

**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 3377, RELATING TO HIGHWAY SAFETY.

LATE

**BEFORE THE:**

HOUSE COMMITTEE ON TRANSPORTATION

**DATE:** Wednesday, January 30, 2008 **TIME:** 9:00 AM

**LOCATION:** State Capitol Room 309  
*Deliver to: committee clerk, Room 441, 5 copies*

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Mark K. Miyahira, Deputy Attorney General

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Chair Souki and Members of the Committee:

The Department of the Attorney General appreciates the intent of this measure, but is concerned about certain provisions within the bill.

The purpose of this bill is to require installation of an ignition interlock device on the vehicle of a person arrested for operating a vehicle under the influence of an intoxicant that will prevent the person from starting or operating the vehicle with more than a minimal alcohol concentration while the person's case is pending and the person's license is revoked pursuant to chapter 291E, Hawaii Revised Statutes. This bill will also provide for certification of these devices and vendors and creates an indigent fund to pay for the installation and operation of these devices in vehicles of the indigent. The bill will also establish a task force to plan for the implementation of the ignition interlock device program.

The Department appreciates the intent of this measure to establish an ignition interlock implementation task force and a 2010 effective date. These provisions will permit the task force and the Legislature to resolve a number of outstanding issues prior to the implementation of the ignition interlock device program.

The Department is concerned about certain provisions currently within the bill.

In section 5, on page 9, lines 17-19, the bill amends the revocation period of a respondent, whose records shows three or more prior alcohol or drug enforcement contacts during a ten-year period from a lifetime revocation to a maximum revocation of ten years. The bill also shortens the time period when the prior alcohol or drug enforcement contacts may occur from ten years to five years.

The Department opposes these changes as these individuals pose the greatest risk to the safety of the community. If the three or more prior alcohol or drug enforcement contacts during the five years preceding the notice of the current administrative revocation are the result of three or more convictions for operating under the influence of an intoxicant within a five-year period, this individual would be currently facing a charge of habitually operating a vehicle under the influence of an intoxicant, a class C felony. A person convicted under this felony charge would be facing a mandatory license revocation for a period of not less than one year but not more than five years and would not be permitted to drive during this period of revocation in any vehicle, not even a vehicle equipped with an ignition interlock device. Therefore, this amendment could directly conflict with concurrent criminal sanctions. As such, there seems to be no logical reason to downgrade the administrative penalty for these cases from a lifetime revocation to a maximum ten-year revocation.

In section 7, the bill amends section 291E-61, Hawaii Revised Statutes, to permit an individual to operate a vehicle, equipped with an ignition interlock device, during the period of license revocation. However, the ability to operate a vehicle will, in many cases, be hampered by section 287-20, Hawaii Revised Statutes, which prohibits an individual, whose license has been suspended or revoked pursuant to part III of chapter 291E or upon conviction of any offense pursuant to law, to operate a motor vehicle, unless and

until the person has furnished and thereafter maintains proof of financial responsibility.

Under the current law, section 287-20, does not apply in circumstances where a license is suspended pursuant to section 291E-61(b)(1), which includes a first-time offense, or any offense not preceded within a five-year period by a conviction for an offense of operating a vehicle under the influence of an intoxicant or for an offense under section 291E-4. However, as the proposed amendment would revoke the license of a person convicted pursuant to section 291E-61(b)(1), section 287-20, would be applicable. The amendment would prevent an individual from operating a vehicle, equipped with an ignition interlock device, during the one-year period of revocation, until proof of financial responsibility had been furnished.

In section 7, the bill amends section 291E-61, by increasing the period of license revocation. Therefore, for example, a first time highly intoxicated offender would be facing a six-month to one-year license revocation under the administrative driver's license revocation process but would be facing a two-year license revocation pursuant to a criminal conviction. However, section 291E-61(c)(3), states in part that "No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act." Therefore, an increase in the period of a license revocation pursuant to 291E-61 will have little effect if the person has already been ordered to serve a shorter administrative revocation.

In section 7, the bill also amends section 291E-61, to authorize a court to place a criminal defendant on probation. However, section 706-624.5(2)(a), Hawaii Revised Statutes, states that as a further condition of a sentence of probation, a defendant may be sentenced to serve "five days in petty misdemeanors cases." Therefore, placing a defendant on probation would clearly conflict

with the sentencing scheme in section 291E-61(b)(4)(C), where a defendant must be sentenced to serve no less than ten days but not more than thirty days of imprisonment. A sentence of probation may also conflict with the sentencing scheme in section 291E-61(b)(3)(B)(ii), where a defendant may be sentenced to serve no less than five days but not more than fourteen days of imprisonment.

In section 9, this bill amends section 804-7.1, Hawaii Revised Statutes, to require the court to order a defendant, as a condition of bail, to install an ignition interlock device within 15 days, on any vehicle that the defendant will operate during the defendant's release on bail. There are two minor issues that should be clarified. The amendment may be read to apply only in cases where the defendant has been released on bail instead of also applying to cases where the defendant was released on recognizance or supervised release. The amendment also authorizes the court to issue a permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the "revocation period." This appears to be a mistake as we assume that the author of the bill intended the defendant to be allowed to drive only while the criminal case was pending.

Therefore, the Department recommends that section 9, on page 32, lines 12 through 22, be amended to have subsection (c) of section 804-7.1, Hawaii Revised Statutes, read as follows:

"(c) In addition to the conditions in subsection (b) and except as provided in subsection (d), when the defendant is charged with an offense under section 291E-61, the court shall order as a condition of release on bail, recognizance, or supervised release that, within fifteen days, the defendant install an ignition interlock device, as defined in section 291E-1, on any vehicle that the defendant will operate during the defendant's release on bail, recognizance, or supervised release. Upon proof that the defendant has installed an ignition interlock

device in the defendant's vehicle, the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the period of defendant's release on bail, recognizance, or supervised release."

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN  
MAYOR



LATE TESTIMONY

BOISSE P. CORREA  
CHIEF

PAUL D. PUTZULU  
MICHAEL D. TUCKER  
DEPUTY CHIEFS

OUR REFERENCE EC-LC

January 30, 2008

The Honorable Joseph M. Souki, Chair  
and Members  
Committee on Transportation  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Souki and Members:

Subject: House Bill No. 3377, Relating to Highway Safety

I am Captain Evan Ching of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 3377, relating to highway safety. This bill introduces the ignition interlock to be installed in vehicles of drivers convicted of driving under the influence of an intoxicant.

The HPD believes that the interlock device will prevent drinkers from driving and thus reduce the risks of deaths or injuries. It addresses most of the issues that will make this bill a success. The implementation date will give the necessary time for the agencies involved to complete their rules and procedures for a better implementation.

The HPD urges your committee to pass House Bill No. 3377 as it will help the drinking driver to remain off of the roadways and reduce the risks to other drivers.

Thank you for the opportunity to testify.

Sincerely,

  
EVAN CHING, Captain  
Traffic Division

APPROVED:

  
For: BOISSE P. CORREA  
Chief of Police

nishimoto2-Bryce

**From:** Dave Rolf [drolf@hawaiiidealer.com]  
**Sent:** Tuesday, January 29, 2008 5:31 PM  
**To:** TRNtestimony  
**Subject:** HADA Testimony H.B. 3377

LATE TESTIMONY

January 29, 2008

Testimony in SUPPORT of HB 3377  
Relating to Highway Safety  
Presented to the House Committee on Transportation  
For the public hearing 9 a.m. Wednesday, January 30, 2008  
Conference Room 309, Hawaii State Capitol

Submitted by David H. Rolf, for the Hawaii Automobile Dealers Association  
Hawaii's franchised new car dealers

Chair Souki and members of the committee:

HADA has long supported MADD, the legislature, HPD, and other civic groups who seek to address Hawaii's battle with drunk driving, and, as members of the Ignition Interlock Working Group, established through H.C.R. 28, we strongly support HB3377.

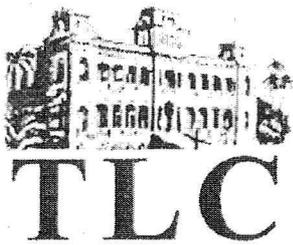
The most impressive testimony to the effectiveness of interlock devices has been the drop in the rates of recidivism in states like New Mexico and West Virginia. We think, with enactment of this measure, that Hawaii will see similar results, and the roads will be safer for everyone.

Our dealers defer to the expertise of the Alliance of Automobile Manufacturers for advice on the technical feasibility with all makes of vehicles.

HADA urges passage of HB3377 and applauds the work of the group.

Respectfully submitted,

David H. Rolf



# THE LEGISLATIVE CENTER

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January 30, 2008

## LATE TESTIMONY

Testimony To: House Committee on Transportation  
Representative Joseph M. Souki, Chair

Presented By: Tim Lyons, Legislative Liaison  
Anheuser Busch Companies

Subject: H.B. 3377 – RELATING TO HIGHWAY SAFETY.

Chair Souki and Members of the Committee:

I am Tim Lyons, Legislative Liaison for Anheuser Busch Companies and we generally support this bill.

Ignition interlocks are the wave of the future and it is only a matter of time before all cars will have some type of alcohol testing built into the operational aspect of the car. Recently, a system was demonstrated in Japan which has sensors in the headrest which samples the drivers breath and others have included a mechanism in the seatbelt buckle that test for alcohol.

Our concern however, is two-fold. One is the "Super Law" that is imposed by Section three (3) of the bill mandating that a person's alcohol concentration must be less than .02 pending their adjudication, when the standard for all other citizens is .08.

## LATE TESTIMONY

Secondly, we also do not believe that ignition interlocks should be provided for first time offenders but rather for repeat offenders and for those who test at abusive levels such as .15.

For the Committee's information, as of late 2007, there are only four (4) states out of approximately forty (40) that mandate ignition interlock systems for first time offenders and we feel this is because other states are going with this technology but they are going with it cautiously. While we realize that there are individuals that need to be caught, there are also a good number of individuals that do get caught, have caused no accidents or other problems, and as a result of the process, never drive drunk again. We think that it is important to remember that it is not illegal to have a drink; it is illegal to drink too much and drive.

Based on the above, we support this bill but would like to see it redirected in the two (2) areas we mentioned above.

Thank you.



January 30, 2008

Hawaii State Legislature  
House Committee on Transportation  
Representative Joseph M. Souki, Chair

**LATE TESTIMONY**

Dear Representative Souki:

The Beer Institute and its members deplore drunk driving and have invested significant resources to help prevent it. Brewers, importers, and suppliers have invested millions of dollars on well-known advertising campaigns and effective programs that promote responsible drinking and seek to prevent drunk driving. Our actions, along with those of federal, state, and local governments and many other public and private organizations, have helped bring about significant reductions in drunk driving. But the effort to fight drunk driving must continue.

Experts in drunk driving enforcement and adjudication tell us that interlock devices should be used as part of a broader policy designed to sanction and effectively rehabilitate drunk drivers. Interlocks are not a "one size fits all" remedy; they are only effective when used on an individualized, tailored basis. Finally, these authorities advise that there is one group that should specifically be targeted for interlock devices: repeat offenders and those who drive with very high blood alcohol content.

Based on this, we support mandatory use of ignition interlock devices for offenders with repeat DUI convictions and those individuals with a BAC of .15 or higher, even if for a first-time offense. There may also be instances where the court will determine that a first-time offender with a BAC between .08 and .14 may be a suitable candidate for an ignition interlock.

We appreciate the opportunity to share our thoughts.

Sincerely,

Jeff Becker  
President