

LINDA LINGLE  
GOVERNOR OF HAWAII



**LATE**

CHIYOME LEINAALA FUKINO, M.D.  
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In reply, please refer to:  
File:

**Committee on Transportation**

**SB 3234 SD2, RELATING TO HIGHWAY SAFETY**

**Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health**

**March 10, 2008, 10:00 a.m.**

1 **Department's Position:** The Department of Health supports the intent of this bill but, respectfully,  
2 would like to delete the term "Underwriters Laboratories Inc." from Section 3, because the term could  
3 be interpreted as partial toward a particular brand of certified testing laboratories. The Department of  
4 Health defers to the Department of Transportation regarding the establishment of an ignition interlock  
5 program and provided that this measure does not adversely impact the spending priorities as set forth in  
6 our Executive Supplemental Budget.

7 Ignition interlocks are an effective way of increasing the safety of all road users by mechanically  
8 preventing convicted drunk drivers from operating a vehicle with alcohol in their system.

9 **Fiscal Implications:** Appropriates general funds for FY 2008-2009 for the purpose of supporting the  
10 work of an ignition interlock implementation task force staffed by DOT. Also sets up an ignition  
11 interlock special fund administered by the director of DOT for indigents. The special fund is funded by  
12 a surcharge that is assessed when the ignition interlock is installed. All other violators pay for their own  
13 ignition interlock installation and maintenance.

14 **Purpose and Justification:** States that have enacted interlock legislation have shown a drop in repeat  
15 DUI arrests by 50 to 95 percent. Hawaii is one of only 5 states without an ignition interlock law.

1 Alcohol related traffic fatalities remain tragically high in Hawaii; in 2006, 41 percent (58  
2 drivers) of all drivers involved in traffic fatalities tested positive for alcohol. Among drivers involved in  
3 fatal crashes, those who tested positive for alcohol were at least 3 times (6% vs. 2%) more likely than  
4 other drivers to have had a previous conviction for DUI (Fatal Analysis Reporting System, National  
5 Highway Traffic Safety Administration - NHTSA). In 2006 there were over 6,729 DUI arrests in  
6 Hawaii. Based on a study conducted in 2005 by the City and County of Honolulu, over one fourth  
7 (28%) of DUI arrestees have been previously arrested for a DUI. NHTSA and Center for Disease  
8 Control and Prevention (CDC) conclude, when installed and in use, ignition interlocks are effective for  
9 reducing alcohol related arrests and crashes.

10 SB 3234 SD2 addresses the key recommendations that were made by the Interlock Working  
11 Group which was established after the legislature passed resolution HCR 28, H.D.1 in 2007 requesting  
12 the Department of Transportation study the feasibility of requiring vehicle ignition interlock devices for  
13 convicted drunk driving offenders. Recommendations from that working group include creating  
14 interlock laws with mandatory sentencing for all convicted impaired driving offenders, a varying  
15 sentence length dependant on the offender's compliance and establishing penalties for tampering and  
16 circumvention of interlock devises.

17 Thank you for the opportunity to testify.



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3234, S.D. 2, RELATING TO HIGHWAY SAFETY.

**BEFORE THE:**

HOUSE COMMITTEE ON TRANSPORTATION

**DATE:** Monday, March 10, 2008 **TIME:** 10:00 AM

**LOCATION:** State Capitol Room 309  
*Deliver to: committee clerk, Room 441, 5 copies*

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Mark K. Miyahira, Deputy Attorney General

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Chair Souki and Members of the Committee:

The Department of the Attorney General appreciates the intent of this measure, but is concerned about certain provisions within the bill.

The purpose of this bill is to require installation of an ignition interlock device on the vehicle of a person arrested for operating a vehicle under the influence of an intoxicant that will prevent the person from starting or operating the vehicle with more than a minimal alcohol concentration while the person's case is pending and the person's license is revoked pursuant to chapter 291E, Hawaii Revised Statutes. This bill will also provide for certification of these devices and vendors and creates an indigent fund to pay for the installation and operation of these devices in vehicles of the indigent. The bill will also establish a task force to plan for the implementation of the ignition interlock device program.

The Department appreciates the intent of this measure to establish an ignition interlock implementation task force and a 2010 effective date. These provisions will permit the task force and the Legislature to resolve a number of outstanding issues prior to the implementation of the ignition interlock device program.

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The Department is concerned about certain provisions currently within the bill.

In section 2, the bill amends section 287-20, Hawaii Revised Statutes, to exempt a person whose license has been suspended pursuant to section 291E-61(b)(1) through (b)(4), Hawaii Revised Statutes, from having to furnish and maintain proof of financial responsibility, in order to be able to operate a motor vehicle. This amendment was made in response to concerns raised by the Department of the Attorney General and the Office of the Public Defender that section 287-20 may prevent people from being able to drive their vehicle even after being ordered to install an ignition interlock device into their vehicle. However, the amendment will not solve the problem because it only exempts a person whose license has been suspended pursuant to section 291E-61(b)(1) through (b)(4). However, as section 8 of this bill amends section 291E-61 so as to require a revocation of license and privilege to operate a vehicle, the amendment in section 9 will not exempt individuals convicted under section 291E-61(b)(1) through (b)(4) from having to provide financial responsibility pursuant to section 287-20 before being able to operate a motor vehicle.

Furthermore, the Department would like to point out that an amendment to section 287-20, exempting all individuals convicted under section 291E-61(b)(1) through (b)(4) from having to provide financial responsibility, may have serious ramifications on the auto insurance industry. As this issue has not been addressed, the Ignition Interlock Implementation Task Force should be required to review this issue.

In section 5, on page 13, lines 14-15, the bill amends the revocation period of a respondent, whose records shows three or more prior alcohol or drug enforcement contacts during a ten-year period, from a lifetime revocation to a maximum revocation of ten years. The bill also shortens the time period when the prior alcohol or drug enforcement contacts may occur from ten years to five years.

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The Department opposes these changes as these individuals pose the greatest risk to the safety of the community. If the three or more prior alcohol or drug enforcement contacts during the five years preceding the notice of the current administrative revocation are the result of three or more convictions for operating under the influence of an intoxicant within a five-year period, this individual would be currently facing a charge of habitually operating a vehicle under the influence of an intoxicant, a class C felony. A person convicted under this felony charge would be facing a mandatory license revocation for a period of not less than one year but not more than five years and would not be permitted to drive during this period of revocation in any vehicle, not even a vehicle equipped with an ignition interlock device. Therefore, this amendment could directly conflict with concurrent criminal sanctions. As such, there seems to be no logical reason to downgrade the administrative penalty for these cases from a lifetime revocation to a maximum ten-year revocation.

In section 8, the bill amends section 291E-61, by increasing the period of license revocation. Therefore, for example, a first time highly intoxicated offender would be facing a six-month to one-year license revocation under the administrative driver's license revocation process but would be facing a two-year license revocation pursuant to a criminal conviction. However, section 291E-61(c)(3), states in part that "No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act." Therefore, an increase in the period of a license revocation pursuant to 291E-61 will have little effect if the person has already been ordered to serve a shorter administrative revocation.

In section 8, the bill also amends section 291E-61, to authorize a court to place a criminal defendant on probation. However, section 706-624(2)(a), Hawaii Revised Statutes, states that

as a further condition of a sentence of probation, a defendant may be sentenced to serve "five days in petty misdemeanor cases." Therefore, placing a defendant on probation would clearly conflict with the sentencing scheme in section 291E-61(b)(4)(C), where a defendant must be sentenced to serve no less than ten days but not more than thirty days of imprisonment. A sentence of probation may also conflict with the sentencing scheme in section 291E-61(b)(3)(B)(ii), where a defendant may be sentenced to serve no less than five days but not more than fourteen days of imprisonment.

In section 10, this bill amends section 804-7.1, Hawaii Revised Statutes, to require the court to order a defendant, as a condition of bail, to install an ignition interlock device within 15 days, on any vehicle that the defendant will operate during the defendant's release on bail. There are two minor issues that should be clarified. The amendment may be read to apply only in cases where the defendant has been released on bail instead of also applying to cases where the defendant was released on recognizance or supervised release. The amendment also authorizes the court to issue a permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the "revocation period." This appears to be a mistake as we assume that the author of the bill intended the defendant to be allowed to drive only while the criminal case was pending.

Therefore, the Department recommends that section 10, on page 36, lines 12 through 22, be amended to have subsection (c) of section 804-7.1, Hawaii Revised Statutes, read as follows:

"(c) In addition to the conditions in subsection (b) and except as provided in subsection (d), when the defendant is charged with an offense under section 291E-61, the court shall order as a condition of release on bail, recognizance, or supervised release that, within fifteen days, the defendant install an ignition interlock device, as defined in section 291E-1, on any vehicle that the

defendant will operate during the defendant's release on bail, recognizance, or supervised release. Upon proof that the defendant has installed an ignition interlock device in the defendant's vehicle, the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the period of defendant's release on bail, recognizance, or supervised release."

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DEPARTMENT OF THE PROSECUTING ATTORNEY  
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DOUGLAS S. CHIN  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE JOSEPH SOUKI, CHAIR  
HOUSE COMMITTEE ON TRANSPORTATION**

Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

March 10, 2008

**RE: S.B. 3234, S.D. 2; RELATING TO HIGHWAY SAFETY.**

Chair Souki and members of the House Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of S.B. 3234, S.D. 2.

The purpose of this bill is to create a statutory framework for the imposition of an ignition interlock device upon vehicles owned or driven by person arrested for impaired driving.

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 have concerns with some aspects of this bill, we understand this bill to be a framework or starting point for further discussions. So if further opportunities are offered to discuss these issues as well as fix, amend or fine tune the bill prior to the 2010 effective date, we support the passage of S.B. 3234, S.D. 2. We fully support the portion of the bill which establishes the Hawaii ignition interlock task force which brings the various stakeholders and constituencies together for further discussion and to address specific issues relating to the implementation of an ignition interlock program and we are willing to sit on the task force and assist the work of the task force.

In closing, we would like to thank the legislature for the opportunity to sit on the Ignition Interlock Working Group established by H.C.R. 28, H.D. 1 of 2007. The Working Group was



able to identify and reach consensus on several major features that an ignition interlock law should have as well as identifying issues which required further discussion.

Thank you for this opportunity to testify.

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