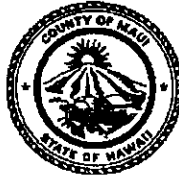


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TESTIMONY

ON

HB 1928 - RELATING TO TESTING FOR INTOXICANTS

February 8, 2012

The Honorable Joseph M. Souki  
Chair  
The Honorable Linda Ichiyama  
Vice Chair  
and Members  
House Committee on Transportation

Chair Souki, Vice Chair Ichiyama and Members of the Committees on Transportation:

The Department of the Prosecuting Attorney, County of Maui supports this measure.

This bill seeks to repeal Hawai'i Revised Statutes § 291E-68, which was passed pursuant to Act 166, Session Laws of Hawai'i 2010. Under this statute, it is a petty misdemeanor for an individual to refuse to submit to a breath, blood, or urine test as required by H.R.S. § 291E-15.

Our Department concurs with the finding by the Legislature that the criminalization of the refusal to submit to a chemical test is causing serious problems with the prosecution of individuals arrested for operating a vehicle under the influence of an intoxicant (OUI). Several cases in our jurisdiction have been dismissed because of purported constitutional violations relating to the potential for criminal penalties associated with a defendant's refusal to submit to a chemical test. Additionally, it is very likely that more cases will be dismissed or compromised because of this issue.

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Prior to the enactment of H.R.S. § 291E-68, the status of the law was clear that police were not required to inform an OUI arrestee of his/her constitutional right to remain silent and/or his/her right to counsel when advising the arrestee of the sanctions for refusing to submit to a chemical test. This was due to the fact that there was no criminal penalty for refusing to submit to a chemical test. However, that changed when Act 166, Session Laws of Hawai'i 2010 was passed.

Accordingly, based upon the above considerations, the Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED. Thank you very much for the opportunity to testify.



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January 30, 2012

To: Representative Joseph M. Souki, Chair –House Committee on Transportation;  
Representative Linda Ichiyama, Vice Chair and members of the Committee

From: Carol McNamee/Arkie Koehl — Co-chairmen, Public Policy Committee - MADD  
Hawaii

Re: House Bill 1928 – Relating to Testing for Intoxicants

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I am Carol McNamee, offering testimony on behalf of the Hawaii organization of Mothers Against Drunk Driving in opposition to HB 1928, relating to testing for intoxicants. This bill repeals section 291E-68 of the Hawaii Revised statutes and if passed would repeal the criminalization of refusing to submit to chemical testing after an arrest for OVUII.

Criminalization of refusal to submit to the chemical test in OVUII cases was included in the ignition interlock program by the Ignition Interlock Task Force which realized that the sanction for refusing the test must always be greater than the sanctions for taking the test in order to encourage compliance with the request to test. Since drivers arrested for OVUII are able to legally drive with an interlock device, there is less advantage to taking the test since individuals refusing to be tested are also able to install the interlock device (albeit they are required to keep the device installed for a longer period). Therefore, the Task Force recommended criminalization of refusal to make the act of refusing the chemical test subject to stronger penalties.

At least fifteen other states have criminal sanctions for refusal. The basic reasons for criminalization are as follows:

- NHTSA (2008) issued a recommendation that States should review their laws to ensure that refusal is a criminal offense and that penalties are greater than those for conviction on an OVUII offense.
- The ability to refuse a chemical test is not a constitutional right, but a statutory right created under the Implied Consent Law.
- Probable cause for a DUI arrest must be present before a person is asked to take a chemical test.
- Researchers have realized that many drivers refuse to take the test in order to avoid or reduce the chance of facing criminal sanctions resulting from a conviction for DUI.
- Individuals who refuse to take the chemical test are more likely to be repeat offenders than those who take the test.

- The lack of criminal penalties for chemical test refusal means the suspect, if not convicted of a DUI, will not be identified as having an alcohol-related offense and will be treated as a first offender by the court if arrested again. The threat of another license suspension for repeat offenders is an ineffective deterrent.
- The additional criminal charge for refusal will not overburden the courts and should not complicate DUI prosecutions. The refusal crime can be charged concurrently with DUI. (OVUII) Prosecutors may choose to dismiss the refusal crime upon a plea to DUI. Courts may choose to impose concurrent sentences on DUI and the refusal crime. The possibility of suffering a refusal penalty even if not found guilty of the DUI charge already exists with the administrative sanction.

Although the use of an interlock may be an inconvenience, the device allows people who have been arrested for OVUII to drive anywhere anytime. Therefore, someone who refuses the test can continue to drive to work and carry out other duties even though his or her license has been revoked. Additional sanctions are needed for this high-risk group of drivers. MADD encourages the Transportation committee to hold this bill and retain Section 291E-68 of the Hawaii Revised Statutes.

Thank you for this opportunity to testify.