

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515



KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHRISTOPHER D.W. YOUNG
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

**THE HONORABLE JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS**

**Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i**

February 28, 2017

RE: S.B. 494, S.D. 1; RELATING TO CONTINUOUS ALCOHOL MONITORING FOR REPEAT OFFENDERS.

Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz, members of the Senate Committee on Judiciary and Labor, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony, in strong support of S.B. 494, S.D. 1. This bill is part of the Department's 2017 legislative package.

The purpose of SB. 494, S.D. 1, 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 S.D. 2 for the Committees' consideration**, which will address the matter of indigent defendants without State funding.

In 2015, the National Highway Traffic Safety Administration ("NHTSA") reported that of the 93 traffic fatalities in Hawaii, 54% were alcohol or drug related. In 2016, there has been a total of 120 traffic fatalities, 62 which have been processed, 32 which appear to be alcohol or drug related. 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.

In crafting SB. 494, S.D. 1, and our Proposed S.D. 2, 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 SB. 494, S.D. 1. 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. 2)

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. The device shall be fitted, maintained and monitored by a single vendor statewide.

(c) All costs associated with the monitoring device, including administrative and operating costs, shall be paid by the person, except that the vendor shall provide partial financial relief for the installation and the periodic calibration charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance Program, or free services under the Older Americans Act or Developmentally Disabled Assistance and Bill of Rights Act.— 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 28, 2017

To: Sen. Gilbert Keith-Agaran, Chair, Senate Committee on Judiciary & Labor; Sen. Karl Rhoads, Vice Chair; and members of the Committee

Senator Jill Tokuda, Chair, Senate Committee on Way & Means; Vice Chair Donovan Dela Cruz; and members of the Committee

From: Arkie Koehl & Carol McNamee, MADD Hawaii

Re: Senate Bill 494 S.D.1 — Relating to Continuous Alcohol Monitoring for Repeat Offenders

The members of Mothers Against Drunk Driving Hawaii have concerns regarding this bill, despite joining its supporters in our common goal of fighting impaired driving. Our concerns mainly relate to the effect of such a law on the highly successful ignition interlock program now in its seventh year.

The bill language should, in our view, explain how continuous alcohol monitoring will work to support increased use of ignition interlocks. This will help avoid confusion, since the continuous alcohol monitoring (CAM) devices support abstinence from alcohol but, unlike interlocks, do not prevent a vehicle from being operated.

In addition to such clarification, we urge the Committees to inquire as to:

- The legality of the enforcement through the bail bond system rather than through probation.
- The impact on the state budget of subsidizing indigent

- offenders for the high cost of the CAM devices.
- Which agency(ies) will ultimately be responsible for monitoring offenders, and for extending the monitoring period when necessary? With what cost impacts?

Ignition interlock has been the law statewide since 2011, in which time alcohol-related fatalities as a percent of total traffic fatalities went from 50% in 2011 to 38% in 2015. And over 72,000 drinking and driving episodes have been prevented. Last year interlocks prevented 12,685 episodes, despite their use by only a minority of OVUII offenders.

The State's Impaired Driving Task Force (IDTF) is currently exploring several ways to increase the use of interlock, as part of a comprehensive bill for the next session. The effectiveness of any mandatory system probably requires that 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 offenders.

Probation was a goal of the original IDTF a decade ago. 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.

MADD appreciates the opportunity to submit this written testimony.

February 27, 2017

Thank you Senate Committees on Judiciary and Labor and Ways and Means for the opportunity to submit testimony in support of Senate Bill 494.

[SCRAM Systems](#) is the inventor of the world's first transdermal alcohol monitoring technology, the SCRAM Continuous Alcohol Monitoring (CAM) bracelet. SCRAM CAM transdermally monitors for the consumption of alcohol every 30 minutes (48 times daily), 24 hours per day. As such, SCRAM CAM deters drinking since those wearing it know alcohol consumption will be detected. Nationally, on any given day, 99.3% of individuals monitored with SCRAM CAM are sober and compliant.

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. By leveraging existing alcohol testing technology like SCRAM CAM enables authorities to effectively monitor sobriety conditions as authorized by Senate Bill 494. 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 SCRAM CAM device. These conditions remain in effect until the case or cases are resolved.

Specifically, Target 25 has resulted in:

- 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.⁵

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.

⁵ From 506 in 2011 to 404 in 2013.



With the passage of Senate Bill 494, Hawaii can expect similar outcomes to those yielded in York County, Pennsylvania.

Submitted by:

Mindy Huddleston
Director, Industry & Government Relations
Alcohol Monitoring Systems, Inc.
MHuddleston@SCRAMsystems.com
703-786-6390



1241 West Mineral Avenue, Suite 200, Littleton, Colorado 80120
p: 303.989.8900 • f: 303.791.4262 • www.scramsystems.com

Follow us at:





1100 ALAKEA ST. SUITE 1604 • HONOLULU, HI 96813 • USA
1-800-880-3394 • 808-695-2416 • SMARTSTARTINC.COM
FAX 808-695-2316

February 28, 2017

To: Senator Gilbert S.C. Keith-Agaran, Chair, Senator Karl Rhoads, Vice Chair and members of the Senate Committee on Judiciary and Labor.

Senator Jill N. Tokuda, Chair; Senator Donovan M. Dela Cruz, Vice Chair and members of the Senate Committee on Ways and Means.

From: JoAnn Hamaji-Oto, State Director, Smart Start LLC, Hawaii Corporate Office.

Re: Senate Bill 494, SD1— Relating to Continuous Alcohol Monitoring for Repeat Offenders.

I am JoAnn Hamaji-Oto, the State Director for Smart Start LLC, Hawaii Corporate Office and the current vendor contracted by the Hawaii Department of Transportation to install and service alcohol ignition interlocks in the state of Hawaii. I am offering written testimony in opposition of Senate Bill 494, SD1- relating to continuous alcohol monitoring (CAM) for repeat offenders as it is written. While CAM technology is a useful tool in assisting authorities in monitoring alcohol use in OVUII offenders, it does not provide instant notification of an alcohol positive test and more importantly, it does not and will not stop them from starting their car after consuming alcohol and driving drunk. Ignition interlocks is the only technology and the single most effective way to keep an alcohol-impaired driver from turning the key on their vehicle and wreaking havoc on our roadways.

As you are most likely aware, ignition interlocks prevents an intoxicated driver from operating a motor vehicle if their breath alcohol concentration (BrAC) exceeds a set point (typically .020). Drivers must provide a breath sample by blowing into an interlock device before starting their car. If the driver's BrAC is over the set point, the vehicle will not start. The interlock is also calibrated to require a driver to provide breath tests at regular intervals while driving (rolling retests). This is to prevent drivers from asking a sober person to start the car and/or consume alcohol while driving. A data recorder logs the driver's BrAC for each attempt to start the vehicle and each rolling test. The daily cost to an OVUII offender for an interlock is \$2.96 per day versus the daily cost of a CAM device which is on average at \$12-\$15 per day. SCRAM systems is the only company nationwide to provide CAM devices; by the definition of CAM devices meaning any device or instrument that is attached to a person and tests for alcohol by contact with the person's skin. Therefore, this bill limits alcohol monitoring devices to only ONE vendor, which will be SCRAM systems.

According to MADD's 2016 Ignition Interlock report, ignition interlocks stopped 1.77 million drunk drivers from starting their cars with a blood alcohol concentration (BAC) of .08 or higher. The number of people stopped from drinking and driving by alcohol ignition interlocks is 12.7 million at a BAC of .025 or higher. Numerous research studies have proven that interlock devices reduce recidivism by 50% to 90% when installed in and maintained on an OVUII offender's vehicle.

Since the implementation of Hawaii's Ignition Interlock law in 2011, we have prevented more than 72,612 drunk driving attempts in the state of Hawaii. In 2016, that number was 12,685 and the current number is 923 prevented drunk driving attempts. The ignition interlock did what it was supposed to do, it prevented intoxicated drivers from starting their cars. It protected me, you, your family, your colleagues and your friends from drunk drivers and the injuries and deaths it causes.

The State's Impaired Driving Task Force (IDTF) is currently discussing the effectiveness of various alcohols monitoring systems for OVUII offenders as well as looking to strengthen and close any loopholes in the current ignition interlock law. Since the current ignition interlock law allows for OVUII offenders to install an ignition interlock only if they need or want to drive during their period of license revocation (it is a voluntary program), we strongly urge that the law is strengthened by requiring mandatory installation of an ignition interlock on all OVUII offenders and if not on all OVUII offenders, on repeat OVUII offenders specifically. They should not be given the choice of waiting out the revocation period without ever installing an ignition interlock which is what they are allowed to currently do. This is a dangerous situation as it is estimated that between 50 to 75% of people continue to drive on a suspended license. An ignition interlock study by the Johns Hopkins Bloomberg School of Public Health has found that states that mandate the devices for all drunk drivers have fewer alcohol related crashes. It found that traffic fatalities declined 7 percent in states that mandated ignition interlocks for first-time drunken-driving offenders. The drop was bigger in states that required the devices for all offenders. The conclusion of the ignition interlock study is compelling: **ignition interlock effectively reduces alcohol-involved fatal crashes.**

In conclusion, we urge you to oppose SB 494 as written and consider requiring mandatory installation of an ignition interlock for repeat OVUII offenders. Although CAM devices will monitor for alcohol use, it does not provide instant notification of an alcohol positive test and does not and will not stop an alcohol impaired driver from starting their car. OVUII offenders should be made to comply with the requirements to install an interlock device before their driver's license is reinstated and demonstrate sober driving. An interlock will separate drinking from driving, help save lives and keep Hawaii roads safe from drunk drivers.

Thank you for the opportunity to provide written testimony.

