



The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2021 Regular Session

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Thursday, February 25, 2021, 9:30 a.m.
State Capitol
VIA VIDEOCONFERENCE

by:

Karilee Endow Harada
Chief Adjudicator
Administrative Driver's License Revocation Office

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 765, SD1, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

Purpose: Defines "highly intoxicated driver." Provides the evidentiary standard for establishing that a person was a "highly intoxicated driver." Requires that ignition interlock devices be installed and maintained on one or more vehicles registered to and all vehicles operated by anyone convicted of operating a vehicle under the influence of an intoxicant, during the applicable period of license revocation. (SD1)

Judiciary's Position:

The Judiciary's Administrative Driver's License Revocation Office (ADLRO) takes no position on the merits of this bill but offers the following comments.

Based on the experience of the ADLRO, public safety would be promoted where the requirement of installing and operating an ignition interlock device (IID) applies to any vehicle

operated by Respondent, and not “one or more vehicles registered to” a respondent. In some cases, a vehicle is registered to a parent, spouse, or other family member.¹ Restricting the issuance of Ignition Interlock Permits (IIPs) to vehicles registered to Respondents may result in the installation of less IIDs. Currently, the law allows respondents to install an IID in any vehicle they operate; the vehicle does not have to be registered to respondents for an IIP to be approved. Provided that respondents had a valid license at the time of arrest and submit proof of vehicle insurance, an IIP is issued and respondents can drive legally with the IID. This encourages use and installation of IIDs, which in turn, promote public safety.

Therefore, **omitting** amendments that require mandatory installation of IIDs in “one or more vehicles registered to” respondents, and only requiring installation of IIDs in vehicles operated by Respondents, would encourage use and installation of IIDs, which in turn, promote public safety.

Thank you for the opportunity to submit testimony on Senate Bill No. 765, S.D.1.

¹ Even if a respondent had a vehicle registered in his/her name, it could be unsafe to drive due to past driving history, accidents, age, etc.

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. 765 SD1: RELATING TO OPERATING A VEHICLE UNDER THE
INFLUENCE OF AN INTOXICANT

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

The Office of the Public Defender strongly opposes S.B. No. 765 SD1.

The Office of the Public Defender opposes the creation of new sentencing guidelines for “highly intoxicated operators” as well as the requirement of the installation of an ignition interlock device upon a conviction, and the increase in penalties for the offense of driving on a license revoked for operating a vehicle under the influence of an intoxicant (“OVUII”).

Ignition interlock devices

This measure requires a person whose license is revoked pursuant to HRS § 291E-41 or any person who has been convicted of an offense under HRS §§ 291E-61 or 29E-61.5 to install an ignition interlock device before he or she is eligible for a license. This measure simply enhances the unfairness of a penal scheme that is already unjust to the economically disadvantaged.

Under this measure, a person with financial means whose BAC was 0.14 and who was involved in a traffic collision will be able to have their license reinstated in one year, meanwhile an indigent person who had borrowed a vehicle, and who was pulled over for an expired safety check, and whose BAC was 0.08 will never be able to legally drive again. Even though the affluent individual’s conduct was far more egregious than the indigent person, the affluent individual’s license will be restricted for one year while the indigent person will suffer a lifetime license revocation.

The proposed law is extremely unfair to those persons who cannot afford to participate in an ignition interlock program or especially for those who cannot afford to own a vehicle. The period of license restriction for such a person will never end

until and unless he/she has the financial means to participate in the ignition interlock program and/or purchase a vehicle.

Persons who opt to forego their privilege to drive during the license revocation period rather than keep their privilege by participating in the ignition interlock program often do so not to skirt the law but because they simply cannot afford to participate in the program and/or do not own a car. Clearly, this measure will disproportionately punish those who are economically disadvantaged. Admittedly, driving is not a right but a privilege. However, *the privilege to drive should not be available to only those who can afford to participate in the ignition interlock and/or who own a car.*

It is common for a group of individuals to get together and consume alcohol at a commercial establishment or at someone's residence. The driver and the owner of the vehicle used may be too intoxicated to drive, so another member of the group, who mistakenly believes he/she is not impaired volunteers to drive. The volunteer, after he/she is convicted, will be required to install an interlock ignition device on a vehicle, whether he/she owns a vehicle. Essentially, this measure will prevent him/her from ever having his/her license reinstated. This volunteer will never be able to rent a vehicle. Therefore, even if the volunteer is able to afford the ignition interlock device (at a discounted rate or even if the device is offered at no cost), the volunteer has no vehicle to install the device.

Furthermore, it is not uncommon that a person convicted of OVUII shares a vehicle with multiple family and/or household members. When the OVUII offender opts to participate in the ignition interlock program, every family member must also participate in the program. Every family member must breathe into the ignition interlock device not only prior to starting the family vehicle but also during the operation of the vehicle, as the program requires the driver to submit to periodic random tests. Rather than inconveniencing the other family/household members, the OVUII offender will choose instead to give up his/her privilege to drive during the license revocation period and opt out of participating in the ignition interlock program. If the measure becomes law, every family/household member of the OVUII offender will be punished, as they will essentially be required to participate in the ignition interlock program to simply operate the family/household vehicle.

License revocation period

This measure also seeks to increase the license revocation period. Increasing the revocation period is simply unnecessary. Lengthening the revocation period will

only exacerbate the problem of unlicensed drivers paying more fines. And in the case of those charged with violating HRS §291E-62, these individuals will be serving jail time *not* for driving while intoxicated but for simply driving without a valid license.

This measure, as well as other ignition interlock laws and license revocation laws (in particular, HRS § 291E-62), simply target and punish former OVUII offenders who are unable to afford an ignition interlock device and/or obtain a valid drivers' license. *Those who were cited or arrested for these offenses, with a few exceptions, were not driving while under the influence of an intoxicant.* They were not even suspected of OVUII. They were simply driving. Rather than punish the non-intoxicated drivers who could not afford the ignition interlock devices and were unable to obtain a license after revocation, the legislature, if it seriously seeks to be tough on intoxicated drivers, should simply mandate non-monetary sentences (i.e., community service work or substance abuse rehabilitation). *OVUII should not be a crime that the wealthy can pay their way out of while the indigent are stuck in a never-ending cycle of license revocation and mandated jail sentences.*

“Highly intoxicated operators”

The creation of sentencing guidelines for “highly intoxicated operators” is an unnecessary restriction on the discretion of the district court judges. These judges are able to and often do consider an individual’s blood alcohol content (“BAC”) when making sentencing decisions. In addition to examining at the facts of a case (e.g., BAC, an individual’s driving, whether an accident occurred, endangering passengers in the vehicle), judges look at factors such as criminal history, driving record, and community involvement. Indeed, judge are in the best position to impose fair and just sentences to defendants, and this bill would only hamper that ability.

Moreover, the proposed penalties for “highly intoxicated operators” under HRS § 291E-61.5 are not only unduly harsh and unjust but also inconsistent with the other felony statutes. The proposed penalty is either an indeterminate term of imprisonment of ten years *or a term of probation of five years with the condition of no less than eighteen months imprisonment.* Moreover, the individual must also pay a minimum fine of \$5,000 after he is released from jail or prison. However, an individual who causes the death of another person by operating a vehicle while under the influence of drugs or alcohol and who is convicted of the offense of negligent homicide in the first degree, in violation of HRS § 707-702.5, is not subject to a mandatory minimum of eighteen months imprisonment nor a minimum fine. It seems incongruous that a person who was stopped for a minor traffic infraction (e.g.,

expired safety check or driving without lights) but whose BAC is over 0.15 receives a harsher sentence than a person who kills another person while driving intoxicated.

With the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai'i is to increase penalties and remove judicial discretion from individualized sentencing. The courts currently have the ability to incarcerate defendants who do not or cannot demonstrate an ability to reform. Thus, the courts should retain the ability to recognize and support defendants who are in treatment and who have a strong support system to prevent new offenses.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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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. 765, S.D. 1, Relating to Operating a Vehicle Under the Influence of an Intoxicant

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

The HPD supports this bill as it defines a "highly intoxicated driver" and also establishes the penalties for a respondent who is a highly intoxicated driver. Increases of related penalties could be a deterrent for would-be violators. Any measure that could potentially keep impaired drivers off of our roads should be considered or implemented.

The HPD strongly urges you to support Senate Bill No. 765, S.D. 1, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in cursive script, appearing to read "Susan Ballard", written over a horizontal line.

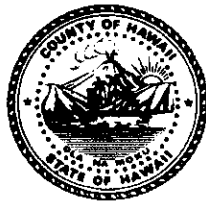
Susan Ballard
Chief of Police

Sincerely,

A handwritten signature in cursive script, appearing to read "Calvin Tong", written over a horizontal line.

Calvin Tong, Major
Traffic Division

Mitchell D. Roth
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado Jr.
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

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February 23, 2021

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

RE: SENATE BILL 765, SD1, RELATING TO OPERATING A VEHICLE UNDER THE
INFLUENCE OF AN INTOXICANT
HEARING DATE: FEBRUARY 25, 2021
TIME: 9:30 A.M.

Dear Senator Rhoads:

The Hawai'i Police Department **supports** Senate Bill 765, SD1, with its purpose to define a "highly intoxicated driver" and increase penalties for offenders.

The Hawai'i Police Department encourages the committee to adopt the proposed changes to Senate Bill 765 to amend Hawai'i Revised Statutes (HRS) 291E-1 and 291E-61 which will establish and define a "highly intoxicated driver" as a driver with 0.15 grams of alcohol per 210 liters of breath or grams of alcohol per one hundred milliliters or cubic centimeters of blood and provides increased penalties for those offenders.

In 2020, the annual average of all operated for driving under the influence was .144% Blood Alcohol Content (BAC), which is nearly twice the legal limit. 40% of those arrested in 2020 had BAC levels in excess of .150% BAC. The National Highway Traffic Safety Administration (NHTSA) states that drivers with a BAC of .150 or greater is nearly 20 times more likely to be involved in a fatal crash.

Passing this bill will hold offenders accountable and help deter dangerous behaviors of drinking and driving.

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 765, SD1.

Sincerely,

PAUL K. FERREIRA
POLICE CHIEF



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
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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: Arkie Koehl and Carol McNamee, Public Policy Committee - MADD Hawaii

Re: Senate Bill 765, SD1 – Relating to Operating a Vehicle Under the Influence of an Intoxicant

I am Carol McNamee testifying on behalf of MADD Hawaii in **strong support** of Senate Bill 765, SD1, relating to Operating a Vehicle Under the Influence of an Intoxicant.

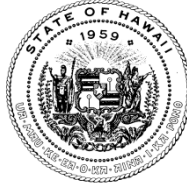
MADD supports the concept of increasing penalties for individuals who are arrested and found to be driving with a BAC of .15 or higher. These individuals fall into the category of “high risk drivers” who, along with repeat offenders and drivers who refuse to be tested, pose an increased danger to other highway users: vehicle drivers and passengers, bicyclists and pedestrians. Research has clearly shown that the higher a driver’s BAC, the greater risk he or she is to others on the road. Hawaii statutes reflected increased penalties for these high-risk drivers before 2011 when the highly intoxicated driver section was removed for reasons unrelated to its effectiveness. This bill establishes administrative and criminal revocation periods for the high BAC driver – from 18 months for a first offender up to 6 years for drivers who have two or more prior alcohol or drug enforcement contacts.

MADD supports other changes that have been proposed in this bill, including increasing the “look back” period which defines who is a repeat offender and therefore how long a revocation period will be imposed on the person arrested.

Another change adds a mandatory interlock requirement for Habitual Offenders and a number of other suggested sanctions for the repeat habitual offender.

This is an important measure for strengthening Hawaii’s OVUII statutes by removing the most dangerous drivers from the road and increasing the deterrent value of the statutes by increasing the penalties for this group of drivers. MADD encourages this committee to pass SB 765, SD1 to strengthen Hawaii’s OVUII statutes.

Thank you for this opportunity to testify.



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

February 25, 2021
9:30 A.M.
State Capitol, Teleconference

**S.B. 765, S.D. 1
RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN
INTOXICANT**

Senate Committee on Judiciary

The Department of Transportation (DOT) **supports** S.B. 765, S.D. 1 relating to operating a vehicle under the influence of an intoxicant. This bill defines “highly intoxicated drivers” and enhances the penalties.

The proposed S.B. 765, S.D. 1 evolved out of concern for the increasing number of traffic fatalities involving alcohol and drugs in Hawaii. This bill was a collaborative effort from the DOT’s Hawaii Drug and Alcohol Intoxicated Driving Working Group (DAID) which is comprised of county police and prosecutors, Mothers Against Drunk Driving, Hawaii State Department of Health, Hawaii Association of Criminal Defense Lawyers and the Office of the Public Defender.

A “highly intoxicated driver” is someone who has been arrested and convicted and poses a substantial risk to others on our roadway. The DAID’s concern is that these drivers are a higher risk to other roadway users and will eventually become involved in a fatal motor vehicle collision.

During the past five years (2016-2020), police arrested an average of 5,405 drivers for Operating a Vehicle Under the Influence of an Intoxicant per year. Of those tested, an average of 1,485 had blood alcohol concentration results of 0.150 and higher. This represents an average of 36% of those arrested and had taken a breath or blood test. Existing legislation needs to be strengthened to address these individuals as they pose a greater risk of a fatal crash happening.

The DOT and the DAID working group urges the committee to pass this important bill as it will enhance the penalties against those drivers who continue to drink and drive. Reducing the amount of impaired driving related fatalities and injuries will help Hawaii reach our Vision Zero goal.

Thank you for the opportunity to provide testimony.

LATE

SB-765-SD-1

Submitted on: 2/25/2021 8:16:30 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 fully support this bill. Too many drivers we see are repeat offenders and fall under the "Highly Intoxicated" category. I firmly believe that having this law implemented will support prosecutors in obtaining harsher penalties upon those found guilty. This will also send a strong message to the public that impaired driving is not and will not be tolerated in Hawaii. Hold those who are **highly impaired** accountable for the risk of tragedy they create. Studies have proven impairment at .050. To be driving a vehicle with a BAC of .15 and higher is reckless and just plain dangerous for everyone on the road.