

*THE JUDICIARY, STATE OF HAWAII*

**Testimony to the Twenty-Fifth Legislature, Regular Session of 2009**  
Senate Committee on Judiciary and Government Operations  
The Honorable Brian T. Taniguchi, Chair  
The Honorable Dwight Y. Takamine, Vice Chair

Thursday, April 2, 2009, 10:15 a.m.  
State Capitol, Conference Room 016

by  
Walter M. Ozawa  
Deputy Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 981, H.D. 2, S.D. 1, Relating to Highway Safety

**Purpose:** Makes amendments to Hawaii Revised Statutes and Act 171, Session Laws of Hawaii 2008, reflecting recommendations of Ignition Interlock Implementation Task Force.

**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. 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 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



House Bill No. 981, H.D. 2, S.D. 1, Relating to Highway Safety.  
Senate Committee on Judiciary and Government Operations  
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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. 2, S.D. 1.



**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 Senate Committee on  
Judiciary and Government Operations**

April 2, 2009, 10:15 a.m.

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

Chair Taniguchi and Members of the Committee:

The Office of the Public Defender supports the intent of this measure, but has concerns about specific portions of this bill.

The installation of an ignition interlock device would allow a person charged with operating a vehicle under the influence of an intoxicant to immediately regain his or her driving privileges and rather than suffer from a license suspension or revocation. The ignition interlock device would "force" this person to change his or her behavior by requiring the driver to either be sober or utilize a designated driver (friend, relative, taxicab or public transportation). The requirement of a digital camera would also protect against using a sober "proxy" blowing into the device for an intoxicated driver, and protect an innocent driver from being blamed for being "locked out" by another person who blew into his device.

**CONCERNS:**

Indigency Criteria:

HB 981 defines an indigent person as an individual whose income is less than a fixed percentage of the official poverty line as set by the U.S. Department of Human Services, or an individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act. An inflexible income limit tied to the official poverty line does not take into account the higher cost of living in Hawaii and special circumstances (high debt and expenses) for each individual. The court and/or ADLRO administrator should be able to declare a defendant an indigent for the purposes of the ignition interlock on a case-by-case basis. Assuming we adopt one hundred and twenty-five percent of the poverty line as our fixed percentage, a defendant with a family of four earning more than \$26,500.00 will have to pay for the ignition interlock out of his or her own pocket. If this person has circumstances which either places him in negative income or high debt each month (medical expenses, etc.), a judge or hearings officer should be able to make an exception to the income limit and declare an individual an indigent for the purposes of this act. The failure to make such exceptions will create a class of people who will be unable to install ignition interlock devices on their automobiles.

### Ten-year Look-back Period

The Office of the Public Defender opposes an extension of the look-back period from five years to ten years. We believe that a ten-year look-back period is appropriate for a person charged with the felony charge of Habitual OVUII (committing an offense within ten year of being convicted of three prior OVUII cases). However, we believe that a ten-year look-back period is too long for non-felony cases.

### Probationary Periods:

The Office of the Public Defender opposes probationary terms and favors a proof of compliance model for OVUII offenses for the following reasons:

1. Currently, OVUII offenders are not placed on probation, but are monitored by the court at proof of compliance hearings. These hearings are attended by the offender, without the appearance of a Deputy Public Defender. Defendant's who are required to attend probation review hearings and motions to modify and/or revoke probation are entitled to written notice of any motion to modify or revoke probation, an evidentiary hearing and legal representation. The effect of placing OVUII offenders on probation will be to substantially increase the caseload of the courts, prosecutors and public defenders.

2. Cost. There will be a financial cost to implementing a probationary system to monitor OVUII cases. The Office of the Public Defender will have to add attorneys. The Judiciary will have to add a significant number of probation officers and support staff. Additional office space may be required to house the probation officers, as the district court currently does not supervise OVUII cases.

3. Implementation. The task force proposed maximum jail terms of five, fourteen and thirty days for first, second and third offenses, and making OVUII a petty misdemeanor. However, the maximum jail allowed as a condition of probation for a petty misdemeanor is five days. As this measure is currently written, the Court would not be able to sentence a third-time offender to more than five days in jail.

### Refusals:

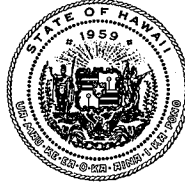
The Office of the Public Defender opposes criminalizing refusals (refusing to be tested for breath or blood alcohol content) and allowing refusals as evidence in an OVUII trial. We believe that doubling the license revocation for refusals (as proposed by the task force) and an SR-22 violation are sufficient deterrents to discourage refusals. Furthermore, the addition of a criminal penalty will increase the amount of contested cases in court and result in an increased caseload for the courts and the Office of the Public Defender. Many defendants whose licenses were revoked via the ADLRO process for refusing to be tested do not contest the OVUII in court.

The ignition interlock legislation will drastically change the DUI climate in Hawaii. Penalties will be increased, and a probationary model introduced. Such change will not come cheap. An entirely new probationary division will have to be created, with

additional probation officers and support staff. There will be an increase in court congestion, which may require adding judges, court staff and attorneys to handle the increased caseload.

Ignition interlock devices may help to reduce alcohol related driving fatalities, but it will not eliminate them entirely. Thank you for the opportunity to testify on this measure.

LINDA LINGLE  
GOVERNOR



BRENNON T. MORIOKA  
DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA

IN REPLY REFER TO:

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

April 2, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 981 HD 2 SD1

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

On behalf of the Hawaii Ignition Interlock Implementation Task Force, the Department supports the passage of House Bill 981 HD 2 SD 1 with amendments.

The Task Force was established by Act 171 of the 2008 Legislative Session and met from July to December 2008 to address issues designated by Act 171. The major recommendations to amend Act 171 have been incorporated into this measure. The following are requested technical/legal amendments, some of which are necessary to conform statutory changes with other sections of the HRS:

- 1. The reference to an emergency override on page 8, lines 9 - 10, should be deleted and later inserted as an "emergency bypass" provision in the administrative rules.**
- 2. Expressly permit probationary periods of 18 to 24 months for persons convicted under various conditions of driving under the influence by adding a conforming amendment to section 706-623 of the HRS to permit these probation periods proposed in this bill;**
- 3. Amend several sections of the bill to provide for a maximum five day term of imprisonment in accordance with that number of days allowable as a condition of probation in section 706-624;**
- 4. Expressly authorize the Department of Transportation to create and promulgate administrative rules;**

The major recommendations and requested amendments above reflect the majority of the Task Force. The remaining unresolved issues to be addressed have been deferred until later this year, after the close of the 2009 legislative session, to be presented to the 2010 Legislature.

Furthermore, 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 2 SD 1 with the suggested amendments.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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1060 RICHARDS STREET, HONOLULU, HAWAII 96813  
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PETER B. CARLISLE  
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**THE HONORABLE BRIAN TANIGUCHI, CHAIR**  
**SENATE JUDICIARY AND GOVERNMENT OPERATIONS COMMITTEE**  
**Twenty-fifth State Legislature**  
**Regular Session of 2009**  
**State of Hawai'i**

April 2, 2009

**RE: H.B. 981, H.D. 2, S.D. 1; RELATING TO HIGHWAY SAFETY.**

Chair Taniguchi and members of the Senate Committee on Judiciary and Government Operations, the Department of the Prosecuting Attorney submits the following testimony in general support of H.B. 981, H.D. 2, S.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 (OVUII) 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.

In addition we recommend that several technical amendments should be made to H.B. 981, H.D. 2, S.D. 1. First we suggest that references to Hawaii Revised Statutes (HRS) chapter 804 which deals with the setting of bail and conditions of bail, since the Ignition Interlock Task Force has recommended that the ignition interlock should not be imposed as a condition of bail at this time and since H.B. 981 H.D. 2, S.D. 1 deleted the provisions relating to the imposition of an ignition interlock as a condition of bail on pages 29 to 30 of the bill. These references to chapter 804 can be found on page 7, line 1, page 8 line 16, and page 9 at lines 2, 8 and 13.

We also suggest that page 12 line 13 be amended to read, "revocation provided in paragraphs (1) to (5) **or in subsection (c)**; provided." The inclusion of the phrase "or in subsection (c)" is necessary to impose the longer revocation periods for persons who refuse to take the blood, breath or urine test and who claim they do not have and will not have access to a vehicle.

We also note that page 17, line 20 of H.B. 981, H.D. 2, S.D. 1 has to be amended to include maximum number of days of imprisonment which may be imposed as a condition of probation for a second offense. Per HRS section 706-624(2)(a), a maximum of five days of imprisonment may be imposed as a condition of probation for a petty misdemeanor, so we recommend page 17, lines 19 to 20 be amended to read, "Not more than **five** days of imprisonment."

We would also suggest replacing the word "probation" with "revocation" at page 20 lines 7, 9 and 11 of H.B. 981, H.D. 2, S.D. 1 since paragraph (5) applies to first, second and third offenses of OVUII of which only the second and third offense are probationable. Therefore, we feel it is more accurate to refer to the revocation periods of the first, second and third offense rather than the probation period which is only applicable to the second and third OVUII offenses.

We also recommend that specific statutory provisions be included in the bill which authorize the state department of transportation to promulgate the necessary administrative rules to manage and implement the ignition interlock program.

Finally, we do have some concerns about the effective date in Section 17 of the bill as it makes several sections, such as the amendments in section 9 which authorizes the imposition of probation for second and third offenses of OUVII, effective *upon the approval* of H.B. 981. This appears premature since the intention is that we have the ignition interlock program running when we start imposing probation for the second and third offenses of OVUII so the ignition



interlock device can be imposed as a condition of probation. Furthermore, the effective dates in Section 17 also appear to conflict with the amended effective dates for Act 171 in Section 12 of the bill. Per section 17 of the S.D. 1, substantive amendments to HRS provisions in sections 2, 7, 8, 9, 10, 13 and 14 of the bill are effective upon approval. However amendments to the same HRS sections in Act 171 of 2008 would have an effective date of January 1, 2011 under section 12 of the S.D. 1. We suggest that this inconsistency be rectified by amending the effective date in Section 17 to have all substantive HRS amendments effective on January 1, 2011 by amending Section 17 as follows:

This Act shall take effect upon its approval; provided that sections 1 through 10 and sections 13 and 14 shall take effect on January 1, 2011.

We strongly support the concept of ignition interlocks and respectfully request your favorable consideration of this bill with the suggested 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***

April 2, 2009

To: Senator Brian T. Tanaguchi, Chair – Senate Committee on Judiciary and Government Operations; Senator Dwight Y. Takamine, Vice Chair; and members of the committee

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

Re: House Bill 981, HD 2, SD 1 – Relating to Highway Safety

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I am Carol McNamee, Vice Chairman of the Ignition Interlock Implementation Task Force, speaking in support of House Bill 981, HD2, SD1, Relating to Highway Safety. However, the Task Force is offering amendments to the Senate Draft 1. (*see page 3 of this testimony*)

The Hawaii Ignition Interlock Implementation Task Force was established by Act 171 of the 2008 Legislative Session. The issues for the Task Force to consider were listed in Act 171 although the Task Force was not limited to only those issues. 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 Task Force worked from July to December 2008 to create a number of recommendations incorporated into HB 981. Certain issues were deferred until later this year, after the close of the 2009 legislative session, to be presented to the 2010 legislature.

The major recommendations of the Ignition Interlock Task Force have been incorporated into HB 981 and include the following:

- The Task Force unanimously recommended requiring interlock for ALL offenders - first offenders as well as repeat offenders - and those who refuse to take the breath or blood test. Interlock installation will be mandatory for these offenders.
- Offenders will be required to pay for installation and monthly servicing of the device although there will be an indigent fund established for those who cannot afford the cost. Formula for determining indigency has not yet been established. The fund will be supported through a surcharge added to the interlock service fees charged the offenders who are able to pay.
- The system to administer and oversee the interlock program should be a hybrid: partly an administrative system operated through the current Administrative Drivers' License Revocation office; and partly a judicial system through the State District Courts.
- First offenders should be monitored through "proof of compliance" hearings; repeat offenders will be given probation with oversight by a probation officer.
- The maximum jail terms for first, second and third OVUII petty misdemeanor offenses should all be set at 30 days instead of the current system of 5 days, 14 days, and 30 days respectively. *(This recommendation requires amending.)*
- The Task Force recommends revocation time periods during which interlock devices would be required to be installed on the vehicle. First offenders in the administrative system would be given a one year revocation and interlock period; second offender - 18 month interlock period; third offender - 24 month interlock period. The Judicial system will impose essentially the same time periods with the exception of the 2nd offender who could have as long as a 24 month interlock period depending on the circumstances.
- Failure to successfully start the vehicle because of alcohol in the breath above the preset level of .02 should not result in the person being charged with a crime. The consequence will be that the vehicle will not start until the person is below .02.
- Rolling retests (random testing after the vehicle is underway) will be required with a consequence of the driver being unable to restart the vehicle once it is stopped if he or she fails the test or neglects to take the test.
- Tampering with or circumventing the system will result in the offender being charged with a new crime. The definition of circumvention will include driving another vehicle not equipped with an ignition interlock device.
- There need no longer be two categories of "first offender." The proposed bill repeals the "highly intoxicated driver" category and all first offenders will be exempted from the requirement to post proof of financial responsibility.

- The consequence for a person with four or more law enforcement contacts should no longer be a lifetime revocation. Offenders with four or more OVUII law enforcement contacts will be given a 5 to 10 year license revocation. Ignition interlock should be used in the monitoring of this group of offenders.
- 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.
- Act 171 unintentionally changed the “look back” periods to five years rather than the recommended 10 years. The Task Force is recommending that the “look back” periods for determining whether an arrestee has one, two, three or more prior law enforcement contacts be all uniformly set at 10 years.
- There should be a single vendor because of the small size of our state and the improved opportunity to work together to create an efficient and cost effective system.
- The effective date should be delayed by six months (to January 1, 2011) to allow for the implementation of any amendments made by the 2010 legislature.

The following are requested technical/legal amendments, some of which are necessary to conform statutory changes with other sections of the HRS:

- 1. The reference to an emergency override on page 8, lines 9 - 10, should be deleted and later inserted as an “emergency bypass” provision in the administrative rules.**
- 2. Expressly permit probationary periods of 18 to 24 months for persons convicted under various conditions of driving under the influence by adding a conforming amendment to section 706-623 of the HRS to permit these probation periods proposed in this bill;**
- 3. Amend several sections of the bill to provide for a maximum five day term of imprisonment in accordance with that number of days allowable as a condition of probation in section 706-624;**
- 4. Expressly authorize the Department of Transportation to create and promulgate administrative rules;**

The list of the major points of HB 981 and the above requested amendments reflect the recommendations of a majority of Ignition Interlock Task Force members. On behalf of the Task Force, I thank you for the opportunity to testify and urge the passage of HB 981,HD2,SD1.



Mothers Against Drunk Driving HAWAII  
700 Bishop Street, Suite 1111  
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April 2, 2009

To: Senator Brian Taniguchi, Chair –Senate Committee on Judiciary & Government Operations; Senator Dwight Takamine, Vice Chair; and members of the committee

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

Re: House Bill 981, HD2, SD1 – Relating to Highway Safety

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This testimony is submitted on behalf of the Hawaii members of Mothers Against Drunk Driving in **strong support** of HB 981 HD2 SD1 which reflects the recommendations of the Interlock Implementation Task Force created in last year's Act 171, the ignition interlock law.

Ignition interlock, which requires a DUI offender to prove his sobriety using a breathalyzer wired to the vehicle's ignition, is a win-win proposition for Hawaii:

- It will save lives, by preventing impaired DUI offenders from driving. Interlock is already saving lives in many states on the mainland.
- It allows DUI offenders to drive anytime, anywhere, provided they're sober. This largely replaces current penalties of loss of license and restricted driving thereafter.

Hawaii needs interlock. We urge the Committee to approve HB 981 HD2 SD1, and to reinsert the crucial statutory conforming amendments contained in HD 2. These are detailed in the **Task Force testimony** for this hearing, with which MADD is in agreement.

Thank you for this opportunity to submit testimony.



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**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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### SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice Chair

Thursday, April 2, 2009  
10:15 a.m.

### **HB 981, HD2, SD1**

Chair Taniguchi, Vice Chair Takamine 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, HD2, SD1** which expands the proof of financial responsibility (SR 22) exemption to include all first time offenders. 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.

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**From:** Sharon Vitousek [vitousek@nhop.org]  
**Sent:** Wednesday, April 01, 2009 3:07 PM  
**To:** JGO Testimony  
**Cc:** Arkie Koehl; M. Stevens; Carol McNamee  
**Subject:** Testimony For April 2, 2009 10:15 AM hearing on HB 981 Ignition Interlock to reduce risk of injury form drinking drivers

To: COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice Chair

RE: HB 981 Ignition Interlock to reduce risk of death and injury from drinking drivers

Too many people die or are seriously injured each year on Hawaii roads. Hawaii Traffic data clearly shows that more than half of these deaths are related to alcohol and or drug use.

Data from states like New Mexico which have effectively implemented ignition interlock also clearly shows that ignition interlock saves many lives and significantly reduces injuries. The cure is known.

Hawaii residents and visitors deserve to drive on roads where citizens are protected from the devastating impact of drinking drivers. You, your family, your children and your friends deserve to be protected form the devastating impact of drinking drivers. Evidence is clear. Please have the courage to protect drivers and passengers on Hawaii roads by passing this essential bill. It will save lives.

Sincerely,

Sharon Vitousek MD