



LATE

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

February 5, 2020
1:15 P.M.
State Capitol, Room 225

**PROPOSED S.B. 2330
RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN
INTOXICANT**

Senate Committee(s) on Public Safety, Intergovernmental, & Military Affairs
and Transportation

The Department of Transportation (DOT) **supports the intent** of S.B. 2330 relating to operating a vehicle under the influence of an intoxicant, but supports the Proposed H.B. 2174 HD1 version.

Although S.B. 2330 defines “highly intoxicated drivers” and enhances the penalties, the Proposed H.B. 2174 HD 1 version represents a collaborative effort that included input from DOT’s Hawaii Drug and Alcohol Intoxicated Driving (DAID) Working Group (comprised of county police and prosecutors, MADD, Hawaii State Department of Health, etc.), Hawaii Association of Criminal Defense Lawyers and the Office of the Public Defender. This version evolved last year out of concern for Hawaii’s increasing number of traffic fatalities involving alcohol and drugs.

The habitual “highly intoxicated driver,” someone who has been arrested and convicted many times over, poses a substantial risk to others on the road. Despite their repeated arrests and convictions, these drivers continue to drink and drive. DOT’s concern is that eventually these drivers will become involved in a collision and kill someone.

During 2015-2019, police arrested an average of 6,030 drivers for Operating a Vehicle Under the Influence of an Intoxicant (OVUII) per year. An average 1,664 of those 6,030 drivers who were arrested and tested, had blood alcohol concentration (BAC) results of 0.150 and higher. In addition, the average BAC during 2015-2019 was 0.162. Existing legislation needs to be strengthened to address the habitual offender, especially those who are continually arrested for violating the law.

Based on the language in Proposed H.B. 2174 HD 1, the DOT urges the committees to pass a Proposed S.B. 2330 SD 1. The DAID will support that version as it will enhance the penalties against those drivers who continue to drink and drive, as well as address drivers who continue to be arrested for OVUII.

Thank you for the opportunity to provide testimony.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committees on Transportation and Public Safety,
Intergovernmental, and Military Affairs**

February 6, 2020

S.B. No. 2330: RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT

Hearing: February 7, 2020, 1:15 p.m.

Chairs Inouye and Nishihara, Vice Chairs Harimoto and Wakai, and Members of the Committees:

The Office of the Public Defender respectfully opposes S.B. 2330. In particular, we oppose the creation of new sentencing guidelines for “highly intoxicated operators” as well as any increase in penalties for the offense of driving on a license revoked for operating a vehicle under the influence of an intoxicant (“OVUII”).

The creation of sentencing guidelines for “highly intoxicated operators” is an unnecessary restriction on the discretion of District Court judges. These judges are able to, and often do, take into account an individual’s blood alcohol content (“BAC”) when making sentencing decisions. In addition to looking at the facts of a case (i.e. an individual’s driving and whether an accident occurred), judges also look at factors such as criminal history, driving record, and community involvement. Judges are in the best position to hand out fair and just sentences to defendants, and this bill would hamper that ability.

Rather than increasing the mandatory penalties for driving on a license revoked for OVUII, we are asking this committee to consider restoring sentencing discretion to judges under HRS 291E-62. While we recognize the need to curb repeat drunk-driving offenders, the statute fails to link to that objective in its current form. The majority of individuals charged with driving on a license revoked for OVUII are not also charged with a subsequent OVUII offense, yet the mandatory jail time is more severe than a second OVUII. Individuals are issued these citations as they drive to work, the grocery store, or to pick up the kids from school. Our office’s clients are the most vulnerable to this charge because they are often unable to afford the fees to install and maintain an interlock device in their vehicle. Rather than increasing mandatory penalties for this charge, we ask this committee to restore sentencing discretion to the judges familiar with the facts of each case.

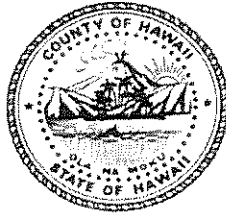
On a final note, the increase of monetary fines for any charge disproportionately affects the indigent clients that our office serves. A wealthy individual charged with OVUII will be able to bounce back quickly, but unpaid fines will turn into a stopper for a poor individual charged with

the same offense. Unless fines are tailored to an individual's income, or removed from the penalty options in favor of community service work, we will continue to have a two-tiered system of justice for individuals charged with OVUII.

Thank you for the opportunity to comment on S.B. 2330.

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 2330

A BILL RELATING TO OPERATING A VEHICLE UNDER
THE INFLUENCE OF AN INTOXICANT

COMMITTEE ON TRANSPORTATION

Sen. Lorraine R. Inouye, Chair
Sen. Breene Harimoto, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL,
AND MILITARY AFFAIRS

Sen. Clarence K. Nishihara, Chair
Sen. Glenn Wakai, Vice Chair

Friday, February 7, 2020, 1:15 p.m.
State Capitol, Conference Room 225

Honorable Chair Inouye, Honorable Vice Chair Harimoto, and Members of the Committee on Transportation and Honorable Chair Nishihara, Honorable Vice Chair Wakai, and Members of the Committee on Public Safety, Intergovernmental, and Military Affairs, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 2330.

The intent of S.B. 2330 is to establish a definition and penalties for "highly intoxicated operator"; increase license revocation periods and lookback periods; and increase penalties for repeat offenders, for habitual offenders, and for persons driving with a license suspended or revoked for OVUII while also under the influence of an intoxicant.

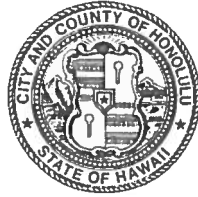
Highway safety in Hawai'i is compromised by drunk and drugged drivers who continue to jeopardize the safety of all road users. This legislation was designed to strengthen Hawai'i's laws regarding the offense of operating a vehicle under the influence of an intoxicant ("OVUII").

From April 2019 through December 2019, our Department was part of a highly dedicated working group that convened to produce proposed legislation that would significantly strengthen Hawaii's OVUII laws. We feel that S.B. 2330, is reflective of that collaborative effort, and will resulting in meaningful change in Hawai'i's fight against impaired driving.

For all of the foregoing reasons, the Office of the Prosecuting Attorney of the County of Hawai'i supports the passage of S.B. 2330. Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE CT-LC

February 7, 2020

The Honorable Lorraine R. Inouye, Chair
and Members
Committee on Transportation
The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 225
Honolulu, Hawaii 96813

Dear Chairs Inouye and Nishihara and Members:

SUBJECT: Senate Bill No. 2330, Relating to Operating a Vehicle Under the Influence of an Intoxicant

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

The HPD supports Senate Bill No. 2330, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

The HPD supports this proposal that establishes penalties for and defines a "highly intoxicated operator." Increases to the related penalties could be a deterrent for the would-be violators. Any measure that could potentially keep impaired drivers off of our roads should be considered or implemented.

The HPD urges you to support Senate Bill No. 2330, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in black ink that reads "Susan Ballard".

Susan Ballard
Chief of Police

Sincerely,

A handwritten signature in black ink that reads "Calvin Tong".

Calvin Tong, Major
Traffic Division

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

LATE

ALII PLACE

1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY



LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE LORRAINE R. INOUE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION**

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

**Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

February 7, 2020

RE: S.B. 2330; RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.

Chair Inouye, Chair Nishihira, Vice Chair Harimoto, Vice Chair Wakai, members of the Senate Committee on Transportation, and members of the Senate Committee on Public Safety, Intergovernmental & Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony, supporting the intent of S.B. 2330, with a Proposed H.D. 1.

The Department greatly appreciates the bill's overall goal of strengthening Hawaii's laws regarding operating a vehicle under the influence of an intoxicant ("OVUII"). As stated in the description, the aim of this bill is to: establish penalties and a definition for "highly intoxicated operator"; increase license revocation periods and lookback periods; and increase penalties for repeat offenders, habitual offenders, and persons driving on a suspended or revoked license (for OVUII) while also under the influence of an intoxicant.

From April 2019 through December 2019, our Department was part of an highly dedicated working group—coordinated and facilitated by the Department of Transportation, Highway Safety Division ("DOT")—which convened nearly every two weeks for five months, and spent numerous working hours outside of that, for a singular purpose: to produce proposed legislation that would significantly strengthen Hawaii's OVUII laws. We believe we were able to do that, and with largely the same goals as S.B. 2330. As such, we humbly ask that you consider the language in our Proposed S.D. 1, which was jointly created by the working group.

For these reasons, the Department supports the intent of S.B. 2330, and recommends adoption of the attached Proposed H.D. 1. Thank you for this opportunity to testify.

Report Title:

Operating a Vehicle Under the Influence of an Intoxicant; Penalty Increases

Description:

Establishes higher penalties for operating a vehicle under the influence of an intoxicant (OVUII) as a "highly intoxicated driver"; creates definition. Increases license revocation periods ordered by ADLRO, and applicable lookback periods. Requires that ignition interlock devices be installed and maintained on one or more vehicles registered to, and all vehicles operated by, anyone convicted of operating a vehicle under the influence of an intoxicant, during their applicable period of license revocation. Establishes higher penalties for repeat OVUII offenders and habitual OVUII offenders.

A BILL FOR AN ACT

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

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

1 SECTION 1. Section 291E-1, Hawaii Revised Statutes, is
2 amended by adding the definition of "highly intoxicated driver"
3 to read as follows:

4 "Highly intoxicated driver" means a person whose measured
5 amount of alcohol is 0 .15 or more grams of alcohol per one
6 hundred milliliters or cubic centimeters of the person's blood,
7 or 0.15 or more grams of alcohol per two hundred ten liters of
8 the person's breath."

9 SECTION 2. Section 291E-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§291E-3 Evidence of intoxication. (a) In any criminal
12 prosecution for a violation of section 291E-61 or 291E-61.5 or
13 in any proceeding under part III:

14 (1) .08 or more grams of alcohol per one hundred
15 milliliters or cubic centimeters of the person's
16 blood;

17 (2) .08 or more grams of alcohol per two hundred ten

1 liters of the person's breath; or
2 (3) The presence of one or more drugs in an amount
3 sufficient to impair the person's ability to operate a
4 vehicle in a careful and prudent manner,
5 within three hours after the time of the alleged violation as
6 shown by chemical analysis or other approved analytical
7 techniques of the person's blood, breath, or urine shall be
8 competent evidence that the person was under the influence of an
9 intoxicant at the time of the alleged violation.

10 (b) In any criminal prosecution for a violation of section
11 291E-61 or 291E-61.5, the amount of alcohol found in the
12 defendant's blood or breath within three hours after the time of
13 the alleged violation as shown by chemical analysis or other
14 approved analytical techniques of the defendant's blood or
15 breath shall be competent evidence concerning whether the
16 defendant was under the influence of an intoxicant at the time
17 of the alleged violation and shall give rise to the following
18 presumptions:

19 (1) If there were .05 or less grams of alcohol per one
20 hundred milliliters or cubic centimeters of
21 defendant's blood or .05 or less grams of alcohol per
22 two hundred ten liters of defendant's breath, it shall
23 be presumed that the defendant was not under the
24 influence of alcohol at the time of the alleged

1 violation; and

2 (2) If there were in excess of .05 grams of alcohol per
3 one hundred milliliters or cubic centimeters of
4 defendant's blood or .05 grams of alcohol per two
5 hundred ten liters of defendant's breath, but less
6 than .08 grams of alcohol per one hundred milliliters
7 or cubic centimeters of defendant's blood or .08 grams
8 of alcohol per two hundred ten liters of defendant's
9 breath, that fact may be considered with other
10 competent evidence in determining whether the
11 defendant was under the influence of alcohol at the
12 time of the alleged violation, but shall not of itself
13 give rise to any presumption.

14 (c) In any criminal prosecution for a violation of section
15 291E-61 or in any proceeding under part III:

16 (1) .15 or more grams of alcohol per one hundred
17 milliliters or cubic centimeters of the person's
18 blood: or

19 (2) .15 or more grams of alcohol per two hundred ten
20 liters of the person's breath,
21 within three hours at the time of the offense or after the time
22 of the alleged violation as shown by chemical analysis or other
23 approved analytical techniques of the person's blood or breath
24 shall be competent evidence that the person was a highly

1 intoxicated driver at the time of the alleged violation.

2 [~~e~~](d) Nothing in this section shall be construed as
3 limiting the introduction, in any criminal proceeding for a
4 violation under section 291E- 61 or 291E- 61.5 or in any
5 proceeding under part III, of relevant evidence of a person's
6 alcohol concentration or drug content obtained more than three
7 hours after an alleged violation; provided that the evidence is
8 offered in compliance with the Hawaii rules of evidence."

9 SECTION 3. Section 291E-41, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "**§291E-41 Effective date, conditions, and period of**
12 **administrative revocation; criteria.** (a) Unless an
13 administrative revocation is reversed or the temporary permit is
14 extended by the director, administrative revocation shall become
15 effective on the day specified in the notice of administrative
16 revocation. Except as provided in section 291E-44.5, no license
17 and privilege to operate a vehicle shall be restored under any
18 circumstances during the administrative revocation period. Upon
19 completion of the administrative revocation period, the
20 respondent may reapply and be reissued a license pursuant to
21 section 291E-45.

22 (b) Except as provided in paragraph (5) and in section
23 291E-44.5, the respondent shall keep an ignition interlock
24 device installed and operating in [~~any vehicle~~] one or more

1 vehicles registered to [the defendant] and all vehicles operated
2 by [any vehicle] the respondent [operates] during the revocation
3 period. Except as provided in section 291E-5, installation and
4 maintenance of the ignition interlock device shall be at the
5 respondent's expense. The periods of administrative revocation
6 with respect to a license ~~[and privilege]~~ to operate a vehicle,
7 that shall be imposed under this part are as follows:

8 (1) A one year revocation of license ~~[and privilege]~~ to
9 operate a vehicle, if the respondent's record shows no
10 prior alcohol enforcement contact or drug enforcement
11 contact during the ~~[five]~~ ten years preceding the date
12 the notice of administrative revocation was issued;

13 (2) ~~[An eighteen-month]~~ A two-year revocation of license
14 ~~[and privilege]~~ to operate a vehicle, if the
15 respondent's record shows one prior alcohol
16 enforcement contact or drug enforcement contact during
17 the ~~[five]~~ ten years preceding the date the notice of
18 administrative revocation was issued;

19 (3) A ~~[two-]~~ four-year revocation of license and privilege
20 to operate a vehicle, if the respondent's record shows
21 two or more prior alcohol enforcement contacts or drug
22 enforcement contacts during the ~~[five]~~ ten years
23 preceding the date the notice of administrative
24 revocation was issued;

1 ~~[(4) A minimum of [five] three years up to a maximum of~~
2 ~~[ten] five years revocation of license [and privilege]~~
3 ~~to operate a vehicle, if the respondent's record shows~~
4 ~~[three] two or more prior alcohol enforcement contacts~~
5 ~~or drug enforcement contacts during the ten years~~
6 ~~preceding the date the notice of administrative~~
7 ~~revocation was issued;]~~

8 (4) For a respondent who is a highly intoxicated driver,
9 if the respondent's record shows no prior alcohol
10 enforcement contact or drug enforcement contact during
11 the ten years preceding the date the notice of
12 administrative revocation was issued, an eighteen
13 month revocation of license to operate a vehicle, with
14 mandatory installation of an ignition interlock device
15 in one or more vehicles registered to, and all
16 vehicles operated by the respondent during the
17 revocation period;

18 (5) For a respondent who is a highly intoxicated driver,
19 if the respondent's record shows one prior alcohol
20 enforcement contact or drug enforcement contact during
21 the ten years preceding the date the notice of
22 administrative revocation was issued, a three year
23 revocation of license to operate a vehicle, with
24 mandatory installation of an ignition interlock device

1 in one or more vehicles registered to, and all
2 vehicles operated by the respondent during the
3 revocation period;

4 (6) For a respondent who is a highly intoxicated driver,
5 if the respondent's record shows two or more prior
6 alcohol enforcement contacts or drug enforcement
7 contacts during the ten years preceding the date the
8 notice of administrative revocation was issued, a six
9 year revocation of license to operate a vehicle, with
10 mandatory installation of an ignition interlock device
11 in one or more vehicles registered to, and all
12 vehicles operated by the respondent during the
13 revocation period;

14 (7) For respondents under the age of eighteen years who
15 were arrested for a violation of section 291E-61 or
16 291E-61.5, revocation of license [~~and privilege~~] to
17 operate a vehicle for the appropriate revocation
18 period provided in paragraphs (1) to [~~+4~~] (3) or in
19 subsection (c); provided that the respondent shall be
20 prohibited from driving during the period preceding
21 the respondent's eighteenth birthday and shall
22 thereafter be subject to the ignition interlock
23 requirement of this subsection for the balance of the
24 revocation period; or

1 (8) [~~(6)~~] For respondents, other than those excepted
2 pursuant to section 291E-44.5(c), who do not install
3 an ignition interlock device in [~~any vehicle~~] one or
4 more vehicles registered to and all vehicles operated
5 by the respondent [~~operates~~] during the revocation
6 period, revocation of license [~~and privilege~~] to
7 operate a vehicle for the period of revocation
8 provided in paragraphs (1) to [~~(5)~~] (4) or in
9 subsection (c); provided that:

10 (A) The respondent shall be absolutely prohibited
11 from driving during the revocation period and
12 subject to the penalties provided by section
13 291E-62 if the respondent drives during the
14 revocation period; and

15 (B) The director shall not issue an ignition interlock
16 permit to the respondent pursuant to section
17 291E-44.5;

18 provided that when more than one administrative revocation,
19 suspension, or conviction arises out of the same arrest, it
20 shall be counted as only one prior alcohol enforcement contact
21 or drug enforcement contact, whichever revocation, suspension,
22 or conviction occurs later.

23 (c) If a respondent has refused to be tested after being
24 informed:

1 (1) That the person may refuse to submit to testing in
2 compliance with section 291E-11; and

3 (2) Of the sanctions of this part and then asked if the
4 person still refuses to submit to a breath, blood, or urine
5 test, in compliance with the requirements of section 291E-15,
6 the revocation imposed under subsection (b)(1), (2), or (3)~~[, or~~
7 ~~(4)]~~ shall be for a period of two years, [~~three~~]four years,
8 [~~four~~]or eight years~~[, or ten years]~~, respectively.

9 (d) Whenever a license and privilege to operate a vehicle
10 is administratively revoked under this part, the respondent
11 shall be referred to the driver's education program for an
12 assessment, by a certified substance abuse counselor, of the
13 respondent's substance abuse or dependence and the need for
14 treatment. The counselor shall submit a report with
15 recommendations to the director. If the counselor's assessment
16 establishes that the extent of the respondent's substance abuse
17 or dependence warrants treatment, the director shall so order.
18 All costs for assessment and treatment shall be paid by the
19 respondent.

20 (e) Alcohol and drug enforcement contacts that occurred
21 prior to January 1, 2002, shall be counted in determining the
22 administrative revocation period.

1 (f) The requirement to provide proof of financial
2 responsibility pursuant to section 287-20 shall not be based
3 upon a revocation under subsection (b)(1)."

4 SECTION 4. **§291E-61 Operating a vehicle under the**
5 **influence of an intoxicant.** (a) A person commits the offense
6 of operating a vehicle under the influence of an intoxicant if
7 the person operates or assumes actual physical control of a
8 vehicle:

9 (1) While under the influence of alcohol in an amount
10 sufficient to impair the person's normal mental faculties or
11 ability to care for the person and guard against casualty;

12 (2) While under the influence of any drug that impairs the
13 person's ability to operate the vehicle in a careful and prudent
14 manner;

15 (3) With .08 or more grams of alcohol per two hundred ten
16 liters of breath; or

17 (4) With .08 or more grams of alcohol per one hundred
18 milliliters or cubic centimeters of blood.

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

22 (1) Except as provided in section 291 E-61(b)(4), for
23 [~~For~~] the first offense, or any offense not preceded within a
24 ten-year period by a conviction for an offense under this

1 section or section 291E-4(a):

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

5 (B) One year revocation of license [~~and privilege~~] to
6 operate a vehicle [~~during the revocation period and~~];

7 (C) [~~installation~~] Installation during the revocation
8 period of an ignition interlock device on [~~any vehicle~~] one
9 or more vehicles registered to and all vehicles operated by
10 the person;

11 [~~C~~](D) Any one or more of the following:

12 (i) Seventy-two hours of community service work;

13 (ii) No less than forty-eight hours and no more
14 than five days of imprisonment; or

15 (iii) A fine of no less than \$250 but no more than
16 \$1,000;

17 [~~D~~](E) A surcharge of \$25 to be deposited into the
18 neurotrauma special fund; and

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

21 (2) For an offense that occurs within ten years of a prior
22 conviction for an offense under this section [~~or section 291E-~~
23 ~~4(a)~~]:

24 (A) A thirty-six-hour minimum substance abuse

1 rehabilitation program, including education and counseling, or
2 other comparable program deemed appropriate by the court;

3 [~~(A)~~](B) Revocation of license to operate a vehicle
4 for no less than [~~twenty-four months~~] two years nor more than
5 three years [~~of license and privilege to operate a vehicle~~
6 ~~during the revocation period and~~];

7 (C) [~~installation~~]Installation during the revocation
8 period of an ignition interlock device on [~~any vehicle~~] one or
9 more vehicles registered to and all vehicles operated by the
10 person;

11 [~~(B)~~](D) Either one of the following:

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

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

17 [~~(C)~~](E) A fine of no less than \$1,000 but no more
18 than \$3,000;

19 [~~(D)~~](F) A surcharge of \$25 to be deposited into the
20 neurotrauma special fund; and

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

23 (3) In addition to a sentence imposed under paragraphs (1)
24 and (2), any person eighteen years of age or older who is

1 convicted under this section and who operated a vehicle with a
2 passenger, in or on the vehicle, who was younger than fifteen
3 years of age, shall be sentenced to an additional mandatory fine
4 of \$500 and an additional mandatory term of imprisonment of
5 forty-eight hours; provided that the total term of imprisonment
6 for a person convicted under this paragraph shall not exceed the
7 maximum term of imprisonment provided in paragraph (1) or (2),
8 as applicable. Notwithstanding paragraphs (1) and (2), the
9 revocation period for a person sentenced under this paragraph
10 shall be no less than two years; and

11 (4) In addition to a sentence imposed under paragraph
12 (1), any person who is convicted under this section and was a
13 highly intoxicated driver at the time of the subject incident,
14 shall be sentenced to an additional mandatory term of
15 imprisonment of forty-eight consecutive hours and an additional
16 mandatory revocation period of six months; provided that the
17 total term of imprisonment for a person convicted under this
18 paragraph shall not exceed the maximum term of imprisonment
19 provided in paragraph (1). Notwithstanding paragraph (1), the
20 revocation period for a person sentenced under this paragraph
21 shall be no less than eighteen months; and

22 (5) In addition to a sentence imposed under paragraph
23 (2), any person who is convicted under this section and was a
24 highly intoxicated driver at the time of the subject incident,

1 shall be sentenced to an additional mandatory term of
2 imprisonment of ten consecutive days and additional mandatory
3 revocation period of one year; provided that the total term of
4 imprisonment for a person convicted under this paragraph shall
5 not exceed the maximum term of imprisonment provided in
6 paragraph (2), as applicable. Notwithstanding paragraph (2),
7 the revocation period for a person sentenced under this
8 paragraph shall be no less than three years; and

9 ~~(4)~~(6) If the person demonstrates to the court that the
10 person:

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

14 (B) Is otherwise unable to drive during the
15 revocation period~~(7)~~;

16 the person shall be absolutely prohibited from driving during
17 the period of applicable revocation provided in paragraphs (1)
18 to (3); provided that the court shall not issue an ignition
19 interlock permit pursuant to subsection (i) and the person shall
20 be subject to the penalties provided by section 291E-62 if the
21 person drives during the applicable revocation period

22 (c) Except as provided in sections 286-118.5 and 291E-
23 61.6, the court shall not issue an ignition interlock permit to:

24 (1) A defendant whose license is expired, suspended, or

1 revoked as a result of action other than the instant offense;

2 (2) A defendant who does not hold a valid license at the
3 time of the instant offense;

4 (3) A defendant who holds either a category 4 license
5 under section 286-102(b) or a commercial driver's license under
6 section 286-239(a), unless the ignition interlock permit is
7 restricted to a category 1, 2, or 3 license under section 286-
8 102(b); or

9 (4) A defendant who holds a license that is a learner's
10 permit or instruction permit.

11 (d) Except as provided in subsection (c), the court may
12 issue a separate permit authorizing a defendant to operate a
13 vehicle owned by the defendant's employer during the period of
14 revocation without installation of an ignition interlock device
15 if the defendant is gainfully employed in a position that
16 requires driving and the defendant will be discharged if
17 prohibited from driving a vehicle not equipped with an ignition
18 interlock device.

19 (e) A request made pursuant to subsection (d) shall be
20 accompanied by:

21 (1) A sworn statement from the defendant containing facts
22 establishing that the defendant currently is employed in a
23 position that requires driving and that the defendant will be
24 discharged if prohibited from driving a vehicle not equipped

1 with an ignition interlock device; and

2 (2) A sworn statement from the defendant's employer
3 establishing that the employer will, in fact, discharge the
4 defendant if the defendant cannot drive a vehicle that is not
5 equipped with an ignition interlock device and identifying the
6 specific vehicle the defendant will drive for purposes of
7 employment and the hours of the day, not to exceed twelve hours
8 per day, or the period of the specified assigned hours of work,
9 the defendant will drive the vehicle for purposes of employment.

10 (f) A permit issued pursuant to subsection (d) shall
11 include restrictions allowing the defendant to drive:

12 (1) Only during specified hours of employment, not to
13 exceed twelve hours per day, or the period of the specified
14 assigned hours of work, and only for activities solely within
15 the scope of the employment;

16 (2) Only the vehicle specified; and

17 (3) Only if the permit is kept in the defendant's
18 possession while operating the employer's vehicle.

19 (g) Notwithstanding any other law to the contrary, any:

20 (1) Conviction under this section, section 291E-4(a), or
21 section 291E-61.5;

22 (2) Conviction in any other state or federal jurisdiction
23 for an offense that is comparable to operating or being in
24 physical control of a vehicle while having either an unlawful

1 alcohol concentration or an unlawful drug content in the blood
2 or urine or while under the influence of an intoxicant or
3 habitually operating a vehicle under the influence of an
4 intoxicant; or

5 (3) Adjudication of a minor for a law violation that, if
6 committed by an adult, would constitute a violation of this
7 section or an offense under section 291E-4(a), or section 291E-
8 61.5,
9 shall be considered a prior conviction for the purposes of
10 imposing sentence under this section. Any judgment on a verdict
11 or a finding of guilty, a plea of guilty or nolo contendere, or
12 an adjudication, in the case of a minor, that at the time of the
13 offense has not been expunged by pardon, reversed, or set aside
14 shall be deemed a prior conviction under this section. [~~No~~
15 ~~license and privilege revocation shall be imposed pursuant to~~
16 ~~this section if the person's license and privilege to operate a~~
17 ~~vehicle has previously been administratively revoked pursuant to~~
18 ~~part III for the same act; provided that, if the administrative~~
19 ~~revocation is subsequently reversed, the person's license and~~
20 ~~privilege to operate a vehicle shall be revoked as provided in~~
21 ~~this section. There shall be no requirement for the~~
22 ~~installation of an ignition interlock device pursuant to this~~
23 ~~section if the requirement has previously been imposed pursuant~~
24 ~~to part III for the same act; provided that, if the requirement~~

1 ~~is subsequently reversed, a requirement for the installation of~~
2 ~~an ignition interlock device shall be imposed as provided in~~
3 ~~this section.]~~

4 (h) Whenever a court sentences a person pursuant to
5 subsection (b), it also shall require that the offender be
6 referred to the driver's education program for an assessment, by
7 a certified substance abuse counselor deemed appropriate by the
8 court, of the offender's substance abuse or dependence and the
9 need for appropriate treatment. The counselor shall submit a
10 report with recommendations to the court. The court shall
11 require the offender to obtain appropriate treatment if the
12 counselor's assessment establishes the offender's substance
13 abuse or dependence. All costs for assessment and treatment
14 shall be borne by the offender.

15 (i) Upon proof that the defendant has:

16 (1) Installed an ignition interlock device in any vehicle
17 the defendant operates pursuant to subsection (b); and

18 (2) Obtained motor vehicle insurance or self-insurance
19 that complies with the requirements under either section
20 431:10C-104 or section 431:10C-105,
21 the court shall issue an ignition interlock permit that will
22 allow the defendant to drive a vehicle equipped with an ignition
23 interlock device during the revocation period.

24 (j) Notwithstanding any other law to the contrary,

1 whenever a court revokes a person's driver's license pursuant to
2 this section, the examiner of drivers shall not grant to the
3 person a new driver's license until the expiration of the period
4 of revocation determined by the court. After the period of
5 revocation is completed, the person may apply for and the
6 examiner of drivers may grant to the person a new driver's
7 license.

8 (k) Any person sentenced under this section may be ordered
9 to reimburse the county for the cost of any blood or urine tests
10 conducted pursuant to section 291E-11. The court shall order
11 the person to make restitution in a lump sum, or in a series of
12 prorated installments, to the police department or other agency
13 incurring the expense of the blood or urine test. Except as
14 provided in section 291E-5, installation and maintenance of the
15 ignition interlock device required by subsection (b) shall be at
16 the defendant's own expense.

17 (l) As used in this section, the term "examiner of
18 drivers" has the same meaning as provided in section 286-2.

19 SECTION 5. Section 291E-61.5, Hawaii Revised Statutes, is
20 amended as follows:

21 **"§291E-61.5 Habitually operating a vehicle under the**
22 **influence of an intoxicant.** (a) A person commits the offense of
23 habitually operating a vehicle under the influence of an
24 intoxicant if:

1 (1) The person is a habitual operator of a vehicle while
2 under the influence of an intoxicant; and

3 (2) The person operates or assumes actual physical control
4 of a vehicle:

5 (A) While under the influence of alcohol in an amount
6 sufficient to impair the person's normal mental
7 faculties or ability to care for the person and
8 guard against casualty;

9 (B) While under the influence of any drug that
10 impairs the person's ability to operate the
11 vehicle in a careful and prudent manner;

12 (C) With .08 or more grams of alcohol per two hundred
13 ten liters of breath; or

14 (D) With .08 or more grams of alcohol per one hundred
15 milliliters or cubic centimeters of blood.

16 (b) For the purposes of this section:

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

22 (A) A judgment on a verdict or a finding of guilty,
23 or a plea of guilty or nolo contendere, for [a
24 ~~violation of section 291-4, 291-4.4, or 291-7 as~~

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

3 (B) A judgement on a verdict or finding of guilty, or
4 a plea of guilty or nolo contendere, for an
5 offense that is comparable to [~~section 291-4,~~
6 ~~291-4.4 or 291-7 as those sections were in effect~~
7 ~~on December 31, 2001, or~~] section 291E-61 or 707-
8 702.5; or

9 (C) An adjudication of a minor for a law or probation
10 violation that, if committed by an adult, would
11 constitute a violation of 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 that, at the time of the instant offense, had not been expunged
16 by pardon, reversed, or set aside. All convictions that have
17 been expunged by pardon, reversed, or set aside prior to before
18 the instant offense shall not be deemed prior convictions for
19 the purposes of proving that the person is a habitual operator
20 of a vehicle while under the influence of an intoxicant.

21 (2) "Convicted one or more times for offenses of
22 habitually operating a vehicle under the influence"
23 means that, at the time of the behavior for which the
24 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
13 probation violation that, if committed by an
14 adult, would constitute a violation of this
15 section or section 291-4.4 as that section was in
16 effect on December 31, 2001,

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

24 (3)_"Habitual operator of a vehicle while under the

1 influence of an intoxicant" means that the person:

2 (A) Was convicted two or more times for offenses of
3 operating a vehicle under the influence; or

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

7 (c) [~~Habitually operating a vehicle under the influence of~~
8 ~~an intoxicant is~~] For a first offense, or any offense not
9 preceded within a ten-year period by a conviction for an offense
10 under this section, the offense shall be a class C felony, and
11 the person shall be sentenced to: [-]

12 [~~(d) For a conviction under this section, the sentence~~
13 ~~shall be either:~~]

14 (1) An indeterminate term of imprisonment of five years;

15 or

16 (2) A term of probation of five years, with conditions to
17 include:

18 (A) Mandatory revocation of license [~~and privilege~~]

19 to operate a vehicle for a period no less than

20 three years but no more than five years, with

21 mandatory installation of an ignition interlock

22 device in one or more vehicles registered to, and

23 all vehicles operated by the respondent during

24 the revocation period;

1 (B) No less than ten days imprisonment, of which at
2 least forty-eight hours shall be served

3 consecutively;

4 (C) A fine of no less than \$2,000 but no more than
5 \$5,000;

6 (D) Referral to a certified substance abuse counselor
7 deemed appropriate by the court, as provided in
8 section 291E-61[~~(d)~~](h);

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

11 (F) May be charged a surcharge of up to \$50 to be
12 deposited into the trauma system special fund if
13 the court so orders.

14 In addition to the foregoing, any vehicle owned and operated by
15 the person committing the offense shall be subject to forfeiture
16 pursuant to chapter 712A[; ~~provided that the department of~~
17 ~~transportation shall provide storage for vehicles forfeited~~
18 ~~under this subsection~~].

19 (d) For an offense that occurs within ten years of a prior
20 conviction for an offense under this section, the offense shall
21 be a class B felony, and the person shall be sentenced to:

22 (1) An indeterminate term of imprisonment of ten years; or

23 (2) A term of probation of five years, with conditions to

24 include:

- 1 (A) Permanent revocation of license to operate a
2 vehicle;
- 3 (B) No less than eighteen months imprisonment;
- 4 (C) A fine of no less than \$5,000 but no more than
5 \$25,000;
- 6 (D) Referral to a certified substance abuse counselor
7 deemed appropriate by the court, as provided in
8 section 291E-61(h);
- 9 (E) A surcharge of \$50 to be deposited into the
10 neurotrauma special fund; and
- 11 (F) May be charged a surcharge of up to \$100 to be
12 deposited into the trauma system special fund if
13 the court so orders.

14 In addition to the foregoing, any vehicle owned and operated by
15 the person committing the offense shall be subject to forfeiture
16 pursuant to chapter 712A.

17 SECTION 6. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 7. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held
22 invalid, the invalidity does not affect other provisions or
23 applications of the Act that can be given effect without the
24 invalid provision or application, and to this end the provisions

1 of this Act are severable.

2 SECTION 8. Statutory material to be repealed is bracketed

3 and stricken. New statutory material is underscored.

4 SECTION 9. This Act shall take effect upon approval.

INTRODUCED BY: _____



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 7, 2020

To: Senator Lorraine R. Inouye, Chair, Senate Committee on Transportation;
Senator Breene Harimoto, Vice Chair; and members of the Committee

Senator Clarence Nishihara, Chair, Senate Committee on Public Safety,
Intergovernmental, and Military Affairs; Senator Glenn Wakai, Vice Chair;
and members of the Committee

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

Re: Senate Bill 2330 – Relating to Operating a Vehicle Under the Influence of an
Intoxicant

I am Carol McNamee testifying on behalf of MADD Hawaii in support of Senate Bill 2330, relating to Operating a Vehicle Under the Influence of an Intoxicant. This testimony is based on the similar bill heard by the House Committee on Transportation on February 5th.

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

MADD supports the concept of increasing penalties for individuals who are arrested and found to be driving with a BAC of .15 or higher. These individuals fall into the category of "high risk drivers" who, along with repeat offenders and test refusers, pose an increased danger to other highway users, meaning vehicle drivers and passengers, bicyclists and pedestrians. There is no doubt that the higher the BAC, the greater risk to others on the road. Hawaii statutes reflected increased penalties for these high-risk drivers in its statutes before 2011 when the highly intoxicated driver section was removed for reasons unrelated to its effectiveness. This bill establishes the revocation periods for the high BAC driver – from 18 months for a first offender up to 6 years for drivers who have two or more prior alcohol or drug enforcement contacts.

MADD supports other changes that have been proposed in this bill, including increasing the "look back" period which defines who is a repeat offender and therefore how long a revocation period will be imposed on the person arrested.

Another change adds a mandatory interlock requirement for Habitual Offenders and a number of other suggested sanctions for the repeat habitual offender.

This is an important measure for strengthening Hawaii's OVUII statutes to remove the most dangerous drivers from the road and increase the deterrent value of the statutes by increasing the penalties for this group of drivers. MADD encourages this committee to pass SB 2330 and strengthen Hawaii's OVUII statutes.

Thank you for this opportunity to testify.



900 FORT ST. MALL, SUITE 1620 • HONOLULU, HI 96813
1-800-880-3394 • 808-695-2416 • SMARTSTARTINC.COM
FAX 808-695-2316

February 7, 2020

To: Senator Lorraine R. Inouye, Chair, Senator Breene Harimoto, Vice Chair, Senator Clarence K. Nishihara, Chair, Senator Glenn Wakai, Vice Chair and members of the Senate Committee on Transportation and Senate Committee on Public Safety, Intergovernmental and Military Affairs

From: JoAnn Hamaji-Oto, Territory Operations Director, Smart Start LLC, Hawaii Corporate Office

Re: Senate Bill 2330 - Relating to Operating a Vehicle Under the Influence of an Intoxicant
Testimony in Support

I am JoAnn Hamaji-Oto, Territory Operations Director for Smart Start LLC, Hawaii Corporate Office. Smart Start is the current vendor contracted by the Hawaii Department of Transportation to install and service alcohol ignition interlocks in the state of Hawaii. I am offering testimony in support of Senate Bill 2330, Relating to Operating a Vehicle Under the Influence of an Intoxicant. We commend the legislature for its efforts to strengthen Hawaii's impaired driving laws.

This bill would, among other provisions, establish penalties for and define "highly intoxicated operator." It increases license revocation periods and lookback periods for offenses of operating a vehicle under the influence of an intoxicant. We believe that this bill is an important policy step forward.

The only way to stop a drunk driver from reoffending is to install an ignition interlock on the vehicle that a person operates during a license revocation period. Unlike other alcohol monitoring technologies or programs, an interlock is the only technology and the single most effective tool available to physically separate drinking from driving and to enhance public safety. Since the implementation of Hawaii's Ignition Interlock law in 2011, we have prevented more than 100,000 drunk driving attempts in the state of Hawaii. The interlock did what it was supposed to do, it directly prevented drunk driving and the injuries and deaths it causes.

We believe that Senate Bill 2330 is an effort to broadly address and strengthen the existing law and support its intent. Thank you for the opportunity to provide testimony in support of this important bill.

LATE

SB-2330

Submitted on: 2/7/2020 11:04:37 AM

Testimony for TRS on 2/7/2020 1:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Kari Benes | Individual | Support | No |

Comments: