

HB 306, HD2

RELATING TO CONTINUOUS ALCOHOL MONITORING FOR REPEAT OFFENDERS.

Requires persons charged for operating a vehicle under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant to be fitted with a continuous alcohol monitoring device if the person: (1) has a prior conviction for operating a vehicle under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant within the past five years; or (2) is currently pending criminal investigation or prosecution for one or more prior charges of operating a vehicle under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant. (HB306 HD2)



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
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IN REPLY REFER TO:

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

March 20, 2017
1:20 p.m.
State Capitol, Room 225

H.B. 306, H.D. 2
RELATING TO CONTINUOUS ALCOHOL MONITORING FOR REPEAT OFFENDERS

Senate Committee on Transportation and Energy

The Department of Transportation (DOT) **supports** H.B. 306, H.D.2 relating to continuous alcohol monitoring for repeat offenders. This bill will mandate a driver charged who (1) has a prior conviction for operating a vehicle under the influence of an intoxicant (OVUII) within the last five years or habitually OVUII, or (2) currently pending criminal investigation or prosecution for one or more charges of OVUII or habitually OVUII to be fitted with a continuous monitoring device.

The DOT realizes the beneficial purpose that this bill provides concerning the repeat offenders arrested for OVUII. During the calendar year (CY) 2015, the Administrative Driver's License Revocation Office adjudicated 1,071 cases involving repeat offenders which represents 17 percent of the total number cases handled that year. These repeat offenders continued to drive, placing other roadway users at risk. Additionally, of the 93 motor vehicle fatalities that occurred in CY 2015, 51 or 54.8 percent had a positive alcohol and/or drug results.

The DOT recognizes that an initiative such as this will reduce the number of fatalities caused by drivers that are OVUII. The DOT urges your support by passing H.B. 306, H.D.1.

Thank you for the opportunity to provide testimony.



Office of the Public Defender State of Hawaii



Testimony of the Office of the Public Defender, State of Hawaii to the Senate Committees on Transportation and Energy

March 20, 2017, 1:20 p.m.

H.B. No. 306, HD2: RELATING TO CONTINUOUS MONITORING FOR REPEAT OFFENDERS

Chair Inouye and members of the Transportation and Energy Committee:

The Office of the Public Defender opposes H.B. 306, HD2.

This measure would mandate that any person arrested for a violation of 291E-61 (OVUII) or 291E-61.5 (Habitual OVUII) with a prior conviction or pending charge for the same offenses be required to be fitted with a continuous alcohol monitoring device as a condition of bail. For the reasons stated below, the Office of the Public Defender opposes H.B. No. 306, HD2.

This measure will unfairly target indigent defendants. By mandating that all defendants facing charges as a repeat OVUII offender be outfitted with a SCRAM device as a condition of bail, indigent defendants who cannot afford to pay for both a SCRAM device and ignition interlock device will not be able to obtain release from pre-trial release from custody. While this measure does provide for a subsidy for indigent defendants, there is no procedure or guidelines included in this bill to accomplish that goal. While a determination of indigency is being conducted, the defendant sits in jail, while a person with adequate financial resources will not spend a single day in custody. The Office of the Public Defender screens all potential clients for indigency. In some cases, after a finding that some defendants are not indigent, they are still unable to secure the services of an attorney, and return to court unrepresented by counsel. The same situation will occur with the installation of SCRAM devices. What happens when a defendant's indigency claim is rejected and still cannot afford to pay for the SCRAM device? That person will sit in jail until his case is resolved.

The current measure will pit the use of SCRAM devices against the installation of ignition interlock devices. This measure requires all defendants with a prior conviction or pending charge for OVUII to wear a SCRAM device, whereas the installation of an ignition interlock is not. An unintended, and potentially dangerous consequence of this measure will be the reduction in the amount of ignition interlock devices installed by repeat offenders when faced with choosing between a mandatory requirement versus a non-mandatory requirement. The repeat offenders are the most dangerous category of OVUII defendants, and the priority should be on preventing them from driving while under the influence of alcohol, versus drinking alcohol. Many defendants in this category

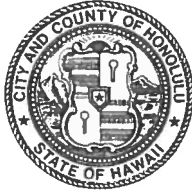
will have alcohol abuse issues and will not be able to stop drinking, even with a SCRAM device attached to their body.

This measure calls for the forfeiture of bail and the setting of new bail where a defendant, outfitted with a SCRAM device, consumes alcohol. Who will monitor the device for violations? Who will file the motions to revoke or set aside bail and/or motion to increase bail? Do our community correctional centers have the capacity to add violators of this measure who are placed into pre-trial custody during the pendency of their case? There is no question that there will be people who will not be able to refrain from consuming alcohol during the pendency of their OVUII case.

The Office of the Public Defender strongly opposes H.B. No. 306, HD2. Thank you for the opportunity to provide input on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE KI-GR

March 20, 2017

The Honorable Lorraine R. Inouye, Chair
and Members
Committee on Transportation and Energy
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 225
Honolulu, Hawaii 96813

Dear Chair Inouye and Members:

SUBJECT: House Bill No. 306, H.D. 2, Relating to Continuous Alcohol Monitoring for Repeat Offenders

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

The HPD supports the passage of House Bill No. 306, H.D. 2, Relating to Continuous Alcohol Monitoring for Repeat Offenders, as written.

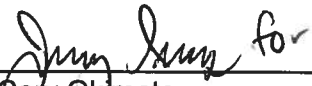
The HPD recognizes the danger caused by impaired drivers and the need to address habitual offenders. The use of the continuous alcohol monitoring device may deter these offenders from further jeopardizing the safety of all pedestrians and drivers on our streets.

Therefore, the HPD urges you to pass House Bill No. 306, H.D. 2, Relating to Continuous Alcohol Monitoring for Repeat Offenders, as it is written.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Cary Okimoto
Acting Chief of Police


Kerry Inouye, Major
Traffic Division



SENATE COMMITTEE ON TRANSPORTATION AND ENERGY
Senator Lorraine R. Inouye, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Regular Session of 2017
State of Hawaii
29th Legislature
March 20 2017

RE: HB 306; Relating to Continuous Alcohol Monitoring For Repeat Offenders

Good afternoon Chair Inouye, Vice Chair Dela Cruz, and members of the Senate Committee on Transportation and Energy. My name is Mindy Huddleston and I am the Director of Industry and Government Relations for Alcohol Monitoring Systems. I am delighted to be here today to testify before you in **strong support** of House Bill 306.

As you know, in 2014 Hawaii experienced 95 traffic fatalities, 32 of which involved an alcohol-impaired driver.¹ Additionally, in 2015 police reportedly made 5,250 arrests for OVUII in Hawaii; 4,605 of which were in the City/County of Honolulu.² Of those, 35% were repeat offenders.³

Fortunately, new programs that enhance public safety and promote behavioral change for repeat drunk drivers are available. Technology such as the SCRAM Continuous Alcohol Monitoring bracelet tests an individual every 30 minutes, 48 times a day, for the presence of alcohol through their sweat. This technology enables authorities to effectively monitor sobriety conditions as authorized by House Bill 306.

Unlike other alcohol monitoring technologies, SCRAM has a 100% installation rate. And although it does not stop the car from driving, it deters the behavior of drinking. Nationally, 99.3% of SCRAM days are Sober Days, meaning there are no confirmed drinking or circumvention events. Thus, when people are sober, they are not committing the crime of OVUII.

Jurisdictions who have implemented similar criteria-based, bail-release DUI programs mandating sobriety, as described in House Bill 306, have resulted in:

- A 90% reduction in the number of DUI offenders arrested for another DUI within the first year;

¹ <https://www.fars.nhtsa.dot.gov/States/StatesAlcohol.aspx>

² Honolulu Police Department's Annual Report 2015.

³ http://www.courts.state.hi.us/news_and_reports/featured_news/2014/03/2014_graduation



- A 12% decrease in DUI victims served by the District Attorney's Office⁴; and
- A significant decline in the number of alcohol-related crashes.⁵

With the passage of House Bill 306, Hawaii can expect similar outcomes.

Thank you for the opportunity to testify before you today.

Mindy Huddleston
Director, Industry & Government Relations
Alcohol Monitoring Systems
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⁴ From 18% in 2011 to 6% in 2013.

⁵ From 506 in 2011 to 404 in 2013.





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March 20, 2017

To: Senator Lorraine Inouye, Chair, Senate Committee on Transportation and Energy; Vice Chair Donovan Dela Cruz; and members of the Committee

From: Carol McNamee, Public Policy Committee, MADD Hawaii

Re: House Bill 306, HD 2 — Relating to Continuous Alcohol Monitoring for Repeat Offenders

I am Carol McNamee offering comments on HB 306, HD2 – Relating to Continuous Alcohol Monitoring for Repeat Offenders.

MADD Hawaii is unable to support HB 306 which mandates SCRAM devices be attached to the ankles of all repeat OVUII offenders in Hawaii. SCRAM devices do not prevent high risk convicted repeat offenders from consuming alcohol and driving. In addition, by mandating these devices for repeat offenders, it is likely that no repeat offenders will also choose to install an Ignition Interlock device which DOES prevent a person with alcohol in his system from driving. With a SCRAM bracelet, a drunk driver can still drive drunk.

Interlocks are proven to reduce DUI fatalities and recidivism and have been thoroughly studied with more than 15 peer-reviewed studies showing their effectiveness. Their use has been endorsed by the CDC, NHTSA, NTSB, and every major traffic safety organization. A recent study by the University of Pennsylvania finds that statewide laws requiring all convicted drunk drivers to use an interlock device reduce fatalities by 15 percent. The reported fatality reduction in Hawaii since interlocks started being used is 23 percent.

In addition to the reduction in fatalities, since the Ignition Interlock Law went into effect in 2011, 72,000 engine starts, where alcohol has been detected, have been prevented.

We find it unfortunate that our comments, for the first time in 33 years, must be different from the position of the Honolulu Prosecutor's office. However, MADD is committed to increasing the proportion of arrested impaired drivers

who install an Ignition Interlock device and we believe that by mandating SCRAM ankle bracelets for repeat offenders, a significant number of offenders will refuse an additional device – the Interlock — and therefore we will lose interlock users instead of gaining them.

Thank you for this opportunity to express our concerns about HB306, HD2.