

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender, State of Hawai‘i
to the Senate Committee on Judiciary**

February 25, 2021

S.B. No. 754: RELATING TO THE USE OF INTOXICANTS WHILE
OPERATING A VEHICLE

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 754.

This measure proposes to reduce the OUVII threshold from 0.08% blood alcohol content (BAC) to 0.05% blood alcohol content. For reasons stated below, we oppose this measure.

A reduction of the alcohol impairment level to 0.05% BAC simply casts too wide a net and will result in criminalizing the behavior of normally responsible drinkers without having an impact on reducing alcohol related fatalities. There are many responsible drinkers who do not drink and drive, or who limit their alcohol consumption to one to two drinks over the course of a night. These are the kind of people who are law-abiding and follow the rules. A reduction of the BAC will result in some of these individuals being arrested for OVUII. Indeed, a female driver weighing a mere 100 pounds may reach a 0.05% BAC with only one alcoholic drink. See https://www.onhealth.com/content/1/alcohol_impairment_chart (last visited, February 7, 2021). These law-abiding individuals will be caught in this wide net. The individuals who drive drunk and seriously injure or kill innocent people are not this kind of people. The high-level BAC drivers are alcohol dependent and/or uncaring individuals. They do not have licenses and/or insurance. A reduction of the BAC or an increase in penalties will not stop these kinds of people from drinking and driving.

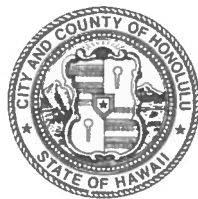
Another consequence of a reduction of the BAC will be increased court congestion. In order to deal with the backlog, you will need to add judges, prosecutors and public defenders. At our current staffing level, the earliest our O‘ahu Branch can schedule an appointment to meet our traffic and misdemeanor clients is 2 to 4 months. An increase in our OVUII caseload will require at least two more attorneys and another clerical position on O‘ahu alone. There have always been high caseloads for our

OVUII calendars in the Honolulu District Court, but the backlog caused by the COVID-19 pandemic has increased the calendars several-fold. There have been several mornings where the deputy public defender and deputy prosecuting attorney have over 100 OVUII cases to deal with. These cases are all being continued once a month for status or pretrial conference hearings because we have not even attempted to re-start OVUII trials in the Honolulu District Court. With the number of cases already clogging the district courts, there will be more cases dismissed due to a Rule 48 of the Hawai'i Rules of Penal Procedure and/or constitutional speedy trial violation. The emphasis should be reducing traffic fatalities, not increasing court congestion.

Thank you for the opportunity to comment on S.B. No. 754.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honoluluupd.org



RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE CT-LC

February 25, 2021

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 754, Relating to Operating a Vehicle While Intoxicated

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

The HPD supports the proposal for lowering the blood alcohol concentration (BAC) in a person's breath or blood for the offense of Operating a Vehicle Under the Influence of an Intoxicant (OVUII).

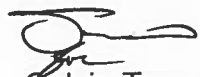
In recent years, alcohol-impaired driving alone has been a factor in approximately 20 percent of all traffic fatalities and critical collisions on Oahu's roadways. Impaired driving is a serious problem that needs to be addressed. Research shows that critical driving skills are impaired at .05 BAC (.05 or more grams of alcohol per 100 milliliters or cubic centimeters of blood or .05 grams of alcohol per 210 liters of breath). This level of impairment significantly increases the risk of senseless and preventable crashes that can take the life on an innocent commuter. Any measure that could stop these tragedies and keep impaired drivers off of our roads should be implemented.

The HPD strongly urges you to support Senate Bill No. 754, Relating to Operating a Vehicle While Intoxicated.

The Honorable Karl Rhoads, Chair
and Members
Page 2
February 25, 2021

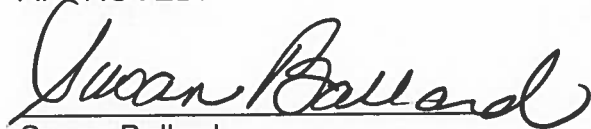
Thank you for the opportunity to testify.

Sincerely,



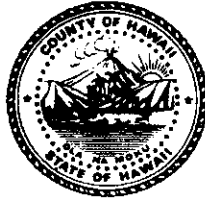
Calvin Tong, Major
Traffic Division

APPROVED:



Susan Ballard
Chief of Police

Mitchell D. Roth
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado Jr.
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998
(808) 935-3311 • Fax (808) 961-2389

February 23, 2021

Senator Karl Rhoads
Chairperson and Committee Members
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: SENATE BILL 754, RELATING TO OPERATING A VEHICLE WHILE INTOXICATED
HEARING DATE: FEBRUARY 25, 2021
TIME: 9:30 A.M.

Dear Senator Rhoads:

The Hawai'i Police Department **supports** Senate Bill 754, with its purpose to lower the threshold blood alcohol concentration for the offense of operating a vehicle while under the influence of an intoxicant.

In recent years alcohol-impaired driving has been a factor in approximately 31% of all traffic fatalities and critical collisions in Hawai'i County. The Hawai'i Police Department encourages the committee to adopt the proposed changes to Senate Bill 754 to reduce the change of Hawai'i Revised Statutes (HRS) 291E-1 to amend the definition of "under the influence to .05 or more grams of alcohol per two hundred ten liters of the persons breath or .05 or more grams of alcohol per one hundred millimeters or cubic centimeters of blood."

The National Library of Medicine reports that "There is strong evidence in the literature that lowering the BAC limit from08 to .05 is effective, and that lowering the BAC limit for youth to .02 or lower is effective..." in deterring drinking and driving and ultimately saves lives. The reduction of blood and breath alcohol levels will help make our roads safer by identifying unsafe levels of intoxication, allowing for efficient enforcement and prevent driving while intoxicated.

It is for these reasons, we urge this committee to approve this legislation. Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 754.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul K. Ferreira".

PAUL K. FERREIRA
POLICE CHIEF

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura




Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 24, 2021

TO: Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Alice L. Lee
Council Chair 

DATE: February 25, 2021

SUBJECT: **SUPPORT OF SB 754, RELATING TO OPERATING A VEHICLE WHILE INTOXICATED**

Thank you for the opportunity to testify in **SUPPORT** this important measure. The purpose of this measure is lower the threshold blood alcohol concentration for the offense of operating a vehicle while under the influence of an intoxicant from 0.08 percent to 0.05 percent.

On February 19, 2021, the Maui County Council adopted Resolution 21-22, entitled "SUPPORTING STATE SENATE BILL 754 (2021), RELATING TO OPERATING A VEHICLE WHILE INTOXICATED." Therefore, I am providing testimony on behalf of the Maui County Council.

The Maui County Council **SUPPORTS** this measure for the following reasons:

1. This measure would help the County realize its "Vision Zero" goal of eliminating all traffic deaths by 2040.
2. The Council agrees with the National Transportation Safety Board that this measure would help save lives in Maui County and throughout Hawai'i.

For the foregoing reasons, the Council **SUPPORTS** this measure.

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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

February 25, 2021

To: Senator Karl Rhoads, Chair, Senate Committee on Judiciary;
Senator Jarrett Keohokalole, Vice Chair; and members of the Committee

From: Carol McNamee; Arkie Koehl, Public Policy Committee; Mothers Against
Drunk Driving (MADD) Hawaii

Re: Senate Bill 754 – RELATING TO OPERATING A VEHICLE WHILE
INTOXICATED

I am Carol McNamee, offering testimony on behalf of the *Hawaii Chapter of Mothers Against Drunk Driving* in strong support of Senate Bill 754 – relating to Operating a Vehicle While Intoxicated. This bill would change the legal alcohol limit for driving a vehicle on land or water from the existing .08 grams of alcohol per 100 milliliters of blood to .05 grams per 100 milliliters.

Alcohol-impaired driving is the leading killer on U.S. roadways. According to the National Highway Traffic Safety Administration (NHTSA), 12,389 people were killed in alcohol-impaired crashes in the United States in 2019. That same year there were 108 fatalities on Hawaii's roads and at least one third (36) percent were alcohol-related (NHTSA). These crashes cost Hawaii taxpayers over \$575 million annually.

According to the NTSB (National Transportation Safety Board) the risk of being in a fatal crash is at least seven times higher for drivers with a .05 - .079 BAC than for drivers with no alcohol in their system. At a .08 BAC, drivers could have a reduced ability to concentrate, short-term memory loss, difficulty in controlling speed, a reduced information processing capability, and impaired perception.

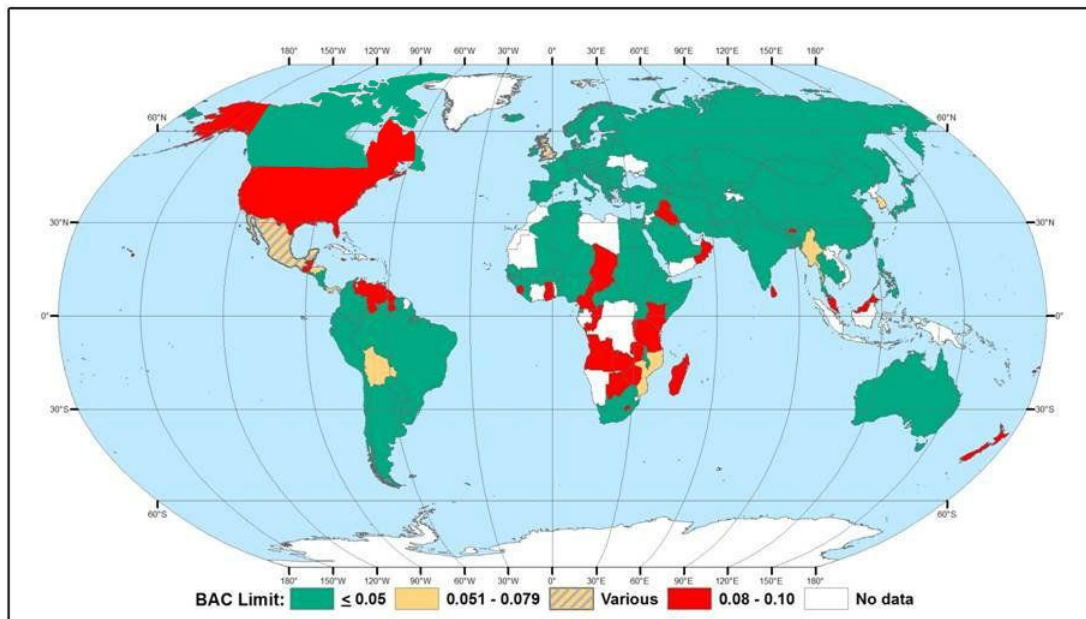
If Hawaii passes this measure, we will join the majority of industrialized countries having a .05 or lower limit for driving. The tourism industry may be concerned about the proposed reduction of the BAC in Hawaii but a large percentage of our foreign visitors may actually have come from a country where a .05 or lower BAC is the illegal level for driving. (See map attached below)

The goal of a .05 BAC is not to stop people age 21 and over from consuming alcohol, but to deter people from driving after drinking. According to the AAA Foundation, sixty-three percent of people surveyed already think .05 BAC should be the illegal level in the United States. A lower BAC should encourage more people to get serious about having a designated driver or taking a bus, cab, or ride-share to and from their destination if they plan to consume alcohol.

In 1995, Hawaii became one of the earliest states in the U.S. (13th) to reduce its illegal blood alcohol level for driving from .10 to .08. Our alcohol-related fatality rate improved considerably but it is still higher than most states. We see evidence of that in the terrible highway crash injuries and fatalities our local media report almost every week. A fatality is not just a word – it represents a life lost - from young children, to young adults, to our kapuna. The word means that a family has experienced overwhelming grief knowing life will never again be the same. Let Hawaii again be one of the first states to take the life-saving step of reducing its blood alcohol level for driving. This time, from .08 to .05.

MADD Hawaii strongly encourages the Judiciary committee to pass SB 754. Thank you for this opportunity to testify.

BAC Limits World Wide





To: The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

Re: Strong Support of SB 754, Relating to Operating a Vehicle While Intoxicated

Hrg: Thursday, February 25, 2021 at 9:30am via Videoconference

Position: Support

The Hawai'i Alcohol Policy Alliance, which is fiscally managed by Hawai'i Public Health Institute, would like to provide testimony in **SUPPORT of SB754**, which would lower the threshold blood alcohol concentration for the offense of operating a vehicle while under the influence of an intoxicant.

1. Lowering the Blood Alcohol Concentration (BAC) to .05 will save lives

A comprehensive 2017 independent research study shows that from 1982 to 2014, in 50 States and DC, lowering BAC from .10 to .08 resulted in a 10.4% reduction in alcohol-related fatalities, with no change in alcohol consumption. This means that lowering the BAC to .08 in the U.S. has saved 1,736 lives annually. A total of 24,868 lives were saved between 1983 and 2014 due to lowering the BAC to .08. **It is estimated that a .05 or lower BAC would result in an 11.1% decline in fatal alcohol crashes** and save 1,790 lives annually in the United States ^[1].

2. Approximately 90 countries have lower alcohol-related crash deaths than the United States due to .05 or lower BAC laws

Approximately 100 countries around the world have already adopted .05 or lower BAC laws. Due to these laws, these countries have significantly lower rates of alcohol-related crash death deaths ^[2].

3. Lowering the BAC to .05 will NOT hurt local business



While countries that have passed .05 or lower BAC laws have lower rates of alcohol-related crash deaths, they have the same or higher rates of alcohol consumption when compared to the US^[3].

Hawai'i has the opportunity to help set a new BAC standard for our nation. This law would improve the overall health and wellness of our communities and ultimately save lives. We ask that you **pass SB754** forward, for the benefit of the people of Hawai'i.

Mahalo for your time and attention to this urgent matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Collins" with "CPS" written in a smaller font to the right.

Richard Collins
rick@hiphi.org

[1] NORC: Fell JC & Scherer M, Effectiveness of .08 and .05 BAC Limits for Driving, 2017 (NIH Grant no. R21 AA022171-01). <http://www.norc.org> (under "NORC Headlines").

[2] Global Status Report on Road Safety 2018, World Health Organization, 2018. https://www.who.int/violence_injury_prevention/road_safety_status/2018/en/

[3] World Health Statistics 2019, World Health Organization, 2019. https://www.who.int/gho/publications/world_health_statistics/2019/en/

To: The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

Re: Strong Support of SB 754, Relating to Operating a Vehicle While Intoxicated

Hrg: Thursday, February 25, 2021 at 9:30am via Videoconference

Position: Support

Good morning, Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary. My name is Michael Sparks from Kihei. Thank you for the opportunity to submit testimony in STRONG SUPPORT of SB 754, Relating to Operating a Vehicle While Intoxicated.

This bill will lower the limit of alcohol-impaired driving to .05 percent blood alcohol concentration (BAC), which deters drunk driving and saves lives.

In 2018, Hawai'i has 117 highway-related fatalities, more than a third involved a driver with a BAC of 0.01 percent or higher. Lowering the BAC to 0.05 addresses alcohol-impaired driving and is a necessary step to reduce traffic deaths and related injuries.

Internationally, approximately 100 countries have some type of .05 or lower BAC laws which have lowered their traffic deaths.

By separating drinking and driving while impaired, a .05 BAC or lower limit would result in an estimated 11% decline in fatal alcohol crashes and save at least 1700 lives annually in the U.S.

Reducing BAC limits does not discourage alcohol consumption. It does deter deadly drinking and driving. The data is clear, the lifesaving benefits are certain, the support is documented and the justification for action is compelling. Each person killed in a preventable alcohol-related crash on Hawai'i roads forever changes the lives of families and communities. We urge you to advance SB 754 to reduce the death and injury toll of alcohol-impaired driving.

Mahalo for the opportunity to submit testimony.

Michael Sparks
President – SparksInitiatives
1667 South Kihei Rd
Kihei, HI 96753



Cindy Goldstein, PhD
Hawaiian Craft Brewers Guild
98-814 C Kaonohi Street
Aiea, HI 96701

SB754 Relating to Intoxicating Liquor : Definition of Beer
Senate Committee on Judiciary
Thursday, February 25, 2021 at 9:30 a.m. Via Videoconference

Position: **Oppose**

Chair Senator Karl Rhoads, Vice Chair Senator Jarrett Keohokalole, and members of the Senate committee on Judiciary,

The Hawaiian Craft Brewers Guild is a nonprofit trade organization representing the interests of small independent craft breweries across the State of Hawaii. Our members make 100% of their beer in Hawaii.

The Hawaiian Craft Brewers Guild and our member breweries embrace the responsible consumption of alcohol.

Lowering Blood Alcohol Concentration from .08 to .05

This legislation proposes to lower the threshold blood alcohol concentration (BAC) for a driver to such a low amount that an otherwise responsible person consuming a small amount of alcohol would be considered legally “under the influence”.

According to data from the American Beverage Institute, a woman weighing approximately 125 pounds would reach this new proposed limit if she consumed just one 12 ounce glass of beer or one 5 ounce glass of wine. A man weighing 160 pounds would reach the limit for “under the influence” proposed in this bill for .05 grams of blood alcohol if he were to consume two 12 oz glasses of beer or two 5 ounce glasses of wine.

Drivers with a 0.05 blood alcohol concentration are not significantly impaired, they’ve had relatively little to drink. These proposed limits are set so low that even a conscientious person that does not over consume would now be over the legal limits set by this legislation, resulting in harsh consequences.

A second bill related to a similar topic, SB765, addresses highly intoxicated drivers and repeat offenders that are responsible for most of the alcohol-related traffic deaths. The majority of alcohol-related traffic fatalities involve a driver with a BAC of 0.15 or above, three times that of

0.05. Effective education about alcoholism and treatment programs for heavy drinkers are strategies to reduce the number of highly intoxicated drivers on our roadways.

Enforcing current laws and addressing excessive drinking is a more meaningful way to set policy. Lowering the long-standing legal blood alcohol concentration (BAC) arrest level for drunk driving from 0.08 to 0.05 would punish Hawaii residents and visitors alike for consuming even a minimal amount alcohol, with a policy that is close to zero tolerance.

Data from The Virginia Tech Alcohol Abuse Prevention American Beverage Institute <https://abionline.org/issue/lowering-the-blood-alcohol-arrest-level/>

BAC CHART FOR WOMEN									
DRINKS	BODY WEIGHT IN POUNDS								
	90	100	120	140	160	180	200	220	240
0	.00	.00	.00	.00	.00	.00	.00	.00	.00
1	.05	.05	.04	.03	.03	.03	.02	.02	.02
2	.10	.09	.08	.07	.06	.05	.05	.04	.04
3	.15	.14	.11	.10	.09	.08	.07	.06	.06
4	.20	.18	.15	.13	.11	.10	.09	.08	.08
5	.25	.23	.19	.16	.14	.13	.11	.10	.09
6	.30	.27	.23	.19	.17	.15	.14	.12	.11
7	.35	.32	.27	.23	.20	.18	.16	.14	.13
8	.40	.36	.30	.26	.23	.20	.18	.17	.15
9	.45	.41	.34	.29	.26	.23	.20	.19	.17
10	.51	.45	.38	.32	.28	.25	.23	.21	.19
Subtract .01% for each 40 minutes of drinking. One drink is 1.25 oz. of 80 proof liquor, 12 oz. of beer, or 5 oz. of table wine.									

Source: The Virginia Tech Alcohol Abuse Prevention

BAC CHART FOR MEN								
DRINKS	BODY WEIGHT IN POUNDS							
	100	120	140	160	180	200	220	240
0	.00	.00	.00	.00	.00	.00	.00	.00
1	.04	.03	.03	.02	.02	.02	.02	.02
2	.08	.06	.05	.05	.04	.04	.03	.03
3	.11	.09	.08	.07	.06	.06	.05	.05
4	.15	.12	.11	.09	.08	.08	.07	.06
5	.19	.16	.13	.12	.11	.09	.09	.08
6	.23	.19	.16	.14	.13	.11	.10	.09
7	.26	.22	.19	.16	.15	.13	.12	.11
8	.30	.25	.21	.19	.17	.15	.14	.13
9	.34	.28	.24	.21	.19	.17	.15	.14
10	.38	.31	.27	.23	.21	.19	.17	.16
Subtract .01% for each 40 minutes of drinking. One drink is 1.25 oz. of 80 proof liquor, 12 oz. of beer, or 5 oz. of table wine.								

Source: The Virginia Tech Alcohol Abuse Prevention



To: The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

Re: Strong Support of SB 754, Relating to Operating a Vehicle While Intoxicated

Hrg: Thursday, February 25, 2021 at 9:30am via Videoconference

Position: **Support**

The Hawai'i Alcohol Policy Alliance, which is fiscally managed by Hawai'i Public Health Institute, would like to provide testimony in **SUPPORT of SB754**, which would lower the threshold blood alcohol concentration (BAC) for the offense of operating a vehicle while under the influence of an intoxicant.

1. Lowering the Blood Alcohol Concentration (BAC) to .05 will save lives

A comprehensive 2017 independent research study shows that from 1982 to 2014, in 50 States and DC, lowering BAC from .10 to .08 resulted in a 10.4% reduction in alcohol-related fatalities, with no change in alcohol consumption. This means that lowering the BAC to .08 in the United States has saved 1,736 lives annually. A total of 24,868 lives were saved between 1983 and 2014 due to lowering the BAC to .08. **It is estimated that a .05 or lower BAC would result in an 11.1% decline in fatal alcohol crashes** and save 1,790 lives annually in the United States ^[1].

2. Approximately 90 countries have lower alcohol-related crash deaths than the United States due to .05 or lower BAC laws

Approximately 100 countries around the world have already adopted .05 or lower BAC laws. Due to these laws, these countries have significantly lower rates of alcohol-related motor vehicle deaths ^[2].

3. Lowering the BAC to .05 will NOT hurt local business

While countries that have passed .05 or lower BAC laws have lower rates of alcohol-related crash deaths, they have the same or higher rates of alcohol consumption when compared to the United States ^[3].



Hawai‘i has the opportunity to help set a new BAC standard for our nation. This law would improve the overall health and wellness of our communities and ultimately save lives. We ask that you **pass SB754** forward, for the benefit of the people of Hawai‘i.

Mahalo for your time and attention to this urgent matter.

Sincerely,
Chelsea Gonzales
chelsea@hiphi.org

^[1] NORC: Fell JC & Scherer M, Effectiveness of .08 and .05 BAC Limits for Driving, 2017 (NIH Grant no. R21 AA022171-01). <http://www.norc.org> (under “NORC Headlines”).

^[2] Global Status Report on Road Safety 2018, World Health Organization, 2018.
https://www.who.int/violence_injury_prevention/road_safety_status/2018/en/

^[3] World Health Statistics 2019, World Health Organization, 2019.
https://www.who.int/gho/publications/world_health_statistics/2019/en/



Sen. Karl Rhoads
Chair
Senate Committee on Judiciary
Hawaii State Senate

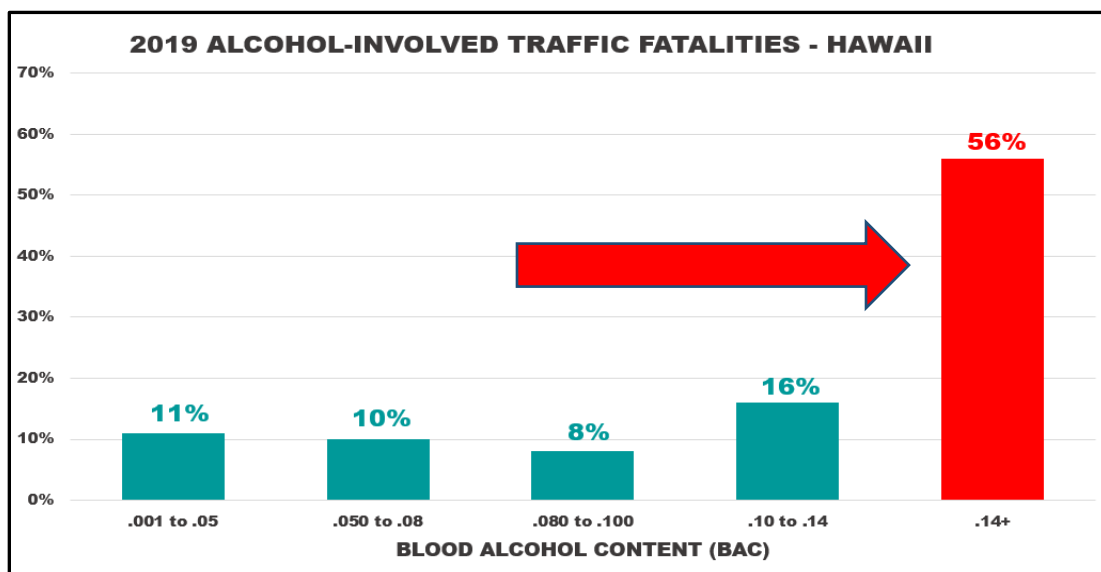
Sen. Jarrett Keohokalole
Vice Chair
Senate Committee on Judiciary
Hawaii State Senate

Senate Bill 754—which would lower the legal blood alcohol concentration (BAC) limit for driving by 40 percent from 0.08 to 0.05—is well intended, but a poorly targeted approach to improve traffic safety in Hawaii. New data from the federal government reveals drunk driving deaths are falling in the state. Watering down the definition of “drunk” will not build upon that progress. In fact, it may diminish it. The court system is already overburdened and casting a wider legal net to include those currently considered responsible consumers will exacerbate the situation—which could lead to some alcohol abusers falling through the cracks.

Public policy should instead follow the science.

An analysis of newly released government data by my organization finds that two-thirds of alcohol-related traffic fatalities in Hawaii involve someone with a BAC of 0.15 or above. That’s nearly double the BAC arrest level currently enforced. Additionally, the average BAC of a drunk driver involved in a fatal crash in the state is 0.18—nearly four-times the proposed 0.05 threshold. As with so many other products, there is a clear distinction between use and abuse.

Examine the below graph that illustrates where limited traffic safety resources and legislative efforts should be focused. (The figures indicate every case in which alcohol was present, not necessarily at fault.)





University research suggests having a conversation while driving is substantially more impairing than someone at the proposed 0.05 BAC limit. From another angle, federal government studies indicate simply being over the age of 65 while driving is more dangerous than being at 0.05 BAC. And no one is arguing for law enforcement to arrest older drivers.

The modest proportion of accidents shown in the leftward bars of the bar chart support these comparisons. Even if alcohol is present in low-BAC instances, such a tiny amount is unlikely to be a major contributing factor. Some people can reach the 0.05 BAC threshold after consuming little more than one drink. Speeding or distracted driving is therefore more likely to blame.

Committee members should also consider the depressing effect a 0.05 law will have on restaurants. Hospitality businesses are already struggling to survive amid a lingering pandemic and making criminals out of moderate and responsible consumers will make recovery even more challenging. Adopting a 0.05 law would be a bad policy at any time, but should be a nonstarter under current weak business conditions.

We all want to save lives and I applaud the committee for investigating the topic. But lowering the legal BAC limit for driving will not improve road safety; it might even weaken it. Lawmakers should instead follow the science and pursue alternative strategies that target the real menace: high-BAC drunk drivers.

Thank you for reviewing my testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Berman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Berman
Executive Director
American Beverage Institute

SB-754

Submitted on: 2/21/2021 11:01:10 PM

Testimony for JDC on 2/25/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ben Robinson	Individual	Oppose	No

Comments:

Aloha,

In agreement amongst others opposed to the measure, I believe that lowering the threshold to .05 criminalizes those individuals drinking in moderation while not having an overall impact on drunk driving incidents; notably fatal occurrences which are favored to be highlighted as evidence and the BAC is normally recorded at much higher levels than .08.

Please OPPOSE this measure.

Mahalo

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

TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY
THURSDAY, FEBRUARY 25, 2021; 9:30 A.M.
VIA VIDEOCONFERENCE

RE: SENATE BILL NO. 0754, RELATING TO OPERATING A VEHICLE WHILE INTOXICATED.

Chair Rhoads, Vice Chair Keohokalole, 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 **SUPPORT** the **INTENT** of Senate Bill No. 0754, RELATING TO OPERATING A VEHICLE WHILE INTOXICATED., and offer **PROPOSED AMENDMENTS** for your consideration.

As received by your Committee, this bill would reduce the threshold at which a person may be convicted of operating a vehicle under the influence of an intoxicant from .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood to .05 grams.

By way of background, I was requested four years ago 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 (OVUII). 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.

During our examination of Hawaii's OVUII Law, we spoke with numerous police officers from across the State, all of whom requested to share their views "off the record". We learned that on any given night, between 30 and 40 drivers are detained on suspicion of driving under the influence. This comes out to between 11,000 and 15,000 detentions per year. However, because of the time it takes to test the blood alcohol level of drivers, as well as the reluctance of the City Prosecutor to prosecute these types of crimes, only 5,992 of the detained drivers were arrested last year.

At the point a police officer requests the suspect to submit to an alcohol level test, the suspect has the choice of either agreeing to or refusing to take the test. If the suspect chooses to take the test, the suspect is given the option of taking a breath test or a blood test. If the suspect chooses the blood test, it may take hours for the results to be determined because the suspect must be taken to an emergency room or another health facility to have the blood drawn and tested. The time it takes to have the blood drawn allows the suspect's body to metabolize the alcohol in it. As such, by the time the test results are found, the person's blood alcohol level may be considerably lower than it was at the time of the stop. And if the level is lower than .08, no violation would have taken place.

And even if the police officer obtains evidence that the suspect indeed had a blood level at or above .08, oftentimes, these cases are thrown out by the Office of the Prosecuting Attorney. For many of our front-line police officers, there is a perception that the Prosecutors look for any reason whatsoever to throw these types of cases out of court, either because of the complexity of obtaining a conviction, or the large amount of resources it takes to prosecute.

For front-line officers who risk their lives at night walking on busy streets to operate DUI checkpoints and confront sometimes agitated and impaired drivers, to have their work disregarded because the Prosecuting Attorney deems it wasteful to pursue these types of crimes is demoralizing to them and counter to the public policy that the OVUII Law was intended to serve.

In my opinion, the OVUII Law is fundamentally flawed because it rests on the premise that an individual is able to determine on his or her own whether he or she has reached a subjective level of intoxication (i.e., .08, .05, or any blood level). And every time someone dies from a drunk driver, it becomes evident to all that this public policy has failed.

This flaw, however, can be fixed if lawmakers mandate a "Zero Tolerance" policy. If a person wants the privilege of operating a vehicle in the State of Hawaii, the person must not have a measurable amount of alcohol in their blood while operating the vehicle at all times.

If the "Zero Tolerance" policy is applied to adults, law enforcement would only need to show that the offender had a measurable amount of alcohol in the person's blood. This would make enforcement much easier and serve as an even greater deterrent to operating a vehicle under the influence of an intoxicant. Also, if the individual refuses to take the test, the individual will face an even longer license revocation period with the Administrative Driver's License Revocation Office.

The business community, and especially small businesses, will argue that the establishment of such a policy will have an enormous financial impact on their sales. As a whole, however, the establishment of a "Zero Tolerance" policy may cause other businesses to thrive -- taxi cabs, and Uber will find more people seeking their services; the visitor industry could use this as an opportunity to campaign for more Kamaaina to go to resort areas and party rather than risk driving impaired; these are just a few examples where change will force businesses to evolve to meet the newer demands of consumers.

Some will say that such an approach is too strict. But compare this approach to the laws of England, for example. There, a person needs only to show the intent to drive under the influence to be convicted of OVUII. A person walking from a pub with keys in hand was stopped by a police officer. The person was trying to get to his car to go home. The person was arrested and convicted, and the conviction was upheld by the courts.

Lastly, some will also say that if the law is too strict, people will merely ignore it and keep driving while intoxicated. That could be said for any law enacted because there will always be some who will refuse to obey the law. But if a "Zero Tolerance" policy gets the majority, or a few, or even a single intoxicated driver off the roads, then that would be one less potential victim who would otherwise die.

For these reasons, I respectfully request that the contents of this measure be deleted, and the substance of House Bill No. 1999, Regular Session of 2020, attached, a measure that would establish a "Zero Tolerance" policy for both minors and adults in the State of Hawaii, be inserted.

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

attachment.

A BILL FOR AN ACT

RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN
INTOXICANT.

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

1 SECTION 1. Section 291E-61, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) A person commits the offense of operating a vehicle
4 under the influence of an intoxicant if the person operates or
5 assumes actual physical control of a vehicle:

6 (1) ~~[While under the influence of alcohol in an amount~~
7 ~~sufficient to impair the person's normal mental~~
8 ~~faculties or ability to care for the person and guard~~
9 ~~against casualty;]~~ With a measurable amount of alcohol
10 in the person's breath or blood; provided that a law
11 enforcement officer may arrest a person under this
12 section when the officer has probable cause to believe
13 that the arrested person had been operating a vehicle
14 upon a public way, street, road, or highway, or on or
15 in the waters of the State, with a measurable amount
16 of alcohol in the person's breath or blood; or



- 1 (2) While under the influence of any drug that impairs the
- 2 person's ability to operate the vehicle in a careful
- 3 and prudent manner[~~+~~
- 4 ~~(3) With .08 or more grams of alcohol per two hundred ten~~
- 5 ~~liters of breath; or~~
- 6 ~~(4) With .08 or more grams of alcohol per one hundred~~
- 7 ~~milliliters or cubic centimeters of blood]."~~

8 SECTION 2. Section 291E-61.5, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) A person commits the offense of habitually operating
11 a vehicle under the influence of an intoxicant if:

- 12 (1) The person is a habitual operator of a vehicle while
- 13 under the influence of an intoxicant; and
- 14 (2) The person operates or assumes actual physical control
- 15 of a vehicle:

16 (A) [~~While under the influence of alcohol in an~~
17 ~~amount sufficient to impair the person's normal~~
18 ~~mental faculties or ability to care for the~~
19 ~~person and guard against casualty;] With a
20 measurable amount of alcohol in the person's
21 breath or blood; provided that a law enforcement~~

1 officer may arrest a person under this section
2 when the officer has probable cause to believe
3 that the arrested person had been operating a
4 vehicle upon a public way, street, road, or
5 highway, or on or in the waters of the State,
6 with a measurable amount of alcohol in the
7 person's breath or blood; or

8 (B) While under the influence of any drug that
9 impairs the person's ability to operate the
10 vehicle in a careful and prudent manner[+

11 ~~(C) With .08 or more grams of alcohol per two hundred~~
12 ~~ten liters of breath; or~~

13 ~~(D) With .08 or more grams of alcohol per one hundred~~
14 ~~milliliters or cubic centimeters of blood]."~~

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

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



H.B. NO. 1999

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

2

INTRODUCED BY:

[Signature]
Ray A. Ald
[Signature]
[Signature]
[Signature]
[Signature]
Mark Hill
[Signature]
[Signature]

JAN 17 2020



H.B. NO. 1999

Report Title:

OVUII; Zero Tolerance; Any Measurable Amount of Alcohol

Description:

Changes the standard for the offenses of operating a vehicle under the influence of an intoxicant and habitually operating a vehicle under the influence of an intoxicant from .08 grams of alcohol per 210 liters of breath or 100 milliliters or cubic centimeters of blood to any measurable amount of alcohol in the person's breath or blood. Allows law enforcement officers to arrest a person if there is probable cause to believe that the person was operating a vehicle with a measurable amount of alcohol in the person's breath or blood.

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



SB-754

Submitted on: 2/22/2021 4:19:33 PM

Testimony for JDC on 2/25/2021 9:30:00 AM

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

Comments:

I am writing in SUPPORT of this measure WITH AMENDMENTS. I believe that this is a good step in the right direction to minimizing drunk driving. As a concerned citizen and family of a loved one who lost their life to a drunk driver, I strongly believe we should aspire to implement a ZERO TOLERANCE policy for drinking and driving. Please consider adding language from House Bill No. 1999 from the Regular Session of 2020 into this proposal.

Respectfully,

Ron Shimabuku

SB-754

Submitted on: 2/23/2021 9:23:11 AM

Testimony for JDC on 2/25/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
pua auwae	Individual	Support	No

Comments:

I fully support this Bill. Zero Tolerance

SB-754

Submitted on: 2/23/2021 9:58:05 AM

Testimony for JDC on 2/25/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ed	Individual	Support	No

Comments:

I'm in fully support for SB754, Zero Tolerance

To: The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

Re: Strong Support of SB 754, Relating to Operating a Vehicle While Intoxicated

Hrg: Thursday, February 25, 2021 at 9:30am via Videoconference

Position: Support

Aloha, Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary. My name is Cynthia Okazaki, from Kaneohe and a member of the Hawaii Alcohol Policy Alliance . Thank you for the opportunity to submit testimony in STRONG SUPPORT of SB 754, Relating to Operating a Vehicle While Intoxicated.

This measure lowers the limit of alcohol-impaired driving to .05 percent blood alcohol concentration (BAC), will reduce the number of drunk drivers and save lives.

In 2018, Hawai'i had 117 highway-related fatalities, more than a third involved a driver with a BAC of 0.01 percent or higher. Lowering the BAC to 0.05 addresses alcohol-impaired driving and is a necessary step to reduce traffic deaths and related injuries.

Internationally, approximately 100 countries have some type of .05 or lower BAC laws which have lowered their traffic deaths and injuries.

By separating drinking and driving while impaired, a .05 BAC or lower limit would result in an estimated 11% decline in fatal alcohol crashes and save at least 1700 lives annually in the U.S.

Reducing the BAC limit deters deadly drinking and driving. It does not discourage alcohol consumption. The data is clear, the lifesaving benefits are certain, the support is documented and the justification for action is compelling. Each person killed in a preventable alcohol-related crash on Hawai'i roads forever changes the lives of families and our community. We urge you to advance SB 754 and help reduce the death and injury toll of alcohol-impaired driving.

Mahalo for the opportunity to submit testimony.

To: The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

Re: Strong Support of SB 754, Relating to Operating a Vehicle While Intoxicated

Hrg: Thursday, February 25, 2021 at 9:30am via Videoconference

Position: Support

Good morning, Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary. My name is Kristell Corpuz, from Honolulu, HI. Thank you so much for the opportunity to submit testimony in STRONG SUPPORT of SB 754, Relating to Operating a Vehicle While Intoxicated.

This bill will lower the limit of alcohol-impaired driving to .05 percent blood alcohol concentration (BAC), which deters drunk driving and saves lives.

In 2018, Hawai'i has 117 highway-related fatalities, more than a third involved a driver with a BAC of 0.01 percent or higher. Lowering the BAC to 0.05 addresses alcohol-impaired driving and is a necessary step to reduce traffic deaths and related injuries.

Internationally, approximately 100 countries have some type of .05 or lower BAC laws which have lowered their traffic deaths.

By separating drinking and driving while impaired, a .05 BAC or lower limit would result in an estimated 11% decline in fatal alcohol crashes and save at least 1700 lives annually in the U.S.

Reducing BAC limits does not discourage alcohol consumption. It does deter deadly drinking and driving. The data is clear, the lifesaving benefits are certain, the support is documented and the justification for action is compelling. Each person killed in a preventable alcohol-related crash on Hawai'i roads forever changes the lives of families and communities. We urge you to advance SB 754 to reduce the death and injury toll of alcohol-impaired driving.

Mahalo for the opportunity to submit testimony.

LATE

SB-754

Submitted on: 2/25/2021 9:32:39 AM

Testimony for JDC on 2/25/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Testifying for Maui Police Department	Support	No

Comments:

Mahalo for considering this measure.

February 25, 2021

The Honorable Karl Rhoades
Chair, Senate Committee on Transportation
415 South Beretania St. Rm 204
Honolulu, HI 96813

The Honorable Jarrett Keohokalole
Vice Chair, Senate Committee on Transportation
415 Beretania St. Rm 231
Honolulu, HI 96813

Dear Chair Rhoades and Vice-Chair Keohokalole:

On behalf of the National Safety Council (NSC), I am writing today to ask for your support of SB 754, and SB 634/HB 651, legislation that would lower the legal blood alcohol concentration (BAC) limit in Hawaii from .08 to .05. Lowering the legal BAC limit will save lives. The National Safety Council (NSC) is America's leading nonprofit safety advocate and has been for over 100 years. As a mission-based organization, we work to eliminate the leading causes of preventable death and injury, focusing our efforts on the workplace, roadway and impairment. We create a culture of safety to keep people safer in the workplace and beyond so they can live their fullest lives. Our more than 15,000 member companies represent employees at more than 50,000 U.S. worksites, including almost 150 in Hawaii.

The science is clear – impairment begins with the first drink. When behind the wheel, there is no safe level of impairment. Even one or two drinks can significantly impact a driver's concentration, ability to react and make decisions. In one survey, more than 1 in 8 drivers admitted to driving when close to or over the legal limit in the past year, despite believing that drunk driving poses a serious threat.¹ After two or three drinks, which corresponds to a BAC of .05 for most adults, drivers have a 40% higher crash risk than drivers who are sober.² By the time they reach .08, drivers are four times more likely to crash.³

Driving is one of the riskiest tasks all of us undertake on a daily basis. More than 36,000 people died in crashes on our nation's roads in 2019, including 108 people in Hawaii.⁴ In Hawaii, 32% of motor vehicle fatalities were alcohol-related (BAC \geq .08) in 2018.⁵ Alcohol continues to be involved in about 28% of all fatal crashes in America, and this percentage has not significantly fluctuated in more than a decade.⁶ We need new strategies to create a culture of change and new laws.

Utah already has implemented .05 BAC, and other states are considering similar legislation. Research shows that lowering the BAC limit from .08 to .05 reduces crash fatality risk by preventing not only low BAC drivers, but also high BAC drivers, from driving.⁷

¹ AAA Foundation for Traffic Safety. (2016). 2015 Traffic Safety Culture Index.

² https://www.nsc.org/Portals/0/Documents/NSCDocuments_Corporate/Policy-Positions/Transportation/T-Low Alcohol Concentration Culture Change-130.pdf.

³ Blomberg RD, Peck RC, Moskowitz H, Burns M, Fiorentino D: The Long Beach/Fort Lauderdale relative risk study; J Safety Res 40:285; 2009.

⁴ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813060>

⁵ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812917>

⁶ NSC analysis of NHTSA FARS data.

⁷ <https://www.madd.org/wp-content/uploads/2019/03/05BACResearch.pdf>



This legislation will save lives and prevent injuries in Hawaii. NSC fully supports SB 754 and SB634/HB561, and we hope you will support them as well. Thank you for your consideration. If you have any questions or need more information, please contact Tara Leystra at tara.leystra@nsc.org or 202-445-3121.

Sincerely,

A handwritten signature in black ink that reads "Lorraine M. Martin". The signature is written in a cursive style.

Lorraine M. Martin
President and CEO

Copy: Senate Committee on Judiciary

LATE

SB-754

Submitted on: 2/24/2021 10:06:41 PM

Testimony for JDC on 2/25/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Elmer Domingo	Individual	Oppose	No

Comments:

Everyone is different and two people can drink the same amount of alcohol but have different levels of alcohol in their bloodstream. However, drinking less than one standard drink per hour should keep most people's BAC below 0.05%, as the average rate at which alcohol is metabolised is one standard drink per hour.

There is no level of drinking which guarantees that a person's BAC will stay below 0.05%. Age, body size, gender, and a range of other factors can affect the rate at which alcohol is absorbed and metabolised when you drink.

So implementing this bil is an injustice to those who want to have spirits at a restaurant. There is even alcohol in cough syrup.

A perfect example is Rep Sharon Har.

LATE

SB-754

Submitted on: 2/25/2021 8:12:22 AM

Testimony for JDC on 2/25/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
William Hankins	Individual	Support	No

Comments:

I strongly support this bill for one simple reason. It WILL SAVE LIVES. Our impaired driving problem is a huge problem statewide. On Maui alone we have had a 400% increase in habitual impaired driving. These are potential fatalities that police stopped by taking these drivers off the road. Lowering the legal limit to .05 will send a message that we as a state are serious in eliminating impaired driving from our roadways. Currently only Utah has a .05 legal limit and they have seen great success in reducing impaired driving crashes. Studies have shown that someone with a .05 BAC or greater IS impaired and should not be driving. Also most drivers are above .10 when arrested, however by the time police can get them to submit to a chemical test several hours may have passed and the impaired driver falls below .08, yet they are still impaired. I have attached information that states how .05 BAC has been recommended for states since 2013. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4448946/> Please support this bill, and give law enforcement another tool to help eradicate impaired driving in Hawaii.