
A BILL FOR AN ACT

RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF
INTOXICANTS.

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

1 SECTION 1. The legislature finds that there is a need to
2 amend the definition of "drug" for offenses regarding chapter
3 291E, Hawaii Revised Statutes, use of intoxicants while
4 operating a vehicle. In order to convict an offender of
5 operating a vehicle under the influence of intoxicants (OVUII),
6 the prosecution must prove beyond a reasonable doubt that:

- 7 (1) The person was operating a vehicle; and
8 (2) The person was under the influence of any drug that
9 impaired the person's ability to operate the vehicle.

10 Unfortunately, if the drug used while operating a vehicle
11 is not listed as a schedule I through IV drug, then proving this
12 second prong becomes very problematic for the State because many
13 drugs like kawa, seroquel, and some muscle relaxants can cause
14 serious impairment and are not listed as a schedule drug.

15 The legislature further finds that the process of placing a
16 drug or substance on the schedule is one that is not quick to



1 react to emerging drugs. Synthetic drugs can be manufactured
2 very rapidly and can avoid law enforcement by changing the
3 chemical composition of an existing drug to create synthetic
4 drugs like "spice" and "bath salts," thereby taking advantage of
5 the scheduling process. In order to quickly adapt and prosecute
6 offenders using new emerging drugs, law enforcement should not
7 be forced to rely too heavily on the schedules for certain
8 violations.

9 The purpose of this Act is to amend the definition of
10 "drug" for purposes of OVUII violations.

11 SECTION 2. Section 291E-1, Hawaii Revised Statutes, is
12 amended by amending the definition of "drug" to read as follows:

13 "Drug" means any [~~controlled~~] substance, [~~as defined and~~
14 ~~enumerated in schedules I through IV of chapter 329, or its~~
15 ~~metabolites.~~] when taken into the human body, which can impair
16 the ability of the person to operate a vehicle safely."

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

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY: Joseph M. Sout

JAN 22 2015

By Request



H.B. NO. 137

Report Title:

Traffic Violation; Operating a Vehicle Under the Influence of Intoxicants

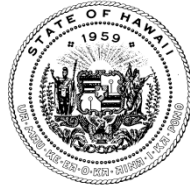
Description:

Amends the definition of "drug" for OVUII violations.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

February 18, 2015
10:05 a.m.
State Capitol, Room 309

H.B. 137
RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF
INTOXICANTS.

House Committee on Transportation

The Department of Transportation (DOT) **supports** H.B. 137 relating to operating a vehicle under the influence of intoxicants. This bill changes the definition of "drugs" as used in section 291E-1, HRS, to include any substance that can impair a person's ability to drive.

With the advent of designer and synthetic drugs, many substances that are being abused are not currently listed as Schedule I through IV drugs. Yet they still have the capability to impair drivers. Under the current statute, substances that are not on the schedule are not considered a "drug," and thus, drivers impaired on these cannot be prosecuted. Even adding new drugs to the schedule is not sufficient because changing just one molecule in the substance changes its chemical makeup, making it an entirely new drug that is now not within the schedule. Therefore, the schedule cannot keep up with the drug trends.

The DOT is concerned about this issue because we are responsible for the state's Drug Recognition Expert (DRE) program, which coordinates specialized training and certifies law enforcement officers to recognize impairment in drivers under the influence of drugs. The current definition of "drug" in the HRS limits law enforcement's ability to remove impaired drivers from the road. By amending the definition, it will allow police to keep the roadways safer for all roadway users.

Thank you for the opportunity to provide testimony.

STATE HIGHWAY SAFETY COUNCIL
Wednesday, February 18th
10:05 AM

COMMITTEE ON TRANSPORTATION
Rep. Henry J.C. Aquino, Chair
Rep. Matthew S. LoPresti, Vice Chair

Honorable Chair Aquino, Vice Chair LoPresti, and members of the Committee on Transportation,

Subject: **Support HB 137**

The State Highway Safety Council supports HB 137, which would amend the definition of “drug” under **HRS section 291E-1** to be defined as “any substance that when taken into the human body, which can impair the ability of the person to drive a vehicle safely.” This amendment helps OVUII enforcement and adjudication efforts addresses drivers under the influence of dangerous substances that fall outside of the parameter of the scheduling of drugs under chapter 329.

The State Highway Safety Council (SHSC) advises the DOT on matters relating to the programs and activities of the State in the field of highway safety. SHSC members include representatives from public, private, and all four counties.

Thank you for allowing us to testify.

Sincerely,

Kari Benes, Co-Chair
State Highway Safety Council

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE CT-GR

February 18, 2015

The Honorable Henry J. C. Aquino, Chair
and Members
Committee on Transportation
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Aquino and Members:

SUBJECT: House Bill No. 137, Relating to Operating a Vehicle Under the Influence of Intoxicants

I am Calvin Tong, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of House Bill No. 137, Relating to Operating a Vehicle Under the Influence of Intoxicants.

Currently, when an impaired driver is stopped and arrested for Operating a Vehicle Under the Influence of an Intoxicant (OVUII), he or she is taken to a police station and asked to submit a breath or blood sample to be tested for alcohol concentration. Drivers suspected of being under the influence of a substance other than alcohol are then asked to participate in a Drug Influence Evaluation. These evaluations are conducted by officers with specialized training and experience in detecting signs and symptoms associated with drug use and impairment. Following an evaluation, a driver who is still suspected of being under the influence of drugs is requested to submit a sample of his or her blood or urine to determine its drug content.

In order to convict a drug-impaired driver of OVUII, the prosecution must prove that he or she was under the influence of a "drug" that impaired him or her. Hawaii Revised Statutes Section 291E-1, Definitions, defines a "drug" as a scheduled substance or its metabolite. In cases where suspects refuse to take a blood or urine test, it is extremely difficult to prove it was "a scheduled substance" that caused his or her impairment. A driver impaired by or under the influence of kawa or Seroquel (a potentially impairing drug prescribed to treat Bipolar Disorder) would not have a scheduled substance or metabolite in his or her blood. Similarly, a driver impaired by the influence of only synthetic drugs such as "spice" or "bath salts," would not have a scheduled substance or metabolite in his or her blood.

Serving and Protecting With Aloha

The Honorable Henry J. C. Aquino, Chair
and Members
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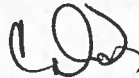
Failure to prove that particular element would result in a suspect being found not guilty by the court. As the prosecution must prove beyond a reasonable doubt that the suspect is under the influence of a scheduled substance, it is nearly impossible to convict a suspect who refuses to consent to a drug test for OVUII.

This change would not alter the current practice of law enforcement officers arresting suspected alcohol and drug impaired drivers; to establish probable cause to support an arrest, drivers would still have to be impaired. Rather, it would allow impaired drivers to be convicted of OVUII if they refuse to be tested for drugs or test positive for non-scheduled impairing substances.

The HPD urges you to support House Bill No. 137, Relating to Operating a Vehicle Under the Influence of Intoxicants.

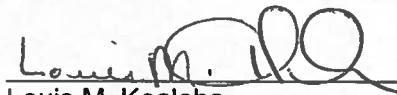
Thank you for the opportunity to testify.

Sincerely,



Calvin Tong, Major
Traffic Division

APPROVED:



Louis M. Kealoha
Chief of Police



Mothers Against Drunk Driving HAWAII
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Honolulu, HI 96813
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February 18, 2015

To: Representative Henry J.C. Aquino, Chair –House Committee on Transportation;
Representative Matthew S. LoPresti, Vice Chair; and members of the committee

From: Arkie Koehl/Carol McNamee, Co-Chairs – Public Policy Committee,
MADD-Hawaii

Re: House Bill 137 – Relating to Operating a Vehicle Under the Influence of
Intoxicants

I am Carol McNamee, speaking in support of House Bill 137 on behalf of the membership of MADD Hawaii. This bill amends the definition of “drug” in the statutes relating to OVUII – Operating a Vehicle Under the Influence of an Intoxicant. The proposed definition of drug in Section 291E-1 of the HRS is: “Drug” means any substance when taken into the human body, which can impair the ability of the person to operate a vehicle safely. (Just for clarity of language I would prefer to say: *Drug means any substance which, when taken into the human body, can impair the ability of the person to operate a vehicle safely.*)

MADD believes this bill is important to the prosecution of an increasing number of arrests and crashes that are the result of the use of a wide variety of drugs, sometimes used alone or sometimes used together with alcohol. The statutes relating to the use of drugs and driving were adopted in 1997 – eighteen years ago. At that time, the majority of impairing drugs could be found in schedules 1 to 4 and therefore limiting the legally impairing list of drugs to those found in the four schedules seemed to be reasonable – and acceptable to the legislature.

In 2015, impairing drugs are less able to be so neatly classified. There are many new synthetic drugs and so-called designer drugs are constantly being created. In addition, prescription drugs can also be impairing and even certain over-the-counter medications can affect driving. I was amazed at the huge selection of drugs displayed and discussed by a police officer from Boise, Idaho at a training a few years ago.

Earlier this month, the National Highway Traffic Safety Administration (NHTSA) released its fifth National Roadside Survey (NRS). The survey is designed to estimate the prevalence of drinking and driving in the United States and as of 2007, was expanded to estimate the prevalence of drug use and driving.

The most recent Roadside Survey, completed in 2013-2014, produced national estimates of alcohol and drug use by weekend drivers. The number of drivers testing positive for alcohol (at all Blood Alcohol Concentration (BAC) levels) continues to decline. This reflects a continuous trend since the time of the first roadside survey in 1973. There has been a substantial decrease in the percentage of drivers who were alcohol positive (i.e., had any amount of alcohol in their system) from 1973 (35.9%) to 2013-2014 (8.3%).

Unfortunately, while the survey revealed a decrease in the prevalence of drunk driving, it also showed a significant increase in drugged driving. In the 2013-2014 NRS, 22.5% of weekend nighttime drivers tested positive for drugs. This is significantly higher than the 16.3% of weekend nighttime drivers who tested positive in 2007. *The drugs that were found in the drivers surveyed included illegal drugs as well as prescription and over-the-counter medications.* (AP – Star Adv 2/7/15)

This new information along with local data collected by the Department of Health, illustrates the need for more resources devoted to driving under the influence of drugs and a broader definition of the word “drug” in order to increase law enforcement’s ability to apprehend drug-impaired drivers in our state.

MADD urges the committee to pass this measure. Thank you for the opportunity to testify.