

SB 494

RELATING TO CONTINUOUS ALCOHOL MONITORING FOR REPEAT OFFENDERS.

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.



Testimony by:
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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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HONOLULU, HAWAII 96813-5097

February 10, 2017
1:15 PM
State Capitol, Room 225
S.B. 494

RELATING TO CONTINUOUS ALCOHOL MONITORING FOR REPEAT OFFENDERS

Senate Committee on Transportation and Energy

The Department of Transportation (DOT) **supports with comments** S.B. 494 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 S.B. 494 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.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE LORRAINE R. INOUE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

February 10, 2017

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

Chair Inouye, Vice Chair Dela Cruz and members of the Senate 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 S.B. 494. This bill is part of the Department’s 2017 legislative package.

The purpose of S.B. 494 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. 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.hawaiiishsp.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 S.B. 494, and our Proposed S.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 S.B. 494. 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 arrested for 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 be fitted with a continuous alcohol monitoring device by a police officer of the county in which the offense occurred, a representative designated by the chief of police, a deputy sheriff, or other representative designated by the sheriff before the person is released on bail, recognizance, or supervised release. The police officer, representative, or deputy sheriff shall order the arrested person fitted with the device to

refrain from consuming any alcohol and ~~to~~ 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. The police officer, representative, or deputy sheriff shall further order the arrested person to refrain from removing, obstructing, or tampering with the device.

~~(b) All costs associated with the monitoring device, including administrative and operating costs, shall be paid by the arrested person. If at any time a court finds that the arrested 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 arrested person's use of a continuous alcohol monitoring device. A determination that an arrested 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 arrested person and an affidavit or a certificate, signed by the arrested person, demonstrating the person's financial inability to pay the costs for a continuous alcohol monitoring device.~~

Commented [NTMKL1]: This subsection just switched position, so it is now subsection (c).

~~(e)(b)~~ At the ~~arrested~~ person's initial court appearance, ~~the court shall order 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 court shall order~~ the person ~~shall be ordered~~ to refrain from removing, obstructing, or tampering with the device during the applicable period.

~~Notwithstanding any law to the contrary, the court shall not modify or suspend these conditions, except that the court may extend the~~ 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. ~~If the person was not previously fitted with a continuous alcohol monitoring device, the court shall order the person to~~ 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 ~~arrested~~ person. If at any time a court finds that the ~~arrested~~ 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 ~~arrested~~ person's use of a continuous alcohol monitoring device. A determination

that ~~an arrested~~ 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 ~~arrested~~ person and an affidavit or a certificate, signed by the ~~arrested~~ 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 ~~arrested~~ person violates any of the conditions of release on bail as specified in subsection ~~(eb)~~, the court, at the earliest practicable time, shall ~~person's bail shall be declared the bail forfeited and bail shall be reset~~ bail in the same amount or higher. ~~The court shall not vacate this~~ Such judgment shall not be vacated, nor shall ~~or reinstate~~ 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: _____

POLICE DEPARTMENT
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OUR REFERENCE KI-GR

February 10, 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: Senate Bill No. 494, 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 Senate Bill No. 494, 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.

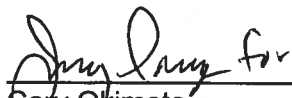
The HPD does not have the legal authority to order an arrested person fitted with the device to refrain from consuming any alcohol and to submit to monitoring by a continuous alcohol monitoring device for a period of 90 days.

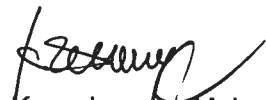
The HPD urges you to oppose Senate Bill No. 494, Relating to Continuous Alcohol Monitoring for Repeat Offenders, as written.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Cary Okimoto
Acting Chief of Police


Kerry Inouye, Major
Traffic Division

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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THE HONORABLE LORRAINE R. INOUE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai'i

February 10, 2017

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

Chair Inouye, Vice Chair Dela Cruz, and members of the Senate Committee on Transportation, the Office of the Prosecuting Attorney of the County of Kaua'i (Office) submits the following testimony in SUPPORT of S.B. 494.

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 S.B. 494. Thank you for the opportunity to testify on this matter.

Hawaii Senate Committee on Transportation & Energy Hearing

February 10, 2017

Good morning Chairman Inouye, Vice Chairman Dela Cruz, 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 Senate Bill 494. 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 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 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 Senate Bill 494, Hawaii can expect similar outcomes to those yielded in York County, Pennsylvania.

With your support, Senate Bill 494 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.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 3:39 PM
To: TRE Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB494 on Feb 10, 2017 13:15PM*

SB494

Submitted on: 2/7/2017

Testimony for TRE on Feb 10, 2017 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

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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