

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Transportation**

February 4, 2020

H.B. No. 2173: RELATING TO IGNITION INTERLOCK DEVICES

Hearing: February 5, 2020, 10:15 a.m.

Chair Aquino, Vice Chair Hashimoto, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 2173. In particular, we oppose the increased penalties for a conviction for H.R.S. § 291E-61.5:

SECTION 2. Section 291E-61.5, Hawai‘i Revised Statutes, is amended by amending subsection (d) to read as follows:

- (d) For a conviction under this section, the sentence shall be either:
 - (1) An indeterminate term of imprisonment of five years; provided that the term of imprisonment shall be consecutive for any person convicted under this section for the same conduct or arising from a conviction under section 291E-62; or

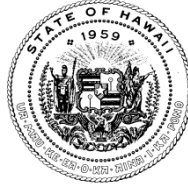
(Page 5, line 8 to line 16).

When an offender is convicted of the offense of Habitually Operating a Vehicle under the Influence of an Intoxicant (“Habitual OVUII”), in violation of HRS § 291E-61.5, and sentenced to an indeterminate term of five years, and is also convicted of the offense of Operating a Vehicle after License and Privilege have been Suspended or Revoked for OVUII (“OVLPS/R-OVUII”), in violation 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 completed the programs and staying out of trouble.

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



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February 5, 2020
10:15 A.M.
State Capitol, Room 423

H.B. 2173
RELATING TO IGNITION INTERLOCK DEVICES.

House Committee on Transportation

The Department of Transportation (DOT) **supports** H.B. 2173 Relating to Ignition Interlock Devices (IID). This bill will require consecutive terms of imprisonment; any person operating a vehicle with an ignition interlock to have a government issued identification on their person; and expands the offense of circumventing or tampering with an IID.

Out of concern for Hawaii's increasing number of traffic fatalities involving alcohol and drugs, DOT's Hawaii Drug and Alcohol Intoxicated Driving (DAID) Working Group (comprised of county police and prosecutors), reviewed existing Operating a Vehicle Under the Influence of an Intoxicant (OVUII) laws to address issues and concerns legislatively. As such, this proposed bill includes fixes for what was omitted from a law passed last year, as well as to remedy issues for existing OVUII laws.

H.B. 2173 will require consecutive terms of imprisonment, which DOT agrees that time spent incarcerated should be continuous since time spent over multiple weekends is not effective in changing the behavior of the driver.

This bill also requires a person operating a vehicle with an IID to have a government issued identification on their person, which would allow police to verify the identity of the driver as the IID permit holder. Currently, the IID permit does not include a picture, which makes it difficult for police to confirm the identity of the driver, and more importantly ensure that the IID permit driver is operating a vehicle with an installed IID.

Lastly, H.B. 2173 enhances the circumvention law, section 291E-66, by adding obstruction of the camera. The camera, which is required under the current IID law, is an effective tool for the IID program as it identifies the driver in relation to the IID. Without this tool, the driver who was drinking and cannot start the vehicle may have someone else blow into the IID to start the vehicle.

The DOT urges the committee of transportation to pass H.B. 2173 as it will fix what was omitted in related OVUII laws, and strengthen some of the penalties and IID procedures.

Thank you for the opportunity to provide testimony.

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THE HONORABLE HENRY J.C. AQUINO, CHAIR
HOUSE COMMITTEE ON TRANSPORTATION
Thirtieth State Legislature
Regular Session of 2020
State of Hawai`i

February 5, 2020

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

Chair Aquino, Vice Chair Hashimoto, and members of the House Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of H.B. 2173, with suggested amendments.

The Department agrees with everything that H.B. 2173 aims to accomplish, and agrees that such changes would address certain weaknesses that we have seen in Hawaii's laws regarding operating a vehicle under the influence of an intoxicant ("OVUII"). That said, we do have two suggested amendments, which we believe would address some practical issues:

- Page 10, line 1 – Amend "One year imprisonment" to state:

This would give courts discretion to impose sentencing that may be more tailored to each case, and also provide more options for plea bargaining between parties

- Page 10, between lines 7-8 – Add a new subsection, HRS §291E-62(c)(4), to state:

(4) In addition to a sentence imposed under paragraphs (1) through (3), any person who is convicted under this section and also convicted under section 291E-61 or 291E-61.5, for an offense based on the same conduct or arising from same episode, shall be sentenced to terms of imprisonment for both offenses, which shall be served consecutively.

and delete Sections 1 & 2 (pages 1-6).

For cases in which someone is convicted of both OVUII, and driving while license suspended or revoked (for OVUII), for the same incident, we agree that mandatory, consecutive jail sentences

would be appropriate. Nevertheless, this suggested language and approach would be better suited to meeting the numerous legal/constitutional requirements imposed on prosecutors, when preparing criminal charging documents.

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 (“DOT”)—which spent numerous working hours, and drew upon input from multiple stakeholders--including the Public Defender and defense bar--to craft language that would significantly strengthen Hawaii’s OVUII laws. We thank the Committee to its continued commitment to making our roads safer, and respectfully ask that the Committee consider the amendments that we have suggested herein.

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 with suggested amendments. Thank you for the opportunity to testify on this matter.



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February 5, 2020

To: Representative Henry J. C. Aquino, Chair, House Committee on Transportation; Representative Troy Hashimoto, Vice Chair; and members of the Committee

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

Re: House Bill 2173 – Relating to Ignition Interlock Devices

I am Arkie Koehl, testifying on behalf of the members of Mothers Against Driving Hawaii in support of House Bill 2173. 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, to assure compatibility. Depending on that review, amendments may be necessary to HB 2173.

Thank you for this opportunity to testify.



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February 5, 2020

To: Representative Henry J.C. Aquino, Chair, House Committee on Transportation;
Representative Troy N. Hashimoto, Vice Chair, and members of the committee

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

Re: House Bill 2173 - 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, 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 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.