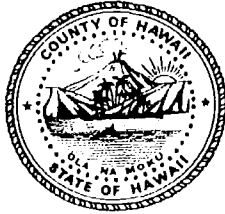


MITCHELL D. ROTH  
PROSECUTING ATTORNEY

DALE A. ROSS  
FIRST DEPUTY  
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE  
HILO, HAWAII 96720  
PH: (808) 961-0466  
FAX: (808) 961-8908  
(808) 934-3403  
(808) 934-3503

WEST HAWAII UNIT  
81-980 HALEKI'I ST, SUITE 150  
KEALAKEKUA, HAWAII 96750  
PH: (808) 322-2552  
FAX: (808) 322-6584

**OFFICE OF THE PROSECUTING ATTORNEY**

TESTIMONY IN SUPPORT OF SENATE BILL 225 SD1

A BILL FOR AN ACT RELATING TO DRIVING UNDER THE  
INFLUENCE

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 18, 2015, 9:15 a.m.  
State Capitol, Conference Room 016

Honorable Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 225 SD1.

This measure amends the offense of habitually operating a vehicle under the influence of an intoxicant to include operating a vehicle under the influence of an intoxicant after at least one conviction within the previous ten years for habitually operating a motor vehicle under the influence of an intoxicant.

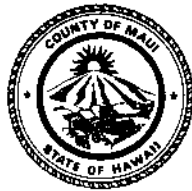
Under the current law, a prior felony conviction for Habitually Operating a Vehicle Under the Influence of an Intoxicant (HOVUII) is treated the same as a prior petty misdemeanor conviction for Operating a Vehicle under the Influence of an Intoxicant (OVUII) for purposes of triggering a subsequent HOVUII charge.

Currently, a loophole exists where a person committing OVUII after being convicted of HOVUII may not have the status of a habitual operator. This Bill will close this loophole by keeping a person's habitual operator status for a period of ten years, and make that status apply to subsequent offenses within that time period.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 225 SD1. Thank you for the opportunity to testify on this matter.

Respectfully,

Mitchell D. Roth  
Prosecuting Attorney  
County of Hawai'i



DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD. K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
SB 225, SD 1 - RELATING TO DRIVING UNDER THE INFLUENCE

February 18, 2015

The Honorable Gilbert S. C. Keith-Agaran  
Chair  
The Honorable Maile Shimabukuro  
Vice Chair  
and Members  
Senate Committee on Judiciary and Labor

Chair Keith Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** SB 225, SD 1 - Relating to Driving Under the Influence. SB 225, SD 1 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 the 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. Because of this, a loophole exists where a person committing OVUII after being convicted of HOVUII may not have the status of a habitual operator.

For example, under the current law, a person was convicted of OVUII in 2002, 2003 and 2010, and was also convicted for HOVUII in 2012. If the person commits OVUII in 2014, the person cannot be charged with HOVUII even though he/she was determined to be a habitual operator just two years prior. The problem is that the HOVUII conviction is treated the same as an OVUII conviction. The 2002 and 2003 convictions must be disregarded, leaving the person

with only two prior convictions. SB 225, SD 1 will close this loophole by keeping a person's habitual operator status for a period of ten years, and make that status apply to subsequent offenses within that time period.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** the passage of this bill. We ask that the committee **PASS** SB 225, SD 1.

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

**Justin F. Kollar**  
Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

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

**OFFICE OF THE PROSECUTING ATTORNEY**

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

3990 Ka'ana Street, Suite 210, 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  
SB225 SD1 – RELATING TO DRIVING UNDER THE INFLUENCE

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

Senate Committee on Judiciary and Labor  
February 18, 2015, 9:15 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shhimabukuro, and Members of the  
Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** SB 225 SD1 – Relating to Driving Under the Influence. The Bill addresses a loophole by expanding 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 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"). Because of this, a loophole exists where a person committing OVUII after being convicted of HOVUII may not have to status of a habitual operator.

For example, under current law, a person was convicted of OVUII in 2002, 2003, and 2010, and was also convicted of HOVUII in 2012. If that same person commits an OVUII in 2014, the person could not be charged with HOVUII even though that person was determined to be a habitual operator just two years prior. The problem is that the HOVUII is treated the same as an OVUII conviction. The 2002, and 2003 convictions must be disregarded, leaving the person with only two convictions. SB 225 will close this loophole by keeping a person's habitual operator status for a period of ten years, and make that status apply to subsequent offenses within that time period.

Accordingly, we are in STRONG SUPPORT of SB225 SD1. We request that your Committee PASS the Bill.



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

February 18, 2015

To: Senator Gilbert S.C. Keith-Agaran, Chair — Senate Committee on  
Judiciary and Labor; Senator Maile S.L. Shimabukuro, Vice Chair, and  
members of the Committee

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

Re: Senate Bill 225, SD 1 – Relating to Driving Under the Influence

---

I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of Senate Bill 225, SD1. This corrects an unfortunate loophole in our statutes relating to Habitual Offenders.

Because the offense of *Habitually Operating a Vehicle Under the Influence of an Intoxicant* – for a person who has had three convictions for OVUII and then is convicted on a fourth OVUII incident – is a felony, it creates its own “category” of impaired driving crimes. However, there is nothing in the current statutes which creates a special category, leading to the problem of another OVUII arrest and conviction, after four previous OVUII offenses, conceivably going back to being considered a first offense, a misdemeanor.

The new language proposed in this bill will correct the problem by clarifying that an OVUII offense following a conviction for Habitually Operating a Vehicle Under the Influence of an Intoxicant would also result in a felony charge of HOVUII.

MADD encourages the passage of SB 225, SD1 to correct a problem in the statutes relating to the most serious OUVII offenders.

Thank you for this opportunity to testify.