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

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

15           [~~(2)~~] (B) A judgment on a verdict or a finding of guilty,  
16 or a plea of guilty or nolo contendere, for an  
17 offense that is comparable to [~~this section or~~]  
18 section 291-4, 291-4.4, or 291-7 as those



1 sections were in effect on December 31, 2001, or  
2 section 291E-61 or 707-702.5; or

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

9 that, at the time of the instant offense, had not been  
10 expunged by pardon, reversed, or set aside. All  
11 convictions that have been expunged by pardon,  
12 reversed, or set aside prior to the instant offense  
13 shall not be deemed prior convictions for the purposes  
14 of proving that the ~~[person's status as]~~ person is a  
15 habitual operator of a vehicle while under the  
16 influence of an intoxicant.

17 ~~[A person has the status of a "habitual"]~~

18 (2) "Convicted one or more times for offenses of  
19 habitually operating a vehicle under the influence"  
20 means that, at the time of the behavior for which the  
21 person is charged under this section, the person had

1 one or more times within ten years of the instant  
2 offense:

3 (A) A judgment on a verdict or a finding of guilty,  
4 or a plea of guilty or nolo contendere, for a  
5 violation of this section or section 291-4.4 as  
6 that section was in effect on December 31, 2001;

7 (B) A judgment on a verdict or a finding of guilty,  
8 or a plea of guilty or nolo contendere, for an  
9 offense that is comparable to this section or  
10 section 291-4.4 as that section was in effect on  
11 December 31, 2001; or

12 (C) An adjudication of a minor for a law or probation  
13 violation that, if committed by an adult, would  
14 constitute a violation of this section or section  
15 291-4.4 as that section was in effect on  
16 December 31, 2001,

17 that, at the time of the instant offense, had not been  
18 expunged by pardon, reversed, or set aside. All  
19 convictions that have been expunged by pardon,  
20 reversed, or set aside prior to the instant offense  
21 shall not be deemed prior convictions for the purposes



1           of proving the person's status as a habitual operator  
2           of a vehicle while under the influence of an  
3           intoxicant.

4           (3) "Habitual operator of a vehicle while under the  
5           influence of an intoxicant" [~~if~~] means that the person  
6           ~~[has been]~~:

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

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

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

17           SECTION 3. Statutory material to be repealed is bracketed  
18           and stricken. New statutory material is underscored.

19           SECTION 4. This Act shall take effect upon its approval.

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**Report Title:**

Motor Vehicle; Under the Influence; Habitual Offender

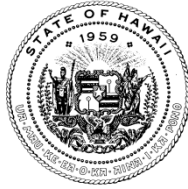
**Description:**

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. (SD1)

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



DAVID Y. IGE  
GOVERNOR



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

IN REPLY REFER TO:

March 23, 2015  
11:00 a.m  
State Capitol, Room 309

**S.B. 225, S.D. 1**  
**RELATING TO DRIVING UNDER THE INFLUENCE**

House Committee on Transportation

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The Department of Transportation (DOT) **supports** S.B. 225, S.D. 1 relating to driving under the influence. This bill will enhance the offense of the habitual driving under the influence of an intoxicant (HOVUII).

This bill will close the loophole by making the offense of operating a vehicle under the influence of an intoxicant (OVUII) after being convicted of a HOVUII (three or more convictions in a ten year period) as another felony if committed within the past ten years.

Presently, the conviction of HOVUII is treated as another OVUII (petty misdemeanor) and does not count as another felony if the previous two OVUII convictions are outside of the ten year period. There have been numerous violators who have been in this situation and that have not been prosecuted as another HOVUII. This measure would close this loophole for those drivers who are constantly being arrested for OVUII.

The DOT urges your support by passing S.B. 225, S.D. 1, as this bill would close the loophole by making subsequent convictions of OVUII a felony.

Thank you for the opportunity to provide testimony.

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 HENRY J.C. AQUINO, CHAIR**  
**HOUSE COMMITTEE ON TRANSPORTATION**  
**Twenty-Eighth State Legislature**  
**Regular Session of 2015**  
**State of Hawai'i**

March 23, 2015

**RE: S.B. 225, S.D. 1; RELATING TO HABITUALLY OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICANT.**

Chair Aquino, Vice-Chair LoPresti, and members of the House Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of S.B. 225, S.D.1. The purpose of this bill is to clarify the definition of "habitual operator of a vehicle while under the influence of an intoxicant" ("HOVUII"), to ensure charging, sentencing and oversight that are commensurate with the offense.

Essentially, the current definition of HOVUII requires that someone have at least 3 prior convictions of operating a vehicle under the influence of an intoxicant ("OVUII") and/or HOVUII, within the past 10 years, and is now caught a fourth time within the same 10 years to substantiate a new HOVUII charge. However, if that person is convicted of HOVUII, and subsequently caught for the same type of activity, but enough time has gone by for 2 of the prior OVUII (and/or HOVUII) convictions to fall outside of the 10-year window, the current definition of HOVUII would not allow us to charge HOVUII for this new offense, no matter how recently or how many times that offender has been convicted of HOVUII. Please keep in mind that some offenders will get 2 OVUII convictions in the same year, or in consecutive years, so 2 prior convictions can fall outside of the 10-year window relatively quickly.

Anyone who is convicted of HOVUII, yet continues to drive under the influence, clearly presents a grave risk to public safety and welfare, and strong measures must be taken to address this type of situation. Moreover, such persons have a substantial problem that must be taken very seriously for their own sake as well. Changes proposed in S.B. 225, S.D.1, would assist in the appropriate enforcement and oversight of these offenses, and ensure that the definition of "habitual operator of a vehicle while under the influence of an intoxicant" more-closely reflects the plain meaning of this term.

For all of these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 225, S.D.1. Thank you for this opportunity to testify.

**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

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TESTIMONY IN STRONG SUPPORT OF  
SB225 SD1 – RELATING TO DRIVING UNDER THE INFLUENCE

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

House Committee on Transportation  
March 23, 2015, 11:00 a.m., Conference Room 309

Chair Aquino, Vice Chair LoPresti, and Members of the Committee:

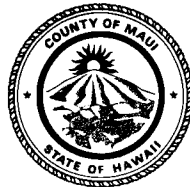
The County of Kaua'i, Office of the Prosecuting Attorney, STRONGLY SUPPORTS SB 225 SD1 – Relating to Driving Under the Influence. The Bill addresses a loophole by expanding the definition of “*habitual operator of a vehicle while under the influence of an intoxicant*,” as it exists under HRS Section 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.



ALAN M. ARAKAWA  
Mayor



JOHN D. KIM  
Prosecuting Attorney  
ROBERT D. RIVERA  
First Deputy Prosecuting Attorney

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Deputy Prosecuting Attorney  
Supervisor - Appellate, Asset Forfeiture and Administrative Services Division

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

March 23, 2015

The Honorable Henry J. C. Aquino  
Chair  
The Honorable Matthew S. LoPresti  
Vice Chair  
and Members  
House Committee on Transportation

Chair Aquino, Vice Chair LoPresti 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.



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

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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.