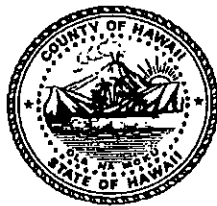


LATE TESTIMONY

CHARLENE Y. IBOSHI
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TESTIMONY IN SUPPORT WITH AMENDMENTS TO
HOUSE BILL HB 2320, HD1
(HSCR71-12)

A BILL FOR AN ACT RELATING TO HIGHWAY SAFETY.

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

Tuesday, February 07, 2012, 2:00 PM
State Capitol, Conference Room 325

Representatives Keith-Agaran, Rhoads and Members of the
Committees:

The Hawaii County Office of the Prosecuting Attorney supports the intent of House Bill 2320 H.D.1 with amendments. The Hawaii County Office of the Prosecuting Attorney Objects to the Amendments made in H.D.1 of the bill for the following reasons.

Our State has had the dubious distinction of having the highest percentage of alcohol related traffic fatalities in the nation. (See NHTSA Statistics attached). While we do not object to the possibility of life time offenders having the opportunity of obtaining an ignition interlock permit, we do object to these offenders being able to drive unsupervised for increasingly shorter periods of time. Reducing the amount of time a serious drunk driver is required to have an ignition interlock device installed in his/her vehicle is not only dangerous, but potentially deadly.

We believe that the prosecutors should be part of the process. Without checks and balances the Bill allows the possibility for people with chronic alcohol problems to drive. Hypothetically, a chronic drunk who repeatedly is being cited for drinking in public would be eligible to obtain a drivers license. By allowing the prosecutors to bring a motion in cases where there is information of chronic alcohol or drug use, this scenario can be prevented.

The current Bill allows a person to get an ignition interlock permit, keep it for 3 years and not drive a single time. As we understand it, the person need only wait the required amount of time and they would be eligible for a license. Theoretically, the person can be incarcerated for the majority of the 3 year permit, have their family members pay for the device, come out of prison and be eligible for a drivers license.

For the above stated reasons, the Hawaii County Office of the Prosecuting supports this bill with the above suggested amendments.

Thank you for the opportunity to testify on this matter.

Table 4
Traffic Fatalities by State and the Highest Driver BAC in the Crash, 2009

State	Total	0.08 or higher	%	0.10 or higher	%	0.15 or higher	%	0.20 or higher	%	0.25 or higher	%
Alabama	848	522	62%	46	5%	280	33%	179	21%	325	38%
Alaska	64	42	65%	3	4%	20	31%	15	24%	22	35%
Arizona	807	514	64%	42	5%	219	27%	137	17%	260	32%
Arkansas	585	372	64%	43	7%	168	29%	117	20%	211	36%
California	3,081	1,956	63%	168	5%	950	31%	655	21%	1,118	36%
Colorado	465	285	61%	20	4%	158	34%	110	24%	178	38%
Connecticut	223	109	49%	15	7%	99	44%	67	30%	114	51%
Delaware	116	68	58%	4	3%	45	38%	30	26%	48	42%
Dist of Columbia	29	17	59%	2	7%	10	35%	3	11%	12	41%
Florida	2,558	1,649	64%	134	5%	770	30%	527	21%	904	35%
Georgia	1,284	885	69%	63	5%	331	26%	217	17%	394	31%
Hawaii	109	51	46%	6	6%	52	48%	40	36%	59	54%
Idaho	226	160	71%	7	3%	58	26%	39	17%	65	29%
Illinois	911	530	58%	62	7%	319	35%	213	23%	381	42%
Indiana	693	443	64%	39	6%	210	30%	142	21%	249	36%
Iowa	372	254	68%	22	6%	96	26%	64	17%	118	32%
Kansas	386	208	54%	23	6%	154	40%	102	27%	177	46%
Kentucky	791	550	70%	45	6%	194	25%	124	16%	239	30%
Louisiana	821	455	55%	72	9%	295	36%	200	24%	366	45%
Maine	159	106	67%	6	4%	47	29%	28	17%	53	33%
Maryland	547	354	65%	32	6%	162	30%	100	18%	194	35%
Massachusetts	334	201	60%	23	7%	108	32%	69	21%	130	39%
Michigan	871	579	67%	45	5%	246	28%	172	20%	291	33%
Minnesota	421	289	69%	23	5%	108	26%	81	19%	131	31%
Mississippi	700	436	62%	30	4%	234	33%	145	21%	264	38%
Missouri	878	518	59%	58	7%	300	34%	205	23%	358	41%
Montana	221	129	58%	11	5%	81	36%	59	27%	92	42%
Nebraska	223	135	61%	22	10%	66	30%	42	19%	88	39%
Nevada	243	152	63%	22	9%	68	28%	47	19%	90	37%
New Hampshire	110	73	66%	7	6%	30	27%	17	15%	36	33%
New Jersey	583	397	68%	36	6%	149	25%	80	14%	185	32%
New Mexico	361	232	64%	15	4%	114	32%	80	22%	129	36%
New York	1,156	766	66%	68	6%	321	28%	196	17%	388	34%
North Carolina	1,314	879	67%	67	5%	363	28%	236	18%	430	33%
North Dakota	140	81	58%	6	4%	54	38%	41	29%	59	42%
Ohio	1,021	643	63%	54	5%	324	32%	215	21%	378	37%
Oklahoma	738	473	64%	30	4%	235	32%	157	21%	265	36%
Oregon	377	235	62%	26	7%	115	30%	80	21%	141	37%
Pennsylvania	1,256	783	62%	64	5%	406	32%	276	22%	470	37%
Rhode Island	83	43	52%	7	8%	34	40%	16	20%	40	48%
South Carolina	894	468	52%	47	5%	377	42%	266	30%	423	47%
South Dakota	131	69	53%	6	5%	53	40%	41	31%	59	45%
Tennessee	989	642	65%	42	4%	303	31%	198	20%	345	35%
Texas	3,071	1,628	53%	202	7%	1,235	40%	830	27%	1,437	47%
Utah	244	190	78%	14	6%	40	16%	26	11%	54	22%
Vermont	74	46	63%	4	6%	23	32%	11	15%	28	37%
Virginia	757	476	63%	34	5%	243	32%	170	22%	278	37%
Washington	492	259	53%	26	5%	206	42%	137	28%	232	47%
West Virginia	356	221	62%	19	5%	115	32%	82	23%	134	38%
Wisconsin	561	308	55%	38	7%	213	38%	158	28%	251	45%
Wyoming	134	81	60%	7	5%	47	35%	36	27%	54	40%
National	33,808	20,961	62%	1,905	6%	10,839	32%	7,277	22%	12,744	38%
Puerto Rico	365	224	61%	32	9%	109	30%	74	20%	141	39%

*Total includes fatalities in crashes in which there was no driver present.

TO: The House of Representatives
Committee on Judiciary

FROM: Steven T. Barta, as an individual
and Lobbyist for Lynn Ramer
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LATE TEST
LATE TESTIMONY

SUBJECT: HB 2320, HD1 - Testimony in Favor, but with revisions

Hearing Date: Tuesday, February 7 2012
Time: 2:00 p.m.
Place: Conference Room 325

Chair Keith-Agaran, Vice Chair Rhoads, and members of the Committee on Transportation, thank you for allowing me to present testimony on House Bill 2320, HD1.

My name is Steve Barta. I am an attorney with over twenty-five years of experience in the area of prosecuting and defending citizens who have lost their driver's license because of drunk driving. I started my career over twenty-five years ago as a Honolulu deputy prosecutor with a lead role in prosecuting drunk drivers; I spoke on behalf of MADD and trained police personnel and other deputy prosecutors on how to handle to drunk driving cases. I presently represent those who have run afoul of the law.

Both as a prosecutor and as a defense attorney I have seen how alcohol has destroyed the lives of those who drive and those who have been victimized as a result of drunk drivers.

I have also seen how well intending laws have destroyed peoples lives and made them dependent upon the State for support. That is why five years ago I asked Senator Hee to introduce SB 946. SB 946 was created to permit those who have lost their driver's license for life an opportunity to drive again and become productive members of our community.

For five years now I have appeared before you and other legislative committees to correct the misinformation and clarify the confusion created by special interest groups intent on reeking their vengeance on those that have been without a license for over ten years that seek another chance to drive and become productive members of our community.

I have explained over and over again the different purposes served by criminal sanctions associated with a drunk driving conviction as opposed to the sanctions attached to an administrative revocation. The purpose of an administrative license revocation is to keep the community safe while the purpose of a criminal prosecution is to punish.

The criminal penalties associated with drunk driving do not allow for a lifetime revocation; even if one is charged with a felony. Lifetime sentences are rare in our penal code and are available only where a death has occurred. Criminal sanctions intended to punish include incarceration, community service and fines.

Administrative consequences of a drunk driving charge have in the past included a lifetime revocation of one's driver's license as a means of protecting the community from those that could not control their drinking. Last year the need for this sanction disappeared with the introduction of the ignition interlock law. The availability of ignition interlock devices in Hawaii eliminated the need for lifetime revocations. And the law was amended to reflect this truth by eliminating lifetime revocations.

Under our present law a drunk driver can no longer lose their license for life. The ignition interlock requirement protects the community from a violator driving a vehicle again while intoxicated.

Unfortunately, those who lost their license for life prior to January 1, 2011, continue to be shut out and cut off by the present ignition interlock law.

There is no justifiable reason to treat those who violated our drunk driving laws prior to 2011 any different than those who are now subject to the ignition interlock law.

Accordingly, last year I drafted an amendment to House Bill 1435 which sought to put those who offended prior to 2011 on an equal footing with those that offended after 2011.

Ironically HB 1435 died last session after it crossed over and was to be heard by Senator Hee's Judiciary Committee.

HB 1435 has been redrafted and now appears before you as HB 2320, HD1. Although the revisions made to HB 2320 by the Transportation Committee have improved the bill, two additions need to be made and a few overlooked drafting

errors need to be corrected.

A few corrections need to be made to make the bill consistent with the changes made by the Transportation Committee. HD1 eliminates the prosecutor from the process and reduces the ignition interlock period from five years to three years. Accordingly, the language that "A copy of the petition shall be served on the prosecuting attorney in the county in which the petition is filed." found under Section 291E-B(e) should be deleted; as should Section 291E-B(e)(4) requiring service on the prosecuting attorney. The reference to five years should be changed to three years in Section 291E-B(e)(3)(A). Because Section 291E-B(e)(4) will be deleted, the reference in Section 291E-B(e)(5) to "the requirement of paragraphs (1) through (5) need to be changed to 'paragraphs (1) through (4).'

The change from five years to three is an improvement; but three years is still punitive. There is no reason to require a motorist who has been without a driver's license for 10, 15 or 20 plus years to have to endure the expenses and shame of an ignition interlock system for more than one year. HB 2320 requires a minimum period of 3 years regardless of how long the person has been without a license.

I ask that you amend the "minimum three year" requirement in HRS, Section 291E-A(e) and modify it so that those who have been without a license for ten years or more need only be hampered by the ignition interlock device for one year.

Life time revocations became effective in Hawaii in 1991. That means there members of our community that have been without a drivers' license for twenty (20) years. The present law has done away with lifetime revocations, but it does not address the burden placed on individuals and society by those still having to live with a lifetime revocation.

The intent of my amendment is not to excuse the conduct of drunk drivers or to allow unsafe drivers back on the road. No one wants that. Rather it is to welcome back into the community those who have paid a steep price for their past indiscretions and are no longer a threat to society.

My proposed amendments rationally distinguishes between individuals. There is simply no rational reason to impose the hardship of requiring an individual who has been responsible for over ten years to endure the expense and shame of an ignition interlock system for five years; one year is sufficient.

Finally, HB 2320, HD1 needs to be amended to allow for those of our

neighbors who have been forced to move because of a lifetime revocation to become relicensed if they install an ignition interlock device in their present home town. This can be achieved by adding the following after Section Section 291E-B(e)(5):

If an out of State resident had their driving privileges in Hawaii revoked for life and has met the requirements of paragraphs (1) through (4), the district court shall grant the petition and issue an order declaring the person eligible for relicensing in Hawaii and reregistration , if applicable. The requirement of paragraph (1) may be met by a certified court abstract from the petitioner's home state. The requirement of paragraph (3) may be met by a certified statement from the appropriate licensing authority in the petitioner's home state.

Thank you for your consideration of these points and the opportunity to testify before your committee.

RESPECTFULLY SUBMITTED

/s/ Steven T. Barta

STEVEN T. BARTA