another person? Reckless in this sense means- foreseeing that harm might occur and going ahead and doing it anyway!

Finally, I believe it is the duty of the legislators to uphold the revised Code, "making recklessness the standard of culpability." In addition, I believe, as stated in HB 535, that when an offender chooses to drink to levels of intoxication and recklessly operates a vehicle in a manner that results in the death of another person, the offender has demonstrated reckless rather than negligent behavior, which should result in a charge of manslaughter," as is provided under the law. Please support, take action today and PASS HB 535!

Thank you for your time and consideration on this matter.

Mahalo,

Nonohe Botelho, Independent Consultant for Victims and Surviving Families