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## A BILL FOR AN ACT

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RELATING TO DRIVING UNDER THE INFLUENCE OF AN INTOXICANT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1       SECTION 1. Chapter 291E, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:

4       "§291E-       Persons arrested for operating a vehicle under  
5 the influence of an intoxicant; conditions prior to release from  
6 custody. No person arrested for a violation of section 291E-61  
7 or 291E-61.5 shall be released from custody unless:

8       (1) The person is no longer under the influence of any:

9           (A) Alcohol that impairs the person's normal mental  
10           faculties or ability to care for the person and  
11           guard against casualty; or

12           (B) Drug that impairs the person's ability to operate  
13           the vehicle in a careful and prudent manner;

14       (2) For a person arrested for being under the influence of  
15       alcohol and no other intoxicant, there is .05 or less  
16       grams of alcohol per one hundred milliliters or cubic  
17       centimeters of the person's blood or .05 or less grams



6 SECTION 2. New statutory material is underscored.

7 SECTION 3. This Act shall take effect upon its approval.

K. H.

Bahr  
Deputy Minister

  
Tom Barr

Bund Kaptani  
Nirde E. Louren

OL

Klaus Wenzel

Denny Coffman

Takachi Onu

[illegible]

JAN 16 2013

# H.B. NO. 66

**Report Title:**

Alcohol; Drugs; Driving Under the Influence of an Intoxicant;  
Conditions Prior to Release from Custody

**Description:**

Imposes conditions to ensure that persons arrested for driving under the influence of an intoxicant are sober prior to being released from custody.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE RYAN I. YAMANE, CHAIR  
HOUSE COMMITTEE ON TRANSPORTATION  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawai'i**

February 13, 2013

**RE: H.B. 66; RELATING TO DRIVING UNDER THE INFLUENCE OF AN  
INTOXICANT.**

Chair Yamane, Vice-Chair Ichiyama, and members of the House Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comments, expressing concern, regarding H.B. 66.

While the Department supports the intent of this bill, it does present significant legal issues. Generally speaking, once someone has posted bail for release, due process requires that they be released, unless they violate the terms or conditions of bail, or commit another offense.

Also, it may be difficult for law enforcement to determine when someone is no longer "under the influence," to the extent that they are required to gauge when someone is no longer "under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty." Section 291E-1, Hawaii Revised Statutes. We will defer to the Department of the Attorney General regarding any potential civil legal issues.

Thank you for this opportunity to testify on this matter.



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Blvd. 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813

**TED SAKAI**  
INTERIM DIRECTOR

**Martha Torney**  
Deputy Director  
Administration

**Max Otani**  
Deputy Director  
Corrections

**Keith Kamita**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 66  
A BILL FOR AN ACT RELATING TO  
DRIVING UNDER THE INFLUENCE OF AN INTOXICANT

By  
Ted Sakai, Interim Director  
Department of Public Safety

House Committee on Transportation  
Representative Ryan I. Yamane, Chair  
Representative Linda Ichiyama, Vice Chair

Wednesday, February 13, 2013, 10:00 AM  
State Capitol, Room 309

Chair Yamane, Vice Chair Ichiyama, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent, but with concerns**, of House Bill 66 which proposes to impose conditions to ensure that persons arrested for driving under the influence of an intoxicant are sober prior to being released from custody.

We fully recognize the danger that intoxicated drivers pose to the public. However, the Department has concerns relating to the language in House Bill 66 relating to the requirement that no person shall be released from custody unless the person is no longer under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner. The problem will be the ability for law enforcement to test if a person is still under the influence of a drug prior to releasing the individual. Many illicit drugs and pharmaceutical drugs (to include pharmaceutical controlled substances) can stay in your system for days, and some for months. Compliance with this law may require us to violate the Eight and Fourteenth Amendment. Rights of persons in our custody.

It may be more prudent to indicate that no person who is arrested for a violation of operating a vehicle while under the influence of any drug that impairs the person's ability to operate a vehicle in a careful and prudent manner shall be allowed to drive himself or herself home from the cellblock.

The Department also understands that this may require additional training and alcohol impairment detection equipment for our Deputy Sheriffs manning the airport and Keawe Street booking facilities.

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**

January 28, 2013, 1:15 p.m.

**H.B. No. 66: RELATING TO DRIVING UNDER THE INFLUENCE OF AN  
INTOXICANT**

Chair Yamane and Members of the Committee:

This measure would prohibit the police department from releasing a person arrested for operating a vehicle under the influence of an intoxicant (OVUII) under HRS §291E-61 or §291E-61.5 until that person is no longer under the influence of any alcohol or drug.

The Office of the Public Defender opposes H.B. 66.

Some individuals arrested for violating §§291E-61 and 291E-61.5 are released without charges. This measure would prohibit the police department from releasing these individuals until they were deemed to be sober, which would require monitoring from police department personnel to determine their blood alcohol content or level of impairment from a drug other than alcohol. First of all, a person who is not being charged with a criminal offense should be released immediately. And secondly, monitoring said individuals will require additional police personnel to fulfill the requirements of this measure. Finally, inadequate monitoring of these arrestees could subject the police departments to civil liability.

Arrestees who have posted bail or bond and arrestees who have been released without charges should be released immediately. Any further deprivation of their liberty is unconstitutional, and again, subjects the state to civil liability.

Thank you for the opportunity to be heard on this matter.

**Justin F. Kollar**  
Prosecuting Attorney



**Kevin K. Takata**  
First Deputy

**Rebecca A. Vogt**  
Second Deputy

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766  
808-241-1888 ~ FAX 808-241-1758  
Victim/Witness Program 808-241-1898 or 800-668-5734

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**TESTIMONY IN SUPPORT OF  
H.B. NO. 66  
A BILL FOR AN ACT RELATING TO DRIVING UNDER THE INFLUENCE OF AN  
INTOXICANT**

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

House Committee on Transportation

Wednesday, February 13, 2013  
10:00 a.m., Room 309

Honorable Chair Yamane, Vice-Chair Ichiyama, and Members of the House Committee on Transportation, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of House Bill No. 66.

The proposed measure in House Bill No. 66 is to add a new section to Chapter 291E, part I as it relates to conditions of a defendant prior to release if arrested for operating a vehicle under the influence of an intoxicant.

In the proposed new section, it states that a person arrested for violation of Section 291E-61 or 291E-61.5 is to be released from custody unless: 1) the person is no longer under the influence of any alcohol or drug; 2) there is .05 or less grams of alcohol per one hundred milliliters/cubic centimeters of the person's blood, etc.; or 3) eight hours have elapsed from the time of arrest.

By requiring sobriety prior to a person's release from jail ensures the safety of the public as well as the individual.

For these reasons, we strongly support House Bill No. 66. Thank you for the opportunity to testify on this matter.

Respectfully,

Justin F. Kollar  
Prosecuting Attorney  
County of Kaua'i



POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: [www.honolulupd.org](http://www.honolulupd.org)



KIRK W. CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE **SB-JL**

**February 13, 2013**

The Honorable Ryan I. Yamane, Chair  
and Members  
Committee on Transportation  
State House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

Subject: House Bill No. 66, Relating to Driving Under the Influence of an Intoxicant

I am Susan Ballard, Major of the Central Receiving Division, of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of House Bill No. 66, Relating to Driving Under the Influence of an Intoxicant.

The HPD is concerned that House Bill No. 66 may conflict with *State of Hawaii v. Perez*. In this decision, the State Supreme Court decided that a delay in allowing the defendant to bail was not justified. Further, the bill may violate the Eighth Amendment, which has been interpreted in some lower courts as a right to bail and may also violate the Fourteenth Amendment, which guarantees the right to due process.

In addition, this bill would require the police department to keep in custody those who have been arrested for operating a vehicle under the influence of an intoxicant (OVUII) until they are no longer under the influence of drugs or alcohol, their blood alcohol concentration (BAC) is 0.05 or less, or eight hours have elapsed from the time of arrest, whichever comes first.

The Honorable Ryan I. Yamane, Chair  
and Members

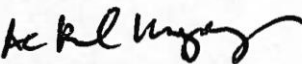
Page 2

February 13, 2013

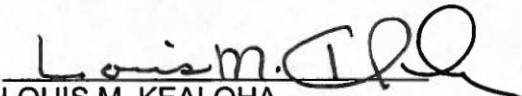
This would create a huge burden on the police department's detention facilities by requiring them to hold detainees longer, thus increasing the total number of people in custody at any one time. The police department's outer district stations would be especially taxed by this bill due to their smaller staff and capacity. The bill would also require our detention facility officers to perform multiple intoxilyzer tests on each detainee arrested for OVUII. In 2012, the Central Receiving Division alone performed over 3,600 intoxilyzer tests on individuals.

Thank you for the opportunity to testify.

Sincerely,

  
for SUSAN BALLARD, Major  
Central Receiving Division

APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police



BERNARD P. CARVALHO, JR.  
Mayor

GARY K. HEU  
Managing Director

## POLICE DEPARTMENT COUNTY OF KAUAI

3990 KAANA STREET, SUITE 200  
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DARRYL D. PERRY  
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MICHAEL M. CONTRADES  
Deputy Chief  
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February 12, 2013

The Honorable Ryan I. Yamane, Chair  
and Members  
Committee on Transportation  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii, 96813

SUBJECT: **HOUSE BILL NO. 66, RELATING TO STATEWIDE TRAFFIC CODE**

Dear Chair Yamane and Members:

The Kauai Police Department **supports** the passage of House Bill No. 66, Relating to Statewide Traffic Code.

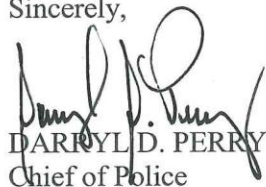
House Bill 66 adds a new section to Chapter 291E, part I requiring conditions of a defendant prior to their release if arrested for operating a motor vehicle under the influence of an intoxicant.

The proposed section for Chapter 291E-61, 291E-61.5, of the Hawaii Revised Statutes states, that a person arrested for this section is not to be released from custody unless: 1) the person is no longer under the influence of any alcohol or drug; 2) there is .05 or less grams of alcohol per one hundred milliliters/cubic centimeters of the person's blood, etc.; 3) eight hours have elapsed from the time of arrest.

The Kauai Police Department believes this bill will keep our roadways safer for both the arrested impaired driver and other innocent users of our thoroughfares by having the affects of the impairment to be reduced significantly before being released.

Thank you for the opportunity to testify.

Sincerely,

  
DARRYL D. PERRY  
Chief of Police

## ichiyama1 - Tate

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 11, 2013 12:28 AM  
**To:** TRNtestimony  
**Cc:** chad@hbl.org  
**Subject:** Submitted testimony for HB66 on Feb 13, 2013 10:00AM

### **HB66**

Submitted on: 2/11/2013

Testimony for TRN on Feb 13, 2013 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Chad Taniguchi		Support	No

Comments: The Hawaii Bicycling League supports this bill. Everyone has the right to be safe on Hawaii's roads. This means that anyone who is impaired, distracted, or otherwise unable to be a safe road citizen should lose their privilege to use the roads. Only by taking this kind of attitude can we as a society seriously hope to have zero deaths on our highways. As a bicycling organization composed of vulnerable road users, the last thing we need is someone operating a 2,000 - 15,000 pound weapon while impaired, to hit a pedestrian with 5 pound of clothes or bicyclist with 25 pounds of metal bike for protection. Sincerely yours, Chad Taniguchi Executive Director

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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## ichiyama1 - Tate

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 08, 2013 9:58 PM  
**To:** TRNtestimony  
**Cc:** hi0050@yahoo.com  
**Subject:** Submitted testimony for HB66 on Feb 13, 2013 10:00AM

### **HB66**

Submitted on: 2/8/2013

Testimony for TRN on Feb 13, 2013 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Hirata	Individual	Support	No

Comments: This law is long overdue. Having served 32 years in the Maui Police Department, I have seen many intoxicated drivers released on bail, only to be re-arrested within an hour of their release. For the protection of the public, and the person who is intoxicated, please pass this bill.

Please note that testimony submitted less than 24 hours prior to the hearing , improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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