

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
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Deputy Directors  
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IN REPLY REFER TO:

February 7, 2012

**HB 2320, HD1  
RELATING TO HIGHWAY SAFETY**

HOUSE COMMITTEE ON JUDICIARY

When the Ignition Interlock Implementation Task Force was first formed in 2008, it agreed upon a goal of creating a basic framework for an ignition interlock program, and that the program would be a work in progress. The Task Force agreed to address issues outside the original scope, such as persons whose licenses were administratively revoked for their lifetime for operating a vehicle under the influence of an intoxicant (OVUII). Now that Hawaii is entering the second year of its ignition interlock program, the Task Force's legislative subcommittee created House Bill No. 2320 to address some of those unresolved issues, as well as issues that have emerged since the implementation of the program.

The Department of Transportation strongly supports House Bill No. 2320, HD1 as it resolves the issue of drivers with a lifetime OVUII license revocation. The proposed legislation includes the following amendments:

- Repeat intoxicated drivers arrested after December 31, 2010 are eligible to have their motor vehicle registration and number plates returned;
- Provides guidelines for those with a lifetime license revocation to be eligible to petition for an ignition interlock instruction permit, ignition interlock permit, and to eventually apply for their driver license; and
- Makes allowances for out-of-state drivers whose driver license would expire within the revocation period.

The Department of Transportation is recommending that the amendments made by the Committee on Transportation be deleted and that a 5-year period on the ignition interlock be imposed for a lifetime revocation person who wants to have their driver's

license reinstated. Regardless of how long a person's driver's license has been revoked, we believe that this five year period will ensure that this person is a responsible driver. We also request that the Prosecutor's Office remain in the process to safeguard the system in allowing the reinstatement of drivers' licenses.

We urge your committee to pass House Bill No. 2320, HD1 with the proposed amendments to ensure the repeat offender and the lifetime offender may have their driving privilege reinstated because they are a more responsible driver, thus making Hawaii's roads safer which protects our residents and visitors.

Thank you for the opportunity to provide testimony.





*The Judiciary, State of Hawaii*

**Testimony to the Twenty-Sixth Legislature, 2012 Regular Session**

**House Committee on Judiciary**  
Representative Gilbert S.C. Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair

Tuesday, February 7, 2012  
2:00 p.m.  
State Capitol, Conference Room 325

by  
Marie C. Laderta  
Chief Adjudicator  
Administrative Driver's License Revocation Office (ADLRO)

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**Bill No. and Title:** House Bill No. 2320, H.D. 1, Relating to Highway Safety.

**Purpose:** To allow repeat intoxicated drivers to install ignition interlock devices in their vehicles by eliminating the revocation of motor vehicle registrations, and to make housekeeping amendments to Chapter 291E, HRS. This bill also provides a process for certain persons currently excluded from the ignition interlock law to petition the district court for an ignition interlock instruction permit and obtain an ignition interlock permit, and allows persons with lifetime administrative revocations to petition the district court for an unrestricted license after a minimum period of three years with an ignition interlock device.

**Judiciary's Position:**

The ADLRO supports portions of this measure which attempt to clarify administrative revocation processes and procedures. The ADLRO recognizes that the clarifications proposed by this measure 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).



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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 are unable to operate an unregistered vehicle. The only recourse for such respondents is to have an 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 ADLRO, which administers the driver’s license revocation law, has already encountered problems dealing with respondents who have multiple OVUII revocations and who desire to install an ignition interlock device in their motor vehicle.

The ADLRO has also seen an increase in the number of respondents whose licenses expire during the revocation period, because the new ignition interlock law requires revocation periods ranging from a minimum period of one year up to a maximum period of ten years, depending on the number of prior alcohol or drug enforcement contacts. This measure would allow a respondent, who otherwise qualifies for a permit under §291E-44.5 or 291E-61, to renew an expired license solely for the purpose of obtaining or extending an ignition interlock permit or employee driver’s permit for the period provided in §286-106 or until the end of the revocation period, whichever occurs first. No physical driver license would be issued to the respondent.

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 5 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



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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.

With regard to Section 4 of this measure, the ADLRO defers to the wisdom of the legislature to determine if the ignition interlock law should be expanded to include individuals currently excluded from obtaining ignition interlock permits, including persons subject to lifetime administrative revocations, persons arrested prior to the effective date of the ignition interlock law, persons whose licenses were expired, had a learner's permit or instruction permit, or who were otherwise unlicensed at the time of arrest, and persons with out-of-state licenses that are expired or will expire during the revocation period, and if, and under what conditions, a person with a lifetime administrative revocation should be allowed to drive with an unrestricted license.

The ADLRO notes that H.D. 1 amendments have created inconsistencies in Section 4 the bill. Specifically, amendments to subsection (e) reduce the minimum period required for persons subject to lifetime administrative revocations to petition the district court for an unrestricted license to operate a vehicle without an ignition interlock device from five years to three years. This change conflicts with paragraph (1)(B), which requires a certified court abstract establishing that the petitioner has not been convicted of circumventing or tampering with an ignition interlock device during the five year period immediately preceding the petition, and paragraph (3)(A), which requires a certified statement establishing installation of an ignition interlock device in a vehicle without a cumulative break of more than thirty days during the five years immediately preceding the petition.

Additionally, amendments to subsection (e) remove the prosecuting attorney from being able to request a hearing on a petition to the court for removal of an ignition interlock device. Notwithstanding this amendment, the bill still requires a copy of the petition to be served on the prosecuting attorney in the county in which the petition is filed, and paragraph (4) requires a certificate of service demonstrating the place, time, and manner of service of the petition on the prosecuting attorney.

Thank you for the opportunity to testify on House Bill No. 2320, H.D. 1.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2320, HD1, RELATING TO HIGHWAY SAFETY.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 7, 2012 **TIME:** 2:00 p.m.  
**LOCATION:** State Capitol, Room 325  
**TESTIFIER(S):** David M. Louie, Attorney General, or  
Susan Won, Deputy Attorney General.

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (the "Department") has significant concerns about the proposed amendments to chapters 291E and 286, Hawaii Revised Statutes (HRS), and provides the following comments.

Section 1 of the bill states that 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." The Department feels that this is a misstatement as some of the proposed amendments, including sections 2 and 4 of the bill, were never discussed and adopted by the task force.

Section 2 of the bill, on page 1, line 14, proposes to authorize a person arrested for a violation of section 291E-61.5, HRS, whose license was previously revoked pursuant to chapter 286, part VI, or section 291E-61, HRS, to apply for a license renewal as provided in sections 286-107 and 286-107.5, HRS. This amendment, however, conflicts with section 291E-61.5(f), HRS, which states "[n]otwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until expiration of the period of revocation determined by the court." Furthermore, it was the original intent of the task force that ignition interlock would not be made available to a person convicted of habitually operating a vehicle under the influence of an intoxicant under section 291E-61.5, HRS.

Section 4 of the bill proposes to add a new section to part IV of chapter 291E, HRS, which will permit individuals with a lifetime license revocation and any person convicted of the

offense of habitually operating a vehicle under the influence of an intoxicant under section 291E-61.5, HRS, to petition for an ignition interlock instruction permit.

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, whom 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. Last year, the Department of Transportation submitted testimony for H.B. No. 1435 and reported therein that the Administrative Driver's License Revocation Office (ADLRO) had calculated there were a total of 1,915 individuals with lifetime license revocations for driving under the influence since the administrative driver's license process had started. Of these 1,915 individuals, 397 of them were reported to have more than one lifetime revocation, and one individual was reported to have had 10 lifetime revocations.

Section 4 of the bill, on page 4, lines 3 through 7, authorizes a person to petition the district court for permission to apply for an ignition interlock instruction permit during the revocation period, which will allow the person to take the driving demonstration portion of the driver's license examination. The Department has a concern as to whether the district courts have authority to amend an administrative revocation issued by the ADLRO. Chapter 604, HRS, which covers the powers of the district courts, is silent on this issue. Furthermore, section 291E-40, HRS, limits the district court's judicial review of an administrative decision by the Director of the ADLRO as to whether the decision was proper and supported by law and evidence.

The Department believes that the amendment requires very little of repeat intoxicated drivers with a lifetime license revocation, to be eligible to use and install an ignition interlock device in their vehicle. The requirements are inadequate to protect the public. The petitioners 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 have not continued to drive after receiving their lifetime license revocations. At the very least, any process that would permit a person with a lifetime license revocation, much less the individual who has more than one lifetime license revocation, should be designed to evaluate cases on a case-by-case basis. The process should give the court a wider degree of discretion so that it can look at a number of

factors, including the petitioner's criminal and traffic record after receiving a lifetime license revocation in order to determine whether or not the individual should be given the privilege to drive again. Instead, this bill would bind the court's hand and put the community at risk.

The proposed amendment in section 4 requires the petitioner to attach a certified court abstract establishing that other than the instant offense, the petitioner has no other pending traffic matters, outstanding fines, outstanding court costs, and court ordered restitution. Further, the certified Hawaii traffic abstract contains only information based on the petitioner's traffic record in the State. It may not contain any information regarding outstanding matters in other states. Therefore, the requirement may fail to provide a complete picture to the district court judge reviewing the petition, and would favor those petitioners who lived in other states after receiving their lifetime revocation.

Any proposed legislation that would permit an individual with a lifetime license revocation to petition for an ignition interlock instruction permit, and eventually a driver's license, should be written so as to allow the courts the discretion to examine each petition on a case-by-case basis. This will let the court assess whether the petitioner still poses a danger to society or whether the petitioner has been rehabilitated and should be given a second chance to regain their driving privileges. Among other things, the courts should be able to consider the petitioner's abstract in any state in which he or she has resided since permanently losing their license, and whether the petitioner complied with the lifetime license revocation or continued to drive in violation of the revocation.

Sections 4 and 17 of the bill completely undermine the sentencing provisions for operating a vehicle after license and privilege has been suspended or revoked for operating a vehicle under the influence of an intoxicant under section 291E-62, HRS, which requires not only an additional revocation of license and privilege to operate a vehicle, but also loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable. Therefore, an individual convicted of this offense, having lost his or her privilege to use an ignition interlock device, would be authorized to install the device again after being arrested for a new operating a vehicle under the influence of an intoxicant offense. It should be noted that individuals convicted for a third offense within five years of two or more prior convictions for offenses under this section and older versions of this law saw their license and privilege to



operate a vehicle revoked **permanently**. This bill, however, proposes to completely nullify and undermine the sentencing provisions for this offense. Even a person with a lifetime revocation, whose license was also revoked pursuant to section 286-124, HRS, after conviction for manslaughter resulting from operation of a motor vehicle, would be eligible to apply for an ignition interlock permit.

Sections 4 and 17 of the bill would also undermine the authority of the Child Support Enforcement Agency (CSEA) to request a license suspension of deadbeat non-custodial parents who are not paying their child support. Under section 286-102(e), HRS, upon receipt of certification from the CSEA that an individual who owns or operates a motor vehicle is not in compliance with an order of child support, the examiner of drivers shall suspend the individual's license and right to operate motor vehicles, and confiscate the individual's license. Furthermore, the examiner of drivers shall not reinstate an individual's license until the CSEA, the Office of Child Support Hearings, or the family court issues an authorization that states the individual is in compliance with an order of support.

Sections 4 and 17 would also undermine the authority of other states' license revocations as it would allow the Director (of ADLRO) to issue to a four-time intoxicated offender, with a lifetime license revocation, an ignition interlock instruction permit, regardless of the fact the offender's license was also suspended or revoked a result of convictions for other offenses. This proposal may violate the Full Faith and Credit Clause of the United States Constitution (Article IV, Section 1), which addresses the duties that the states within the United States respect the "public acts, records, and judicial proceedings of every other state."

Additionally, 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 purpose of licensing, 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.

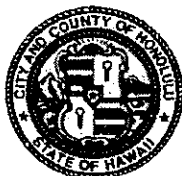
House Draft 1 amended section 4 to permit a person with a lifetime license revocation to petition, after a minimum of three years (instead of five years) from the issuance of the ignition interlock permit, the district court to reinstate the person's license to operate a vehicle without an ignition interlock license. Under the current law, a repeat intoxicated driver, whose record

shows three or more prior alcohol or drug enforcement contacts in the preceding ten years, would be required to install and use an ignition interlock device for a minimum of five years and up to a maximum of ten years. There appears to be no logical reason why a repeat intoxicated driver, who has lifetime license revocation, should only be required to install and use an ignition interlock device for only three years before petitioning the district court to reinstate that person's license. This three-year period is not sufficient to ensure that the person will not drink and drive again and puts the community at risk.

We respectfully ask the committee to make amendments to the bill so that it may address the Department's concerns.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
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MARIE A. MCGAULEY  
DEPUTY CHIEFS

OUR REFERENCE **KK-LC**

February 7, 2012

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 2320, H.D. 1, Relating to Highway Safety

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

The HPD supports the passage of House Bill No. 2320, H.D. 1, Relating to Highway Safety.

Since the 2011 Legislative Session, the HPD has been working with other partners to correct the flaw in the ignition interlock law regarding the difficulties in repeat OVUII offenders obtaining an interlock device. This bill will also clear up other housekeeping issues that will clarify and strengthen the ignition interlock law.

Thank you for the opportunity to testify.

Sincerely,

  
KURT KENDRO, Major  
Traffic Division

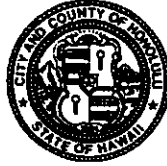
APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police

*Serving and Protecting With Aloha*

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

February 6, 2012

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Committee Members  
Committee on Judiciary  
House of Representatives  
State of Hawaii  
State Capitol, Room 302  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Committee Members:

Subject: H.B. No. 2320 HD1, Relating to Highway Safety

The City and County of Honolulu has concerns regarding H.B. No. 2320 HD1, which provides for several amendments to the Ignition Interlock statutes.

Section 291E-41(B)(4), HRS, provides for a revocation period for a repeat offender of "A minimum of five years up to a maximum of ten years revocation...". Prior to January 1, 2011, a conviction of this offense would have been a lifetime license revocation. However, Section 4 of the current HD1, Section 291E-B(e), allows a person with a lifetime license revocation to file for petition to regain full driving privileges after a minimum of three years from the issuance of an ignition interlock permit. Since current convictions for repeat offenders will have a minimum revocation period of five years, a person convicted as a repeat offender with a lifetime revocation may petition to regain full driving privileges BEFORE a person who is currently convicted of the same offense beginning January 1, 2011. In order to eliminate this disparity, we recommend that Section 291E-B(e) be amended to five years.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis A. Kamimura".

Dennis A. Kamimura  
Licensing Administrator



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

February 7, 2012

To: Representative Gilbert S.C. Keith-Agaran, Chair –House Committee on Judiciary;  
Representative Karl Rhoads, Vice Chair and members of the Committee

From: Carol McNamee/Arkie Koehl — Co-chairmen, Public Policy Committee - MADD  
Hawaii

Re: House Bill 2320, HD1 – Relating to Highway Safety

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I am Carol McNamee, offering testimony on behalf of the Hawaii organization of Mothers Against Drunk Driving in strong support of HB 2320 – although in its original form. The major purpose of this bill is to correct a flaw in the current ignition interlock law which inadvertently excludes repeat OVUII offenders from eligibility to install an ignition interlock device in their vehicles. The bill also extends the opportunity to use an interlock device to other currently excluded categories of offenders. In addition, it makes other housekeeping amendments for clarification of sections of the existing law.

MADD Hawaii supports the principle that the introduction of the in-car breathalyzer justifies reexamining the question of allowing certain multiple OVUII offenders to qualify for the privilege of driving again, provided they satisfy specific criteria including a provisional period of driving with interlock.

Studies have revealed that a large percent of drivers who have had their licenses revoked continue to operate their vehicles illegally and create a risk to other vehicles, pedestrians, and bicyclists on the road. In order to reduce this level of risk, MADD believes it is important to responsibly include as many identified impaired drivers as possible in the effective ignition interlock program. Since a year has now passed and the Ignition Interlock program has proved to work well with devices successfully installed on over 1100 vehicles, preventing over 4200 incidents of a driver getting on the road after consuming alcohol, we can feel more assured that the interlock technology effectively prevents alcohol impaired drivers from starting their vehicles and traveling on our roads. We believe that it is now the right time to expand the program to groups of administrative revocation “respondents” who were not included in the “basic” system that was passed by the legislature and implemented in January, 2011, including recipients of lifetime revocations.

However, MADD would prefer the original version of HB2320 without the three amendments found in House draft 1. To ensure the public acceptance of the idea that a former multiple OVUII arrestee may again be able to legally drive on Hawaii’s roads, it is important that the criteria for application for a full license strongly reflect the need for public safety. This same philosophy applies for also maintaining the provisions for the prosecutor to have the ability to request a hearing on an applicant’s petition to apply for a full license.

We encourage the committee to pass HB 2320 in its original form.

Thank you for this opportunity to testify.