



Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

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

February 9, 2018
1:35 p.m.
State Capitol, Room 225

S.B. 2826
RELATING TO HIGHWAY SAFETY

Senate Committee on Transportation and Energy

The Department of Transportation (DOT) **supports** S.B. 2826 relating to highway safety. The bill clarifies the definition of “drug” in chapter 291E, Hawaii Revised Statutes, regarding the use of intoxicants while operating a vehicle.

Under Hawaii’s current Operating a Vehicle Under the Influence of an Intoxicant (OVUII) statute, a “drug” is defined as any controlled substance listed in schedules I through IV of chapter 329, Hawaii Revised Statutes. With this definition, law enforcement and prosecutors are limited in keeping our roads safe from impaired drivers. Many substances that are being abused are not listed as schedule I through IV drugs, including kava, kratom, toluene, certain muscle relaxants, and over-the-counter cough syrup and anti-diarrheal medicines. Yet they still have the capability to impair drivers. Even adding new drugs to the schedule is not sufficient because changing just one molecule in the substance changes its chemical makeup, thus making it an entirely new drug that is now excluded from the schedule. In this manner, designer and synthetic drugs like “spice” and “bath salts” evade the scheduling process.

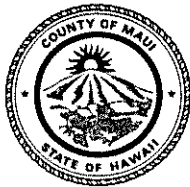
This is further exacerbated by the internet, which rapidly spreads the newest drug trends and offers opportunities for the public to learn how to manufacture, obtain and abuse substances.

In addition, there have been recent attempts at the federal and state levels to remove marijuana and tetrahydrocannabinols from the schedule of controlled substances. If these were to succeed, persons found to be driving while impaired by marijuana could not be prosecuted under Hawaii’s current OVUII statute.

DOT is primarily concerned about improving highway safety and protecting the lives of our community members and visitors. In order to protect our public from impaired drivers, law enforcement and adjudicators should not be forced to rely solely on the controlled substance schedules for OVUII offenses. DOT coordinates specialized training and certifies law enforcement officers to recognize impairment in drivers under

the influence of drugs through its Drug Recognition Expert (DRE) program to combat this issue.

Thank you for the opportunity to provide testimony.



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD K. MINATOYA
Deputy Prosecuting Attorney
Supervisor - Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
SB 2826 - RELATING TO HIGHWAY SAFETY

February 9, 2018
1:35 P.M.

The Honorable Lorraine H. Inouye
Chair
The Honorable Will Espero
Vice Chair
and Members
Senate Committee on Transportation and Energy

Chair Inouye, Vice Chair Espero, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS the intent of SB 2826 - Relating to Highway Safety. This measure clarifies the definition of "drug" in HRS Chapter 291E to include any substance that impairs a person, in addition to scheduled controlled substances and their metabolites. This measure will help address the problem of people driving under the influence of substances that cause impairment, but are not alcohol or scheduled controlled substances. Examples of these are kava and certain muscle relaxants.

While we agree with the intent of this measure, we do not agree with the wording of the proposed amendment to the "drug" definition. The proposed definition states, in part, "can impair the ability of a person to operate a vehicle safely." This adds an undefined subjective element of "safely." We believe that this will cause unintended problems in prosecution. Impairing a "person's ability to operate a vehicle in a careful and prudent manner" is already set forth in HRS § 291E-61(a)(2), and the current language of this measure will add an additional element of proof that is clearly not the intent of this measure.

We propose that Section 2, Page3, Lines 3-7 be amended to read:

““Drug”” means any controlled substance, as defined and enumerated in schedules I through IV of chapter 329, or its metabolites[.], or any substance that impairs a person.”

We believe that this change more clearly reflects the intent of this measure.

The Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED AS AMENDED with our proposed amendment. Thank you very much for the opportunity to provide this testimony.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE **BM-GR**

February 9, 2018

The Honorable Lorraine R. Inouye, Chair
and Members
Committee on Transportation and
Energy
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 225
Honolulu, Hawaii 96813

Dear Chair Inouye and Members:

SUBJECT: Senate Bill No. 2826, Relating to Highway Safety

I am Benjamin Moszkowicz, Acting Captain of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of Senate Bill No. 2826, Relating to Highway Safety.

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 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

The Honorable Lorraine R. Inouye, Chair
and Members
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February 9, 2018

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.

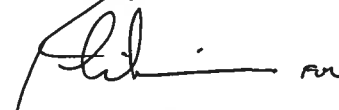
Failure to prove that particular element would result in a suspect being found not guilty by the court. As the prosecution must prove beyond a reasonable doubt that the suspect is under the influence of a scheduled substance, it is nearly impossible to convict a suspect who refuses to consent to a drug 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 nonscheduled impairing substances.

The HPD urges you to support Senate Bill No. 2826, Relating to Highway Safety.

Thank you for the opportunity to testify.

Sincerely,



Benjamin Moszkowicz, Acting Captain
Traffic Division

APPROVED:



Susan Ballard
Chief of Police



February 7, 2018

The Honorable Lorraine R. Inouye
Chair, Committee on Transportation and Energy
Hawaii State Senate
State Capitol, Room 210
415 S Beretania Street
Honolulu, Hawaii 96813

RE: Concerns with S.B. 2826 (Kouchi) – Relating to highway safety

Dear Chairwoman Inouye,

I am writing on behalf of the Consumer Healthcare Products Association (CHPA) to express concern with SB 2826 as currently drafted and to suggest a solution. The bill, which is scheduled to be heard by the Senate Committee on Transportation and Energy on Friday, February 9, would expand the definition of “drug” as it relates to Hawaii’s impaired driving laws (under chapter 291E, 3 Hawaii Revised Statutes). While the legislation is well intended, CHPA is concerned that the bill proposes to define “drug” so broadly, that it is no longer clear which substances may lead to a person’s conviction for impaired driving. CHPA is proposing minor amendments to address these concerns.

CHPA is the 137-year-old trade association representing the leading manufacturers and marketers of over-the-counter (OTC) medicines and dietary supplements. Every dollar spent by consumers on OTC medicines saves the U.S. healthcare system \$6-\$7, contributing a total of \$102 billion in savings each year. CHPA is committed to empowering consumer self-care by preserving and expanding choice and availability of consumer healthcare products.

CHPA fully supports safe driving laws, and OTC medicines that may impair a person’s ability to safely operate a vehicle are labeled with a clear warning. Any inclusion of OTC medicines under impaired driving statutes should be specifically tied only to such medicines that may interfere with a person’s ability to safely operate a vehicle. The expanded definition of “drug” included in SB 2826 is so broad that it could inadvertently implicate OTC medicines that do not impair a person's ability to “operate a vehicle in a careful and prudent manner.”

CHPA believes that it is possible to preserve the intent of this legislation and strengthen Hawaii’s safe driving laws, while also removing some of the ambiguity present in SB 2826, by amending Section 2. in the following manner:

- 1 SECTION 2. Section 291E-1, Hawaii Revised Statutes, is
- 2 amended by amending the definition of “drug” to read as follows:
- 3 “”Drug” means any controlled substance, as defined and
- 4 enumerated in schedules I through IV of chapter 329, or its

5 metabolites [-], and/or any INTOXICATING substance, AND/OR ANY COMBINATION OF ALCOHOL, A
6 CONTROLLED SUBSTANCE OR AN INTOXICATING SUBSTANCE that, when taken into the
7 human body, can impair the ability of a person to operate a vehicle safely.”

Making this small modification to the text of SB 2826 would accomplish the stated goal of the legislation and address CHPA’s concerns, allowing us to take a neutral position on this bill. Such an approach has been used successfully in states such as Michigan¹ and Wisconsin².

CHPA sincerely appreciates your consideration of our position on this important issue. If you have any questions regarding our position, please contact me directly or CHPA’s in-state counsel, Ms. Lauren Zirbel (LSZ Consulting) at 808-294-9968 or LaurenZirbel@gmail.com.

Respectfully submitted,



Carlos I. Gutiérrez
Vice President, State & Local Government Affairs
Consumer Healthcare Products Association

cc: Members, Senate Committee on Transportation and Energy
 The Honorable Ronald Kouchi, President, Hawaii State Senate
 Ms. Lauren Zirbel, LSZ Consulting

¹ See MCL §257.625 (1)(a):

[http://www.legislature.mi.gov/\(S\(gmiuyfcyboy0bymdmxqr1iqq\)\)/mileg.aspx?page=getObject&objectName=mcl-257-625](http://www.legislature.mi.gov/(S(gmiuyfcyboy0bymdmxqr1iqq))/mileg.aspx?page=getObject&objectName=mcl-257-625)

² See §346.63 Wisconsin Code: <http://docs.legis.wisconsin.gov/statutes/statutes/346/X/63/1/a>



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 9, 2018

To: Senator Lorraine R. Inouye - Chair, Senate Committee on Transportation and Energy; Senator Will Espero - Vice Chair; and members of the Committee

From: Carol McNamee and Arkie Koehl, Public Policy Committee - MADD Hawaii

Re: Senate Bill 2826 – Relating to Highway Safety

I am Arkie Koehl, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in strong support of Senate Bill 2826, relating to Highway Safety.

Approximately three years ago, the National MADD organization amended its mission by inserting the phrase, “to help stop drugged driving” along with the original “to end drunk driving.” This was a major step taken only after 10 years of evaluating the problem of impairment caused by substances other than – or in addition to – alcohol. MADD Hawaii applauded this amendment, largely because our chapter had worked on Hawaii statutes relating to drugs and driving since 1986! We have witnessed the beginning of the DRE (Drug Recognition Expert) program from its inception and have always been extremely impressed with the knowledge and capabilities of this specialized sector of the Honolulu Police Department. We are quite sure that the neighbor island police departments, having received the same training, are equally capable.

Therefore, because of our long history of advocating for solid legislation to keep our roads free of drug-impaired driving, we support measures that give law enforcement (police and prosecutors) more tools or improved methods of doing their jobs. In the case of SB 2826 which amends the definition of “drugs”, MADD believes that changing times necessitates this amendment to our current statutes. Although Chapter 329 lists scores of drugs in schedules one through four, clever underground chemists are now able to create new drugs at too swift a rate for our statutes to keep pace. MADD does not have knowledge of all the names of new synthetic drugs that are not part of Schedules one through four but we have heard about some “non-scheduled” impairing substances that are ingested – like Kava or Nutmeg.

SB 2826’s proposed language is the same as that used in DRE training and therefore makes good sense as the standard to use for the needed broadening of the drug definition in our statutes as it relates to the impaired operation of a vehicle.

This bill will be a significant help to law enforcement officers and prosecutors who are working to keep our roads safe from impaired drivers. MADD strongly encourages this committee to pass SB 2826.

Thank you for this opportunity to testify.

SB-2826

Submitted on: 2/8/2018 7:29:18 AM

Testimony for TRE on 2/9/2018 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jolon Wagner		Support	No

Comments:

Good Morning,

My name is Jolon Wagner and I am an Officer in the Honolulu Police Department. The views and opinions given in this testimony are solely of this writer, they are not supported or endorsed by the HPD and this testimony is being given as a private citizen on my own personal time using my own personal resources.

As an officer in the HPD there have been numerous occasions when I have seen vehicles in front of me being operated in a manner that is not only hazardous to other road users but also to the operator themselves. Upon stopping this vehicle I have found that the operator is under the influence of Kava, which I know to be **NOT** on the list of scheduled substances. As a Drug Recognition Expert I know that in order to get a conviction for OVUII under the current version of the law that the state needs to prove that the person is impaired by a scheduled substance. In these cases mentioned before, I know that there is no chance of proving this case.

Through my personal history there have been times when my brother has spoken to me about his own drug use. He related to me that one of the reasons that he uses drugs is to "escape reality." Through talking to other people while at work, that theme seems to be a common one among drug users. The impact to public safety is enormous if you think that people who are taking various drugs to "escape reality" then get behind the wheel of a motor car and drive on our roadways.

The reason to take some prescription drugs is to interact with the neurons in a person's brain. Manufacturers of illicit drugs have the same goal in mind, to interact with the neurons of a person's brain. Marijuana is also designed to interact with a person's brain chemistry. Makers of illicit drugs are always adapting their product to be ahead of law enforcement, changing chemical makeups of their product, to keep the product legal but still mind impairing.

I thank the committee for its time and wish to show my support for this measure, in amending the definition of the word drug.

Committee on Transportation and Energy
Senator Lorraine R. Inouye, Chair
Senator Will Espero, Vice Chair

Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Hearing Date: Thursday, February 8th, 2018 9:00 am
Measure: **SB 2826**

Dear Chair Inouye, Chair Nishihara, and members of the Senate Committee on Transportation and Energy and the Senate Committee on Public Safety, Intergovernmental, and Military Affairs,

My name is Kari Benes and I am the current chair of the Hawaii Strategic Highway Safety Plan (SHSP) asking for your **support of SB 2826**, which provides clarity to the definition of a “drug” within the impaired driving statute. The definition of a “drug” as stated in SB 2826, is one of the life saving priorities outlined by the Hawaii SHSP Core Committee.

Providing clarity to the definition of drug within the impaired driving statute will help our trained police officers properly remove dangerous drug-impaired drivers from our roadways. With the ever-changing trends in chemical compositions of illicit drugs and experimentation with things like “tide pods”, it is important to be a step ahead of what is listed as a controlled substance. This measure sends a clear message that we don’t want individuals to be driving under the influence of any type of substance that impairs their ability to drive.

Please support SB 2826 and SHSP's vision that all of Hawaii's road users arrive safely at their destinations.

To view the Hawaii Strategic Highway Safety Plan go to www.hawaiishsp.com.

Thank you for your time.

Sincerely,

Kari Benes -Chair

Hawaii Strategic Highway Safety Plan

Committee on Transportation and Energy
Senator Lorraine R. Inouye, Chair
Senator Will Espero, Vice Chair

Hearing Date: Friday, February 9th, 2018 1:35 pm
Measure: **SB 2826**

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Thank you for your time.

Sincerely,

Kari Benes -Chair

Hawaii Strategic Highway Safety Plan