



**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 Judiciary  
February 9, 2010 2:30 p.m.**

H.B. No. 2752, HD1: RELATING TO HIGHWAY SAFETY

Chair Karamatsu and Members of the Committee:

The Office of the Public Defender opposes two portions of this bill: the criminalization of refusals and the elimination of the indigency fund.

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.

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. The mantra of the ignition interlock task force was "baby steps." The criminalization of refusals is not a baby step. We can always revisit this issue at a later date if it the need to criminalize refusals are justified.

Indigent Fund:

The previous years' versions of ignition interlock legislation included a provision for the creation of an indigency fund. This fund would have provided for the installation of ignition interlock devices for individuals who were deemed indigent. It defined 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. This bill completely eliminates the indigency fund.

The task force discussed requiring the vendor to pay for the installation of the ignition interlock device for indigents, and/or requiring indigents to pay a dollar a day for the device. We also discussed utilizing food stamp eligibility as proof of indigency. Somehow, none of these ideas made it into this measure.

The failure to make such exceptions will mean create a class of people who will be unable to install ignition interlock devices on their automobiles, and therefore unable to drive. Wealthy individuals and those who can afford the installation and monthly fees will be able to drive within days of their OVUII arrest.

This legislation is not a panacea, but can be a step forward toward reducing alcohol related driving fatalities. Thank you for the opportunity to testify on this measure.