



**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 Public Safety & Military Affairs

January 31, 2008, 8:30 a.m.

RE: H.B. 2968: Relating To Pretrial Release

Chair Evans and Members of the Committee:

This measure would allow a court to order a person released on bail, recognizance or supervised release to be fitted with a remote alcohol and/or electronic tracking monitor at the defendant's expense.

The Office of the Public Defender opposes this measure. We believe that this bill discriminates against indigent defendants. There is no provision in this bill for an indigent fund to pay for the alcohol monitor and electronic monitoring. This bill will create two classes of defendants, those who remain in jail, unable to pay for an alcohol or electronic monitor, and those who are able to afford the monitors and are thus set free pending trial. Again, we believe this presents an equal protection problem.

We oppose H.B. 2968. Thank you for the opportunity to comment on this bill.

**Statement of Stephen K. Talpins
Vice President of Industry Relations
Alcohol Monitoring Systems, Inc.
Regarding HB 2968**

Thank you for holding a hearing on HB 2968, relating to pretrial release. I apologize for my inability to attend the hearing and thank you for the opportunity to present our views through this written statement. My name is Stephen K. Talpins. I am the Vice President of Industry Relations for Alcohol Monitoring Systems, Inc., the manufacturer of the Secure Continuous Remote Alcohol Monitor (SCRAM) device.

The DUI Problem

Nationally, over 12,000 people are killed in crashes where at least one driver has a blood alcohol level (BAC) of 0.08 or higher each year.¹ In 2006, 63 people were killed in crashes in Hawaii where at least one driver had a BAC that exceeded the illegal limit.² This represents an increase of 16.7% from 2005. These numbers are, of course, unacceptable. And yet, they do not tell the entire story. Drunk drivers visit unimaginable pain and suffering on surviving victims, their families and friends. As a former prosecutor and former MADD National Director of Public Policy, I've witnessed the devastation first hand. We can and should do more.

HB 2968

Section 804-7.1 allows judges to hold an offender pretrial if "there exists a danger that the defendant will commit a serious crime." Still, the vast majority of DUI offenders are released on bond. Subsection (3) prohibits offenders out on bond from "indulging in intoxicating liquors." For DUI offenders, who already have proven an inability or unwillingness to consume alcohol safely, this is a critical requirement. Unfortunately, there is no effective way to monitor alcohol use without ongoing testing. HB 2968 would give meaning to this proscription and protect the public by authorizing judges to require offenders "at the defendant's own expense, to submit to alcohol testing or monitoring for alcohol use by a secure continuous remote alcohol monitor."

What is a Continuous Alcohol Monitor? How does it work?

Remote alcohol monitors, such as the Secure Continuous Remote Alcohol Monitor (SCRAM) manufactured by Alcohol Monitoring Systems, Inc., allow courts to continuously monitor a wearer's alcohol use 24 hours a day, seven days a week.

People excrete approximately 1% of the alcohol they drink through their sweat. Transdermal alcohol testing devices work by sampling the vapor created when sweat evaporates. SCRAM

¹ 2006 *Traffic Safety Annual Assessment – Alcohol Related Fatalities at 2*, (National Highway Traffic Safety Administration (NHTSA) August 2007).

² *Id.* at 5.

takes a sample every half hour and tests it for alcohol content. The device is entirely passive; it automatically collects the and transmits the data to a central source for analysis. The device is tamper resistant and detects the vast majority of significant drinking events with little or no risk of a false positive confirmation.

The concept that alcohol and other substances are transported through the skin may be relatively new to some, but it is well recognized in the health sciences. In fact, physicians, pharmacists and others routinely recommend patches or creams that deliver medications transdermally for every day ailments including nicotine addiction, muscle pain, and seasickness and for more serious concerns where there is little to no margin for error like chest pain, high blood pressure, and birth control.

SCRAM measures alcohol content using the same fuel cell used in Draeger Alcotest devices. The National Highway Traffic Safety Administration (NHTSA) includes these devices on the "Conforming Products List of Evidential Breath Measurement Devices." See 69 Fed. Reg. 42237 (July 14, 2004). Over 50,000 of these devices are used worldwide.

SCRAM fulfills the longstanding need to objectively assess and monitor people with alcohol misuse issues. Criminal justice professionals have embraced SCRAM since its introduction in 2003. Over 1,500 courts and agencies in 44 states use SCRAM. We have monitored over 50,000 offenders have worn SCRAM and conducted over 100 million tests. Over 7,000 people wear our device on any given day.

SCRAM was listed among the "10 Promising Sentencing Practices," in a "compendium of promising sentencing practices proposed at the NHTSA National DWI Sentencing Summit at the National Judicial College" in March 2004³ and among the National Center for State Courts' "Future Trends in State Courts" in 2006. See V.E. Flango and C.R. Flango, "What's Happening with DWI Courts," Future Trends in State Courts (NCSC 2006).

SCRAM has been peer reviewed by traffic safety professionals and scientists, who have studied SCRAM in the laboratory and in the field. They have demonstrated that SCRAM is difficult to circumvent and detects most drinking events of significance. The device is court tested as well. Over 20 judges have considered SCRAM's reliability; all but one found that SCRAM meets legal standards of admissibility.

Five states already have passed legislation incorporating remote alcohol monitoring; 10 are considering legislation this year.

We would be happy to provide this committee with the relevant studies, literature and case law if it so desires.

Conclusion

³ See "Promising Sentencing Practice No. 6: Electronic Monitoring and SCRAM," Strategies of Addressing the DWI Offender: 10 Promising Sentencing Practices (NHTSA 2005).

We've come a long way since the early 1980's when driving drunk was seen as a rite of passage. Still, DUI remains a problem. Society can, and should, do more. With modern technology, we can address drunk drivers in ways we never thought possible. We can assess offenders and tailor sanctions to meet their needs while simultaneously protecting the public.

Thank you for your consideration of this important problem and this promising bill.

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