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**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
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February 15, 2022  
3:30 P.M.  
State Capitol, Teleconference

**S.B. 150**  
**RELATING TO IGNITION INTERLOCK DEVICES**

Senate Committees on Transportation

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The Department of Transportation (DOT) **supports** S.B. 150, which improves the Ignition Interlock program by requiring the following:

- Applies consecutive terms of imprisonment to both habitual offenders and OVUII offenders who operate a vehicle without an ignition interlock device;
- Individuals sentenced to operating a vehicle with an ignition interlock will also be issued a government identification for their immediate possession;
- Expands the offense of circumventing or tampering with an ignition interlock to include obscuring the camera lens or not providing a picture of the driver; and
- Extends the look back period from 5 years to 10 years.

The DOT supports S.B. 150, because impaired driving continues to be the second leading factor among fatal crashes. According to National Highway Traffic Safety Administration, nearly one-third of all driving under the influence (DUI) arrests and DUI convictions involved repeat drunk driving offenders and repeat DUIs are 4.1 times more likely of being involved in a fatal crash.

The DOT urges your committee to pass S.B. 150 as the provisions outlined in this measure will further deter impaired driving and ultimately reduce the amount of impaired driving related crashes.

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 Committee on Transportation**

February 15, 2022

S.B. No. 150: RELATING TO IGNITION INTERLOCK DEVICES

Chair Lee, Vice Chair Inouye, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 150.

The Office of the Public Defender opposes the extension of the “look back” period from five years to ten years as amended in subsection (c) because the current five-year period already creates a harsh penalty that disproportionately affects those that are struggling to make ends meet. Further, if the intent of the law is to discourage frequent or habitual offenders from driving, a five-year “look back” period already achieves that goal.

**HRS § 291E-62 disproportionately affects indigent drivers**

Drivers may have their licenses suspended by the Administrative Driver’s License Revocation Office (“ADLRO”) for Operating a Vehicle under the Influence of an Intoxicant (“OVUII”) without being convicted for OVUII beyond a reasonable doubt. Further, driver’s have no right to have an attorney provided for them if they cannot afford one in the ADLRO proceedings.

If a driver’s license is suspended for OVUII, an affluent driver can afford an ignition interlock device and can thus avoid the harsh penalties of HRS § 291E-62. At all levels, this statute imposes mandatory jail time. In contrast, first and second OVUII offenses do not impose mandatory jail time. So, someone who is convicted of driving drunk twice may not have to do jail time, but someone who drives one time sober (with a suspended license) to take their children to school must serve mandatory jail time if cited for violating HRS § 291E-62.

An ignition interlock device is often unavailable to those that are struggling to make ends meet. There are fees associated with installation and with maintaining the ignition interlock device. Furthermore, it is not uncommon that a person convicted of OVUII shares a vehicle with multiple family and/or household members. When the OVUII offender opts to participate in the ignition interlock program, every

family member must also participate in the program. Every family member must breathe into the ignition interlock device not only prior to starting the family vehicle but also during the operation of the vehicle, as the program requires the driver to submit to periodic random tests while driving. Rather than inconveniencing the other family/household members, the OVUII offender will choose instead to give up his/her privilege to drive during the license revocation period and opt out of participating in the ignition interlock program. If the measure becomes law, every family/household member of the OVUII offender will be punished, as they will essentially be required to participate in the ignition interlock program to simply operate the family/household vehicle.

Because this statute disproportionately incarcerates the indigent and imposes unreasonable financial hardships on them and their families, the Office of the Public Defender opposes any changes to increase the penalties of this chapter.

### **Section (c)(4) is unconstitutional**

The Office of the Public Defender strongly opposes the addition of section (c)(4) in its entirety. This subsection would be a violation of the double jeopardy clause under article I, section 10 of the Hawai'i Constitution and the fifth amendment to the United States Constitution. Not only would a criminal defendant be subject to the ordinary sentencing under this section and the sentencing under 291E-61 or 291E-61.5 independently, a subsequent compulsory imposition of incarceration would have to be enforced and served consecutively. Based on the vagueness of the phrase "for an offense based on the same conduct or arising from the same episode," a defendant who may have been previously sentenced for "the same conduct" will be adversely affected and sentenced again under section (c)(4) for an offense in which they have already been sentenced.

### **Our State should be reforming the criminal justice system, not making it harsher**

With the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai'i is to increase penalties for offenses that disproportionately affect the indigent. The courts currently have the ability to incarcerate defendants who do not or cannot demonstrate an ability to reform. Thus, the courts should retain the ability to recognize and support defendants who are in treatment and who have a strong support system to prevent new offenses.

Thank you for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE CHRIS LEE, CHAIR**  
**SENATE COMMITTEE ON TRANSPORTATION**  
**Thirty-first State Legislature**  
**Regular Session of 2022**  
**State of Hawai`i**

February 15, 2022

**RE: S.B. 150; RELATING TO IGNITION INTERLOCK DEVICES.**

Chair Lee, Vice Chair Inouye, and members of the Senate Committee on Transportation, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of S.B. 150, and respectfully submits the attached Proposed S.D. 1 for the Committee's consideration.

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—that drew upon input from multiple stakeholders—including the Public Defender and defense bar—to craft language that would significantly improve Hawaii's laws regarding operating a vehicle under the influence of an intoxicant ("OVUII"). We believe that S.B. 150 is consistent with the working group's recommendations, and thank the Committee for its commitment to working with stakeholders in this regard. Where additional changes could be made to the bill, to bring it closer in-line with the working group's recommendations, the Proposed S.D. 1 makes recommendations highlighted in yellow, below.

For cases in which someone is convicted of both OVUII—or Habitual OVUII—and driving while license suspended or revoked for OVUII ("E-62"), for the same incident, the Department believes that mandatory, consecutive jail sentences is appropriate, and hopefully an effective deterrent to would-be violators. In cases where a defendant is concerned that consecutive jail sentences may be detrimental to his or her release on parole (for Habitual OVUII, a class C felony)—such as a defendant concurrently convicted of his or her third E-62 in a 10-year span (which has mandatory one year jail)—it is the Department's understanding that defendants may ask the court to order that the sentence for E-62 be served first.

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. 150. Thank you for the opportunity to testify on this matter.

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## A BILL FOR AN ACT

RELATING TO IGNITION INTERLOCK DEVICES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 291E-62, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) No person whose license and privilege to operate a  
5 vehicle have been revoked, suspended, or otherwise restricted  
6 pursuant to this section or to part III or section 291E-61 or  
7 291E-61.5, or to part VII or part XIV of chapter 286 or section  
8 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions  
9 were in effect on December 31, 2001, shall operate or assume  
10 actual physical control of any vehicle:

11 (1) In violation of any restrictions placed on the  
12 person's license;

13 (2) While the person's license or privilege to operate a  
14 vehicle remains suspended or revoked;

15 (3) Without installing an ignition interlock device  
16 required by this chapter; or

17 (4) With an ignition interlock permit unless the person has  
18 the ignition interlock permit and a valid government-issued

1 identification in the person's immediate possession. As used in  
2 this section, "government-issued identification" means:

- 3 (1) A passport issued by the United States of America; or
- 4 (2) A photo identification card issued by any federal,
- 5 state or local government.

6 2. By amending subsection (c) to read:

7 (c) Any person convicted of violating this section shall  
8 be sentenced as follows without possibility of probation or  
9 suspension of sentence:

10 (1) For a first offense, or any offense not preceded  
11 within a [~~five-year~~] ten-year period by conviction for an  
12 offense under this section, section 291E-66, or section 291-4.5  
13 as that section was in effect on December 31, 2001:

14 (A) A term of imprisonment of no less than three  
15 consecutive days but no more than thirty days;

16 (B) A fine of no less than \$250 but no more than  
17 \$1,000, to be deposited into the state drug and  
18 alcohol toxicology testing laboratory special  
19 fund; and

20 (C) Revocation of license and privilege to operate a  
21 vehicle for an additional year; - [and

**Commented [NTMKL1]:** This language should be added to SB 150, to make it consistent with amendments enacted in 2021 (Act 196).

1 ~~(D) Loss of the privilege to operate a vehicle~~  
2 ~~equipped with an ignition interlock device, if~~  
3 ~~applicable;]~~

4 (2) For an offense that occurs within [five] ten years of  
5 a prior conviction for an offense under this section, section  
6 291E-66, or section 291-4.5 as that section was in effect on  
7 December 31, 2001:

- 8 (A) Thirty days imprisonment;
- 9 (B) A \$1,000 fine, to be deposited into the state  
10 drug and alcohol toxicology testing laboratory  
11 special fund; and
- 12 (C) Revocation of license and privilege to operate a  
13 vehicle for an additional two years; and

14 ~~[(D) Loss of the privilege to operate a vehicle~~  
15 ~~equipped with an ignition interlock device, if~~  
16 ~~applicable; and]~~

17 (3) For an offense that occurs within [~~five~~] ten years of  
18 two or more prior convictions for offenses under this section,  
19 section 291E-66, or section 291-4.5 as that section was in  
20 effect on December 31, 2001, or any combination thereof:

- 21 (A) [One] No less than six months and no more than  
22 one year imprisonment;

**Commented [NTMKL2]:** This language should be added to SB 150, to make it consistent with amendments enacted in 2021 (Act 196).

1 (B) A \$2,000 fine, to be deposited into the state  
2 drug and alcohol toxicology testing laboratory  
3 special fund; and

4 (C) Permanent revocation of the person's license and  
5 privilege to operate a vehicle; and

6 ~~(D) Loss of the privilege to operate a vehicle  
7 equipped with an ignition interlock device, if  
8 applicable].~~

Commented [NTMKL3]: This language should be added to SB 150, to make it consistent with amendments enacted in 2021 (Act 196).

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

15 SECTION 2. Section 291E-66, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"HRS §291E-66. Circumvention of, or tampering with, an**  
18 **ignition interlock device by a person who has been restricted to**  
19 **operating a vehicle equipped with an ignition interlock device;**  
20 **penalties.** (a) No person whose driving privileges have been  
21 restricted to operating a vehicle equipped with an ignition  
22 interlock device shall knowingly **circumvent or tamper with an**



1 ignition interlock device in any way, including but not limited

2 to:

3 (1) [~~Request, solicit, direct, or authorize~~] Requesting,  
4 soliciting, directing, or authorizing another person to blow  
5 into an ignition interlock device or start a vehicle equipped  
6 with the device for the purpose of providing an operable vehicle  
7 to a person who has been restricted by law to operating only a  
8 vehicle so equipped; [~~or~~]

9 (2) [~~Tamper~~] Tampering with an ignition interlock device  
10 with the intent to render it inaccurate or inoperable[~~-~~];

11 (3) Obscuring a camera lens associated with an ignition  
12 interlock device; or

13 (4) Failing to provide a picture of the driver.

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

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

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

**Commented [NTMKL4]:** These amendments to HRS 291E-66(b) are contained in the bill's description, but are not currently in SB 150, so this should be added. Also important for consistency's sake, with the lookback periods for HRS 291E-61 and 291E-62.

1 (B) A fine of not less than \$250 but not more than  
2 \$1,000; and

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

5 (2) For an offense that occurs within ~~five~~ ten years of  
6 a prior conviction for an offense under this section or section  
7 291E-62(a) (3):

8 (A) Thirty days imprisonment;

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

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

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

15 (A) One year imprisonment;

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

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

19 SECTION 7. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.

**S. B. NO.** 150  
PROPOSED  
S.D. 1

1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon approval.

INTRODUCED BY: \_\_\_\_\_

**LATE**



Mothers Against Drunk Driving HAWAII  
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February 15, 2022

To: Senator Chris Lee, Chair  
Senator Lorraine R. Inouye, Vice Chair  
Senate Committee on Transportation, and members of the Committee

From: Kurt Kendro, Chair, Public Policy Committee; Mothers Against Drunk Driving  
(MADD) Hawaii

Re: SENATE BILL 150- RELATING TO IGNITION INTERLOCK DEVICES

I am Kurt Kendro, Chair of MADD Hawaii's Public Policy Committee and retired Major from the Honolulu Police Department speaking on behalf of the members of MADD Hawaii Advisory Board in STRONG SUPPORT WITH COMMENTS of Senate Bill 150.

MADD Hawaii has worked with many stakeholders in a concerted effort to improve Hawaii's laws related to operating a vehicle under the influence of an intoxicant (OVUII). MADD Hawaii strongly supports Senate Bill 150, as it is closely aligned with the recommendations and outcomes of the working group from the Department of Transportation.

In conjunction with this proposed bill, MADD Hawaii would like to see the following language included that would further the efforts to eliminate impaired driving from our roadways.

1. Adding language that would include any fine associated with the Hawaii Revised Statutes 291E-62, would be paid to the state drug and alcohol toxicology testing laboratory special fund. Hawaii does not have a drug and alcohol toxicology testing laboratory and it is appropriate that fines from convicted OVUII offenders be used to help fund this laboratory.
2. The Honolulu Prosecutor's Office has prepared a draft Senate Bill, SD1, that includes the above and other language that MADD Hawaii fully supports.

MADD Hawaii STRONGLY SUPPORTS WITH THE ABOVE COMMENTS Senate Bill 150 and ask that this bill be passed.

Thank you for the opportunity to testify.