



LATE

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

February 7, 2020
1:15 P.M.
State Capitol, Room 225

S.B. 2329
RELATING TO IGNITION INTERLOCK DEVICES

Senate Committee(s) on Public Safety, Intergovernmental, & Military Affairs
and Transportation

The Department of Transportation (DOT) **supports** S.B. 2329 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.

S.B. 2329 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, S.B. 2329 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 passage of S.B. 2329 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.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committees on Transportation and Public Safety,
Intergovernmental, and Military Affairs**

February 6, 2020

S.B. No. 2329: RELATING TO IGNITION INTERLOCK DEVICES

Hearing: February 7, 2020, 1:15 p.m.

Chairs Inouye and Nishihara, Vice Chairs Harimoto and Wakai, and Members of the Committees:

The Office of the Public Defender respectfully opposes S.B. 2329. 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 S.B. No. 2173.

LATE

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**THE HONORABLE LORRAINE R. INOUE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION**

**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL & MILITARY AFFAIRS**

**Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

February 7, 2020

RE: S.B. 2329; RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.

Chair Inouye, Chair Nishihira, Vice Chair Harimoto, Vice Chair Wakai, members of the Senate Committee on Transportation, and members of the Senate Committee on Public Safety, Intergovernmental & Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of S.B. 2329, with suggested amendments.

The Department agrees with everything that S.B. 2329 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:

No more than six months and no less than one year of imprisonment;

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).

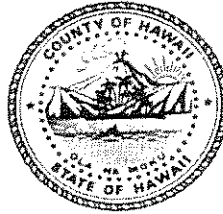
For cases in which someone is convicted of both OVUII, and driving while license suspended or revoked (for OVUII), for the same incident, we agree that mandatory, consecutive jail sentences would be appropriate. Nevertheless, the language and approach that we suggest above would be better suited to meeting 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 improve 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 S.B. 2329, with suggested amendments. Thank you for the opportunity to testify on this matter.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2329

A BILL RELATING TO IGNITION INTERLOCK DEVICES

COMMITTEE ON TRANSPORTATION

Sen. Lorraine R. Inouye, Chair
Sen. Breene Harimoto, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL,
AND MILITARY AFFAIRS

Sen. Clarence K. Nishihara, Chair
Sen. Glenn Wakai, Vice Chair

Friday, February 7, 2020, 1:15 p.m.
State Capitol, Conference Room 225

Honorable Chair Inouye, Honorable Vice Chair Harimoto, and Members of the Committee on Transportation and Honorable Chair Nishihara, Honorable Vice Chair Wakai, and Members of the Committee on Public Safety, Intergovernmental, and Military Affairs, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 2329.

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, together with all proposed amendments. Thank you for the opportunity to provide testimony.



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February 7, 2020

To: Senator Lorraine R. Inouye, Chair, Senate Committee on Transportation; Senator Breene Harimoto, Vice Chair; and members of the Committee
Senator Clarence K. Nishihara, Chair, Senate Committee on Public Safety, Intergovernmental and Military Affairs; Senator Glenn Wakai, Vice Chair; and members of the Committee

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

Re: Senate Bill 2329 – Relating to Ignition Interlock Devices

I am Arkie Koehl, testifying on behalf of the members of Mothers Against Driving Hawaii in support of Senate Bill 2329. 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 SB 2330, to assure compatibility. Depending on that review, amendments may be necessary to SB 2329.

Thank you for this opportunity to testify.



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February 7, 2020

To: Senator Lorraine R. Inouye, Chair, Senator Breene Harimoto, Vice Chair, Senator Clarence K. Nishihara, Chair, Senator Glenn Wakai, Vice Chair and members of the Senate Committee on Transportation and Senate Committee on Public Safety, Intergovernmental and Military Affairs

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

Re: Senate Bill 2329 - 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, 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 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.