



## *The Judiciary, State of Hawaii*

### **Testimony to the House Committee on Transportation**

Representative Henry J.C. Aquino, Chair  
Representative Matthew S. LoPresti, Vice Chair

Wednesday, March 16, 2016, 10:30 a.m.  
State Capitol, Conference Room 309

by  
Sidney Nakamoto  
Adult Client Services Branch Administrator

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**Bill No. and Title:** Senate Bill No. 612, SD 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 and 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 SD 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 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).



Senate Bill No. 612, S.D. 1, Relating to Probation  
House Committee on Transportation  
Wednesday, March 16, 2016  
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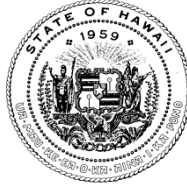
Based on an assumption of 25% of the cases involving first- and second-time offenders being sentenced to probation as an “option”, an additional 993 cases would have been added to the probation workload. This would have required five additional probation officers at \$50,772 annual salary only; one supervisor at \$57,168 annual salary only; three judicial clerk II support positions at \$31,236 salary only; office equipment (including desk, computer, printer, lateral file cabinets, chairs, modular unit with walls) at \$15,000 per staff position; and an annual cost of office space on Oahu of approximately \$500,000 annually with one security officer at \$34,425.60 annually. The projected total annual cost for Oahu only amounts to approximately \$1,076,361.60 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 in 2013 on Maui (1,476 offenders), Hawai‘i (1,449 offenders), and Kaua‘i (223 offenders). In addition, costs would be incurred for office space for Maui and Hawaii.

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 equate to approximately \$5,040 - \$10,080 per probationer 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.



Testimony by:  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG

IN REPLY REFER TO:

**LATE**

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

March 16, 2016  
10:30AM  
State Capitol, Room 309

**S.B. 612, S.D. 1  
RELATING TO PROBATION**

House Committee on Transportation

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The Department of Transportation (DOT) **supports** the intent of this bill which establishes probation for the offense of operating a vehicle under the influence of an intoxicant (OVUII).

It was the intention of the Ignition Interlock Task Force when it was tasked to develop the interlock law to establish probation for the offense of OVUII when the law was passed in the 2010 Legislative Session. Probation is a necessary factor to enhance the monitoring of those convicted of OVUII and creates a better monitoring method to Ensure compliance by the driver of the conditions set forth by probation. By establishing probation, convicted drivers will be better monitored by either an ignition interlock device or an in-home monitor that will prevent them from driving while having any alcohol in their system. The original intent of this bill was to have probation in addition to the mandated penalties of OVUII and that probation would not be lengthy so as to trigger a jury trial as an unintended consequence.

As the result of an amendment to Section 291E-62, Hawaii Revised Statutes, in the 2015 Legislative Session, the section was restructured. We recommend that this section be reviewed and the proper subsections be inserted and listed in a proper order.

The DOT urges your support for SB 612, SD 1 with the recommended action. The DOT feels that probation will enable to employ better control over convicted OVUII drivers thereby reducing injuries and fatalities on our highways.

Thank you for the opportunity to testify.

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

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

House Committee on Transportation  
Senate Committee on Ways and Means  
March 16, 2016, 10:30 a.m., Conference Room 309

Chair Aquino, Vice Chair Lo Presti, and Members of the Committees:

The County of Kaua'i, Office of the Prosecuting Attorney, SUPPORTS, WITH AMENDMENTS, SB 612 SD 1 – 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 support of the intent of this bill, we offer the following recommendations to strengthen the bill and also address several concerns:

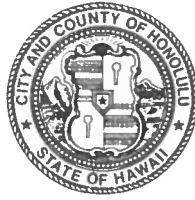
- The Bill uses language from an old version of HRS 291E-62. As of January 1, 2016, there is a new subsection (b) and the old subsection (b) is now subsection (c);
- The Bill's language would make probation for violations of HRS 291E-62 MANDATORY rather than optional, which we believe was the original intent of the bill. The Bill should be amended to make probation an option, rather than a requirement.
- The maximum length of probation should be two years. Four years is a length that takes the offense into the realm of what could be considered an offense serious enough to warrant a jury trial, which is not the intent of the Bill and would defeat any desirable judicial economies otherwise achieved by this Bill.

Accordingly, we are in SUPPORT, WITH AMENDMENTS, of SB 612 SD 1. We request that your Committee PASS the Bill with the suggested amendments.

Thank you very much for the opportunity to provide testimony on this Bill.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE DI-GR

March 16, 2016

The Honorable Henry J. C. Aquino, Chair  
and Members  
Committee on Transportation  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Aquino:

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

I am Darren Izumo, 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.

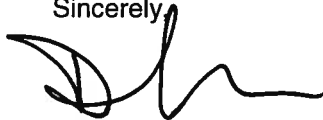
As Hawaii's ignition interlock laws have developed, a gap has been identified concerning second time and subsequent OVUII arrestees. Since there is no possibility to sentence repeat offenders to probation, the requirement to install and comply with ignition interlock requirements has gone unchecked. 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 Henry J. C. Aquino, Chair  
and Members  
Committee on Transportation  
March 16, 2016  
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The HPD urges you to support Senate Bill No. 612, S.D. 1, Relating to Probation.

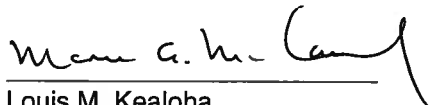
Thank you for the opportunity to testify.

Sincerely,



Darren Izumo, Major  
Traffic Division

APPROVED:



*for* Louis M. Kealoha  
Chief of Police

**MITCHELL D. ROTH**  
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## **OFFICE OF THE PROSECUTING ATTORNEY**

TESTIMONY IN SUPPORT (WITH AMENDMENTS)  
SENATE BILL 612, SD1

A BILL FOR AN ACT RELATING TO PROBATION

COMMITTEE ON TRANSPORTATION

Rep. Henry J.C. Aquino, Chair

Rep. Matthew S. LoPresti, Vice Chair

Wednesday, March 16, 2016, 10:30 A.M.  
State Capitol, House Conference Room 309

Honorable Chair Aquino, Honorable Vice-Chair LoPresti, and Members of the Committee on Transportation, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support (with amendments) of Senate Bill No. 612, SD1.

This measure provides for a period of probation for any person convicted of the offense of Operating a Vehicle Under the Influence of an Intoxicant. This measure also mandates a period of probation for any person convicted of Operating a Vehicle after license and privilege have been suspended or revoked for Operating a Vehicle Under the Influence of an Intoxicant.

We support the intent of this Bill and agree with the recommended changes in the testimony provided the County of Kaua'i, Office of the Prosecuting Attorney:

- The Bill uses language from an old version of HRS 291E-62. As of January 1, 2016, there is a new subsection (b) and the old subsection (b) is now subsection (c);
- The Bill's language would make probation for violations of HRS 291E-62 MANDATORY rather than optional, which we believe was the original intent of the bill. The Bill should be amended to make probation an option, rather than a requirement; and
- The maximum length of probation should be two years. Four years is a length that takes the offense into the realm of what could be considered an offense serious enough to warrant a jury trial, which is not the intent of the Bill and would defeat any desirable judicial economies otherwise achieved by this Bill.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 612, SD1, with amendments. Thank you for the opportunity to testify on this matter.





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

March 16, 2016

To: Representative Henry Aquino, Chair — House Committee on Transportation; Rep. Matthew LoPresti, 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

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This testimony is offered on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of Senate Bill 612, SD1. This measure establishes probation for the offense of OVUII – Operating a Vehicle under the Influence of an Intoxicant.

With over 13,000 drunk driving episodes prevented last year by the in-car breathalyzer, the Ignition Interlock program has proven its ability to protect our citizens. Overall, however, Hawaii is still one of the most notorious states in terms of percent of alcohol-related traffic fatalities. Worse, a 2012 study by the Centers for Disease Control (CDC) involving almost half a million interviews reports that, while the U.S. as a whole averages 505 impaired driving episodes per 1,000 people, Hawaii tops the list at 995 per 1,000.

As for the interlock program, the lack of “leverage” such as probation means that only about one-fifth of arrested offenders whose licenses are revoked install the interlock device. The remainder are either ineligible, say they have no vehicle, or say they will arrange alternate transportation during their revocation. But NHTSA reports that 50-75% of OVUII offenders continue to drive with suspended licenses nationally.

In the regrettable absence of a successor body to the state’s former Impaired Driving Task Force, the numerous organizations involved in the fight against impaired driving have struggled to develop a unified approach to the challenge of keeping non-interlock OVUII offenders off the road. One measure the impaired driving community generally agrees on, however, is **probation**.

Hawaii is the only state which currently does not use probation for DUI offenders in one form or another. The Task Force acknowledged, in the Preamble to Act 166 of 2010, that probation was not at that time feasible in light of the state’s financial crisis, and made it clear that attempts would be made to establish probation when the economic climate improved.

In the meantime, the technology to remotely monitor abstinence for non-interlock users has already come into limited use in Hawaii, and several available systems cost the same amount to the offender as the interlock device.

With this simple technology, probation would effectively give offenders a clear choice: **use interlock, or go without alcohol** for the period of their license revocation. The in-home device typically requires a breath alcohol test once or twice a day, providing a low-cost way to significantly reduce the danger to our residents of the violent criminal behavior of drunk driving. And, for the probation office, it greatly simplifies the monitoring process, most of which is routinely handled at no cost to the state by the system vendor.

Hawaii's drunk driving situation is a blight on our state and a constant danger to road users. MADD believes a sufficient consensus exists in the impaired driving stakeholder community, even without the formal legal structure of the Task Force, to continue discussion of the details of implementing probation for all, or repeat, OVUII offenders. We there respectfully urge the committee to forward SB 612 SD 1 to the Judiciary and Finance Committees where the outstanding legal and financial questions can be addressed.

Thank you for this opportunity to testify.

**lopresti2 - Jasmine**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 15, 2016 1:29 PM  
**To:** TRNtestimony  
**Cc:** timothy.e.ho@hawaii.gov  
**Subject:** \*Submitted testimony for SB612 on Mar 16, 2016 10:30AM\*

**SB612**

Submitted on: 3/15/2016

Testimony for TRN on Mar 16, 2016 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Timothy Ho	Office of the Public Defender	Oppose	Yes

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.

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**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 House Committee on Transportation**

March 16, 2016, 10:30 a.m.

S.B. No. 612, SD1: RELATING TO PROBATION

LATE

Chair Aquino and Members of the Committee:

This measure would allow the court to sentence a person convicted of Operating a Vehicle Under the Influence of an Intoxicant (OVUII) to a term of probation. While we support the intent of this measure, we have some concerns about the impact it will have on the Judiciary and Office of the Public Defender.

Currently, a person convicted of OVUII in the district court can be sentenced to a fine, community service and/or jail, depending on whether the offense is a first, second or third offense. The court cannot order that defendant to serve a term of probation.

Theoretically, a term of probation would provide the court with more control over a person convicted of OVUII, by allowing them to modify or revoke the probation of a defendant who is not abiding by the court's sentence. However, in order for a term of probation to be successful, the court must be given the tools for effective supervision. Effective supervision begins with probation officers. This Legislature must adequately fund the creation of additional probation officers for every island. The Judiciary will be required to staff probation officers in an area of the court system where there currently are none. Furthermore, in order to effectively supervise probationers who more than likely suffer from alcohol dependence, the probation caseload must be kept at a minimum. There will also be a need to create and fund additional programs for OVUII defendant, which will be a further drain on the Judiciary's budget.

OVUII probation will have a significant impact on the Office of the Public Defender. . . Currently, unless a defendant is enrolled in the DWI Court pilot project, he or she is not represented by our office at their proof of compliance hearings after conviction. Every individual charged with violating probation is entitled to written notice and a hearing, and to be represented by counsel. If this measure passes, we will need to add at least one attorney each on Oahu and Hilo, where the majority of the OVUII cases occur.

Finally, we would like to point out that on pages 7 and 8, a judge would be able to sentence a defendant to 30 days and one year jail and probation, respectively, for second and third offenses for driving while license suspended for OVUII. We believe that in instances where a defendant is sentenced to the maximum jail term, probation cannot be imposed.

706-624(2)(a)

5 days petty  
max  
6 mo. misd.