

*The Judiciary, State of Hawai'i*

**Testimony to the Thirty-First State Legislature, 2022 Regular Session**

**Senate Committee on Judiciary**  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Thursday, March 3, 2022, 9:30 a.m.  
Via Videoconference

**WRITTEN TESTIMONY ONLY**

By:

Judge Melanie May  
Deputy Chief Judge  
District Court of the First Circuit

Judge Blaine J. Kobayashi  
Deputy Chief Judge  
District Court of the Second Circuit

Judge Michelle K. Laubach  
Deputy Chief Judge  
District Court of the Third Circuit

Judge Michael K. Soong  
Deputy Chief Judge  
District Court of the Fifth Circuit

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**Bill No. and Title:** Senate Bill No. 3165, S.D. 1, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

**Purpose:** Lengthens the driver's license revocation period for first time offenders convicted of operating a vehicle under the influence of an intoxicant who do not install an ignition interlock device. Allows early termination of driver's license revocation after nine months upon showing three consecutive months of ignition interlock use without any violations. Effective 1/1/2050. (SD1)

## **Judiciary's Position:**

The Judiciary takes no position as to the merits of Senate Bill No. 3165, S.D. 1 but offers the following comments regarding implementation of a procedure for early termination of license revocation periods.

The bill does not provide for a mechanism to verify the installation and maintenance of the ignition interlock device for the specified time period. Likewise, the bill does not provide for a mechanism to verify that a person did not commit any violation pertaining to the ignition interlock device during the specified time period.

To address this, the Judiciary suggests that persons seeking early termination of license revocations be required to provide certification from the Director of Transportation, consistent with certification provided under existing laws regarding ignition interlock devices and modifications to license revocation periods, such as Haw. Rev. Stat. § 291E-61.6.

Haw. Rev. Stat. § 291E-61.6 currently allows a person subject to a lifetime license revocation to apply for an ignition interlock instruction permit, and, after installing and maintaining an ignition interlock device for a specified period without committing specified violations, to petition the court to reinstate the person's eligibility for license and privilege to operate a vehicle without an ignition interlock device. In essence, the statute provides a second chance to persons who would otherwise be barred from driving for life by incentivizing sobriety and safe driving. Under Haw. Rev. Stat. § 291E-61.6(e), the Director of the Department of Transportation ("the "Director") certifies the motorist's compliance with statutory requirements. The Director also provides certification that no violations have occurred with respect to the motorist's operation of the vehicle during the ignition interlock period.

Since 2012, approximately 200 petitions for ignition interlock instruction permits were filed under Haw. Rev. Stat. § 291E-61.6, and approximately 176 such permits were granted. Of the 176 individuals who received ignition interlock instruction permits, approximately 30 individuals filed petitions under Haw. Rev. Stat. § 291E-61.6(e) to reinstate their eligibility for license and privilege to operate a vehicle without an ignition interlock device. In these cases, the presentation of certified statements from the Director provided the courts with critical and reliable information needed for the adjudication of these petitions.

Based on its experience under Haw. Rev. Stat. § 291E-61.6, the Judiciary believes a similar mechanism would provide the courts with baseline information needed to adjudicate motions for early terminations of license revocation periods contemplated by this bill. To this end, the Judiciary suggests the following technical amendment to the language found in SB3165, SD1, starting from page 6, line 6:

(6) A person sentenced pursuant to paragraph (1)(B) may file a motion for early termination of the applicable revocation period if the person:

(A) Was not sentenced to any additional mandatory revocation period pursuant to paragraphs (3) or (4);

(B) Actually installed and maintained an ignition interlock device in one or more vehicles for a continuous period of six months, after which the person maintained the ignition interlock device in one or more vehicles for a continuous period of three months without violation, as that term is defined in rules established by the department of transportation; and

(C) The person has complied with all other sentencing requirements.

A motion for early termination under this section shall include the following:

(1) A certified court abstract establishing that the person was not sentenced to any additional mandatory revocation period pursuant to paragraphs (3) or (4);

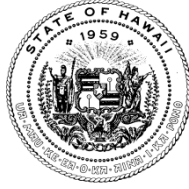
(2) A certified statement from the director of transportation establishing that:

(a) The person actually installed and maintained an ignition interlock device in one or more vehicles for a continuous period of six months; and

(b) After the six month period referenced above, the person maintained the ignition interlock device in one or more vehicles for a continuous period of three months without violation, as that term is defined in rules established by the department of transportation.

Nothing in this paragraph shall require a court to grant early termination of the revocation period if the court finds that continued use of the ignition interlock device will further the person's rehabilitation or compliance with this section; and

Thank you for the opportunity to testify on this measure.



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
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March 3, 2022  
9:30 A.M.  
State Capitol, Teleconference

**S.B. 3165, S.D. 1**  
**RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN**  
**INTOXICANT**

Senate Committee on Judiciary

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The Department of Transportation (DOT) **supports** S.B. 3165, S.D. 1, relating to operating a vehicle under the influence of an intoxicant, with a suggested amendment. This measure increases the initial period of driver's license revocation for first time offenders and allows early termination of license revocation for those who show consistent use of an ignition interlock use without any violations.

Out of concern for Hawaii's increasing number of traffic fatalities involving alcohol and drugs, the DOT's Hawaii Drug and Alcohol Intoxicated Driving (DAID) Working Group drafted the initial bill to incentivize offenders to install and use an ignition interlock and believes S.B. 3165 S.D. 1 is consistent with these recommendations.

As the term "violation" is used on page 6, lines 17-19, and there are no formal rules defining this term in relation to ignition interlock devices, the DOT recommends inserting the following language as a definition of "violation," for the purposes of discussion:

"...of three months without violation, where the term "violation" is defined as:

- (1) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath when starting the vehicle, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.02 and the digital image confirms the same person provided both samples;
- (2) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath on a rolling retest, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.02 and the digital image confirms the same person provided both samples;
- (3) Failing to provide a rolling retest;
- (4) Violating section 291E-66; or

(5) Failing to provide a clear photo of the person when the person blows into the ignition interlock device; and...

The language that is already contained in S.B. 3165, S.D. 1, is noted in *italics*.<sup>1</sup>

For the purpose of consistency, we also recommend adding “if an acceptable test is performed within ten minutes” to subsection (3), for uniformity with the preceding subsections (1) and (2).

The DOT urges the passage of S.B. 3165 S.D. 1 with the suggested amendment, which will help keep Hawaii’s streets safer for all roadway users.

Thank you for the opportunity to provide testimony.

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<sup>1</sup> This language is taken from the original version of S.B. 2133 (2022), between page 2, line 10, and page 3, line 6. Available online at: [https://www.capitol.hawaii.gov/session2022/Bills/SB2133\\_.pdf](https://www.capitol.hawaii.gov/session2022/Bills/SB2133_.pdf); last accessed February 28, 2022.

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**

March 3, 2022

S.B. No. 3165 SD1: RELATING TO OPERATING A VEHICLE UNDER THE  
INFLUENCE OF AN INTOXICANT

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

The Office of the Public Defender respectfully opposes S.B. No. 3165 SD1.

**Revocation Period**

We oppose the section of the measure that seeks to lengthen the driver’s license revocation period for first time offenders convicted of operating a vehicle under the influence of an intoxicant (OVUII) from twelve months to eighteen months.

First, there does not appear to be any justification for the increase. A revocation period of one year is sufficient sanction for an individual who has committed a petty misdemeanor (in which the maximum jail time is five days in jail). Lengthening the revocation period will only exacerbate the problem of unlicensed drivers paying more fines. And in the case of those charged with violating HRS §291E-62, these individuals will be serving mandatory jail time *not* for driving while intoxicated but for simply driving without a valid license.

Those that are able to afford ignition interlock devices will still be able to drive to work and drop their children off at school during the revocation period. But for people struggling to make ends meet that cannot afford an ignition interlock device (or do not own their own vehicle), they will suffer the harsh penalty of being unable to drive for 18 months. Further, while a discount is offered to those that can obtain the paperwork to show their indigency, the discounted price is still beyond the means of many drivers.

Clearly, this measure will disproportionately punish those who are economically disadvantaged. Admittedly, driving is not a right but a privilege. However, *the privilege to drive should not be available to only those who can afford to participate in the ignition interlock program and/or who own a car.*

## **Early Termination**

Our office supports the intent of the provision, which allows the early termination of a driver's license revocation after nine months upon showing three consecutive months of ignition interlock use without any violations. However, this measure simply enhances the inequity of a penal scheme that is already unjust to the economically disadvantaged. As outlined above, the majority of individuals convicted of OVUII who do not install an ignition interlock—and thus cannot take advantage of the early termination—simply cannot afford to install one.

Under this measure, the license revocation for a person with financial means whose BAC was 0.14 and who was involved in a traffic collision can be reduced to nine months; meanwhile, the license revocation for an indigent person who had borrowed a vehicle, and who was pulled over for an expired safety check, and whose BAC was 0.08 will remain at eighteen months. Even though the affluent individual's conduct was far more egregious than the indigent person's, the affluent individual's license will be revoked for half the time period (nine months) than the indigent person's license (eighteen months).

For these reasons, we suggest that the measure be amended to allow early termination for all individuals who have not violated the terms of the revocation after six months.

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 KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirty-First State Legislature**  
**Regular Session of 2022**  
**State of Hawai`i**

March 3, 2022

**RE: S.B. 3165, S.D. 1; RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.**

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **support** of S.B. 3165, S.D. 1, with a **suggested amendment**.

In 2021, our Department worked with multiple stakeholders to craft language that would significantly incentivize more offenders—who have been convicted of operating a vehicle under the influence of an intoxicant (“OVUIP”)—to install and use an Ignition Interlock device. The Department believes S.B. 3165, S.D. 1, is consistent with the working group’s recommendations, and thanks the Committee for its commitment to making Hawaii’s roads safer for everyone.

One amendment that the Department recommends—at least for purposes of discussion—is to add a definition of “violation,” as that term is used on page 6, lines 17-19. Currently, the Department of Transportation does not have any formal rules that define this term in relation to Ignition Interlock devices. While rulemaking is potentially one solution, another option would be to define the term in statute. To date, the working group (mentioned above) has not been able to reconvene for purposes of developing a definition, so the **language found in S.B. 2133, between page 2, line 10, and page 3, line 6, could be inserted as a starting-point for further discussion**.<sup>1</sup> With regards to that specific language, the Department notes that it may be overly

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<sup>1</sup> S.B. 2133 (2022), available online at: [https://www.capitol.hawaii.gov/session2022/Bills/SB2133\\_.pdf](https://www.capitol.hawaii.gov/session2022/Bills/SB2133_.pdf); last accessed March 1, 2022.



restrictive to include “failing to provide a [single] rolling retest” (S.B. 2133, page 3, line 3) as a violation, without any chance of rectification as in the subsections above that (S.B. 2133, page 2, line 11, through page 3, line 2). Also, S.B. 2133, page 3, lines 5-6, is quite subjective and would be a potential source of litigation.

To the extent Ignition Interlock devices have been shown to prevent alcohol-impaired drivers from operating a vehicle, the Department believes that Hawaii’s roads would be safer if a higher percentage of offenders—particularly anyone whose driver’s license is presently revoked due to OVUII—actually installed and maintained an Ignition Interlock device in every vehicle that they operate. As always, the Department is open to further discussion regarding the specific provisions of this bill, and welcomes the opportunity to continue working with all stakeholders.

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. 3165, S.D. 1, with the suggested amendment. Thank you for the opportunity to testify on this matter.



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March 3, 2022

To: Senator Karl Rhoads, Chair, Senator Jarrett Keohokalole, Vice-Chair, and members of the Committee on Judiciary

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

Re: Senate Bill 3165, SD1, Relating to the Statewide Traffic Code - 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 SB 3165, SD1, with a requested amendment for clarity.

We support **closing a gap in the current law** which allows people who have already plead guilty, been convicted, or administratively adjudicated to have been impaired while driving, *to continue to attempt to drive drunk without limit on the restoration of their license*. We feel that this is not only wrong, but dangerous. Thirty-four other states have adopted some form of compliance-based regulations. We have heard concerns raised about requiring an ignition interlock device. This bill, instead, takes the approach of offering a reduced revocation period for demonstrating that the driver can be trusted. Therefore, we support it.

For clarity we recommend clarifying that a person violates this section by:

(1) Providing a sample of 0.02 or more when starting the vehicle, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.02 and the digital image confirms the same person provided both samples;

(2) Providing a sample of 0.02 or more on a rolling retest, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.02 and the digital image confirms the same person provided both samples;

(3) Failing to provide a rolling retest;

(4) Violating section 291E-66; or

(5) Failing to provide a clear photo of the person when the person blows into the ignition interlock device.

Currently, 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 ignition interlock is the only technology and the single most effective tool available to physically separate drinking from driving and to enhance public safety. A consequence for trying to drive drunk on an interlock is not incarceration, but rather a parked vehicle that will not start until the driver sobers up.

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. An indigent program is available for those that qualify to help lessen the costs associated with an interlock. The Hawaii Department of Transportation (HDOT) established a program to provide for partial financial relief on the installation, calibration, and other related charges to participants who apply for such assistance and who are recipients at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance Program (SNAP), or free services under the Older American Act or Developmentally Disabled Act.

Under state law and per contract terms with HDOT, if the participant qualifies for receiving financial relief, the installation and monthly service fees are discounted at 50% off the standard rate. This discounted rate breaks down the monthly service fee cost to the participant at \$1.48 a day.

According to the American Association of Motor Vehicle Administrators (AAMVA) Ignition Interlock Best Practice Guide called on states to have compliance-based removals for people on an interlock. This legislation will boost interlock implementation. Currently, OVUII offenders in Hawaii merely have their interlock removed when it is time for end of program, whether they have proved sobriety to drive or not. One of the biggest challenges facing Hawaii's ignition interlock program is eligible OVUII offenders wait out the revocation period and do not install an interlock, many choosing to drive unlicensed and not interlocked.

In conclusion, we strongly urge you to pass SB 3165, SD1, as it will help strengthen Hawaii's ignition interlock laws which is critically important to help save lives and keep Hawaii roads safe. Thank you for the opportunity to provide testimony in support of this important bill.



**JoAnn Hamaji-Oto**

*Territory Operations Director-Hawaii*

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Setting the Standard in Alcohol Monitoring Technology™



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March 3, 2022

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

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

Re: Senate Bill 3165, SD1- RELATING TO OPERATING A VEHICLE UNDER  
THE INFLUENCE OF AN INTOXICANT

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 of Senate Bill 3165, SD1, Relating to Operating a Vehicle Under the Influence of an Intoxicant, with suggested additional language.

MADD Hawaii strongly supports the use of ignition interlock devices (IIL) as it is the first line of defense from preventing a person who has been drinking from driving. This bill reinforces the use IIL and offers early removal if the user does not commit a violation for three consecutive months.

With our stakeholder partners, MADD Hawaii suggests that language should be added to the bill to clarify the term, "violation" as follows:

"...of three months without violation, where the term "violation" is defined as:

- (1) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath when starting the vehicle, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.02 and the digital image confirms the same person provided both samples;
- (2) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath on a rolling retest, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.02 and the digital image confirms the same person provided both samples;

- (3) Failing to provide a rolling retest;
- (4) Violating section 291E-66; or
- (5) Failing to provide a clear photo of the person when the person blows into the ignition interlock device; and..."

MADD Hawaii STRONGLY SUPPORTS Senate Bill 3165, SD1, with the above suggested language, and ask that this bill be passed.

Thank you for the opportunity to testify.