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THE HONORABLE HENRY J.C. AQUINO, CHAIR
HOUSE COMMITTEE ON TRANSPORTATION
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai'i

February 10, 2017

RE: H.B. 306; RELATING TO CONTINUOUS ALCOHOL MONITORING FOR
REPEAT OFFENDERS

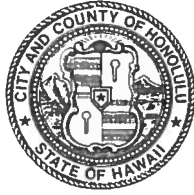
Chair Aquino, Vice Chair Quinlan, and members of the House Committee on Transportation, the Office of the Prosecuting Attorney of the County of Kaua'i (Office) submits the following testimony in SUPPORT of H.B. 306.

We concur with the testimony submitted by the Honolulu Prosecutor with regards to this Bill with the sole exception that we do not believe the State should finance the devices for offenders who claim they cannot afford to pay; rather, we believe that the cost for truly indigent offenders should be borne by the vendor selected to provide the devices, as is done for the Ignition Interlock program.

For all of the reasons stated above, the Office of the Prosecuting Attorney of County of Kaua'i SUPPORTS H.B. 306. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE KI-GR

February 10, 2017

The Honorable Henry J. C. Aquino, Chair
and Members
Committee on Transportation
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 423
Honolulu, Hawaii 96813

Dear Chair Aquino and Members:

SUBJECT: House Bill No. 306, 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 opposes the passage of House Bill No. 306, Relating to Continuous Alcohol Monitoring for Repeat Offenders, as written.

The HPD is in opposition of the requirement to have police officers apply the continuous monitoring device to repeat offenders. The HPD does not have the legal authority to order an arrested person fitted with the device to refrain from consuming any alcohol and to submit to monitoring by a continuous alcohol monitoring device for a period of 90 days.

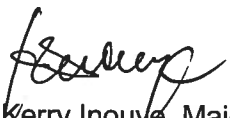
The HPD urges you to oppose House Bill No. 306, Relating to Continuous Alcohol Monitoring for Repeat Offenders, as written.

Thank you for the opportunity to testify.

APPROVED:


Cary Okimoto
Acting Chief of Police

Sincerely,


Kerry Inouye, Major
Traffic Division

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE HENRY J.C. AQUINO, CHAIR
HOUSE COMMITTEE ON TRANSPORTATION
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai'i

February 10, 2017

**RE: H.B. 306; RELATING TO CONTINUOUS ALCOHOL MONITORING FOR
REPEAT OFFENDERS.**

Chair Aquino, Vice Chair Quinlan and members of the House Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony, in strong support of H.B. 306. This bill is part of the Department’s 2017 legislative package.

The purpose of H.B. 306 is to require people who are charged with a repeat offense of operating a vehicle under the influence of an intoxicant (“OVUII”) to wear a continuous alcohol monitoring (“CAM”) device for at least ninety (90) days, while awaiting trial. The language of this bill also leaves open the option for courts to require use of a CAM device as part of a convicted offender’s sentencing. **Attached, please see a Proposed H.D. 1 for the Committee’s consideration**, which will avoid a number of issues that the Department has been discussing with various stakeholders.

In 2012, the National Highway Traffic Safety Administration (“NHTSA”) reported that 41% of all traffic fatalities in Hawaii were alcohol-impaired, versus the national average of 31%.¹ Moreover, between 2008 and 2012, 11% of all alcohol-related fatalities in Hawaii involved a driver who was previously convicted of operating a vehicle under the influence of an intoxicant.² Although the Department’s primary role is to prosecute defendants after they commit an (alleged) offense, our main interest is public safety and welfare, and to the extent criminal offenses can be prevented or minimized, the Department is dedicated to exploring and/or expanding all effective methods of prevention.

¹ Hawaii State Department of Transportation, “Hawaii Strategic Highway Safety Plan, 2013-2018,” p.12 (citing other sources). Available at <http://www.hawaiihsdp.com/wp-content/uploads/2015/05/FOR-WEBSITE-WITH-IGE-MESSAGE-2013-2018-SHSP-FINAL-single-pages-4.27.2015.pdf>. Accessed February 9, 2017.

² *Id.*

To our knowledge, CAM devices have proven to be a very effective means of reducing recidivism among repeat OVUII offenders in other states—pre-trial as well as post-conviction—and shows great potential to significantly decrease OVUII recidivism in Hawaii as well. Not only would this save lives, but it would generally assist in making our community a safer place to live and work.

In crafting the original language for H.B. 306, and our Proposed H.D. 1, we have worked diligently with other stakeholders to share ideas and explore various ways in which this type of technology could be applied most effectively in Hawaii. While we understand that specific procedures for implementing the use of CAM devices may continue to evolve, we strongly believe that pre-trial application is important, to minimize the chance that defendants will consume alcohol—and minimize the risk of them injuring themselves or others—while awaiting trial. In our experience, this is typically a period of several months, during which time we have often suspected that defendants are continuing to drive impaired on other occasions.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 306. Thank for you the opportunity to testify on this bill.

Report Title:

Honolulu Prosecuting Attorney Package; Continuous Alcohol Monitoring; Driving Under the Influence

Description:

Requires persons arrested 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. (Proposed S.D. 1)

A BILL FOR AN ACT

RELATING TO CONTINUOUS ALCOHOL MONITORING FOR REPEAT OFFENDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**"§291E- Continuous alcohol monitoring device;
requirement; penalties.** (a) Any person charged with a
violation of section 291E-61 or 291E-61.5:

- (1) Within five years of a prior conviction for an offense
under section 291E-61 or 291E-61.5; or
- (2) While pending criminal investigation or prosecution
for one or more prior charges of violating section
291E-61 or 291E-61.5,

Shall refrain from consuming any alcohol and shall submit to
monitoring by continuous alcohol monitoring device, for a period
of no less than ninety days. If, following the person's arrest,
the person is released on bail by the sheriff, deputy sheriff,
chief of police or any person named by the chief of police, the
person shall be scheduled for an initial court appearance within
five business days.

(b) At the person's initial court appearance, the person shall be ordered to refrain from consuming any alcohol and to submit to monitoring by continuous alcohol monitoring device, for a period of not less than ninety days, as conditions of release on bail. As further conditions of release on bail, the person shall be ordered to refrain from removing, obstructing, or tampering with the device during the applicable period. The applicable period may be extended by the court at any time, beyond ninety days, as reasonably necessary to ensure the safety of the community, but may not be shortened or suspended. The person shall be fitted with a continuous alcohol monitoring device within five business days of their initial court appearance.

(c) All costs associated with the monitoring device, including administrative and operating costs, shall be paid by the person. If at any time a court finds that the person lacks the financial ability to pay all or part of the costs for a continuous alcohol monitoring device, the court may authorize the State to finance the person's use of a continuous alcohol monitoring device. A determination that a person lacks the financial ability to pay all or part of the costs for a monitoring device shall be based upon an appropriate inquiry into the financial circumstances of the person and an affidavit or a certificate, signed by the person, demonstrating the

person's financial inability to pay the costs for a continuous alcohol monitoring device.

(d) For purposes of this section, and notwithstanding any law to the contrary, if the person violates any of the conditions of release on bail as specified in subsection (b), the person's bail shall be declared forfeited and bail shall be reset in the same amount or higher. Such judgment shall not be vacated, nor shall the forfeited bail be reinstated.

(e) Nothing in this section shall prevent a court from ordering a defendant to submit to monitoring by a continuous alcohol monitoring device as a condition of release on bail, recognizance, supervised release or sentencing, for violation of section 291E-61 or 291E-61.5 as a first offense, or for violation any other section, if otherwise permitted by law."

SECTION 2. Section 291E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Continuous alcohol monitoring device" means any device or instrument that:

- (1) Is attached to the person;
- (2) Designed to automatically test the alcohol content in a person by contact with the person's skin at least once per one-half hour regardless of the person's location;
- (3) Detects the presence of alcohol; and

(4) Detects attempts to tamper with, obstruct, or remove
the device."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-600
hi.state@madd.org

February 10, 2017

To: Representative Henry Aquino, Chair, House Committee on Transportation;
Rep. Sean Quinlan, Vice Chair; and members of the Committee

From: Arkie Koehl, Chair, Public Policy Committee, MADD Hawaii

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

I am Arkie Koehl, offering testimony on behalf of the members of Mothers Against Drunk Driving Hawaii in support of the overall intent of House Bill 306, which calls for greater public safety through stricter monitoring of repeat OVUII (Operating a Vehicle Under the Influence of an Intoxicant) offenders.

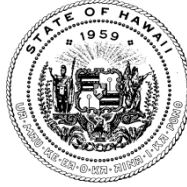
The State's Impaired Driving Task Force (IDTF) is currently exploring various monitoring systems such as the continuous device mentioned in HB 306. The Task Force notes that the effectiveness of any such systems probably requires that convicted offenders be put on probation.

The IDTF is currently in discussions with the Probation Department. to arrive at a broad understanding of costs and logistics of probation for OVUII offenders. This was the goal of the original Ignition Interlock Task Force during its early days. It was taken off the table due to the state's precarious financial position at the time, with the explicit proviso that it would continue to be a goal going forward.

The IDTF expects to wrap up its discussions with Probation soon and to draft a comprehensive bill for the next session, incorporating what we have learned from the first six years of interlock, what loopholes we need to close, and other improvements. We expect that our deliberations will steer us toward an effective monitoring system at a reasonable cost to the offender.

With this in mind, MADD is pleased to support the intent of HB 306, and applauds the Honolulu Prosecutor's Office for its initiative. MADD hopes the Committee will join in the discussions going forward, and join in MADD's dream of "No More Victims."

Thank you for this opportunity to testify.



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

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

IN REPLY REFER TO:

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

February 10, 2017
10:00 AM
State Capitol, Room 423

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

House Committee on Transportation

The Department of Transportation (DOT) **supports with comments** H.B. 306 relating to continuous alcohol monitoring for repeat offenders. This bill will mandate drivers arrested for operating a vehicle while under the influence of an intoxicant within 5 years of a prior conviction or while being investigated to be fitted with a continuous alcohol monitoring device.

The DOT recognizes the beneficial purpose this bill provides and has questions that would need to be addressed.

The DOT supports H.B. 306 and urges this bill be passed by this committee to promote further discussion.

For example, some of the questions that need to be addressed are:

- Will the arrested driver be fitted with the monitoring device by law enforcement at the time the arrested driver is processed at the police department?
- Is the monitoring done in real time?
- If a violation is committed, will the offender be arrested at the time of the violation?
- If within the 90-day period, the offender commits a violation; what agency would be responsible to extend the period of monitoring?
- What agency would monitor the offender?
- If the offender lacks the financial ability, which State agency will bear the cost of the monitoring device?

The DOT recognizes that an initiative such as this, would require additional refinement to attain the optimum effect. DOT recommends that procedures are established prior to the effective date of the law. DOT also recommends that a private vendor be contracted and "housed" at the police stations so the monitoring devices can be fitted at the time the arrested driver is processed at the police department.

Thank you for the opportunity to provide testimony.

Good morning Chairman Aquino, Vice Chairman Quinlan, and Members of the Committee. Thank you for the opportunity to testify on the merits of sobriety monitoring programs for repeat offenders of operating a vehicle under the Influence of an Intoxicant.

Thank you for the opportunity to testify this morning on behalf of House Bill 306. My name is Moses Leasiolagi, and I am the Hawaii regional business manager for SCRAM Systems, the inventor of the world's first transdermal alcohol monitoring technology.

As you know, in 2014 Hawaii experienced 95 traffic fatalities, 32 of which, or 34%, involved an alcohol-impaired driver.¹ Additionally, in 2015 police reportedly made 5,250 arrests for DUI 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 SCRAM Continuous Alcohol Monitoring tests an individual once every 30 minutes for the presence of alcohol through their sweat. The opportunity to continuously monitor an individual 48 times a day, enables authorities to effectively monitor sobriety conditions as authorized by House Bill 306. Jurisdictions who have implemented similar criteria-based programs have seen significant reductions in drunk driving.

As an example, a nationally-recognized bail-release DUI program by the name of Target 25 was started five years ago in York County, Pennsylvania. Under this program, anyone with a prior or pending repeat DUI arrest is placed on public-safety conditions mandating sobriety, including the installation of a transdermal Continuous Alcohol Monitoring device. These conditions remain in effect until the case or cases are resolved.

Target 25 is being replicated in Pennsylvania and in other jurisdictions throughout the United States. And for good reason. The program has had an immense impact on drunk driving and alcohol-related crashes. Specifically, Target 25 has produced:

- A 90% reduction in the number of DUI offenders arrested for another DUI within the first year.
- A 12% decrease in DUI victims served by the District Attorney's Office.⁴
- A significant decline in the number of alcohol-related crashes from 506 in 2011 to 404 in 2013.

With the passage of House Bill 306, Hawaii can expect similar outcomes to those yielded in York County, Pennsylvania.

With your support, House Bill 306 can help reduce drunk driver recidivism and enhance public safety. Thank you for the opportunity to testify before you today.

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

⁴ From 18% in 2011 to 6% in 2013.