

HB2320, HD2



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

Deputy Directors
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IN REPLY REFER TO:

March 19, 2012

**HB 2320, HD1, HD2
RELATING TO HIGHWAY SAFETY**

SENATE COMMITTEE(S) ON TRANSPORTATION AND INTERNATIONAL AFFAIRS
and JUDICIARY AND LABOR and
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

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 and its safety partners supports House Bill No. 2320, HD2 as it addresses the technical fixes of the repeat offender to apply for an ignition interlock. This bill also addresses the lifetime revocation drivers of OVUII. The proposed legislation for the lifetime revocation drivers, includes the following amendments:

- Reduces the lifetime revocation recipients from the original 5-year provisional period for the ignition interlock device (IID) to a 3-year period; and
- Removes the prosecutors from the petition hearings for the lifetime revocation recipients.

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The Department of Transportation strongly prefers that the 5-year period on the ignition interlock for a lifetime revocation person who wants to have their driver's license reinstated replace the 3-year period. Regardless of how long a person's driver's license has been revoked, we believe that a five-year period will ensure that this person is more likely to be a responsible driver. The 5-year period is consistent with a driver who has committed three or more OVUII offenses. The Department strongly prefers that the Prosecutor's Office remain in the hearing process for the re-entry of the revoked lifetime drivers into the driver's licensing system. This would safeguard the re-entry of these drivers to ensure the protection of the public.

We strongly urge your committee to pass House Bill No. 2320, HD2 with the proposed amendments to ensure that the repeat offender and the lifetime offender have their driving privilege reinstated because they are more likely to be a responsible driver and are not a risk to the rest of Hawaii's drivers on the roadway.

Thank you for the opportunity to provide testimony.





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

ON THE FOLLOWING MEASURE:

H.B. NO. 2320, H.D. 2, RELATING TO HIGHWAY SAFETY.

BEFORE THE:

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

DATE: Monday, March 19, 2012

TIME: 1:21 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): David M. Louie, Attorney General, or
Susan Won, Deputy Attorney General

Chairs English, Hee and Espero and Members of the Committees:

The Department of the Attorney General (the "Department") supports the intent of ensuring that repeat drunk driving offenders are placed into the state's ignition interlock program, but has significant concerns with the proposed amendments to chapters 291E and 286, Hawaii Revised Statutes (HRS), and therefore makes the following recommendations.

Section 1 of the bill provides 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, because 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 provides "[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 or no 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.

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 examine a number of factors, including the petitioner's criminal and traffic record after receiving a lifetime license revocation, in order to determine whether the individual should be given the privilege to drive again. This process will then 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.

Furthermore, the amended section 4 deletes the provision that allowed the prosecuting attorney to request a hearing and offer evidence and argument for or against the petition. As such, this amendment places more emphasis on making the process easier for the petitioner, rather than on the safety of the community.

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. 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, as drafted 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 relicensing, 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 of the bill 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 reason why a repeat intoxicated

driver, who has a 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.



The Judiciary, State of Hawaii

Testimony to the Twenty-Sixth Legislature, 2012 Regular Session

Senate Committee on Transportation and International Affairs

Senator J. Kalani English, Chair
Senator Will Espero, Vice Chair

Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

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

Senator Will Espero, Chair
Senator Michelle N. Kidani, Vice Chair

Monday, March 19, 2012

1:21 p.m.

State Capitol, Conference Room 224

by

Marie C. Laderta
Chief Adjudicator

Administrative Driver's License Revocation Office (ADLRO)

Bill No. and Title: House Bill No. 2320, 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 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.



House Bill No. 2320, H.D. 2, Relating to Highway Safety
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Senate Committee on Judiciary and Labor
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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).

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



House Bill No. 2320, H.D. 2, Relating to Highway Safety
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Senate Committee on Judiciary and Labor
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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 6 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.

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.

Thank you for the opportunity to testify on House Bill No. 2320, H.D. 2.



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 Committees on Transportation and International Affairs,
Judiciary and Labor and Public Safety, Government Operations, and Military Affairs**

March 19, 2012, 1:21 p.m.

RE: H.B. 2320, HD2: Relating To Highway Safety

Chairs English, Hee, Espero, and Committee Members,

The ignition interlock law went into effect on January 1, 2011. The law was supposed to require anyone convicted of operating a vehicle under an intoxicant to install an ignition interlock device in their motor vehicle. The law, in its current state, only allows first-time offenders to legally drive with an ignition interlock device. The proposed amendments to the ignition interlock law will allow repeat offenders to install interlock devices in their vehicles.

Arguably, the drivers who need ignition interlock the most were omitted in the 2011 law. The public is better served, and safer, if a person chooses to drive an interlock equipped vehicle over driving illegally.

The Office of the Public Defender supports H.B. 2320, HD2. Thank you for the opportunity to be heard on this measure.

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 15, 2012

The Honorable J. Kalani English, Chair
and Committee Members
Committee on Transportation and International Affairs
The Honorable Clayton Hee, Chair
and Committee Members
Committee on Judiciary and Labor
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 Hee, Chair Espero and Committee Members:

Subject: H.B. No. 2320 HD2, Relating to Highway Safety

The City and County of Honolulu has no objections to the intent H.B. No. 2320 HD2 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 HD2, 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,

Handwritten signature of Dennis A. Kamimura in black ink.

Dennis A. Kamimura
Licensing Administrator

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE DI-LC

March 19, 2012

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

Dear Chairs English, Hee, and Espero and Members:

Subject: House Bill No. 2320, H. D. 2, Relating to Highway Safety

I am Darren Izumo, Captain 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. 2, Relating to Highway Safety, but only with the listed amendments.

In the language contained in House Bill No. 2320, H. D. 1, there was a provision for persons with a lifetime revocation to apply for a permit for a driver's license after five years with an ignition interlock and stating that the prosecuting attorney be allowed to present evidence that may be considered regarding the request for the driver's license. This language was removed in the current House Bill No. 2320, H. D. 2, version of the bill.

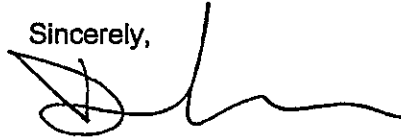
The HPD requests that the above-mentioned provisions be re-inserted into the current version of the bill.

The Honorable J. Kalani English, Chair
and Members
The Honorable Clayton Hee, Chair
and Members
The Honorable Will Espero, Chair
and Members
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Without the addition of these two suggested provisions that were previously in House Bill No. 2320, H. D. 1, the HPD would request that this bill be held.

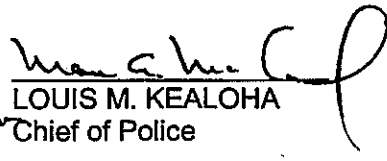
Thank you for the opportunity to testify.

Sincerely,



DARREN IZUMO, Captain
Traffic Division

APPROVED:


for LOUIS M. KEALOHA
Chief of Police



OFFICE OF THE PROSECUTING ATTORNEY

COUNTY OF KAUAI, STATE OF HAWAII
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Jake Delaplane
First Deputy Prosecuting Attorney

Shaylene Iseri-Carvalho
Prosecuting Attorney

Sam Jajich
Second Deputy Prosecuting Attorney

March 16, 2012

TO: MEMBERS OF THE SENATE; COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS; COMMITTEE ON JUDICIARY AND LABOR; AND COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS
FR: SHAYLENE ISERI-CARVALHO, COUNTY OF KAUAI PROSECUTING ATTORNEY
RE: HB 2320 HD2, RELATING TO HIGHWAY SAFETY

Aloha,

Senators J. Kalani English, Will Espero, Clayton Hee, Maile S.L. Shimabukuro, Michelle N. Kidani, and Committee Members, the County of Kaua'i Office of the Prosecuting Attorney strongly objects to HB 2320 HD2, which would amend the State's ignition interlock law and expand its applicability.

Though we recognize that ignition interlock programs have seen success in some jurisdictions and we recognize that these programs may be successful in enabling persons who have lost driving privileges to regain those privileges, we nevertheless must object to the above bill as it offers too much leniency towards those who have lost driving privileges and has the potential to unleash significant dangers on society.

Specifically, this bill proposes changes to the Hawai'i Revised Statutes (HRS) permitting individuals with lifetime license revocations and any person convicted of the offense of habitually operating a vehicle under the influence of an intoxicant to petition for an ignition interlock instruction permit. Also, the bill allows individuals with lifetime driver license revocations to get a valid Hawaii Driver License after only three years of having an ignition interlock. Based on these changes, even a person convicted of manslaughter from the operation of a motor vehicle would be eligible to apply for an ignition and could obtain a Hawai'i Driver License after only three years.

We have serious concerns with these measures as they will allow repeat intoxicated drivers, persons deemed dangerous enough to warrant a lifetime license revocation, back into vehicles and on the streets with little to no proof that they are not as dangerous as they once were. This bill, though written towards accomplishing a noble goal, requires very little of persons who have previously been adjudicated unfit to drive. Thus, we cannot support this bill

Deputy Prosecuting Attorneys:

Lisa R. Arin
Jared Auna
Lance Kobashigawa

Melinda K. Mendes
Tracy Murakami

John H. Murphy
Ramsey Ross
Rebecca A. Vogt

"An Equal Opportunity Employer"

unless requirements are added thereto which are more stringent than the current requirements of submitting a simple application for an ignition interlock and maintaining it for three years.

Also, as presently written, the bill contains no provision for the court, or any other agency, to exercise discretion in awarding these individuals a new license. Thus, we recommend that both the court and law enforcement, including both police and prosecutors, be given a voice in the decision as to whether habitual drunk drivers and persons with lifetime license revocations be allowed to receive their licenses back.

Furthermore, we agree with the testimony put forward by the Department of the Attorney General wherein they have stated that the bill would work to undermine the sentencing provisions for operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant under section 291E-62. We also agree that this bill undermines the authority of other states' license revocations.

In conclusion, we cannot support the bill as presently written. Instead, we offer strong opposition as the bill has the potential to allow dangerous drivers back on the streets without adequate proof that they are safe to be there. We therefore ask you to oppose this bill and continue to support law enforcement, prosecutors, and the judiciary as we attempt to ensure that only those who have earned the right to drive be allowed that privilege.

Mahalo,



Jake Delaplane
First Deputy Prosecuting Attorney, County Of Kauai



BERNARD P. CARVALHO, JR.
Mayor

GARY K. HEU
Managing Director

POLICE DEPARTMENT COUNTY OF KAUAI

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MICHAEL M. CONTRADES
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March 16, 2012

The Senate
The Twenty-Sixth Legislature
Regular Session of 2012
Committee on Transportation and International Affairs
Committee on Judiciary and Labor
Committee on Public Safety, Government Operations, and Military Affairs

RE: House Bill 2320HD2 (Relating to Highway Safety)

Honorable Chairs English, Hee and Espero:

The Kauai Police Department (KPD) offers this testimony today in support of amendments to HB 2320HD2 (Relating to Highway Safety). KPD supports this bill to the extent it is amended to include language that if a person with a lifetime driver license revocation applies for a driver's license pursuant to the new law, the period during which that person may operate a vehicle with interlock should be extended to five years as opposed to three years. KPD also supports amendments to include the appropriate County Prosecutor (at the Prosecutor's discretion) in District Court proceedings concerning issuance of ignition interlock permits to individuals with lifetime revocations. Law enforcement should have a role in ensuring that drivers who may threaten the safety of the public remain off the streets. The judge in such cases should have discretion to deny the Petitioner's request for an ignition interlock permit.

Without these amendments, KPD will ask that this bill not be passed.

Therefore, we humbly urge your honorable committee to support amendments to HB 2320HD2.

Mahalo,

Darryl D. PERRY
Chief of Police

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawai'i 96720-3998
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March 16, 2012

Chairs English, Hee, Espero, and Committee Members:
Committee on Transportation and International Affairs
Committee on Judiciary and Labor
Committee on Public Safety, Government Operations, and Military Affairs
415 South Beretania Street, Room 224
Honolulu, Hawai'i 96813

Re: House Bill 2320HD2, Relating To Highway Safety

Dear Chairs English, Hee, and Espero:


The Hawai'i Police Department supports the intent of House Bill 2320, but cannot support its current form Relating to Highway Safety with amendments. The purpose of this Bill is to clarify the ignition interlock requirements and permitting process.

The Hawai'i Police Department believes that if it is the will of the Legislature to allow a process for individuals with a lifetime revocation to apply for reinstatement of license and privilege to operate a motor vehicle without an ignition interlock that it be allowed only after a minimal **five-year period** of time with an ignition interlock permit. Further, we would support a judicial process wherein the **Prosecutor's Office** of the appropriate jurisdiction is allowed to present evidence and/or witnesses in the Judicial Process which may serve to challenge a Defendant's petition for reinstatement.

We believe that it is important to send a message that the safety of the community at large will take precedence over the "driving privileges" of an individual.

For these reasons, we urge these committee to approve this legislation only with the cited amendments. Thank you for allowing the Hawai'i Police Department to **provide comments relating to House Bill 2030.**

Sincerely,


HARRY S. KUBOJIRI
POLICE CHIEF



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

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GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

March 16, 2012

The Honorable J. Kalani English, Chair
And Members of the Committee on Transportation
and International Affairs

The Honorable Clayton Hee, Chair
And Members of the Committee on Judiciary and Labor

The Honorable Will Espero, Chair
And Members of the Committee on Public Safety,
Government Operations, and Military Affairs
The Senate
Hawaii State Capitol
Honolulu, HI 96793

Re: HB 2320, HD2, RELATING TO HIGHWAY SAFETY

Dear Chairs English, Hee, Espero and Members of the Committees:

The Maui Police Department is in support of the intent of HB 2320, HD2, with amendments. This bill that clarifies recommendations of renewal of a driver's license revoked for impaired driving, allows 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; provides guidelines for ignition interlock instruction permits and ignition interlock permits, allows individuals with a lifetime revocation to apply for reinstatement of license and privilege to operate a motor vehicle without an ignition interlock after three years with an ignition permit, and requires courts to grant petition for reinstatement if certain requirements are met. This bill can help to keep our roadways safe if the suggested amendments are implemented.

We respectfully request that an amendment to this bill is added to include language that if a person with a lifetime revocation applies for a driver's license, they must have, for at least five consecutive years, an installed ignition interlock with no violations instead of the proposed three years in the bill.

The Honorable J. Kalani English, Chair
Committee on Transportation and International Affairs

The Honorable Clayton Hee, Chair
Committee on Judiciary and Labor

The Honorable Will Espero, Chair
Committee on Public Safety, Government Operations,
And Military Affairs

March 16, 2012

Page 2

The next amendment deals with the need for our Prosecutors to have the ability to present evidence at any hearing where there is a request for reinstatement of a driver's license. This will allow for a check and balance for this process.

Finally, the Maui Police Department is in support of HB 2320, HD2, with the stated amendments that must be submitted for our future support of this bill.

Thank you for this opportunity to testify.

Sincerely,



GARY A. YABUTA
Chief of Police



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

March 19, 2012

To: Senator J. Kalani English, Chair –Senate Committee on Transportation and International Affairs; Senator Will Espero, Vice Chair;
Senator Clayton Hee, Chair – Senate Committee on Judiciary and Labor; Senator Maile S.L. Shimabukuro, Vice Chair;
Senator Will Espero, Chair – Committee on Public Safety, Government Operations, and Military Affairs; Senator Michelle N. Kidani, Vice Chair;
and members of the committees

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

Re: House Bill 2320, HD2 – Relating to Highway Safety

I am Carol McNamee, speaking on behalf of the members of Mothers Against Drunk Driving - Hawaii, in support of House Bill 2320, HD2 but with a request for amendments.

Part of this bill mirrors measures submitted last session in the Senate (SB 825) and House (HB 1435) in response to the need to correct a flaw in the ignition interlock law which went into effect on January 1, 2011. The problem was caused by a conflict between the pre-2011 statutes requiring the revocation of vehicle registration for repeat offenders and the new law under which vehicles being equipped with an interlock device need to be registered. The current bill, HB2320, remedies the problem in the law by removing all references to the requirement of the revocation of vehicle registration and permits repeat OVUII offenders to request that their registration be returned in order to obtain an Ignition Interlock permit.

House Bill 2320 not only corrects the flaw mentioned above, it extends the opportunity to use an interlock device to other currently excluded categories of offenders. It also makes other housekeeping amendments for clarification of sections of the existing law. And it recognizes 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 before the person is eligible to petition the Court for a full unrestricted license.

MADD Hawaii supports the inclusion of additional groups of OVUII “respondents” since over 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 5000 alcohol-involved journeys on Hawaii roads. Our organization agrees that it is 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.

However, MADD, along with the law enforcement community, feels strongly that lifetime revocation recipients included in this bill should have a five year provisional period with use of an ignition interlock device as stated in the original version of HB 2320.

Five years is consistent with the minimum number of years of interlock use required of “respondents” who are arrested for a fourth OVUII after the interlock system went into effect on January 1, 2011. It also provides a longer time in which to assess the safety qualifications of a person who wants to eventually become a fully licensed driver again. In addition, MADD believes that the prosecutor’s office of each county should be notified of petition hearings so that they have the option of participating in the petition process of assessing former lifetime revocation recipients.

Finally, MADD has reviewed prior testimony from the Office of the Attorney General and agrees with the recommendation to clarify that Habitual Offenders (291-E61.5), those convicted of Manslaughter (286-284) and child support related license revocation recipients are not included in the expanded group of individuals proposed to be eligible for an interlock program and possible application for a new regular drivers license. Language could be made available upon request.

We strongly encourage the Committees to pass this bill with the amendments of returning to the language of the original HB 2320 as it relates to Section 4 (e) (minimum of five years rather than minimum of 3 years before being able to file a petition to reinstate eligibility for a drivers license; and the provision that a copy of the petition shall be served on the prosecuting attorney in the county where the petition is filed.)

Thank you for the opportunity to testify.

TESTIMONY IN SUPPORT OF HB-2320 RELATING TO HIGHWAY SAFETY

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair; Senator Will Espero, Vice Chair and members of the committee

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair; Senator Maile S.L. Shimabukuro, Vice Chair and members of the committee

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

Senator Will Espero, Chair; Senator Michelle N. Kidani, Vice Chair; and members of the committee

Monday, March 19, 2012 1:21 p.m.
State Capitol, Conference Room 224

By

Brandon Espedal

An interested individual

According to MADD's publication *2009 State Progress Report*, in relation to the percentage of alcohol related traffic fatalities; Hawaii ranked 47th out of 51 (50 states and the District of Columbia). This is a poor record - in spite of Hawaii having, at the time, one of the toughest set of laws in the country regarding suspensions and revocations as punishments for operating a vehicle under the influence of an intoxicant (OVUII) offenses. It is apparent that more needs to be done in Hawaii to reduce the number of alcohol related traffic fatalities.

I am testifying to encourage passage of HB-2320 which is intended to correct 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 to permit repeat offenders and those, like myself, who had received an administrative lifetime license revocation (ALLR) to apply for an interlock ignition permit. The primary reason to pass this bill is that it is a statistical certainty that allowing repeat offenders drive with interlocks devices serves public safety more than suspensions or revocations alone.

Over the last century the ability to drive from place to place has woven itself into the fabric of American life to such a degree that it is a large part of the definition of who and what we are as a nation. The ability to drive is essential transportation to such a large majority of the population that it should not come as a surprise that studies have estimated that over 75% of drivers with suspended or revoked licenses continue to drive, (van Oldenbeek and Coppin, 1965; Hagen et al., 1980; Ross and Gonzales, 1988; DeYoung, 1990, Cheng et al., 2006). In fact, these studies show that the longer the period of suspension or revocation the more likely the offender is to drive illegally.

Part of the Department of Transportations' testimony on a similar bill in 2011 (HB 1435) included this information:

The Administrative Drivers License Revocation Office (ADLRO) 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 would be correctly deduced that if 20% of those with an ALLR received one or more additional lifetime revocations that a much, much higher percentage drive illegally.

The deterrent effect of possible lifetime revocations previously touted by many in the law enforcement community here in Hawaii and elsewhere has been proved ineffectual. In the American Association of State Highway and Transportation Officials publication titled *Addressing Collisions Involving Unlicensed Drivers and Drivers with Suspended or Revoked Licenses*;

Measures traditionally employed to make it more difficult for unlicensed suspended or revoked drivers to obtain or retain a license are ineffective and may even be counterproductive. Because of the costs of reinstating licensure, including the cost of vehicle insurance after a conviction for DUI, many drivers choose to remain unlicensed but continue to drive. In California, there are about 1 million suspended or revoked drivers in the state at any given time and an additional estimated 1 million who are unlicensed (DeYoung, 1999, p. 46). When drivers are suspended or revoked, they are on the record system, and at least some level of control may be exerted over them. However, unlicensed drivers are more difficult to monitor, so that simply threatening to remove licensure for longer and longer periods of time does not solve the problem of hardcore offenders. Neither does education, jail sentences, or treatment programs. Something more is required.

On January 1, 2011, Act 171, SLH, as amended by Act 88, SLH 2009, as further amended by Act 166, SLH 2010, became law, in part, recognizes that lifetime revocations are not effective. The "something more" envisioned by the new laws was the combination of tougher jail sentences, vehicle impoundment and the utilization of interlock devices in the vehicles of repeat offenders. However, in this new set of laws there are no provisions for those with lifetime revocations. In fact, a person arrested or convicted on December 31, 2010 with three prior alcohol enforcement contacts would receive a lifetime revocation while, that same person, if arrested or convicted one day later, on January 1, 2011 could be fully eligible to get an unrestricted license in as little as five years. There is also a flaw in the current law where there are no provisions for those repeat offenders who were adjudicated for OVUI prior to January 1, 2011 to be eligible to get an interlock permit.

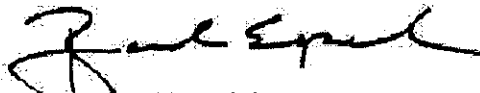
Because of studies like those mentioned, those few states like Hawaii that once had mandatory lifetime revocations have since repealed those laws leaving lifetime revocations as punishment to only a few (like those holding a commercial driver license). All states with the exception of Hawaii and Kansas have enacted some kind of legislation to allow most of those who received lifetime revocations under the old laws the ability to drive legally; with an

interlock device, or after either a significant amount of time has passed without an alcohol enforcement contact, or a combination of both.

The recent controversy surrounding HB-2320 seems to be focused on whether an offender who had received an ALLR is allowed to apply for an unrestricted license after three or five years. If public safety is the paramount concern, that question can be addressed in future sessions. I think, in the future, this law can be modified to allow the Director more discretion in determining if and when a repeat offender should become eligible for an unrestricted license. In making such a determination; the respondent's past and present criminal and non-criminal activities (including length of sobriety) should be taken into account.

The public safety is better served by allowing repeat OVUII offenders to drive legally, with an interlock device, than it is of the inevitability of having the majority of repeat offenders drive illegally without an interlock. For that reason I urge passage of HB-2320.

Respectfully submitted,



Brandon Espedal

Citations:

American Association of State Highway and Transportation Officials publication titled *Addressing Collisions Involving Unlicensed Drivers and Drivers with Suspended or Revoked Licenses*; Found online at http://safety.transportation.org/htmlguides/USR/types_of_probs.htm

Chang, H, Woo, and Tseng, C.M. *Is rigorous punishment effective? A case study of lifetime license revocation in Taiwan Accident Analysis & Prevention*, 2006, 38 (2) : 269-276

DeYoung, D. J. *Development, Implementation and Evaluation of a Pilot Project to Better Control Disqualified Drivers*. Report No. 129. Sacramento, California: California Department of Motor Vehicles. 1990.

Hagen, R. E., E. J. McConnell, and R. E. Williams. *Suspension and Revocation Effects on the DUI Offender*. California Department of Motor Vehicles, Sacramento. 1980.

Ross, H. L., and P. Gonzales. Effects of license revocation on drunk driving offenders. *Accident Analysis & Prevention*. 20(5): 379-91. 1988.

van Oldenbeek, G., and R. S. Coppin. *Driving Under Suspension and Revocation; A Study of Suspended and Revoked Drivers Classified as Negligent Operators*. California Department of Motor Vehicles, Sacramento. 1965.

Sharon Lum Ho

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 16, 2012 6:39 PM
To: TIATestimony
Cc: vitousek@nhop.org
Subject: Testimony for HB2320 on 3/19/2012 1:21:00 PM

Testimony for TIA/JDL/PGM 3/19/2012 1:21:00 PM HB2320

Conference room: 224
Testifier position: Support
Testifier will be present: No
Submitted by: Sharon Vitousek
Organization:
E-mail: vitousek@nhop.org
Submitted on: 3/16/2012

Comments:

On behalf of the island wide Motor vehicle crash reduction group as its facilitator, we wanted you to know that we strongly support this bill and its improvements to the ignition interlock program. AS you may know, on the big island the traffic death rate is three times higher than on Oahu and more than 50 % of traffic fatalities are related to alcohol impaired driving, This will help to save lives

Sincerely,
Sharon Vitousek MD

March 16, 2012

Person Testifying: Hannibal E. Starbuck

To: Senate Committee on Transportation and International Affairs; Senate Committee on Judiciary and Labor; & Senate Committee on Public Safety, Government Operations, and Military Affairs.

Re: Hearing on Monday March 19, 2012, 1:21 p.m., conference room 224

Subject: House Bill 2320 H.D. 2

Aloha kākou Chair English, Chair Hee, Chair Espero, and Members of the Committees,

I am sending this testimony in support of HB 2320 H.D. 2 as it applies to persons living with a lifetime driver's license revocation in the State of Hawaii. I am one such person and have been waiting for a fair process to be given a chance to regain my driving privileges. It is my opinion that the 3-5 year term with the interlock device as a transition back to fully restored driving privileges is fair and appropriate. My driver's license was revoked in 1999 and even though I have maintained a life of great quality, it has been and is difficult at times to be without a license.

I have lived on Maui for my entire life of 40 years, except for 2 years on Kaua'i and 4 ½ years on O'ahu. I graduated from H.P. Baldwin High School in 1989. Early occupations I tried were landscaping, roofing, carpentry, and cooking. Ironically, it wasn't until after the 4th and final DUI conviction I had in 1999 that I got serious about college and a career. I spent 2 years at Maui Community College and then transferred to UH Mānoa to major in Physics. I received a BS in Physics in 2005 and then a Post Baccalaureate Certificate in Secondary Education in 2006 to become a high school science teacher. While at UH Mānoa I worked for the Physics Department until it was time to do my student teaching, which I did at Aiea and Farrington High Schools. I returned to Maui where I was hired at H.P. Baldwin High School in July 2006 and have been teaching science there ever since. My mother passed away in 2006 as well and I was able to use the money I inherited from the sale of our family house in Huelo to finance a house in Waiehu. I was married in 2009, and in November of that year my wife gave birth to our daughter. Also in the house since the marriage are her 2 other children who attend high school at Kamehameha Maui Campus. In 2010 I received a Masters of Science in Geoscience from Mississippi State University from a mostly online program. At Baldwin I helped start the Baldwin Robotics team which I was a part of for 3 years—I had to quit due to family responsibilities.

My mode of transportation on Maui before I got married, both before and after UH Mānoa, was mainly a bicycle with occasional rides from family and friends. On O'ahu I lived in Mānoa Valley so the bicycle was again my main mode of transportation. When I had to travel further I took the bus or caught a ride with friends. Once I got married my wife has been my ride. I no longer ride a bicycle because she thinks it is too dangerous, but I occasionally ride the Maui Bus. I have been living without a license for over 12 years. While I do get to where I need to be, I know my life and the lives of my wife and daughter would improve if I could get my license back. My wife works nights, and my step children are graduating and probably going off the island for college. My daughter is in daycare and by August we hope to get her into a preschool. My having a driver's license would make our lives easier and safer.

While I may have shown that one can get by, and even prosper, without a license I think there should be a process that a person in a position like mine can follow to get a driver's license restored. I hope that the Committees find House Bill 2320 H.D. 2 satisfactory to accomplish what is fair and just for persons deserving a chance for restoration of a revoked driver's license. If not in this form, I hope that the Committees find the intent of the bill justified and see that adequate revisions be made or revert back to the original form.

Mahalo nui,

Hannibal E. Starbuck
Waiehu, Maui

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 18, 2012 4:53 AM
To: TIATestimony
Cc: jem1@mchsi.com
Subject: Testimony for HB2320 on 3/19/2012 1:21:00 PM

Testimony for TIA/JDL/PGM 3/19/2012 1:21:00 PM HB2320

Conference room: 224
Testifier position: Support
Testifier will be present: No
Submitted by: Edward Lioen
Organization: Individual
E-mail: jem1@mchsi.com
Submitted on: 3/18/2012

Comments:

I am testifying to encourage passage of HB-2320 which is intended to correct 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 to permit repeat and those, like my son, who had received an administrative lifetime license revocation (ALLR) to apply for an interlock ignition permit. The primary reason to pass this bill is that it is a statistical certainty that allowing repeat offenders drive with interlock devices serves public safety more than suspensions or revocations alone.

My son has a lifetime revocation in force for 10 years. He has turned his life around, and he has been free of intoxicants for 10 years. He belongs to AA and attends meetings regularly. He started a construction business that he has operated successfully thus contributing to society. Without the ability to drive, it is very difficult to do business. If he had been arrested after 1 January, 2011, he would have been eligible to get an unrestricted license in as little as five years. These seem very unfair.

With the interlock device, the public is afforded protection while allowing repeat OVUII offenders to drive and lead productive lives.

For these reasons, I urge passage of HB-2320

Respectfully submitted,
Edward Lioen