

Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
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IN REPLY REFER TO:

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

February 13, 2018
9:30 A.M.
State Capitol, Room 016

S.B. 2841
RELATING TO MOTOR VEHICLE SAFETY



Senate Committee on Transportation and Energy
Senate Committee on Judiciary

The Department of Transportation (DOT) **supports with amendments** S.B. 2841 relating to motor vehicle safety. This bill adds a definition for a highly intoxicated driver. The bill further establishes evidence and sentencing parameters for the highly intoxicated driver and also minimum and maximum administrative license revocation periods for the highly intoxicated driver.

The drinking driver continues to be a problem in Hawaii and the nation. The impaired drinking driver has been responsible for an average of 33.5 percent of Hawaii's traffic fatalities during calendar years 2012 – 2016. During this period, law enforcement has arrested 33,953 drivers for operating a vehicle under the influence of an intoxicant (OVUII). Of those arrested, 31,952 were charged for OVUII (alcohol). Of those arrested and tested for alcohol, 13,629 or 33.9 percent had results between .150 - .400 blood alcohol content (BAC) and 3,302 or eight (8) percent had results between .000 - .149 BAC. Of those arrested and tested, 27,714 or 69 percent were determined to be first-time offenders according to the Administrative Driver License Revocation Office.

The DOT recommends the following two amendments:

- Section 3 on page 6, delete the following wording in lines 18 through 20, "... and a minimum of six months up to a maximum of one year revocation of the registration of any motor vehicle registered to ..." and replace it with the following wording "... during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle registered to and/or operated by...".
- Section 4, on page 12, line 19: Increase the fine from \$150 to \$300.

These amendments will act as a deterrent to those violators who would be first-time offenders to understand the legal repercussions before drinking and driving.

The DOT urges your support to pass S.B. 2841 with the recommended amendments as it will deter drivers from drinking and driving thereby making the roads safer for Hawaii's residents and visitors.

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 and Judiciary

February 9, 2018, 10:00 a.m.

S.B. No. 2841: RELATING TO MOTOR VEHICLE SAFETY

Chairs Inouye and Taniguchi, and Members of the Committees:

This measure would reinstate the offense of “highly intoxicated driver,” and increase penalties for any driver with a measurable amount of alcohol above 0.15% blood alcohol content. The Office of the Public Defender opposes S.B. 2841.

The ignition interlock law as it currently stands, was many years in the making. Prior to the existence of the Impaired Driving Task Force, which submitted this bill, and prior to the existence of the Ignition Interlock Task Force, which is responsible for the legislation creating the ignition interlock law, there four to five individuals who spent countless hours creating the framework and drafting the original language of the ignition interlock law. The group consisted of myself, Lori Nishimura, then a deputy prosecuting attorney, Carol MacNamee, Bob Lung and Mark Miyahira, who was at the time a deputy prosecuting attorney on Maui. One of the first and most important concessions made by the MADD and law enforcement representatives was the repeal of the highly intoxicated driver portion of the OVUII law. The rationale for this agreement was that if all individuals convicted of OVUII were required to install ignition interlock to continue to drive, the level of his or her intoxication would be less relevant.

So now, to see a request from the Impaired Driving Task Force, which consists of virtually the same members from the Ignition Interlock Task Force to reinstate the offense of highly intoxicated driver, seem quite like a betrayal of the compromises and promises made during the creation of our current OVUII law. We ask that this committee defer this measure until the task force, or anyone can produce statistics of a measurable increase in alcohol related fatalities, and OVUII arrests. Back when we were composing the ignition interlock bill for consideration by this Legislature,

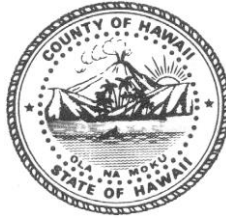
we were given statistics that more than 50% of people arrested for OVUII offenses had a BAC higher than .15%.

The real focus of the Impaired Driving Task Force should be reducing recidivism and increasing the percentage of individuals installing ignition interlock in their motor vehicles. Providing incentives in the law for the installation of ignition interlock such as a longer license suspension for people who do not install ignition interlock and/or increasing the penalty for the offense of driving while license suspended for OVUII would be a better place to start.

The Office of the Public Defender strongly opposes this measure. Thank you for the opportunity to be heard on this matter.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

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Statement of
MITCHELL D. ROTH
Prosecuting Attorney, County of Hawaii
before the
COMMITTEE ON TRANSPORTATION AND ENERGY
&
COMMITTEE ON JUDICIARY
Tuesday, February 13, 2018
9:30 a.m.
State Capitol, Conference Room 016



in consideration of
SB 2841
RELATING TO MOTOR VEHICLE SAFETY

Chair Inouye, Vice Chair Espero, and Members of the Senate Committee on Transportation and Energy, and;

Chair Taniguchi, Vice Chair Rhoads, and Members of the Senate Committee on Judiciary;

SB 2841 proposes an addition to Hawaii Revised Statutes §291E of a 'highly intoxicated driver'. Enhanced penalties relating to a highly intoxicated driver are also proposed.

At nearly twice the legal limit, an individual who's blood alcohol level is .15 or above creates an extremely dangerous situation when operating a motor vehicle. Enhanced penalties for an individual that chooses to drive in this state of impairment are justified given the level of intoxication.

The National Highway Traffic Safety Administration (NHTSA) has drawn a distinction between the physical effects shown at .08 blood alcohol concentration ('BAC') versus .15. At .08 NHTSA reports the typical effects are "muscle coordination becomes poor, harder to detect danger, judgement, self-control, reasoning, and memory are impaired".¹ The predictable effects on driving at .08 are, "concentration, short-term memory loss, speed control, reduced information processing capability (e.g., signal detection, visual search), impaired perception."²

¹ <https://www.nhtsa.gov/risky-driving/drunken-driving>, last accessed Feb. 8, 2018

² Id.

Compared to a driver at .15 BAC or above, NHTSA reports the typical effects are “Far less muscle control than normal, vomiting may occur (unless this level is reached slowly or a person has developed a tolerance for alcohol), major loss of balance”.³ The predictable effects on driving at .15 or above are, “Substantial impairment in vehicle control, attention to driving task, and in necessary visual and auditory information processing.”⁴

Given the elevated risk created by the highly intoxicated driver, enhanced penalties are appropriate for a person driving while at this level of impairment. For these reasons the proposed language found in SB 2841 should be adopted along with the Amendments suggested by the Hawai’i Department of Transportation.

Thank you for the opportunity to offer comments on this measure.

³ Id.

⁴ Id.

SB-2841

Submitted on: 2/12/2018 9:24:33 AM

Testimony for TRE on 2/13/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Testifying on behalf of Maui Department of the Prosecuting Attorney	Support	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 2841 - Relating to Motor Vehicle Safety. This measure will provide much needed assistance in dealing with the continuing problem of drivers whose blood alcohol contents are well above the current limit of .08%. The Department requests that this measure be PASSED.

Thank you very much for the opportunity to provide this testimony.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
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JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE **BM-GR**

February 13, 2018

The Honorable Lorraine R. Inouye, Chair
and Members
Committee on Transportation and
Energy
The Honorable Brian T. Taniguchi, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813



Dear Chairs Inouye and Taniguchi and Members:

SUBJECT: Senate Bill No. 2841, Relating to Motor Vehicle Safety

I am Benjamin Moszkowicz, Acting Captain of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of Senate Bill No. 2841, Relating to Motor Vehicle Safety, with proposed changes.

According to a case control crash risk study published in 2015 by the National Highway Traffic Safety Administration (NHTSA), drivers with breath or blood alcohol levels above .15 (who would be classified as "highly intoxicated drivers" by this legislation) are over 12 times as likely to be involved in a motor vehicle collision as sober drivers. As breath or blood alcohol content (BAC) continues to climb above .15, crash risk continues to increase exponentially. Highly intoxicated drivers are a menace to the rest of the citizens of Hawaii and should be subject to much harsher penalties once convicted or adjudicated.

The Honorable Lorraine R. Inouye, Chair
 and Members
 The Honorable Brian T. Taniguchi, Chair
 and Members
 February 13, 2018
 Page 2

Senate Bill No. 2841, as currently written, would add a motor vehicle registration revocation period for first time “highly intoxicated drivers,” as well as increase their period of driver license revocation. However, the bill lacks any language increasing penalties for repeat intoxicated drivers who are also “highly intoxicated drivers.” Under the statutory scheme proposed by Senate Bill No. 2841, a “highly intoxicated driver” with a prior alcohol enforcement contact within five years would actually be subject to less penalties than one with no prior alcohol enforcement contacts.

The HPD urges you to consider passing Senate Bill No. 2841, Relating to Motor Vehicle Safety, with the proposed amendments to increase penalties for repeat offenders who are also “highly intoxicated drivers” as follows.

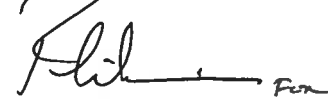
Number of prior contacts	Current Bill	Proposed Penalties
0 prior alcohol or drug enforcement contacts within 5 years	18 month license revocation, 6 to 12 month registration revocation	18 month license revocation, 6 to 12 month registration revocation
1 prior alcohol or drug enforcement contact within 5 years	No change from current statutes. (18 month license revocation)	36 month license revocation, 9 to 15 month registration revocation
2 prior alcohol or drug enforcement contacts within 7 years	No change from current statutes. (24 month license revocation)	48 month license revocation, 12 to 24 month registration revocation
3 or more prior alcohol or drug enforcement contacts within 10 years	No change from current statutes. (60 to 120 month license revocation)	90 to 120 month license revocation, 18 to 36 month registration revocation

Thank you for the opportunity to testify.

APPROVED:


 Susan Ballard
 Chief of Police

Sincerely,


 Benjamin Moszkowicz, Acting Captain
 Traffic Division



Mothers Against Drunk Driving HAWAII
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February 13, 2018

To: Senator Lorraine R. Inouye, Chair - Senate Committee on Transportation and Energy; Senator Will Espero, Vice Chair; and members of the Committee

Senator Brian Tanaguchi, Chair – Senate Committee on Judiciary; Senator Karl Rhoads, Vice Chair; and member of the Committee

From: Carol McNamee and Arkie Koehl, Public Policy Committee - MADD Hawaii

Re: Senate Bill 2841 – Relating to Motor Vehicle Safety

I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of the intent of SB 2841, relating to Highway Safety. This bill increases the penalties for driving with a Blood Alcohol Concentration at or above .15 grams of alcohol per one hundred milliliters of blood.

MADD supports the general concept of increasing sanctions for high BAC drivers but has serious concerns about aspects of this bill as written. We propose that the concept of Senate Bill 2841 not be lost but be discussed further and brought back to the Legislature at a later date. The current Impaired Driving Task Force would be the logical group to study this issue as part of an assessment of all of the state's OVUII statutes.

MADD well understands the basis for the proposed amendments. Drivers with a BAC of .15 or higher have a significant chance of causing crashes resulting in harm to themselves and possibly innocent drivers on the road. Specific sanctions for this category of high risk driver have been included in Hawaii's impaired driving statutes in the past but were removed when Interlock went into effect in 2011.

However, in Senate Bill 2841, the penalties for driving with a BAC over .15 are higher than those for other high risk groups: repeat offenders and those who refuse to take the chemical test. Under these circumstances it is very likely that drivers who suspect that they have a high BAC will refuse to be tested. Hawaii's refusal rate has already climbed over the last two years (largely because of recent Supreme Court opinions). Hawaii needs to decrease its refusal rate and guard against measures that would likely increase it. Drivers who refuse to be tested deprive the state of administering penalties that fit the crime. The individuals themselves are deprived of the wake-up-call that might help them break through their denial that they have a problem with alcohol or other drugs.

In this bill, the additional sanction of revocation of the vehicle registration for high BAC drivers creates an even greater difference in severity between the penalties of refusing to be tested versus driving with a BAC of .15 or more. Furthermore, SB 2841 makes no provision for removal of the license plate to allow law enforcement to be aware of vehicles being operated by drivers who have lost their vehicle registration due to being arrested for driving with a high BAC.

MADD asks that the committee hold this measure to give highway safety advocates time to prepare a well-constructed measure for the next legislative session. Thank you for this opportunity to testify.

SB-2841

Submitted on: 2/9/2018 5:33:47 PM

Testimony for TRE on 2/13/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Circe Carr		Support	No

Comments:



SB-2841

Submitted on: 2/12/2018 1:49:27 PM

Testimony for TRE on 2/13/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Support	No

Comments: