

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 Public Safety,  
Intergovernmental, and Military Affairs**

February 16, 2021

S.B. No. 765: RELATING TO OPERATING A VEHICLE UNDER THE  
INFLUENCE OF AN INTOXICANT

Chair Nishihara, Vice Chair English, and Members of the Committee:

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

The Office of the Public Defender opposes the creation of new sentencing guidelines for “highly intoxicated operators” as well as any increase in penalties for the offense of driving on a license revoked for operating a vehicle under the influence of an intoxicant (“OVUII”).

**“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.

### **Ignition interlock devices**

This measure appears to not only require the installation of an ignition interlock device upon a conviction but the installation of an ignition interlock in all vehicles registered to the individual.

The proposed law is patently unfair to those persons who cannot afford to participate in an ignition interlock program or who cannot afford to own a vehicle. The period of license restriction for such a person will never end unless and until he/she has the financial means to purchase a vehicle and/or participate in the ignition interlock program. 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 because they cannot afford to participate in the program and/or do not own a car. Thus, this measure will disproportionately punish those who are economically disadvantaged.

Admittedly, driving is not a right but a privilege. However, the privilege should not be available to only those who can afford to participate in the ignition interlock and/or who own a car. Under this proposal, a person with financial means whose BAC was 0.15 and who was involved in a traffic collision will be able to have their license reinstated in one year, but an indigent person who was initially pulled over for an expired safety check and whose BAC was 0.08 will never be able to legally drive again. ***Essentially, the State will be imposing a one-year license restriction on the affluent defendant but a lifetime license revocation on the economically disadvantaged defendant.***

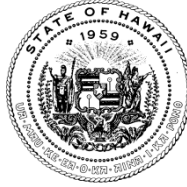
Furthermore, it is not uncommon that a person convicted of OVUII shares a vehicle with multiple family and/or household members. When the OVUII offender opts to participate in the ignition interlock program, every family member must also participate in the program. Every family member must breathe into 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 while driving. 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 seeks to increase the license revocation period for those convicted of HRS § 291E-61 and HRS § 291E-61.5. 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.***

Thank you for the opportunity to comment on this measure.



**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 16, 2021  
1:20 P.M.  
State Capitol, Teleconference

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

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

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The Department of Transportation (DOT) **supports** S.B. 765 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 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.

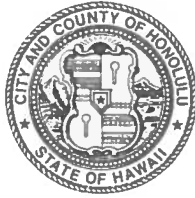
During the past five years (2016-2020), police arrested an average of 5,405 drivers for Operating a Vehicle Under the Influence of an Intoxicant per year. Of those tested, an average of 1,485 had blood alcohol concentration results of 0.150 and higher. This represents an average of 36% of those arrested 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.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI  
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CHIEF

JOHN D. MCCARTHY  
AARON TAKASAKI-YOUNG  
DEPUTY CHIEFS

OUR REFERENCE

CT-LC

February 16, 2021

The Honorable Clarence K. Nishihara, Chair  
and Members  
Committee on Public Safety,  
Intergovernmental, and Military Affairs  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

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

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Susan Ballard in black ink.

Susan Ballard  
Chief of Police

Sincerely,

Handwritten signature of Calvin Tong in black ink.

Calvin Tong, Major  
Traffic Division



MICHAEL P. VICTORINO  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# POLICE DEPARTMENT

## COUNTY OF MAUI

55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
FAX (808) 244-6411



TIVOLI S. FAAUMU  
CHIEF OF POLICE

DEAN M. RICKARD  
DEPUTY CHIEF OF POLICE

February 12, 2021

The Honorable Clarence K. Nishihara, Chair  
Committee on Public Safety, Intergovernmental, and Military Affairs  
Thirty-First Legislature 2021  
Hawaii State Capitol  
415 South Beretania Street, Room 409  
Honolulu, HI 96813

RE: SENATE BILL 765 RELATING TO OPERATING A VEHICLE UNDER THE  
INFLUENCE OF AN INTOXICANT

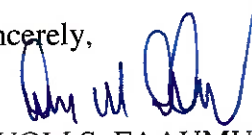
Dear Chair Nishihara and Committee Members:

The Maui Police Department strongly SUPPORTS the passage of SB 765.

This act will define “highly intoxicated drivers” and increase the penalties for offenders. Previously there was a law similar to this but was replaced with the ignition interlock. Bringing this statute back will hold offenders accountable and help deter such dangerous behavior.

Accordingly, the Maui Police Department requests SB 765 be PASSED. Thank you for the opportunity to testify.

Sincerely,



TIVOLI S. FAAUMU  
Chief of Police

**Justin F. Kollar**  
Prosecuting Attorney



**Rebecca Vogt Like**  
Second Deputy

**Jennifer S. Winn**  
First Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766  
808-241-1888 ~ FAX 808-241-1758  
Victim/Witness Program 808-241-1898 or 800-668-5734

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**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND  
MILITARY AFFAIRS  
THIRTY-FIRST STATE LEGISLATURE**

Regular Session of 2021  
State of Hawai'i

February 16, 2021

**RE: SB 765 RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF  
AN INTOXICANT**

Chair Nishihara, Vice Chair English, and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs:

The Office of the Prosecuting Attorney, County of Kaua'i SUPPORTS SB 765, establishing higher penalties for operating a vehicle with a Blood Alcohol Concentration ("BAC") of 0.15 or higher.

The Bill establishes and defines a class of intoxicated drivers as "Highly Intoxicated Drivers" in Section 291E-1 and 291E-61 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. With this revision the statute will provide for more severe consequences for elevated levels of unsafe conduct.

This amendment reflects the nearly unanimous consensus among the United States that elevated levels of intoxication among drivers multiplies the danger to other drivers, pedestrians, and the community at large. Currently, 44 states, The District of Columbia, and Guam have increased penalties for drivers convicted at higher BACs. According to the Foundation for Advancing Alcohol Responsibility 90% of Alcohol-Impaired Driving Fatalities in Hawaii involve high BAC drivers (greater than 0.15 BAC). This Bill can truly save lives.

Accordingly, the Office of the Prosecuting Attorney, County of Kaua'i, requests that this measure be PASSED.

Thank you very much for the opportunity to testify.

*An Equal Opportunity Employer*

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**LATE**

STEVEN S. ALM  
PROSECUTING ATTORNEY



THOMAS J. BRADY  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL & MILITARY AFFAIRS**

**Thirty-first State Legislature  
Regular Session of 2021  
State of Hawai'i**

February 16, 2021

**RE: S.B. 765; RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF  
AN INTOXICANT.**

Chair Nishihira, Vice Chair English, and members of the Senate Committee on Public Safety, Intergovernmental & Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of S.B. 765.

The purpose of S.B. 765 is to establish heightened penalties (and a definition) for operating a vehicle under the influence of an intoxicant ("OVUII") offenders who operate a vehicle while "highly intoxicated"; increase and align all license revocation periods and lookback periods; require a longer substance abuse program for repeat OVUII offender—as current law requires a substance abuse program only for first-time offenders, none for repeat offenders—and close so-called "loopholes" in the current mandate for OVUII offenders to install ignition interlock devices in their registered vehicles.

From April 2019 through December 2019, the Department was part of a highly dedicated working group—coordinated and facilitated by the Department of Transportation, Highway Safety Division—which convened nearly every two weeks for five months, and spent numerous working hours outside of that, for a singular purpose: to produce proposed legislation that would significantly strengthen Hawaii's OVUII laws. We believe the working group was able to accomplish this, and S.B. 765 is consistent with the bills that were jointly created by that working group. The Department greatly appreciates the bill's goal of strengthening Hawaii's OVUII laws, in a concerted efforts to keep our communities safe from intoxicated drivers.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 765. Thank you for the opportunity to testify on this matter.





Mothers Against Drunk Driving HAWAII  
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hi.state@madd.org

February 16, 2021

To: Senator Clarence K. Nishihara, Chair, Senate Committee on Public Safety,  
Intergovernmental, and Military Affairs;  
Senator J. Kalani English, Vice Chair; and members of the Committee

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

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

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

This omnibus bill has been crafted by a small group of prosecutors who, over the past two years, were tasked with studying and improving Hawaii's OVUII statutes with special attention to drivers found to have a high blood or breath alcohol level.

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 to strengthen Hawaii's OVUII statutes.

Thank you for this opportunity to testify.

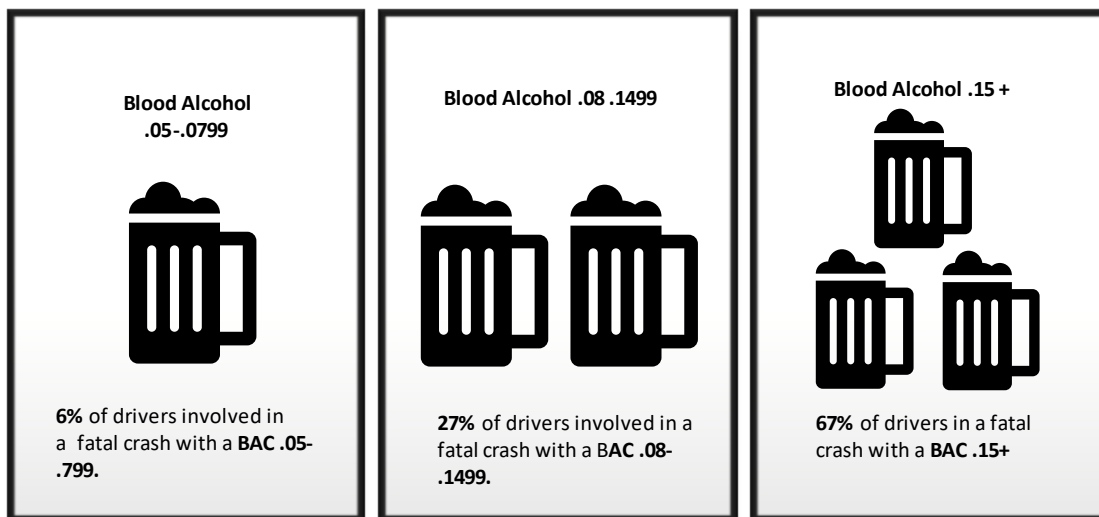


Subject: **Support** SB765 with recommendations.

Dear Chair Clarence K. Nishihara, Vice Chair J. Kalani English, and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs,

My name is Kari Benes, and I am the Chair of the Hawaii Strategic Highway Safety Plan (SHSP) Core Committee. The SHSP Core Committee is committed to supporting system changes within the impaired driving statutes that enhance the ability to detect, deter, and mitigate the complexities around impaired driving. SB765 addresses a group of drivers that are disproportionately represented in our fatal crashes.

Highly intoxicated drivers endanger themselves as well as other road users and especially more vulnerable road users such as pedestrians and bicyclists. In Hawaii, over the course of 5 years, 109 drivers involved in fatal crashes had a blood alcohol content (BAC) of .05 or greater. The graphic below demonstrates how majority of drivers involved in fatal crashes involving alcohol had a BAC of **.15 or greater (2x the legal limit)**.



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<sup>1</sup> N=109 drivers involved in a fatal crash in **Hawaii** with a reported BAC level of .05 and greater. *Note of the drivers who tested with a positive BAC of .01 to .079 67% were also positive for one or more drugs. FARS 2014-2018*



SB765 aligns with SHSP's life-saving priorities in the updated 2019-2024 plan.

The Hawaii Strategic Highway Safety Plan's vision is that all of Hawaii's road users arrive safely at their destinations. You can help us achieve our goal of reducing yearly fatalities by supporting this measure.

To view the Strategic Highway Safety Plan, please visit <https://hidot.hawaii.gov/highways/shsp/>

#### Strategic Highway Safety Plan Mission

*Save lives and reduce injuries on Hawaii's roadways through strategic partnerships and implementation of the Strategic Highway Safety Plan.*

**LATE**

**SB-765**

Submitted on: 2/15/2021 1:35:30 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Phil Kasper	Testifying for Malolo Charters	Oppose	No

Comments:

We oppose this bill and adhere to the Testimony from the **Ocean Tourism Coalition**.

**SB-765**

Submitted on: 2/13/2021 4:58:33 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip T. Rapoza	Individual	Oppose	No

Comments:

I oppose

**SB-765**

Submitted on: 2/12/2021 11:01:41 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

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.

**LATE**

**SB-765**

Submitted on: 2/16/2021 10:48:02 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chad Taniguchi	Testifying for Hawaii Bicycling League	Support	No

Comments:

The Hawaii Bicycling League strongly supports SB765 to drastically increase the penalties for those convicted of being highly intoxicated or habitually intoxicated while driving a motor vehicle.

The purpose of SB765 is to serve as a deterrent to those who would continue to drive after drinking by punishing those who disregard the lives of innocent users of the road.

The streets belong to us all for safe use. Those who commit traffic violence on others should not be on the streets driving. They can walk, bicycle, take transit, or be driven by others.

This is one way to reach Vision Zero, our state law, to eliminate all serious injuries and deaths on our roads.

Imagine Safe Streets.