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**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

**THE HONORABLE JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS**

**Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i**

March 30, 2017

**RE: H.B. 306, H.D. 2, S.D. 1; RELATING TO CONTINUOUS ALCOHOL
MONITORING FOR REPEAT OFFENDERS.**

Chair Keith-Agaran, Chair Tokuda, Vice Chair Rhoads, Vice Chair Dela Cruz, members of the Senate Committee on Judiciary and Labor, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony, in strong support of H.B. 306, H.D. 2, S.D. 1. The original bill (H.B. 306) is part of the Department's 2017 legislative package.

The purpose of H.B. 306, H.D. 2, S.D. 1, is to require people who are charged with a repeat offense of operating a vehicle under the influence of an intoxicant ("OVUII") to wear a continuous alcohol monitoring ("CAM") device for at least ninety (90) days, while awaiting trial. The language of this bill also leaves open the option for courts to require use of a CAM device as part of a convicted offender's sentencing.

In 2015, the National Highway Traffic Safety Administration ("NHTSA") reported that of the 93 traffic fatalities in Hawaii, 54% were alcohol or drug related. In 2016, there was a total of 120 traffic fatalities, 62 which have been processed, 32 which appear to be alcohol or drug related. Although the Department's primary role is to prosecute defendants after they commit an offense, our main interest is public safety and welfare, and to the extent criminal offenses can be prevented or minimized, the Department is dedicated to exploring and/or expanding all effective methods of prevention.

In crafting H.B. 306, and every amendment that we have recommended since, we have worked diligently with other stakeholders to share ideas and explore various ways in which this type of technology could be applied most effectively in Hawaii. The current version of the bill

would leave existing bail procedures exactly as they are now, from the time of arrest to the person's initial court appearance, except that the initial court appearance would be expedited for repeat OVUII offenders. After the initial court appearance, the person would have five (5) business days to get the CAM device fitted by the designated vendor. The vendor would then be responsible for assessing the appropriate level of payment, and would cover up to the full amount of any fees for the device—based on the person's financial ability to pay—similar to the statute already in place for ignition interlock. The CAM device vendor would also be responsible for monitoring each device for any violations.

Based on further discussion with stakeholders, we respectfully recommend the following amendments to H.B. 306, H.D. 2, S.D. 1:

- Page 1, line 11 – add “as a result of having consumed alcohol” to the end of the line;
- Page 3, line 9 – replace “license revocation or suspension” with “arrest”

While we understand that specific procedures for implementing the use of CAM devices may still evolve as the legislative session progresses, we do believe that pre-trial application is important, to minimize the chance that defendants will consume alcohol—and minimize the risk of them injuring themselves or others—while awaiting trial. In our experience, this is typically a period of several months, during which time we have often suspected that defendants are continuing to drive impaired on other occasions.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 306, H.D. 2, S.D. 1, with the proposed amendments. Thank for you the opportunity to testify on this bill.

Senate Committees on Judiciary and Labor and Ways and Means

**Regular Session of 2017
State of Hawaii
29th Legislature
March 30, 2017**

RE: HB 306 HD2 SD1; Relating to Continuous Alcohol Monitoring For Repeat Offenders

I am pleased to submit to you the following testimony in **strong support** of HB306 HD2 SD1.

HB 306 HD2 SD1 and the deployment of continuous alcohol monitoring devices, which test for the consumption of alcohol every 30 minutes (48 times per day), is an effective tool at reducing the incidents of people who are charged with a repeat offense of operating a vehicle under the influence of an intoxicant ("OVUII").

This technology can and should be used in conjunction with ignition interlock devices, as they are both effective tools to reduce the incidents of impaired driving. According to MADD Hawaii, the ignition interlock installation rate is about 20% of all OVUII offenders who qualify. The remaining 80% are living in the community without any monitoring for alcohol. Thus, they can continue to reoffend until their next arrest.

As you know, in 2014 Hawaii experienced 95 traffic fatalities, 32 of which involved an alcohol-impaired driver.ⁱ Additionally, in 2015 police reportedly made 5,250 arrests for OVUII in Hawaii; 4,605 of which were in the City/County of Honolulu.ⁱⁱ Of those, 35% were repeat offenders.ⁱⁱⁱ

Although the continuous alcohol monitoring device does not stop the car from driving, it does deter the behavior of drinking. Nationally, **99.3% of SCRAM days are Sober Days**, meaning there are no confirmed drinking or circumvention events. Thus, when people are sober, they are not committing the crime of OVUII.

There is published research to support the aforementioned data. A study conducted by the National Center for State Courts examined the effects of SCRAM bracelets on criminal recidivism. Flango and Cheesman (2009) compared re-arrest rates for 144 offenders who were placed on SCRAM to those of comparable offenders who were not placed on SCRAM. The groups were matched carefully by age, race, gender, county of residence, number of prior DUI offenses, and number of any prior offenses. The researchers found that **only 3% of offenders on SCRAM recidivated while they were wearing the device**, and repeat DUI offenders who

ⁱ <https://www-fars.nhtsa.dot.gov/States/StatesAlcohol.aspx>

ⁱⁱ Honolulu Police Department's Annual Report 2015.

ⁱⁱⁱ http://www.courts.state.hi.us/news_and_reports/featured_news/2014/03/2014_graduation.



were put on SCRAM for at least 90 days recidivated at half the rate as those not placed on SCRAM (10% vs. 21%, $p < .05$).^{iv}

In an effort to ensure continuous alcohol monitoring devices are available to all individuals ordered to them, one possible provider of the technology has stated it will “never deny enrollment of an individual because of their inability to pay or dismissal from the program for a client’s inability to pay.”

This provider will conduct a financial assessment for each individual ordered to continuous alcohol monitoring to determine his/her ability to pay. This process ensures indigent clients are identified and appropriate cost considerations are made, including monitoring at no cost or setting affordable fees and payment terms. The financial assessment process can continue during the client’s monitoring period as clients may enter the program unemployed and gain employment thereafter.

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^{iv} Flango, V. E., & Cheesman, F. L. (2009). The effectiveness of the SCRAM alcohol monitoring device: A preliminary test. *Drug Court Review*, 6(2), 109–134.



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March 30, 2017

To: Sen. Gilbert Keith-Agaran, Chair, Senate Committee on Judiciary & Labor; Sen. Karl Rhoads, Vice Chair; and members of the Committee

Senator Jill Tokuda, Chair, Senate Committee on Way & Means; Vice Chair Donovan Dela Cruz; and members of the Committee

From: Arkie Koehl & Carol McNamee, MADD Hawaii

Re: House Bill 306 HD2 SD1 — Relating to Continuous Alcohol Monitoring for Repeat Offenders

The members of Mothers Against Drunk Driving Hawaii have reluctantly concluded that we must **oppose** House Bill 306 HD2 SD1. We have a number of concerns about this bill and we strongly believe that the issues need to be worked out in the official meetings of the Hawaii **Impaired Driving Task Force** which was formed by the Governor and is administered by the State Department of Transportation. We ask that the bill be deferred until the opening of the 2018 Legislative Session and that there be a mandated report from the Task Force giving a summary of its deliberations and its specific recommendations for any possible amendments to this bill.

This measure was not brought before the Task Force during the current session and therefore there was no Task Force testimony, recommendation, or comments to guide the 2017 House and Senate committees.

MADD Hawaii's major questions and concerns are as follows:

- CAMs do not prevent an offender from drinking and

driving.

- If an expensive device like SCRAM is mandated by law, it is doubtful that an offender will elect to install an Ignition Interlock device (which is not mandated) in addition to SCRAM.
- The bill states that there will be a single vendor. Because there is more than one company offering transdermal alcohol monitors, and many more offering portable breath devices, will the Committees recommend a review of all such devices, or is it their intention to allow the State's procurement process to be waived?
- The cost of the device, should SCRAM be the selected vendor, is at least \$13 - \$15 per day for a minimum of 90 days plus the initial installation charge. This raises serious concerns:
 - Many offenders who are not considered officially "indigent" will find the costs to be prohibitive: installation, monthly fee, and possible repeated bail payments. Will the sanction for this group of offenders be prison?
 - The vendor offers only "partial financial relief" for indigent offenders. Presumably the state picks up the remaining cost. Has this been budgeted?
 - Have less expensive alternatives to CAM been considered? Mobile breath-testing devices with multiple daily online reporting and digital camera verification cost around \$3 per day, the same cost as interlocks.
- What will be the cost to the state of manpower (presumably Public Safety personnel) to deal with the offenders who violate the order not to drink, as shown by the CAM device, and who will need to have a bail forfeiture hearing — or multiple, repeated bail forfeiture hearings?
- A number of repeat offenders will be severely alcohol dependent and will be physically unable to stop drinking. What provisions will be made for this group of people?
- The Foundation for Advancing Alcohol Responsibility, the alcohol industry's educational program, understands the limitation of CAM and suggests its proper use (bold type ours): "Unlike an interlock, **CAM does not**

prevent an individual from driving after consuming alcohol. The transdermal readings accurately reflect BACs, but there is a delay due to the process of absorption and elimination of alcohol from the body. As a result, this technology is frequently utilized to monitor drinking behavior and is often used **in conjunction with or as a supplement to the alcohol interlock.**”.

The members of MADD Hawaii therefore strongly urge that this matter be studied by the Impaired Driving Task Force as expeditiously as possible, that a revised draft of the bill be submitted to the 2018 session, and that the effective date be January 1, 2019, giving time for the procurement process and the drafting of necessary administrative rules.

Thank you for this opportunity to submit testimony.



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March 30, 2017

To: Senator Gilbert S.C. Keith-Agaran, Chair; Senator Karl Rhoads, Vice Chair and members of the Senate Committee on Judiciary and Labor.

Senator Jill N. Tokuda, Chair; Senator Donavan M. Dela Cruz, Vice Chair and members of the Senate Committee on Ways and Means.

From: JoAnn Hamaji-Oto, State Director, Smart Start LLC, Hawaii Corporate Office.

Re: House Bill 306, SD1— Relating to Continuous Alcohol Monitoring for Repeat Offenders.

My name is JoAnn Hamaji-Oto and I am the State Director for Smart Start LLC, Hawaii Corporate Office and the current vendor contracted by the Hawaii Department of Transportation to install and service ignition interlocks in the state of Hawaii. I am offering testimony in strong opposition of HB 306, SD1 relating to continuous alcohol monitoring (CAM) for repeat offenders as written. Our concern is that the current language on the bill limits alcohol monitoring to one technology which is CAM devices and it does not allow the use of all alcohol monitoring technologies such as portable alcohol monitoring devices and ignition interlocks. While a CAM anklet is a useful tool in monitoring for alcohol use in OVUII offenders, it does not provide instant notification of an alcohol positive test. More importantly, a CAM anklet in no way deters or stops someone from consuming alcohol and as well as a drunk driver from driving. Interlocks is the only technology and the single most effective way to keep a drunk driver from turning the key on their car and wreaking havoc on our roadways.

Interlocks prevent a drunk driver from starting their car if their breath alcohol concentration (BrAC) exceeds a set point (typically .020). Drivers must provide a breath sample by blowing into an interlock device before starting their car. If the BrAC is over the set point, the car will not start. The interlock also requires a driver to provide breath tests at regular intervals while driving (rolling retests). This is to prevent drivers from asking a sober person to start the car and/or consume alcohol while driving. A data recorder logs the driver's BrAC for each attempt to start the vehicle and each rolling test.

The daily cost for an interlock is less than \$3.00 per day (includes the monitoring fees, calibration and device rental) versus the daily cost of a CAM anklet, which is on average is at \$12-\$15 per day. There may also be an additional cost for the CAM equipment rental. When comparing the cost of both devices, an interlock is a much more feasible option for repeat OVUII offenders. The current interlock law allows for OVUII offenders to install an interlock voluntarily if they want to drive. **It is not mandated to install an interlock after an OVUII arrest and/or conviction.** Offenders

can wait out their period of revocation without ever having to install an interlock and get their license reinstated.

Scram Systems has submitted testimony in support for this measure stating that jurisdictions that have utilized SCRAM CAM devices have resulted in a 90% reduction in the number of repeat DUI arrests within the first year, a 12% decrease in DUI victims and a significant decline in the number of alcohol related crashes. These reported statistics are specific to a Target 25 program implemented in York County, Pennsylvania. What is not mentioned in the testimony is that the Target 25 program utilizes not only the SCRAM CAM devices which is only one component of the program, they have also incorporated intensive supervision and treatment components into the program. The SCRAM CAM devices alone did not contribute to the reported statistics. This bill does not provide for the intensive supervision or treatment for repeat OVUII offenders which is critical for this category of offenders to address their issues of alcohol addiction and to affect a change in behavior.

According to MADD's 2016 Ignition Interlock report, interlocks stopped 1.77 million drunk drivers from starting their cars. Numerous research studies have proven that interlock devices reduce recidivism by 50% to 90% when installed in and maintained on an OVUII offender's vehicle.

Since the implementation of Hawaii's Ignition Interlock law in 2011, the interlock has prevented more than 72,612 drunk driving attempts in the state of Hawaii. In 2016, that number alone was at 12,685 drunk driving attempts. Alcohol traffic related fatalities have also decreased from a reported 51 alcohol related fatalities in 2012 to 32 alcohol related fatalities in 2016. The interlock did what it was supposed to do, it prevented drunk drivers from starting their cars protecting me, you, your family, your colleagues and constituents from drunk drivers and the injuries and deaths it causes.

We strongly urge that HB 306 HD2 be amended and expanded to include the use of all alcohol monitoring technologies and **require the mandatory installation of an ignition interlock on repeat OVUII offenders**. They should be made to comply with the requirements to install an interlock and not be given the choice of waiting out the revocation period before their driver's license is reinstated which is what they are currently allowed to do. A 2016 interlock study by the University of Pennsylvania has found that states that mandate the devices for all drunk drivers have seen a 15% decline in alcohol related traffic fatalities and noted that this percentage is comparable to the number of lives saved by airbags each year. The conclusion of the study is compelling: ignition interlock effectively reduces alcohol-related fatal crashes.

Interlocks have been around and have survived court challenges for over 30 years. Currently there have been over 330,000 interlocks that have been installed nationwide. An interlock will separate drinking from driving, help save lives and keep Hawaii roads safe from drunk drivers.

Thank you for the opportunity to provide written testimony.