

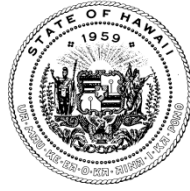
# SB321

RELATING TO OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICANT.

Increases the penalty for the offense of operating a vehicle under the influence of an intoxicant to a class C felony if the defendant operated a vehicle with a passenger who was fifteen years of age or younger.

Establishes minimum breath and blood alcohol levels for defendants who are between eighteen and twenty-one years of age and convicted of operating a vehicle under the influence of an intoxicant with a passenger who was fifteen years of age or younger.

DAVID Y. IGE  
GOVERNOR



FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

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

IN REPLY REFER TO:

February 3, 2015  
2:45 pm  
State Capitol, Room 229

**S.B. 321**  
**RELATING TO OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF AN**  
**INTOXICANT**

Senate Committee on Transportation

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The Department of Transportation (DOT) **supports** S.B 321, Relating to Operating a Vehicle while Under the Influence of an Intoxicant. This bill enhances the penalty of a driver who at the time had a passenger in the vehicle fifteen years of age or younger.

The seriousness of driving under the influence of alcohol with young passengers in the vehicle is a serious offense. The protection of the young individuals who do not have a choice should be protected by the state. Traffic fatalities involving impaired drivers who have young individuals as passengers within the vehicle always have serious consequences to their families. This proposal will make the driver more aware of the severe consequences and serve as a deterrent before opting to drive. Additionally, this bill will bring the existing law in line with the zero tolerance by including drivers eighteen years of age or older, but under the age of twenty-one.

The DOT urges your support in passing S.B. 321 as it will provide a greater deterrence to those drivers who continue to put the young in harm's way.

Thank you for the opportunity to provide testimony.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org



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MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE CT-GR

February 3, 2015

The Honorable Clarence K. Nishihara, Chair  
and Members  
Committee on Transportation  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

**SUBJECT: Senate Bill No. 321, Relating to Operating a Vehicle While Under the Influence  
Of an Intoxicant**

I am Calvin Tong, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu. The HPD opposes the passage of Senate Bill No. 321, Relating to Operating a Vehicle While Under the Influence of an Intoxicant.

Currently, the penalty for a person convicted of Operating a Vehicle Under the Influence of an Intoxicant (OVUII) who operated a vehicle with a passenger younger than fifteen years of age includes an additional \$500 fine and a mandatory imprisonment of an additional 48 hours. This bill would change that penalty to make the person guilty of a class C felony, subject the person to license revocation, and fees beyond the normal petty misdemeanor OVUII conviction.

While the HPD supports the general concept of increasing penalties for drivers convicted of OVUII with passengers younger than fifteen years of age, the passage of Senate Bill 321 would conflict with existing statutes.

Currently Hawaii Revised Statutes (HRS) Section 291E-64, Operating a vehicle after consuming a measurable amount of alcohol; persons under the age of twenty-one, establishes the consequences for drivers under twenty-one years of age convicted of operating a vehicle while under the influence of "a measurable amount of alcohol." HRS Section 291E-1 defines "Measurable amount of alcohol" as a breath or blood alcohol concentration test "result equal to or greater than .02 but less than .08." There is no element of impaired driving in HRS Section 291E-64; merely demonstrating that a person under twenty-one has a measurable amount of alcohol while operating a vehicle is sufficient for a conviction.

The Honorable Clarence k. Nishihara, Chair  
and Members  
Page 2  
February 3, 2015

HRS Section 291E, Evidence of Intoxication, states that in the event that a person's breath or blood alcohol concentration test is .05 or less, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation. As a result, notwithstanding a driver under the influence of other drugs, no person, regardless of age, can be convicted of an alcohol OVUII with a breath or blood alcohol concentration test of .05 or less.

Conviction under HRS Section 291E-64 is considered a violation. It is not punishable by jail time or even administrative driver's license revocation. Presumably, Senate Bill 321 intends to increase the penalties for a person convicted of HRS Section 291E-64 from a violation with no license revocation to a full class C felony with a two-year mandatory license revocation. This dramatic increase in penalty would create a definite disincentive for persons arrested for HRS Section 291E-64 from taking any chemical test.

The HPD urges you to oppose Senate Bill No. 321, Relating to Operating A Vehicle While Under The Influence of an Intoxicant.

Thank you for the opportunity to testify.

Sincerely,



CALVIN TONG, Major  
Traffic Division

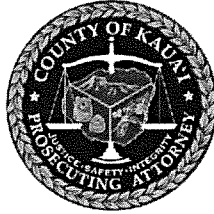
APPROVED:



LOUIS M. KEALOHA  
Chief of Police

**Justin F. Kollar**  
Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766

808-241-1888 ~ FAX 808-241-1758

Victim/Witness Program 808-241-1898 or 800-668-5734

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**TESTIMONY IN SUPPORT OF  
SB321 – RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF  
AN INTOXICANT**

**Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i**

**Senate Committee on Transportation  
February 3, 2015, 2:45 p.m., Conference Room 229**

**Chair Nishihara, Vice Chair Harimoto, and Members of the Committee:**

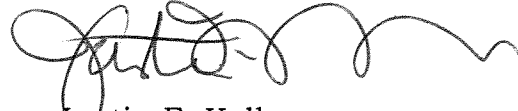
The County of Kaua'i, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS SB321 – Relating to Operating a Vehicle Under the Influence of an Intoxicant.** The Bill specifies that offenders who commit the offense of Operating a Vehicle Under the Influence of an Intoxicant (OVUII) with a passenger under the age of 15 can be charged with a class C Felony and also subjected to an appropriate period of requiring an ignition interlock device in their vehicle. This Bill also establishes breath and blood-alcohol per se limits for offenders between the ages of 18 and 21.

Under existing law, OVUII offenders who endanger the lives of their passenger minor children can be charged only with a petty misdemeanor level OVUII offense with a sentencing enhancement of 48 hours in jail and an additional \$500 fine. This penalty is insufficient to deter what is extremely dangerous conduct. This Bill addresses that shortcoming.

This Bill also specifies a per se limit of .02 for offenders between the ages of 18 and 21 who operate a vehicle with a minor passenger under the age of 15. This limit will harmonize the OVUII statute with the limit already established in the existing zero tolerance law (HRS 291E-64) for underage OVUII offenders who do not operate their vehicles with minor passengers under the age of 15.

Accordingly, we are in STRONG SUPPORT of SB321. We request that your Committee PASS the Bill.

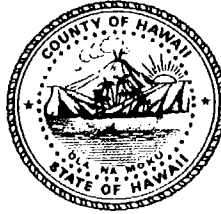
Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar", with a long, sweeping flourish extending to the right.

Justin F. Kollar  
Prosecuting Attorney

MITCHELL D. ROTH  
PROSECUTING ATTORNEY

DALE A. ROSS  
FIRST DEPUTY  
PROSECUTING ATTORNEY



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## OFFICE OF THE PROSECUTING ATTORNEY

### TESTIMONY IN SUPPORT OF SENATE BILL 321

### A BILL FOR AN ACT RELATING TO OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICANT

#### COMMITTEE ON TRANSPORTATION

Sen. Clarence K. Nishihara, Chair  
Sen. Breene Harimoto, Vice Chair

Tuesday, February 3, 2015, 2:45 p.m.  
State Capitol, Conference Room 229

Honorable Chair Nishihara, Vice-Chair Harimoto, and Members of the Committee on Transportation, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 321.

This measure increases the penalty for the offense of Operating A Vehicle Under The Influence Of An Intoxicant (OVUII) to a Class C Felony if the defendant operated a vehicle with a passenger who was fifteen years of age or younger. This Bill also establishes minimum breath and blood alcohol levels for defendants who are between eighteen and twenty-one years of age and convicted of OVUII with a passenger who was fifteen years of age or younger.

Minor children have little choice when an impaired driver gets behind the wheel in a vehicle in which they are a passenger. Currently, OVUII offenders who endanger the lives of minor children that are a passenger in their vehicle can be charged only with a petty misdemeanor level OVUII offense with a sentencing enhancement of 48 hours in jail and an additional \$50 fine. An impaired driver makes the choice to drink and drive, but minor children often have no choice as to whether or not they ride with an impaired driver. The current penalty is insufficient to deter what is extremely dangerous conduct, this Bill corrects this deficiency.

This Bill also specifies a per se limit of .02 for offenders between the ages of 18 and 21 who operate a vehicle with a minor passenger under the age of 15. This limit will correspond with the OVUII statute with the limit already established in the existing zero law (HRS 291E-64) for underage OVUII offenders who do not operate their vehicles with minor passengers under the age of 15.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 321. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Roth", with a long horizontal flourish extending to the right.

Mitchell D. Roth  
Prosecuting Attorney  
County of Hawai'i





Mothers Against Drunk Driving HAWAII  
745 Fort Street, Suite 303  
Honolulu, HI 96813  
Phone (808) 532-6232  
Fax (808) 532-6004  
hi.state@madd.org

February 3, 2015

To: Senator Clarence K. Nishihara, Chair — Senate Committee on  
Transportation; Senator Breene Harimoto, Vice Chair, and members of the  
Committee

From: Arkie Koehl/Carol McNamee—Co-chairmen, Public Policy Committee -  
MADD Hawaii

Re: Senate Bill 321 – Relating to Operating a Vehicle While Under the  
Influence of an Intoxicant

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I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in support of the intent of Senate Bill 321. This bill would increase the class of offense for “Child Endangerment” from its current status of a petty misdemeanor OVUII with enhanced penalties to a Class C Felony.

MADD has had a long-standing concern for the plight of children who are passengers in a vehicle driven by an impaired driver. Across the country, over half of all children killed in alcohol-related crashes are killed while riding with a drunk driver. Most of the time the driver is old enough to be the child’s parent or guardian.

MADD believes that this is an issue to be taken very seriously. No child should be in danger from impaired driving, especially by those entrusted to keep them safe. MADD believes that impaired driving is criminal and irresponsible, and having a child in the vehicle elevates this criminal act to child abuse.

MADD Hawaii was a strong supporter of enhanced penalties for those convicted of DUI (as it was called before 2001) when the issue came before the legislature many years ago. We believed then, and we continue to believe now, that the sanctions should be stronger than an increased fine and a 48 hour mandatory jail term.

We support the concept of a two year driver’s licence revocation period with the mandated use of an ignition interlock device by anyone convicted of child endangerment and we also believe that the monetary and jail time sanctions should be increased. We understand the benefit of the felony providing probation and thereby oversight for the offender. However, MADD Hawaii does not have a position on increasing the class of offense from a petty misdemeanor with enhancement to a Class C Felony. Therefore, we are unable to support that part of this bill until such time as our Chapter Board can discuss and vote on the issue.

Thank you for the opportunity to testify.

