H.B. NO. (15

A BILL FOR AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. Chapter 706, Hawaii Revised Statutes, is
2	amended by adding a new section to part III to be appropriately
3	designated and to read as follows:
4	"§706- Victim restitution; financial support for minor
5	children of victims of persons operating a vehicle under the
6	influence. (1) Notwithstanding any law to the contrary, if a
7	defendant is convicted of violating section 291E-61 or
8	707-702.5(1)(a) and the violation caused the disability or death
9	of a parent or legal guardian of a minor child, the sentencing
10	court shall order the defendant to make restitution in the form
11	of financial support to each child of the victim until the child
1 2	reaches:
13	(a) Eighteen years of age; or
14	(b) Nineteen years of age if the child is still enrolled
15	in high school.

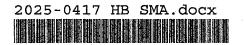
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1	(2)	In determining an amount that is reasonable and
2	necessary	for the financial support of the victim's child, the
3	court sha	ll consider all relevant factors, including the:
4	<u>(a)</u>	Financial needs and resources of the child;
5	<u>(b)</u>	Financial resources and needs of the disabled parent,
6		surviving parent, or legal guardian of the child, or
7		if applicable, the financial resources of the State if
8		the child is in the custody of the department of
9		children's services;
10	<u>(c)</u>	Standard of living to which the child is accustomed;
11	<u>(d)</u>	Physical and emotional condition of the child and the
12		child's educational needs;
13	<u>(e)</u>	Child's physical and legal custody arrangements; and
14	<u>(f)</u>	Reasonable child care expenses of the disabled parent,
15		surviving parent, or legal guardian.
16	(3)	The court shall order that payments made to
17	financial	ly support the child be made first to the disabled
18	parent, su	irviving parent, or legal guardian. The clerk of the
19	court shal	ll be made trustee for remittance to the child as an
20	alternativ	ve to a disabled parent, surviving parent, or legal



1	guardian,	if deemed necessary. If payments are made to the
2	clerk, th	e clerk shall:
3	<u>(a)</u>	Deposit all payments no later than the next working
4		day after receipt; and
5	<u>(b)</u>	Remit the payments to the disabled parent, surviving
6		parent, or legal guardian within three working days of
7		receipt by the clerk.
8	(4)	If a defendant who is ordered to make restitution in
9	the form	of financial support for the child under this section
10	is incarc	erated and unable to make the required restitution, the
11	defendant	shall have up to one year after the release from
12	incarcera	tion to begin payment, including entering into a
13	payment p	lan to address any arrearage.
14	(5)	If a defendant's payments to financially support the
15	child are	set to terminate but the defendant's obligation is not
16	paid in f	ull, the payments to financially support the child
17	shall cont	tinue until the entire arrearage is paid.
18	(6)	If the disabled parent, surviving parent, or legal
19	guardian d	of the child brings a civil action against the
20	defendant	before the sentencing court orders restitution to
21	financial	ly support the child and the disabled parent, surviving

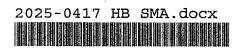


1	parent, or legal guardian obtains a judgment and full			
2	satisfaction of damages in the civil suit, restitution shall not			
3	be ordered	under this section.		
4	(7)	If the court orders the defendant to make restitution		
5	to financi	ally support the child under this section and the		
6	disabled p	arent, surviving parent, or legal guardian		
7	subsequent	ly brings a civil action and obtains a judgment, the		
8	restitutio	n order shall be offset by the amount of the judgment		
9	awarded an	d paid by the defendant or the defendant's insurance		
10	for lost w	ages.		
11	For t	he purposes of this section, "disabled":		
12	(1)	Means a legal disability as is measured by functional		
13		inabilities; and		
14	(2)	Includes inabilities caused by psychological,		
15	I	psychiatric, or stress-related trauma, and refers to		
16	<u>-</u>	any person who is unable to make informed decisions		
17	1	with respect to their physical health and safety or		
18		the physical health and safety of a minor child,		
19	i i i i i i i i i i i i i i i i i i i	including health care, food, shelter, clothing, or		
20	נ	personal hygiene."		

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1	SECTION 2.	Section 291E-61, Hawaii Revised Statutes, is
2	amended by amen	ding subsection (b) to read as follows:
3	"(b) A pe	rson committing the offense of operating a
4	vehicle under t	he influence of an intoxicant shall be sentenced
5	without possibi	lity of probation or suspension of sentence as
6	follows:	:
7	(1) Excep	t as provided in paragraph (4), for the first
8	offen	se, or any offense not preceded within a ten-year
9	perio	d by a conviction for an offense under this
10	sectio	on or section 291E-4(a):
11	(A) · A	A fourteen-hour minimum substance abuse
12	1	rehabilitation program, including education and
13	C	counseling, or other comparable programs deemed
14	ā	appropriate by the court;
15	(B) I	Revocation of license to operate a vehicle for no
16	1	less than one year and no more than eighteen
17	n	nonths;
18	(C)	Installation during the revocation period of an
19	Ė	ignition interlock device on all vehicles
20	c	operated by the person;
21	(D) <i>P</i>	Any one or more of the following:



1		(i) Seventy-two hours of community service work;
2		(ii) No less than forty-eight hours and no more
3		than five days of imprisonment; or
4		(iii) A fine of no less than \$250 and no more than
5		\$1,000;
6		(E) A surcharge of \$25 to be deposited into the
7		neurotrauma special fund; [and]
8		(F) A surcharge, if the court so orders, or up to \$25
9		to be deposited into the trauma system special
10		fund; and
11		(G) When applicable, victim restitution pursuant to
12		section 706- ; and
13	(2)	For an offense that occurs within ten years of a prior
14		conviction for an offense under this section:
15		(A) A substance abuse program of at least thirty-six
16		hours, including education and counseling, or
17		other comparable programs deemed appropriate by
18		the court;
19		(B) Revocation of license to operate a vehicle for no
20		less than two years and no more than three years;

1	(C)	Installation during the revocation period of an
2		ignition interlock device on all vehicles
3		operated by the person;
4	(D)	Either one of the following:
5		(i) No less than two hundred forty hours of
6		community service work; or
7		(ii) No less than five days and no more than
8		thirty days of imprisonment, of which at
9		least forty-eight hours shall be served
10		consecutively;
11	(E)	A fine of no less than \$1,000 and no more than
12		\$3,000, to be deposited into the drug and alcohol
13		toxicology testing laboratory special fund;
14	(F)	A surcharge of \$25 to be deposited into the
15		neurotrauma special fund; [and]
16	(G)	A surcharge of up to \$50, if the court so orders,
17		to be deposited into the trauma system special
18		fund; and
19	<u>(H)</u>	When applicable, victim restitution pursuant to
20		section 706

1 In addition to a sentence imposed under paragraphs (1) (3) 2 and (2), any person eighteen years of age or older who 3 is convicted under this section and who operated a 4 vehicle with a passenger, in or on the vehicle, who 5 was younger than fifteen years of age, shall be 6 sentenced to an additional mandatory fine of \$500 and 7 an additional mandatory term of imprisonment of forty-8 eight hours; provided that the total term of 9 imprisonment for a person convicted under this 10 paragraph shall not exceed the maximum term of 11 imprisonment provided in paragraph (1) or (2), as 12 applicable. Notwithstanding paragraphs (1) and (2), 13 the revocation period for a person sentenced under 14 this paragraph shall be no less than two years; 15 (4)In addition to a sentence imposed under paragraph (1), 16 for a first offense under this section, or an offense 17 not preceded within a ten-year period by a conviction 18 for an offense, any person who is convicted under this 19 section and was a highly intoxicated driver at the 20 time of the subject incident shall be sentenced to an 21 additional mandatory term of imprisonment for forty-

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1 eight consecutive hours and an additional mandatory revocation period of six months; provided that the 2 3 total term of imprisonment for a person convicted 4 under this paragraph shall not exceed the maximum term 5 of imprisonment provided in paragraph (1). Notwithstanding paragraph (1), the revocation period 6 7 for a person sentenced under this paragraph shall be 8 no less than eighteen months; 9 (5) In addition to a sentence under paragraph (2), for an 10 offense that occurs within ten years of a prior 11 conviction for an offense under this section, any 12 person who is convicted under this section and was a 13 highly intoxicated driver at the time of the subject 14 incident shall be sentenced to an additional mandatory 15 term of imprisonment of ten consecutive days and an 16 additional mandatory revocation period of one year; 17 provided that the total term of imprisonment for a 18 person convicted under this paragraph shall not exceed 19 the maximum term of imprisonment provided in paragraph 20 (2), as applicable. Notwithstanding paragraph (2),

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1		the	revocation period for a person sentenced under
2		this	paragraph shall be no less than three years;
3	(6)	A pe	rson sentenced pursuant to paragraph (1)(B) may
4		file	a motion for early termination of the applicable
5		revo	cation period if the person:
6		(A)	Was not sentenced to any additional mandatory
7			revocation period pursuant to paragraph (3) or
8			(4);
9		(B)	Actually installed and maintained an ignition
10			interlock device on all vehicles operated by the
11			person for a continuous period of six months,
12			after which the person maintained the ignition
13			interlock device on all vehicles operated by the
14			person for a continuous period of three months
15			without violation;
16		(C)	Includes with the person's motion for early
17			termination a certified court abstract
18			establishing that the person was not sentenced to
19			any additional mandatory revocation period
20			pursuant to paragraph (3) or (4);

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1		(D) Includes with the person's motion for early
2		termination a certified statement from the
3		director of transportation establishing that:
4		(i) The person installed and maintained an
5		ignition interlock device on all vehicles
6		operated by the person for a continuous
7		period of six months; and
8		(ii) After the six-month period, the person
9		maintained the ignition interlock device on
10		all vehicles operated by the person for a
11		continuous period of three months without
12		violation; and
13		(E) Has complied with all other sentencing
14		requirements.
15		Nothing in this paragraph shall require a court to
16		grant early termination of the revocation period if
17		the court finds that continued use of the ignition
18		interlock device will further the person's
19		rehabilitation or compliance with this section;
20	(7)	If the person demonstrates to the court that the
21		person:

1		(A) Does not own or have the use of a vehicle in
2		which the person can install an ignition
3		interlock device during the revocation period; or
4		(B) Is otherwise unable to drive during the .
5		revocation period,
6		the person shall be prohibited from driving during the
7		period of applicable revocation provided in paragraphs
8		(1) to (5); provided that the person shall be
9		sentenced to the maximum license revocation period,
10		the court shall not issue an ignition interlock permit
11		pursuant to subsection (i), and the person shall be
12		subject to the penalties provided by section 291E-62
13		if the person drives during the applicable revocation
14		period; and
15	(8)	For purposes of this subsection, "violation" means:
16		(A) Providing a sample of .04 or more grams of
17		alcohol per two hundred ten liters of breath when
18		starting the vehicle, unless a subsequent test
19		performed within ten minutes registers a breath
20		alcohol concentration lower than .02 and the

1		digital image confirmed the same person provided
T		digital image confirmed the same person provided
2		both samples;
3	(B)	Providing a sample of .04 or more grams of
4		alcohol per two hundred ten liters of breath on a
5		rolling retest, unless a subsequent test
6		performed within ten minutes registers a breath
7		alcohol concentration lower than .02 and the
8		digital image confirms the same person provided
9		both samples;
10	(C)	Failing to provide a rolling retest, unless an
11		acceptable test is performed within ten minutes;
12	(D)	Violating section 291E-66; or
13	(E)	Failing to provide a clear photo of the person
14		when the person blows into the ignition interlock
15		device."
16	SECTION 3	. This Act does not affect rights and duties that
17	matured, penal	ties that were incurred, and proceedings that were
18	begun before i	ts effective date.
19	SECTION 4	. Statutory material to be repealed is bracketed
20	and stricken.	New statutory material is underscored.

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1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

JAN 1 4 2025

Report Title:

Disability; Driving Under the Influence; Victim Restitution; Child Support

Description:

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Requires defendants convicted of causing the death or disability of a parent or legal guardian of a minor child by the operation of a vehicle while under the influence of an intoxicant to make restitution in the form of financial support to each child of the victim.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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