

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Finance

HB 981 HD1, RELATING TO HIGHWAY SAFETY

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

February 27, 2009, 10:00 a.m.

1 **Department's Position:** The Department of Health supports HB 981 HD1. The Department of Health
2 defers to the Department of Transportation regarding the establishment of an ignition interlock program
3 and provided that this measure does not adversely impact the spending priorities as set forth in our
4 Executive Supplemental Budget.

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

7 **Fiscal Implications:** This bill sets up an ignition interlock special fund administered by the director of
8 transportation for indigents. The special fund is funded by a surcharge that is assessed when the ignition
9 interlock is installed. All other violators pay for their own ignition interlock installation and
10 maintenance.

11 **Purpose and Justification:** Alcohol related traffic fatalities remain tragically high in Hawaii; in 2007,
12 50 percent (69 drivers) of all drivers involved in traffic fatalities tested positive for alcohol. Among
13 drivers involved in fatal crashes, those who tested positive for alcohol were at least 3 times (6% vs. 2%)
14 more likely than other drivers to have had a previous conviction for DUI (Fatal Analysis Reporting
15 System, National Highway Traffic Safety Administration - NHTSA). In 2008 there were 6,975 DUI

1 arrests in Hawaii. Based on a study conducted in 2005 by the City and County of Honolulu, over one
2 fourth (28%) of DUI arrestees have been previously arrested for a DUI. NHTSA and the Centers for
3 Disease Control and Prevention (CDC) conclude, when installed and in use, ignition interlocks are
4 effective for reducing alcohol related arrests and crashes.

5 HB 981 HD1 addresses the key recommendations that were made by the Ignition Interlock Task
6 Force, which was established after the legislature passed Act 171 in 2008. Act 171 requested the
7 Department of Transportation develop an Ignition Interlock Task Force to study issues identified in Act
8 171 during the interim and make recommendations for additional legislation necessary to implement use
9 of the ignition interlock devices. Recommendations from the Ignition Interlock Task Force include
10 creating interlock laws with mandatory sentencing for all convicted impaired driving offenders,
11 establishing penalties for tampering and circumvention of interlock devices, and stricter laws and
12 increased enforcement to deter those who would try to avoid installation.

13 Thank you for the opportunity to testify.

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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IN REPLY REFER TO:

February 27, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 981 HD 1

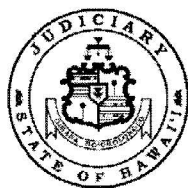
COMMITTEE ON FINANCE

On behalf of the Hawaii Ignition Interlock Implementation Task Force, the Department supports the passage of House Bill 981 HD 1 with the following amendments:

- Reinstating the section addressing drivers who refuse to take a chemical test. The refusal should be a criminal offense rather than a civil matter. The Task Force believes that making a refusal a criminal offense will encourage arrestees to submit to testing and even if they fail the test, their ignition interlock period will be only half as long as it would be if they refused the test. The Task Force is concerned that because the driver's license revocation period for refusal will include a requirement to install an interlock device, arrestees may be more tempted to refuse to be tested because the interlock will allow them to drive throughout their revocation period, even though it is longer than that imposed for people taking and failing the chemical test. Sixteen other states across the nation criminalize DUI offenses.
- Allowing the Director of Transportation to express authority to create and promulgate administrative rules [beyond that stated in Sec. 291E-6(e)].
- Extending the Ignition Interlock Implementation Task Force existence until January 1, 2011 to provide a smooth transition of the implementation of the ignition interlock program.
- The amendment to Section 11 which affects the Ignition Interlock implementation date is not clear. The January 1, 2011 implementation date was selected to provide time for administrative rules to be written, approved, and promulgated and for the eventual vendor to have time to establish service centers in all counties.

Costs associated with establishing an ignition interlock program in the state are unknown at this time and will be included in legislative bills prepared for the 2010 session.

A strong ignition interlock bill will prevent alcohol related crashes and reduce fatalities in the state. The Task Force strongly recommends the passage of HB981, HD 1 with the suggested amendments.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Finance

The Honorable Marcus R. Oshiro, Chair

The Honorable Marilyn B. Lee, Vice Chair

Friday, February 27, 2009, 10:00 a.m.

State Capitol, Conference Room 308

by

Walter M. Ozawa

Deputy Administrative Director of the Courts

Bill No. and Title: House Bill No. 981, H.D. 1, Relating to Highway Safety

Purpose: To enact recommendations made by the ignition interlock implementation task force pursuant to Act 171, Session Laws of Hawaii 2008.

Judiciary's Position:

The Judiciary takes no position on this measure but will monitor ongoing ignition interlock implementation task force recommendations to determine fiscal and other impacts on program operations.

Of particular note are the provisions in this bill that authorize the court to place a criminal defendant on probation. SECTION 6(b)(2) places an offender on probation for not less than eighteen months nor more than two years and SECTION 6(b)(3) places an offender on probation for two years. SECTION 9(1)(c)[sic] amends Section 706-603 to allow an offender to be placed on probation for eighteen months to two years upon a conviction under 291E-61(b)(2) and two years upon a conviction under 291E-61(b)(3). Currently, the Adult Client Services Branch (adult probation) supervises over 19,000 probationers in the State of Hawaii. We try to ensure public safety by focusing our resources on the highest risk offenders, which include sex offenders, domestic violence offenders, and serious drug offenders, so they do not re-offend. Due to the current economic situation, the probation office is already operating with numerous vacant positions and probation officers are being taxed to their limits. This provision will require that the probation office supervise approximately 3,000 more adult offenders, which will strain our



House Bill No. 981, H.D. 1, Relating to Highway Safety.
House Committee on Finance
February 27, 2009
Page 2

already overburdened personnel and resources, necessitating an increase in staff and funding. It is estimated that 3,000 new offenders would require an additional 10 probation officers who would be carrying caseloads of 300 clients. If these offenders are supervised by the Adult Client Services Branch, adequate funding will be required.

The Judiciary is pleased to continue to work with the task force to address all concerns.

Thank you for the opportunity to comment on House Bill No. 981, H.D. 1.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MUPI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZBLU
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DEPUTY CHIEFS

OUR REFERENCE TTN-LC

February 27, 2009

The Honorable Marcus R. Oshiro, Chair
and Members
Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 981, H.D. 1, Relating to Highway Safety


I am Major Thomas Nitta of the Traffic Division, Honolulu Police Department (HPD), City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 981, H.D. 1, Relating to Highway Safety for the implementation of an ignition interlock device to prevent drivers arrested for operating under the influence of alcohol, to operate a vehicle while under the influence. The recommendations under House Bill No. 981, H.D. 1, resolve many issues under Act 171, considering all persons in a realistic approach to these issues.

The Honolulu Police Department also supports the criminalization of the refusal to take a breath or blood test.

Thank you for this opportunity to testify.

Sincerely,


THOMAS T. NITTA, Major
Traffic Division

APPROVED:


for: BOISSE P. CORREA
Chief of Police

Serving and Protecting With Aloha

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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DOUGLAS S. CHIN
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THE HONORABLE MARCUS OSHIRO, CHAIR
HOUSE FINANCE COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i

February 27, 2009

RE: H.B. 981, H.D. 1; RELATING TO HIGHWAY SAFETY.

Chair Oshiro and members of the House Committee on Finance, the Department of the Prosecuting Attorney submits the following testimony in general support of H.B. 981, H.D. 1 but with several suggested amendments.

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. To this end, the legislature established a task force which was mandated to review this issue and to make recommendations for the implementation of an ignition interlock program. A wide range of stakeholders were included in the task force including our department, which was given the opportunity to participate in and give input to the task force.

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.

We do have a concern with one aspect of this bill, primarily with recommendation of the Ignition Interlock Implementation Task Force to eliminate the lifetime revocation of driver's license for drivers that have had four or more arrests for Operating a Vehicle Under the Influence of an Intoxicant during a ten year period; a five to ten year revocation period with an ignition interlock is proposed in place of the lifetime revocation.

Our concerns are that these drivers have repeatedly chosen to drive while impaired despite escalating sanctions for their behavior and multiple opportunities for assessment and treatment for their substance abuse issues. Due to their repeated inability or unwillingness to modify their behavior and refrain from drinking and driving, these drivers are extremely dangerous and pose a significant risk of injury or death to others. We are concerned that the ten year revocation period as proposed by the task force does not provide sufficiently stringent safeguards for preventing the relicensing, after the ten year revocation is completed, of those drivers who have: 1) not had a consistent and extended record of sobriety; or 2) who not reliably refrained from driving after use of an intoxicant. For these reasons, we have chosen to respectfully dissent from the majority's recommendation that the lifetime revocation of driver's license for repeat impaired drivers be eliminated and replaced with a five to ten year revocation period with ignition interlock.

We would also respectfully request that Section 2 of H.B. 981, which was deleted from the H.D. 1, be reinserted in H.B. 981. This section created a petty misdemeanor offense for refusing to submit to a breath, blood or urine test. We believe this provision is important in ensuring that there is sufficient incentive for defendants to take a breath, blood or urine test to establish a BAC level, which is the best evidence of the driving under the influence offense. Under the current scheme, the incentive for drivers to take the test is the fact they will receive a shorter period of suspension and they will be eligible for a conditional license which will permit them to legally drive when necessary for the purposes of work or treatment; refusal to take the test will result in a longer period of revocation without the possibility of a conditional license. However, under the ignition interlock program proposed in S.B. 981, S.D. 1, everyone will be permitted to legally drive for various revocation periods with an ignition interlock permit whether or not they refuse to take a breath, blood or urine test for alcohol or drugs. We feel that some drivers, knowing that they will still be able to legally be able to drive with an interlock permit, may refuse to take a blood, breath or urine test in hopes of eliminating the best evidence for a criminal charge of driving under the influence and avoiding the conviction for driving under the influence. Providing the criminal charge of refusing to take the test will ensure there is no benefit to the driver for refusal.

Finally, we'd also like to ask that the bill also be amended to include express statutory authority for the Department of Transportation to promulgate administrative rules and regulations necessary to implement and oversee the ignition interlock program.

We strongly support the concept of ignition interlocks and respectfully request your favorable consideration of this bill and our proposed amendments. Thank you for the opportunity to testify.

Hawaii Ignition Interlock Implementation Task Force
Established by Act 171 – Twenty-fourth Legislature – Regular session of 2008

February 27, 2009

To: Representative Marcus R. Oshiro, Chair – House Committee on Finance;
Representative Marilyn B. Lee, Vice Chair; and members of the committee

From: Carol McNamee, Vice Chairman – Hawaii Ignition Interlock Implementation
Task Force

Re: House Bill 981, HD 1 – Relating to Highway Safety

I am Carol McNamee, Vice Chairman of the Ignition Interlock Implementation Task Force, speaking in support of House Bill 981, HD 1, Relating to Highway Safety.

The Hawaii Ignition Interlock Implementation Task Force was established by Act 171 of the 2008 Legislative Session. Act 171 provided the first step in establishing a system for increasing highway safety by requiring drivers arrested for operating a vehicle under the influence of an intoxicant (OVUII) to install an ignition interlock device in their vehicle. The interlock device, wired into the vehicle's ignition system, prevents the vehicle from starting when it detects alcohol in the breath of the driver after the person blows into its mouthpiece.

Not only does an ignition interlock system prevent an alcohol impaired person from getting on the road, it records the history of each attempted start – successful or unsuccessful – and each retest the driver is required to take after the vehicle is underway. This information is downloaded on a regular schedule at one of a number of service centers which will be set up throughout the state. Interlock technology prevents impaired drivers from getting on the road while also giving OVUII offenders the privilege of legally driving as long as they are operating an interlock equipped vehicle. This system enhances public safety while allowing the compliant offender to drive anywhere, anytime.

The Interlock Ignition Implementation Task Force was given the job of amending Act 171 to provide additional information necessary for the establishment of a workable interlock system in Hawaii with the goal of having the interlock system go into effect by July 1, 2010.

The major recommendations of the Ignition Interlock Task Force have been incorporated into HB 981. Subsequently several amendments have been made by the House Judiciary Committee including the change of the effective date to January 1, 2011. The Task force is in agreement with the Judiciary Committee's amendments with the exception of one which is contrary to the Task Force's recommendation. That recommendation is:

- Drivers who refuse to take a chemical test should be required to install an interlock device on their vehicles for a time period twice the length of time required for those who take the chemical test and fail it, according to the periods imposed for a first, second, or third law enforcement contact. The Task Force is also recommending that refusing to submit to testing be made a criminal offense rather than a civil matter.

The Judiciary committee amended HB 981 by deleting the part of the bill on page 5, lines 10 to 12, which stated that: “Refusal to submit to a breath, blood, or urine test as required by part II is a petty misdemeanor.” The Task Force respectfully requests this committee to re-insert that paragraph back into the bill to strengthen the arrestee’s motivation to submit to the OVUII chemical test. If this section was deleted because of concerns about any constitutional right to refuse the chemical test, that concern has been addressed in “*Schmerber vs. California*”- 1966, as follows:

The Court found that the Fifth Amendment did not prohibit blood tests to determine intoxication levels, because the Fifth Amendment applies to only interrogation and testimony and because the results of blood tests constituted neither testimony nor evidence of a confession or other communicative act. In addition, the Court concluded that the blood test did not constitute an unreasonable search and seizure given the circumstances.

The Task Force believes that making a refusal a criminal act will motivate an arrestee to take the test. Otherwise, the sanction of using an interlock device for a longer time period than would be imposed if he took the test and failed, might not be a severe enough sanction by itself to avoid an increase in the State’s refusal rate. Studies show that arrestees who are in a high risk category are more likely to refuse – the very people for whom taking the test and having a known BAC level is most important for prosecution. Sixteen states have now made refusing the chemical test for DUI a separate crime.

In addition to the requested amendment above, the Task Force also asks that:

1. DOT be given express authority to create and promulgate administrative rules (beyond that stated in Sec. 291E-6(e)).
2. Because of the proposed change in the implementation date to January 1, 2011, the Task Force asks for authority to exist until January, 2011 rather than June 30th, 2010.

Thank you for the opportunity to testify in support of this important legislation which brings Hawaii one step closer to implementing an Ignition Interlock system for identified impaired drivers.



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Friday, February 27, 2009
10:00 a.m.

HB 981, HD1

Chair Oshiro, Vice Chair Lee and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council attended many of the Task Force meetings and we are appreciative of the opportunity to participate. While we support efforts to reduce drunk driving, we continue to **oppose provisions** in Act 171 (SLH 2008) and **H.B. 981, HD1** which expand the proof of financial responsibility (SR 22) exemptions to include first offense highly intoxicated drivers. HIC members believe that SR 22s for intoxicated driving should be reinstated as it serves as a tool for the insurance industry to properly price the risk of future bad driving behavior. If bad drivers do not pay their fair share, good drivers will pay more.

In addition, without the SR 22 requirement, insurers may request more traffic abstracts, which will increase insurers' administrative costs and these costs will eventually be passed on to the consumer. The cost of a single traffic abstract is a statutory minimum

of \$7 and as high as \$10 for those insurers that use a vendor to access driving record information.

Thank you for this opportunity to testify.



MADD
Activism | Victim Services | Education™

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February 27, 2009

To: Representative Marcus R. Oshiro, Chair – House Committee on Finance;
Representative Marilyn B. Lee, Vice Chair; and members of the Committee

From: Arkie Koehl — Chair, Public Policy, MADD - Hawaii

Re: House Bill 981, HD 1 – Relating to Highway Safety

I am Arkie Koehl, offering testimony on behalf of the Hawaii members of Mothers Against Drunk Driving in strong support of HB 981 HD1 which reflects the recommendations of the Interlock Implementation Task Force created in last year's Act 171, the ignition interlock law.

We respectfully ask the Committee to restore Section 2 of H.B. 981, which was deleted from the H.D. 1. This section created a petty misdemeanor offense for refusing to submit to a breath, blood or urine test, a necessary measure to ensure that there is sufficient incentive for defendants to take a test to establish a BAC level, which is the best evidence of OVUII. The Task Force believed that simply sentencing a refusing offender to a longer interlock period is unlikely to provide sufficient incentive.

MADD agrees with the U.S. Supreme Court's 1966 ruling that since submission to testing violates neither due process, nor privilege against self-incrimination, nor constitutes an unreasonable search or seizure, refusal to submit is a sanctionable offense. MADD further agrees with the large number of states who hold that submitting to testing clearly falls under the implied consent principle of drivers licensing — that is, a drivers license is a privilege, not a right, and the state may require testing as a condition of that privilege.

We hope the Committee will endorse the Task Force recommendation that test refusal be a petty misdemeanor offense, and restore it to HB 981, HD 1.

Thank you for the opportunity to testify.