



LATE

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

March 15, 2019
10:30 a.m.
State Capitol, Room 423

**S.B. 641
RELATING TO INTOXICANTS.**

House Committee on Transportation

The Department of Transportation (DOT) **supports** S.B. 641.

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 in Chapter 329, Hawaii Revised Statutes. This definition limits law enforcement and prosecutors from keeping our roads safe from impaired drivers. Many substances that are being abused are not listed as schedule I through IV drugs, this includes kava, kratom, toluene, certain muscle relaxants and over-the-counter cough syrup. Yet they still have the capability to impair drivers. Even adding new drugs to the schedule is not enough 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 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. 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 program to combat this issue.

Thank you for the opportunity to provide testimony.

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on
Transportation**

March 15, 2019

S.B. No. 641: RELATING TO INTOXICANTS

Chair Aquino and Members of the Committee:

We respectfully **oppose** passage of S.B. No. 641 which would amend the operating a vehicle under the influence of an intoxicant statute. This measure expands the definition of “drug” for purposes of this offense. The proposed definition – **“any substance that, when taken into the human body, can impair the ability of a person to operate a vehicle safely”** is too vague and could violate a citizen’s right to due process of law. For example, caffeine is a legal substance which can impair a person’s actions when taken in excess. Perhaps a person who drives erratically by making sudden movements within his/her lane could fall under this definition.

Moreover, there is currently no widely accepted standard for the level of THC (marijuana) in a driver’s blood to reasonably infer that the driver was under the influence. This is also true of other substances targeted by this bill. THC is a metabolite that can be present many weeks after ingestion. In other jurisdictions, some opponents of decriminalization are using data to exaggerate the number of “cannabis involved” accidents.

Due to the vagueness and the lack of evidence-based standards in this bill, we oppose its passage. Thank you for the opportunity to provide testimony in this matter.



Subject: Support SB641

Dear Chair Henry J.C. Aquino, Vice Chair Troy N. Hashimoto, and members of the House Committee on Transportation,

My name is Kari Benes and I am the chair of the Hawaii Strategic Highway Safety Plan (SHSP) asking for your **support of SB641**, which provides clarity to the definition of a “drug” within the impaired driving statute. This measure is one of the SHSP traffic safety priorities for 2019.

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. It is important to keeping our impaired-driving laws ahead of ever-changing trends in chemical compositions of illicit drugs and experimentation with substances that when ingested test limits of physical impairment. **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 safely.**

The Hawaii Strategic Highway Safety Plan's vision is that all of Hawaii's road users arrive safely at their destinations. You can help us achieve our goal of reducing yearly fatalities, by supporting this measure.

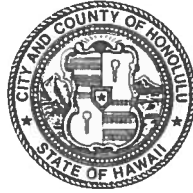
To view the Strategic Highway Safety Plan, go to www.hawaiiishsp.com

Strategic Highway Safety Plan Mission

Save lives and reduce injuries on Hawaii's roadways through strategic partnerships and implementation of the Strategic Highway Safety Plan.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE **BM-GR**

March 15, 2019

The Honorable Henry J. C. Aquino, Chair
and Members
Committee on Transportation
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 423
Honolulu, Hawaii 96813

Dear Chair Aquino and Members:

SUBJECT: Senate Bill No. 641, Relating to Intoxicants

I am Benjamin Moszkowicz, Acting Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu. The HPD strongly supports the passage of Senate Bill No. 641, Relating to 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 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 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, currently 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. Similarly, even if he or she provided a blood or urine sample, a driver impaired by kava or Seroquel (a potentially impairing drug prescribed to treat bipolar

The Honorable Henry J. C. Aquino, Chair
and Members
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disorder) whose blood tests showed these chemicals would not have a scheduled substance or metabolite in his or her blood. Similarly, a driver impaired by the influence of synthetic drugs, such as "spice" or "bath salts," would not have a scheduled substance or metabolite in his or her blood.

The passage of this bill would not change the requirement for the police to prove beyond a reasonable doubt that a driver was impaired while he or she was driving. Rather, it would allow for the prosecution of impaired drivers for OVUII, even if a chemical test failed to show a scheduled substance in their blood or urine.

The bottom line is that impaired drivers are a menace to the safety of all roadway users, regardless if the particular impairing chemical in their blood is on a specific list or not.

Though seemingly a small technical change, the passage of this bill would give the police and prosecutors an important tool we need to combat the rise of drug impaired driving that we see on our roadways.

The HPD urges you to support Senate Bill No. 641, Relating to Intoxicants.

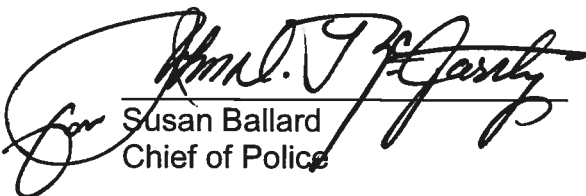
Thank you for the opportunity to testify.

Sincerely,



Benjamin Moszkowicz, Acting Major
Traffic Division

APPROVED:



Susan Ballard
Chief of Police

March 15, 2019

Honorable Chair Henry Aquino
House Committee on Transportation
Hawaii State Capitol, Room 423

RE: SB 641 – Relating to Intoxicants.
SUPPORT

Dear Chair Aquino:

AAA Hawaii was founded in 1915 in Honolulu and is a leader in motorist services and a strong advocate for traffic safety. With more than 165,000 members, service to and the safety of our members, other motorists, and all road users is our founding and continuing purpose.

AAA Hawai'i supports SB641 as introduced on January 18, 2019. SB641 modernizes the statutory definition of "substance" under the state's impaired driving law. Rather than enumerating specific drug names/types, this bill states any natural or synthetic element that can cause impairment (including marijuana) is prohibited in operating a motor vehicle.

Driving Under the Influence of Drugs (DUID) is on the rise nationwide despite alcohol related arrests have been declining for years. Findings from a 2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers (NHTSA) found alcohol impairment to be 30% lower over 2007 but illicit drug use was up 25%. Marijuana was the common drug found among impaired drivers (37%) but the share of drivers with traces of narcotics or depressants were not far behind (29% each) according to the Sobriety Testing Resource Center (2014). SB641 helps Hawaii keep pace with emerging drugs, both legal and illegal, to keep all road users safe.

AAA Hawaii also strongly supports the provision in SB641 to ensure marijuana remains a prohibited drug when driving irrespective of whether it remains classified as a Schedule 1 drug. The impact of marijuana impaired driving is getting worse nationwide. The National Roadside Survey also found nighttime weekend drivers with marijuana in their system increased 50% from 2007 to 2014. Unfortunately, many users still fail to recognize marijuana can impair the ability to operate a motor vehicle. SB641 helps ensure marijuana use remains prohibited before driving.

1130 N. Nimitz Highway, Suite A170, Honolulu, HI 96817

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We have a long history of advocating traffic safety policies to keep road users safe. We support vigorous enforcement of laws against impaired driving in addition to public policies that address the full spectrum of ways substance abuse can impact our roads. We respectfully request that the Committee on Judiciary support SB641 as a positive step for traffic safety in Hawaii.

Thank you very much for your consideration.

Sincerely,

Stephen Finnegan

Stephen Finnegan
Public Affairs and Government Relations Manager



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

March 15, 2019

To: Representative Henry J. C. Aquino, Chair, House Committee on Transportation ; Representative Troy Hashimoto, Vice Chair; and members of the Committee

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

Re: Senate Bill 641 – Relating to Intoxicants

I am Carol McNamee, offering testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in strong support of Senate Bill 641, relating to Intoxicants.

Hawaii's annual fatality statistics reveal an increasing number of highway deaths connected to the presence of drugs. In 2016, the number exceeded alcohol-related fatalities. MADD supports measures that give law enforcement the necessary tools to be able to arrest and convict impaired drivers – whatever their substance(s) of intoxication might be. Senate Bill 641 provides language necessary to amend our current statutes to broaden the definition of “drug”. Although Chapter 329 lists scores of drugs in schedules one through four, clever underground chemists are now able to synthesize new drugs at too swift a rate for our statutes to keep pace. This problem results in difficulties making an arrest in a number of cases which unfortunately results in more impaired drivers left on the road.

MADD supports SB 641's proposed definition of “drug” because it is the same as that used in DRE training. It also goes farther by amending the word “substance” and the words “substance abuse”.

MADD strongly encourages this committee to pass SB 641.

Thank you for this opportunity to testify.



Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: Senate Committee on Judiciary
FROM: Carl Bergquist, Executive Director
HEARING DATE: March 15, 2019, 10:30AM
RE: SB641, RELATING TO INTOXICANTS, **OPPOSE**

Dear Chair Aquino, Vice Chair Hashimoto, Committee Members:

The Drug Policy Forum of Hawai'i (DPFH) **opposes** this measure to expand the definition of "drug" in [Chapter 291E, Hawai'i Revised Statutes](#), in order to attempt to obtain convictions for operating vehicles under the influence of an intoxicant. We appreciate the efforts of the introducer to address the concerns raised by the Office of the Public Defender and our organization when a similar bill, [HB2399/SB2826](#) was introduced in 2018 as part of the Governor's Package. However, we feel the core issue in that legislation remains in the current version of the bill: it introduces an overbroad definition of "drug" and "substance" and allows for the prosecution of individuals who have such "drugs"/"substances" in their system even though there are no reliable tests that can help prove a causal connection between said presence and actual impairment.

This bill purports to address the danger of non-scheduled drugs such as "kava or muscle relaxants" that may cause impairment. The movement to add kava, e.g., to the definition of "drugs" is over two decades old, and to date, there is little evidence for the need to do so. **Kava related prosecutions in California, where the drug definition is similar to the one proposed in this bill, have not been successful due to deficient evidence.** [To the contrary, recent research shows that reaction times after kava consumption may actually be better than for non kava consumers.](#)

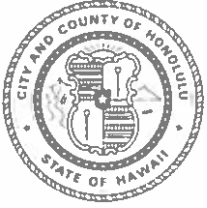
Rather than this sweeping change, which has few parallels in others states, we suggest that *if* specific substances actually pose a threat to the public, then the Department of Transportation (DOT) should furnish evidence to that effect, and request

the addition of specific language in the definition of “drugs”. This would be more in line with an evidence-based approach. It is worth highlighting that the Administrator of the Narcotics Enforcement Division (NED) at the Department of Public Safety already has emergency scheduling powers, per HRS §329-11(e), in case new substances such as synthetics appear in Hawai’i. If there is an example of when this power was not sufficient to address impaired driving, we would welcome that evidence.

We also submit that prosecuting drugged drivers is already possible without the radical change proposed by this bill. In the case of serious accidents, with the help of Drug Recognition Experts (DREs), it should be possible to prosecute under [HRS §707-705 Negligent injury in the first degree](#), and [HRS §707-706 Negligent injury in the second degree](#). Alternatively, there is HRS [HRS §707-713 Reckless endangering in the first degree](#), and [HRS §707-714 Reckless endangering in the second degree](#). In the case of fatalities, there are requisite statutes as well. [As the testimony from the Office of the Public Defender noted in 2018](#), there are not necessarily any scientific verification methods for proving impairment resulting from some of the substances informing this bill. As such, **using these parts of HRS seems a more prudent course than adding a new one that would be exceedingly hard to enforce.**

As an example, when it comes to cannabis, which the bill anticipates being legalized or descheduled, there is no demonstrable blood level test that proves impairment. It is therefore imperative that no arbitrary limit *per se* limit be set that would claim to indicate impairment – [the National Highway Traffic Safety Administration councils against this](#). Again, **rather than broadening the “drug” definition, should cannabis be legalized or descheduled, the legislature can simply specifically list “cannabis” in the Chapter 291E definitions – we would not be opposed to that.**

This bill puts the cart before the horse, and we respectfully ask that you defer it. A working group to study the experience of other states would instead be in order. Thank you for the opportunity to testify.



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WRITTEN TESTIMONY ONLY

March 15, 2019

TESTIMONY OF
COUNCIL CHAIR EMERITUS & VICE CHAIR RON MENOR
COUNCIL DISTRICT 9
CITY AND COUNTY OF HONOLULU

Senate Bill 641
RELATING TO INTOXICANTS.

Chair Aquino, Vice Chair Hashimoto and Members of the House Committee on Transportation (TRN):

I am testifying in support of Senate Bill 641. I am submitting this testimony not on behalf of the Honolulu City Council, but as an individual Councilmember.

Hawaii's annual fatality statistics reveal an increasing number of highway deaths connected to drugs. In 2016, it exceeded alcohol-related fatalities. Senate Bill 641 amends our current statutes to broaden the definition of drugs and substance abuse.

As new drugs become available, we want law enforcement to have the necessary tools to be able to arrest and convict impaired drivers. Because of these developments, it has resulted in fewer arrests and more impaired drivers endangering the safety of our roads.

Mahalo for the opportunity to testify in support of this bill.

SB-641

Submitted on: 3/14/2019 11:59:29 AM

Testimony for TRN on 3/15/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Clifford G Wong, Ph.D	Individual	Support	Yes

Comments:

Representative Henry Aquino and Transportation Committee members:

My name is Dr. Clifford G Wong, and I head the local private laboratory that currently performs drug DUI testing for the state judiciary. I hold a Ph.D. in biochemistry and am board-certified as a forensic toxicologist. I have served as a technical consultant to the state and county prosecutorial staffs, and have served as an expert forensic toxicology witness in many Federal and state criminal and civil hearings.

I wish to my full support to SB641 as the bill addresses a major problem encountered since the official inception of the state drug DUI program (a.k.a. DRE). Current law allows only for the DUI prosecution of drivers who are apprehended and have been shown to have consumed drugs included in the state controlled-substances schedules. Unfortunately there are other drugs that have been found in arrested drivers who have exhibited poor vehicular control or hazardous operations of their vehicles. These would include OTC drugs commonly used for cold medications (pseudoephedrine, dextromethorphan, Benedryl (diphenhydramine) and other antihistamines, Kava, and numerous new drugs that have been recently entered into mainstream use (Kratom, new synthetic cannabinoids, bath salts). Because of the novelty of some of the new drugs, there was been insufficient time to include them into the controlled substance list (Federal and State). This new bill will allow us to prosecute DUI drivers who have exhibited consistent unsafe maneuvers and have consumed intoxicants that are not currently on the controlled substance schedules.

Passage of this bill will not make DUI prosecution an "open season" on "innocent drivers" as any prosecution is predicated by observation of impaired performance of driving, physical impairment of the driver in standardized tests, physical signs of intoxication, and the toxicology report itself, in which the officer's conclusions are supported by scientific data. The prosecution must also still prove that the intoxicant identified can impair the person's performance at the concentrations found.

I am planning to provide oral testimony at your hearing as well to answer any questions that may have arisen from my written testimony here.

Mahalo!

Clifford G. Wong, Ph.D. DABFT-FT

Clinical Labs of Hawaii Toxicology Dept.

phone: 808-864-3483, email: clifford.wong@hawaiilabs.com.