

The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2022 Regular Session

House Committee on Judiciary and Hawaiian Affairs

Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Monday, April 4, 2022, 2:00 p.m.
State Capitol, Conference Room 325
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

Bill No. and Title: Senate Bill No. 3165, S.D. 2, Proposed H.D. 1, Relating to Operating a Vehicle Under the Influence of an Intoxicant.

Purpose: Amends the driver's license revocation period for first-time offenders convicted of operating a vehicle under the influence of an intoxicant and people who do not install an ignition interlock device. Allows early termination of driver's license revocation. Requires any person

operating a vehicle with an ignition interlock device to have government-issued identification in their immediate possession. Amends the lookback period and sentencing requirements for violations of operating a vehicle after license and privilege have been suspended or revoked. Amends the offense of circumventing or tampering with an ignition interlock device to include obscuring the camera lens or not providing a picture of the driver and extend the lookback period. Effective 1/1/2050. (PROPOSED HD1)

Judiciary's Position:

The Judiciary provides comments to thank the Senate Committee on the Judiciary and the House Committee on Judiciary and Hawaiian Affairs for incorporating our suggested amendments into this bill, and has no further concerns with the bill.

Thank you for the opportunity to testify on this measure.

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 & Hawaiian Affairs**

April 4, 2022

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

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

The Office of the Public Defender respectfully opposes S.B. No. 3165 SD2 and HD1 (proposed).

I. SD2

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.

II. HD1 (proposed)

The Office of the Public Defender supports the change in HD1 (proposed) from one year jail to a range of six months to one year jail for drivers with two or more prior HRS § 291E-62 convictions. However, we must oppose HD1 (proposed) for all of the reasons discussed above. In addition, we oppose 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.

Increasing the “look back” period for HRS § 291E-62 disproportionately affects indigent drivers

As discussed above, drivers struggling to make ends meet are not able to afford an ignition interlock device and thus avoid the harsh penalties of HRS § 291E-62. That results in someone who is convicted of driving drunk twice may not have to do jail time, but someone who drives sober three times (with a suspended license) to take their children to school or to commute to work must serve six to twelve months of jail time for violating HRS § 291E-62.

By increasing the “look back” period from five years to ten years, this statute disproportionately incarcerates the indigent and imposes unreasonable financial hardships on them and their families. Accordingly, we oppose 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.

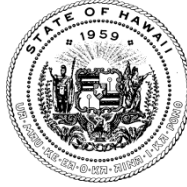
Our State should be reforming the criminal justice system, not making it harsher

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.

DAVID Y. IGE
GOVERNOR

LATE



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

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

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

April 4, 2022
2:00 P.M.

State Capitol, Capitol Room 325/Teleconference

**S.B. 3165, S.D. 2
RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN
INTOXICANT**

House Committee on Judiciary & Hawaiian Affairs

The Department of Transportation (DOT) **supports** S.B. 3165, S.D. 2, relating to operating a vehicle under the influence of an intoxicant. 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.

DOT recommends that the provided sample needed to start the vehicle installed with an ignition interlock, and the subsequent retests performed remain consistent with standards set for ignition interlocks of a breath alcohol concentration of .02 or less. This level is consistent with recommendations by National Highway Traffic Safety Administration and American Association of Motor Vehicle Administrators.

Out of concern for Hawaii's increasing number of traffic fatalities involving alcohol and drugs, DOT's Hawaii Drug and Alcohol Intoxicated Driving Working Group believes this measure will incentivize offenders to install and use an ignition interlock for its intended purpose, which is to help drivers separate drinking alcohol from driving.

The DOT urges the passage of S.B. 3165, S.D. 2, which will help keep Hawaii's streets safer for all roadway users.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-First State Legislature
Regular Session of 2022
State of Hawai`i

April 4, 2022

RE: S.B. 3165, S.D. 2, PROPOSED H.D. 1; RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.

Chair Nakashima, Vice Chair Matayoshi, and members of the House 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. 2, Proposed H.D. 1.

In 2021, the Department actively participated in a working group—coordinated and facilitated by the Department of Transportation, Highway Safety Division—to craft language that would significantly incentivize more offenders (convicted of operating a vehicle under the influence of an intoxicant (“OVUII”)) to install and use an Ignition Interlock device. The Department believes S.B. 3165, S.D. 1, Proposed H.D. 1, is consistent with the working group’s recommendations. In addition, the Proposed H.D. 1 contains language recommended by a similar working group in 2019 (pre-pandemic), which would strengthen laws against operating a vehicle while license suspended or revoked for OVUII (“HRS §291E-62”) and circumvention or tampering with an ignition interlock device (“HRS §291E-66”).

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. S.B. 3165, S.D.1, Proposed H.D. 1, would not only provide multiple incentives for offenders to install the device, but would also incentivize them to make better choices when using it (i.e. not drive while impaired, not circumvent or tamper with the device, etc).

Given the numerous and preventable alcohol-related crashes and fatalities that have occurred in Hawaii, the Department believes the changes presented in S.B. 3165, S.D. 2, Proposed H.D. 1, could more effectively address—and hopefully deter—impaired driving in the future. For this and all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports S.B. 3165, S.D. 1, Proposed H.D. 1. Thank you for the opportunity to testify on this matter.



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-6004
hi.state@madd.org

April 4, 2022

To: Representative Mark M. Nakashima, Chair, House Committee on
Judiciary and Hawaiian Affairs; Representative Scot Z. Matayoshi, Vice
Chair; and members of the Committee

From: Arkie Koehl, Public Policy Committee; Mothers Against Drunk Driving
(MADD) Hawaii

Re: Senate Bill 3165 HD2 Proposed HD1 – RELATING TO OPERATING A
VEHICLE WHILE INTOXICATED

I am Arkie Koehl, member of MADD Hawaii's Public Policy Committee speaking on behalf of the members of MADD Hawaii Advisory Board in **STRONG SUPPORT** of Senate Bill 3165 SD2 Proposed HD1.

MADD strongly supports this bill as it lengthens the driver's license revocation period for those convicted offenders who fail to install an ignition interlock device. At the same time, this bill rewards those offenders who install an ignition interlock device and abide by the guidelines without any violations.

An ignition interlock device is often the very first line of defense preventing a person who has been drinking from making a bad choice that could end in tragedy. Statewide, ignition interlock devices have prevented well over 100,000 such bad choices.

MADD Hawaii **STRONGLY SUPPORTS** Senate Bill 3165 SD2 Proposed HD1 and asks that this bill be passed. Thank you for the opportunity to submit testimony.



900 FORT ST. MALL, SUITE 1620 • HONOLULU, HI 96813
1-800-880-3394 • 808-695-2416 • SMARTSTARTINC.COM
FAX 808-695-2316

April 4, 2022

To: Representative Mark Nakashima, Chair; Representative Scot Matayoshi, Vice-Chair; and members of the House Judiciary Committee

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

Re: Senate Bill 3165, PROPOSED HD1 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, PROPOSED HD1.

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. This bill takes the approach of offering a reduced revocation period for demonstrating that the driver can be trusted. It requires a three-month period free of violations for a driver to be eligible for the reduced revocation period and establishes the nature of those violations. Therefore, we support it.

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 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 SB 3165, PROPOSED HD1.



JoAnn Hamaji-Oto

Territory Operations Director-Hawaii

Office: 808-695-2416 Cell: 808-782-7723

[Jhamaji-oto@smartstartinc.com](mailto:jhamaji-oto@smartstartinc.com)

Setting the Standard in Alcohol Monitoring Technology™