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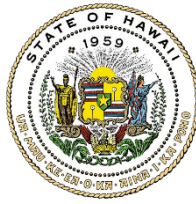
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February 3, 2026

SB 2392: RELATING TO TRAFFIC SAFETY

Chair Inouye, Vice-Chair Elefante, and Members of the Committee on Transportation:

The Office of the Public Defender (OPD) **opposes SB 2392** which would convert the offense of Operating a Vehicle Under the Influence of an Intoxicant (OVUII) involving a “highly intoxicated driver” into a class C felony with mandatory penalties.¹

While OPD fully supports efforts to promote roadway safety and prevent impaired driving, this bill represents a significant and unwarranted expansion of felony criminal liability that will not meaningfully improve public safety, will exacerbate existing inequities in the criminal justice system, and will impose substantial fiscal costs on the State of Hawaii without clear evidence of effectiveness.

Existing law already recognizes “highly intoxicated” driving through enhanced penalties such as mandatory minimum jail time beyond standard OVUII penalties and extended driver’s license revocation periods (without the possibility of early termination of the revocation period).

¹ Hawaii Revised Statute § 291E-1: “Highly intoxicated driver” means a person whose measurable amount of alcohol is:

- (1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood; or
- (2) .15 or more grams of alcohol per two hundred ten liters of the person's breath.

This bill elevates a first time, non-injury offense to felony status based solely on a numerical alcohol concentration. This metric varies significantly by individual physiology, is subject to measurement error and testing limitations which are vigorously challenged in court, and do not reliably correlate with dangerous driving behavior in every case. Elevating a non-injury OVUII offense to felony status solely on this basis risks overcriminalization without corresponding public safety benefits.

Critically, statistics shows that most OVUII arrestees in Hawaii are first-time offenders, and most individuals convicted of impaired driving do not go on to reoffend.² Repeat impaired driving is concentrated among a relatively small subset of individuals with more severe and chronic substance use disorders. This data undermines the assumption that felony-level punishment is justified for the typical OVUII case, even “high intoxication” cases, as the majority are first offenses, or that the increase in penalties improves deterrence.

Felony convictions create significant collateral consequences that extend far beyond the term of any sentence. These include: 1) increased incarceration exposure, particularly through probation violations rather than new criminal conduct, 2) reduced employment opportunities and long-term earnings, as felony convictions substantially diminish hiring prospects, 3) housing instability, including barriers to public and private housing, 4) greater long-term involvement with the criminal legal system due to cumulative disadvantage; and 5) reduced rehabilitation outcomes, as instability in employment and housing undermines recovery and compliance. These consequences often bear little relation to traffic safety, will disproportionately impact the financially disadvantaged, and can instead increase the likelihood of future system involvement.

These issues are especially pressing in Hawai‘i, where the State has overcrowded and understaffed correctional facilities, limited access to substance use treatment, particularly on the neighbor islands, and significant fiscal costs associated with incarceration and felony supervision. Expanding felony OVUII prosecutions risks deepening existing systemic strain without evidence that such expansion will meaningfully reduce impaired driving or improve safety outcomes.³

² <https://ag.hawaii.gov/cpja/files/2013/01/DUI-Report-2005.pdf>

³ Particularly to the OPD, the creation of a new offense would increase the number of circuit court cases. The felony attorneys at the OPD are already operating at higher-than-recommended case counts. If the Legislature intends to pass this measure it should be amended to add five additional

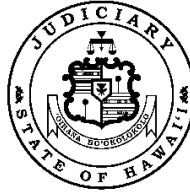
Finally, the OPD respectfully submits that limited state and community resources would be more effectively directed toward prevention, education, and treatment, rather than felony prosecution and incarceration.

Felony cases consume substantially greater public resources, including court time, correctional staffing, supervision costs, and collateral social services. By contrast, prevention-focused strategies such as public education, early intervention, treatment access, ignition interlock compliance, and community-based alternatives will reduce impaired driving at lower cost and with fewer unintended consequences.

For these reasons, the Office of the Public Defender **opposes** SB 2392.

Thank you for the opportunity to comment on this measure.

Deputy Public Defender III positions (one for each of the five branches of the OPD – Maui, Kaua‘i, Kona, Hilo, O‘ahu) to the OPD to cover the increased workload.



The Judiciary, State of Hawai‘i
Ka ‘Oihana Ho‘okolokolo, Moku‘āina ‘o Hawai‘i

Testimony to the Thirty-Third Legislature, 2026 Regular Session

Senate Committee on Transportation

Senator Lorraine R. Inouye, Chair

Senator Brandon J.C. Elefante, Vice Chair

Tuesday, February 3, 2026 at 3:00 p.m.
State Capitol, Conference Room 229 & Videoconference

By

Jennifer Awong

Staff Attorney, Circuit Court of the First Circuit

Bill No. and Title: Senate Bill No. 2392, Relating to Traffic Safety.

Purpose: Specifies that operating a vehicle under the influence of an intoxicant while a highly intoxicated driver is a class C felony and outlines additional requirements for probation.

Judiciary's Position:

The Judiciary provides the following comments to advise the committee of the potential impacts the bill will have on court operations and resource requirements. The Judiciary takes no position on either the proposed legislation or the policy behind the bill.

The proposed legislation amends section 291E-61(b)(4) of the Hawai‘i Revised Statutes (H.R.S.) to elevate the offense of operating a vehicle under the influence of an intoxicant while a highly intoxicated driver to a class “C” felony from the current petty misdemeanor. Defendants charged with “C” felonies have a right to a jury trial in circuit court. Since January of 2022, six months after effective date of Act 216 (2021) which first set forth additional penalties for defendants convicted of operating a vehicle under the influence of an intoxicant as a “highly intoxicated driver,”¹ there have been 861 charges involving highly intoxicated drivers across the State for an average of 216 cases per year.

¹ “Highly intoxicated driver” is defined under H.R.S. § 291E-1 as “a person whose measurable amount of alcohol is: (1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person’s blood; or (2) .15 or more grams of alcohol per two hundred ten liters of the person’s breath.”



Senate Bill No. 2392, Relating to Traffic Safety
Senate Committee on Transportation
Tuesday, February 3, 2026 at 3:00 p.m.
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It is anticipated that this legislation will increase the caseloads in circuit court by an average of 128 cases per year in the First Circuit, 68 cases per year in the Third Circuit, 18 cases per year in the Fifth Circuit, and two cases per year in the Second Circuit. For reference, there are currently approximately 1,200 jury trials pending in the Circuit Court of the First Circuit, with the eight trial divisions averaging a caseload of approximately 150 cases.

Given this anticipated statewide increase in jury trials, and in light of the constitutional right of all defendants to a speedy trial, the Judiciary would likely require an additional circuit court judge (and statutory authorization for the same) and full staff on O‘ahu, possibly additional resources in other circuits, and additional funding for probation services.

Relatedly, the Judiciary’s Driving While Impaired (DWI) Court is a voluntary treatment court on O‘ahu and, although anyone may apply for the program, the target population includes those with one instance of high BAC (0.15 or greater). The goal of the DWI Court Program is for participants to attain sobriety through a comprehensive, court-regulated, treatment plan that provides intervention support for non-violent offenders. The Judiciary appreciates the Legislature’s appropriation of additional resources for the DWI Court during the 2025 legislative session and looks forward to expanding the program.

Thank you for the opportunity to testify on Senate Bill 2392.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2392

A BILL FOR AN ACT RELATING TO TRAFFIC SAFETY

COMMITTEE ON TRANSPORTATION

Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair

Tuesday, February 3, 2026, at 3:00 p.m.
Via Videoconference
State Capitol Conference Room 229
415 South Beretania Street

Honorable Chair Inouye, Vice-Chair Elefante and Members of the Committee on Transportation: The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony **in strong support with comments** of Senate Bill 2392.

SB 2392 was drafted with the intent to enhance public safety by amending HRS Section 291E-61 to create a class C felony offense for highly intoxicated drivers who operate a vehicle under the influence of an intoxicant, whose actions put our communities at high risk of death and serious bodily injury on the roadways. The felony offense would allow appropriate interventions to stop and rehabilitate these drivers.

Intoxicated drivers pose a grave and ongoing threat to public safety in Hawai'i, and the most highly intoxicated drivers are the most dangerous. Trends show that drivers with high blood alcohol concentration are disproportionately responsible for serious crashes, catastrophic injuries, and traffic fatalities. These are not momentary lapses in judgment—driving while highly intoxicated demonstrates extreme disregard for the safety of others on our roadways, and the tragic results are no accident.

For nearly a decade, traffic safety advocates, law enforcement, prosecutors, and community organizations across the State have worked collaboratively to reduce impaired driving and save lives. While current law includes enhanced penalties for highly intoxicated drivers, those enhancements are limited and minimal. The offense continues to be treated as a petty misdemeanor, with penalties that are insufficient to deter the most dangerous offenders or provide courts with the tools necessary to address chronic alcohol abuse and dependence.

This measure recognizes that highly intoxicated driving is the most dangerous form of impaired driving and treats it with appropriate interventions. With a class C felony offense, the courts can impose meaningful supervision, accountability, and treatment over a longer period.

The availability of felony-level probation gives the justice system the ability to assess risk and monitor an offender's compliance with substance abuse counseling and rehabilitation to prevent future harm.

Importantly, this bill is not solely punitive in its intent. SB 2392 balances accountability with rehabilitation by emphasizing substance abuse evaluation, treatment, ignition interlock requirements, and structured probation. These provisions protect the public while also addressing the underlying alcohol abuse issues that often drive repeat offenses.

Critics of SB 2392 may argue that escalating to a felony offense for a first offense of operating a vehicle under the influence of an intoxicant ("OVUII") as a highly intoxicated driver within ten years may be too drastic. They may suggest that a graduated penalty may be more appropriate. Additionally, if the Legislature were to pass the legislation as currently drafted, a subsequent amendment would be necessary to Chapter 853 (Criminal Procedure: Deferred Acceptance of Guilty Plea, Nolo Contendere Plea) in order to ensure that the law is consistent and that an OVUII as a highly intoxicated driver also would not be eligible for a deferred plea similarly to both the existing petty misdemeanor and felony, habitually OVUII offenses.

Prospectively, to suffice the opposition's concerns regarding graduated sanctions and to address any ambiguity within existing law under Chapter 853, a proposed SD1 version (here attached as Attachment #1) has been included for the Committee's consideration. On February 2, 2026, the proposed SD1 was circulated for comments via email among the membership of the Hawai'i Law Enforcement Coalition and Statewide Traffic Commanders. The proposed SD1 includes three substantial changes to SB 2392: 1) a first conviction as a highly intoxicated driver would be a misdemeanor offense, instead of a felony, and punishable by either 10 days jail and statutory provisions or 1 year probation with no less than 5 days in jail and statutory provisions; 2) a second conviction as a highly intoxicated driver within ten years would be a class C felony offense and punishable by either a five-year prison term or four years probation with no less than thirty days jail and statutory provisions; and 3) amend HRS Section 853 to include OVUII as an excluded offense to clarify any ambiguity on the availability of a deferral.

SB 2392 will protect the public, promote public safety, and deter those who choose to drive while highly intoxicated from hurting themselves or others. Alcohol-related traffic fatalities in Hawai'i make it clear that stronger action is necessary. Every fatal or life-altering crash caused by a highly intoxicated driver is preventable. This legislation sends a clear message that Hawai'i will not tolerate conduct that endangers lives and devastates families, while still offering a path toward rehabilitation and recovery.

For the foregoing reasons, the County of Hawai'i, Office of the Prosecuting Attorney **strongly supports** the passage of Senate Bill 2392 and inclusion of the suggestions within the attached proposed SD1. Thank you for the opportunity to testify on this matter.

ATTACHMENT #1

THE SENATE

S.B. NO. 2392
PROPOSED
SD1

THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO TRAFFIC SAFETY.

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

1 SECTION 1. The legislature finds that studies indicate
2 that many traffic collisions and fatalities involve "highly
3 intoxicated" impaired drivers. For nearly a decade, traffic
4 safety advocates across the State have collaborated to promote
5 traffic safety legislation to deter impaired driving, strive for
6 accountability in the criminal justice system, and save
7 lives. Furthermore, alcohol abuse trends demonstrate a need to
8 take appropriate action to promote public health and protect
9 public safety.

10 Under existing law, enhancements exist for individuals
11 convicted of the offense of operating a vehicle under the
12 influence of an intoxicant deemed to be a highly intoxicated
13 driver. However, these enhancements are limited to additional
14 fines, minimal jail time, and an additional driver's license
15 revocation period, while the offense itself remains a petty
16 misdemeanor. These enhancements are not sufficient to address

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1 the concerns and deter this hazardous conduct. In addition to
2 the possibility of a prison term, if the facts and circumstances
3 so warrant, a misdemeanor and subsequently a class C felony
4 sanction will provide court supervision authorities with a more
5 appropriate period to assess, monitor, and rehabilitate highly
6 intoxicated drivers and properly address any potential alcohol
7 abuse or dependence needs through appropriate treatment.

8 The purpose of this Act is to enhance public safety by
9 upgrading the offense of operating a vehicle under the influence
10 of an intoxicant while a highly intoxicated driver to a
11 misdemeanor; upgrading the offense of operating a vehicle under
12 the influence of an intoxicant as a second offense while a
13 highly intoxicated driver to a class C felony; and specifying
14 additional probation requirements.

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

17 "(b) A person committing the offense of operating a
18 vehicle under the influence of an intoxicant [~~shall be sentenced~~
19 ~~without possibility of probation or suspension of sentence as~~
20 ~~follows~~]:

21 (1) [~~Except as provided in paragraph (4), for~~] For the
22 first offense, or any offense not preceded within a

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ten-year period by a conviction for an offense under this section or section 291E-4(a), except as provided in paragraph (4), shall be sentenced without possibility of probation or suspension of sentence to all of the following:

- (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court;
- (B) Revocation of license to operate a vehicle for no less than one year and no more than eighteen months;
- (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;
- (D) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) No less than forty-eight hours and no more than five days of imprisonment; or
 - (iii) A fine of no less than \$250 and no more than \$1,000;

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(E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

(F) A surcharge of up to \$25, if the court so orders, [~~or up to \$25~~] to be deposited into the trauma system special fund;

(2) For an offense that occurs within ten years of a prior conviction for an offense under this section, except as provided in paragraph (5), shall be sentenced without possibility of probation or suspension of sentence to all of the following:

(A) A substance abuse program of at least thirty-six hours, including education and counseling, or other comparable programs deemed appropriate by the court;

(B) Revocation of license to operate a vehicle for no less than two years and no more than three years;

(C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;

(D) Either one of the following:

(i) No less than two hundred forty hours of community service work; or

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(ii) No less than five days and no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;

(E) A fine of no less than \$1,000 and no more than \$3,000, to be deposited into the drug and alcohol toxicology testing laboratory special fund;

(F) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

(G) A surcharge of up to \$50, if the court so orders, to be deposited into the trauma system special fund;

(3) In addition to a sentence imposed under paragraphs (1) and (2), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of

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1 imprisonment provided in paragraph (1) or (2), as
2 applicable. Notwithstanding paragraphs (1) and (2),
3 the revocation period for a person sentenced under
4 this paragraph shall be no less than two years;

5 (4) ~~[In addition to a sentence imposed under paragraph~~
6 ~~(1), for] For [a] the first offense [under this~~
7 ~~section], or [an] any offense not preceded within a~~
8 ~~ten-year period by a conviction for an offense under~~
9 ~~this section, [any person who is convicted under this~~
10 ~~section] and was a highly intoxicated driver at the~~
11 ~~time of the subject incident, shall be [sentenced to~~
12 ~~an additional mandatory term of imprisonment for~~
13 ~~forty-eight consecutive hours and an additional~~
14 ~~mandatory revocation period of six months; provided~~
15 ~~that the total term of imprisonment for a person~~
16 ~~convicted under this paragraph shall not exceed the~~
17 ~~maximum term of imprisonment provided in paragraph~~
18 ~~(1). Notwithstanding paragraph (1), the revocation~~
19 ~~period for a person sentenced under this paragraph~~
20 ~~shall be no less than eighteen months;] guilty of a~~
21 misdemeanor and shall be sentenced to either:

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1 (A) A term of imprisonment of not less than ten days

2 and all the following:

3 (i) A fourteen-hour minimum substance abuse
4 rehabilitation program, including education
5 and counseling, or other comparable programs
6 deemed appropriate by the court;

7 (ii) Revocation of license to operate a vehicle
8 for no less than eighteen months and no more
9 than two years;

10 (iii) Installation during the revocation period of
11 an ignition interlock device on all vehicles
12 operated by the person;

13 (iv) A fine not less than \$500 and no more than
14 \$2,000;

15 (v) A surcharge of \$25 to be deposited into the
16 neurotrauma special fund; and

17 (vi) A surcharge of up to \$25, if the court so
18 orders, to be deposited into the trauma
19 system special fund; or

20 (B) A term of probation of one year, with conditions
21 to include:

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- 1 (i) A fourteen-hour minimum substance abuse
2 rehabilitation program, including education
3 and counseling, or other comparable programs
4 deemed appropriate by the court;
- 5 (ii) Revocation of license to operate a vehicle
6 for no less than eighteen months and no more
7 than two years;
- 8 (iii) Installation during the revocation period of
9 an ignition interlock device on all vehicles
10 operated by the person;
- 11 (iv) A term of imprisonment of no less than five
12 days;
- 13 (v) A fine not less than \$500 and no more than
14 \$2,000;
- 15 (vi) A surcharge of \$25 to be deposited into the
16 neurotrauma special fund; and
- 17 (vii) A surcharge of up to \$25, if the court so
18 orders, to be deposited into the trauma
19 system special fund.

- 20 (5) ~~[In addition to a sentence under paragraph (2), for]~~
21 For an offense that occurs within ten years of a prior
22 conviction for an offense under this section, ~~[any~~

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1 ~~person who is convicted under this section]~~ and was a
2 highly intoxicated driver at the time of the subject
3 incident, shall be ~~[sentenced to an additional~~
4 ~~mandatory term of imprisonment of ten consecutive days~~
5 ~~and an additional mandatory revocation period of one~~
6 ~~year; provided that the total term of imprisonment for~~
7 ~~a person convicted under this paragraph shall not~~
8 ~~exceed the maximum term of imprisonment provided in~~
9 ~~paragraph (2), as applicable. Notwithstanding~~
10 ~~paragraph (2), the revocation period for a person~~
11 ~~sentenced under this paragraph shall be no less than~~
12 ~~three years;]~~ guilty of a class C felony and shall be
13 sentenced to either:

14 (A) An indefinite term of imprisonment of five years;

15 or

16 (B) A term of probation of four years, with

17 conditions to include:

18 (i) A substance abuse program of at least
19 thirty-six hours, including education and
20 counseling, or other comparable programs
21 deemed appropriate by the court;
22

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- (ii) Revocation of license to operate a vehicle
for no less than three years and no more
than four years;
- (iii) Installation during the revocation period of
an ignition interlock device on all vehicles
operated by the person;
- (iv) A term of imprisonment of no less than
thirty days;
- (v) A fine of no less than \$2,000 and no more
than \$5,000, to be deposited into the drug
and alcohol toxicology testing laboratory
special fund;
- (vi) A surcharge of \$25 to be deposited into the
neurotrauma special fund; and
- (vii) A surcharge of up to \$50, if the court so
orders, to be deposited into the trauma
system special fund.

- (6) A person sentenced pursuant to paragraph (1) (B) may
file a motion for early termination of the applicable
revocation period if the person:

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- 1 (A) Was not sentenced to any additional mandatory
2 revocation period pursuant to paragraph (3) or
3 (4);
- 4 (B) Actually installed and maintained an ignition
5 interlock device on all vehicles operated by the
6 person for a continuous period of six months,
7 after which the person maintained the ignition
8 interlock device on all vehicles operated by the
9 person for a continuous period of three months
10 without violation;
- 11 (C) Includes with the person's motion for early
12 termination a certified court abstract
13 establishing that the person was not sentenced to
14 any additional mandatory revocation period
15 pursuant to paragraph (3) or (4);
- 16 (D) Includes with the person's motion for early
17 termination a certified statement from the
18 director of transportation establishing that:
- 19 (i) The person installed and maintained an
20 ignition interlock device on all vehicles
21 operated by the person for a continuous
22 period of six months; and

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1 (ii) After the six-month period, the person
2 maintained the ignition interlock device on
3 all vehicles operated by the person for a
4 continuous period of three months without
5 violation; and

6 (E) Has complied with all other sentencing
7 requirements.

8 Nothing in this paragraph shall require a court to
9 grant early termination of the revocation period if
10 the court finds that continued use of the ignition
11 interlock device will further the person's
12 rehabilitation or compliance with this section;

13 (7) If the person demonstrates to the court that the
14 person:

15 (A) Does not own or have the use of a vehicle in
16 which the person can install an ignition
17 interlock device during the revocation period; or

18 (B) Is otherwise unable to drive during the
19 revocation period,

20 the person shall be prohibited from driving during the
21 period of applicable revocation provided in paragraphs

22 (1) to (5); provided that the person shall be

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1 sentenced to the maximum license revocation period,
2 the court shall not issue an ignition interlock permit
3 pursuant to subsection (i), and the person shall be
4 subject to the penalties provided by section 291E-62
5 if the person drives during the applicable revocation
6 period; and

7 (8) For purposes of this subsection, "violation" means:

8 (A) Providing a sample of .04 or more grams of
9 alcohol per two hundred ten liters of breath when
10 starting the vehicle, unless a subsequent test
11 performed within ten minutes registers a breath
12 alcohol concentration lower than .02 and the
13 digital image confirmed the same person provided
14 both samples;

15 (B) Providing a sample of .04 or more grams of
16 alcohol per two hundred ten liters of breath on a
17 rolling retest, unless a subsequent test
18 performed within ten minutes registers a breath
19 alcohol concentration lower than .02 and the
20 digital image confirms the same person provided
21 both samples;

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- 1 (C) Failing to provide a rolling retest, unless an
2 acceptable test is performed within ten minutes;
3 (D) Violating section 291E-66; or
4 (E) Failing to provide a clear photo of the person
5 when the person blows into the ignition interlock
6 device."

7 SECTION 3. Section 853-4, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows: (a) This
9 chapter shall not apply when:

10 (1) The offense charged involves the intentional,
11 knowing, reckless, or negligent killing of another
12 person;

13 (2) *[Repeal and reenactment on June 30, 2026. L*
14 *2020, c 19, §15.]* The offense charged is:

15 (A) A felony that involves the intentional,
16 knowing, or reckless bodily injury, substantial
17 bodily injury, or serious bodily injury of
18 another person; or

19 (B) A misdemeanor or petty misdemeanor that
20 carries a mandatory minimum sentence and that
21 involves the intentional, knowing, or reckless

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1 bodily injury, substantial bodily injury, or
2 serious bodily injury of another person;
3 provided that the prohibition in this paragraph
4 shall not apply to offenses described in section 709-906(18);

5 (3) The offense charged involves a conspiracy or
6 solicitation to intentionally, knowingly, or
7 recklessly kill another person or to cause serious
8 bodily injury to another person;

9 (4) The offense charged is a class A felony;

10 (5) The offense charged is nonprobationable;

11 (6) The defendant has been convicted of any offense
12 defined as a felony by the Hawaii Penal Code or has
13 been convicted for any conduct that if perpetrated in
14 this State would be punishable as a felony;

15 (7) The defendant is found to be a law violator or
16 delinquent child for the commission of any offense
17 defined as a felony by the Hawaii Penal Code or for
18 any conduct that if perpetrated in this State would
19 constitute a felony;

20 (8) The defendant has a prior conviction for a felony
21 committed in any state, federal, or foreign
22 jurisdiction;

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(9) A firearm was used in the commission of the offense charged;

(10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;

(11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior offense, regardless of whether the period of deferral has already expired;

(12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;

(13) *[Repeal and reenactment on June 30, 2026. L 2020, c 19, §15.]* The offense charged is:

(A) Escape in the first degree;

(B) Escape in the second degree;

(C) Promoting prison contraband in the first degree;

(D) Promoting prison contraband in the second degree;

S.B. NO.

- 1 (E) Bail jumping in the first degree;
- 2 (F) Bail jumping in the second degree;
- 3 (G) Bribery;
- 4 (H) Bribery of or by a witness;
- 5 (I) Intimidating a witness;
- 6 (J) Bribery of or by a juror;
- 7 (K) Intimidating a juror;
- 8 (L) Jury tampering;
- 9 (M) Promoting prostitution;
- 10 (N) Abuse of family or household member except
- 11 as provided in paragraph (2) and section 709-
- 12 906(18);
- 13 (O) Sexual assault in the second degree;
- 14 (P) Sexual assault in the third degree;
- 15 (Q) A violation of an order issued pursuant to
- 16 chapter 586;
- 17 (R) Promoting child abuse in the second degree;
- 18 (S) Promoting child abuse in the third degree;
- 19 (T) Electronic enticement of a child in the
- 20 first degree;
- 21 (U) Electronic enticement of a child in the
- 22 second degree;

S.B. NO.

(V) Commercial sexual exploitation pursuant to section 712-1200.5;

(W) Street prostitution and commercial sexual exploitation under section 712-1207(1) (b) or (2) (b);

(X) Commercial sexual exploitation near schools or public parks under section 712-1209;

(Y) Commercial sexual exploitation of a minor under section 712-1209.1;

(Z) Habitual commercial sexual exploitation under section 712-1209.5;

(AA) Violation of privacy in the first degree under section 711-1110.9;

(BB) Violation of privacy in the second degree under section 711-1111(1) (d), (e), (f), (g), or (h);

(CC) Habitually operating a vehicle under the influence of an intoxicant under section 291E-61.5(a);

(DD) Promoting gambling in the first degree; ~~or~~

(EE) Promoting gambling in the second degree; or

S.B. NO.

1 (FF) Operating a vehicle under the influence of an
2 intoxicant under section 291E-61;

3 (14) The defendant has been charged with:

4 (A) Knowingly or intentionally falsifying any

5 (B) report required under part XIII of chapter

6 11, with the intent to circumvent the law or

7 deceive the campaign spending commission; or

8 (B) Violating section 11-352 or 11-353; or

9 (15) The defendant holds a commercial driver's license

10 and has been charged with violating a traffic

11 control law, other than a parking law, in

12 connection with the operation of any type of

13 motor vehicle.

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

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

17 INTRODUCED BY: _____

S.B. NO.

S.B. NO.

Report Title:

Relating to Traffic Safety; Operating a Vehicle Under the Influence of an Intoxicant; Highly Intoxicated Driver

Description:

Specifies that operating a vehicle under the influence of an intoxicant while a highly intoxicated driver is a class C felony and outlines additional requirements for probation.

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

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2392

A BILL FOR AN ACT RELATING TO TRAFFIC SAFETY

COMMITTEE ON TRANSPORTATION

Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair

Tuesday, February 3, 2026, at 3:00 p.m.
Via Videoconference
State Capitol Conference Room 229
415 South Beretania Street

Honorable Chair Inouye, Vice-Chair Elefante and Members of the Committee on Transportation: The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony **in strong support with comments** of Senate Bill 2392.

SB 2392 was drafted with the intent to enhance public safety by amending HRS Section 291E-61 to create a class C felony offense for highly intoxicated drivers who operate a vehicle under the influence of an intoxicant, whose actions put our communities at high risk of death and serious bodily injury on the roadways. The felony offense would allow appropriate interventions to stop and rehabilitate these drivers.

Intoxicated drivers pose a grave and ongoing threat to public safety in Hawai'i, and the most highly intoxicated drivers are the most dangerous. Trends show that drivers with high blood alcohol concentration are disproportionately responsible for serious crashes, catastrophic injuries, and traffic fatalities. These are not momentary lapses in judgment—driving while highly intoxicated demonstrates extreme disregard for the safety of others on our roadways, and the tragic results are no accident.

For nearly a decade, traffic safety advocates, law enforcement, prosecutors, and community organizations across the State have worked collaboratively to reduce impaired driving and save lives. While current law includes enhanced penalties for highly intoxicated drivers, those enhancements are limited and minimal. The offense continues to be treated as a petty misdemeanor, with penalties that are insufficient to deter the most dangerous offenders or provide courts with the tools necessary to address chronic alcohol abuse and dependence.

This measure recognizes that highly intoxicated driving is the most dangerous form of impaired driving and treats it with appropriate interventions. With a class C felony offense, the courts can impose meaningful supervision, accountability, and treatment over a longer period.

The availability of felony-level probation gives the justice system the ability to assess risk and monitor an offender's compliance with substance abuse counseling and rehabilitation to prevent future harm.

Importantly, this bill is not solely punitive in its intent. SB 2392 balances accountability with rehabilitation by emphasizing substance abuse evaluation, treatment, ignition interlock requirements, and structured probation. These provisions protect the public while also addressing the underlying alcohol abuse issues that often drive repeat offenses.

Critics of SB 2392 may argue that escalating to a felony offense for a first offense of operating a vehicle under the influence of an intoxicant ("OVUII") as a highly intoxicated driver within ten years may be too drastic. They may suggest that a graduated penalty may be more appropriate. Additionally, if the Legislature were to pass the legislation as currently drafted, a subsequent amendment would be necessary to Chapter 853 (Criminal Procedure: Deferred Acceptance of Guilty Plea, Nolo Contendere Plea) in order to ensure that the law is consistent and that an OVUII as a highly intoxicated driver also would not be eligible for a deferred plea similarly to both the existing petty misdemeanor and felony, habitually OVUII offenses.

Prospectively, to suffice the opposition's concerns regarding graduated sanctions and to address any ambiguity within existing law under Chapter 853, a proposed SD1 version (here attached as Attachment #1) has been included for the Committee's consideration. On February 2, 2026, the proposed SD1 was circulated for comments via email among the membership of the Hawai'i Law Enforcement Coalition and Statewide Traffic Commanders. The proposed SD1 includes three substantial changes to SB 2392: 1) a first conviction as a highly intoxicated driver would be a misdemeanor offense, instead of a felony, and punishable by either 10 days jail and statutory provisions or 1 year probation with no less than 5 days in jail and statutory provisions; 2) a second conviction as a highly intoxicated driver within ten years would be a class C felony offense and punishable by either a five-year prison term or four years probation with no less than thirty days jail and statutory provisions; and 3) amend HRS Section 853 to include OVUII as an excluded offense to clarify any ambiguity on the availability of a deferral.

SB 2392 will protect the public, promote public safety, and deter those who choose to drive while highly intoxicated from hurting themselves or others. Alcohol-related traffic fatalities in Hawai'i make it clear that stronger action is necessary. Every fatal or life-altering crash caused by a highly intoxicated driver is preventable. This legislation sends a clear message that Hawai'i will not tolerate conduct that endangers lives and devastates families, while still offering a path toward rehabilitation and recovery.

For the foregoing reasons, the County of Hawai'i, Office of the Prosecuting Attorney **strongly supports** the passage of Senate Bill 2392 and inclusion of the suggestions within the attached proposed SD1. Thank you for the opportunity to testify on this matter.

ATTACHMENT #1

THE SENATE

S.B. NO. 2392
PROPOSED
SD1

THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO TRAFFIC SAFETY.

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

1 SECTION 1. The legislature finds that studies indicate
2 that many traffic collisions and fatalities involve "highly
3 intoxicated" impaired drivers. For nearly a decade, traffic
4 safety advocates across the State have collaborated to promote
5 traffic safety legislation to deter impaired driving, strive for
6 accountability in the criminal justice system, and save
7 lives. Furthermore, alcohol abuse trends demonstrate a need to
8 take appropriate action to promote public health and protect
9 public safety.

10 Under existing law, enhancements exist for individuals
11 convicted of the offense of operating a vehicle under the
12 influence of an intoxicant deemed to be a highly intoxicated
13 driver. However, these enhancements are limited to additional
14 fines, minimal jail time, and an additional driver's license
15 revocation period, while the offense itself remains a petty
16 misdemeanor. These enhancements are not sufficient to address

S.B. NO.

1 the concerns and deter this hazardous conduct. In addition to
2 the possibility of a prison term, if the facts and circumstances
3 so warrant, a misdemeanor and subsequently a class C felony
4 sanction will provide court supervision authorities with a more
5 appropriate period to assess, monitor, and rehabilitate highly
6 intoxicated drivers and properly address any potential alcohol
7 abuse or dependence needs through appropriate treatment.

8 The purpose of this Act is to enhance public safety by
9 upgrading the offense of operating a vehicle under the influence
10 of an intoxicant while a highly intoxicated driver to a
11 misdemeanor; upgrading the offense of operating a vehicle under
12 the influence of an intoxicant as a second offense while a
13 highly intoxicated driver to a class C felony; and specifying
14 additional probation requirements.

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

17 "(b) A person committing the offense of operating a
18 vehicle under the influence of an intoxicant [~~shall be sentenced~~
19 ~~without possibility of probation or suspension of sentence as~~
20 ~~follows~~]:

21 (1) [~~Except as provided in paragraph (4), for~~] For the
22 first offense, or any offense not preceded within a

S.B. NO.

ten-year period by a conviction for an offense under this section or section 291E-4(a), except as provided in paragraph (4), shall be sentenced without possibility of probation or suspension of sentence to all of the following:

- (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court;
- (B) Revocation of license to operate a vehicle for no less than one year and no more than eighteen months;
- (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;
- (D) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) No less than forty-eight hours and no more than five days of imprisonment; or
 - (iii) A fine of no less than \$250 and no more than \$1,000;

S.B. NO.

(E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

(F) A surcharge of up to \$25, if the court so orders, ~~[or up to \$25]~~ to be deposited into the trauma system special fund;

(2) For an offense that occurs within ten years of a prior conviction for an offense under this section, except as provided in paragraph (5), shall be sentenced without possibility of probation or suspension of sentence to all of the following:

(A) A substance abuse program of at least thirty-six hours, including education and counseling, or other comparable programs deemed appropriate by the court;

(B) Revocation of license to operate a vehicle for no less than two years and no more than three years;

(C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;

(D) Either one of the following:

(i) No less than two hundred forty hours of community service work; or

S.B. NO.

(ii) No less than five days and no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;

(E) A fine of no less than \$1,000 and no more than \$3,000, to be deposited into the drug and alcohol toxicology testing laboratory special fund;

(F) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

(G) A surcharge of up to \$50, if the court so orders, to be deposited into the trauma system special fund;

(3) In addition to a sentence imposed under paragraphs (1) and (2), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of

S.B. NO.

1 imprisonment provided in paragraph (1) or (2), as
2 applicable. Notwithstanding paragraphs (1) and (2),
3 the revocation period for a person sentenced under
4 this paragraph shall be no less than two years;

5 (4) ~~[In addition to a sentence imposed under paragraph~~
6 ~~(1), for] For [a] the first offense [under this~~
7 ~~section], or [an] any offense not preceded within a~~
8 ~~ten-year period by a conviction for an offense under~~
9 ~~this section, [any person who is convicted under this~~
10 ~~section] and was a highly intoxicated driver at the~~
11 ~~time of the subject incident, shall be [sentenced to~~
12 ~~an additional mandatory term of imprisonment for~~
13 ~~forty-eight consecutive hours and an additional~~
14 ~~mandatory revocation period of six months; provided~~
15 ~~that the total term of imprisonment for a person~~
16 ~~convicted under this paragraph shall not exceed the~~
17 ~~maximum term of imprisonment provided in paragraph~~
18 ~~(1). Notwithstanding paragraph (1), the revocation~~
19 ~~period for a person sentenced under this paragraph~~
20 ~~shall be no less than eighteen months;] guilty of a~~
21 misdemeanor and shall be sentenced to either:

S.B. NO.

1 (A) A term of imprisonment of not less than ten days

2 and all the following:

3 (i) A fourteen-hour minimum substance abuse
4 rehabilitation program, including education
5 and counseling, or other comparable programs
6 deemed appropriate by the court;

7 (ii) Revocation of license to operate a vehicle
8 for no less than eighteen months and no more
9 than two years;

10 (iii) Installation during the revocation period of
11 an ignition interlock device on all vehicles
12 operated by the person;

13 (iv) A fine not less than \$500 and no more than
14 \$2,000;

15 (v) A surcharge of \$25 to be deposited into the
16 neurotrauma special fund; and

17 (vi) A surcharge of up to \$25, if the court so
18 orders, to be deposited into the trauma
19 system special fund; or

20 (B) A term of probation of one year, with conditions
21 to include:

S.B. NO.

- 1 (i) A fourteen-hour minimum substance abuse
2 rehabilitation program, including education
3 and counseling, or other comparable programs
4 deemed appropriate by the court;
- 5 (ii) Revocation of license to operate a vehicle
6 for no less than eighteen months and no more
7 than two years;
- 8 (iii) Installation during the revocation period of
9 an ignition interlock device on all vehicles
10 operated by the person;
- 11 (iv) A term of imprisonment of no less than five
12 days;
- 13 (v) A fine not less than \$500 and no more than
14 \$2,000;
- 15 (vi) A surcharge of \$25 to be deposited into the
16 neurotrauma special fund; and
- 17 (vii) A surcharge of up to \$25, if the court so
18 orders, to be deposited into the trauma
19 system special fund.

- 20 (5) ~~[In addition to a sentence under paragraph (2), for]~~
21 For an offense that occurs within ten years of a prior
22 conviction for an offense under this section, ~~[any~~

S.B. NO.

1 ~~person who is convicted under this section]~~ and was a
2 highly intoxicated driver at the time of the subject
3 incident, shall be ~~[sentenced to an additional~~
4 ~~mandatory term of imprisonment of ten consecutive days~~
5 ~~and an additional mandatory revocation period of one~~
6 ~~year; provided that the total term of imprisonment for~~
7 ~~a person convicted under this paragraph shall not~~
8 ~~exceed the maximum term of imprisonment provided in~~
9 ~~paragraph (2), as applicable. Notwithstanding~~
10 ~~paragraph (2), the revocation period for a person~~
11 ~~sentenced under this paragraph shall be no less than~~
12 ~~three years;]~~ guilty of a class C felony and shall be
13 sentenced to either:

14 (A) An indefinite term of imprisonment of five years;

15 or

16 (B) A term of probation of four years, with

17 conditions to include:

18 (i) A substance abuse program of at least
19 thirty-six hours, including education and
20 counseling, or other comparable programs
21 deemed appropriate by the court;
22

S.B. NO.

- 1 (ii) Revocation of license to operate a vehicle
2 for no less than three years and no more
3 than four years;
- 4 (iii) Installation during the revocation period of
5 an ignition interlock device on all vehicles
6 operated by the person;
- 7 (iv) A term of imprisonment of no less than
8 thirty days;
- 9 (v) A fine of no less than \$2,000 and no more
10 than \$5,000, to be deposited into the drug
11 and alcohol toxicology testing laboratory
12 special fund;
- 13 (vi) A surcharge of \$25 to be deposited into the
14 neurotrauma special fund; and
- 15 (vii) A surcharge of up to \$50, if the court so
16 orders, to be deposited into the trauma
17 system special fund.

- 18 (6) A person sentenced pursuant to paragraph (1) (B) may
19 file a motion for early termination of the applicable
20 revocation period if the person:

S.B. NO.

- 1 (A) Was not sentenced to any additional mandatory
2 revocation period pursuant to paragraph (3) or
3 (4);
- 4 (B) Actually installed and maintained an ignition
5 interlock device on all vehicles operated by the
6 person for a continuous period of six months,
7 after which the person maintained the ignition
8 interlock device on all vehicles operated by the
9 person for a continuous period of three months
10 without violation;
- 11 (C) Includes with the person's motion for early
12 termination a certified court abstract
13 establishing that the person was not sentenced to
14 any additional mandatory revocation period
15 pursuant to paragraph (3) or (4);
- 16 (D) Includes with the person's motion for early
17 termination a certified statement from the
18 director of transportation establishing that:
- 19 (i) The person installed and maintained an
20 ignition interlock device on all vehicles
21 operated by the person for a continuous
22 period of six months; and

S.B. NO.

1 (ii) After the six-month period, the person
2 maintained the ignition interlock device on
3 all vehicles operated by the person for a
4 continuous period of three months without
5 violation; and

6 (E) Has complied with all other sentencing
7 requirements.

8 Nothing in this paragraph shall require a court to
9 grant early termination of the revocation period if
10 the court finds that continued use of the ignition
11 interlock device will further the person's
12 rehabilitation or compliance with this section;

13 (7) If the person demonstrates to the court that the
14 person:

15 (A) Does not own or have the use of a vehicle in
16 which the person can install an ignition
17 interlock device during the revocation period; or

18 (B) Is otherwise unable to drive during the
19 revocation period,

20 the person shall be prohibited from driving during the
21 period of applicable revocation provided in paragraphs

22 (1) to (5); provided that the person shall be

S.B. NO.

1 sentenced to the maximum license revocation period,
2 the court shall not issue an ignition interlock permit
3 pursuant to subsection (i), and the person shall be
4 subject to the penalties provided by section 291E-62
5 if the person drives during the applicable revocation
6 period; and

7 (8) For purposes of this subsection, "violation" means:

8 (A) Providing a sample of .04 or more grams of
9 alcohol per two hundred ten liters of breath when
10 starting the vehicle, unless a subsequent test
11 performed within ten minutes registers a breath
12 alcohol concentration lower than .02 and the
13 digital image confirmed the same person provided
14 both samples;

15 (B) Providing a sample of .04 or more grams of
16 alcohol per two hundred ten liters of breath on a
17 rolling retest, unless a subsequent test
18 performed within ten minutes registers a breath
19 alcohol concentration lower than .02 and the
20 digital image confirms the same person provided
21 both samples;

S.B. NO.

- 1 (C) Failing to provide a rolling retest, unless an
2 acceptable test is performed within ten minutes;
3 (D) Violating section 291E-66; or
4 (E) Failing to provide a clear photo of the person
5 when the person blows into the ignition interlock
6 device."

7 SECTION 3. Section 853-4, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows: (a) This
9 chapter shall not apply when:

10 (1) The offense charged involves the intentional,
11 knowing, reckless, or negligent killing of another
12 person;

13 (2) *[Repeal and reenactment on June 30, 2026. L*
14 *2020, c 19, §15.]* The offense charged is:

15 (A) A felony that involves the intentional,
16 knowing, or reckless bodily injury, substantial
17 bodily injury, or serious bodily injury of
18 another person; or

19 (B) A misdemeanor or petty misdemeanor that
20 carries a mandatory minimum sentence and that
21 involves the intentional, knowing, or reckless

S.B. NO.

1 bodily injury, substantial bodily injury, or
2 serious bodily injury of another person;
3 provided that the prohibition in this paragraph
4 shall not apply to offenses described in section 709-906(18);

5 (3) The offense charged involves a conspiracy or
6 solicitation to intentionally, knowingly, or
7 recklessly kill another person or to cause serious
8 bodily injury to another person;

9 (4) The offense charged is a class A felony;

10 (5) The offense charged is nonprobationable;

11 (6) The defendant has been convicted of any offense
12 defined as a felony by the Hawaii Penal Code or has
13 been convicted for any conduct that if perpetrated in
14 this State would be punishable as a felony;

15 (7) The defendant is found to be a law violator or
16 delinquent child for the commission of any offense
17 defined as a felony by the Hawaii Penal Code or for
18 any conduct that if perpetrated in this State would
19 constitute a felony;

20 (8) The defendant has a prior conviction for a felony
21 committed in any state, federal, or foreign
22 jurisdiction;

S.B. NO.

(9) A firearm was used in the commission of the offense charged;

(10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;

(11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior offense, regardless of whether the period of deferral has already expired;

(12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;

(13) *[Repeal and reenactment on June 30, 2026. L 2020, c 19, §15.]* The offense charged is:

(A) Escape in the first degree;

(B) Escape in the second degree;

(C) Promoting prison contraband in the first degree;

(D) Promoting prison contraband in the second degree;

S.B. NO.

- 1 (E) Bail jumping in the first degree;
- 2 (F) Bail jumping in the second degree;
- 3 (G) Bribery;
- 4 (H) Bribery of or by a witness;
- 5 (I) Intimidating a witness;
- 6 (J) Bribery of or by a juror;
- 7 (K) Intimidating a juror;
- 8 (L) Jury tampering;
- 9 (M) Promoting prostitution;
- 10 (N) Abuse of family or household member except
- 11 as provided in paragraph (2) and section 709-
- 12 906(18);
- 13 (O) Sexual assault in the second degree;
- 14 (P) Sexual assault in the third degree;
- 15 (Q) A violation of an order issued pursuant to
- 16 chapter 586;
- 17 (R) Promoting child abuse in the second degree;
- 18 (S) Promoting child abuse in the third degree;
- 19 (T) Electronic enticement of a child in the
- 20 first degree;
- 21 (U) Electronic enticement of a child in the
- 22 second degree;

S.B. NO.

(V) Commercial sexual exploitation pursuant to section 712-1200.5;

(W) Street prostitution and commercial sexual exploitation under section 712-1207(1) (b) or (2) (b);

(X) Commercial sexual exploitation near schools or public parks under section 712-1209;

(Y) Commercial sexual exploitation of a minor under section 712-1209.1;

(Z) Habitual commercial sexual exploitation under section 712-1209.5;

(AA) Violation of privacy in the first degree under section 711-1110.9;

(BB) Violation of privacy in the second degree under section 711-1111(1) (d), (e), (f), (g), or (h);

(CC) Habitually operating a vehicle under the influence of an intoxicant under section 291E-61.5(a);

(DD) Promoting gambling in the first degree; ~~or~~

(EE) Promoting gambling in the second degree; or

S.B. NO.

1 (FF) Operating a vehicle under the influence of an
2 intoxicant under section 291E-61;

3 (14) The defendant has been charged with:

4 (A) Knowingly or intentionally falsifying any

5 (B) report required under part XIII of chapter

6 11, with the intent to circumvent the law or

7 deceive the campaign spending commission; or

8 (B) Violating section 11-352 or 11-353; or

9 (15) The defendant holds a commercial driver's license

10 and has been charged with violating a traffic

11 control law, other than a parking law, in

12 connection with the operation of any type of

13 motor vehicle.

14 SECTION 4. Statutory material to be repealed is bracketed

15 and stricken. New statutory material is underscored.

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

17

INTRODUCED BY: _____

S.B. NO.

S.B. NO.

Report Title:

Relating to Traffic Safety; Operating a Vehicle Under the Influence of an Intoxicant; Highly Intoxicated Driver

Description:

Specifies that operating a vehicle under the influence of an intoxicant while a highly intoxicated driver is a class C felony and outlines additional requirements for probation.

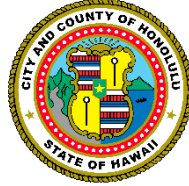
The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

**DEPARTMENT OF CUSTOMER SERVICES
KA 'OIHANA LAWELawe KUPA
CITY AND COUNTY OF HONOLULU**

ADMINISTRATION

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RICK BLANGIARDI
MAYOR
MEIA



KIMBERLY M. HASHIRO
DIRECTOR
PO'O

MEGAN JOHNSON
DEPUTY DIRECTOR
HOPE PO'O

February 2, 2026

The Honorable Lorraine R. Inouye, Chair
The Honorable Brandon J.C. Elefante, Vice Chair
and Members of the Senate Committee on Transportation
State Capitol, Conference Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Inouye, Vice Chair Elefante, and Members of the Senate Committee on Transportation:

SUBJECT: S.B. No. 2392 - Relating To Traffic Safety
HEARING: Tuesday, February 3, 2026, 3:00 p.m.

The City and County of Honolulu, Department of Customer Services (CSD) **supports** this bill and appreciates the opportunity to offer comments for your committee's consideration. Pursuant to Section 6-402 of the Revised Charter of the City and County of Honolulu, CSD Division of Motor Vehicles (DMV) administers the motor vehicle registration program for the island of O'ahu. While CSD appreciates the intent of the proposed legislation, we have concerns regarding its application and its legal implications.

CSD supports efforts to improve traffic safety and reduce serious injuries and fatalities caused by impaired driving. Highly intoxicated drivers pose a significant risk to the public, and stronger accountability measures, including longer periods of supervision, treatment, and monitoring, are important tools to reduce repeat offenses.

From an administrative standpoint, clearly defined license revocation periods and ignition interlock requirements are critical for effective enforcement. These measures help ensure that high-risk drivers are restricted from driving while impaired and provide practical safeguards for the public.

CSD respectfully notes that implementation of these changes may require additional resources to be effective. Increased workloads related to longer revocation periods, ignition interlock compliance, and coordination with the courts may necessitate additional funding, staffing, and technology support to ensure accurate, timely processing and public service continuity.

With these considerations in mind, CSD supports the intent of S.B. No. 2392 and looks forward to working with the Legislature and partner agencies to ensure successful and workable implementation.

Thank you for this opportunity to provide testimony on S.B. No. 2392.

Sincerely,

/s/ Kimberly M. Hashiro
Director



JOHN PELLETIER
CHIEF OF POLICE

POLICE DEPARTMENT COUNTY OF MAUI

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



WADE M. MAEDA
DEPUTY CHIEF OF POLICE

February 2, 2026

LATE

Honorable Senator Loraine Inouye, Chair
Honorable Senator Brandon J.C Elefante, Vice Chair
and Members
Committee on Transportation
The Thirty-Third Legislature
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

SUBJECT: Testimony in Support of S.B. 2392, Relating to Traffic Safety

Dear Chair Inouye, Vice Chair Elefante, and Committee Members:

I am writing in strong support of SB 2392, which seeks to classify operating a vehicle while "highly intoxicated" as a Class C felony. This measure is a critical step in addressing the persistent danger posed by extreme impairment on our roads.

By setting a felony threshold for drivers with a Blood Alcohol Concentration (BAC) of 0.15%, which is nearly double the legal limit in the state of Hawaii, this bill will more effectively improve public safety as drivers with a higher blood alcohol content are significantly more likely to be involved in fatal crashes.

Elevating these offenses to a Class C felony allows for more rigorous probation requirements, to include mandatory alcohol monitoring and long-term rehabilitation.

In addition, the stronger penalties send a clear message that extreme intoxication is a serious and significant threat to the community, not just a minor infraction.

Unfortunately, our existing laws do not adequately address first time offenders who may have underlying alcohol or substance abuse issues which lead to these higher levels of impairment. SB 2392 provides the Department of Health and the Judiciary a more effective means of intervention.

I respectfully urge the committee to pass SB 2392.

Sincerely,


JOHN PELLETIER
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU

LATE

ALII PLACE
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STEVEN S. ALM
PROSECUTING ATTORNEY
LOIO HO'OPI'I



THOMAS J. BRADY
FIRST DEPUTY PROSECUTING ATTORNEY
HOPE MUA LOIO HO'OPI'I

THE HONORABLE, CHAIR LORRAINE R. INOUE
SENATE COMMITTEE ON TRANSPORTATION
Thirty-Third State Legislature
Regular Session of 2026
State of Hawai'i

February 3, 2026

RE: S.B. 2392; RELATING TO TRAFFIC SAFETY.

Chair Inouye, Vice-Chair Elefante, and members of the Senate Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following **comment** on S.B. 2392.

S.B. 2932 increases the penalties for drunk drivers by creating a class C felony for "highly intoxicated drivers."¹ The Department supports the intent of this bill to enhance public safety by reducing alcohol-related crashes and fatalities. A recent report from the Hawaii Alcohol Policy Alliance found that 40% of traffic fatalities in 2011-2012 involved alcohol, higher than the national average.² Highly-intoxicated drivers pose a clear and present danger on our highways.

The Department cautions that the bill may have the unintended consequence of encouraging refusal of blood and breath testing on Oahu. In *State v. Won*,³ the Hawai'i Supreme Court struck down the statute criminalizing refusal of chemical testing by suspected drunk

¹ See HRS § 291E-1 (defining "highly intoxicated driver" as one whose measurable amount of alcohol is 0.15 or more grams of alcohol per 100 milliliters or cubic centimeters of blood or 0.15 or more grams of alcohol per 210 liters of breath).

² HAWAII NEWS NOW, *Report: Hawaii Alcohol-Related Traffic Fatality Rate Outpaces National Average* (Feb. 4, 2025), available at <https://www.hawaiinewsnow.com/2025/02/04/report-hawaii-alcohol-related-traffic-fatality-rate-outpaces-national-average/>; MAUI NEWS, *Hawai'i's Alcohol-Related Traffic Fatality Rate Outpaces National Average* (Feb. 5, 2025), available at <https://mauiNOW.com/2025/02/05/hawaiis-alcohol-related-traffic-fatality-rate-outpaces-national-average>.

³ 137 Hawai'i 330, 372 P.3d 1065 (2015).

drivers.⁴ And unlike the United States Supreme Court,⁵ the Hawai‘i Supreme Court does not treat breath tests as an incidental search obviating the warrant requirement.⁶ Thus, in refusal cases, police must usually obtain a warrant to secure evidence of alcohol consumption. And that warrant cannot wait: it is a “biological certainty”⁷ that alcohol dissipates from the bloodstream with each passing minute.

While the other circuits routinely issue electronic and telephonic warrants, the First Circuit does not have regular procedures to do so, more than a decade after the *Won* decision. Oahu is where the majority of OVUII cases are prosecuted. Oahu accounts for the highest share of traffic fatalities. And many drivers here continue to evade prosecution by simply refusing breath or blood tests. Under the current legal framework, this bill—which rightly aims at the most dangerous and manifestly guilty drivers—may unintentionally incentivize further refusals.

Thank you for the opportunity to testify on this matter.

⁴ *Id.* at 346-49, 372 P.3d at 1081-84.

⁵ *Birchfield v. North Dakota*, 579 U.S. 438, 461-63 (finding that an alcohol breath test does not implicate significant privacy concerns).

⁶ *Won* at 338 (“[P]roduction of deep lung breath is a search under well-settled law.”). *See also State v. Wilson*, 141 Hawai‘i 459, 465-66, 413 P.3d 363, 369-70 (App. 2018) (noting that prosecutions for refusal of breath or blood testing would require overturning the *Won* decision).

⁷ *Missouri v. McNeely*, 569 U.S. 141, 169 (2013) (Roberts, C.J., concurring in part).



February 1, 2026

COMMITTEE ON TRANSPORTATION

Senator Lorraine R. Inouye, Chair

Senator Brandon J.C. Elefante, Vice Chair

Re: Testimony in Support w/Comments of SB2392

Aloha Chair, Vice Chair, and Members of the Committee,

My name is Garrett W. Marrero, and I live in Kihei, Hawai'i. I am the CEO and Founder of Maui Brewing Co., operating locations in Lahaina, Kaanapali, and Kihei on Maui, and Waikiki and Kailua on Oahu. Now sold in 6 States and 2 Countries, employing more than 500 teammates across Hawai'i. I am submitting this testimony in **SUPPORT WITH COMMENTS** on **SB2392**, which strengthens penalties for driving under the influence.

I want to be clear at the outset: I strongly support tougher DUI penalties. Dangerous and impaired driving puts lives at risk, and repeat offenders, highly intoxicated drivers, and even first-time offenders who make reckless choices must be held accountable. Strengthening enforcement and consequences for truly dangerous behavior is absolutely the right direction for Hawai'i. We **SHOULD NOT** redefine the DUI threshold lowering BAC to .05.

While it is not my place to prescribe specific punishments or sentencing structures, I do believe SB2392 reflects the *correct policy approach*: focusing on behavior, risk, and responsibility rather than redefining impairment itself.

This approach stands in contrast to proposals such as **SB2463**, which would lower the per se BAC threshold to 0.05. Based on data, experience, and practical impacts, lowering the BAC limit is the wrong tool for improving public safety in Hawai'i.

Lowering the threshold to 0.05 risks:

- **Criminalizing responsible, legal behavior** rather than targeting dangerous conduct. Many individuals at 0.05 are not meaningfully impaired, especially when accounting for body weight, food consumption, and time.
- **Diverting law enforcement resources** away from truly impaired and dangerous drivers toward marginal cases, reducing overall public safety effectiveness.
- **Creating enforcement ambiguity**, increasing contested cases, court congestion, and inconsistent outcomes.
- **Disproportionately impacting working residents and visitors**, without clear evidence of meaningful safety gains.

Handcrafted Ales & Lagers Brewed with Aloha
605 Lipoa Parkway, Kihei, HI 96753
808.213.3002

Importantly for Hawai'i, there is also a real **economic and tourism impact** to consider. Our hospitality, restaurant, and visitor industries are foundational to the state's economy and local jobs. Lowering the BAC limit sends a chilling message to visitors that Hawai'i is an outlier destination with punitive standards that differ from the rest of the country. This does not make our roads safer—it risks discouraging tourism, dining, and legitimate commerce at a time when Hawai'i can least afford additional economic headwinds.

SB2392 takes a smarter path. By strengthening penalties for DUI—particularly where there is repeat behavior, high levels of intoxication, or demonstrably dangerous conduct—the Legislature can improve public safety without overreaching, harming responsible adults, or undermining the tourism economy that supports so many local families.

I respectfully urge the Legislature to continue down this path: **stronger consequences for dangerous behavior**, not lower thresholds that expand criminalization without proven benefit. For these reasons, I **support SB2392** with comments and encourage thoughtful consideration of this approach and **oppose harmful measures like SB2463**.

Mahalo for your time and consideration!

Sincerely,

A handwritten signature in black ink, appearing to read 'Garrett W. Marrero', with a long horizontal flourish extending to the right.

Garrett W. Marrero
CEO/Founder



Testimony of the Oahu Metropolitan Planning Organization

Senate Committee on Transportation

02/03/26 3:00 PM
CR 229 & Videoconference

SB2392 RELATING TO HIGHWAY SAFETY

Dear Chair Inouye, Vice Chair Elefante, and Committee Members,

The Oahu Metropolitan Planning Organization (OahuMPO) **supports SB2392** which specifies that operating a vehicle under the influence of an intoxicant while a highly intoxicated driver is a class C felony and outlines additional requirements for probation.

This bill supports our goal of reducing traffic related deaths and serious injuries to zero by 2045. Traffic fatalities increased over twenty (20) percent in Hawaii, and over sixty (60) percent on Oahu from 2024 to 2025. Nearly a [third of traffic deaths in Hawaii](#) are the result of impaired driving, where drivers have a Blood Alcohol Concentration of 0.08 or higher. This statistic puts Hawaii in the bottom quarter of all states with regard to impaired driving fatalities.

The OahuMPO is the federally designated Metropolitan Planning Organization (MPO) on the island of Oahu responsible for carrying out a multimodal transportation planning process, including the development of a long-range (25-year horizon) metropolitan transportation plan, referred to as the Oahu Regional Transportation Plan (ORTP), which encourages and promotes a safe, efficient, and resilient transportation system that serves the mobility needs of all people and freight (including walkways, bicycles, and transit), fosters economic growth and development, while minimizing fuel consumption and air pollution ([23 CFR 450.300](#)).

Mahalo for the opportunity to provide testimony on this measure.

SB-2392

Submitted on: 2/1/2026 2:20:26 PM

Testimony for TRS on 2/3/2026 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Steve Haumschild	Testifying for Lanikai Brewing Company LLC DBA Lanikai Spirits	Support	Written Testimony Only

Comments:

Aloha Chair, Vice Chair and committee members,

We are in SUPPORT of safer roads and logical legislation that specifically punishes repeat offenders of those driving with BAC above .08. This is a no-nonsense approach to keeping our roads safer and directly impacts compared to moving the goalpost and reducing the BAC levels, which show no notable impact on traffic accidents.

Thank you for the opportunity to testify

Mahalo!



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Thomas Kerns
President / Brewmaster
Big Island Brewhaus

SB 2392
Position: **Support**

My name is Thomas Kerns and I am the owner and brewmaster of Big Island Brewhaus. We are an independent craft brewery and restaurant producing 100% of our beer in Hawaii. We are united with other members of the Hawaii Craft Brewery Community in our pursuit to promote economic activity and growth for Hawaii's beer manufacturers and enhance opportunities in our communities.

Our brewery along with the other member breweries of the Hawaiian Craft Brewers Guild embrace the responsible consumption of alcohol.

This bill specifies that operating a vehicle under the influence of an intoxicant while being a highly intoxicated driver is a class C felony and outlines additional requirements for probation. We are in favor of strong deterrent penalties for anyone operating a vehicle under the influence of an intoxicant while being a highly intoxicated driver.

We take our responsibility as producers and retailers of alcohol very seriously and work daily to prevent customers from potentially driving while over the current blood alcohol content legal limit. We do however oppose a bill that would lower the limit from .08 to .05. People have different reactions to alcohol, and a blood alcohol content of .05 would be very difficult to discern for bartenders and servers, who ultimately have a legal obligation and liability to not over-serve.

Research seems to indicate that a majority of drunk-driving related fatalities involve at least one driver with blood alcohol content of .15 or higher. Thus we believe strong deterrents are justified to hopefully diminish drunk-driving in general and related accidents and fatalities.

We recommend looking closely at these ideas and solutions:

- Rather than lowering the BAC threshold, we should divert resources to target repeat offenders and high BAC drivers.
- National Highway Traffic Safety Administration data over 20 years show only 2.6% of drivers with a BAC between .05 and .08 have been involved in fatal accidents. 92% of drivers involved in fatal accidents had a BAC above .10

- According to the NHTSA, lowering the BAC from .10 to .08 in all states did not change the percentage of alcohol-related fatalities on the road.
- Staying tough on repeat offenders and high BAC drivers. Persistent drunk drivers and drunk drivers with BACs higher than .15 are still some of the most dangerous drivers on our roads, and policy measures that produce swift, certain, and escalated penalties are as necessary as ever.

The US beer industry prioritizes:

- Mandatory use of interlocks for all offenders convicted of alcohol-impaired driving offenses as an evidence-based countermeasure to reduce drunk driving. Research has shown that alcohol ignition interlocks are one of the most proven and effective tools to prevent impaired driving, reduce recidivism, and reduce alcohol-related crashes.

While we advocate for the responsible consumption of alcohol - including designated drivers, not over-serving, and proper education about the effects of intoxication - we feel this bill can help promote public health and safety regarding alcohol consumption.

Sincerely,

Thomas Kerns

President / Brewmaster
Big Island Brewhaus



February 2, 2026

COMMITTEE ON TRANSPORTATION
Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair

Re: Testimony in Support w/Comments of SB2392

Aloha Chair, Vice Chair, and Members of the Committee,

My name is Bret Larson and I live in Wailua, Kauai, Hawai'i. I am owner and founder of Kauai Island Brewing Company, operating locations in Port Allen and Koloa on Kauai.

I am submitting this testimony in **SUPPORT WITH COMMENTS** on **SB2392**, which strengthens penalties for driving under the influence.

We and all of our team members strongly support tougher DUI penalties. Dangerous and impaired driving puts lives at risk, and repeat offenders and highly intoxicated drivers who make poor choices should be held accountable for their actions. Strengthening enforcement and consequences for truly dangerous behavior is absolutely the right direction for Hawai'i. However, what I am not in favor of is redefining the DUI threshold lowering BAC to .05.

This approach stands in contrast to proposals such as **SB2463**, which would lower the per se BAC threshold to 0.05. Based on data, experience, and practical impacts, lowering the BAC limit is the wrong tool for improving public safety in Hawai'i. Lowering the threshold to 0.05 risks:

- **Criminalizing responsible, legal behavior** rather than targeting dangerous conduct. Many individuals at 0.05 are not meaningfully impaired, especially when accounting for body weight, food consumption, tolerance levels and time.
- **Diverting law enforcement resources** away from truly impaired and dangerous drivers toward marginal cases, reducing overall public safety effectiveness.
- **Creating enforcement ambiguity**, increasing contested cases, court congestion, and inconsistent outcomes.
- **Disproportionately impacting working residents and visitors**, without clear evidence of meaningful safety gains.

Importantly for Hawai'i, there is also a real **economic and tourism impact** to consider. Our hospitality, restaurant, and visitor industries are foundational to the state's economy and local jobs. Lowering the BAC limit sends a chilling message to visitors that Hawai'i is an outlier destination with punitive standards that differ from the rest of the country. This does not make our roads safer—it risks discouraging tourism, dining, and legitimate commerce at a time when Hawai'i can least afford

Brewery Location: 4350 Waialo Rd, Port Allen, HI 96705 Saloon and Whiskey Bar 5460 Koloa, HI 97656

Mailing Address: PO Box 215, Eleele, HI 96705

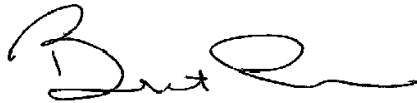
www.kauaiislandbrewing.com

additional economic headwinds.

SB2392 takes a smarter path. By strengthening penalties for DUI—particularly where there is repeat behavior, high levels of intoxication, or demonstrably dangerous conduct—the Legislature can improve public safety without overreaching, harming responsible adults, or undermining the tourism economy that supports so many local families.

I respectfully urge the Legislature to continue down this path: **stronger consequences for dangerous behavior**, not lower thresholds that expand criminalization without proven benefit. For these reasons, I **support SB2392** with comments and encourage thoughtful consideration of this approach and **oppose harmful measures like SB2463**.

Mahalo for your time and consideration!

A handwritten signature in black ink, appearing to read "Bret", with a long, sweeping horizontal line extending to the right.

Bret Larson
Kauai Island Brewing Company, LLC.
808-755-5926
bret@kauaiislandbrewing.com

SB-2392

Submitted on: 2/2/2026 7:50:54 AM

Testimony for TRS on 2/3/2026 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lilly	Individual	Oppose	Written Testimony Only

Comments:

Please make this offense deferral eligible. Do not make our citizens FELONS for DUI. People struggling with substance abuse need a treatment court and help NOT more barriers to leading a successful life. This is a horrible idea from my perspective as a clerk who works in Circuit Court in Kona, Big island. This is a non violent offense and people need more grace this will not solve the DUI problem we have and the Habitual DUI not having the opportunity to be deferred has been disastrous. Stop creating more felons!