



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
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**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 4, 2019  
1:15 p.m.  
State Capitol, Room 225

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

Senate Committee on Transportation

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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.

Harry Kim  
Mayor



Paul K. Ferreira  
Police Chief

Kenneth Bugado Jr.  
Deputy Police Chief

## County of Hawai'i

### POLICE DEPARTMENT

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January 31, 2019

Senator Lorraine R. Inouye  
Chairperson and Committee Members  
Committee on Transportation  
415 South Beretania Street, Room 225  
Honolulu, Hawai'i 96813

#### **RE: SENATE BILL 641, RELATING TO INTOXICANTS**

Dear Senator Inouye:

The Hawai'i Police Department supports Senate Bill 641, with its purpose to add the definition of "substance abuse" and amend the definitions of "drug" and "substance" for purposes of operating a vehicle under the influence of an intoxicant violations.

We believe the requirements set forth within this bill provide clarity with respect to the "under the influence" vehicle operator and those substances whether specifically defined beforehand or not, that are the root cause of said impairment.

It is for these reasons, we urge this committee to support this legislation.

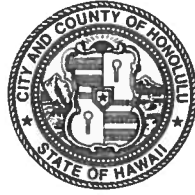
Thank you for allowing the Hawai'i Police Department to provide comments relating to House Bill 641.

Sincerely,

PAUL K. FERREIRA  
POLICE CHIEF

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR

SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
JONATHON GREMS  
DEPUTY CHIEFS

OUR REFERENCE

BM-GR

February 4, 2019

**LATE**

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

Dear Chair Inouye 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

The Honorable Lorraine R. Inouye, Chair  
and Members

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impaired by kawa or Seroquel (a potentially impairing drug prescribed to treat bipolar 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 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

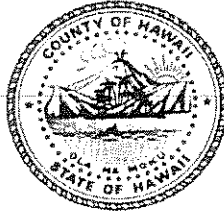
APPROVED:



Susan Ballard  
Chief of Police

MITCHELL D. ROTH  
PROSECUTING ATTORNEY

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## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 641

A BILL FOR AN ACT RELATING TO INTOXICANTS

COMMITTEE ON TRANSPORTATION

Senator Lorraine Inouye, Chair  
Senator Breene Harimoto, Vice Chair

Monday, February 4, 2019, 1:15 p.m.  
State Capitol, Conference Room 225

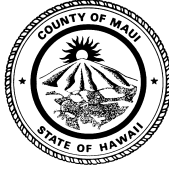
Honorable Chair Inouye, Honorable Vice Chair Harimoto, and Members of the Committee on Transportation, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in SUPPORT of Senate Bill No. 641

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. We are finding that impaired drivers may consume a combination of alcohol and/or substances that may or may not be detected under current drug test contracts. This makes it impossible to prove a material element of the offense and allows a driver who is clearly impaired to get away with driving while impaired.

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, yet they have the capability to impair drivers. 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. These substances are not necessarily screened for in lab tests.

To protect our public from impaired drivers, law enforcement and adjudicators should not be limited to only substances on the controlled substance schedules that are detectable for OVUII offenses. An impaired driver is dangerous to others regardless of what caused the impairment.

The Office of the Prosecuting Attorney, County of Hawai'i, supports the passage of Senate Bill No. 641. Thank you for the opportunity to testify on this matter.



COUNTY OF MAUI  
**DEPARTMENT OF THE PROSECUTING ATTORNEY**  
150 S. HIGH STREET  
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CONTACT: Brandon M. Segal  
Deputy Prosecuting Attorney

TESTIMONY ON  
SB641 - RELATING TO INTOXICANTS.

February 2, 2019

The Honorable Lorraine R. Inouye, Chair  
The Honorable Breene Harimoto, Vice Chair  
and Members of the Committee on Transportation

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

The Department of the Prosecuting Attorney, County of Maui **STRONGLY SUPPORTS** S.B 641, Relating to Intoxicants.

The definition of "drug", as currently defined in the Hawaii Revised Statutes § 291E-1, does not sufficiently protect the safety of our citizens and visitors who use our roadways. In order to substantiate a charge for Operating a Vehicle Under the Influence of an Intoxicant ("OVUII"), the drug must be a controlled substance. This definition limits our ability to prosecute cases involving impaired drivers who are under the influence of substances such as kava, certain muscle relaxants, and other organic or synthetic substances that are not scheduled under law.

In addition, recent attempts at the federal and state levels to remove marijuana (cannabis) and tetrahydrocannabinols from the controlled substance schedules, if accomplished, could make it impossible to prosecute a marijuana-impaired driver under the current definition of "drug".

The proposed definition of "drug" under this bill patterns the definition implemented in the Drug Recognition Expert ("DRE") training program. DREs are law enforcement officers who have been specially trained, pursuant to strict National Highway Traffic Safety Administration standards, to recognize

drivers who are under the influence of substances that impair their ability to operate their vehicle in a safe manner. These seven categories of substances are: central nervous system depressants, CNS stimulants, hallucinogens, dissociative anesthetics, narcotic analgesics, inhalants, and cannabis.

It is important to note that the proposed definition of "drug" would only result in an arrest and charge for OVUII if the substance the driver consumed or ingested **impairs the driver's ability to operate a vehicle safely**. In other words, the substance must weaken or impact the driver's mental faculties, balance and coordination, and/or divided attention abilities, in some material respect. All police officers in Hawai'i are given standardized and comprehensive training to recognize signs of impairment, including observing driving patterns and conducting Standardized Field Sobriety Tests to evaluate a person's mental and physical faculties.

The Department of the Prosecuting Attorney, County of Maui is invested in improving traffic safety and protecting the lives of our citizens and visitors. This bill, if enacted into law, will help protect those lives, and also hold accountable those who chose to put the lives of others in danger by driving while impaired.

Thank you for the opportunity to provide testimony.



Subject: Support SB641

Dear Senator Chair Inouye, Vice Chair Harimoto and Members of the Senate 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.hawaiishsp.com](http://www.hawaiishsp.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.*





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February 4, 2019

To: Senator Lorraine R. Inouye, Chair, Senate Committee on  
Transportation ; Senator Breene Harimoto, 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

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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 fewer arrests and more impaired drivers threatening the safety of our roads.

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.

**LATE**

**SB-641**

Submitted on: 2/4/2019 8:23:31 AM

Testimony for TRS on 2/4/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Oppose	No

Comments:

Decide NOT to legalize recreational marijuan.

Although the language "sounds good," proving a case for DUI for substances like 'awa, for example, will be very difficult.