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CITY AND COUNTY OF HONOLULU

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**THE HONORABLE RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON TRANSPORTATION
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i**

March 12, 2014

RE: S.B. 2729 S.D. 2; RELATING TO MOBILE ELECTRONIC DEVICES.

Chair Yamane, Vice Chair Takayama and members of the House Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comments expressing concerns on S.B. 2729, S.D. 2. This bill amends guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts. It also provides procedures for agencies to dispose of retained evidence and for defendants to file objections to proposed disposals.

The intent of S.B. 2729, S.D. 2 is to allow drivers to hold mobile electronic devices

1. For emergency purposes;
2. When using the devices for searching for traffic conditions, accidents, or alternative traffic routes; or
3. When at a complete stop whether or not the engine is running in a safe location by the side of the road out of the way of traffic.

Such exceptions in the law that prohibits one from holding a mobile electronic device while driving a vehicle is difficult to enforce because law enforcement officers would not know whether a person is using the device under one of the enumerated exceptions unless the device is seized as evidence, which would not only inconvenience one from being without their device, but it would take up storage space in the Honolulu Police Department's facilities.

For the reasons stated, the Department of the Prosecuting Attorney of the City and County of Honolulu has concerns on S.B. 2729, S.D. 2. Thank you for the opportunity to testify on this matter.



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

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

March 12, 2014
10:30 a.m.
State Capitol, Room 309

S.B. 2729 SD2
RELATING TO MOBILE ELECTRONIC DEVICES

House Committee on Transportation

The Department of Transportation (DOT) **opposes** S.B. 2729, S.D. 2 which amends Section 291C-137 by making it a traffic infraction and specifies the penalty for each infraction be not less than \$200.

This measure will not allow the DOT to be eligible to receive federal grant funds because it does not meet the requirements of 23 United States Code, Section 405(e), the distracted driving grant. The grant requires that there be minimum fines for the first violation and increased fines for repeat offenders. The propose amendments to the law, through this bill, does not meet any of the federal grant requirements and would not qualify Hawaii to apply for and receive a distracted driving grant.

The DOT asks for your consideration in the following amendments:

- Page 1, lines 10 through 12: Delete proposed amendment.
- Page 3, line 12: amend to read, “vehicle upon a public highway, street, road, or highway and includes the operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise.”
- Page 3, lines 16 through 17: Delete the proposed amendment.
- Page 3, line 20: Delete the amendment.
- Page 4, lines 1 through 11: Delete the proposed amends and change:
 - Line 6, \$200 to read \$201; and
 - Line 11, \$300 to read \$301.
 - Page 4, line 11: Delete the proposed amendment, “a fine of \$200”.

The DOT urges your committee not to pass S.B. No 2729, S.D. 2 as proposed as it will weaken Hawaii's mobile electronic device law and further disqualify Hawaii from receiving federal grant to combat distracting driving. The DOT asked for your consideration of its proposed amendments.

Thank you for the opportunity to testify.

LATE

POLICE DEPARTMENT

CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE KK-LC

March 12, 2014

The Honorable Ryan I. Yamane, Chair
and Members
Committee on Transportation
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

Subject: Senate Bill No. 2729, S.D. 2, Relating to Mobile Electronic Devices

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

The HPD is strongly opposed to the passage of Senate Bill No. 2729, S.D. 2, Relating to Mobile Electronic Devices. The passage of this bill would amend Section 291C-137, Mobile Electronic Devices, Hawaii Revised Statutes (HRS), and would effectively eliminate any possibility of enforcement of the law.

On page 1, lines 10 through 12, the bill would amend paragraph (a) from, "*No person shall operate a motor vehicle while using a mobile electronic device.*" to "*No person shall operate a motor vehicle while using a mobile electronic device held in the person's hand for the purpose of making or receiving a non-emergency call, texting, or receiving a text message.*" When a police officer observes someone holding a mobile electronic device (MED), there is no way the officer can determine what the person is doing. This would allow a driver of a vehicle to check e-mail, read the newspaper, check an internet website, play games, or do any other distracting activity. A police officer would never be able to testify in court as to what activity the driver was doing when the officer witnessed the driver holding a MED.

When the different county ordinances were developed, it was recognized that the law would be ineffective if the elements of the law were specific that the officer would have to testify as to what exactly the driver was doing on the MED. As such, when county ordinances and HRS 291C-137 were passed, it included language that made it outright illegal to hold an MED. The purpose and intent of this law is to prevent drivers from being distracted while operating a motor vehicle.

On page 2, lines 10 through 13, the bill would allow drivers to pull to the side of the road, out of traffic, and allow them to use an MED, whether or not the engine was running. This is problematic

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The Honorable Ryan I. Yamane, Chair
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from an enforcement perspective. The term "stop" is defined in HRS 291C-1, so this would allow a driver to step on the brake and utilize his or her MED. There have been many instances of drivers who were then distracted, and their vehicles rolled into other vehicles and even pedestrians. The safer way would require that the vehicle be put in "park" and have the engine turned off.

Distracted driving is a serious problem across the United States and around the world. The National Highway Transportation Safety Administration (NHTSA) reported that in 2012, there were 3,328 people killed, and an estimated 421,000 people were injured in motor vehicle crashes involving distracted driving. The NHTSA further reports that a driver who is distracted is twenty-six times more likely to get into a crash.

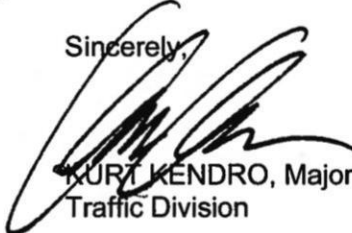
It is important to note that in the criminal justice system, the government (the police and prosecutors) have to prove that a person is guilty of an action. In this instance, the police would have to testify that the driver was not making or receiving a non-emergency call, texting, or receiving a text message. Unless the police officer was in the vehicle with the driver, the officer could not testify as to what the driver is doing with the MED. It would render the law unenforceable and place people using the roadways in our community at serious risk of injury and damage to property.

In 2013, the HPD issued 11,007 citations for drivers who were holding an MED. Distracted drivers are a serious problem in Hawaii. Changing this law would provide a legal and justified excuse for a driver to hold an MED. Law enforcement officers would not be able to refute the explanation, and no citations could be issued. The greater risk is that if this law is changed, drivers could hold an MED and legally drive while distracted when all of their attention should be on the roadway in front of their vehicles.

The HPD strongly urges you to oppose Senate Bill No. 2729, S.D. 2, Relating to Mobile Electronic Devices.

Thank you for the opportunity to testify.

Sincerely,



KURT KENDRO, Major
Traffic Division

APPROVED:



LOUIS M. KEALOHA
Chief of Police

takayama2 -Brandon

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 12, 2014 11:16 AM
To: TRNtestimony
Cc: franosj@gmail.com
Subject: Submitted testimony for SB2729 on Mar 12, 2014 10:30AM

SB2729

Submitted on: 3/12/2014

Testimony for TRN on Mar 12, 2014 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Stephen Frano	Individual	Support	No

Comments: I support this bill. I believe this should allow individuals to use mobile devices in their vehicle ONLY when parked safely.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

The Honorable Rep. Ryan I. Yamane, Chair
and Members of the Committee on Transportation

LATE

Dear Chair Yamane and Members:

RE: SB 2729, SD.2, Relating to Mobile Electronic Devices

My name is Leilani Johnson and I am in full support of SB2729 SD2. I believe that the law needs to be revised to better serve the public. I received a citation for changing the song on my iTunes (similar to tuning the radio) and was cited for using my phone. The officer said that any type of interaction with an electronic device is subject to citation. Furthermore, he gave the example that technically a person could be cited for holding an electronic cigarette, which is not reasonable considering the purpose of this law is to discourage using mobile phones while driving.