

HB 1435,  
HD2

NEIL ABERCROMBIE  
GOVERNOR



GLENN M. OKIMOTO  
DIRECTOR

Deputy Directors  
FORD N. FUCHIGAMI  
JAN S. GOUVEIA  
RANDY GRUNE  
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IN REPLY REFER TO:

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

March 21, 2011

**H.B. 1435, H.D. 2**

RELATING TO HIGHWAY SAFETY  
COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS &  
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

House Bill 1435, HD-2 clarifies recommendations of the ignition interlock task force; allows repeat intoxicated drivers to install ignition interlock devices in any vehicle they operate by eliminating the requirement to surrender their motor vehicle registrations and license plates; makes provisions to allow lifetime revocation drivers to obtain a permit to drive an ignition interlock equipped vehicle; deletes the section to extend the ignition interlock task force; and sets the effective date of this be to January 7, 2059.

**The Ignition Interlock Task Force opposes House Bill No. 1435, HD2** and supports the original House Bill No. 1435 and Senate Bill 825, SD1. It was realized this year that repeat offenders should not have their vehicle registration revoked to be eligible to enter into the ignition interlock program. Therefore, it is necessary to remove all references to the revocation of the vehicle registration and license plate impoundment from the statutes. The Task Force is in strong support of this original important purpose of the bill.

However, the recent amendments to allow lifetime revoked drivers to re-enter the interlock program by issuing temporary permits would be a mistake and a detriment to highway safety. The Administrative Drivers License Revocation Office (ADLRO) has calculated that there are a total of 1,915 individuals with lifetime revocations for operating a vehicle under the influence of an intoxicant (OVUII) since ADLRO started. Of these lifetime revocation drivers, 397 of them have had more than one lifetime revocation. It is reported that one of these drivers has had 10 lifetime revocations. This is unacceptable by any standard. The Ignition Interlock Task Force is aware that lifetime revocation drivers may change their style of life and may be worthy of driving. Keep in mind that in order to have a lifetime revocation, these drivers must have been arrested for OVUII three or more times. The task force is willing to have these drivers evaluated for eligibility for an interlock permit on a case-by-case basis through a system of petition for a judicial review.

However, to address this issue, it may be necessary that the task force remain active for another year to draft amendments and to make other necessary amendments that may occur during this initial period of the program's inception.

The Ignition Interlock Task Force recommends that House Bill No 1435, HD2 be amended by:

- HB 1435, HD2 deleting page 44, lines 8 and 9, "[;] except as provided in section 291E-45(b);

- HB 1435, HD2 deleting pages 47 and 48, lines 12 through 21 and 1 through 19.
- Re-instate Section 24 of HB 1435, HD1 to extend the Ignition Task Force for another year ending June 30, 2012.
- Amend the effective date to read June 29, 2011.



WRITTEN ONLY

In reply, please refer to:  
File:

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

**Senate Committee on Transportation and International Affairs**

**Senate Committee on Public Safety, Government Operations, and Military Affairs**

**HB 1435 HD-2, RELATING TO HIGHWAY SAFETY**

**Testimony of Loretta Fuddy, ACSW, MPH  
Interim Director of Health  
March 21, 2011, 1:16pm**

**Department's Position:** The Department of Health opposes HB1435 HD-2.

**Fiscal Implications:** None.

**Purpose and Justification:** HB1435 HD-2 does not reflect the original intentions of this bill, and the Ignition Interlock Task Force opposes it. In addition, the language adopted in this bill, if enacted, weakens the current Ignition Interlock Law (Act 166). The Department of Health supports the Department of Transportation's position relating to SB 825 SD1.

Thank you for the opportunity to testify.



*THE JUDICIARY, STATE OF HAWAII*

**Testimony to the Twenty-Sixth Legislature, 2011 Regular Session**

**Senate Committee on Transportation and International Affairs**

Senator J. Kalani English, Chair

Senator Will Espero, Vice Chair

**Senate Committee on Public Safety, Government Operations, and Military Affairs**

Senator Will Espero, Chair

Senator Michelle Kidani, Vice Chair

Monday, March 21, 2011

1:16 p.m.

State Capitol, Conference Room 224

by

**Marie C. Laderta**

Chief Adjudicator

Administrative Driver's License Revocation Office (ADLRO)

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**Bill No. and Title:** **House Bill No. 1435, H.D. 2**, Relating to Highway Safety.

**Purpose:** To allow repeat intoxicated drivers to install ignition interlock devices in their vehicles by eliminating the revocation of the motor vehicle registrations of such drivers. Also allows persons with lifetime administrative revocations to qualify for relicensing and makes housekeeping amendments to Chapter 291E, HRS.

**Judiciary's Position:**

The ADLRO has serious concerns with the lack of safeguards and specificity with the subsequently proposed amendments in Sections 15 and 16 of the bill, which would permit individuals, who have previously received an administrative lifetime revocation of their licenses, to be able to drive with an ignition interlock device and to be eligible for relicensing. These additionally proposed amendments, not originally contemplated by the task force, make implementation by the ADLRO burdensome and in some cases impossible without further study and specificity of the processes needed to reasonably implement the overly broad language.



House Bill No. 1435, H.D. 2, Relating to Highway Safety  
Senate Committee on Transportation and International Affairs and  
Senate Committee on Public Safety, Government Operations, and Military Affairs  
Monday, March 21, 2011  
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Moreover, some of the proposed amendments are likely to require additional resources and money which are not available to ADLRO. We believe that continuing discussions and careful consideration are needed in order to arrive at workable and reasonable processes to implement some of the additional amended proposed in H.D. 2.

For example, Section 16 of the bill authorizes the ADLRO to issue a temporary permit to those individuals who have received an administrative lifetime revocation of their license. However, there is not the usual motor vehicle licensing requirement (such as a vision test, etc.) to assure that these drivers who allegedly have not been driving for an extended period of time, are still physically or otherwise fit to drive.

The ADLRO recognizes that the clarifications proposed by this measure as originally introduced seek to reconcile inconsistencies within the law. On January 1, 2011, Act 171, SLH, as amended by Act 88, SLH 2009, as further amended by Act 166, SLH 2010, became law. The Acts amend Chapter 291E, HRS, relating to use of intoxicants while operating a motor vehicle to require the use of ignition interlock devices by any person whose driver's license is revoked for operating a vehicle while under the influence of an intoxicant (OVUII).

Act 171 stated that the purpose of the law is to require use of ignition interlock devices so that persons arrested for OVUII (hereinafter referred to as "respondents") can drive, but are prevented from drinking and driving, during the pendency of the case and the revocation period thereafter. According to the statement of purpose, "the requirement of installation of an ignition interlock device would replace the provisions to take custody of the motor vehicle registration and number plates and to issue conditional license permits." Emphasis added.

Notwithstanding the foregoing, §291E-41(b) (2), (3) and (4), HRS, of the law which took effect on January 1, 2011, revokes the motor vehicle registration of any vehicle registered to a respondent who has more than one alcohol enforcement contact during certain specified periods of time while §291E-41(b), HRS, requires that except for certain limited classes of respondents, a respondent "shall keep an ignition interlock device installed and operating in any vehicle the respondent operates during the revocation period." The revocation of the motor vehicle registration of respondents with multiple OVUII revocations effectively forecloses such respondents from driving during the revocation period because they would be unable to operate an unregistered vehicle. The only recourse for such respondents would appear to have the owner of a vehicle agree to the installation of an ignition interlock device in his/her vehicle and allow the respondent to drive that vehicle.

The Administrative Driver's License Revocation Office, which administers the driver's license revocation law, has already encountered problems dealing with respondents who have



House Bill No. 1435, H.D. 2, Relating to Highway Safety  
Senate Committee on Transportation and International Affairs and  
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multiple OVUII revocations and who desire to install an ignition interlock device in their motor vehicle.

This measure also makes housekeeping amendments to Chapter 291E, HRS, for purposes of efficiency and consistency. Of the housekeeping amendments, two may appear to substantively change the law, and therefore, are addressed in this testimony.

Section 3 of the bill amends the definition of “repeat intoxicated driver” to include “drug enforcement contacts” as a factor in defining a person as a repeat intoxicated driver. Under the present definition, only alcohol enforcement contacts are used to determine if a person is a repeat intoxicated driver. However, §291E-41, HRS, which sets forth the periods of license revocation mandated for repeat offenders counts prior drug enforcement contacts, as well as alcohol enforcement contacts, to impose longer periods of revocation for repeat offenders. The proposed amendment makes the definition consistent with §291E-41, HRS. The amendment also clarifies that a repeat intoxicated driver is someone who has two contacts during the five years preceding the date of the latest arrest. The present definition states that two contacts during the preceding seven years makes a person a repeat intoxicated driver. Again, the proposed amendment makes the definition consistent with §291E-41, HRS, which uses two contacts within five years, rather than seven years.

The ADLRO is willing to work with the ignition interlock implementation task force to monitor the law and make suggested improvements, if needed.

Thank you for the opportunity to testify on House Bill No. 1435, H.D. 2.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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**ON THE FOLLOWING MEASURE:**

**H.B. NO. 1435**, H.D. 2, RELATING TO HIGHWAY SAFETY.

**BEFORE THE:**

SENATE COMMITTEES ON TRANSPORTATION AND INTERNATIONAL AFFAIRS  
AND ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY  
AFFAIRS

**DATE:** Monday, March 21, 2011      **TIME:** 1:16 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Lance Goto, Deputy Attorney General

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Chairs English and Espero and Members of the Committees:

The Department of the Attorney General supports the intent of this bill but opposes the amendments made in House Draft No. 1, reflected in this bill in sections 15 and 16, which would allow repeat intoxicated drivers, with lifetime license revocations, to drive again.

The purpose of this bill is to (1) amend the State's ignition interlock law to permit repeat offenders to install an ignition interlock device into their vehicle; (2) to allow repeat intoxicated drivers arrested after December 31, 2010, and before the effective date of this measure, to install an ignition interlock device in their vehicle; (3) to make technical amendments for consistency; and (4) to permit individuals, who have previously received an administrative lifetime revocation of their license, to drive with an ignition interlock device and to be eligible for re-licensing.

Over the years, the Legislature has taken numerous steps to address the danger caused by intoxicated drivers to the general public. These steps included providing increased criminal penalties and enacting an administrative process to quickly



revoke the intoxicated driver's license. By 2007, however, the consensus among the law enforcement community and other interested parties was that the traditional method of prosecuting intoxicated drivers was not working. The number of arrests for intoxicated drivers was still high and people were still being killed by intoxicated drivers. The consensus was that the focus needed to move from increasing penalties towards ensuring that intoxicated drivers, after being convicted, would not continue to drive while intoxicated.

The intent of Act 171, Session Laws of Hawaii 2008, and subsequent amendments to the State's ignition interlock law, was to require individuals arrested for operating under the influence, including repeat offenders, to install an ignition interlock device into their car that would prevent them from starting and operating their vehicle when there is more than a minimal alcohol concentration in their body. The ignition interlock device will prevent the intoxicated driver from starting and operating their vehicle, thereby protecting the general public. However, an oversight in the drafting of the ignition interlock law, which went into effect on January 1, 2011, requires the Administrative Driver's License Revocation Office to revoke the registration of any motor vehicle registered to a repeat offender for a specified period.

Section 13 of this bill will amend section 291E-41, Hawaii Revised Statutes, by removing the requirement to revoke the vehicle registration of cars owned by repeat offenders. This amendment will permit repeat offenders to install an ignition interlock device into their car, which will prevent them from starting and operating their car when there is more than a minimal alcohol concentration in their body.

Section 2 will permit repeat offenders arrested after December 31, 2010, but before the effective date of this bill, to install an ignition interlock device into their motor vehicles.

The bill also amends other statutes in chapter 291E, Hawaii Revised Statutes, for consistency and to correct minor technical mistakes.

The Department strongly opposes the amendments made in House Draft No. 1, reflected in this bill in section 15, on page 44, lines 8-9, and in section 16, on page 47, lines 12-21, and page 48, lines 1-19. The Department respectfully requests that these amendments be deleted from the measure. The Department has significant concerns about permitting repeat intoxicated drivers, who have repeatedly endangered lives by driving while intoxicated, to drive again. Yet this provision would allow repeat intoxicated drivers the State previously determined to be so dangerous that a *lifetime* license revocation was warranted, back onto the streets with minimal assurances that they no longer pose a danger to the community.

The opposed amendments in House Draft No. 2 propose to authorize the Director of the Administrative Driver's License Revocation Office (ADLRO) to issue an ignition interlock permit to individuals who have previously received an administrative lifetime revocation of their license.

The amendment will require the Director to determine whether the individual, with a lifetime revocation, has completed "all requirements of any criminal conviction associated with the lifetime administrative revocation" as well as having "complied with all requirements of the lifetime revocation." (See page 47, at lines 15-18.)

Furthermore, this amendment will require an individual, with a lifetime revocation, who has not had a license for ten or more years, to install and use an ignition interlock device for only one year. An individual, who has not had a license for 5 to 10 years, would have to install and use an ignition interlock device, for eighteen months. An individual, who has not had a license for 2 to 5 years, would have to install and use an ignition interlock device for two years. And an individual, who has not had a license for less than two years, would have to install and use an ignition interlock device for 5 to 10 years.

There appears to be no logical reason why a repeat intoxicated driver, who has a lifetime license revocation, who has not possessed a valid license for over 10 years, should only be required to install and use an ignition interlock device for only one year. Under the current law, a repeat intoxicated driver, whose record shows three or more prior alcohol or drug enforcement contacts in the preceding five years, would be required to install and use an ignition interlock device for a minimum of five years up to a maximum of ten years.

The Department has significant concerns that the vagueness of the amendment will make it difficult for the ADLRO to determine whether an applicant has complied with the necessary requirements. Furthermore, the Department believes that this amendment will place an additional burden on the ADLRO that will increase its workload.

Additionally, the amendment requires very little of repeat intoxicated drivers for them to be eligible to use and install an ignition interlock device in their vehicle. The requirements are inadequate to protect the public. The applicants do not have to demonstrate that they no longer pose a danger to the community. They do not have to show that they have complied

with the traffic code and that they have not continued to drive after receiving their lifetime license revocation. The applicants do not even have to show proof that they were examined by a licensed physician or physician assistant not more than six months prior to their application and that they were found by the examination to have met the physical requirements established by the State Director of Transportation, as would be required for a person renewing the person's license.

Moreover, this provision would allow a repeat intoxicated driver whose license was revoked for life, after committing four offenses, to be potentially treated as a first-time offender for purposes of administrative revocation of license, if the repeat intoxicated driver commits yet another offense after the reinstatement. Thus, a *five-time* (or more) offender would be subject to the *minimum* revocation period.

Furthermore, the amendment would give preferential treatment to individuals who received a lifetime license revocation prior to January 1, 2011. Under the current law, the Director is prohibited from issuing an ignition interlock permit to a person whose license is expired, suspended, or revoked as a result of an action other than the instant revocation. Therefore under the current law, if any offender, much less a four-time offender, does not have a valid license when they are arrested and charged for operating a vehicle under the influence of an intoxicant, the Director is prohibited from issuing that person an ignition interlock permit. However, the amendment would authorize the Director to issue to a four-time intoxicated offender, with a lifetime license revocation, an ignition interlock permit, regardless of whether the person had a valid license when they were last arrested for operating a vehicle

under the influence of an intoxicant, or similar criminal offense.

Additionally, the amendment appears to authorize the Director to issue to a four-time intoxicated offender, with a lifetime license revocation, an ignition interlock permit, regardless of the fact that the offender's license was also revoked as a result of conviction for other offenses, including no no-fault insurance and operating a vehicle after license and privilege has been suspended or revoked for operating a vehicle under the influence of an intoxicant. Even a person with a lifetime license revocation, whose license was revoked pursuant to section 286-128, Hawaii Revised Statutes, after conviction for manslaughter resulting from operation of a motor vehicle, would be eligible to apply for an ignition interlock permit.

The Ignition Interlock Legislative Task Force discussed the issue of retroactively applying the ignition interlock law to individuals who had their licenses revoked prior to January 1, 2011. The task force decided that the issue was complex and that it would be prudent to take it up after the ignition interlock law went into effect and was working properly.

The Department recommends that the amendments made in House Draft No. 1, reflected in this bill in section 15, on page 44, lines 8-9, and in section 16, on page 47, lines 12-21, and page 48, lines 1-19, be deleted. The amendments place the safety of the general public at risk. Furthermore, the Department recommends that it is more appropriate to create a multi-disciplinary task force to review the issue and submit its recommendations to the Legislature before the regular session of 2012.

We respectfully request that this bill be passed without the opposed amendments.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-6552

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE J. KALANI ENGLISH, CHAIR  
SENATE TRANSPORTATION AND INTERNATIONAL AFFAIRS COMMITTEE  
THE HONORABLE WILL ESPERO  
SENATE PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS  
COMMITTEE

Twenty-sixth State Legislature  
Regular Session of 2011  
State of Hawai'i

March 21, 2011

RE: H.B. 1435, H.D. 2; RELATING TO HIGHWAY SAFETY.

Chair English, Chair Espero, and members of the Senate Committee on Transportation and International Affairs and the Senate Committee on Public Safety, Government Operations, and Military Affairs the Department of the **Prosecuting Attorney** submits the following testimony in **support of H.B. 1435, H.D. 2.**

Last year, the Ignition Interlock Implementation Task Force lobbied to pass 2010 Hawaii Session Laws 166 or Act 166 that amended Chapter 291E, Hawaii Revised Statutes, which required repeat intoxicated drivers to surrender their motor vehicle registrations and license plates. However, this new requirement conflicted with another mandate that was created in Act 166, which required an individual whose license and privilege to operate a vehicle, and motor vehicle registration if applicable, were administratively revoked, to obtain an ignition interlock permit in order to operate a vehicle during the revocation period if the individual had a valid license at the time of the arrest. Under current law, if a repeat intoxicated driver had his motor vehicle registration and license plate revoked, and he or she had a valid driver license at the time of arrest, he or she cannot participate in the ignition interlock program without violating the vehicle license and registration law that requires one to have a valid vehicle license and registration in order to drive.

Therefore, the purpose of H.B. 1435, H.D. 2 is to correct this mistake of conflicting laws to allow repeat intoxicated drivers to install ignition interlock devices in any vehicle they operate by eliminating the requirement to surrender motor vehicle registrations and license plates.

One substantive change that was included in the House Draft 2 of House Bill 1435 is language that allows persons who have had licenses administratively revoked for a lifetime to be eligible to participate in the ignition interlock program. Our department supports this amendment and will work with all parties on the final language.

Finally, there are housekeeping or technical amendments to Chapter 291E, Hawaii Revised Statutes. For these reasons, we **strongly support** the passage of H.B. 1435, H.D. 2. Thank you for this opportunity to testify.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



PETER B. CARLISLE  
MAYOR

LOUIS M. KEALOHA  
CHIEF

DELBERT T. TATSUYAMA  
RANDAL K. MACADANGDANG  
DEPUTY CHIEFS

OUR REFERENCE TTN-LC

March 21, 2011

The Honorable J. Kalani English, Chair  
and Members  
Committee on Transportation and  
International Affairs  
The Honorable Will Espero, Chair  
Committee on Public Safety, Government  
Operations, and Military Affairs  
and Members  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs English and Espero and Members

Subject: House Bill No. 1435, H.D. 2, Relating to Highway Safety

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

The Honolulu Police Department opposes House Bill No. 1435, H.D. 2, Relating to Highway Safety. The Honolulu Police Department supports the original intent of House Bill No. 1435 and its sister bill, Senate Bill No. 825, to clarify and amend certain sections of the interlock laws.

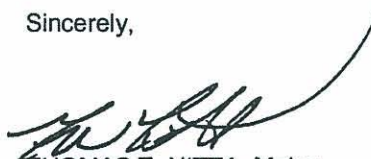
Although the police department concurs with the intent of House Bill No. 1435, H.D. 2, we oppose the amendment regarding persons with lifetime license revocations be allowed to apply for the interlock program. A process needs to be developed and approved. Notices, studies, and lifting of restrictions of the lifetime revocation and its implications need to be considered. Revocations should be reviewed on a case-by-case basis, and the Interlock Implementation Task Force may confer and address this issue.

Thank you for this opportunity to testify.

APPROVED:

Sincerely,

  
LOUIS M. KEALOHA  
Chief of Police

  
THOMAS T. NITTA, Major  
Traffic Division



DEPARTMENT OF CUSTOMER SERVICES  
**CITY & COUNTY OF HONOLULU**  
DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS  
ADMINISTRATION  
P.O. BOX 30300  
HONOLULU, HAWAII 96820-0300

PETER B. CARLISLE  
MAYOR



GAIL Y. HARAGUCHI  
DIRECTOR

DENNIS A. KAMIMURA  
LICENSING ADMINISTRATOR

March 17, 2011

The Honorable J. Kalani English, Chair  
and Committee Members  
Committee on Transportation and  
International Affairs  
The Honorable Will Espero, Chair  
and Committee Members  
Committee on Public Safety, Government Operations  
And Military Affairs  
The Senate  
State of Hawaii  
State Capitol, Room 231  
Honolulu, Hawaii 96813


Dear Chair English, Chair Espero and Committee Members:

Subject: H.B. No. 1435 HD2, Relating to Highway Safety

The City and County of Honolulu has concerns regarding H.B. No. 1435 HD2 which will provide clarifying amendments to the ignition interlock law.

Section 16 of the bill, which amends Section 291E-45, HRS, allows the issuance of a temporary permit to drive to an individual, whose license had been permanently revoked and had not been driving for a period of time, without completing the driver licensing requirements of Chapter 286, HRS. The issuance of a permit to drive without being tested regarding the applicant's knowledge of the rules of the road and ability to safely operate a motor vehicle may endanger the individual and the motoring public. We recommend that before the ignition interlock permit is issued, the applicant is certified by the County's Examiner of Drivers as having successfully demonstrated his ability to complete the driver licensing requirements to include successfully completing the written and road tests and complying with medical, financial responsibility and other requirements that are applicable to other licensed drivers.

Sincerely,

  
for Gail Y. Haraguchi  
Director



Mothers Against Drunk Driving HAWAII  
745 Fort Street, Suite 303  
Honolulu, HI 96813  
Phone (808) 532-6232  
Fax (808) 532-6004  
[www.maddhawaii.com](http://www.maddhawaii.com)

March 21, 2011

To: Senator J. Kalani English, Chair –Senate Committee on Transportation and International Affairs; Senator Will Espero, Vice Chair and members of the Committee  
Senator Will Espero, Chair – Senate Committee on Public Safety, Government Operations, and Military Affairs; Senator Michelle Kidani, Vice Chair and members of the Committee

From: Carol McNamee—Chairman, Public Policy Committee - MADD Hawaii

Re: House Bill 1435, HD 2 – Relating to Highway Safety

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I am **Carol McNamee**, offering testimony on behalf of the Hawaii chapter of Mothers Against Drunk Driving in support of **HB 1435, HD 2 but with concerns** about recent amendments in Sections 16 (b). I am also speaking as Vice Chairman of the Hawaii Ignition Interlock Implementation Task Force.

This bill amends Act 166 (2010) which, along with previous Acts 171(2008) and 88 (2009), established the Ignition Interlock system for the state of Hawaii. This program was implemented on January 1<sup>st</sup> of this year.

House Bill 1435 clarifies and resolves several language and numbering issues to conform the statutes relating to the interlock program. In addition, a vitally important purpose of House Bill 1435 is to correct a problem which was not realized at the time of passage of the final draft of the Task Force's Interlock bill - SB2897 - in the last legislative session. In trying to keep sanctions in place for repeat offenders who do not install an interlock device, the provisions for the administrative revocation of vehicle registrations and the impoundment of license plates were reinserted in SB2897 last year. When the Task Force reanalyzed that action a few months ago, it determined that there was a legal conflict between the revocation of vehicle registration and the interlock program that was best resolved by deleting the requirement that "respondents" with prior OVUII enforcement contacts have their vehicles' registrations revoked and the vehicles' license plates impounded.

Because of this statutory conflict, at the present time repeat intoxicated drivers are not eligible to install an interlock device and obtain an interlock permit because their vehicle registration has been revoked. **The Task Force is eager to correct this situation so that all OVUII drivers with a valid license at the time of arrest can receive an interlock device.**

This bill removes all references to vehicle registration revocation and license plate impoundment for respondents with prior alcohol or drug enforcement contacts. The measure will go into effect on July 1, 2011 and after its effective date, repeat intoxicated drivers arrested on or after January 1, 2011 will be able to apply for an ignition interlock device to use for the remainder of their revocation periods.

MADD Hawaii, as a member of the Ignition Interlock Implementation Task Force, has concerns about the recent amendments to HB 1435 which allow lifetime revocation recipients to receive a "temporary permit" to drive an ignition interlock equipped vehicle. MADD and the Task Force recognize the need to determine a method of including this group of "respondents" in the interlock program. However, MADD prefers to maintain its support of the Task Force's original intentions to consider this issue after the basic interlock program had been implemented and was operational. Our concern is that if amendments are not well studied, well written and well conformed with other sections of the statutes, the resulting bill could be flawed.

MADD believes the safety of the public is the priority and that there is a need to create safeguards before putting drivers with a long history of impaired driving back on the road. The ADLR Office has calculated that there is a total of 1,915 individuals in our state with lifetime revocations. Of that number, 397 recipients have had more than one lifetime revocation. One person has had 10 lifetime revocations!

This bill has also deleted a section of the original HB1435 that extended the Task Force until June 30, 2012. Extending the task force would be of no cost to the State and it would officially keep the members together to evaluate the statutes that it worked three years to create. It could then suggest amendments to augment or strengthen the program as necessary. MADD respectfully requests that the provision for the extension of the Task Force to June 30, 2012 be reinstated by this committee.

MADD Hawaii encourages the committees to pass House Bill 1435, HD2 in its original form which is the same as SB825 previously considered by these committees. Thank you for this opportunity to testify.

# IRON WORKERS STABILIZATION FUND

March 21, 2011

Sen. J. Kalani English  
Transportation and International Affairs

Sen. Will Espero  
Public Safety, Government Operations, and Military Affairs

Room 224  
State Capitol  
Honolulu, Hawai'i 96813

Re: H.B. 1435 H.D. 2., Proposed S.D. 1, Relating to Highway Safety

Dear Chairs English and Espero & Members of TIA and PGM:

We represent the Ironworkers Union Local 625 Stabilization Fund.

Repeat offenders who were arrested before the effective date of the HB 1435 H.D. 2 (1/1/11) are *not* afforded the same rights to be sentenced under the same penalties as those who are arrested after the law's effective date. This is unfair and counter to the intent of the legislation. As the proposed law stands, it is dissonant with federal sentencing guidelines "that are in effect on the date the defendant is sentenced." 18 U.S.C. § 3553(a)(4); USSG § 1B1.11(a) Furthermore, this raises constitutional concerns relating to equal protection. Hence, we respectfully recommended that you consider an ammendment to address these issues. Attached, please find our proposed S.D. 1 to H.B. 1435, H.D. 2. Mahalo.

Hawaii Ironworkers Workers Stabilization Fund  
94-497 Ukee Street  
Waipahu, HI 96797  
Tel - 671-4344  
Fax - 671-6901

Fax: 586-6659  
Sergeant-At-Arms

94-497 UKEE STREET ■ WAIPAHO, HAWAII 96797 ■ (808) 671-4344



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## A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The purpose of this Act is to make amendments to the State's ignition interlock law recommended by the Hawaii ignition interlock implementation task force pursuant to Act 171, Session Laws of Hawaii 2008, as amended by Act 88, Session Laws of Hawaii 2009, as amended by Act 166, Session Laws of Hawaii 2010.

SECTION 2. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"S291E- Repeat intoxicated driver arrested, but not convicted before January 1, 2011; installation of ignition interlock device.

Notwithstanding any other law to the contrary, any repeat intoxicated driver, arrested for a violation of section 291E-61 or 291-E61.5 before January 1, 2011 and who was not convicted

before January 1, 2011, upon proof that the driver has installed an ignition interlock device in any vehicle the driver operates, may request an ignition interlock permit that will allow the driver to drive a vehicle equipped with an ignition interlock device during the revocation period."

SECTION 3. This Act shall take effect upon its approval.

Introduced By: \_\_\_\_\_

March 21, 2011

Sen. J. Kalani English  
Transportation and International Affairs

Sen. Will Espero  
Public Safety, Government Operations, and Military Affairs

Room 224  
State Capitol  
Honolulu, Hawai'i 96813

Re: H.B. 1435 H.D. 2., Proposed S.D. 1, Relating to Highway Safety

Good morning Chairs English and Espero & Members of TIA and PGM:

My name is Mel Kahele and I, along with my colleague Ron Amemiya, are employed by the Ironworkers Union Local 625 Stabilization Fund.

We support HB 1435. The current draft before you will help to lessen the number of uninsured drivers on the road that continue to drive even though their licenses have been revoked. However, we humbly ask that you look at our proposed adjustment to HB 1435 H.D. 2. The House version does not address what happens to those arrested before the effective date of the bill, but have yet to stand trial before a judge to determine innocence or guilt and possibly receive a sentence. The proposed adjustments will clarify that those offenders will be treated the same as the ones arrested after the bill is enacted. Mahalo for your time and consideration.

Mahalo.

Mel Kahele

Hawaii Ironworkers Workers Stabilization Fund  
94-497 Ukee Street  
Waipahu, HI 96797  
Tel – 671-4344  
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March 18, 2011

Senator J. Kalani English, Chair  
Transportation and International Affairs  
Fax: 587-7230

H.B. NO. 1435 S.D. 1  
Joint Committee Hearing  
March 21, 2011, 1:16 p.m., Room 224  
Testimony In Favor of Bill

Senator Willie C. Espero, Chair  
Public Safety, Government Operations and Military Affairs

Senator Clayton Hee, Chair  
Judiciary and Labor

I am writing to alert you to an urgent matter regarding the current ignition interlock law. Specifically, "repeat offenders" who were arrested prior to the effective date of the new law, (1/1/11) are not being afforded the same rights to be sentenced under the same penalties as those who are arrested after its effective date. Not only is this unfair, but it runs counter to the intent of the legislation. It is causing a huge inequity in its application. It is out of step with federal sentencing law, which states a defendant's sentence should be based on the guidelines " that are in effect on the date the defendant is sentenced." 18 U.S.C §3553(a)(4); USSG § 1B1.11(a). Also, it raises constitutional concerns, i.e. equal protection.

As you know HB 1435 is already pending before the House regarding corrections to the new law, including a change to allow lifetime revocations sentenced under the old law to be amended into interlock revocations. I believe this is an ideal time and opportunity to correct the problem I am highlighting here.

**Section 24 of S.B. 2897 Reads as Follows:**

**"This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date."**

Some have concluded, incorrectly, that because of this language, "proceedings that were begun before its effective date", the ignition interlock law does not apply where a person has the misfortune of being arrested on December 31, 2010 at 11:55p.m., but it does apply if the arrest is just five minutes later. (Sadly, this is not just a hypothetical scenario). This is patently unfair. I respectfully submit that this confusing language must be amended or deleted altogether and replaced with more eloquent language that clearly allows for people, whose cases are not at sentencing, to be given the opportunity this new law provides. After all, repeat offenders are a risk and the installation of the ignition interlock is for public safety. Why not be liberal in interpreting the law? I am extremely disheartened to discover that some judges, prosecutors, and hearings officers at the Administrative Driver's License Revocation Office



(ADLRO) are interpreting the law as not applying to those who are currently still in the system, who are presumed innocent, and who are not yet revoked or convicted.

It is my understanding in reading S.B. No. 2897 that the ignition interlock program is triggered when there is a revocation or conviction. I call your attention to section 1 of S.B. No. 2897 which reads as follows:

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

**SECTION 1.** The legislature finds that Act 171, Session Laws of Hawaii 2008, established an ignition interlock program. The purpose of the program is to require drivers whose licenses have been administratively revoked for, or who have been convicted of, operating a vehicle under the influence of an intoxicant to install an ignition interlock device on their vehicles. The device will prevent these drivers from starting or operating their vehicles when the driver has more than a minimal alcohol concentration.

It is important to note that an "arrest" in 2010 (before the effective date of 1/1/11) does not always result in a revocation or conviction in 2010. For example, a repeat offender arrested in November of 2010 has 60 days to request a hearing at the ADLRO and thus, his 1<sup>st</sup> hearing date could be in January or February of 2011. Question? Wasn't it the intent of the legislature that this repeat offender be required to install an interlock device if revoked or convicted even if it was after January 1, 2011. The answer is a resounding "yes".

Applying the same scenario and to the criminal side of said November 2010 arrest, the individual would be arraigned in December 2010 and his 1<sup>st</sup> trial setting would be in February 2011. If that individual, a repeat offender, pleads guilty in February 2011 for an arrest in November 2010, did the legislature intend that he or she be denied an opportunity to retain his or her driving privileges by installing an ignition interlock after the effective date of 01/11/11.

In addition, prohibiting these defendants from being sentenced under this new law places a burden on our state. The new law alleviates the hardship an absolute driver's license revocation or suspension places on individuals and their families. The original language in Act 171 specifically stated, that "people whose license has been revoked still need to get to work, to transport their families and to fulfill other obligations, and there is often no efficient alternative to driving, Act 171 (Haw. Session Laws, 2008). These individuals are currently in the system, their case is yet to be adjudicated, they are presumed innocent, and, if they are convicted, they will face a greater hardship than the person who is right there beside them in the courtroom for exactly the same crime, simply because of the date of arrest. I do not believe this should be the case. I believe it does create an unnecessary burden on our state and I humbly urge you and your colleagues to act quickly.

I am urging you to refer this issue to the Legislature Reference Bureau to assist in amending the language on section 24 of S.B. 2897 so that a "Repeat Offender" who was arrested in 2010 and whose case is still active at the administrative office (ADLRO) or in criminal court be allowed the opportunity to install the ignition interlock device in lieu of having his or her driver's license revoked.

Please see suggested legislative language attached.

Respectfully Submitted:

*/s/ Paul J. Cunney*

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Attorney Paul Cunney  
220 S. King Street, Suite 1220  
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Attachment

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

H.B. NO. 1435  
H.D. 2

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## A BILL FOR AN ACT

Relating to highway safety.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1       SECTION 1.       The purpose of this Act is to make amendments  
2       to the State's ignition interlock law recommended by the Hawaii  
3       ignition interlock implementation task force pursuant to Act  
4       171, Session Laws of Hawaii 2008, as amended by Act 88, Session  
5       Laws of Hawaii 2009, as amended by Act 166, Session Laws of  
6       Hawaii 2010.

7       SECTION \_\_\_\_ Chapter 291E, Hawaii Revised Statutes, is  
8       amended by adding a new section to part III to be appropriately  
9       designated and to read as follows:  
10      "§291E-     Repeat intoxicated driver arrested , but not convicted before  
11      January 1, 2011; installation of ignition interlock device.  
12      Notwithstanding any other law to the contrary, any repeat intoxicated driver,  
13      arrested for a violation of section 291E-61 or 291E-61.5 before January 1, 2011,  
14      and who was not convicted before January 1, 2011, upon proof that the  
15      driver has installed an ignition interlock device in any vehicle the driver operates,  
16      may request an ignition interlock permit that will allow the driver to drive a vehicle  
17      equipped with an ignition interlock device during the revocation period."

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

H.B. NO. 1435  
H.D. 2

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## A BILL FOR AN ACT

SECTION \_\_\_\_ This Act shall take effect on July 1, 2011.

INTRODUCED BY: \_\_\_\_\_