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THE HONORABLE LORRAINE INOUE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

March 20, 2017

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

Chair Inouye, Vice Chair Dela Cruz 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 strong support of H.B. 306, H.D. 2. The original bill (H.B. 306) is part of the Department’s 2017 legislative package.

The purpose of H.B. 306, H.D. 2, 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. **Attached, please see a Proposed S.D. 1 for the Committees’ consideration**, which will address the matter of indigent defendants without State funding.

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 has been 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 (alleged) 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, H.D. 2, and our Proposed S.D. 1, 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. While we understand that specific procedures for implementing the use of CAM devices may continue to evolve, we strongly 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, with the proposed amendments. Thank for you the opportunity to testify on this bill.

Report Title:

Honolulu Prosecuting Attorney Package; Continuous Alcohol Monitoring; Driving Under the Influence

Description:

Requires persons charged with operating a vehicle under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant to be fitted with a continuous alcohol monitoring device if the person: (1) has a prior conviction for operating a vehicle under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant within the past five years; or (2) is currently pending criminal investigation or prosecution for one or more prior charges of operating a vehicle under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant. Establishes a process for certain persons to receive financial relief for the cost of the monitoring devices. Takes effect on 1/7/2059. (Proposed SD1)

A BILL FOR AN ACT

RELATING TO CONTINUOUS ALCOHOL MONITORING FOR REPEAT OFFENDERS.

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

SECTION 1. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§291E- Continuous alcohol monitoring device; requirement; penalties. (a) Any person charged with a violation of section 291E-61 or 291E-61.5, as a result of having consumed alcohol:

(1) Who is a repeat intoxicated driver~~Within five years of a prior conviction for an offense under section 291E-61 or 291E-61.5;~~ or

(2) While pending criminal investigation or prosecution for one or more prior charges of violating section 291E-61 or 291E-61.5,

shall refrain from consuming any alcohol and ~~shall~~ submit to monitoring by a continuous alcohol monitoring device, for a period of no less than ninety days. If, following the person's arrest, the person is released on bail by the sheriff, deputy sheriff, chief of police, or any person named by the chief of police, the person shall be scheduled for an initial court appearance within five business days.

(b) At the person's initial court appearance, the person shall be ordered to refrain from consuming any alcohol and to submit to monitoring by a continuous alcohol monitoring device, for a period of not less than ninety days, as conditions of release on bail. As further conditions of release on bail, the person shall be ordered to refrain from removing, obstructing, or tampering with the device during the applicable period. The applicable period may be extended by the court at any time, beyond ninety days, as reasonably necessary to ensure the safety of the community, but may not be shortened or suspended. The person shall be fitted with a continuous alcohol monitoring device within five business days of the person's initial court appearance.

(c) If the device is removed upon being taken into custody by the department of public safety, or for a verified medical emergency, such removal shall not be considered a violation of conditions of release on bail, and the applicable period shall be suspended. The person shall be refitted with a continuous alcohol monitoring device at the earliest possible opportunity, at which time the applicable period shall resume.

(ed) The device shall be fitted, maintained and monitored by a single vendor statewide. All costs associated with the monitoring device, including administrative and operating costs, shall be paid by the person, except that the vendor shall provide partial financial relief for the fitting and maintenance charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of

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~~either food stamps under the Supplemental Nutrition Assistance Program, or free services under the Older Americans Act or Developmentally Disabled Assistance and Bill of Rights Act. -If at any time a court finds that the person lacks the financial ability to pay all or part of the costs for a continuous alcohol monitoring device, the court may authorize the State to finance the person's use of a continuous alcohol monitoring device. A determination that the person lacks the financial ability to pay all or part of the costs for a monitoring device shall be based upon an appropriate inquiry into the financial circumstances of the person and an affidavit or a certificate, signed by the person, demonstrating the person's financial inability to pay the costs for a continuous alcohol monitoring device.~~

~~(de)~~ For purposes of this section, and notwithstanding any law to the contrary, if the person violates any of the conditions of release on bail as specified in subsection (b), the person's bail shall be declared forfeited and bail shall be reset in the same amount or higher. Such judgment shall not be vacated, nor shall the forfeited bail be reinstated.

~~(ef)~~ Nothing in this section shall prevent a court from ordering a defendant to submit to monitoring by a continuous alcohol monitoring device as a condition of release on bail, recognizance, supervised release or sentencing, for violation of section 291E-61 or 291E-61.5 as a first offense, or for violation of any other section, if otherwise permitted by law."

SECTION 2. Section 291E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Continuous alcohol monitoring device" means any device or instrument that:

(1) Is attached to the person;

(2) Is designed to automatically test the alcohol content in a person by contact with the person's skin at least once per one-half hour regardless of the person's location;

(3) Detects the presence of alcohol; and

(4) Detects attempts to tamper with, obstruct, or remove the device."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2050.

INTRODUCED BY: _____

Testimony of Attiana Harper

IN SUPPORT OF HB NO 306., RELATING TO CONTINUOUS ALCOHOL MONITORING FOR REPEAT
OFFENDERS

Twenty-Ninth Legislature, State of Hawaii

March 20, 2017

This bill is for the amendment of Hawaii State Statute S291E which describes the offense of operating a vehicle while under the influence of an intoxicant. The passing of this bill could help in making the communities in Hawaii a safer place by enforcing more strict punishments for those who do not respect the lives of others. This bill also states that the cost of the monitoring device shall be paid for by the person who must wear it. The court will inquire into whether the person can pay for the device themselves, if they cannot then the state will finance it. This bill could help save a life and therefore, should be passed.

When I was 16 years old, I bought my first car. Within a month of purchasing my car, my mother who had borrowed it to go to work, was driving home – cones were out, extending the lanes, when my mother was sideswiped by a drunk driver. My mother called me from a nearby establishment, and I could hear the male in the background pleading with my mother not to call the police as it was his 7th DUI, and that he'd pay for all the damages. As it was near where we lived, I called the police and hightailed it over to where my mother had been hit. My bumper was torn off the front of my car, and my mother was visibly shaking, though thankfully not hurt (whiplash that became apparent later, but, considering what could have happened...)...the police officers though were next to the male who had hit my mother and car and seemed to be having a pleasant conversation – with when I made an outburst the officer at first blowing me off, and telling me to just leave – though the second officer told him to stop, and he turned away and didn't even look back at us again. We left.

All of this could have been prevented, if stronger DUI laws had been in place. If he couldn't get behind the wheel after drinking...If he hadn't been allowed to keep on drinking and driving after so many incidents...

I've read only a little about the SCRAM bracelet and the testimony's given by Lancaster PD and some other sites. So, can only say that it might be the cost associated with the SCRAM bracelet as there they seem to have defendants that foot the entire bill (which seems to be the one time installation fee ranging from \$50-\$100, plus the daily charges of \$10-\$15 depending on the vendor – so approximately \$550 for 30 days, with most sentences listed as being a 60-90 day, so \$1100 or \$1650, taking the highest billing charges listed) might be a deterrent, if the person charged with the DUI has to foot the bill. (at least it would be less drinking money to spend) but I disagree if “If at any time a court finds that the person lacks the financial ability to pay all or part of the costs for a continuous alcohol monitoring device, the court may authorize the State to finance the person's use of a continuous alcohol monitoring device.” is implemented, as then we're just pushing another burden onto the community, that doesn't actually prevent an alcoholic to stop drinking before stepping into a vehicle, where they may cause harm to another besides themselves. (And there are people who know how to work the system...and personally if they have enough money to be out drinking and driving, then they should be paying the fine...even if it's in increments...) If we're talking about a device that prevents them from driving or operating a vehicle, I personally can see my tax dollars going to something that will actually be of a benefit, but not for some item that will just detect alcohol.