



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Sixth Legislature, 2011 Regular Session

House Committee on Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Tuesday, March 1, 2011
1:00 p.m.
State Capitol, Conference Room 308

by
Marie C. Laderta
Chief Adjudicator
Administrative Driver's License Revocation Office (ADLRO)

Bill No. and Title: House Bill No. 1435, H.D. 2, Relating to Highway Safety

Purpose: To allow repeat intoxicated drivers to install ignition interlock devices in their vehicles by eliminating the revocation of the motor vehicle registrations of such drivers. Also allows persons with lifetime administrative revocations to qualify for relicensing and makes housekeeping amendments to Chapter 291E, HRS.

Judiciary's Position:

The ADLRO has serious concerns with the lack of safeguards and specificity with the subsequently proposed amendments in Sections 15 and 16 of the bill, which would permit individuals, who have previously received an administrative lifetime revocation of their licenses, to be able to drive with an ignition interlock device and to be eligible for relicensing. These additionally proposed amendments, not originally contemplated by the task force, make implementation by the ADLRO burdensome and in some cases impossible without further study and specificity of the processes needed to reasonably implement the overly broad language.

For example, Section 16 of the bill authorizes the ADLRO to issue a temporary permit to those individuals who have received an administrative lifetime revocation of their license. However, there is not the usual motor vehicle licensing requirement (such as a vision test, etc.) to



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assure that these drivers who allegedly have not been driving for an extended period of time, are still physically or otherwise fit to drive.

The ADLRO recognizes that the clarifications proposed by this measure as originally introduced seek to reconcile inconsistencies within the law. On January 1, 2011, Act 171, SLH, as amended by Act 88, SLH 2009, as further amended by Act 166, SLH 2010, became law. The Acts amend Chapter 291E, HRS, relating to use of intoxicants while operating a motor vehicle to require the use of ignition interlock devices by any person whose driver's license is revoked for operating a vehicle while under the influence of an intoxicant (OVUII).

Act 171 stated that the purpose of the law is to require use of ignition interlock devices so that persons arrested for OVUII (hereinafter referred to as "respondents") can drive, but are prevented from drinking and driving, during the pendency of the case and the revocation period thereafter. According to the statement of purpose, "the requirement of installation of an ignition interlock device would replace the provisions to take custody of the motor vehicle registration and number plates and to issue conditional license permits." Emphasis added.

Notwithstanding the foregoing, §291E-41(b) (2), (3) and (4), HRS, of the law which took effect on January 1, 2011, revokes the motor vehicle registration of any vehicle registered to a respondent who has more than one alcohol enforcement contact during certain specified periods of time while §291E-41(b), HRS, requires that except for certain limited classes of respondents, a respondent "shall keep an ignition interlock device installed and operating in any vehicle the respondent operates during the revocation period." The revocation of the motor vehicle registration of respondents with multiple OVUII revocations effectively forecloses such respondents from driving during the revocation period because they would be unable to operate an unregistered vehicle. The only recourse for such respondents would appear to have the owner of a vehicle agree to the installation of an ignition interlock device in his/her vehicle and allow the respondent to drive that vehicle.

The Administrative Driver's License Revocation Office, which administers the driver's license revocation law, has already encountered problems dealing with respondents who have multiple OVUII revocations and who desire to install an ignition interlock device in their motor vehicle.

This measure also makes housekeeping amendments to Chapter 291E, HRS, for purposes of efficiency and consistency. Of the housekeeping amendments, two may appear to substantively change the law, and therefore, are addressed in this testimony.

Section 3 of the bill amends the definition of "repeat intoxicated driver" to include "drug enforcement contacts" as a factor in defining a person as a repeat intoxicated driver. Under the present definition, only alcohol enforcement contacts are used to determine if a person is a repeat



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intoxicated driver. However, §291E-41, HRS, which sets forth the periods of license revocation mandated for repeat offenders counts prior drug enforcement contacts, as well as alcohol enforcement contacts, to impose longer periods of revocation for repeat offenders. The proposed amendment makes the definition consistent with §291E-41, HRS. The amendment also clarifies that a repeat intoxicated driver is someone who has two contacts during the five years preceding the date of the latest arrest. The present definition states that two contacts during the preceding seven years makes a person a repeat intoxicated driver. Again, the proposed amendment makes the definition consistent with §291E-41, HRS, which uses two contacts within five years, rather than seven years.

The ADLRO is willing to work with the ignition interlock implementation task force to monitor the law and make suggested improvements, if needed.

Thank you for the opportunity to testify on House Bill No. 1435, H.D. 2.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**WRITTEN
ONLY**

LORETTA FUDDY, ACSW, MPH
ACTING DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Finance

HB 1435 HD-2, RELATING TO HIGHWAY SAFETY

**Testimony of Loretta Fuddy, ACSW, MPH
Acting Director of Health**

March 1, 2011

Department's Position: The Department of Health opposes HB1435 HD-2.

Fiscal Implications: None.

Purpose and Justification: HB1435 HD-2 does not reflect the original intentions of this bill, and the Ignition Interlock Task Force opposes it. In addition, the language adopted in this bill, if enacted, weakens the current Ignition Interlock Law (Act 166). The Department of Health supports the Department of Transportation's position relating to SB 825 SD1.

Thank you for the opportunity to testify.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE MARCUS R. OSHIRO, CHAIR
HOUSE FINANCE COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

March 1, 2011

RE: H.B. 1435, H.D. 2; RELATING TO HIGHWAY SAFETY.

Chair Oshiro, Vice Chair Lee, and members of the House Committee on Finance, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 1435, H.D. 2.

Last year, the Ignition Interlock Implementation Task Force lobbied to pass 2010 Hawaii Session Laws 166 or Act 166 that amended Chapter 291E, Hawaii Revised Statutes, which required repeat intoxicated drivers to surrender their motor vehicle registrations and license plates. However, this new requirement conflicted with another mandate that was created in Act 166, which required an individual whose license and privilege to operate a vehicle, and motor vehicle registration if applicable, were administratively revoked, to obtain an ignition interlock permit in order to operate a vehicle during the revocation period if the individual had a valid license at the time of the arrest. Under current law, if a repeat intoxicated driver had his motor vehicle registration and license plate revoked, and he or she had a valid driver license at the time of arrest, he or she cannot participate in the ignition interlock program without violating the vehicle license and registration law that requires one to have a valid vehicle license and registration in order to drive.

Therefore, the purpose of H.B. 1435, H.D. 2 is to correct this mistake of conflicting laws to allow repeat intoxicated drivers to install ignition interlock devices in any vehicle they operate by eliminating the requirement to surrender motor vehicle registrations and license plates.

One substantive change that was included in the House Draft 2 of House Bill 1435 is language that allows persons who have had licenses administratively revoked for a lifetime to be eligible to participate in the ignition interlock program. Our department supports this amendment and will work with all parties on the final language.

Finally, there are housekeeping or technical amendments to Chapter 291E, Hawaii Revised Statutes. For these reasons, we strongly support the passage of H.B. 1435, H.D. 2. Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE TTN-LC

March 1, 2011

The Honorable Marcus R. Oshiro
and Members
Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 1435, H.D. 2, Relating to Highway Safety

I am Major Thomas Nitta of the Traffic Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 1435, H.D. 2, Relating to Highway Safety, as it has the recommendations of the Interlock Implementation Task Force. These recommendations were discussed; it was the consensus of the task force that these recommendations be submitted for legislative action.

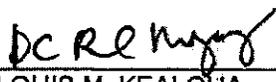
The police department further supports the position of the State Department of Transportation on House Bill No. 1435, H.D. 2, that persons with lifetime revocations should be reviewed on a case-by-case basis and that the Interlock Implementation Task Force confer and address this issue.

The task force is composed of many stakeholders, including the State Department of Transportation, Department of the Prosecuting Attorney, Office of the Public Defender, law enforcement, the Judiciary, Administrative Driver's Licensing Revocation Office, parole office, driver's licensing, and Mother's Against Drunk Driving.

Thank you for this opportunity to testify.

APPROVED:

Sincerely,

for 
LOUIS M. KEALOHA
Chief of Police


THOMAS T. NITTA, Major
Traffic Division



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association
February 28, 2011

H.B. 1434, H.D. 1 – RELATING TO
PUBLIC WORKS PROJECTS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of the original H.B. 1434, which seeks to clarify that a single violation of the prevailing wage law refers to each separate project where the Department of Labor and Industrial Relations finds a contractor in violation. We believe it is in the public's interest to have such serious violations classified as separate violations and not to be bundled as they have been under current law.

For that reason, we oppose H.B. 1434, H.D. 1 and respectfully urge the passage of a bill containing the original language of H.B. 1434. Thank you for the opportunity to provide testimony.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

TESTIMONY IGNITION INTERLOCK TASK FORCE

H.B. 1435, H.D. 2 RELATING TO HIGHWAY SAFETY House Committee on Finance

March 1, 2011

House Bill 1435, HD-2 clarifies recommendations of the ignition interlock task force; allows repeat intoxicated drivers to install ignition interlock devices in any vehicle they operate by eliminating the requirement to surrender their motor vehicle registrations and license plates; makes provisions to allow lifetime revocation drivers to obtain a permit to drive an ignition interlock equipped vehicle; deletes the section to extend the ignition interlock task force; and sets the effective date of this be to January 7, 2059.

The Ignition Interlock Task Force opposes House Bill No. 1435, HD2 and supports the original House Bill No. 1435 and Senate Bill 825, SD1. It was realized this year that repeat offenders should not have their vehicle registration revoked to be eligible to enter into the ignition interlock program. Therefore, it is necessary to remove all references to the revocation of the vehicle registration and license plate impoundment from the statutes. The Task Force is in strong support of this original important purpose of the bill.

However, the recent amendments to allow lifetime revoked drivers to re-enter the interlock program by issuing temporary permits would be a mistake and a detriment to highway safety. The Administrative Drivers License Revocation Office (ADLRO) has calculated that there are a total of 1,915 individuals with lifetime revocations for operating a vehicle under the influence of an intoxicant (OVUII) since ADLRO started. Of these lifetime revocation drivers, 397 of them have had more than one lifetime revocation. It is reported that one of these drivers has had 10 lifetime revocations. This is unacceptable by any standard. The Ignition Interlock Task Force is aware that lifetime revocation drivers may change their style of life and may be worthy of driving. Keep in mind that in order to have a lifetime revocation, these drivers must have been arrested for OVUII three or more times. The task force is willing to have these drivers evaluated for eligibility for an interlock permit on a case-by-case basis through a system of petition for a judicial review.

However, to address this issue, it may be necessary that the task force remain active for another year to draft amendments and to make other necessary amendments that may occur during this initial period of the program's inception.

The Ignition Interlock Task Force recommends that House Bill No 1435, HD2 be amended by:

- HB 1435, HD2 deleting page 44, lines 8 and 9, "[;] except as provided in section 291E-45(b);
- HB 1435, HD2 deleting pages 47 and 48, lines 12 through 21 and 1 through 19.
- Re-instate Section 24 of HB 1435, HD1 to extend the Ignition Task Force for another year ending June 30, 2012.
- Amend the effective date to read June 29, 2011.

Thank you for the opportunity to testify.

CAROL McNAMEE
Vice Chair, Ignition Interlock Task Force



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March 1, 2011

To: Representative Marcus R. Oshiro, Chair –House Committee on Finance;
Representative Marilyn B. Lee, Vice Chair and members of the Committee

From: Carol McNamee—Chairman, Public Policy Committee - MADD Hawaii

Re: House Bill 1435, HD 2 – Relating to Highway Safety

I am Carol McNamee, offering testimony on behalf of the Hawaii chapter of Mothers Against Drunk Driving in support of the original HB 1435 but in opposition to recent amendments found in HB 1435, HD1 and HD 2. I am also speaking as Vice Chairman of the Hawaii Ignition Interlock Implementation Task Force.

This bill amends Act 166 which, along with previous Acts 171 and 88, established the Ignition Interlock system for the state of Hawaii. This program was implemented on January 1st of this year. MADD opposes the House Draft 1 amendments which broaden the scope of the system to retroactively include respondents who have received lifetime revocations since the year the Administrative Drivers License Revocation law first went into effect. The ADLR Office has calculated that there is a total of 1,915 individuals in our state with lifetime revocations. Of that number, 397 recipients have had more than one lifetime revocation. One person has had 10 lifetime revocations! MADD does not object to the concept of giving at least some lifetime revocation recipients the ability to drive again with an ignition interlock. We believe that creating a workable and responsible system needs time and the input of all the State and County agencies involved in Hawaii's Interlock program.

House Bill 1435 clarifies and resolves several language and numbering issues to conform the statutes relating to the interlock program. In addition, a vitally important purpose of House Bill 1435 is to correct a problem which was not realized at the time of passage of the final draft of the Task Force's Interlock bill - SB2897 - in the last legislative session. In trying to keep sanctions in place for repeat offenders who do not install an interlock device, the provisions for the administrative revocation of vehicle registrations and the impoundment of license plates were reinserted in SB2897 last year. When the Task Force reanalyzed that action a few months ago, it determined that there was a legal conflict between the revocation of vehicle registration and the interlock program that was best resolved by deleting the requirement that "respondents" with prior OVUII enforcement contacts have their vehicles' registrations revoked and the vehicles' license plates impounded.

Because of this statutory conflict, at the present time repeat intoxicated drivers are not eligible to install an interlock device and obtain an interlock permit because their vehicle registration has been revoked. The Task Force is eager to correct this situation so that all OVUII drivers with a valid license at the time of arrest can receive an interlock device. This bill removes all references to vehicle registration revocation and license plate impoundment for respondents with prior alcohol or drug enforcement contacts. The measure will go into effect on July 1, 2011 and after its effective date, repeat intoxicated drivers arrested on or after January 1, 2011 will be able to apply for an ignition interlock device to use for the remainder of their revocation periods.

MADD Hawaii, as a member of the Ignition Interlock Implementation Task Force, opposes the recent amendments to HB 1435 which allow lifetime revocation recipients to receive a "temporary permit" to drive an ignition interlock equipped vehicle. The Task Force recognizes the need to discuss and evaluate the possibility of including this group of "respondents" in the interlock program. However, the Task Force finds that the proposed language in House bills 1435 HD1 and HD2 is not a fair and equitable means to include lifetime revocation recipients in the interlock program but it is willing to work with the Task Force on new language to present to the legislature either later in this session or by the beginning of the 2012 session. We understand that an expanded program needs to be well thought out and contain minimal implementation costs to the State. MADD asks that Section 16; Section 291E-45 (b) from line 12 on page 48 through line 19 on page 48 be removed.

This bill deleted a section of the original HB1435 that extended the Task Force until June 30, 2012. Extending the task force would be of no cost to the State and it would officially keep the members together to evaluate the statutes that it worked three years to create. It could then suggest amendments to augment or strengthen the program as necessary. MADD respectfully requests that the provision for the extension of the Task Force to June 30, 2012 be reinstated by this committee.

MADD Hawaii asks the Finance committee to pass House Bill 1435, HD2 with its recommended changes. It is a vitally important measure to correct a serious problem in the core interlock program. It is also an inappropriate vehicle in which to bring forth new issues.

Thank you for this opportunity to testify.

February 28, 2011

Representative Joseph Souki
Chairman of Committee on Transportation

H.B. NO. 1435 H.D. 2
House Finance Comm.
March 1, 2011 1 p.m.
Room 308

Representative Marcus Oshiro
Chairman of Committee on Finance

I am writing to alert you to an urgent matter regarding the current ignition interlock law. Specifically, "repeat offenders" who were arrested prior to the effective date of the new law, (1/1/11) are not being afforded the same rights to be sentenced under the same penalties as those who are arrested after it's effective date. Not only is this unfair, but it runs counter to the intent of the legislation. It is causing a huge inequity in its application. It is out of step with federal sentencing law, which states a defendant's sentence should be based on the guidelines " that are in effect on the date the defendant is sentenced." 18 U.S.C §3553(a)(4); USSG § 1B1.11(a). Also, it raises constitutional concerns, i.e. equal protection.

As you know HB 1435 is already pending before the House regarding corrections to the new law, including a change to allow lifetime revocations sentenced under the old law to be amended into interlock revocations. I believe this is an ideal time and opportunity to correct the problem I am highlighting here.

Section 24 of S.B. 2897 Reads as Follows:

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

Some have concluded, incorrectly, that because of this language, "proceedings that were begun before its effective date", the ignition interlock law does not apply where a person has the misfortune of being arrested on December 31, 2010 at 11:55p.m., but it does apply if the arrest is just five minutes later. (Sadly, this is not just a hypothetical scenario). This is patently unfair. I respectfully submit that this confusing language must be amended or deleted altogether and replaced with more eloquent language that clearly allows for people, whose cases are not at sentencing, to be given the opportunity this new law provides. After all, repeat offenders are a risk and the installation of the ignition interlock is for public safety. Why not be liberal in interpreting the law? I am extremely disheartened to discover that some judges, prosecutors, and hearings officers at the Administrative Driver's License Revocation Office (ADLRO) are interpreting the law as not applying to those who are currently still in the system, who are presumed innocent, and who are not yet revoked or convicted.

It is my understanding in reading S.B. No. 2897 that the ignition interlock program is triggered when there is a revocation or conviction. I call your attention to section 1 of S.B. No. 2897 which reads as follows:

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

SECTION 1. The legislature finds that Act 171, Session Laws of Hawaii 2008, established an ignition interlock program. The purpose of the program is to require drivers whose licenses have been administratively revoked for, or who have been convicted of, operating a vehicle under the influence of an intoxicant to install an ignition interlock device on their vehicles. The device will prevent these drivers from starting or operating their vehicles when the driver has more than a minimal alcohol concentration.

It is important to note that an "arrest" in 2010 (before the effective date of 1/1/11) does not always result in a revocation or conviction in 2010. For example, a repeat offender arrested in November of 2010 has 60 days to request a hearing at the ADLRO and thus, his 1st hearing date could be in January or February of 2011. Question? Wasn't it the intent of the legislature that this repeat offender be required to install an interlock device if revoked or convicted even if it was after January 1, 2011. The answer is a resounding "yes".

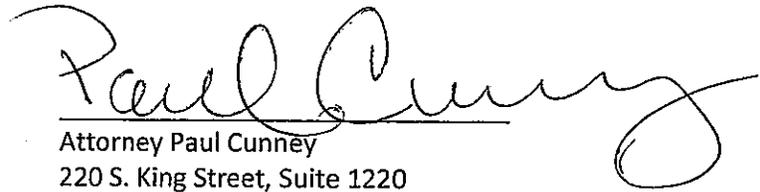
Applying the same scenario and to the criminal side of said November 2010 arrest, the individual would be arraigned in December 2010 and his 1st trial setting would be in February 2011. If that individual, a repeat offender, pleads guilty in February 2011 for an arrest in November 2010, did the legislature intend that he or she be denied an opportunity to retain his or her driving privileges by installing an ignition interlock after the effective date of 01/11/11.

In addition, prohibiting these defendants from being sentenced under this new law places a burden on our state. The new law alleviates the hardship an absolute driver's license revocation or suspension places on individuals and their families. The original language in Act 171 specifically stated, that "people whose license has been revoked still need to get to work, to transport their families and to fulfill other obligations, and there is often no efficient alternative to driving. Act 171 (Haw. Session Laws, 2008). These individuals are currently in the system, their case is yet to be adjudicated, they are presumed innocent, and, if they are convicted, they will face a greater hardship than the person who is right there beside them in the courtroom for exactly the same crime, simply because of the date of arrest. I do not believe this should be the case. I believe it does create an unnecessary burden on our state and I humbly urge you and your colleagues to act quickly.

I am urging you to refer this issue to the Legislature Reference Bureau to assist in amending the language on section 24 of S.B. 2897 so that a "Repeat Offender" who was arrested in 2010 and whose case is still active at the administrative office (ADLRO) or in criminal court be allowed the opportunity to install the ignition interlock device in lieu of having his or her driver's license revoked.

Please see suggested legislative language attached.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Paul Cunney", written over a horizontal line.

Attorney Paul Cunney
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Honolulu, HI 96813
Cell: 551-6500
Office: 523-0077
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A BILL FOR AN ACT

Relating to highway safety.

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

1 SECTION 1. The purpose of this Act is to make amendments
2 to the State's ignition interlock law recommended by the Hawaii
3 ignition interlock implementation task force pursuant to Act
4 171, Session Laws of Hawaii 2008, as amended by Act 88, Session
5 Laws of Hawaii 2009, as amended by Act 166, Session Laws of
6 Hawaii 2010.

7 SECTION ___ Chapter 291E, Hawaii Revised Statutes, is
8 amended by adding a new section to part III to be appropriately
9 designated and to read as follows:

10 "**§291E- Repeat intoxicated driver arrested , but not convicted before**
11 **January 1, 2011; installation of ignition interlock device.**

12 Notwithstanding any other law to the contrary, any repeat intoxicated driver,
13 arrested for a violation of section 291E-61 or 291E-61.5 before January 1, 2011,
14 and who was not convicted before January 1, 2011, upon proof that the
15 driver has installed an ignition interlock device in any vehicle the driver operates,
16 may request an ignition interlock permit that will allow the driver to drive a vehicle
17 equipped with an ignition interlock device during the revocation period."

A BILL FOR AN ACT

SECTION ____ This Act shall take effect on July 1, 2011.

INTRODUCED BY: _____

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 2:28 PM
To: FINTestimony
Cc: sbarta@BartaLaw.com
Subject: Testimony for HB1435 on 3/1/2011 1:00:00 PM

Testimony for FIN 3/1/2011 1:00:00 PM HB1435

Conference room: 308
Testifier position: support
Testifier will be present: Yes
Submitted by: steven tom barta
Organization: Individual
Address:
Phone:
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Submitted on: 2/28/2011

Comments: