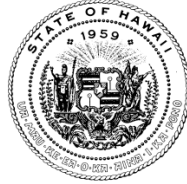


SB2729

SD1

LATE

TESTIMONY



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

February 25, 2014
10:30 a.m.
State Capitol, Room 16

S.B. 2729, S.D. 1
RELATING TO MOBILE ELECTRONIC DEVICES

Senate Committee on Judiciary and Labor

The Department of Transportation (DOT) **opposes** Senate Bill No. 2729, S.D.1, Relating to Mobile Electronic Devices. This bill amends Section 291C-137, Hawaii Revised Statutes, which weakens Act 74 of 2013 by providing exceptions to allow cellular usage when searching for traffic conditions, accidents, or alternative traffic routes for drivers who are already at a complete stop and in a safe location. It also deletes the increased fines and makes this violation a traffic infraction.

Should this measure pass, it 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. Under Hawaii's existing law, the definition of a mobile electronic device specifically defines what devices are covered and specifies the term "use" or "uses." A requirement of the federal grant prohibits the use of such mobile electronic device while driving and defines driving to mean "on a public road, including the operation while temporarily stationary because of traffic, a traffic light, stop sign or otherwise." However, it does not include operating of a motor vehicle when pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary. Another grant requirement 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 therefore disqualify Hawaii from receiving a distracted driving grant.

The DOT recommends the following amendments:

- Page 1, lines 10 through 12: Delete the proposed amendment.
- Page 2, lines 10 through 15: Delete the proposed amendment.
- Page 3, lines 13 through 16: Delete the proposed amendment and insert the following:

"Operate" a motor vehicle means the same as is defined in section 291E-1- and includes the operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise; and does not include operating a motor vehicle when the

vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary with engine turned off.

- Page 3, lines 18 and 19: Delete the proposed amendment as it is difficult for law enforcement to prove by just observing from the outside.
- Page 4, lines 1 through 11: Delete amendment and recommend that:
 - Line 6, \$200 is amended to read \$201; and
 - Line 11, \$300 is amended to read \$301.
- Page 4, line 17: Delete the proposed amendment.
- Page 5, line 3: To read, "shall take effective upon approval."

The Department of Transportation urges your committee not to pass S.B. 2729, S.D. 1 as written and respectfully ask you consider the aforementioned amendments.

Thank you for the opportunity to testify.



The Judiciary, State of Hawaii

**Testimony to the
Senate Committee on Judiciary and Labor**

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

Tuesday, February 25, 2014, 10:30 a.m.
State Capitol, Conference Room 016

WRITTEN COMMENTS ONLY

by
Calvin Ching
Deputy Chief Court Administrator, First Circuit

Bill No. and Title: Senate Bill No. 2729, S.D. 1, Relating to Mobile Electronic Devices.

Purpose: Amends section 291c-137, HRS, to prohibit the operation of a motor vehicle while using a mobile electronic device held in a person's hand for making or receiving a nonemergency call, texting, or receiving a text message. Adds exemptions to prohibition. Amends the penalties for violations. Deems a violation to be a traffic infraction. Takes effect retroactive to 5/20/2013.

Judiciary's Position:

The Judiciary takes no position on the merits of this bill but has **STRONG CONCERNS** regarding Section 5, which states that this Act, upon its approval, shall take effect *retroactive* to May 20, 2013.

As the legislature is aware, traffic infractions are treated differently in the courts than traffic violations. A traffic infraction is civil in nature which allows a defendant 21 days to answer, and the answer can be a denial, admission or an admission with mitigating circumstances. In cases where a defendant does not comply with required payment, it will generate a license stopper on either the driver license or car license plate number. The case could also end up in collection.

Whereas, a traffic violation is a criminal act which the defendant must appear and defend and failure to do so may result in the issuance of a bench warrant. The case may result in a criminal conviction. Therefore, retroactively changing a criminal violation into a traffic infraction would pose immense logistical problems and would be costly for the State.

Since the inception of the current law there have been **7,184** mobile device cases state wide of which 4,171 cases have been adjudicated. In almost 900 of these cases bench warrants were issued for those defendants who did not make a court appearance. In some cases where the warrants have been served, defendants may have also been convicted of contempt of court for failure to appear. For these cases, defendants have a criminal conviction record which is recorded in the Hawaii Criminal Justice Data Center's CJIS database. The Judiciary cannot assume that it can simply enter default judgments for defendants who did not appear in court on their scheduled arraignment dates; the person had a summons to appear and failed to do so as ordered.

As such, if SB2729 passes with retroactive application, there are serious concerns on how the courts will deal with adjudicated cases, pending cases and outstanding warrants. With a retroactive effective date, these cases would need to be vacated and the amended sentences would have to be entered in our case management systems (Criminal and Traffic) as well as CJIS. The concern is that all warrants would have to be re-called and default judgment (DJ) issued. If the warrant was served and judgment entered, the plea would have to be vacated and a motion to dismiss needs to be filed and a dismissal ordered.

An additional concern is that the law creating the statewide ban on mobile devices went into effect on July 1, 2013, prior to this each county had a separate ordinance. As the retroactive date is May 30, 2013, is the intent of the Legislature to include all mobile infractions issued under the county ordinance?

Hence, all 7,184 cases plus all cases issued under prior county ordinances would have to be **manually** reviewed to assure that the law has been appropriately applied. In essence, this would be an additional 7,184 cases not including those cases which are now in the courts. It is not clear if the proposed retroactivity would require the Judiciary, in addition to vacating any prior convictions and refunding any fines/fees paid, to also have to notify all previously cited defendants of the civil traffic infraction procedures in Chapter 291D. This may add confusion to the motoring public who have already had their cases adjudicated.

The Judiciary would have to dedicate additional time and resources to reviewing and adjudicating these cases. In addition to the courts judgments, motorists would have to be notified and given an opportunity to have their cases heard in a different system.

This effort would involve all components of Judiciary operations needed for vacating judgments, calendaring cases, recording new judgments, reversing and updating official court records, recalling bench warrants, refunding of fines/fees and reversing collection proceedings. This would pose a huge financial burden on the Judiciary to bear the costs of possibly six months of work to hire per diem judges, pay overtime costs for staff, and pay for additional supplies and mail-out of multiple notices, etc. In some instances, where fines were ordered and not paid, the cases may have already been referred to the collection agency and/or credit bureau. These would all need to be recalled and appropriate action will need to be taken by the collection agency and/or the credit bureau.

The Judiciary notes that there are enforcement and proof issues, however, we feel that law enforcement would be the appropriate entities to provide comments.

Thank you for the opportunity to provide comments on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai`i

February 25, 2014

RE: S.B. 2729 S.D. 1; RELATING TO MOBILE ELECTRONIC DEVICES.

Chair Hee, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, 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. 1. 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. 1 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. 1. Thank you for the opportunity to testify on this matter.