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H.B. No. 2526, HD2: RELATING TO TRANSPORTATION

Chair Chris Lee
Vice Chair Lorraine R. Inouye
Honorable Committee Members

The Office of the Public Defender **opposes** this bill.

This bill increases penalties for driving without a license by turning a misdemeanor into Class C felony. That means a non-violent driving offense can expose people to five years imprisonment.

This will not stop people from driving without a license. Most people who drive without a license are lawfully prohibited from getting a license because they cannot afford to pay off their court debt. Default judgments start small, but when financial constraints for living in one of the most expensive states in the Union add up, the balance grows until a license stopper is triggered. All the while, the need to go to work, buy groceries, and move from one place to another demand a motor vehicle.

The penalties for this crime are too severe. Forfeiting a motor vehicle for driving without a license may be unconstitutional. The Eighth Amendment's prohibition of excessive fines includes civil asset forfeitures. *Timbs v. Indiana*, 586 U.S. ___, 139 S.Ct. 682 (2019). That is because the United States Constitution protects people "against abuses of government's punitive or criminal-law-enforcement authority." *Id.* at 686.

Finally, increasing the penalty will also flood circuit courts with felony cases and cause a spike in the mass incarceration of the poor. The bill also takes away sentencing discretion from the trial court. These penalties perpetuate poverty, pile

on the already difficult financial situation for families, and strips judges of the discretion to impose a sentence that fits the crime.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE CHRIS LEE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS
Thirty-Second State Legislature
Regular Session of 2024
State of Hawai'i**

March 14, 2024

RE: H.B. 2526 H.D. 2; RELATING TO MOTOR VEHICLES.

Chair Lee, Vice Chair Inouye, and members of the Senate Committee on Transportation and Culture and the Arts, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) **supports** H.B. 2526 HD 2.

H.B. 2526 HD 2 increases the statutory penalties for repeat offenders who drive without a license or while on a suspended license. Upon the third conviction within five years, the offense would become a Class C felony. Under the current law, a person can be convicted again and again for the same behavior while facing no penalty greater than a misdemeanor.

Each conviction for unauthorized driving begins with a stop based on reasonable suspicion, usually for violating another traffic law. It also requires proof of the person’s license status on the date of the stop. And the prosecution must prove beyond reasonable doubt the motorist acted recklessly with respect to his or her license status. A third conviction therefore represents a pattern of continuing disregard for the motor vehicle licensing laws.

A Class C felony carries a maximum term of five years in prison, which presents a substantial deterrent. But grading this offense as a Class C felony upon a third conviction does not eliminate judicial discretion to impose an appropriate sentence. The bill prevents the court from discharging the case with a simple fine,¹ but does not require mandatory imprisonment.

¹ H.R.S. § 706-641(1) (West, Westlaw through Act 1 of the 2024 Regular Session) (“The court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, except in misdemeanor or petty misdemeanor cases.”).

Courts will have the option to place repeat offenders on probation for up to four years.² This probationary term can be shortened if the judge believes it appropriate.³ Judicial supervision can better ensure compliance with the law and identify the individual reasons for chronic unauthorized driving. By doing this bill will significantly contribute to making our roads and highways safer.

Thank you for the opportunity to testify.

² *Id.* § 706-623(1)(b).

³ *Id.* § 706-623(1).

HB-2526-HD-2

Submitted on: 3/12/2024 5:34:42 PM

Testimony for TCA on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kim Coco Iwamoto	Individual	Support	In Person

Comments:

I am testifying in Support of HB2526 HD2 with Amendments.

It is my understanding that this bill was introduced in honor of Sara Yara who was killed while crossing the street in a marked crosswalk. If so, I urge this committee to refer to this bill as "Sara Yara's Law."

The news reported that the alleged driver of the vehicle that killed Sara Yara, was stopped and cited 12 times for driving without a license in the last five years; he was convicted for only six of those offense before the fatal incident.

Police must be able to distinguish whether a driver has a valid license, but not on them at the time of the stop, versus whether the driver is unlicensed; the citation needs to clearly state that distinction. This is not about charging people who forgot their driver's license in a different purse or pair pants, this is about protecting the public from people who may not know how to drive or who have been adjudicated unsafe to drive and had their licensed revoked.

When people flagrantly violate the law designed to increase safety for the community, it often demonstrate a level of unwillingness to take responsibility and modify their behavior. Because mandatory minimums via elevated charges are ineffective deterrents of behavior, I urge this committee to remove the mandatory minimum sentencing language and replace with the following provisions that directly narrow the opportunities for habitually driving while unlicensed and will result in safer streets for all of our keiki.

When an officer accesses the DMV database at a traffic stop and realizes the individual was never issued a driver's license or had their license revoked, the police officer **should not let that unlicensed driver get back in the car and drive away**. The police should call the registered owner of the car to find out if the car was stolen or whether they gave permission to the unlicensed driver to drive their car.

The driver can either have another driver who is licensed drive the car away or have the car towed (not impounded) to a legal parking spot, until a licensed driver can drive the car to the car owner's home.

It is our understanding that this does not happen because its up to the ticketing officer's discretion and police often allow the unlicensed driver to get back in the car and drive off. The reason for this, we heard, is because there is no law that says otherwise and/or that the police think they would need to impound the car as evidence and they do not have the physical space to store the car. Again the car just needs to be left in a safe, legal spot, not impounded unless the car itself is evidence to a separate crime.

Realtime records should be kept regarding ownership of a vehicle when the driver is determined to be unlicensed and cited, available to the police and the courts. Upon conviction of driving while unlicensed, the judge shall order the owner of the car that was driven to sign a statement that affirms the following:

- they know the driver does not have a license,
- if this driver drives their car again, the owner understands they as the owner of the car may be subject to a fine,
- upon a third conviction of guilt for driving while unlicensed by the same defendant driving this same car - the car will be subject to asset forfeiture;
- owner knows their insurance company will be notified by the court that owner has permitted an unlicensed driver to drive a vehicle covered by that insurance company and the insurance company may take affirmative steps to adjust coverage or premiums.

If the car is financed by a commercial lender, it will give that institution cause to repossess the car.

If the car is owned by another household member, the owner may be motivated to get rid of the car by selling it or donating it. If they cannot stop their unlicensed household member from driving their car, the owner can report the car stolen by a household member.

Obviously cars reported stolen should not be seized by asset forfeiture.

The end result would be less unlicensed drivers driving on our roads.

Re: HB 2526—
RELATING TO MOTOR VEHICLES
Hawaii State Capitol & Via Videoconference
March 13, 2024

Committee Members

My name is Chevylyn Saniatan and I am here to give my Testimony as a Mom
I support with amendment

If you want to name it after my daughter Sara Yara. Please take a hard look that it was an
unlicensed driver that was behind the wheel and should not be behind the wheel.

Last year on February 15, 2023, my daughter Sara Yara, was killed by a hit and run
unlicensed driver while walking to school. My daughter was in a marked crosswalk on
Kapiolani Boulevard. I was later informed that the person who was apprehended and is
currently awaiting trial on this crime was driving the vehicle that killed my daughter
without a valid driver's license, had over 164 driving infractions on his record, and was
actually stopped and cited for driving without a valid driver's license in the previous
month I just do not understand why this habitual criminal was able and allowed to drive
away after being previously cited for driving without a valid license. With seeing that
amount of citations on his recorded the vehicle should have been taken away. The Bill
that is being presented has a loopholes for someone to still be able to get behind the
wheel and drive off. I am asking that you would take a close look and ask yourself if it
was you family member this happened to what would you do to fix the law, so no one has
to go through what I had to go through.

On this bill that you are presenting still allow a person to drive off until he or she is
pulled over for the 3rd time when their vehicle is taken or towed away. Why do you not
see a problem with this on the 1st or 2nd time would still allow an unlicensed driver to get
into an accident. All I ask is that this unlicensed driver call someone with a license to
drive the vehicle home or get it towed. We just continue to allow this kind of behavior
and we wonder why? It is not a pressing matter to you folks because it has not happen to
you that you loss a love one. I ask for you to put yourself in my shoe and you have all the
power to make wrong a right what would you want to be done to make our roads safe.
Also if this vehicle belong to this unlicensed driver than it means he has no insurance, so
what will happen if he or she gets into an accident the victims pay for their own damages
and I don't think it is fair on the victims. I can no longer bring my daughter back, but
with consequences to an action of an unlicensed driver would make them think twice
before getting behind the wheel and we could save more lives.

This amendment to the Highway Safety provisions of Hawaii's law is being proposed to
rectify these gaps in enforcement and judicial proceeding by providing tangible
consequences for driving without a valid driver's license here in Hawaii. It is my hope
and prayer that these amendments will make a person at least think twice about driving a
motor vehicle on our roads without a valid driver's license. If the proposed amendments
saves one other person from being killed by an unlicensed driver, then my daughter will
not have died in vain and another mother will not have to go through what my family has
endured this past year. Thank you.

HB-2526-HD-2

Submitted on: 3/12/2024 7:09:46 AM

Testimony for TCA on 3/14/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chad K Taniguchi	Individual	Support	Written Testimony Only

Comments:

To protect people from careless drivers we need stricter enforcement when drivers do not obey the basic requirements for the privilege of driving a dangerous weapon. Careless drivers need to be off the roads.

The public defender is concerned about people. Please look at the problem from the point of view of people harmed by careless driving.