Office of the Public Defender
State of Hawaiʻi

Testimony of the Office of the Public Defender, State of Hawaiʻi to the House Committee on Judiciary

February 6, 2019

H.B. No. 703, H.D. 1: RELATING TO INTOXICATING LIQUOR

Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

The Office of the Public Defender opposes H.B. 703, H.D. 1.

Our office has serious concerns regarding the establishment of the term "restricted person," the prohibition of alcohol imposed on the "restricted person," and the changing the threshold of the offense of Habitual Operating a Vehicle Under the Influence of an Intoxicant ("Habitual OVUII").

<u>"Restricted Person"</u>

This measure seeks to prohibit any person convicted of the offense of Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") or the offense of Habitual OVUII from purchasing or publicly consuming alcohol for a period of three years following conviction or an administrative license revocation.

First, alcohol is a substance and, like other drugs, can be abused. Operating a vehicle under the influence of a substance may be a sign that the defendant is suffering from substance abuse. Therefore, instead of focusing on punishment such as a three-year alcohol prohibition, the legislature should place an emphasis on treatment and education. A person convicted of the offense of OVUII is required to participate in a fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court. Although we have no statistics to show the number of individuals ordered to do the minimum fourteen-hour program, we believe that the majority of convicted OVUII defendants are only required to participate in the minimal program. The legislature should consider requiring more intensive and/or comprehensive substance abuse treatment.

It should also be noted that not all convictions for OVUII are based on alcohol. A person can be convicted of OVUII while under the influence of any drug that impairs the person's ability to operate a vehicle in a careful and prudent manner. Such a person should not be designated as a "restricted person."

Finally, an alcohol prohibition period of three years is excessive. The first, second and third offense of OVUII are classified as petty misdemeanors. If the offenses were subject to probation supervision, the probation term would be six months (and up to one year upon a finding of good cause). *See* HRS § 702-623(d). Therefore, if any period of prohibition of alcohol is to be imposed, the prohibition should not be for a period any longer than the standard period of probation -- six months.

Habitual OVUII Threshold (Section 11)

This measure seeks to change the threshold for the offense of Habitual Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") to two or more convictions within ten years (and repeals the sentencing requirements for a third conviction of OVUII within five years).

Currently, the term of imprisonment for a defendant convicted of a first offense of OVUII is ***zero to five (5) days***. The term of imprisonment for a defendant convicted of an offense of OVUII within five years of a prior conviction is z***ero to thirty (30) days.*** The measure now seeks to increase the term of imprisonment for a third offense of OVUII from ***ten (10) to thirty (30) days*** to ***ten (10) days to five (5) years***. The disparity between the maximum sentence of a second offense and a third offense is simply too disproportionate, especially when one considers that a defendant convicted of a second offense is rarely sentenced to thirty days imprisonment. If the legislature is contemplating increasing the penalties for a third offense, a more sensible approach is a gradual increase of the maximum penalties; the maximum penalty for a third offense should be a period between thirty days and five years.

Moreover, reclassifying a third OVUII offense to a felony will contribute to an increased number of people admitted to prison. Currently, the trend is to reduce the prison population by providing alternative sentencing for drug related crimes. OVUII, especially a third offense, is a drug related crime. Therefore, rather than seeking additional prison time, the better approach is to punish or supervise in treatment. Community-based drug (alcohol) treatment has been proven to be more effective both in economic and social terms than incarceration.

Finally, the Office of the Public Defender is unaware of any statistical data to show that there is an increase of cases involving defendants with two prior convictions. Therefore, unless there is a need to increase the penalties for a third offense, we oppose reclassifying a third offense to a felony.

Thank you for the opportunity to comment on H.B. 703, H.D. 1.

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February 7, 2019

To: Representative Chris Lee, Chair, House Committee on Judiciary; Representative Joy A. Buenaventura, Vice Chair; and members of the Committee

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

Re: House Bill 703 – Relating to Intoxicating Liquor

I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of the intent of House Bill 703, Relating to the Ignition Interlock Program.

This bill involves a number of different sections of the Hawaii statutes relating to impaired driving. MADD Hawaii appreciates the intent of the authors to amend our current OVUII laws with the intent of reducing highway injuries and fatalities. On the subject of banning the sale of liquor to individuals who have been convicted of OVUII or whose drivers license has been administratively revoked due to impaired driving, our organization nationally and locally has no position. It is MADD's policy to research issues and countermeasures and to review data before creating a position which then must be accepted by the National Board of MADD. In our brief time to research the issue of a liquor restriction we only see that the state of Tennessee had introduced a bill in its legislature in 2018 but we have no information about whether it has passed. If the bill has passed, there will need to be time to study its effectiveness.

MADD's current position is that license revocation with the use of an interlock is the best hope for stopping repeat drunk driving.

MADD supports other sections of HB 703 which relate to increasing the "look-back" periods for repeat offenses and increasing fines.

Thank you for the opportunity to testify.

Marcella Alohalani Boido, M. A.
Hawaii Judiciary Certified Spanish Court Interpreter, Tier 4
Senate District 10, House District 21. Moili'ili, Honolulu, Hawaii 96826

To: Chair, Rep.Chris Lee; Vice-Chair, Rep. Joy San Buenaventura
Members, House Committee on Judiciary

Re: **HB 703, SUPPORT with comments**

Date: Thursday, February 7, 2019, 2:05 p.m., Room 325

Chair Lee, Vice-Chair San Buenaventura, and Committee Members: Thank you for hearing HB 703.

This testimony is presented as a private individual. I support the intent of this bill, which is to increase the safety of motorists and pedestrians in Hawaii.

My comments draw on my experience and observations as a Certified Spanish court interpreter. My Tier 4 level within the Judiciary's tier system ensures that I work on a significant percentage of the Oahu cases requiring a Spanish/English interpreter. Many times, defendants recognize me, and I recognize them.

1. **Judiciary records do not identify Hispanic defendants accurately and reliably.** My estimate is that 95%+ of the names for Hispanics defendants on the Judiciary records are erroneous. This results in the same defendant being given multiple Party Identification numbers. Judges therefore cannot determine, on a reliable basis, if a defendant has a prior history for anything, including DUIs.

The response to my informal inquiries has been that the names of the defendants come from police and the prosecution. One would think that these organizations would want to provide the information necessary to track a defendant's record accurately. When I have tried to correct the names in court, the reception is not always positive.

The errors are basically of two types:

a) Whoever writes down the defendant's name initially does not understand the basic structure of Hispanic names and surnames, which is

[First name, which may have multiple parts]
[Second name, which is optional]
Crucially: [Paternal surname]
Followed by: [Maternal surname]

What we call "last name" in English is usually the paternal surname in Spanish. Judiciary records, however, often wind up being kept under the maternal surname, under the mistaken idea that this corresponds to our English language concept of a "last name." The defendant then winds up with multiple Party Identification numbers.

Example: Victor Hugo García Torres should be alphabetized as García Torres, Victor Hugo (two- part first name). Instead, the records might be under Torres, Torrez, Garcia-Torres, Garcia-Torrez, etc. Just about anything other than the right name, in other words.

b) Some part or all of the Defendant's name is misspelled on the Judiciary records. (See "Torrez," above.)

I have interpreted for defendants who may have anywhere from two (2) to eight (8) Party Identification numbers, each one with a different,usually erroneous version of the person's name.

When I hear a judge say that this is a first offense, I may suspect otherwise. However, the ethics governing the role of a court interpreter prohibit us from offering this kind of information to the court, defense counsel, or the prosecution.

Over the years I have repeatedly explained the problem to people within the Judiciary, to judges, counsel, and prosecutors. So far, I have seen no systematic change.

Anyone who has had a semester of Spanish at the high school or college level will have learned the structure of Hispanic names. So, it mystifies me to see that this learning is not applied to important records, such as police and Judiciary reports.

In Hawaii, we know that a person who says his name is "Tanaka Toshiaki" is "Mr. Tanaka," not "Mr. Toshiaki." We know similar things about the traditional structure of Chinese and Korean names. Surely Hawaii can get Hispanic names right.

If Hawaii wants to deal fairly with offenders of all backgrounds, including repeat offenders, then this situation should be corrected.

2. Limited-English Proficient (LEP) defendants do not get written information in their first language about matters such as court dates, the conditions of their probation, or their fines, or anything else. This makes compliance more difficult. (The big exception is the Spanish language workbook provided to Spanish-speaking people who take the mandatory two-day DUI class.)

Currently LEP defendants do not get any written information printed on paper in their first, strongest language from the police, prosecution, courts, or public

defenders. So, LEP defendants may not know things ranging from when to show up, to how to pay the fines.

[I estimate that the Judiciary is owed very significant sums of money from fines simply because no written notice in a Language Other Than English (LOTE) has been provided to defendants about how much they owe nor how to pay it. The total sums owed may be in the hundreds of thousands of dollars, and are probably much higher.]

3. Court hearings may proceed without an interpreter, even when one is known to be needed. Defendants tend to wait a while in court. Taking the time to have the Schedulers find a court interpreter, even though it is on short notice, would significantly improve compliance with court dates.

This matters, because once a certain number of hearings has been held without resolving a case, the judge may dismiss the charges. Judges also dismiss charges if the case does not comply with the time limits of Rule 48.

My conclusions: If Hawaii wants to improve compliance with its laws, especially those pertaining to DUI and related offenses, it needs to improve the accuracy of Judiciary and other records, provide a court interpreter at all hearings for LEP defendants, and provide more information to LEP defendants in printed form in Languages Other Than English (LOTE). Raising the standards for court interpreters to be on the Judiciary Registry would help, too.

Thank you for taking the time to hear this bill. I hope my comments have been helpful. Respectfully, I ask this Committee to pass HB 703, with amendments.

HB-703
Submitted on: 2/5/2019 2:44:57 PM
Testimony for JUD on 2/7/2019 2:05:00 PM

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

Comments:

LATE

HB-703
Submitted on: 2/6/2019 4:48:08 PM
Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Dau	Lisa Dau, RN, Representing Keiki Injury Prevention Coalition	Support	No

Comments:

LATE

HB-703
Submitted on: 2/7/2019 7:47:57 AM
Testimony for JUD on 2/7/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Keith Kawai	Individual	Comments	No

Comments:

While I do not oppose the introduced bill I do believe it is ill concieved as there is no way to ensure or prevent any DUI offender gaining access to alcohol by a third party.

I do believe stonger penalties should apply specifically for those who kill anyone while under the influence of a substance or alcohol.

Penalties to include life in prison with no parole to possibly the death sentence if this person has **MULTIPLE** DUI convictions and a clear disrgard for public safety.

Simply making a law to prohibit sales or consumption of alcohol for 3 to 6 years is unreasonable to monitor or track.