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IN REPLY REFER TO:

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

February 11, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 1520

COMMITTEE ON TRANSPORTATION

On behalf of the Hawaii Ignition Interlock Implementation Task Force, **the Department recommends that this bill be deferred** to allow the Task Force to take up this matter as part of its final set of recommendations to the Legislature of the 2010 legislative session, before the ignition interlock law goes into effect in the summer of 2010.

House Bill 1520 proposes that a person with three or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding his or her notice of administrative revocation relating to another OVUII, be eligible for relicensing after 10 years from the date that a lifetime revocation was imposed as long as certain criteria are met.

The question of lifetime revocations was one of the issues discussed in the past seven months by the Hawaii Ignition Interlock Task Force created by Act 171 of the 2008 legislative session. In the Task Force measures, House Bill 981 and 716, the Task Force is recommending the following to this Legislature:

HB 981, page 11, line 17 to page 12, line 2:

(4) a minimum of five years up to a maximum of ten years revocation of license and privilege to operate a vehicle, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the () ten years preceding the notice of administrative revocation was issued;

The revocation periods would include installation of an ignition interlock device.

The Task Force elected to craft any additional language for this provision between the end of the 2009 legislative session and the beginning of the 2010 session. Therefore, we believe that HB 1520 is premature but its language should be considered by the Task Force as it drafts more of the details for Hawaii's ignition interlock system in the last six months of this year.

The Task Force appreciates the effort to address the issue of lifetime revocations after an ignition interlock system has been implemented in our State. This system will have the important potential of helping to assess whether a high risk impaired driver has been able to change his behavior and no longer present a danger to himself and others on the road.

Furthermore, this bill will impact commercial drivers who, under current law, are disqualified for life. To ensure that this measure conforms to the federal CDL program and meets the requirement of Federal Regulation 49 383.51(a)(5) which permits a state to reinstate any commercial driver disqualified for life after 10 years, language must be included to require that a driver has voluntarily entered and successfully completed an appropriate rehabilitative program approved by the state. In addition, the driver can be reinstated only once.

Deferring this proposed bill will allow the Task Force to address the issues mentioned above and provide a smoother implementation of an ignition interlock program.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Transportation
The Honorable Joseph M. Souki, Chair
The Honorable Karen Leinani Awana, Vice Chair

Wednesday, February 11, 2009, 8:30 a.m.
State Capitol, Conference Room 309

by
Ronald Sakata
Chief Adjudicator
Administrative Driver's License Revocation Office (ADLRO)

Bill No. and Title: House Bill No. 1520, Relating to Administrative Revocation.

Purpose: To allow a respondent whose license has been administratively revoked for life to be eligible for relicensing after ten years provided certain requirements are met.

Judiciary's Position:

The Judiciary takes no position on this measure but notes that this proposal is contingent on the enactment of legislation implementing the use of ignition interlock devices.

The ADLRO estimates that approximately 1,800 respondents may become eligible for relicensing under this measure.

Thank you for the opportunity to comment on House Bill No. 1520.



**Office of the Public Defender
State of Hawaii
Timothy Ho, Chief Deputy Public Defender**



**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Transportation**

February 11, 2009, 8:30 a.m.

H.B. No. 1520: RELATING TO ADMINISTRATIVE REVOCATION

Chair Souki and Members of the Committee:

This measure would permit an individual whose driver's license was revoked for life to petition the administration for reinstatement of their driver's license ten years after the imposition of the lifetime revocation. The Office of the Public Defender supports H.B. 1520, and would like to suggest an amendment to include driver's who are subjected to a lifetime revocation for driving with a suspended license under §291E-62.

Under this measure, an individual petitioning for a driver's license will have to submit proof of their eligibility to the director, which includes the completion of a substance abuse assessment and the installation of an ignition interlock device. Although driving is a privilege and not a right, the ability to drive motor vehicle allows us to seek and maintain employment, transport our family to and from schools and medical appointments. This measure will not repeal the lifetime revocation requirement of §291E-41(b)(5), but will allow an individual to be considered for a reduction of his lifetime revocation to ten years.

We suggest that §291E-62 also be amended to allow individuals to petition the director for a reduction of their permanent revocation to ten years as well. Under §291E-62, a permanent (lifetime) revocation is imposed on those individuals who have had a prior conviction for OVUII under §291E-61 and are convicted of their third driving while license suspended for OVUII. These individuals are not committing new OVUII cases, but are simply being caught driving without a license subsequent to the OVUII conviction. We believe that these individuals should be considered for a reduction of their lifetime revocation if they meet the requirements set forth in this measure.

The Office of the Public Defender recommends the passage of H.B. 1520. Thank you for the opportunity to be heard on this matter.

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**THE HONORABLE JOE SOUKI, CHAIR
HOUSE COMMITTEE ON TRANSPORTATION
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i**

February 11, 2009

RE: H.B. 1520; RELATING TO ADMINISTRATIVE LICENSE REVOCATION.

Chair Souki and members of the House Committee on Transportation, the Department of the Prosecuting Attorney submits the following testimony in opposition to H.B.1520.

The purpose of this bill is to permit persons who have had their driver's licenses administratively revoked for life for repeatedly driving while intoxicated, to obtain an ignition interlock permit if: 1) 10 years or more have passed since the revocation; 2) he or she has completed all the requirements of a criminal conviction associated with lifetime administrative revocation; 3) complied with all the requirements of the lifetime administrative revocation; 4) the person obtains written proof that the person has been assessed by a certified substance abuse counselor who has determined that the person is not in need of treatment; and 5) the person has installed an ignition interlock in their vehicle. Upon completion of five years of operating a vehicle with an ignition interlock, the person shall be eligible for an unrestricted license upon proof that the person has not been convicted of any alcohol related convictions.

Impaired driving is an extremely serious problem in our state. According to statistics provided by Mothers Against Drunk Driving, Hawaii had 140 traffic deaths in 2005 and 51% or 71 of these were alcohol related. Recognizing that impaired driving has resulted in needless death and injury to the public, the state has previously passed laws which require the lifetime revocation of driver's licenses for persons who have been found driving impaired four or more times in a ten year period. We believe this is sound policy given that drivers with prior convictions are over represented in fatal crashes and have a greater risk of having a fatal crash. We also believe if the people are permitted to request a reinstatement from previously imposed lifetime revocation, it would impair the deterrent effect of lifetime revocation. The threat of an absolute lifetime revocation was intended to make it clear to people who chose to drink and had been previously found to be driving impaired, that they could and should not continue to drink and then drive.

Additionally, we are extremely concerned that this bill does not have sufficient safeguards to prevent repeated intoxicated drivers who have had a lifetime revocation of their driver's license from driving under the influence again. First, although the bill requires the driver to have a clean driving record prior to request for reinstatement of license, we would like to point out that the person *should* have a clean record since they are under a lifetime revocation and should not have been driving. Furthermore, the fact they have not had any further impaired driving offenses over the period prior to the request for reinstatement does not necessarily mean that the person has been clean and sober during that time. All it means is that the person has not been arrested for a driving offense during that time. Thus, the person could have refrained from driving in compliance with the lifetime revocation but still continued to have problems with alcohol or drugs up to a point shortly before getting an assessment. Moreover, since the assessment is in part based on self reporting and the person has probably not been monitored for drug or alcohol use for the ten years prior to assessment, we are unsure how valid the determination will be if the person is not completely honest about their alcohol or drug use. We also note that if the person does obtain an ignition interlock permit and uses it for five years, this bill permits them to obtain an unrestricted license without **any** consideration of whether they have attempted to drive drunk and were prevented from doing so by the interlock; we believe this is a tremendous danger to public safety.

We also have serious concerns that if the revoked driver gets reinstated but then has another impaired driving offense, that offense may not result in another lifetime revocation. Under the current law, lifetime revocation only occurs when a driver has four or more prior impaired driving offenses during a ten year period preceding the last notice of administrative revocation. If the person reoffends after reinstatement, it is possible that one or more of the prior impaired driving offenses will now be beyond the ten year period and thus the person will be considered a first, second or third offender all over again.

Finally, as this issue is being discussed by the Ignition Interlock Task force, we would recommend that this bill be deferred until the task force has the opportunity to continue its work to plan the implementation of an ignition interlock program for the state.

For these reasons, we oppose the passage of H.B. 1520 and respectfully request that it be held. Thank you for this opportunity to testify.



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February 11, 2009

To: Representative Joseph M. Souki, Chair – House Committee on Transportation;
Representative Karen Leinani Awana, Vice Chair; and members of the committee

From: Arkie Koehl, Chairman –Public Policy Committee, MADD-Hawaii

Re: House Bill 1520 – Relating to Administrative Revocation

I am Arkie Koehl, Chairman of MADD Hawaii's Public Policy Committee, offering testimony regarding House Bill 1520, Relating to Administrative Revocation.

This measure would permit a person with a lifetime drivers license revocation, as a result of having had four or more alcohol law enforcement contacts, to apply for conditional relicensing after 10 years have elapsed since the lifetime revocation was imposed, providing that other criteria are also met. The respondent would be required to drive an ignition interlock equipped vehicle for at least 5 years after receiving the conditional license before becoming eligible for an unrestricted driver's license.

MADD testified about lifetime revocation in 2007 when our organization suggested that ignition interlock programs, if and when implemented in Hawaii, could provide a way of safeguarding the public through technology. Now, having two MADD representatives on the Hawaii Ignition Interlock Task Force, we are part of discussions concerning interlock and lifetime revocations. HB 981 and its companion Senate Bill 716 recommend replacing lifetime revocation with a revocation period of 5 to 10 years along with the use of ignition interlock.

The Task Force will be continuing to address the lifetime revocation issue as it works throughout 2009 in preparation for expanded interlock provisions in a probable bill to be introduced in the 2010 legislative session. It seems appropriate to have the legislatively established Task Force make its final recommendations next year before passing any related legislation. No doubt the Task Force will use HB 1520 as a resource for its deliberations on this issue.

MADD is confident that the members of the Task Force will recommend a way to allow clean and sober drivers to drive again while carefully safeguarding the safety of the public.

Thank you for this opportunity to testify.

TO: The House of Representatives
Committee on Transportation

FROM: Steven T. Barta, as an individual
and Lobbyist for Kevin Lioen and Lynn Ramer
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SUBJECT: HB 1520 - Testimony in Favor, but with revisions

Hearing Date: Wednesday, February 11, 2009
Time: 8:30 a.m.
Place: Conference Room 306

Chair Souki, Vice Chair Awanao and members of the Committee on Transportation, thank you for allowing me to present testimony on House Bill 1520.

My name is Steve Barta. I am an attorney with over twenty-five years of experience in the area of prosecuting and defending citizens who have lost their driver's license because of drunk driving. I started my career over twenty-five years ago as a Honolulu deputy prosecutor with a lead role in prosecuting drunk drivers; I spoke on behalf of MADD and trained police personnel and other deputy prosecutors on how to handle to drunk driving cases. I presently represent those who have run afoul of the law.

Both as a prosecutor and as a defense attorney I have seen how alcohol has destroyed the lives of those who drive and those who have been victimized as a result of drunk drivers.

In 1991, the Administrative Driver's License Revocation Law went into force. This law complemented the criminal drunk driving laws by seeking to quickly remove drunk drivers from the road. The criminal law served to punish drunk drivers. The new administrative law sought to remove these drivers from the road as quickly as possible. The purpose of the administrative law was **not** intended to punish offenders, the criminal laws already served that purpose. The very first paragraph of the Conference Committee Report made this object clear. It provides:

The purpose of this bill is to provide for the public safety by establishing a quick, administrative procedure for revoking the licenses of drunk drivers while they are awaiting trial on criminal DUI charges

under section 291-4, Hawaii Revised Statutes.

Conf. Com. Rep. 137 on S.B. 1148, House Journal 1989.

Our Hawaii Supreme Court has also recognized the non-punitive nature of the Administrative Revocation Law. In finding that the administrative law did not violate the constitutional guarantees of double jeopardy, the Court ruled:

Based on the foregoing, we hold that Hawaii's ADLRO proceedings serve legitimate, **non-punitive, and purely remedial functions**, and, therefore, the administrative license revocation proceedings based on DUI did not bar Higa's subsequent criminal prosecution on the grounds of double jeopardy principles.

State v. Toyomura, 80 Haw. 8, 17; 904 P.2d. 893, __ (1995).

When the administrative revocation law first went into effect life time revocations help to serve to keep habitual drunk drivers off the road. Unfortunately, it also created unintended consequences causing unemployment, broken families, homelessness and a cycle of poverty and hopelessness.

With the introduction of ignition interlock systems, there is no longer a justification for life time revocations. The ignition interlock system prevents a drunk driver from driving their vehicle while intoxicated. Yes, a drunk driver could driver a vehicle without a interlock system, but if they did, they would be in violation of their conditional driver's license and subject to the same criminal penalties as if they did not have a conditional license.

The intent of legislation such as HB 1520 is not to excuse the conduct of drunk drivers or to allow unsafe drivers back on the road. No one wants that. Rather it is to welcome back into the community those who have paid a steep price for their past indiscretions and are no longer a threat to society.

Presently, in Hawaii life time sentences without the possibility of parole/probation exist for only two offenses; First Degree Murder, and Drunk Driving.

HB 1520, corrected this injustice. It recognizes that those who have had their driver's license revoked for life and have been sober for ten (10) years since that revocation should be given a chance to return to society as productive members. The bill(s) recognizes what most of us take for granted; one can NOT live a normal life without driving. The ability to drive effects every aspect of our lives; it effects our ability to work, it effects our ability to care for ourselves and our families; its absence makes us dependent upon others and ultimately the State.

HB 1520, serve the public good by correcting an unintended result of the State's drunk driving laws. Our drunk driving laws were created to benefit public safety by removing dangerous drivers from our roads and penalizing them for their indiscretions. However, it was never intended to take away the ability to work or the collateral effects of unemployment - broken families, homelessness and a cycle of poverty and hopelessness.

A lifetime revocation of one's driver's license is a lifetime sentence of destituteness. Especially if one lives on the outer islands where public transportation is not available or is engaged in a trade that requires transporting tools or materials or otherwise requires driving.

Many of our citizens/neighbors that have had their license revoked for life fell upon hard times and turned to alcohol to cope. Some have been able to dig themselves out of that hole and become sober law abiding members of our community. But their inability to drive stretches them to the limit and holds them back from more fulfilling lives.

These people, who no longer possess a threat and have already been punished by being without a license for a minimum of ten years (plus jail time, fines, counseling, etc....) should be treated as other law violators who have paid the price for their sins and allowed to rejoin our community as productive members.

Because this Bill has provisions which guarantee the safety of the public (certification by a substance abuse counselor that they are not chemically dependent or in need of treatment and the right only to drive a vehicle with an ignition interlock system), I respectfully submit that the ten year penance period be eliminated from the Bill and we welcome back these sober citizens the same as we do all other criminals that have served their criminal sentence.

Thank you for your consideration of these points and the opportunity to testify before your committee.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, reading "S.T. Barta". The signature is written in a cursive style with a long horizontal stroke extending to the left.

STEVEN T. BARTA