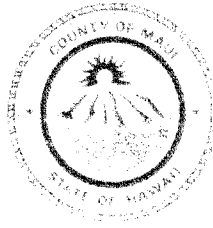


MICHAEL P. VICTORINO  
Mayor

DON S. GUZMAN  
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First Deputy Prosecuting Attorney

ANDREW H. MARTIN  
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OFFICE OF THE MAYOR

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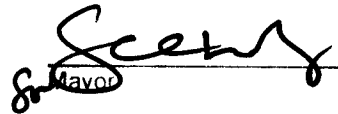
September 3, 2019

The Honorable Michael P. Victorino  
Mayor  
Office of the Mayor  
County of Maui  
200 S. High Street  
Wailuku, Hawaii 96793

Transmittal to:  
The Honorable Yuki Lei Sugimura, Chair  
Multimodal Transportation Committee  
Maui County Council  
County of Maui  
200 S. High St.  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Re: ROADWAY SAFETY (MT-10(8))

 9/4/19  
Mayor Date

Dear Council Member Sugimura:

The Department of the Prosecuting Attorney is in receipt of your August 20, 2019 inquiry concerning roadway safety in Maui. Our Department is committed to improving traffic safety and protecting the lives of our citizens and visitors, and we appreciate the opportunity to provide input.

- Provide your Department's short-term, intermediate, and long-term goals to create safer roadways and prevent traffic fatalities.

In the Second Circuit's criminal judicial system, District Court is responsible for the adjudication of traffic infractions, traffic violations, and criminal traffic offenses. This includes Reckless Driving, Pedestrian Right-of-Way offenses, Speeding and Excessive Speeding, and Operating a Vehicle Under the Influence of an Intoxicant ("OVUII"). In Circuit Court, our Department handles traffic felonies including Habitual OVUII, Negligent

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Injury and Negligent Homicide, and Manslaughter. Enforcement and prosecution of these offenses is one of the top priorities of our Department.

For the short-term, we are focused on enforcement, training, and education. Our Department has recently accomplished its goal of fully staffing all Deputy Prosecuting Attorney ("DPA") vacancies in District Court, and is close to full DPA staffing in Circuit Court. The Department has also assigned DPAs to interact with the media and to conduct community outreach and education, with the goal of increasing the visibility of impaired driving and general traffic safety enforcement.

Each year, our Department applies for grants from the State of Hawaii's Department of Transportation, which distributes federal funds from the National Highway Traffic Safety Administration. Through these grants, we will continue to provide DPAs with hands-on training and plenary sessions concerning impaired driving and traffic safety, including: understanding current and evolving trends in drugged driving (such as the use of Drug Recognition Expert officers to identify and prosecute drug-impaired drivers, and marijuana-related impaired driving in States which have recently legalized medical and recreational marijuana), combating new legal defenses to standardized field sobriety tests and breath intoxilyzer machines, and improving the testimony of police officers and accident reconstruction witnesses in the courtroom.

Furthermore, we continue to meet with other state departments and agencies on a regular basis (including law enforcement, toxicologists, other county prosecutors, and traffic safety professionals) to share information, develop countermeasures, and advance the best practices for traffic safety. We also value our relationship with the Maui Police Department ("MPD"), and we will continue to work closely in collaboration with MPD to increase OVUII arrests and traffic citations, improve conviction rates, and reduce the number of impaired and reckless drivers on our roadways through enforcement and deterrence.

Our intermediate-term goals are primarily focused on improving our traffic laws, deterrence, and strengthening evidence used in Court. This includes:

- Supporting legislative initiatives, such as (a) the addition of a fourth District Court judge in the Second Circuit to reduce case delays and address the increasing traffic safety caseload; (b) increasing

statutory penalties for impaired drivers who are "highly intoxicated" by alcohol, i.e., breath and blood alcohol levels above 0.15; and (c) expanding the definition of "drug" under our OVUII law to allow prosecution of drivers who are under the influence of non-scheduled substances that are known to impair one's ability to operate a vehicle safely, such as kava, certain muscle relaxants, and synthetic chemicals produced for recreational use.

- Deterring impaired drivers through law enforcement initiatives like "Saturation Saturdays" and "No-Refusal Weekends," and partnering with agencies such as Mothers Against Drunk Driving to improve education and outreach to our community and schools about the dangers of speeding and impaired driving.
- Implementing a pilot-project with MPD and the Judiciary to apply for electronic search warrants, a rule recently passed into law during the 2019 Legislative Session (see Act 117, H.B. 507). Electronic search warrants will significantly improve the ability of law enforcement to timely obtain blood alcohol evidence based on probable cause and in compliance with the Fourth Amendment, especially in cases where an impaired driver has crashed a vehicle resulting in injuries or death to others.
- Working with other state agencies towards the goal of developing an in-state forensic testing laboratory, so that blood samples involving drug-impaired drivers do not have to be tested on the mainland.

For the long-term, our Department will actively support this administration's "Vision Zero Maui" initiative to eliminate traffic fatalities and severe injuries in our community. Inherent in achieving that goal is our role in improving enforcement, prosecution, and deterrence of drivers who chose to operate a vehicle unsafely.

- *Would it be beneficial to have a designated team of Deputy Prosecuting Attorneys assigned to impaired driving-related cases?*

In the past, our Department did have one designated DPA assigned to impaired driving-related cases. This was beneficial for a number of reasons. Primarily, new DPAs who have either recently graduated from law school, or are transferring over from

another area of law, are initially assigned to prosecute cases in District Court. These prosecutors then spend a significant amount of time developing their trial skills in District Court, while improving their knowledge of the rules of evidence, case law, and techniques to effectively prosecute impaired driving and speeding cases. However, the nature of the prosecutor's profession is that these DPAs eventually move on to other areas of criminal law, such as domestic violence, property crime, and drug crime. A designated DPA can use his/her experience to provide guidance, training, and dissemination of knowledge to newer DPAs who begin in District Court, ensure continuity of Department policies and prosecutorial methods in both District Court and Circuit Court, and foster relationships with law enforcement and other state agencies.

- *Has County of Hawaii Ordinance 11-102 been effective in deterring impaired driving in the County of Hawaii? Would a similar law be effective for the County of Maui?*

Our Department supports strengthening traffic safety on a local ordinance level, through vehicular sanction laws such as County of Hawaii Ordinance 11-102 (also known as "Aaliyah's Law"). This law allows police officers to tow and impound a motor vehicle if the operator of that motor vehicle is arrested or cited for certain traffic offenses such as OVUII, operating a vehicle without a license, driving with a suspended or revoked license, and operating a vehicle without a required ignition interlock system. Towing and impounding a vehicle may act as a deterrent to these unsafe drivers, as well as to the registered owners of motor vehicles who may chose to loan their vehicles to unsafe drivers. According to the County of Hawaii, they do believe that Ordinance 11-102 has been a factor in reducing traffic fatalities, although we are not aware of any studies that have been performed.

At the very least, we believe that towing and impoundment of vehicles can be an effective deterrent, and would support a similar law in the County of Maui. Anecdotaly, in the past we have had several cases where a driver was cited for OVUII or driving with a revoked license, but then continued to drive and rack up further citations while his/her original case was pending in the criminal judicial system. Towing and impoundment of a vehicle under such circumstances could certainly reduce recidivism. We would also support exploration of other vehicular sanction ordinances, such as requiring surrender of license plates for registered owners of vehicles who have been convicted of OVUII and chose not to install an ignition interlock system,

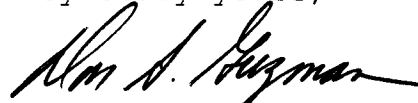
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and the implementation of "whiskey plates," which are special license plate numbers for repeat OVUII offenders.

I thank the County Council for the opportunity to provide this information, and for your interest and efforts in making our roadways safer.

If you have further questions, please contact me at 270-7777.

Very truly yours,

A handwritten signature in black ink, appearing to read "Don S. Guzman", with a stylized flourish at the end.

DON S. GUZMAN  
Prosecuting Attorney

DSG:kym