

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 Judiciary and Hawaiian Affairs**

February , 24, 2022

H.B. No. 1453: RELATING TO TRAFFIC VIOLATIONS

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 1453, which would criminalize the refusal to provide identifying information to a police officer when detained for a traffic offense by raising it to a petty misdemeanor. This measure will also require any person detained for a violation of HRS Chapter 291C to provide the person’s name and address, *and* any proof thereof. This change serves no legitimate purpose other than to give law enforcement additional powers to arrest people they deem as non-compliant when many people simply do not carry the required documentation.

Requiring a person to provide proof of identification is troublesome inasmuch as not every pedestrian or bicyclists carries identification, and it would be absurd to require them to do so. This requirement is truly disconcerting, in an Orwellian way, because it implies that citizens must present “papers” in order to move freely upon our streets. While a citizen may be temporarily detained under suspicion of a traffic related offense, by not engaging with law enforcement and providing documentation, they now will be arrested and charged with a petty misdemeanor when the original purpose of the stop was to issue an infraction or a violation. What starts as a simple ticket suddenly becomes an arrestable offense for which the citizen suddenly finds himself/herself in handcuffs on the way to the police station.

Unconstitutionally Vague

Charging and arresting an individual under this measure may be deemed unconstitutionally vague on its face within the meaning of the due process clause of the fourteenth amendment of the U.S. Constitution and article I, § 5 of the Hawai‘i Constitution.

In Kolender v. Lawson, 461 U.S. 352 (1983), Lawson, after being detained or arrested fifteen times for California Penal Code (CPC) § 647(e), which required persons who loiter or wander on the streets to identify themselves and account for their presence when requested by a police officer to do so, challenged the constitutionality of the statute. CPC § 647(e) was interpreted by the California appellate courts to require the individual provide a “credible and reliable” identification that carries a reasonable assurance of its authenticity and that provides a means for later getting in touch with the person who has identified himself.

The U.S. Supreme Court found that the statute contained no standard for determining what a suspect must do in order to satisfy the requirement to provide a credible and reliable identification. Consequently, the Court concluded that the statute failed to clarify what is contemplated by the requirement that a suspect provide a “credible and reliable” identification. As such, the statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute. Thus, the Court concluded that § 647(e) *was unconstitutionally vague on its face* because it encouraged arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute.

Similar to California Penal Code § 647(e), HRS § 291C-172 fails to describe with sufficient particularity as to what is contemplated by the requirement, “proof of identification.”

Criminalization of the poor and the homeless

This measure also appears to be another attempt to criminalize poverty and homelessness. Most of our homeless who violate the pedestrian laws simply cannot provide proof of identification for the simple reason that they do not possess any form of identification. The majority of these individuals are not on the streets by choice. Many are unemployed, suffering from alcohol or drug abuse, or mentally ill. These are larger problems with which our community must come to terms. Before we criminalize their inability or their refusal to provide proof of identification, we as a society must provide alternative housing for these individuals. Those who cannot or will not provide proof of identification should not be arrested and be subject to thirty days jail for initially being detained for a traffic violation.

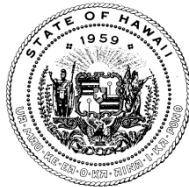
This measure can also be misused by law enforcement to conduct pretextual arrests and searches. Police will be authorized and justified to arrest and search an uncooperative individual for committing a minor infraction (e.g., jaywalking) simply because the individual is unable to provide proper identification.

Comparison to HRS § 291C-23

Proponents of this measure justify criminalizing HRS § 291C-172 by analogizing this measure to HRS § 291C-23. This argument simply has no merit. Under HRS § 291C-23, a person commits the offense when the person willfully fails or refuses to comply with any lawful order or direction of a police officer authorized by law to direct, control, or regulate traffic. The purpose of HRS § 291C-23 is to promote public safety. Failure to comply with an officer's order in traffic situations may endanger not only the driver but the general public. Failure to follow an officer's order directing traffic in a crowd situation (such as a demonstration, an event, or a parade) compromises the safety of the attendees. Failure to abide by an officer directing traffic at an accident scene risks the lives of the police and first responders. HRS § 291C-172, however, has no such "higher" purpose. The purpose of HRS § 291C-172 is to simply make it easier for the police to turn a mere traffic infraction into a criminal jailable offense.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

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

February 24, 2022
2:00 P.M.
State Capitol, Teleconference

H.B. 1453
RELATING TO TRAFFIC VIOLATION

House Committee on Judiciary & Hawaiian Affairs

The Department of Transportation (DOT) **supports** H.B. 1453, which specifies that refusing to provide identifying information to a police officer when being detained for a traffic offense is a petty misdemeanor

The DOT supports this bill as it will assist law enforcement officers with traffic code violators who refuse to provide identifying information.

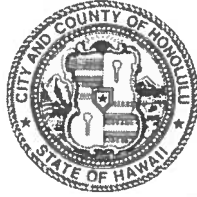
Thank you for the opportunity to provide testimony.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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LATE

RICK BLANGIARDI
MAYOR



RADE K. VANIC
INTERIM CHIEF

OUR REFERENCE BO-BO

February 24, 2022

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 1453, Relating to Traffic Violations

I am Bradon Ogata, Captain of the Legislative Liaison Office of the Honolulu Police Department (HPD), City and County of Honolulu.

The Honolulu Police Department supports the passage of House Bill No. 1453, Relating to Traffic Violations.

Section 291C-172 of the Hawaii Revised Statutes does not adequately address situations in which violators of traffic laws are stopped by police officers and refuse to provide their personal identifying information. The requirement to issue a citation for this offense is not practical when the violator refuses to provide the information required for a citation. By providing the option to arrest, this bill will create a functional progression for law enforcement officers to follow when violators of the traffic code refuse to provide their identifying information.

The HPD supports the passage of House Bill No. 1453, Relating to Traffic Violations.

Thank you for the opportunity to testify.

APPROVED:



Rade K. Vanic
Interim Chief of Police

Sincerely,


Bradon Ogata, Captain
Legislative Liaison Office

LATE

HB-1453

Submitted on: 2/24/2022 11:16:49 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jonathon Rakieten	HPD	Support	No

Comments:

I believe this bill needs to be passed since the current law contradicts itself and is unenforceable in the event someone refuses to identify themselves.

SHOPO



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS

" A Police Organization for Police Officers Only "
Founded 1971

February 14, 2022

LATE

ONLINE/FAX: 808-586-6684; 808-586-8474

The Honorable Mark M. Nakashima
Chair
The Honorable Scot Z. Matayoshi
Vice-Chair
House Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol, Rooms 331, 432
415 South Beretania Street
Honolulu, HI 96813

Re: **HB1453-Relating to Traffic Violations**

Dear Chair Nakashima, Vice-Chair Matayoshi, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write to you on behalf of our Union to express our strong **support** for HB1453 and respectfully call upon your Committee on Judiciary & Hawaiian Affairs to schedule this bill for a hearing. The bill will amend HRS §291C-172 to require a violator to provide proof of their identity, and give our officers the option to arrest a violator when a person refuses to identify themselves during a valid traffic stop.

The current language in HRS §291C-172 allows an officer to issue a written citation when a traffic violator refuses to provide personal identifying information or provides false information. The quagmire for the officer is that if the violator refuses to provide accurate information relating to their identity or no information at all, the written citation will also be inaccurate and rendered useless or the officer will be unable to issue the citation in the first instance because of the violator's refusal to provide any information. By giving our officers the option of arresting the violator for a petty misdemeanor, consistent with HRS §291C-23, the violator can be properly identified and appropriately cited for the violation.

In conducting patrol duties, our officers are involved in numerous traffic stops for various traffic infractions. Without observing an operator's driver's license and photograph, it is difficult for our officers to verify if the operator is really who they claim to be or is simply using a false name or alias. What often happens is the operator claims to have a valid driver's license but provides the officer with another person's name and personal information. The officer will run a license check in the computer system to confirm if there is a valid license under the name and personal information provided by the operator. However, if the operator gave a false name or false personal information, the system may confirm a valid driver's license but it would not be for the operator who gave the misleading information. The false information would also prevent the officer from running a valid warrant check on the driver. In our experience, drivers who do not have a valid driver's license often have outstanding arrest warrants.

The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice-Chair
House Committee on Judiciary & Hawaiian Affairs
February 14, 2022
Re: HB1453-Relating to Traffic Violations
Page 2

The proposed amendment to HRS §291C-172 will greatly aid and enhance our officers' ability to perform their duties, accurately identify an operator who is stopped for a traffic violation, and hopefully provide the proper deterrent for those who may refuse to properly identify themselves.

We thank you for allowing us to be heard on this very important issue and we hope your committee will unanimously support HB1453.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President

LATE

HB-1453

Submitted on: 2/24/2022 12:30:36 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nathan Suzuki	Individual	Support	No

Comments:

This bill if passed will ensure that the individual/operator caught violating the traffic law is held accountable for their actions/decisions. The only way that this possible is to verify, via their drivers license whom they claim to be. Failure to provide a valid drivers license should be a punishable offense to full extent of the law. Possessing a valid drivers license and obeying all traffic laws allows one the privilege of operating a vehicle upon State and County roadways.

LATE

HB-1453

Submitted on: 2/24/2022 3:06:14 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gregory Timme	Individual	Support	No

Comments:

I support this Bill. We should not allow the criminal element to exploit our lack of common sense legislation.

LATE

HB-1453

Submitted on: 2/24/2022 10:37:36 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lucius Crabbe	Individual	Support	No

Comments:

I support Hawaii Bill 1453 because Law Enforcement Officers need laws set in place to assist them while applying there daily duties.