



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Transportation and International Affairs

Senator J. Kalani English, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Thursday, February 6, 2014, 1:16 p.m.
State Capitol, Conference Room 224

by
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Bill No. and Title: Senate Bill No. 2729, Relating to Mobile Electronic Devices.

Purpose: Amends section 291c-137, HRS, to prohibit the operation of a motor vehicle while using a mobile electronic device held in a person's hand for making or receiving a non-emergency call, texting, or receiving a text message. Adds exemptions to prohibition. Amends the penalties for violations. Deems a violation to be a traffic infraction. Takes effect retroactive to 5/20/2013.

Judiciary's Position:

The Judiciary takes no position on the merits of Senate Bill No. 2729; however, we have strong concerns for Section 5 which states that this Act, upon its approval, shall take effect retroactive to May 20, 2013.

Under the current law, which treats operating a motor vehicle while using a mobile electronic device as a violation, the person receiving the citation is required to appear in court, face arraignment, enter a plea of guilty, no contest or not guilty, and, if the person enters a plea of not guilty, return to court for a trial. If the defendant fails to make any court appearance, a bench warrant would be issued and the defendant would face possible arrest.

Since the inception of the current law there have been 7,184 mobile device cases statewide of which 4,171 cases have been adjudicated. However, in almost 900 of these cases a



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bench warrant has been issued for those defendants who did not make a court appearance. In some cases where the warrants have been served, defendants have also been convicted of contempt of court for failure to appear. For these cases, defendants have a criminal conviction record which is recorded in the Hawaii Criminal Justice Data Center's CJIS database.

If Senate Bill No. 2729 passes with retroactive application, there are serious concerns on how the courts will deal with adjudicated cases, pending cases and outstanding warrants. If the effective date is retroactive, each of the adjudicated cases would need to be reopened and the databases in our case management systems (Criminal and Traffic) as well as in CJIS would require updating. All outstanding warrants would have to be recalled.

The retroactivity of the bill also poses immense logistical problems beyond the situations in which a bench warrant was issued and a conviction for failure to appear was entered. The Judiciary cannot assume that it can simply enter default judgments for defendants who did not appear in court on their scheduled arraignment dates. Defendants in civil traffic infraction cases are given 21 days to answer, and the answer can be a denial, admission or an admission with mitigating circumstances. In cases where a defendant does not comply with required payment, it will generate a license stopper on either the driver license or car license plate number. The case could also end up in collection. Hence all 7,184 cases would have to be manually reviewed to assure that the law has been appropriately applied.

Other concerns are that the Judiciary will need processes and resources to manually review all cases, including:

- The calendaring and scheduling of court appearances for some cases.
- Notifying parties, which will require added costs for postage.
- Providing funding for staff overtime to process the cases and to update case management system to reflect amendments to the records, make changes to our fiscal records and to assure that the amendments are accurately reflected and displayed on the traffic abstract.
- The Judiciary case management system would need to be updated to reflect any changes on past cases so that they display accurately on the traffic abstract.

The Judiciary notes that there are enforcement and proof issues; however, we feel that law enforcement would be the appropriate entities to provide comments.

Thank you for the opportunity to provide comments on this bill.