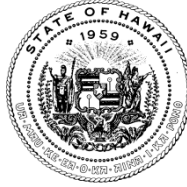


DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

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



February 8, 2022
2:00 P.M.
State Capitol, Teleconference

H.B. 2337
RELATING TO HIGHWAY SAFETY

House Committee on Judiciary & Hawaiian Affairs

The Department of Transportation (DOT) **supports** H.B. 2337, which clarifies the definitions of “drug,” “substance,” and “substance abuse” in Chapter 291E, Hawaii Revised Statutes (HRS), 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 in Chapter 329, HRS. We are one of six states in the United States with this restrictive language in their impaired driving laws; other states’ definitions include variations of other impairing substances.

This definition limits law enforcement and prosecutors from keeping our roads safe from impaired drivers. As highlighted in the 2017 Governors Highway Safety Association’s Drug-Impaired Driving guide for states, drugged driving is more complex than drunk driving for many reasons, including the fact that “some drugs that can impair driving are illegal to use, some are legal to use under certain conditions, and some are freely available over-the-counter.” 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 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.

According to a 2018 Palm Beach County study published in the Journal of Analytical Toxicology, "Driving Under the Influence of Drugs (DUID): When the Law Misses the Mark", a review of impaired driving cases in Palm Beach County, Florida, from 2007-2018 revealed that 21% of all drug-positive blood specimens and 47% of all drug-positive urine specimens contained at least one impairing non-controlled drug. In comparing the study's top 10 non-controlled drugs identified in blood and top 10 non-controlled drugs identified in urine to Hawaii's Controlled Substances List, 11 of the substances found in the study's blood and urine samples are not on Hawaii's list, and 6 of the substances were detected in Hawaii's impaired driving toxicology results within the past 3 years. (These are probably underestimated due to limited and/or no testing.)

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.

A common concern is the misconception that broadening the definition of "drug" in Hawaii's OVUII statute would lead to more arrests. This is not true. Law enforcement officers are still required to have probable cause before making an arrest, and officers are not aware of what substance a driver is under the influence of when currently making arrests; they would not know until they receive a toxicology confirmation. Officers are trained to look for impairment on the roads, not specific drugs or drug categories. Amending the definition of "drug" would enable prosecutors to address impaired driving no matter what drug is causing the driver to be impaired.

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. As stated in the Palm Beach County study, "If the intent of DUID laws is to improve traffic safety by removing impaired drivers from the road, then more inclusive statutory language such as 'any impairing drug' is more appropriate than linking the charge to a drug possession law framework or using other similarly restrictive language."

The DOT urges your support with H.B. 2337, which will improve law enforcement's ability to separate impaired drivers from our roadways.

Thank you for the opportunity to provide testimony.

LATE

HB-2337

Submitted on: 2/8/2022 8:33:04 AM

Testimony for JHA on 2/8/2022 2:00:00 PM

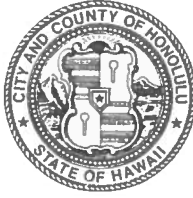
Submitted By	Organization	Testifier Position	Remote Testimony Requested
Karen Kahikina	Hawaii DOT	Support	Yes

Comments:

I am with the DOT and am available for comments.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



RICK BLANGIARDI
MAYOR

RADE K. VANIC
INTERIM CHIEF

OUR REFERENCE JS-LC

February 8, 2022

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 2337, Relating to Highway Safety

I am James Slayter, Acting Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2337, Relating to Highway Safety.

The HPD strongly supports the proposal to clarify the definitions of "drug," "substance," and "substance abuse" in Chapter 291E of the Hawaii Revised Statutes (HRS) regarding the use of intoxicants while operating a vehicle.

In order to convict a drug-impaired driver of Operating a Vehicle Under the Influence of an Intoxicant (OVUII), the prosecution must prove that he or she was under the influence of a "drug" that impaired him or her. Section 291E-1, Definitions, HRS, currently defines a "drug" as a scheduled substance or its metabolite. In cases where the suspect refuses 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 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.

The Honorable Mark M. Nakashima, Chair
and Members
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Page 2

Furthermore, 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 if a chemical test shows an impairing, nonscheduled substance in their blood or urine.

Impaired drivers are a menace to the safety of all roadway users, regardless of the particular chemical in their blood causing the impairment is on a specific list or not. Although 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 prevalently see on our roadways.

The HPD urges you to support House Bill No. 2337, Relating to Highway Safety.

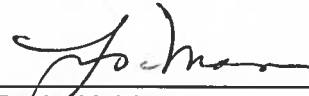
Thank you for the opportunity to testify.

Sincerely,



James Slayter, Acting Major
Traffic Division

APPROVED:



for Rade K. Vanic
Interim Chief of Police



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 8, 2022

To: Representative Mark M. Nakashima, Chair, Committee on Judiciary & Hawaiian Affairs, Representative Scot Z. Matayoshi, Vice Chair; and members of the Committee

From: Kurt Kendro, Chair, Public Policy Committee; Mothers Against Drunk Driving (MADD) Hawaii

Re: House Bill 2337- RELATING TO HIGHWAY SAFETY

I am Kurt Kendro, Chair of MADD Hawaii's Public Policy Committee and retired Major from the Honolulu Police Department speaking on behalf of the members of MADD Hawaii Advisory Board in STRONG SUPPORT of House Bill 2337- Relating to Highway Safety.

This bill would provide a broader definition of the term "drug" and "substance" and add "substance abuse" for purposes of operating a vehicle under the influence of an intoxicant violations. In today's world of technology and science changes almost seemingly every day that result in a new type of drug which is why this change to the law is desperately needed. The change of definitions and the addition of the term "substance abuse" will be more inclusive of substances that are natural, synthetic, or combination of these, that impair drivers on the roadways. These changes are necessary to further protect innocent users of roadways and to apprehend and prosecute these impaired drivers.

MADD Hawaii is in STRONG SUPPORT of House Bill- 2337 Relating to Highway Safety.

Thank you for the opportunity to testify.