STATE OF HAWAIʻI
OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender,
State of Hawai'i to the House Committee on Judiciary

February 23, 2020

H.B. No. 2173, H.D. 1: RELATING TO IGNITION INTERLOCK DEVICES

Hearing: February 24, 2020, 2:00 p.m.

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

The Office of the Public Defender respectfully supports in part and opposes in part H.B. No. 2173, H.D. 1 and offers comments for the committee's consideration.

As a preliminary matter, the sentences imposed for operating a vehicle while a license and privilege to operate a vehicle has been revoked, suspended or otherwise restricted pursuant to HRS § 291E-61, 291E-61.5 et al are, in general, too simply too severe. Imposing a mandatory three-day jail sentence on a first offense, a mandatory thirty-day jail sentence on a second offense, and a minimum six-month jail sentence for a third or subsequent offense is substantially harsher sentence than the offense of operating a vehicle while under the influence of an intoxicant ("OVUII"), in violation of HRS § 291E-61.

In regard to the proposal to amend the penalties of the third offense for HRS § 291E-62 from one year mandatory imprisonment to "no less than six months and nor more than one year imprisonment," we do acknowledge that the reduction is a step in the right direction. Courts are currently required to sentence individuals convicted of a third offense to a year in jail, even if that individual has not had a drink in years. However, as stated above, a six month penalty for simply operating a vehicle (with no indication of being under the influence of an intoxicant or driving recklessly) is simply too harsh.

While we recognize the need to curb repeat drunk-driving offenders, the statute fails to link to that objective in its current form. The majority of individuals charged with driving on a license revoked for OVUII are not suspected of driving with any alcohol or intoxicant in their system, yet the mandatory jail time is substantially more severe than a subsequent OVUII offense. Individuals are issued these citations as they drive to work, the grocery store, or to pick up their children from school. These individuals are not drinking and driving – they are simply detained for minor traffic violations. Moreover, Public Defender clients are the most vulnerable to this charge because they are often unable to afford the fees to install and maintain an interlock device in their vehicle. If we are dedicated to reducing incarceration rates linked to poverty rather than danger to our community, incarceration should only be mandatory if coupled with intoxicated driving. Beyond that, judges should have the discretion to sentence individuals to community service work rather than incarceration. We respectfully request this committee to restore greater sentencing discretion to the judges familiar with the facts of each case.

Finally, we oppose the provision, which requires the trial court to impose a consecutive sentence when a person is convicted of HRS § 291E-61 (OVUII) or HRS § 291E-61.5 (Habitual OVUII) and for HRS § 291E-62. When an offender is convicted of OVUII or Habitual OVUII and is also convicted of HRS § 291E-62, the sentencing judge must already take into account an offender's record in imposing an appropriate sentence. Thus if an offender is viewed as a particular danger based upon his/her record, the power already exists for a judge to impose consecutive sentences. It is not necessary to remove judges' discretion in these instances. Given the movement to bring our prisoners back from mainland correctional facilities and to reduce the prison population, the courts must be given more discretion in sentencing matters rather than being handcuffed by additional mandatory sentencing provisions.

Moreover, imposing consecutive sentencing when one offense is a felony and the other offense is a petty misdemeanor or misdemeanor may lead to unintended consequences. The offense of Habitual OVUII is a class C felony, punishable up to five years imprisonment. The offense of OVLPS/R-OVUII is either a petty misdemeanor (1st and 2nd offenses) or a misdemeanor (3rd offense). When an offender is sentenced to an indeterminate term of imprisonment on the felony offense, the offender is eligible for parole only after serving a minimum term of imprisonment set by the Hawai‘i Paroling Authority ("HPA"). Release on parole will only be considered by HPA if the offender has completed the appropriate prison programs, complied with the prison rules and regulations, and submitted a satisfactory parole plan with an acceptable residence and strong employment prospects. It has been our experience, when the offender has received a consecutive misdemeanor sentence, the offender was not released when HPA granted parole. Instead, the offender had to serve his misdemeanor sentence. Under the provision proposed in this measure, the offender will then have to serve additional time (up to another year) in prison to complete his misdemeanor sentence. After serving the additional time, chances are likely that the parole plan will no longer be applicable; that is, the residence and the employment prospect proposed in the parole plan will not be available after serving the misdemeanor sentence. As a result, the offender will lose his/her opportunity for parole even though he/she has earned it after completing the programs and staying out of trouble.

Thank you for the opportunity to comment on H.B. No. 2173, H.D. 1.

DAVID Y. IGE
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LATE

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February 24, 2020
2:00 P.M.
State Capitol, Room 325

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H.B. 2173 H.D. 1
RELATING TO IGNITION INTERLOCK DEVICES

House Committee on Judiciary

The Department of Transportation (DOT) **supports** H.B. 2173, H.D. 1, relating to ignition interlock devices (IID), with a suggested amendment.

In response to a legislative request during the last session, DOT created the Hawaii Drug and Alcohol Intoxicated Driving (DAID) Working Group to review Hawaii's existing Operating a Vehicle Under the Influence of an Intoxicant (OVUII) laws and legislatively address any issues and concerns.

The DAID, which is comprised of multiple stakeholders including county prosecutors and police, and representatives from the Hawaii State Department of Health, Mothers Against Drunk Driving, Smart Start, Inc., began tackling the considerable task in April 2019. As a result of the numerous hours dedicated to this statewide collaborative effort, which included input from the Public Defender and defense bar, DOT completed the legislative request by providing language to strengthen Hawaii's existing OVUII laws in December 2019.

Based on DAID's proposed legislative language, DOT suggests amending page 2, lines 2-3 of H.B. 2173, H.D. 1 to state the following:

has the ignition interlock permit <u>and a valid government-issued photo identification</u> in the person's immediate

Currently, an Ignition Interlock Device (IID) permit does not include a picture, which makes it difficult for police to confirm the identity of the driver. Requiring a person operating a vehicle with an IID to have a government issued <u>photo</u> identification card on their person, would not only allow police to verify the identity of the driver as the IID permit holder, but more importantly, ensure that the IID permit driver is operating a vehicle with an installed IID.

As DOT is concerned with improving highway safety, as well as saving lives, we respectfully ask the committee on judiciary to pass H.D. 2173, H.D. 1 with the suggested amendment. This amendment would provide law enforcement with additional support statutorily to help protect our loved ones from impaired drivers.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY

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THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai`i

February 24, 2020

RE: H.B. 2173, H.D. 1; RELATING TO IGNITION INTERLOCK DEVICES.

Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of H.B. 2173, H.D. 1.

From April 2019 through December 2019, our Department was part of a highly dedicated working group—coordinated and facilitated by the Department of Transportation, Highway Safety Division—that spent numerous working hours, and drew upon input from multiple stakeholders--including the Public Defender and defense bar--to craft language that would significantly improve Hawaii's laws regarding operating a vehicle under the influence of an intoxicant ("OVUII"). We believe that H.B. 2173, H.D. 1, is consistent with the working group's recommendations, and thank the prior Committee for its commitment to working with stakeholders in this regard.

For cases in which someone is convicted of both OVUII—or Habitual OVUII—and driving while license suspended or revoked for OVUII ("E-62"), for the same incident, we believe that mandatory, consecutive jail sentences is appropriate, and hopefully an effective deterrent to would-be violators. In cases where a defendant is concerned that consecutive jail sentences may be detrimental to his or her release on parole (for Habitual OVUII, a class C felony)—such as a defendant concurrently convicted of his or her third E-62 in a 10-year span (which has mandatory one year jail)—it is the Department's understanding that defendants could ask the court to order that the sentence for E-62 be served first.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 2173, H.D. 1. Thank you for the opportunity to testify on this matter.

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February 24, 2020

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

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

Re: House Bill 2173 HD1 – Relating to Ignition Interlock Devices

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I am Arkie Koehl, testifying on behalf of the members of Mothers Against Driving Hawaii in support of the intent of House Bill 2173 HD1. The purpose of this bill is to incorporate several improvements to Hawaii's interlock law, covering incarceration, identification procedures, lookback period, and a broader definition of circumvention or tampering with the device.

MADD Hawaii agrees with the measures raised in this bill. We believe that it should be carefully studied in relation to the comprehensive OVUII measures in HB 2174 HD2, to assure compatibility. Depending on that review, amendments may be necessary to HB 2173 HD1.

Thank you for this opportunity to testify.

LATE

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February 24, 2020

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

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

Re: House Bill 2173 HD1- Relating to Ignition Interlock Devices

Testimony in Support

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 support of House Bill 2173 HD1, Relating to Ignition Interlock Devices. We commend the legislature for its efforts to strengthen Hawaii's impaired driving laws.

This bill would, among other provisions, requires consecutive terms of imprisonment for anyone convicted as a repeat or habitual offender if arising from same conduct as conviction for operating a vehicle without an ignition interlock device. It expands the lookback period under provisions relating to ignition interlock requirements from five to ten years and expands the offense of circumventing or tampering with an ignition interlock to include obscuring the camera lens. We believe that this bill is an important policy step forward.

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. 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.

We believe that HB 2173 HD1 is an effort to complement and strengthen the existing law and support its intent. Thank you for the opportunity to provide testimony in support of this important bill.