



Office of the Public Defender State of Hawai'i

Testimony of the Office of the Public Defender, State of Hawai'i to the Senate Committee on Transportation

March 11, 2019

H.B. No. 763, H.D. 2: RELATING THE IGNITION INTERLOCK PROGRAM

Hearing: Wednesday, March 13, 2019, 1:00 p.m.

Chair Inouye, Vice Chair Harimoto, and Members of the Committee:

The Office of the Public Defender opposes H.B. No. 763, H.D. 2. We are especially concerned with the tolling provision set forth in subsection 291E-61 (l), which reads as follows:

The period of license restriction under subsection (b) shall be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person for a continuous period of one hundred eighty days unless the person receives a determination from the department that the person is unable to operate an ignition interlock device due to a physical disability. The department's determination that a person is unable to operate an ignition interlock device due to a physical disability shall be reasonable and shall be based upon a showing of substantial evidence. This determination shall be subject to review by a court of competent jurisdiction. The department may charge a person seeking an exception under this subsection a reasonable fee for an assessment.

The foregoing provision is extremely unfair to those persons who cannot afford to own a vehicle or cannot afford to participate in an ignition interlock program. The period of license restriction for such a person will never end until and unless he/she has the financial means to purchase a vehicle and/or participate in the ignition interlock program. Persons who opt to forego their privilege to drive during the license revocation period rather than keep their privilege by participating in the ignition interlock program often do so because they do not own a car and/or cannot afford to participate in the program.

Essentially, this measure will disproportionately punish those who are economically disadvantaged. The period of a license revocation for a person with financial means (i.e., a person who owns a vehicle and can afford to participate in the ignition interlock program) will be substantially shorter than for a person who cannot afford a car and/or participate in

the program. A person should not be subject to an endless license restriction period simply because he/she cannot afford to own a car and/or participate in the program.

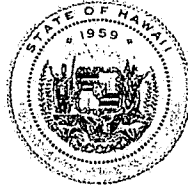
Moreover, it is not uncommon that a person convicted of operating a vehicle while under the influence of an intoxicant (“OVUII”) shares a vehicle with multiple family and/or household members. When the OVUII offender opts to participate in the ignition interlock program, every family member must also participate in the program. Every family member must breathe into the ignition interlock device not only prior to starting the family vehicle but also during the operation of the vehicle, as the program requires the driver to submit to periodic random tests. Rather than inconveniencing the other family/household members, the OVUII offender will choose instead to give up his/her privilege to drive during the license revocation period and opt out of participating in the ignition interlock program. If the measure becomes law, every family/household member of the OVUII offender will be punished, as they will essentially be required to participate in the ignition interlock program to simply operate the family/household vehicle.

Finally, this measure is not necessary because a person who drives a non-ignition interlock vehicle (regardless of whether he or she is participating or sitting out of the ignition interlock program) is subject to the penalties of section 291E-62, which include mandatory imprisonment:

- First offense: a term of imprisonment of not less than three consecutive days; and
- Second offense: thirty days imprisonment; and
- Third offense: one-year imprisonment.

Section 291E-62 is certainly an effective (and harsh) sanction. Many persons convicted of OVUII have never been incarcerated; indeed, but for the few hours prior to posting bail after an OVUII arrest, persons convicted of OVUII are rarely incarcerated. The prospect of spending three days imprisonment for driving a vehicle is a sufficient deterrent of driving a non-ignition interlock vehicle.

Thank you for the opportunity to comment on H.B. No. 753, H.D. 2.



LATE

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

March 13, 2019
1:00 p.m.
State Capitol, Room 225

**H.B. 753 H.D.2
RELATING TO THE IGNITION INTERLOCK PROGRAM**

Senate Committee on Transportation

The Department of Transportation (DOT) **supports the intent of H.B. 753 H.D.2 with significant concerns.**

There is strong agreement amongst DOT and its traffic safety partners that there needs to be fixes to the ignition interlock statute and administrative rules. To better protect the public from the drinking driver. However, DOT believes this bill doesn't effectively or comprehensively address all the necessary fixes.

Specifically, significant work needs to be done to address concerns such as:

- Providing sufficient policies and procedures or guidelines for the courts, ADLRO or participating agencies.
- The lack of a cap on the tolling provision appears to present potential constitutional issues, particularly as the proposed subsection 291E-61(m) arguably imposes a sentence modification without due process. It is also important to note, this may have a disparate impact on low-income individuals, prohibiting someone from ever getting their license back if they cannot afford an ignition interlock.
- The triggering criteria for the proposed 291E-61(m)(1) through (4) are unclear and appear overbroad, considering that alcohol consumption is not necessarily prohibited as part of the sentence. If someone attempts to start the vehicle but is prevented to do so by the ignition interlock device – then takes the responsible action of getting a sober ride home – they should not be penalized in the same fashion as someone who is intentionally trying to evade or abuse the system.
- The proposed 291E(m)(4) does not appear to provide any leeway, grace period, etc. for extenuating circumstances, such as hospitalization, imprisonment, simple mistakes, deployment, etc.

Because this bill impacts numerous sections within Chapter 291E and Chapter 286, more time is needed to address the necessary modifications needed. HDOT is concerned that there is not enough time in this session to address all concerns, especially the constitutionality issues.

For these reasons, DOT recommends deferring this bill. We will be working to prepare a comprehensive and clean bill for next session with the safety partners.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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ACTING PROSECUTING ATTORNEY

ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

LATE

THE HONORABLE LORRAINE R. INOUE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION
Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i

March 13, 2019

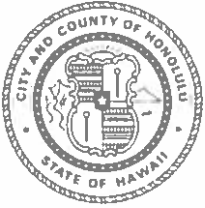
RE: H.B. 753, H.D. 1; RELATING TO IGNITION INTERLOCK PROGRAM.

Chair Inouye, Vice Chair Harimoto, 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 regarding H.B. 753, H.D. 1. While the Department supports the intent to strengthen Hawaii's Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") laws, we respectfully ask that this measure be deferred.

The purpose of H.B. 753, H.D. 1 is to amend Hawaii's Ignition Interlock Program, by extending drivers license revocations indefinitely, in order to increase participation in the program. Although the Department supports the use of the ignition interlock devices to curb drunk driving in Hawaii, the proposed bill would likely have unintended—and possibly unconstitutional—consequences, which would not only increase the existing court congestion for OVUII trials, but could also have a disparate impact on low-income individuals. Pursuant to this bill, someone who could not afford to pay for an ignition interlock device for their entire revocation period, would never be allowed to reinstate their drivers license.

The Department is deeply concerned that the bill attempts to make sweeping changes to Hawaii's OVUII laws, without any substantive input from Hawaii's law enforcement agencies or various stakeholders. Members of both the Hawaii Impaired Driving Task Force and Statewide Traffic Commanders—including police and prosecutors from all four counties, sheriffs, Judiciary, Administrative Drivers License Revocation Office ("ADLRO") and the Department of Transportation—have clearly expressed their willingness to work on proposed legislation during the off-session, and would also like to solicit input from the defense bar and other stakeholders.

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu asks that H.B. 753, H.D. 1 be deferred. Thank you for the opportunity to testify on this matter.



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WRITTEN TESTIMONY ONLY

March 13, 2019

TESTIMONY OF
COUNCIL CHAIR EMERITUS & VICE CHAIR RON MENOR
COUNCIL DISTRICT 9
CITY AND COUNTY OF HONOLULU

House Bill 753 HD2

RELATING TO THE IGNITION INTERLOCK PROGRAM.

Chair Inouye, Vice Chair Harimoto and Members of the Senate Committee on Transportation:

I am testifying in support of House Bill 753 HD2. I am submitting this testimony not on behalf of the Honolulu City Council, but as an individual Councilmember.

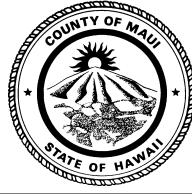
With Hawaii's existing interlock law, Hawaii's drunk driving deaths have decreased by two percent since 2010, compared to an increase of over seven percent nationally.

HB 753 HD2 requires interlock users to prove compliance with ignition interlock requirements prior to removing the device. They must have a certain period of no recordable violations before removing the device - known as compliance based removal which is law in 28 states.

HB 753 HD2 ensures that drivers who are ordered to use an interlock actually use the device before obtaining an unrestricted license. The interlock costs approximately \$3 a day to the offender, and current law allows for a reduced rate for the indigent.

The CDC finds that interlocks reduce repeat drunk driving offenses by 67 percent. An ignition interlock is more effective than license suspension or revocation alone, as up to 75 percent of convicted drunk drivers continue to drive with a suspended license. License revocation with an interlock requirement is the best option for stopping repeat drunk driving.

Mahalo for the opportunity to testify in support of this bill.



LATE

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TESTIMONY
ON
HB 753, HD2 - RELATING TO
THE IGNITION INTERLOCK PROGRAM

March 12, 2019

The Honorable Lorraine R. Inouye
Chair
The Honorable Breene Harimoto
Vice Chair
and Members of the Committee on Transportation

Chair Inouye, Vice Chair Harimoto, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, would like to submit the following testimony regarding the current draft of H.B. 753, H.D. 2, Relating to The Ignition Interlock Program. We agree with the general intent of the bill to strengthen the State's ignition interlock program in order to decrease incidents of intoxicated persons operating a vehicle. However, we believe that this measure should be deferred in order to address the procedural and legal concerns we have with the current language.

One of our concerns is that portions of this bill may present constitutional due process or equal protection issues. As drafted, these sections have the potential to create an unlimited license restriction period for a defendant without any kind of judicial review, opportunity for a defendant to contest the extension, or, depending on how the language is interpreted, without any particular wrongdoing. As such, future appellate review of this language may result in it being declared unconstitutional, even though it directly addresses the State's legitimate interest in reducing intoxicated driving.

We are also unaware of any formal input from the Judiciary and related government entities, aside from what has already been submitted, regarding the current language of H.B. 753, H.D. 2 and its potential impact on H.R.S. Chapter 291E violations. We believe that this input should be sought and reviewed to ensure that the potential for unforeseen consequences, legal or otherwise, has been thoroughly addressed.

Finally, we believe that H.B. 753, H.D. 2's current language could be amended in a

manner that addresses the concerns stated above without compromising the general intent or efficacy of the bill. However, this would require additional time to discuss alternative language, obtain additional input and ensure that the bill's statewide effects are properly considered. Our office is willing to assist in this process.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, believes that H.B. 753, H.D. 2 should be deferred in order to address the concerns we have with its current language. However, we would also like to make it clear that we agree with the general intent of the bill to strengthen the State's ignition interlock program in order to decrease incidents of intoxicated persons operating a vehicle.

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

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. 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
Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i

LATE

March 13, 2019

RE: H.B. 753, H.D. 1; RELATING TO IGNITION INTERLOCK PROGRAM.

Chair Inouye, Vice Chair Harimoto, and members of the Senate Committee on Transportation, the Office of the Prosecuting Attorney of the County of Kaua'i submits the following testimony regarding H.B. 753, H.D. 1. While the Office supports the intent to strengthen Hawaii's Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") laws, we respectfully ask that this measure be deferred.

The purpose of H.B. 753, H.D. 1 is to amend Hawaii's Ignition Interlock Program, by extending drivers license revocations indefinitely, in order to increase participation in the program. Although the Office supports the use of the ignition interlock devices to curb drunk driving in Hawaii, the proposed bill would likely have unintended—and possibly unconstitutional—consequences, which would not only increase the existing court congestion for OVUII trials, but could also have a disparate impact on low-income individuals. Pursuant to this bill, someone who could not afford to pay for an ignition interlock device for their entire revocation period, would never be allowed to reinstate their driver's license.

The Office is deeply concerned that the bill attempts to make sweeping changes to Hawaii's OVUII laws, without any substantive input from Hawaii's law enforcement agencies or various stakeholders. Members of both the Hawaii Impaired Driving Task Force and Statewide Traffic Commanders—including police and prosecutors from all four counties, sheriffs, Judiciary,

Administrative Driver's License Revocation Office ("ADLRO") and the Department of Transportation—have clearly expressed their willingness to work on proposed legislation during the off-session, and would also like to solicit input from the defense bar and other stakeholders.

Based on the foregoing, the Office of the Prosecuting Attorney of the County of Kaua'i asks that H.B. 753, H.D. 1 be deferred. Thank you for the opportunity to testify on this matter.



March 11, 2019

The Honorable Lorraine R. Inouye, Chair
The Honorable Breene Harimoto, Vice Chair
Committee on Transportation
Conference Room 225 State Capitol
415 South Beretania Street
Hawai'i State Capitol Honolulu, HI 96813

Re: House Bill 753/ HD2- RELATING TO THE IGNITION INTERLOCK PROGRAM on Wednesday, March 13, 2019@ 1:00 P.M

Aloha Chair Inouye and Vice Chair Harimoto,

My name is Tara Casanova Powell. I am the Principal of Casanova Powell Consulting (CPC). I am providing testimony as a research expert in the field of impaired driving to strongly urge your support of House Bill 753/HD2.

I am the Principal of Casanova Powell Consulting, an independent traffic safety research consulting firm. With over 20 years of experience in the field of road safety and conducting research regarding the impaired driving population, I am considered a national expert in this regard. I have led several national and state projects involving alcohol and drug impaired driving, including a national evaluation of 28 state's ignition interlock programs, two Washington State ignition interlock offender behavior and recidivism projects, Minnesota and Colorado interlock program evaluations, an Annual National Survey of Ignition Interlocks, and a Continuous Alcohol Monitoring Recidivism study in Nebraska and Wisconsin. I have been asked to present at several state, national and international conferences including the 2017 National Conference of State Legislatures (NCSL) State Transportation Leaders Symposium in Denver, Colorado where I discussed refining ignition interlock laws and programs. I am a founding member of the Connecticut Statewide Impaired Driving Task Force, a faculty staff member for the National Center for DWI Courts (NCDC), a member of the Leadership Committee of the National Academies Transportation Research Board Alcohol and Other Drug Committee, and a member of the International Council on Alcohol Drugs and Traffic Safety where I have been appointed to the Rehabilitation Measure Working Group. I have intimate knowledge of Hawaii's impaired driving program since Hawaii was selected as a case study for a national study where I was the Principal Investigator: State Blood Alcohol Concentration (BAC) Testing and Reporting for Drivers Involved in Fatal Crashes.

Passage of House Bill 753/HD2 provides for the adoption of language which will strengthen and expand the current ignition interlock program whereby Senate Bill 645 will:

- grant the Department of Transportation rule-making authority;

[Casanova Powell Consulting \(CPC\)](#)
[Traffic Safety Program Design and Implementation, Evaluation, and Research](#)

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Email: taracpc@outlook.com |



- establish compliance-based removal provisions (180 consecutive days without violations);
- establish penalties for those who fail to install an interlock including a requirement to complete a sobriety program;
- define program violations;
- allow the court the discretion to order defendants to enroll in a constant sobriety program; and,
- require the revocation of license period be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person.

As interlock research and technology evolved over the years, reductions in recidivism were seen with varying cohorts of offenders and terms of interlock, including interlock extensions. In other words, interlock extensions were found to decrease recidivism among all levels of offense including high BAC and repeat populations of DWI offenders (of which 65 percent of impaired driving fatalities occur).

Interlock research performed by myself and my colleagues in the field has shown that interlocks can effectively monitor offenders, facilitate behavior change, and reduce recidivism rates among this population. (McCartt et. al, 2013; Casanova Powell et. al, 2015, McGinty, 2017) Compliance-based removal, or interlock extensions based on compliant performance over a specific period of time was a strong recommendation as a result of my “Evaluation of State Ignition Interlock Programs: Interlock Use Analyses From 28 States” study (Casanova et. al, 2015).

Furthermore, a recent study conducted by Voas et al., (2016), examined the effects of treatment and supervision in combination with interlock use. Results showed that those participants in the treatment group experienced 32 percent reduction in recidivism during the 30 months following the removal of the interlock. The Voas study validates the use of ignition interlock paired with treatment as a viable tool to facilitate behavior change. As a result, public perceptions regarding the interlock device as a useful tool to monitor the impaired driving population (including those of judges and court staff), have changed over the years. This research also supports the DWI court model where required interlock use and term extension for confirmed alcohol interlock violations are standard practice.

In conclusion, I ask you to support House Bill 753/HD2 to better ensure the safety of the citizens of Hawai'i. Please contact me with any additional questions you may have.

Respectfully Yours,

A handwritten signature in black ink that reads 'Tara Casanova Powell'. The signature is written in a cursive, flowing style.

Tara Casanova Powell
Principal

Casanova Powell Consulting (CPC)
Traffic Safety Program Design and Implementation, Evaluation, and Research

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WRITTEN TESTIMONY
CHAIR OF THE HOUSE COMMITTEE ON TRANSPORTATION
HOUSE BILL 753, HD 2
TUESDAY, MARCH 13, 2019 AT 1:00 PM
CONFERENCE ROOM 225, STATE CAPITOL, 415 BERETANIA STREET

Good afternoon Chairwoman Lorraine Inouye and distinguished members of the committee, thank you for the opportunity for submitting written testimony in support **House bill 753, HD 2**. My name is Erin Holmes. I am the Director of Traffic Safety at the Foundation for Advancing Alcohol Responsibility (Responsibility.org). Prior to joining the Foundation in September of 2014, I was a Research Scientist at the Traffic Injury Research Foundation (TIRF). During my tenure at TIRF, I published more than 40 reports, evaluations, and articles and delivered in excess of 50 presentations internationally on impaired driving, justice system improvements, alcohol monitoring technologies, risk assessment, and drug policy. Ignition interlocks are my primary area of expertise. I have provided The National Highway Traffic Safety Administration (NHTSA)-funded training and technical assistance to more than 20 states, including Maryland, to improve the delivery of their interlock programs. Moreover, I was involved in the planning and implementation of an international symposia series on interlocks and developed the content for the Alcohol Interlock Curriculum for Practitioners (www.aic.tirf.ca).

The Foundation for Advancing Alcohol Responsibility (Responsibility.org) is a national not-for-profit that leads the fight to eliminate drunk driving and underage drinking and is funded by the following distillers: Bacardi U.S.A., Inc.; Beam Suntory; Brown-Forman; Constellation Brands, Inc.; DIAGEO; Edrington; Mast-Jägermeister US, Inc.; and Pernod Ricard USA. For more than 25 years, Responsibility.org has brought individuals, families, and communities together to guide a lifetime of conversations around alcohol responsibility and offers proven strategies to stop impaired driving. To learn more, visit www.responsibility.org.

Responsibility.org supports the mandatory and effective use of ignition interlocks for all convicted DUI offenders as part of a comprehensive approach to eliminating drunk driving. **House bill 753, HD 2** seeks to strengthen Hawaii's existing interlock program by giving the Department of Transportation rule-making authority, establishing compliance-based removal provisions (180 consecutive days without violations), establishing penalties for those who fail to install an interlock including a requirement to complete a sobriety program, defining program violations, and affording the court the discretion to order defendants to enroll in an alcohol or substance abuse education or treatment program. Furthermore, HB 753, HD 2 requires the revocation of license period be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person. If passed, this legislation will reduce instances of drunk driving and increase offender accountability. Given the life-saving potential of this technology and the potential of this legislation to align Hawaii with some of the strongest interlock programs in the country, **we urge all legislators to vote yes on HB 753, HD 2**.

Evidence shows interlocks are highly effective in preventing alcohol-impaired driving for both repeat and first-time DUI offenders while they are installed.

- More than 10 evaluations of interlock programs have reported reductions in recidivism ranging from 35-90% with an average reduction of 64% (Willis et al., 2004).
- A study commissioned by the Centers for Disease Control and Prevention (CDC) that involved a systematic review of 15 peer-reviewed studies revealed that, while interlocks were installed, the re-arrest rate of offenders decreased by a median of 67% compared to groups who never had an interlock installed (Elder et al., 2011).
- A study of New Mexico's interlock program (Marques et al., 2010) examined the recidivism rate of first offenders arrested for aggravated DUI. This research found that offenders who participated in the program

had a 61% lower recidivism rate while the device was installed and a 39% lower recidivism rate following the removal of the interlock when compared to offenders who never installed the device.

Simply put, the passage of interlock laws saves lives. A study by Kaufman and Wiebe (2016) examined the impact that the passage of all offender interlock laws have on alcohol-involved crashes (defined as any crash involving at least one driver who had a blood alcohol concentration above .00) in 18 states. The authors found that requiring all drivers convicted of DUI to install an interlock was associated with a 15% reduction in the rate of alcohol-involved crash deaths; this translates into an **estimated 915 lives saved**. A more recent examination of the effects of state interlock laws on alcohol-involved fatal crashes in the U.S. found that interlocks may reduce the occurrence of these crashes (McGinty et al., 2017). State laws that require interlocks for all DUI offenders were associated with a 7% decrease in the rate of fatal crashes involving a driver above the legal limit (.08) and an 8% decrease in the rate of fatal crashes involving a high-BAC (.15>) driver. This translates into an **estimated 1,250 prevented fatal crashes** involving a drunk driver.

This strong convergence of scientific evidence has led to substantial growth in interlock programs within the last decade, along with a shift toward mandatory interlock laws for all DUI offenders. At present, all 50 states have passed some form of interlock legislation and achieved different degrees of program implementation. A total of 32 states and the District of Columbia have passed all offender interlock laws; 28 of these jurisdictions require mandatory installation.

Interlock programs however, should not exist in isolation. This technology is most effective when utilized in conjunction with assessment, treatment, and supervision. It is essential that effective screening for alcohol, drugs, and mental health issues be conducted with DUI offenders in tandem with an interlock sanction to identify those offenders who have issues that must be treated. Research shows that repeat DUI offenders often suffer from multiple disorders. In one study, in addition to a lifetime alcohol disorder, 41% of the participants had a drug-related disorder and 45% had a major mental health disorder that was not alcohol or drug-related (Shaffer et al., 2007). Absent the identification and treatment of substance use and co-occurring disorders, long-term behavior change is unlikely for these offenders. In order to prevent future instances of drunk driving, and subsequently, save lives, the underlying causes of DUI offending (such as substance misuse or mental health issues) must be addressed. The addition of a strong treatment component to Hawaii's program has the potential to change the behavior of impaired drivers in the long-term.

One option that treatment providers might consider is a new screening/assessment instrument. Responsibility.org and the Division on Addiction at Cambridge Health Alliance, a teaching affiliate of Harvard Medical School, launched the [Computerized Assessment and Referral System](#), (CARS). This revolutionary screening and assessment instrument generates immediate diagnostic reports that contain information about an offender's mental health and substance use issues, a summary of risk factors, and provides referrals to nearby treatment services. CARS is available for **free** download at <http://www.carstrainingcenter.org>. We hope this resource will help states better identify, sentence, supervise, and treat high-risk impaired drivers.

In conclusion, Responsibility.org believes that strong laws enabling swift identification, certain punishment, and effective treatment are fundamental elements necessary to reduce the incidence of drunk driving. Responsibility.org further believes that these elements must be coordinated into a statewide system in order to be effective. If there is anything that Responsibility.org can do to strengthen your efforts, please contact Erin Holmes, Director of Traffic Safety at (202) 445-0334 or erin.holmes@responsibility.org.

Thank you.



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March 13, 2019

To: Senator Lorraine R. Inouye, Chair; Senate Committee on Transportation; Senator Breene Harimoto, Vice Chair; and members of the committee

From: JoAnn Hamaji-Oto, Territory Operations Director, Smart Start LLC, Hawaii Corporate Office

Re: HB 753, HD2- Testimony in Strong Support Relating to the Ignition Interlock Program Enhancement

I am JoAnn Hamaji-Oto, Territory Operations Director for Smart Start LLC, Hawaii Corporate Office. Smart Start is 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 testimony in strong support of House Bill 753, HD2, Relating to The Ignition Interlock Program.

The only way to stop a drunk driver from reoffending is to install an ignition interlock on the vehicle that a person operates during a license revocation period. Unlike other alcohol monitoring technologies or programs, an interlock is the only technology and the single most effective tool available to physically separate drinking from driving and to enhance public safety. A consequence for trying to drive drunk on an interlock is not incarceration, but rather a parked vehicle that will not start until the driver sobers up. As you are most likely aware, ignition interlocks prevent a drunk 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 ignition interlock device before starting their car. If the driver's BrAC is over the set point, the vehicle will not start. HB 753, HD2, will make interlock users prove compliance and demonstrate they are able to drive sober before removing the device. For drunk drivers using an interlock, they must have a certain period of no recordable violations before removal, known as compliance-based removal and is law in 28 states. Interlock compliance-based removal laws are important in teaching sober driving behavior.

In 2014, the Traffic Injury Research Foundation (TIRF), through a cooperative agreement with the National Highway Traffic Safety Administration (NHTSA) was invited by the state

Department of Transportation to provide technical assistance to strengthen and improve the delivery of the ignition interlock program in Hawaii. This bill is a result of the recommendations of this report to:

- Not allow offenders to “wait out” their revocation period
- Address the problem of offenders continuing to engage in unsafe driving behaviors and exiting the program without proving sobriety to drive
- Provide rule-making authority to DOT to administer the program and develop administrative rules surrounding interlock sanctions

We are offering proposed amendments to improve earlier versions of this bill:

- Delaying implementation to January 1, 2021
- Requesting input and recommendations from the Hawaii Impaired Driving Task Force before the 2020 Legislative Session
- Inserting the compliance-based removal provisions in the administrative section of the law (HRS 291E-41) and
- Revising the Department of Transportation’s rule-making authority to insert it not in the Judicial section of the law, but the Administrative section

According to the American Association of Motor Vehicle Administrators (AAMVA) Ignition Interlock Best Practice Guide for Ignition Interlocks called on states to have compliance-based removal for people on an ignition interlock. Currently, OVUII offenders in Hawaii merely have their interlock removed when it is time for end of program, whether they have proved sobriety to drive or not. This legislation will boost interlock implementation. One of the biggest challenges facing Hawaii’s interlock program is eligible OVUII offenders wait out the revocation period and do not install an interlock, many choosing to drive unlicensed and not interlocked.

Since the implementation of Hawaii’s Ignition Interlock law in 2011, we have prevented more than 100,000 drunk driving attempts in the state of Hawaii. The interlock did what it was supposed to do, it directly prevented drunk driving and the injuries and deaths it causes. The TIRF report concluded that participation rates in Hawaii’s ignition interlock program can be improved by strengthening the law. OVUII offenders should be made to comply with the requirements to install an interlock device before their driving privileges are restored. They should not be given the choice of waiting out the revocation period without ever installing an interlock. This is a dangerous situation as research provides that suspending licenses by itself is not a deterrent, 50 – 75% of OVUII offenders continue to drive on suspended licenses.

In conclusion, we strongly urge you to pass HB 753, HD2, as it will help strengthen Hawaii’s Ignition Interlock laws which is critically important to help save lives and keep Hawaii roads safe.

Thank you for the opportunity to provide testimony in support of this important bill.

A BILL FOR AN ACT

RELATING TO THE IGNITION INTERLOCK PROGRAM.

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

SECTION 1. The legislature finds that it is in the interest of the State to decrease incidents of persons operating a vehicle under the influence of an intoxicant. Therefore, it is vitally important that the State's ignition interlock program be strengthened by requiring compliance with the program prior to removal of an interlock device and expanded by providing courts with the option to use a constant sobriety monitoring system. It is equally vital that persons convicted of operating a vehicle under the influence of an intoxicant not be allowed to "sit out" the interlock period and drive non-ignition interlock vehicles. The purpose of this Act is to augment the State's existing ignition interlock program and to establish rulemaking authority within the department of transportation to develop/ implement/ and manage compliance-based provisions.

SECTION 2. Section 291E-41 Hawaii Revised Statutes/ is amended by amending subsection (b) to read as follows:

"(b) Except as provided in paragraph (5) and in sections 291E-44.5**(b)** and **(c)**, the respondent shall keep an ignition

Interlock device installed and operating in any vehicle the respondent operates during the revocation period. The removal of the ignition interlock device and the termination or expiration of the revocation period are subject to compliance with subsection (f) of this Section. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device shall be at the respondent's expense. The periods of administrative revocation, with respect to a license and privilege to operate a vehicle, that shall be imposed under this part are as follows:

- (1) A one year revocation of license and privilege to operate a vehicle, if the respondent's record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) An eighteen month revocation of license and privilege to operate a vehicle, if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (3) A two-year revocation of license and privilege to operate a vehicle, if the respondent's record shows two

prior alcohol enforcement contacts or drug enforcement contacts during the five years preceding the date the notice of administrative revocation was issued;

- (4) A minimum of five years up to a maximum of ten years revocation of license and privilege to operate a vehicle, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued;
- (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection (c); provided that the respondent shall be prohibited from driving during the period preceding the respondent's eighteenth birthday and shall thereafter be subject to the ignition interlock requirement of this subsection for the balance of the revocation period; or
- (6) For respondents, other than those excepted pursuant to section 291E-44.5(c), but including those who receive a disability determination by the department pursuant to

subsection (f), who do not install an ignition interlock device in any vehicle the respondent operates during the revocation period, revocation of license and privilege to operate a vehicle for the period of revocation provided in paragraphs (1) to (5) or in subsection (c); provided that:

- (A) The respondent shall be absolutely prohibited from driving during the revocation period and subject to the penalties provided by section 291E-62 if the respondent drives during the revocation period; and
- (B) The director shall not issue an ignition interlock permit to the respondent pursuant to section 291E-44.5; provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later.

SECTION 3. Section 291E-41 Hawaii Revised Statutes is amended by adding new subsections (f) and (g) to read as

Page 5

follows:

(f) The period of license revocation under subsection (b) shall be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person for a period of one hundred and eighty consecutive days, unless the person receives a determination by the department that the person is unable to operate an ignition interlock device due to a physical disability. The department's determination that a person is unable to operate an ignition interlock device due to a physical disability shall be reasonable and shall be based on a showing of substantial evidence. This determination shall be subject to review by a court of competent jurisdiction. The department may charge a person seeking a physical disability determination under this subsection a reasonable fee for an assessment. Other than those excepted pursuant to Section 291E-44.5(c) and subsection (b)(6), any restrictions under this subsection and subsection (b) shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that none of the following occurred within the one hundred eighty consecutive days prior to the date of expiration or termination of the

revocation period:

- (1) An attempt to start the vehicle with a breath alcohol concentration of 0.04 or more unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both sample;
- (2) Failure to take any random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test;
- (3) Failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; or
- (4) Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

The date of expiration or termination of the revocation

Page 7

period, or any extension thereof pursuant to this subsection, shall be extended or further extended, for a period of one hundred and eighty days until the department receives a declaration that meets the requirements under this subsection.

(g) The director of transportation shall adopt rules pursuant to chapter 91 necessary for the purpose of this Section.

SECTION 4. Section 291E-61, Hawaii Revised Statutes, is amended to read as follows:

"§291E-61 Operating a vehicle under the influence of an intoxicant.

(a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred

ten liters of breath; or

- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced without possibility of probation or suspension of sentence as follows:

- (1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a)
 - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
 - (B) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
 - (C) Any one or more of the following:
 - (i) Seventy-two hours of community service

- work;
- (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
- (iii) A fine of not less than \$150 but not more than \$1,000;
- (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
- (E) A surcharge, if the court so orders, of up to \$25 to be deposited into the trauma system special fund;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a):
 - (A) Revocation for not less than eighteen months nor more than two years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
 - (B) Either one of the following:
 - (i) Not less than two hundred forty hours

- of community service work; or
- (ii) Not less than five days but not more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;
- (C) A fine of not less than \$500 but not more than \$1,500;
- (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
- (E) A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund;
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
- (A) A fine of not less than \$500 but not more than \$2,500;
- (B) Revocation for two years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by

- the person;
- (C) Not less than ten days but not more than thirty days imprisonment, of which at least forty-eight hours shall be served consecutively;
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (E) A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund;
- (4) In addition to a sentence imposed under paragraphs (1) through (3), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1), (2), or

(3), as applicable. Notwithstanding paragraphs (1) and (2), the revocation period for a person sentenced under this paragraph shall be under this paragraph shall be not less than two years; and

(5) If the person demonstrates to the court that the person:

(A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the revocation period; or

(B) Is otherwise unable to drive during the revocation period; or the person shall be absolutely prohibited from driving during the period of applicable revocation provided in paragraphs (1) to (4); provided that the court shall not issue an ignition interlock permit pursuant to subsection (i) and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the applicable revocation period.

(c) Except as provided in sections 286-118.5 and 291E-61.6, the court shall not issue an ignition interlock permit to:

- (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense;
- (2) A defendant who does not hold a valid license at the time of the instant offense;
- (3) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(a)1 unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b); [or]
- (4) A defendant who holds a license that is a learner's permit or instruction permit; or
- (5) A defendant who is found to be unable to operate an ignition interlock device in accordance with the vendor's instructions due to a medical disability.

(d) Except as provided in subsection (c), the court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer during the period of

revocation without installation of an ignition interlock device if the defendant is gainfully employed in a position that requires driving and the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.

(e) A request made pursuant to subsection (d) shall be accompanied by:

- (1) A sworn statement from the defendant containing facts establishing that the defendant currently is employed in a position that requires driving and that the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition 4 interlock device; and
- (2) A sworn statement from the defendant's employer establishing that the employer will, in fact, discharge the defendant if the defendant cannot drive a vehicle that is not equipped with an ignition interlock device and identifying the specific vehicle the defendant will drive for purposes of employment and the hours of the day, not to exceed twelve hours per day, or the period of the specified assigned hours of work, the

defendant will drive the vehicle for purposes of employment.

(f) A permit issued pursuant to subsection (d) shall include restrictions allowing the defendant to drive:

- (1) Only during specified hours of employment, not to exceed twelve hours per day, or the period of the specified assigned hours of work, and only for activities solely within the scope of the employment;
- (2) Only the vehicle specified; and
- (3) Only if the permit is kept in the defendant's possession while operating the employer's vehicle.

(g) Notwithstanding any other law to the contrary, any:

- (1) Conviction under this section, section 291E-4(a), or section 291E-61.5;
- (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an

- intoxicant or habitually operating a vehicle under the influence of an intoxicant; or
- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5, shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication, in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be revoked as provided in

this section. There shall be no requirement for the installation of an ignition interlock device pursuant to this section if the requirement has previously been imposed pursuant to part III for the same act; provided that, if the requirement is subsequently reversed, a requirement for the installation of an ignition interlock device shall be imposed as provided in this section.

(h) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(i) Upon proof that the defendant has:

- (1) Installed an ignition interlock device in any vehicle the defendant operates pursuant to

subsection (b); and

- (2) Obtained motor vehicle insurance or self-insurance that complies with the requirements under either section 431:10C-104 or section 431:10C-105, the court shall issue an ignition interlock permit that will authorize [allow] the defendant to drive a vehicle equipped with an ignition interlock device during the revocation period, subject to subsections (l) and (m) of this Section.

(j) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation, or any extension thereto, is ordered [determined] by the court pursuant to this section. After the period of revocation or any extension thereto is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(k) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order

the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device required by subsection (b) shall be at the defendant's own expense.

(l) Except as provided by subsection (c), the period of license revocation or restriction under subsection (b) shall be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person for a continuous period of one hundred eighty days.

(m) The court shall extend the license revocation period under subsection (b) or (l) if it finds that any of the following occurred within one hundred and eighty consecutive days prior to the termination or expiration of the revocation period:

- (1) An attempt to start the vehicle with a breath alcohol concentration of 0.04 or more unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same

- person provided both samples;
- (2) Failure to take any random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time the missed test;
- (3) Failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; or
- (4) Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

(n) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2."

(o) In addition to the revocation period imposed under subsection (b), a court may require a defendant to enroll in an alcohol or substance abuse education or treatment program or a sobriety program; provided that a defendant may choose to enroll in such a program prior to conviction; provided further that if a defendant chooses to enroll, prior to conviction, in a

compliant program, participation in that program shall count toward the period of alcohol or substance abuse education or treatment program, or a sobriety program participation, if such participation is later ordered by the judge. For purposes of this subsection "sobriety program" means a sobriety and drug monitoring program which requires a person to:

(1) Abstain from alcohol and controlled substances for a specified period; or

(2) Be subject to testing to determine whether alcohol or a controlled substance is present in the person's body in the following manner:

(A) At least twice per day at a central location, to be determined by the department of transportation, where an immediate sanction can be effectively applied; or

(B) If testing creates a documented hardship or is geographically impractical, allow an alternative method of random alcohol monitoring and testing, approved by the department of transportation and consistent with a timely sanction.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1,

Report Title:

Ignition Interlock; Operating a Vehicle under the Influence of an Intoxicant

Description:

Requires compliance with the ignition interlock program before an interlock device is removed. Allows for a constant sobriety program. Authorizes rulemaking. (HB753 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



The knowledge source for safe driving

March 11th, 2019

Senator Lorraine R. Inouye, Chair
Senator Breene Harimoto, Vice Chair
Committee on Transportation
Conference Room 225, 415 South Beretania Street
Hawai'i State Capitol Honolulu, HI 96813

RE: HB 753 HD2 improving the drunk driving law

**Senate Committee on Transportation on Wednesday, March 13th, 2019 @
1:00 P.M**

Ladies and Gentlemen,

The Traffic Injury Research Foundation (TIRF; www.tirf.ca) strongly urges you to support and advance HB 753 HD2, which closes loopholes in the drunk driving law and improves compliance with the state's lifesaving ignition interlock law.

TIRF is an independent, scientific research institute, based in Canada, with a separate US office. We operate as a registered charity in Canada, and our US office is a registered 501(c)3. We receive funding from governments through research project contracts as well as from associations and industry. We have consulted with governments around the world (including the Netherlands, Australia, United Kingdom, Belgium, Norway and France in addition to the US and Canada) about drunk driving and alcohol ignition interlock programs. The Association of Ignition Interlock Program Administrators (AIIPA) in the US hires TIRF to provide strategic advice to AIIPA. During the past ten years, we have delivered technical assistance to improve the implementation and delivery of interlock programs and other drunk driving countermeasures in more than 40 states in the US with funding from the National Highway Traffic Safety Administration (NHTSA) through a cooperative agreement.

As part of this technical assistance, TIRF reviewed Hawaii's Alcohol Interlock Program in May 2014 and concluded with a written report. The report identified some of Hawaii's biggest challenges and offered suggested solutions. Challenges included:

- > Offenders who are eligible for the interlock program often choose to wait out the hard revocation instead of enrolling in the interlock program;
- > There is a lack of agency authority to hold offenders accountable for non-compliance with interlock program rules; and,
- > Offenders in the interlock program who continue unsafe driving behaviors can not necessarily be kept in the program, thereby reducing possibilities to prevent future offending.

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Registered Charity No. 10813 5641 RR0001

We believe that HB 753 HD2 would effectively address these identified challenges by the following stipulations contained in it:

- > No longer allowing offenders to wait out the hard revocation period, but rather ensuring that drivers ordered to use an interlock have no other choice but to actually install the device before they can obtain an unrestricted license;
- > Provide the authority for the Department of Transportation to adopt and promulgate rules, notably in relation to non-compliance; and,
- > Implement a compliance-based removal system whereby offenders must prove compliance with ignition interlock program rules before their device will be removed. This approach requires that drunk drivers using an interlock must have a certain period of no recordable violations before the device is removed. This system is already law in 28 states and has become an effective way to teach sober driving.

In conclusion, we believe that HB 753 HD2 addresses existing challenges in the current drunk driving law. The new law proposes proven best practices to overcome these challenges. We therefore urge you to support and advance HB 753 HD2. We sincerely hope that the information we have provided will help to make this decision but remain available, should you require more information.

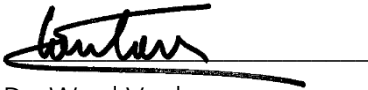
Please do not hesitate to contact us if you have follow-up questions about our letter.

Sincerely,



Robyn Robertson
President and CEO
TIRF

Secretary of the Board
TIRF USA, Inc.



Dr. Ward Vanlaar
COO
TIRF



Subject: Support HB753 HD2

Dear Chair Lorraine R. Inouye, Vice Chair Breene Harimoto, and members of the Senate Committee on Transportation,

My name is Kari Benes and I am the Chair of the Hawaii Strategic Highway Safety Plan (SHSP). The Strategic Highway Safety Plan Core Committee has identified “enhancing ignition interlock law” as a priority for 2019.

2008-2017 FARS data reveals Hawaii as being above the national average for alcohol-impaired driving fatalities for the entire decade. We currently rank the **5th worst in the nation for the percentage of alcohol-impaired driving fatalities.**¹ It’s important that Hawaii treats impaired driving seriously, by enhancing a system shown to separate problem drinking behavior from our other roadway users.

HB753 HD2 applies what 28 states across the US do with their ignition interlock programs, which is to have a **compliance-based removal** as a condition of their program.

The Hawaii Strategic Highway Safety Plan's vision is that all of Hawaii's road users arrive safely at their destinations. You can help us achieve our goal of reducing yearly fatalities, by supporting this measure.

To view the Strategic Highway Safety Plan, go to www.hawaiiishsp.com

Strategic Highway Safety Plan Mission

Save lives and reduce injuries on Hawaii’s roadways through strategic partnerships and implementation of the Strategic Highway Safety Plan.

¹ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812630>

HB-753-HD-2

Submitted on: 3/12/2019 8:48:24 AM

Testimony for TRS on 3/13/2019 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert McPherson	Testifying for HACDL	Oppose	No

Comments:

Attorney R. Patrick McPherson testimony on behalf of the (Hawaii Association of Criminal Defense Attorneys)

The cornerstone of the American Judicial System lies within the rights of the people to have due process. The Administrative Driver's License Revocation Office provides due process for a person arrested for OUVII and permits a challenge to the Director's revoking of a respondent's driving priveleges. These revocations are for a period of time depending on the level of offense and wether a person took an alcohol concentration test. In this bill, a period of revocation is not definite or certain. In fact the administrative statute in the new bill refers to a criminal statute to assist in determining the possible length of revocation. The reason these statutes are separate is to minimize the possibility that double jeopardy becomes an issue at the criminal proceeding. As the law stands now, the criminal court does not have jurisdiction over a driver's license when the ADLRO revokes same. Therefore no hearings can be had in District Court as to a revocation issued by ADLRO.

If this bill passes then an entire new system will have to be created for the hearings that will be required to increase the respondent/defendant's revocation. The judiciary does not have sufficient funding to provide these required hearings at this time. Nor does the judiciary have sufficient personell to accomplish what is required to afford due process to those individuals who disagree with the findings of a mechanical device. There is some idea that the DOT would provide the hearings. There is serious constitutional grounds for a govermental agency to usurp the power of the judiciary and to make deternminations and or change judcial decisions.

The bill authorizes the DOT to enact rules pursuant to act 91 to enable the the statute to be put into full force and effect. This usurps the power of this legislature to enact laws that are debated and stakeholders from having input into, the manner in which the processes will take place, and may be consitionally prohibited.

This bill requires that all person's revoked by the Court or ADLRO have a mandatory interlock device placed in a vehicle for a specified period, which can be amended and lengthened. The cost of an interlock device installed and operated for a period of one year is approximately \$1100.00 but can be lowered for the indigent to approximately \$600.00. If an appellate court determines that interlock devices must be provided free of

charge for person's who qualify then who is going to pay for this. The party requesting this measure be enacted is required to provide services but at soome point it may not make business sense to supply a massive number of these devices for free.

This concept was debated by the legislative committee when the interlock bill was encated in 2011. The stakeholders did not feel that mandatory interlock was going to solve the problem with OUVII. As technology is changing at a very rapid rate, other alternatives exist to address this problem more efficiently and affectively. The Impalred Driving Task Force was enacted to address this problem more than 10 years ago. The process of submitting legislatation has been the purvue of this oraganization. The party whom introduced this legislation, did not attempt to garner the support of this committee. Why? A comprehensive solution to the many problems caused by OUVII is being debated by a committee of stakeholders to determine the best possible legislation that can address the multitude of issues. The Police, Prosecutor's, DOT, DMV, Public Defenders, and many other invited guests are working hard to deliver a more comprehensive solution to this problem. Putting a band aid on a bullet hole is not wise. Passing this legisiation complicates the hard work and dedication of many stakeholders who are taking a more comprehensive approach to deter OUVII. All of those supporting the intent of this legislation are not whole heatedly in support of this bill.

Plesase defer this bill so that all of the stakeholders can address the problem of OUVII, and a more comprehensive solution can be forwrded to the legislature to deter driving while impaired in the near future.



Mothers Against Drunk Driving HAWAII
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Phone (808) 532-6232
Fax (808) 532-6004
hi.state@madd.org

March 12, 2019

To: Senator Lorraine R. Inouye, Chair, Senate Committee on
Transportation ; Senator Breene Harimoto, Vice Chair; and members
of the Committee

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

Re: House Bill 753, HD 2 – Relating to the Ignition Interlock Program

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 753, HD2, Relating to the Ignition Interlock Program.

HB 753 HD2 makes ignition interlock users prove compliance with new interlock requirements before the device is removed. Impaired drivers using an interlock will be required to have a certain period of no recordable violations before the device will be removed from the vehicle--known as compliance based removal – a concept that is part of the interlock laws in 28 states. Compliance based removal laws are important in teaching sober driving behavior. This bill will also ensure that people who are ordered to use an interlock actually use the device before obtaining an unrestricted license.

Hawaii has unique situations which will require some continuing deliberations and editing of this measure to make the compliance - based system function effectively in our state. Those who have been reviewing this measure have realized that a significant amount of time will be needed for additional study and drafting to produce a workable system for Hawaii. MADD asks that this measure be given an effective date of June 1st, 2020 with an expected implementation date of January 1st 2021 in order for a working group of the Impaired Driving Task Force to produce a quality measure that fits Hawaii's statutory requirements.

MADD has great faith in the Ignition Interlock system and believes it deserves the time for careful drafting of the appropriate amendments. According to the CDC, interlocks reduce repeat drunk driving offenses by 67 percent. License revocation with the use of an interlock is our best hope for stopping repeat drunk driving.

Thank you for the opportunity to testify.