



TESTIMONY BY:

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

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

PROPOSED H.B. 2174 HD 1
RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN
INTOXICANT

House Committee on Transportation

The Department of Transportation (DOT) **supports** proposed H.B. 2174, H.D. 1 Relating to Operating a Vehicle Under the Influence of an Intoxicant. This bill defines “highly intoxicated drivers” and enhances the penalties.

Proposed H.B. 2174, H.D. 1 evolved last year out of concern for Hawaii’s increasing number of traffic fatalities involving alcohol and drugs. It represents a collaborative effort that included input from DOT’s Hawaii Drug and Alcohol Intoxicated Driving Working Group (comprised of county police and prosecutors, MADD, Hawaii State Department of Health, etc.), Hawaii Association of Criminal Defense Lawyers and the Office of the Public Defender.

The habitual “highly intoxicated driver,” someone who has been arrested and convicted many times over, poses a substantial risk to others on the road. Despite their repeated arrests and convictions, these drivers continue to drink and drive. DOT’s concern is that eventually these drivers will become involved in a collision and kill someone.

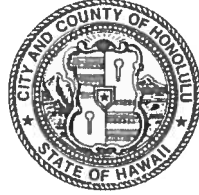
During the past five years (2015-2019), police arrested an average of 6,030 drivers for Operating a Vehicle Under the Influence of an Intoxicant (OVUII) per year. An average 1,664 of those 6,030 drivers who were arrested and tested, had blood alcohol concentration (BAC) results of 0.150 and higher. In addition, the average BAC during 2015-2019 was 0.162. Existing legislation needs to be strengthened to address the habitual offender, especially those who are continually arrested for violating the law.

The DOT urges you to pass proposed H.B. 2174, H.D. 1, which the Hawaii Drug and Alcohol Intoxicated Driving Working Group recommends since it will enhance the penalties against those drivers who continue to drink and drive, as well as address drivers who continue to be arrested of OVUII many times.

Thank you for the opportunity to provide testimony.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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February 5, 2020

The Honorable Henry J.C. Aquino, Chair
and Members
Committee on Transportation
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 423
Honolulu, Hawaii 96813

Dear Chair Aquino and Members:

SUBJECT: House Bill No. 2174, H.D. 1, Relating to Operating a Vehicle Under the Influence of an Intoxicant

I am Calvin Tong, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2174, H.D. 1, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

The HPD supports this proposal, which establishes penalties for and defines a "highly intoxicated operator." Increases of related penalties could be a deterrent for the would-be violators. Any measure that could potentially keep impaired drivers off of our roads should be considered or implemented.

The HPD urges you to support House Bill No. 2174, H.D. 1, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in cursive script that reads "Susan Ballard".

Susan Ballard
Chief of Police

Sincerely,

A handwritten signature in cursive script that reads "Calvin Tong".

Calvin Tong, Major
Traffic Division



Mothers Against Drunk Driving HAWAII
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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 2174, HD1 proposed – Relating to Operating a Vehicle Under the Influence of an Intoxicant

I am Carol McNamee testifying on behalf of MADD Hawaii in support of House Bill 2174, HD1 proposed, relating to Operating a Vehicle Under the Influence of an Intoxicant.

This omnibus bill has been carefully crafted by a small group of prosecutors who were tasked with studying and improving Hawaii's OVUII statutes with special attention to the drivers found to have a high blood or breath alcohol level.

MADD supports the concept of increasing penalties for individuals who are arrested and found to be driving with a BAC of .15 or higher. These individuals fall into the category of "high risk drivers" who, along with repeat offenders and test refusers, pose an increased danger to other highway users, meaning vehicle drivers and passengers, bicyclists and pedestrians. There is no doubt that the higher the BAC, the greater risk to others on the road. Hawaii statutes reflected increased penalties for these high-risk drivers in its statutes before 2011 when the highly intoxicated driver section was removed for reasons unrelated to its effectiveness. This bill establishes the revocation periods for the high BAC driver – from 18 months for a first offender up to 6 years for drivers who have two or more prior alcohol or drug enforcement contacts.

MADD supports other changes that have been proposed in this bill, including increasing the "look back" period which defines who is a repeat offender and therefore how long a revocation period will be imposed on the person arrested.

Another change is adding a mandatory interlock requirement for Habitual Offenders and a number of other added sanctions for the repeat habitual offender.

This is an important measure for strengthening Hawaii's OVUII statutes to remove the most dangerous drivers from the road and increase the deterrent value of the statutes by increasing the penalties for this group of drivers. MADD encourages this committee to pass HB 2174, HD1 proposed, and strengthen Hawaii's OVUII statutes.

Thank you for this opportunity to testify.



Date: February 4, 2020

To: Honorable Henry J.C. Aquino, Chair
Honorable Troy Hashimoto, Vice Chair
Honorable Members of the House Committee on Transportation

Re: Support for HB2174 Relating to Operating a Vehicle Under the Influence of an Intoxicant

Hrg: February 5, 2020 at 10:15am at Conference Room 423

The Maui MPO Policy Board is in **support of HB2174** to establish penalties for and define "highly intoxicated operator". The bill increases license revocation periods and lookback periods for offenses of operating a vehicle under the influence of an intoxicant. It also increases penalties for repeat offenders, habitual offenders, and persons driving on a suspended or revoked license for offenses of operating a vehicle under the influence of an intoxicant.

Hawai'i ranks 5th worst in the nation for percentage of alcohol-impaired driving fatalities¹. Of the 23 traffic fatalities on Maui in 2019, 15 crashes involved drivers under the influence of drugs or alcohol. This measure would help to reduce the number of traffic fatalities by discouraging people from driving under the influence.

Following a County Council resolution and Mayor's proclamation in support of road safety, Maui MPO is working to develop a Vision Zero Action Plan to eliminate traffic fatalities and serious injuries through a combination of education, engineering and enforcement.

The Maui MPO Policy Board approved this testimony in support of HB2174.

Please support HB2174 to discourage drunk driving and save lives.

¹ National Highway Traffic Safety Administration (NHTSA), accessed online:
<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812630>



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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 2174 - Relating to Operating a Vehicle Under the Influence of an Intoxicant
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 2174, Relating to Operating a Vehicle Under the Influence of an Intoxicant. We commend the legislature for its efforts to strengthen Hawaii's impaired driving laws.

This bill would, among other provisions, establish penalties for and define "highly intoxicated operator." It increases license revocation periods and lookback periods for offenses of operating a vehicle under the influence of an intoxicant. 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 2174 is an effort to broadly address and strengthen the existing law and support its intent. Thank you for the opportunity to provide testimony in support of this important bill.

Erik K. Abe
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Honolulu, Hawaii. 96813
Ph. (808) 537-3081. Cell: (808) 537-3081

TESTIMONY TO THE HOUSE COMMITTEE ON TRANSPORTATION
WEDNESDAY, FEBRUARY 5, 2020; 10:15 A.M.
STATE CAPITOL, CONFERENCE ROOM 423

RE: HOUSE BILL NO. 2174, PROPOSED HOUSE DRAFT 1, RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.

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

My name is Erik Abe, and I am the Public Affairs and Policy Director for the Hawaii Primary Care Association (HPCA). However, I am testifying today solely in my capacity as a concerned citizen, and my views expressed do not necessarily nor officially reflect those of the HPCA.

I **SUPPORT** the **INTENT** of House Bill No. 2174, Proposed House Draft 1, RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT., and offer **PROPOSED AMENDMENTS** for your consideration.

As received by your Committee, this bill would strengthen the penalties for violations of intoxicated operation of a motor vehicle under the Use of Intoxicants While Operating a Vehicle (OVUII) Law, Chapter 291E, Hawaii Revised Statutes (HRS). Among other things, this bill would:

- (1) Define a "highly intoxicated driver" as a person whose measurable amount of alcohol is .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of a person's blood or .15 or more grams of alcohol per two hundred ten liters of the person's breath;
- (2) Provide that in any criminal prosecution for a violation of the OVUII Law, .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of a person's blood or .15 or more grams of alcohol per two hundred ten liters of the person's breath within three hours after the time of the alleged violation be competent evidence that the person was a highly intoxicated driver at the time of the alleged violation;

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- (3) Extends the period of license revocation for a respondent who:
 - (A) Has a second alcohol enforcement contact or drug enforcement contact from eighteen months to two years; and
 - (B) Has a third or more alcohol enforcement contact or drug enforcement contact during the previous ten years from two years to four years; and
- (4) Extends the period of license revocation for a highly intoxicated respondent, as follows:
 - (A) Eighteen months revocation for a first offense during the preceding ten years;
 - (B) Three years revocation for a second offense during the preceding ten years; and
 - (C) Six years revocation for a third or subsequent offense during the preceding ten years.

By way of background, I was requested three years ago by a friend, Mr. Ron Shimabuku, to assist his family draft legislation before the Hawaii State Legislature to strengthen Hawaii's laws applicable to driving under the influence of an intoxicant (OVUII). At that time, Mr. Shimabuku informed me that his hanai brother, Kaulana Werner, was killed by an intoxicated driver in Nanakuli, Island of Oahu, and that his family wanted to change the laws to prevent similar situations from occurring in the future to ease the suffering of families of victims.

During our examination of Hawaii's OVUII Law, we spoke with numerous police officers from across the State, all of whom requested to share their views "off the record". We learned that on any given night, between 30 and 40 drivers are detained on suspicion of driving under the influence. This comes out to between 11,000 and 15,000 detentions per year. However, because of the time it takes to test the blood alcohol level of drivers, as well as the reluctance of the City Prosecutor to prosecute these types of crimes, only 5,992 of the detained drivers were arrested last year.

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At the point a police officer requests the suspect to submit to an alcohol level test, the suspect has the choice of either agreeing to or refusing to take the test. If the suspect chooses to take the test, the suspect is given the option of taking a breath test or a blood test. If the suspect chooses the blood test, it may take hours for the results to be determined because the suspect must be taken to an emergency room or another health facility to have the blood drawn and tested. The time it takes to have the blood drawn allows the suspect's body to metabolize the alcohol in it. As such, by the time the test results are found, the person's blood alcohol level may be considerably lower than it was at the time of the stop. And if the level is lower than .08, no violation would have taken place.

And even if the police officer obtains evidence that the suspect indeed had a blood level at or above .08, oftentimes, these cases are thrown out by the Office of the Prosecuting Attorney. For many of our front-line police officers, there is a perception that the Prosecutors look for any reason whatsoever to throw these types of cases out of court, either because of the complexity of obtaining a conviction, or the large amount of resources it takes to prosecute.

For front-line officers who risk their lives at night walking on busy streets to operate DUI checkpoints and confront sometimes agitated and impaired drivers, to have their work disregarded because the Prosecuting Attorney deems it wasteful to pursue these types of crimes is demoralizing to them and counter to the public policy that the OVUII Law was intended to serve.

In my opinion, the OVUII Law is fundamentally flawed because it rests on the premise that an individual is able to determine on his or her own whether he or she has reached a subjective level of intoxication (i.e., .08, .05, or any blood level). And every time someone dies from a drunk driver, it becomes evident to all that this public policy has failed.

This flaw, however, can be fixed if lawmakers mandate a "Zero Tolerance" policy. If a person wants the privilege of operating a vehicle in the State of Hawaii, the person must not have a measurable amount of alcohol in their blood while operating the vehicle at all times.

If the "Zero Tolerance" policy is applied to adults, law enforcement would only need to show that the offender had a measurable amount of alcohol in the person's blood. This would make enforcement much easier and serve as an even greater deterrent to operating a vehicle under the influence of an intoxicant. Also, if the individual refuses to take the test, the individual will face an even longer license revocation period with the Administrative Driver's License Revocation Office.

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The business community, and especially small businesses, will argue that the establishment of such a policy will have an enormous financial impact on their sales. As a whole, however, the establishment of a "Zero Tolerance" policy may cause other businesses to thrive -- taxi cabs, and Uber will find more people seeking their services; the visitor industry could use this as an opportunity to campaign for more Kamaaina to go to resort areas and party rather than risk driving impaired; these are just a few examples where change will force businesses to evolve to meet the newer demands of consumers.

Some will say that such an approach is too strict. But compare this approach to the laws of England, for example. There, a person needs only to show the intent to drive under the influence to be convicted of OVUII. A person walking from a pub with keys in hand was stopped by a police officer. The person was trying to get to his car to go home. The person was arrested and convicted, and the conviction was upheld by the courts.

Lastly, some will also say that if the law is too strict, people will merely ignore it and keep driving while intoxicated. That could be said for any law enacted because there will always be some who will refuse to obey the law. But if a "Zero Tolerance" policy gets the majority, or a few, or even a single intoxicated driver off the roads, then that would be one less potential victim who would otherwise die.

For these reasons, I respectfully recommend that this bill be amended to establish a "Zero Tolerance" policy in Hawaii's OVUII Law.

On page 12, lines 7 through 11, I ask that the language in the bill be replaced with the following:

"(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;~~] With a measurable

amount of alcohol; provided that a law enforcement officer may arrest a person under this section when the officer has probably cause to believe the arrested person has been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the state with a measurable amount of alcohol; or

- (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]."~~

In addition, on page 24, line 8 through page 25, line 5, I request that the language in the bill be replaced with the following:

"(a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

- (1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and
- (2) The person operates or assumes actual physical control of a vehicle:

- (A) [~~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;~~ With a measurable amount of alcohol; provided that a law enforcement officer may arrest a person under this section when the officer has probably cause to believe the arrested person has been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the state with a measurable amount of alcohol; or
- (B) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner[~~+~~
- ~~(C) With .08 or more grams of alcohol per two hundred ten liters of breath; or~~
- ~~(D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood]."~~

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact me.