



STATE OF HAWAII
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IN REPLY REFER TO:

February 23, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 2752 H.D. 2

COMMITTEE ON FINANCE

On behalf of the Hawaii Ignition Interlock Implementation Task Force, the Department supports and recommends the passage of House Bill 2752 H.D. 2. This measure incorporates most of the recommendations from the Task Force, which was established by Act 171 of the 2008 Legislative Session.

HB 2752 is the third legislative bill introduced to the Legislature in anticipation of the January 1, 2011 implementation of Hawaii's ignition interlock program. The first and second measures resulted in Acts 171 (2008) and Act 88 (2009). This bill provides the missing details needed for implementation.

Due to the State's existing economic crisis, concessions have been made to the ignition interlock program to prevent any major expenditure of state funds at this time. We see these changes as temporary, and look forward to implementing an interlock program as originally envisioned by the Task Force in better economic times.

HB 2752 HD 2 includes the following:

- Establishes circumvention of the system or tampering with the interlock device by a person required to operate a vehicle equipped with a device as a petty misdemeanor offense with penalties of three to thirty days imprisonment; \$250 to \$1,000 fine; and loss of the privilege to operate a vehicle during the revocation period by having an interlock device and an interlock permit. The person convicted of tampering or circumventing the system, which includes having another person start or attempt to start the vehicle, will be sentenced without possibility of probation or suspension of sentence. The penalties will increase for repeat circumvention or tampering offenders. (A second offense within a 5 year period.) The third offense becomes a full misdemeanor.
- Establishes that assisting or abetting the circumvention of or tampering with an interlock device as an offense. Assisting or abetting circumvention includes blowing into the device or otherwise starting the vehicle for a person required to use an interlock; tampering with the system; or lending or renting a vehicle to a person required to have an interlock.

- Removes the definition of highly intoxicated driver (a person whose blood alcohol level at the time of testing was .15 or higher) and other sections of the chapter relating to the highly intoxicated driver to conform amendments instituted by Act 88 in 2009.
- Reinstates the section, removed by Act 171, relating to the administrative impoundment of license plates and the revocation of vehicle registration by repeat OVUII offenders. In addition, the bill also reinstates the opportunity for a family member to obtain special plates when essential for the person(s) to drive the offender's vehicle. These reinstatements were necessary for the cases in which a person required to use an interlock pledged that he or she would not drive. In these cases, the vehicle sanction remains the current plate impoundment and registration revocation rather than installation of an interlock device.
- Clarifies that a person must hold a valid license at the time of arrest for OVUII in order to qualify for an ignition interlock permit.
- Establishes that a person convicted of OVUII shall be sentenced without possibility of probation or suspension of sentence and amends Act 88's minimum and/or maximum imprisonment times for a person convicted of OVUII:
 - 30 days maximum for a first offender (from 5 days);
 - 5 days minimum and 30 days maximum (from 5 days) for a second offender;
 - 10 days minimum and 30 days maximum (from 5 days) for a third offender;
- Removes probation from the sentencing program for all offenders. (Temporary cost-saving amendment).
- States that any OVUII offender who is driving during the revocation period in a vehicle not equipped with an interlock, will be charged under 291E-62 (Driving while license suspended or revoked for OVUII) and will be sentenced without the possibility of probation or suspension of sentence. In addition, where applicable, the person will lose his or her privilege of operating a vehicle equipped with an ignition interlock device.

Although HD 2 had replaced Section 291E-5 of Act 88, in the 2009 Session, the Task Force is recommending that Section 291E-5 be deleted and amended to read the following:

“§291E-5 Ignition Interlock User affordability. The Director of Transportation shall contract with the selected interlock vendor to provide partial financial relief on the installation and the periodic calibration charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance Program, or free services under the Older Americans Act or Developmentally Disabled Act.”

The Task Force did not change the prior decision to administratively revoke the driver's license of a person with three or more prior alcohol or drug enforcement contacts for a five to 10 year period.

A strong ignition interlock system will prevent unnecessary alcohol-related crashes and reduce fatalities in the state. The Task Force believes that the provisions in this bill are necessary to the implementation of the ignition interlock program and strongly recommends the passage of HB 2752 HD 2.



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Finance

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair

Tuesday, February 23, 2010, 10:00 a.m.
State Capitol, Conference Room 308

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

Bill No. and Title: House Bill No. 2752, H.D. 2, Relating to Highway Safety

Purpose: Enacts the recommendations of the Ignition Interlock Implementation Task Force made pursuant to Act 171, Session Laws of Hawaii 2008. Effective January 1, 2011.

Judiciary's Position:

The Judiciary has been actively involved with the proceedings and deliberations of the ignition interlock implementation task force on an advisory basis. Accordingly, although we take no position on the intent of this measure, we have made our advice and concerns well known throughout the numerous meetings of the task force at-large and in the various subcommittees.

Chief among those concerns is the impact on the Judiciary's already thinly-stretched budgetary and personnel resources. In particular, ADLRO may eventually be required to conduct hearings regarding ignition interlock issues arising after the initial revocation hearings which are held in the ordinary course of our responsibilities. That impact, as of yet, cannot be accurately determined, but any additional hearings at this point will be of consequence to our current case and hearing load.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE MARCUS OSHIRO, CHAIR
HOUSE FINANCE COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i

February 23, 2010

RE: H.B. 2752, H.D. 2; RELATING TO HIGHWAY SAFETY.

Chair Oshiro and members of the House Finance Committee, Department of the Prosecuting Attorney submits the following testimony in support of H.B. 2752, H.D. 2 with some suggested amendments.

The purpose of this bill is to fine tune the statutory framework for the imposition of an ignition interlock device upon vehicles owned or driven by person arrested for impaired driving. To this end, the legislature established a task force which was mandated to review this issue and to make recommendations for the implementation of an ignition interlock program. A wide range of stakeholders were included in the task force including our department, which was given the opportunity to participate in and give input to the task force over the last two years. This bill is the product of the work of the task force's effort to flesh out the framework of the ignition interlock program. In particular, this bill eliminates the use of probation for repeated intoxicated drivers and substitutes less intensive supervision by proofs of compliances due to concerns about the cost and availability of probation resources.

We are in strong support of the use of ignition interlock devices which prevent a person from operating a vehicle when the person has measurable amounts of alcohol in their system. While community education, increased enforcement and stiffer sanctions for impaired driving

have made some impact, Hawaii still has an unacceptably high number of alcohol related fatal crashes. We believe that technologies which would prevent people from driving drunk need to be examined and tried in order to reduce traffic fatalities.

Although we did not agree with all the task force recommendations, we do understand that this bill and effort were intended to be the product of consensus whenever possible. Because all the task force stakeholders have different perspectives and because there are resource limitations that affect what is currently possible, we are fully cognizant that compromises were necessary in order to forge an ignition interlock program which was acceptable and workable for all the task force stakeholders. Thus, we do support the passage of H.B. 2752, H.D. 2. However, we hope that certain changes, such as probation for second and third drunk drivers can be implemented when more state resources are available.

We do suggest that several amendments be made. First, we ask that the word "the" be inserted at page 4 line 21 and at page 6 line 13 as follows:

(2) Tamper with an ignition interlock device with the intent....

We also recommend that the subsection (c)(1) on page 7 lines 6-7 be amended as follows so that it provides a penalty for first and second offenses. If the penalty for a second offense is not added to subsection (c)(1) there will only be a penalty for a first and third offense of aiding or abetting the circumvention of an interlock and it will be unclear as to what the penalty is for a second offense.

(c) Any person who violates this section shall be:

(1) Fined not more than \$1,000 or imprisoned not more than thirty days, or both, for [~~a first offense~~] any offense that does not occur within five years of two prior convictions for this offense;

In addition, we ask that Section 3 of the bill, which relates to HRS section 286-133 at page 7 line 14 to page 8 line 2 be amended as follows:

"§286-133 Unlawful to permit unauthorized person to drive. ~~[(a)]~~ [No] Except as provided in section 291E-B, no person shall authorize or knowingly permit a motor vehicle or moped owned by that person or under that person's control to be driven upon any highway by any person who is not authorized under law to drive the motor vehicle or moped.

~~[(b) This section shall not apply to any person who knowingly provides, lends, leases, or rents an operable vehicle, which is equipped with an ignition interlock device, to a driver whose driving privileges are restricted to operating vehicles equipped with an ignition interlock device.]"~~

This amendment is necessary to ensure that any person who knowingly aids or abets the circumvention of an interlock requirement by lending, leasing, or renting an operable vehicle without an interlock device to a driver who is required to have an interlock device, will be charged under HRS section 291E-B rather than HRS section 286-133.

We would also ask that the reference to HRS section 291E-41(f) be changed to 291E-(g) due to renumbering of the section in Section 13 of the bill.

We would also ask that page 8 line 22 be amended by adding the words "revoked or" as follows:

...apply to a license revoked or suspended pursuant to section 291E-61(b)(1)...

We also note that the definition of "ignition interlock" on page 9 lines 20 and 21 should be amended to read as follows:

"Ignition interlock devices" means a breath testing device that is certified...

In addition, we ask that the amendment to HRS section 291E-44 deleting a reference to "highly intoxicated driver" (contained in Section 15 of H.B. 2752 H.D. 1) be reinstated in H.B. 2752 since all other references and the definition of "highly intoxicated driver" have already been eliminated from HRS chapter 291E. It would be illogical to retain the reference to "highly intoxicated driver" in HRS 291E-44 when there would be no definition and no further references.

We would like to ask that H.B. 2752, S.D.2 be amended to eliminate the current language of HRS section 291E-5 and replaced with the language below:

"§291E-5 Ignition Interlock User Affordability. The Director of Transportation shall contract with the selected interlock vendor to provide partial financial relief on the installation and the periodic calibration charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance Program, or free services under the Older Americans Act or Developmentally Disabled Act."

Finally, we would ask that provisions relating to criminalizing the refusal by an impaired driver to take a blood, breath or urine test be restored to H.B. 2752, H.D. 2. These sections were contained in Sections 2 and 9 of H.B. 2752, H.D. 1 at page 7 lines 14 to 16 and page 17 line 20 to page 18 line 17. As the test is the most reliable evidence of impairment, it is a critical public policy to provide every incentive for suspected impaired drivers to take a blood, breath or urine test. We, like other jurisdictions give our drivers a statutory right to refuse to take the test despite their implied agreement to take such a test as a condition of using our public streets and roads; the right of refusal is given to avoid potential physical confrontations between suspected

impaired drivers and the police. Criminalizing the act of refusing the test provides a significant incentive to drivers to take a blood, breath or urine test. When the refusal is criminalized, there is no benefit to refusing in order to avoid conviction on the drunken driving charge.

We are concerned that with the implementation of the ignition interlock program, which will allow drivers who refuse to take the test to get an interlock and continue driving (as opposed to the current system where drivers who refuse to take the test are ineligible for conditional driving privileges and cannot legally drive), the incentive to take a test is drastically reduced. For this reason, we strongly urge that the refusal of a test be criminalized as a petty misdemeanor, the same level of the offense as the OVUII. Further, we do not believe this will increase the number of trials as the both the OVUII and the refusal will be consolidated for trial seeing as they arise from the same facts and have essentially the same witnesses; so the trial for the OVUII will also include evidence about the refusal. All that will change is that the defendant will be tried and defended on two counts instead of just the OVUII.

Thank you for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE TTN-LC

February 23, 2010

The Honorable Marcus R. Oshiro, Chair
and Members
Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 2752, H.D. 2, Relating to Highway Safety

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

The HPD supports House Bill No. 2752, H.D. 2, Relating to Highway Safety as it is the recommendations of the Interlock Implementation Task Force. The task force is composed of numerous stakeholders from our public streets and highways, from the state Department of Transportation, the Department of the Prosecuting Attorney, the Office of the Public Defender, the Hawaii State Judiciary, including administrative revocation, parole, and driver's licensing, and also Mother's Against Drunk Driving, and law enforcement.

The HPD would further respectfully request that the following section be added to address the issue of financial assistance to the individuals covered under this section:

Section 291E-5 Ignition Interlock User Affordability. The Director shall contract with the selected interlock vendor to provide partial financial relief on the installation and the periodic calibration charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance Program, or free services under the Older Americans Act or Developmentally Disabled Act.

The Honorable Marcus Oshiro, Chair
and Members
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February 23, 2010

These recommendations were discussed and it was the consensus of the task force that these recommendations be submitted for legislative action.

Thank you for this opportunity to testify.

Sincerely,


THOMAS T. NITTA, Major
Traffic Division

APPROVED:


LOUIS M. KEALOHA
Chief of Police

for



MADD
Activism | Victim Services | Education™

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February 23, 2010

To: Representative Marcus Oshiro, Chair – House Committee on Finance;
Representative Marilyn B. Lee, Vice Chair; and members of the committee

From: Arkie Koehl — Chairman, Operations Council, MADD Hawaii

Re: House Bill 2752 HD 2 – Relating to Highway Safety

I am Arkie Koehl, offering testimony on behalf of the Hawaii members of Mothers Against Drunk Driving in support of HB 2752 HD 2 with amendments. This bill updates, amends and provides full statutory detail on ignition interlock, as required of the Ignition Interlock Task Force in previous Acts 171 and 88.

MADD requests the Finance Committee make the following amendments which are vital to the implementation of the Ignition Interlock program:

- Amend Section 3, page 7 lines 14-21 & page 8, lines 1-2, which relates to HRS section 286-133 as follows:
"§286-133 Unlawful to permit unauthorized person to drive. ~~[(a)]~~ [No] Except as provided in section 291E-B, no person shall authorize or knowingly permit a motor vehicle or moped owned by that person or under that person's control to be driven upon any highway by any person who is not authorized under law to drive the motor vehicle or moped.
~~[(b) This section shall not apply to any person who knowingly provides, lends, leases, or rents an operable vehicle, which is equipped with an ignition interlock device, to a driver whose driving privileges are restricted to operating vehicles equipped with an ignition interlock device.]"~~

This amendment is necessary to ensure that any person who knowingly aids or abets the circumvention of an interlock requirement by lending, leasing, or renting an operable vehicle without an interlock device to a driver who is required to have an interlock device, will be charged under HRS section 291E-B rather than HRS section 286-133.

- Page 53, line 15: Section 21 . In the S.D. 1, the language of HRS section 291E-5 (Act 88 – 2009) is deleted (pages 56 – 58) with no new language to replace it. Section 291E-5 should be amended by replacing the struck – through (deleted) language and by adding the following amendment :

“§291E-5 Ignition Interlock User Affordability. The Director of Transportation shall contract with the selected interlock vendor to provide partial financial relief on the installation and the periodic calibration charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance Program, or free services under the Older Americans Act or Developmentally Disabled Act.”
- Reinsert Section 15 (House Draft 1) Section 291-E-44 deleted by the House Judiciary Committee. This section includes ~~{(C) A respondent who is a highly intoxicated driver; and}~~
It appears that the previous committee was trying to allow a highly intoxicated driver to be eligible for a conditional license permit but the category of “highly intoxicated driver” had been deleted by Act 88, HB 2752, and HB2752, HD 1. In addition, the language of the previous committee’s amendment would have created the opposite effect from what was evidently intended.
- Reinstate the amendment submitted by the C& C of Honolulu Office of the Prosecuting Attorney and incorporated in HB 2752, HD 1 in order to correct the situation of there being no penalty for the second offense of “Assisting or abetting the circumvention of, or tampering with, an ignition interlock device.”
Page 7, lines 6 and 7.
§291E-B (c) (1) Fined not more than \$1000 or imprisoned not more than thirty days, or both, for any offense that does not occur within five years of two prior convictions for this offense;
Delete existing (c) (1) [Fined not more than \$1000 or imprisoned not more than thirty days, or both, for a first offense;]
- Reinstate the language removed by previous committee to criminalize refusing to submit to OVUII chemical testing. Add on page 7, line 12 (before section 3):
§291E-C Refusal to submit to a breath, blood, or urine test; penalty. Refusal to submit to a breath, blood, or urine test as required by part II is a petty misdemeanor.”
- Page 8, line 8: Change “section 291E41(f) to section 291E41(g). *An amendment has changed the numbering (lettering). Re: financial responsibility*
- Page 8, line 22 to Page 9, line 1: Change the word “suspended” to “revoked” as it relates to section 291E-61(b)(1).

MADD shares the disappointment of the Task Force that the state's budgetary crisis necessitates forgoing one of the key enforcement measures — probation for repeat offenders — and we share the expectation that future fiscal improvements will restore this important monitoring tool.

MADD Hawaii looks forward to the passage of this session's ignition interlock bill and the implementation of the interlock program state-wide on January 1, 2011. Hawaii will be joining a growing number of states which have adopted mandatory interlock laws for all offenders as the best method currently available to reduce DUI recidivism, crashes, and fatalities.

We respectfully urge passage of House Bill 2752 HD 2 with the recommended amendments.

Thank you for this opportunity to testify.

February 21, 2010

Testimony by:
Shari Krick, M.F.T
HB 2029, Professions and Occupations
House FIN Hearing – Monday February 22, 2010
Position: Oppose

Chair Oshiro, and Members of the House Finance Committee:

I am a Marriage and Family Therapist on the island of Maui. Marriage and Family Therapists serve a vital function in our communities with the focus on treating and healing the families we serve. As a MFT in a rural area we like other health care professions are in great demand. Removing our ability to serve the families here in Hawaii will have a negative impact that will be felt in our institutions such as jails, prisons, and hospitals that struggle with overpopulation already. Insurance companies rely on our expertise to treat and prevent a variety of mental health issues and can only continue to utilize MFT's if we are regulated by a State Government agency.

Personally, I came to Hawaii to practice as a MFT because of the alignment of shared core values of my occupation with the deeply held cultural beliefs of honoring ones "Ohana". While I understand the complexities facing your committee during this challenging fiscal year, I urge you to not turn your back on Hawaii's families. Maybe like me you have a family member who suffered from a mental illness, suicide or drug abuse. If we remove services to treat your sister, your uncle or even you we fail to take care of each other.

Finally, we remove the hope that I see in the eyes of my clients. Many have been through tragedies that propel them into places that harm our islands. When we heal the past we create a beautiful future, not only for our clients but also for their children and several generations to come.

I respectfully request that language to repeal Marriage and Family Therapy (HRS Chapter 451J) be removed from HB2029.

I can be reached at (808) 214-4650

Sincerely,

Shari Krick, MA. MFT