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TESTIMONY ON HOUSE BILL 877
RELATING TO DISPOSITION OF CRIMINAL OFFENDERS
by
Clayton A Frank, Director
Department of Public Safety

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

Wednesday, February 4, 2009; 8:30 a.m.
State Capitol, Conference Room 309

Representative Souki, Representative Awana, and Members of the Committee:

The Department of Public Safety (PSD) understands the intent of House Bill 877, but request that amendments to HRS 291E-61.5, Section 1, (d), (2) (B) be adjusted. As the bill proposes, provided that upon completion of forty-eight consecutive hours of imprisonment, the person may be released on supervision, by either the court or the department of public safety, as appropriate, on the conditions that include the use of a transdermal alcohol monitoring device at the person's own expense; we strongly recommend the authors delete "the department of public safety" because as stated above in Section 1, (d) (2), the offender is sentenced to probation and if released from custody, the offender should remain under the jurisdiction of probation.

In addition and more importantly, we have serious concerns regarding the cost of this measure. The bill does not address the cost of monitoring the

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offenders if released into the community. As it is written, we oppose House Bill 877 at this time.

Thank you for the opportunity to testify on this matter.



**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 4, 2009, 8:30 a.m.

H.B. No. 877: RELATING TO DISPOSITION OF CRIMINAL OFFENSERS

Chair Souki and Members of the Committee:

This measure would permit the court or Department of Public Safety to monitor the release of an individual convicted of habitual operation of a vehicle under the influence of an intoxicant with a transdermal alcohol patch. The Office of the Public Defender opposes H. B. 877.

Presumably, the transdermal alcohol patch would allow the defendant to be monitored on probation or parole after having served a shorter term of jail or imprisonment than if he were not ordered to wear the patch. However, without any language in this measure that specifies a reduction in his or her jail or prison term, we are concerned that the actual amount of jail or prison served will not be reduced. Furthermore, this measure requires the expense of the transdermal patch to be borne by the defendant. A rich person might be able to "buy" himself a reduction of his sentence by paying for the transdermal patch. Our indigent clients, however, would end up spending more time in jail than others if they were not able to afford the patch.

This measure, as it is currently written, would only apply to those individuals sentenced to a term of probation under section (d)(2)(B). If the intent of this measure is to allow for monitoring of habitual OVUII defendants with the use of a transdermal alcohol patch after being placed on parole, then section (d)(1) must be amended to include such language.

This measure raises many questions. How much will it cost the state to implement this program? Will the state pay for the cost of monitoring indigent defendants? How much will jail and prison time be reduced? Will this translate to a cost savings for the State?

The Office of the Public Defender recommends the deferral of H. B. 877. Thank you for the opportunity to be heard on this matter.



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February 4, 2009

To: Representative Joe Souki, Chair, House Committee on Transportation;
Representative Karen Awana, Vice Chair; and members of the Committee

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

Re: House Bill 877 – Relating to Disposition of Criminal Offenders

I am Arkie Koehl, speaking in support of House Bill 877 on behalf of the membership of MADD-Hawaii.

By requiring habitual drunk drivers to remain abstinent from alcohol, the bill correctly recognizes that this group is no different from other [potentially] violent felons whose terms of probation already require abstinence. It also implicitly recognizes that driver's license revocation or suspension is not always an effective deterrent to criminal behaviors which have caused our state to have one of the nation's highest percentages of alcohol-related traffic fatalities.

Transdermal alcohol monitoring, already in use in most states, can play a significant role in felony drunk driving probation and reduce impaired driving recidivism in Hawaii. It can protect our citizens and visitors; and it even benefits the offender by allowing him to lead an unincarcerated normal life as well as pursue treatment for his alcohol addiction.

The transdermal alcohol monitoring device with which MADD is most familiar is an ankle bracelet worn 24/7 by the offender for the duration of his or her court-ordered abstinence period. Twice an hour, the bracelet captures transdermal alcohol readings by sampling the insensible perspiration collected from the air above the skin. The bracelet stores the data and, at pre-determined intervals, transmits it via a modem to a system for analysis and reporting. Alcohol monitoring devices are being used in courts around the country to address overcrowding in prisons, separate certain offenders from the use of alcohol, and support offenders who are engaged in a treatment or other type of sobriety program. We encourage the committee to pass this measure.

Thank you for the opportunity to testify.