



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:

S.B. NO. 1334, S.D. 1, RELATING TO OPERATING A VEHICLE WHILE INTOXICATED.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, March 3, 2015

TIME: 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Michael Q.Y. Lau, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

The purpose of this bill is to deter persons from driving while intoxicated. The measure would allow law enforcement officers to have motor vehicles seized and towed to a private tow yard in accordance with section 291C-165.5, Hawaii Revised Statutes (HRS), if the operator is intoxicated, or is caught driving while his or her driver's license was previously suspended or revoked for driving while intoxicated. Section 291C-165.5 requires the towing company to notify the lien holder and registered owner in writing within twenty days that, if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Neither the bill nor section 291C-165.5 has a provision to give an opportunity to contest whether the seizure was proper. Other statutes that authorize the seizure and sale of property provide for a hearing to contest the seizure. See, e.g., HRS § 200-42 (Supp. 2014) (vessel owner has ten days after receipt of written notice to request an administrative hearing); HRS § 712A-10 (9) (person claiming seized property may seek judicial review of the seizure and proposed forfeiture).

Towing a motor vehicle deprives the owner of an interest in property and the State must provide due process in connection with the towing. Stypmann v. City & County of San Francisco, 557 F.2d 1338, 1342 (9th Cir. 1977). Generally, due process requires a meaningful opportunity to be heard. The hearing, however, need not be held before a vehicle is towed. Goichman v. Rheuban Motor, Inc., 682 F.2d 1320, 1323-24 (9th Cir. 1982). A post-seizure

hearing within forty-eight hours satisfies the requirements of due process. Id. If the owner elects to recover the towed vehicle by paying the tow charges but still wishes to dispute the tow, the property interest at stake is the money paid. In this case, the State must still provide a hearing but the timing is not as critical and a delay as much as a month has been approved by the Supreme Court. City of Los Angeles v. David, 538 U.S. 715, 719 (2003).

The bill should include a provision that the notice sent by the towing company must inform the lien holder and registered owner that he or she may: (1) recover possession of the vehicle by paying the towing and other fees allowed by law and file a lawsuit for damages with any court of competent jurisdiction as allowed by law; or (2) either before or after the person has recovered possession of the vehicle by paying storage and applicable fees that have accrued, demand an administrative hearing to determine whether there was a sufficient factual and legal basis for impounding the vehicle.

Thank you for the opportunity to comment on this bill.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 1334 SD1, WITH CHANGES TO BILL LANGUAGE

A BILL FOR AN ACT RELATING TO OPERATING A VEHICLE WHILE INTOXICATED

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gilbert S.C. Keith-Agaran, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair

Tuesday, March 3, 2015, 9:15 a.m.
State Capitol, Conference Room 016

Honorable Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai‘i submits the following testimony in support of Senate Bill No. 1334 SD1, with changes to the Bill language.

This measure allows law enforcement officers to cause to be towed a motor vehicle if the operator is arrested or cited for various alcohol-related traffic offenses. Adds an exception for community caretaking. Provides definition of “community caretaking.”

These requested changes are based upon “Aliyah’s Law,” which helped to significantly reduce traffic fatalities on the Island of Hawai‘i. The Community Caretaking exception is an exception to the warrant requirements under the 4th and 14th Amendments to the U.S. Constitution. This language comes from case law – CADY v. DOMBROWSKI, 413 U.S. 433 (1973). We request the following changes be made to the language of the Bill:

§ 291E-____ ~~(a) When a law enforcement officer arrests, or issues a summons or citation to, an operator of a motor vehicle for:~~

- (a) Any police officer citing or arresting any driver for the following traffic violations may have the motor vehicle towed to a private tow yard at the registered owner’s expense pursuant to Hawai‘i Revised Statutes (“HRS”) 291C-165.5(a):

- (1) Driving without a license pursuant to HRS 286-102;

(2) Driving while license is suspended or revoked pursuant to HRS 286-132;

(3) Operating a vehicle under the influence of an intoxicant pursuant to HRS 291E-61;

(4) Habitually operating a vehicle under the influence of an intoxicant pursuant to HRS 219E-61.5;

(5) Operating a vehicle after license and privilege has been suspended or revoked for operating a vehicle under the influence of an intoxicant pursuant to HRS 291E-62;

(6) Operating a vehicle after consuming a measurable amount of alcohol; persons under the age of twenty-one pursuant to HRS 291E-64; or

(7) Fraudulent use of plates, tags, or emblems pursuant to HRS 249-11;

~~(b) Law enforcement officers shall not seize or tow any motor vehicle under this section~~

~~if:~~ **(b) Community caretaking considerations: Vehicles are not to be towed and/or impounded under the authority of this section under any of the following circumstances:**

(1) The motor vehicle is parked...

(2) The registered owner...

(3) The motor vehicle is legally...

(4) The motor vehicle is engaged...

(c) No county police...

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 1334 SD1, with the above changes to the language included. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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**TESTIMONY IN SUPPORT OF
SB1334 SD1 – RELATING TO OPERATING A VEHICLE WHILE INTOXICATED**

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

Senate Committee on Judiciary and Labor
March 3, 2015, 9:15 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, submits this testimony in SUPPORT of SB1334 – Relating to Operating a Vehicle While Intoxicated. This Bill allows law enforcement to cause to be towed a motor vehicle if the operator is arrested or cited for various alcohol-related traffic offenses.

We note that vehicle-related sanctions are supported by the National Highway Traffic Safety Administration and Mothers Against Drunk Driving for the reason that they are effective at deterring illegal alcohol-impaired driving.

We further note that removing the vehicles from public ways and roads subsequent to the arrest of a drunk driver will eliminate safety hazards both to other motorists and to individuals who are attempting to retrieve the vehicle in question.

Thank you very much for the opportunity to provide our testimony in SUPPORT of this Bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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CT-GR

OUR REFERENCE

March 3, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Keith-Agaran and Members:

SUBJECT: Senate Bill No. 1334, S.D. 1, Relating to Operating a Vehicle While Intoxicated

I am Calvin Tong, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu. The HPD supports the passage of Senate Bill No. 1334, S.D. 1, Relating to Operating a Vehicle While Intoxicated.

The passage of this bill will allow law enforcement officers to tow a motor vehicle if the operator is arrested or cited for various alcohol-related traffic offenses. Oftentimes the offending motorist is stopped on a freeway or other public roadway that may cause an obstruction or hazard to traffic. This bill will allow the offending motorist's vehicle to be towed without the need for his or her consent.

The HPD urges you to support Senate Bill No. 1334, S.D. 1, Relating to Operating a Vehicle While Intoxicated.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Calvin Tong".

Calvin Tong, Major
Traffic Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha".

Louis M. Kealoha
Chief of Police



Mothers Against Drunk Driving HAWAII
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March 3, 2015

To: Senator Gilbert S.C. Keith-Agaran, Chair, Senate Committee on Judiciary and Labor; Senator Maile S.L. Shimabukuro, Vice Chair; and members of the Committee

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

Re: Senate Bill 1334, S.D.1 – Relating to Operating a Vehicle While Intoxicated

I am Arkie Koehl, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of Senate Bill 1334, S.D.1. This measure allows the towing and impoundment of vehicles being driven by intoxicated drivers and by drivers whose license has been revoked for OVUII. MADD agrees with the amendment that clarifies that the towing should be at the owner's expense.

Towing and impoundment are penalties generically referred to as "vehicle sanctions." Such sanctions are favored by many impaired driving researchers, by organizations such as MADD, and by the National Highway Safety Traffic Administration (NHTSA). The threat of surrendering a vehicle, even temporarily, has been shown to not only deter illegal drivers, but also owners asked to let such a driver borrow their car.

During informal discussions held last year among participants from MADD, HPD, the Honolulu City Council and All Island Towing, many logistical issues were clarified, resulting in general consensus that a program of towing and impoundment could be executed realistically and effectively, at least on Oahu.

We encourage the committee to pass SB 1334, S.D. 1. Thank you for this opportunity to testify.