



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
and

Senate Committee on Ways and Means

Senator Jill N. Tokuda, Chair
Senator Ronald D. Kouchi, Vice Chair

Friday, February 27, 2015, 10:05 a.m.
State Capitol, Conference Room 211

by
Sidney Nakamoto
Adult Client Services Branch Administrator

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 612, Senate Draft 1, Relating to Probation.

Purpose: Provides for a period of probation for any person convicted of the offense of operating a vehicle under the influence of an intoxicant. Mandates a period of probation for any person convicted of operating a vehicle after license privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 612, as amended in Senate Draft 1, but respectfully notes concerns regarding staffing and other costs that would be incurred to implement this proposal. As noted in our original testimony submitted to the Senate Committee on Transportation on February 3, 2015, additional resources would be needed to address the significant increase in the probation office's workload statewide. Since probation sentences would be discretionary in many cases, the Judiciary can only project a rough estimate of increased staffing and resource needs based on certain assumptions described below.

To arrive at an estimate, we have used 2013 statistics from JIMS showing that the number of DUI/DWI petty misdemeanor judgments entered was 7,177 statewide offenders, which



Senate Bill No. 612, S.D. 1, Relating to Probation
Senate Committee on Judiciary and Labor
Senate Committee on Ways and Means
Friday, February 27, 2015
Page 2

created a caseload of 250 per probation officer. This is considered best practice for Hawaii, which is high compared to the national average of 93 cases per probation officer. Of the statewide total of 7,177 offenders, 3,649 involved first-time offenders, 323 were second-time offenders, and 47 were third-time offenders for the First Circuit (Oahu).

Based on an assumption of 25% of the cases involving first- and second-time offenders being sentenced to probation as an “option”, an additional 993 cases would have been added to the probation workload. This would have required five additional probation officers at \$50,772 annual salary only; one supervisor at \$53,400 annual salary only; three judicial clerk support positions at \$31,000 salary only; office equipment (including desk, computer, printer, file cabinets, chairs excluding modular units) at \$3,300 per staff position; and an annual cost of office space on Oahu of approximately \$500,000 annually with one security officer at \$33,000 annually. The projected total annual cost for Oahu only amounts to approximately \$929,960 in additional resources over and above current Judiciary budget allocations.

Additional resources would also be required to service increased DUI/DWI probation workloads for a portion of the number of persons sentenced to probation on Maui (2013 total, 1,476 offenders), Hawai‘i (2013 total, 1,449 offenders), and Kaua‘i (2013 total, 223 offenders). In addition, the cost of office space for Maui and Hawaii would also be needed.

Statistics for statewide convictions of defendants charged with violating HRS section 291E-62 (Operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant) would be an additional 431 probation cases on Oahu, 101 cases on Maui, 173 cases on Hawaii, and 15 cases on Kauai. The number of additional defendants for whom probation would be mandatory would also require additional resources.

Finally, under current standards, residential substance abuse treatment is 4-8 weeks and intensive outpatient (IOP) treatment is for 12-16 weeks. The cost for residential treatment is \$180 per day and for IOP it is \$120 per day per offender, 3 times a week. These treatment costs, per probationer, equate to approximately \$5,040 - \$10,080 in residential substance abuse treatment service costs and \$4,320 - \$5,760 in IOP costs. Further it is unknown if existing treatment programs could immediately absorb the increase in probation referrals. The intent of making the offense probationable may be beneficial, but the desired results will be limited without resources and treatment being made available.

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

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN SUPPORT (WITH AMENDMENTS) OF
SB612 SD1 – RELATING TO PROBATION**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committee on Judiciary and Labor
Senate Committee on Ways and Means
February 27, 2015, 10:05 a.m., Conference Room 211

Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Kouchi, and
Members of the Committees:

The County of Kaua'i, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS, WITH AMENDMENTS, SB612 SD1 – Relating to Probation.** The proposed bill, inter alia, makes offenses of Operating a Vehicle Under the Influence of an Intoxicant eligible for probation.

Although we are in strong support of the intent of this bill, we offer the following recommendations to strengthen the bill and also address the concerns associated with increased costs to the Judiciary:

- We recommend that the period of probation be limited to six months for the petty misdemeanor offenses. This will curtail defense challenges and limit probation costs, while recognizing that most defendants comply with their required conditions within 6 months. For those who do not, the State can always move to revoke and resentence to additional periods of probation.
- We recommend that the Bill specify that all costs associated with the installation and maintenance of the ignition interlock be borne by the offender.
- Probation should be optional, rather than mandatory, for petty misdemeanor offenders. This will also mitigate the increase in caseload for Judiciary Probation Officers.

Accordingly, we are in **STRONG SUPPORT, WITH AMENDMENTS**, of SB612 SD1. We request that your Committee **PASS** the Bill with the suggested amendments.

Thank you very much for the opportunity to provide testimony on these Appropriations.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

KIRK CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE CT-GR

February 27, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
The Honorable Jill N. Tokuda, Chair
and Members
Committee on Ways and Means
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Keith-Agaran and Tokuda and Members:

SUBJECT: Senate Bill No. 612, S.D. 1, Relating to Probation

I am Calvin Tong, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu. The HPD supports the passage of Senate Bill No. 612, S.D. 1, Relating to Probation.

Act 171, Session Laws of Hawaii 2008, established Hawaii's ignition interlock program. It also established an Ignition Interlock Implementation Task Force to develop and make recommendations on the implementation of an ignition interlock law. Part of the concept was to provide for the probationary supervision of drivers convicted of Operating a Vehicle Under the Influence of an Intoxicant (OVUII) to ensure these drivers cannot drink and drive during the appropriate revocation period. It provided "probation supervision, using test results and other information generated by the device, can be an important bridge to getting the driver into treatment so that, once the device is removed, the driver possesses the tools to refrain from drinking and driving altogether."

After the passage of Act 171 in 2008, Hawaii's economy took a significant downturn, resulting in the elimination of probation for OVUII offenses. In addition, it affected the recommendation of a probationary model of supervision for convicted second and third offenders that was established by Act 171. Therefore, when Hawaii's Ignition Interlock Program was fully implemented by Act 166, Session Laws of Hawaii 2010, probation was removed as a possible sentence for OVUII convictions.

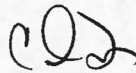
As Hawaii's ignition interlock laws have developed, a gap has been identified concerning second time and subsequent OVUII arrestees. Since there is no possibility to sentence repeat offenders to probation, the requirement to install and comply with ignition interlock requirements has gone unchecked. In addition, after completing his or her sentence for OVUII, drivers no longer fall under the supervision of the District Court. Convicted drunk drivers are not ever required to abstain from alcohol consumption as a consequence of his or her criminal conviction as a condition of probation.

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
The Honorable Jill N. Tokuda, Chair
and Members
Committee on Ways and Means
Page 2
February 27, 2015

The HPD urges you to support Senate Bill No. 612, S.D. 1, Relating to Probation.

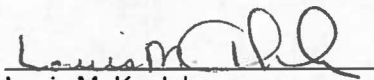
Thank you for the opportunity to testify.

Sincerely,



Calvin Tong, Major
Traffic Division

APPROVED:



Louis M. Kealoha
Chief of Police



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-6004
hi.state@madd.org

February 27, 2015

To: Senator Gilbert S.C. Keith-Agaran, Chair — Senate Committee on
Judiciary; Senator Maile S.L. Shimabukuro, Vice Chair, and members of
the Committee

Senator Jill Tokuda, Chair – Senate Committee on Ways and Means;
Senator Ronald D. Kouchi, Vice Chair; and members of the Committee

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

Re: Senate Bill 612, SD1 – Relating to Probation

I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of Senate Bill 612,SD1 with amendments. This measure establishes probation for the offense of OVUII – Operating a Vehicle under the Influence of an Intoxicant.

Three separate Acts: 171 in 2008; 88 in 2009; and 166 in 2010 established our current Ignition Interlock program in the state of Hawaii. It became obvious to the Task Force which drew up the implementation plans for Hawaii’s system that our state had a challenge which set it apart from most other states. We did not have a system of probation for OVUII and we would therefore not be able to monitor the interlock users. Nor could we consider a system of alcohol home monitoring for those “respondents” electing not to install an interlock and promising never to drive during their revocation period.

The first two acts included provisions for probation but by 2010 when the third act was signed and adopted there was no longer any probation included in the OVUII statutes although the legislative intent to reinstate probation when the economy grew stronger was included in the preamble to ACT 166. SB612 was intended to strengthen the Ignition Interlock program by reinserting the eliminated language for probation into the HRS OVUII statutes.

Even with using “creative concepts” for reducing the cost of probation, MADD has been advised that the pricetag will still be out of reach for the Judiciary at this time. Therefore, we are in support of a system that further modifies the Senate Draft 1 via amendments making probation optional for the first, second, and third offenders and by making the maximum length of probation six months.

MADD believes that this system will provide prosecutors and judges with a tool to use with high risk offenders – a tool which they did not have before and which could be used to mandate the use of Ignition Interlock or other methods of protecting the public from a dangerous driver. All costs of the Ignition Interlock System are to be paid by the offender.

In addition, as pointed out by the Maui Prosecutor's office, an important amendment needs to be made to Section 1 (page 1, line 5):

Current wording is:

SECTION 1. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced [~~without possibility of probation or suspension of sentence~~] as follows...

This section should read: (b) A person...without possibility of [~~probation or~~] suspension of sentence as follows...

MADD urges the committees to pass this measure with the above amendment and the additional suggested amendments to control costs.

Thank you for this opportunity to testify.

From the preamble to Act 166 – 2010

SECTION 1. The legislature finds that Act 171, Session Laws of Hawaii 2008, established an ignition interlock program. The purpose of the program is to require drivers whose licenses have been administratively revoked for, or who have been convicted of, operating a vehicle under the influence of an intoxicant to install an ignition interlock device on their vehicles. The device will prevent these drivers from starting or operating their vehicles when the driver has more than a minimal alcohol concentration.

Act 171 also provided for the probationary supervision of drivers convicted of operating a vehicle under the influence of an intoxicant, stating:

The Hawaii ignition interlock implementation task force had multiple discussions about probation supervision of convicted offenders. These discussions resulted in a recommendation to the legislature in 2009 that only second and third offenders be supervised using a probationary model. The task force concluded that these repeat offenders pose the greatest risk to themselves and to the community because they have not shown themselves amenable to changing their behavior, despite intervention following their first offense. This recommendation was adopted by the legislature in Act 88, Session Laws of Hawaii 2009.

The legislature also finds, and the Hawaii ignition interlock implementation task force recognizes, that since the time Acts 171 and 88 established a probationary model of supervision for convicted second and third offenders, the State's economy has taken a significant downturn. While the Hawaii ignition interlock implementation task force still prefers the probationary model of supervision for convicted second and third time offenders, the task force also recognizes that the availability of resources necessary for implementation of the probationary model on January 1, 2011, is very uncertain, at best.

Accordingly, the Hawaii ignition interlock implementation task force amended its previous recommendation to the legislature and proposed instead that probation be eliminated for convicted second and third offenders and that an existing practice, known as "proof of compliance," which is less intensive--and less expensive--be used for all

convicted offenders. The Hawaii ignition interlock implementation task force recommended that when the State's fiscal outlook improves, the issue of probation for convicted second and third offenders be revisited and implemented.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB612 on Feb 27, 2015 10:05AM*
Date: Tuesday, February 24, 2015 12:28:18 PM

SB612

Submitted on: 2/24/2015

Testimony for JDL/WAM on Feb 27, 2015 10:05AM in Conference Room 211

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------------|---------------------|---------------------------|---------------------------|
| Javier Mendez-Alvarez | Individual | Oppose | No |

Comments:

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