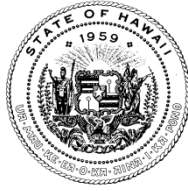


SB 612

RELATING TO PROBATION.

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

DAVID Y. IGE
GOVERNOR



FORD N. FUCHIGAMI
DIRECTOR

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

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

IN REPLY REFER TO:

February 3, 2015
2:45 pm
State Capitol, Room 229

S.B. 612
RELATING TO PROBATION

Senate Committee on Transportation

The Department of Transportation (DOT) **supports** S.B. 612 that establishes probation for the offense of operating a vehicle under the influence of an intoxicant (OVUII).

It has always been the intention for the Ignition Interlock Task Force to have included probation for the offense of OVUII when the law was passed in the 2010 legislative session. Probation is necessary to enhance the monitoring of those convicted of OVUII as it will create a better monitoring method of the driver to insure compliance of conditions set forth by probation. With the imposition of probation and the ignition interlock, offenders will be better monitored.

The DOT urges your support in passing S.B. 612 as it will provide a better method to achieve compliance for those convicted of OVUII.

Thank you for the opportunity to provide testimony.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE CT-GR

February 3, 2015

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Transportation
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: Senate Bill No. 612, 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, 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 devices 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.

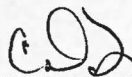
As Hawaii's ignition interlock laws have developed, a gap has been identified concerning second time and subsequent OVUII arrestees. Since there is no possibility to sentence repeat offenders to probation, the requirement to install and comply with ignition interlock requirements has gone unchecked. 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 Clarence K. Nishihara, Chair
and Members
Page 2
February 3, 2015

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

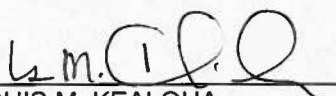
Thank you for the opportunity to testify.

Sincerely,



CALVIN TONG, Major
Traffic Division

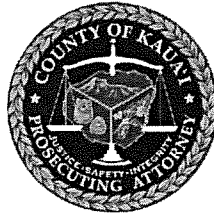
APPROVED:



LOUIS M. KEALOHA
Chief of Police

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 OF
SB612 – RELATING TO PROBATION**

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

**Senate Committee on Transportation
February 3, 2015, 2:45 p.m., Conference Room 229**

Chair Nishihara, Vice Chair Harimoto, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** SB612 – Relating to Probation. The Bill specifies that offenders who are sentenced as first-time offenders for Operating a Vehicle Under the Influence of an Intoxicant (OVUII) can be sentenced to probation.

Under existing law, first-time OVUII offenders cannot be sentenced to probation. Yet, offenders are also sentenced to complete various conditions as conditions of their sentence (i.e. substance abuse evaluations, driver's ed classes). Because offenders cannot be sentenced to probation, the only way to ensure compliance with these conditions is to schedule additional proof of compliance hearings in court. These hearings are burdensome, inefficient, and clog court calendars unnecessarily. This Bill will address this problem.

Accordingly, we are in **STRONG SUPPORT** of SB612. We request that your Committee **PASS** the Bill.

Respectfully,

Justin F. Kollar
Prosecuting Attorney



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 3, 2015

To: Senator Clarence K. Nishihara, Chair — Senate Committee on
Transportation; Senator Breene Harimoto, Vice Chair, and members of the
Committee

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

Re: Senate Bill 612 – 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. 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. The Hawaii Ignition Interlock Task Force, established by the Legislature in 2008, was comprised of knowledgeable legal and highway safety agencies and advocates from all counties. This Task Force was responsible for conducting research and meeting together to establish an Ignition Interlock program that would work for Hawaii.

It became obvious to this Task Force that Hawaii 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 even 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 original bill establishing the interlock program contained a provision for probation and in fact Act 171 was signed with the probation sections still intact. During the following year, concerns about the state’s economy arose and members of the Task Force questioned the viability of a bill that would include costs related to hiring more probation officers for the Judiciary. The Task Force decided to limit probation to only the higher risk repeat offenders. By the end of 2009, concerns about state finances grew, and finally all the references to probation were deleted from the bill. However, in the preamble to Act 166, there was language indicating it was the intention of the Legislature to consider reinstating probation whenever the fiscal climate improved. (*See attachment – pg 3*)

The subject resurfaced in meetings of the 2013-14 Impaired Driving Task Force. There is no doubt that our Ignition Interlock program would be significantly improved when offenders understand that they would be accountable to a probation officer for complying with the law, including tampering with or circumventing the device, as well as installing the interlock device in the first place.

Costs to the state could be limited by having the Interlock company do the initial screening and only report the serious cases to the Judiciary's probation division for monitoring. At this point, there are 1500 to 1600 interlock devices installed on vehicles in the state at any one time. We would like to see that number doubled which could be possible with a probationary program. In past discussions, by using help from the Interlock vendor, we felt that two or three probation officers could handle this increased case load.

Probation would also allow the Legislature to consider a compliance-based program where offenders who continue to show many failures when they try to start their vehicle, would not be eligible to apply for a new license until they showed improvement.

MADD encourages the passage of SB 612 to increase the effectiveness of the Interlock system which will then decrease recidivism and alcohol related highway crashes.

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.