
A BILL FOR AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE.

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

1 SECTION 1. Section 291E-61.5, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) For the purposes of this section:

4 "Convicted three or more times for offenses of operating a
5 vehicle under the influence" means that, at the time of the
6 behavior for which the person is charged under this section, the
7 person had three or more times within ten years of the instant
8 offense:

9 (1) A judgment on a verdict or a finding of guilty, or a
10 plea of guilty or nolo contendere, for a violation of
11 this section or section 291-4, 291-4.4, or 291-7 as
12 those sections were in effect on December 31, 2001, or
13 section 291E-61 or 707-702.5;

14 (2) A judgment on a verdict or a finding of guilty, or a
15 plea of guilty or nolo contendere, for an offense that
16 is comparable to this section or section 291-4, 291-
17 4.4, or 291-7 as those sections were in effect on
18 December 31, 2001, or section 291E-61 or 707-702.5; or



(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving that the ~~[person's status as]~~ person is a habitual operator of a vehicle while under the influence of an intoxicant~~[-]~~; and

~~[A person has the status of a "habitual]~~ "Habitual operator of a vehicle while under the influence of an intoxicant" ~~[if~~ the] means a person who has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant~~[-]~~ or has been convicted within ten years of the instant offense, for habitually operating a vehicle while under the influence of an intoxicant, which conviction was not expunged by pardon, reversed, or set aside, at the time of the instant offense."



1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.
7

INTRODUCED BY: 

By Request

JAN 23 2013



H.B. NO. 1181

Report Title:

Motor Vehicle; Operation; Under the Influence

Description:

Amends the definition of a "habitual offender" to also mean a person who was convicted of habitually operating a vehicle under the influence of an intoxicant within ten years of the instant offense of operating a motor vehicle under the influence of an intoxicant.

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



DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
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KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON TRANSPORTATION
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i**

February 13, 2013

RE: H.B. 1181; RELATING TO DRIVING UNDER THE INFLUENCE.

Chair Yamane, Vice-Chair Ichiyama, and members of the House Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following in support of H.B. 1181.

H.B. 1181 would clarify the definition of "habitual operator of a vehicle while under the influence of an intoxicant," for purposes of section 291E-61.5, Hawaii Revised Statutes. Essentially, the problem is that the current definition requires three (3) or more prior convictions of operating a vehicle under the influence of an intoxicant ("OVUII") within the past 10 years. It does not mention prior convictions of habitually operating a vehicle under the influence of an intoxicant ("HOVUII").

So if, within the past 10 years, someone had two (2) convictions of OVUII and one conviction of HOVUII—but one (1) or more of the OVUII's that led to the HOVUII conviction is now outside of our 10-year window—and this person is caught driving under the influence again, this person may not meet the current definition for a new HOVUII charge. In fact, regardless of how many HOVUII convictions someone has within the past 10 years, none are expressly included under the current definition for a new HOVUII charge.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports H.B. 1181. Thank you for this opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
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KIRK W. CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. MCCAULEY
DEPUTY CHIEFS

OUR REFERENCE KK-LC

February 13, 2013

The Honorable Ryan I. Yamane, Chair
and Members
Committee on Transportation
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

Subject: House Bill No. 1181, Relating to Driving Under the Influence

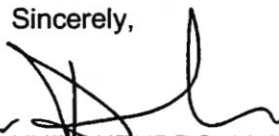
I am Kurt Kendro, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of House Bill No. 1181, Relating to Driving Under the Influence. Passage of this bill would include those persons convicted of habitually operating a vehicle under the influence of an intoxicant as a qualifying conviction in the definition of habitual operation of a vehicle while under the influence of an intoxicant.

The HPD urges you to support Senate Bill No. 1181, Relating to Driving Under the Influence.

Thank you for the opportunity to testify.

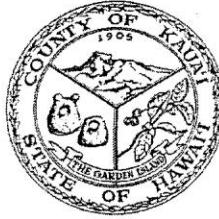
Sincerely,


KURT KENDRO, Major
Traffic Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police

Justin F. Kollar
Prosecuting Attorney



Kevin K. Takata
First Deputy

Rebecca A. Vogt
Second Deputy

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766

808-241-1888 ~ FAX 808-241-1758

Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN SUPPORT OF
H.B. NO. 1181
A BILL FOR AN ACT RELATING TO DRIVING UNDER THE INFLUENCE**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Transportation

Wednesday, February 13, 2013
10:00 a.m., Room 309


Honorable Chair Yamane, Vice-Chair Ichiyama, and Members of the House Committee on Transportation, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of House Bill No. 1181.

The proposed measure in House Bill No. 1181 is to amend Section 291E-61.5, Hawai'i Revised Statutes subsection (b) to expand the definition of "habitual operator of a vehicle while under the influence of an intoxicant" to include convictions of OVUII within ten (10) years of the instant offense.

A person that displays the repetitive action of OVUII within a ten (10) year period essentially establishes a "habitual" offender and should be deemed as such. A first time offender still remains a serious issue, so to have a person continue to commit OVUII within a ten (10) year time period poses more critical danger not only to the community, but to the individual themselves; furthermore, by defining the person as a "habitual offender" will help identify the individual to authorities as a high risk to reoffend.

For these reasons, we strongly support House Bill No. 1181. Thank you for the opportunity to testify on this matter.

Respectfully,


Justin F. Kollar
Prosecuting Attorney
County of Kaua'i



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
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CONTACT: RICHARD K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
HB 1181 - RELATING TO DRIVING UNDER THE INFLUENCE
February 13, 2013

The Honorable Ryan I. Yamane
Chair
The Honorable Linda Ichiyama
Vice Chair
and Members
House Committee on Transportation

Chair Yamane, Vice Chair Ichiyama and Members of the Committee:

HB 1181 seeks to expand the definition of *"habitual operator of a vehicle while under the influence of an intoxicant"* as it exists under HRS Section 291E-61.5(b). Under that current law, a prior felony conviction for Habitually Operating a Vehicle Under the Influence of an Intoxicant ("HOVUII") is treated the same as a prior petty misdemeanor conviction for Operating a Vehicle under the Influence of an Intoxicant ("OVUII") for purposes of triggering a subsequent HOVUII charge.

Under HB 1181, a single prior conviction for HOVUII (or similar type offense) within ten years of the instant offense will trigger a felony charge under HRS Section 291E-61.5(b). Amending the current law in this manner will allow the criminal justice system to have increased supervision over a defendant who, in some cases, would only be charged with a petty misdemeanor under the present law.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** the passage of this bill. We ask that the committee **PASS HB 1181 WITH AMENDMENTS.**

Thank you very much for the opportunity to provide testimony on this bill.

A BILL FOR AN ACT

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

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

SECTION 1. Section 291E-61.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purposes of this section:

(1) "Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within ten years of the instant offense:

~~[(1)]~~ (A) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of ~~[this section or]~~ section 291-4~~[, 291-4.4,]~~ or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

~~[(2)]~~ (B) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to ~~[this section or]~~ section 291-4~~[, 291-4.4,]~~ or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or

~~[(3)]~~ (C) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of ~~[this section or]~~ section 291-4~~[, 291-4.4,]~~ or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

(2) "Convicted one or more times for offenses of habitually operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had one or more times within ten years of the instant offense:

- (A) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001; or
- (B) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4.4 as that section was in effect on December 31, 2001; or
- (C) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001;

that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

(3) [~~A person has the status of a "habitual"~~] "Habitual operator of a vehicle while under the influence of an intoxicant" [~~if~~] means that the person:

- (A) [~~has been~~] Was convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant[.]; or

(B) Was convicted one or more times for offenses
of habitually operating a vehicle under the
influence.

SECTION 2. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2013.



Mothers Against Drunk Driving
MADD-HAWAII
745 Ford Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Page 1
Fax (808) 532-6004
hi.state@madd.org

LATE

February 13, 2013

To: Representative Ryan Yamane, Chair — House Committee on Transportation; Rep. Linda Ichiyama, Vice Chair and members of the Committee

From: Arkie Koehl/Carol McNamee—Co-chairmen, Public Policy Committee - MADD Hawaii

Re: House Bill 1181 – Relating to Driving Under The Influence

I am Arkie Koehl, offering testimony on behalf of the Hawaii members of Mothers Against Drunk Driving in support of House Bill 1181, which removes an ambiguity in the statute by clarifying the definition of “habitual offender.” It removes the possibility that the most serious, highest risk drivers might receive a lighter sentence than the one originally intended by the Legislature. This is because, in determining prior contacts, the current language only counts “OVUII”s, thereby potentially excluding “Habitual OVUII”s. HB 1181 would make clear that a Habitual OVUII counts as an OVUII.

We encourage the committee to pass House Bill 1181.

Thank you for this opportunity to testify.

ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 11, 2013 12:35 AM
To: TRNtestimony
Cc: chad@hbl.org
Subject: Submitted testimony for HB1181 on Feb 13, 2013 10:00AM

HB1181

Submitted on: 2/11/2013

Testimony for TRN on Feb 13, 2013 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Chad Taniguchi	Hawaii Bicycling League	Support	No

Comments: The Hawaii Bicycling League supports this bill. Everyone has the right to be safe on Hawaii's roads. This means that anyone who has proven to disrespect the safety of other road users by being caught driving impaired, distracted, or otherwise being unsafe, should lose their privilege to use the roads. Only by taking this kind of attitude can we as a society seriously hope to have zero deaths on our highways. As a bicycling organization composed of vulnerable road users, the last thing we need is someone operating a 2,000 - 15,000 pound weapon while impaired, to hit a pedestrian with 5 pound of clothes or bicyclist with 25 pounds of metal bike for protection. Only when we as a society get serious, that driving is a privilege to be exercised with the utmost of care, will the roads be safe for all users. Sincerely yours, Chad Taniguchi Executive Director

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

NEIL ABERCROMBIE
GOVERNOR



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

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

IN REPLY REFER TO:
(808) 586-2165

February 13, 2013
10:00 a.m.
State Capitol, Room 309

LATE

**H.B. 1181
RELATING TO DRIVING UNDER THE INFLUENCE**

House Committee on Transportation

The Department of Transportation **supports** House Bill No. 1181, Relating to Driving Under the Influence. This bill amends the definition of a "habitual offender" to mean a person who was convicted of habitually operating a vehicle under the influence of an intoxicant within ten years of the instant offense of operating a motor vehicle under the influence of an intoxicant. This amendment would close a loophole of the existing law by counting the person arrested and convicted for habitual offender as an instant offense of operating a vehicle under the influence of an intoxicant within the ten year period.

The Department of Transportation urges your support in passing House Bill No. 1181 as it will count the charge of habitual offender as an instant offense of operating a vehicle under the influence of an intoxicant.

Thank you for the opportunity to testify.

