

**STATE OF HAWAI‘I**  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the Senate Committee on Judiciary**

February 23, 2020

S.B. No. 2329, S.D. 1: RELATING TO IGNITION INTERLOCK DEVICES

Hearing: February 25, 2020, 12:00 p.m.

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender respectfully supports in part and opposes in part S.B. No. 2329, S.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matter, the sentences imposed for operating a vehicle while a license and privilege to operate a vehicle has been revoked, suspended or otherwise restricted pursuant to HRS § 291E-61, 291E-61.5 et al are, in general, too simply too severe.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.

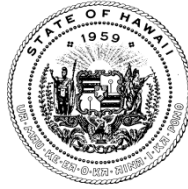
In regard to the proposal to amend the penalties of the third offense for HRS § 291E-62 from one year mandatory imprisonment to “no less than six months and nor more than one year imprisonment,” we do acknowledge that the reduction is a step in the right direction. Courts are currently required to sentence 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 S.B. No. 2329, S.D. 1.



**TESTIMONY BY:**

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**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
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February 25, 2020  
12:00 P.M.  
State Capitol, Room 016



**S.B. 2329, S.D. 1**  
**RELATING TO IGNITION INTERLOCK DEVICES**

Senate Committee on Judiciary

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The Department of Transportation (DOT) supports S.B. 2329, S.D. 1, relating to ignition interlock devices (IID), with a suggested amendment.

In response to a legislative request we received 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 recommends the following amendments to S.B. 2329 S.D. 1:

- Page 2, lines 2-3 to read:

has the ignition interlock permit and a valid government-issued photo identification 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 photo 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.

- Page 5, line 7, Section 2, §291E-66(a) to read:

interlock device shall knowingly circumvent or tamper with an ignition interlock device in any way, including but not limited to:

Amending HRS §291E-66(a) would provide clarification.

- Page 5, line 18 – Amend the lookback period by amending §291E-66(b) HRS to read:

(b) Any person required under subsection (a) to drive using an ignition interlock device, who violates subsection (a) shall be sentenced without possibility of probation or suspension of sentence as follows:

(1) For a first offense, or any offense not preceded within a [~~five~~ten]-year period by conviction under this section or section 291E-62(a)(3):

(A) A term of imprisonment of not less than three consecutive days but not more than thirty days;

(B) A fine of not less than \$250 but not more than \$1,000; and

(C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device;

(2) For an offense that occurs within [~~five~~ten] years of a prior conviction for an offense under this section or section 291E-62(a)(3):

(A) Thirty days imprisonment;

(B) A \$1,000 fine; and

(C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device; and

(3) For an offense that occurs within [~~five~~ten] years of two or more prior convictions for offenses under this section or section 291E-62(a)(3), or any combination thereof:

(A) One year imprisonment;

(B) A \$2,000 fine; and

(C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device.

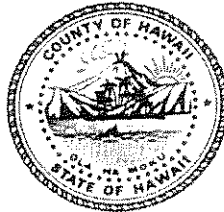
Amending §291E-66(b) HRS would provide continuity with lookback period for OVUII laws.

As DOT is concerned with improving highway safety and saving lives, we respectfully ask the committee on judiciary to pass S.B. 2329, S.D. 1 with the suggested amendments. These amendments would provide law enforcement with additional support statutorily to help protect our loved ones from impaired drivers, as well as provide clarification and consistency.

Thank you for the opportunity to provide testimony.

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## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2329, SD 1

A BILL RELATING TO IGNITION INTERLOCK DEVICES

COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Jarrett Keohokalole, Vice Chair

Tuesday, February 25, 2020, 12:00 p.m.  
State Capitol, Conference Room 016

Honorable Chair Rhoads, Honorable Vice Chair Kaohokalole, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 2329, SD 1.

Highway safety in Hawai'i is compromised by drunk and drugged drivers who continue to jeopardize the safety of all road users. Ignition interlock devices are a valuable tool in preventing further instances of drunk driving when installed on a vehicle driven by a defendant who has already been arrested for driving under the influence.

Individuals that have already had their license revoked for an alcohol related incident are required to install an ignition interlock to legally drive. HRS 291E-62 sets forth penalties which include mandatory jail if an individual is convicted of driving on a revoked license after an alcohol related incident without the appropriate interlock device. This bill proposes that if an individual is convicted of both HRS 291E-62 (driving while license revoked without an interlock device) and HRS 291E-61 / 291E-61.5 (DUI, known in Hawaii as OVUII), that any jail time ordered by the court shall run consecutively. This change will mandate the court to sentence defendants to meaningful punishment when their conduct is of an inexcusable nature.

Further, this bill proposes a fix to an enforcement issue that arises when police officers contact a driver with an interlock device. The current language in 291E-62 only requires the driver to have the ignition interlock permit in their possession, which creates problems for officers when trying to identify the person. This amendment would require the driver to also have a government issued photo ID. This is a practical solution to a problem that was drafted with the intent not to be a road block to people getting ignition interlocks, but rather allowing police to more quickly identify and confirm that a driver is who they purport to be.

The Office of the Prosecuting Attorney of the County of Hawaii is in support of S.B. 2329, SD 1, together with all proposed amendments. Thank you for the opportunity to provide testimony.



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February 25, 2020

To: Senator Karl Rhoads, Chair, Senator Jarrett Keohokalole, Vice Chair, Members of the Senate Committee on Judiciary

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

Re: Senate Bill 2329 SD1 - 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 Senate Bill 2329 SD1, 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, require 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 Senate Bill 2329 SD1 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.