



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
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HONOLULU, HAWAII 96813-5097

February 6, 2025
3:00 p.m.
State Capitol, Room 224 & Videoconference

S.B. 384
RELATING TO VICTIM RESTITUTION

Senate Committee on Transportation and Culture and the Arts

The Hawaii Department of Transportation (HDOT) **supports S.B. 384**, relating to victim restitution. This proposed bill would require defendants convicted of negligent homicide in the first degree while driving under the influence of an intoxicant to provide financial support to the decedent's surviving minor children until they reach the age of 18 or until the age of 23 for any child that enrolls in post high school education.

S.B. 384 and S.B. 356 evolved from Bentley's law; a legislative initiative proposed in response to a grieving grandmother in Missouri. As a result, similar legislation has been enacted in six other states (Tennessee, Kentucky, Texas, South Dakota, Utah, and Maine) during the past four years.

According to HDOT's annual Behavioral Survey:
13% of car drivers and 22% of pickup truck drivers admitted to driving while feeling buzzed in the past six months. In addition, 24% of passengers of motor vehicles witnessed the driver of the vehicle they were in looked buzzed or admitted to feeling buzzed.

According to the National Highway Traffic Safety Administration, in 2022 Hawaii experienced 37 alcohol-impaired driving fatalities (BAC .08+), which were all 100 percent preventable. Additionally, 2023 preliminary state data shows that 49 of the 117 (42 percent) drivers involved in a fatal crash tested positive for alcohol and/or drugs.

Increasing the penalty for those who willingly drive while impaired, and in doing so cause the death or disability of a guardian, could serve as strong deterrents to those drivers who think that driving impaired is only an issue if you get caught. And subsequently, spare our families and communities the financial pain of losing loved one to the bad choices of an impaired driver.

We respectfully urge the Committee to pass this measure.

Thank you for the opportunity to provide testimony.

JON N. IKENAGA
PUBLIC DEFENDER

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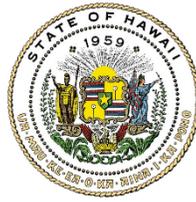
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February 5, 2025

LATE

S.B. 384: RELATING TO VICTIM RESTITUTION

Chair Lee, Vice-Chair Inouye, and Members of the Committee:

The Office of the Public Defender **opposes SB 384.**

Hawaii Revised Statute (HRS) § 706-646 determines the applicability of restitution in criminal cases and states “[t]he court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victim as a result of the defendant’s offense when requested by the victim.”

As written, the bill requires restitution for unforeseen and unpredictable expenses that cannot be verified. It would be impossible for a criminal court to forecast and verify the required financial support necessary to cover the financial, physical, emotional, and educational needs of a child or disabled adult. Criminal court is not the appropriate forum to meaningfully litigate and determine extensive and complicated issues of monetary damages. The appropriate forum would be to file a civil action in civil court.

In State v. DeMello, 136 Hawaii 193, 361 P.3d 420 (2015) the Hawaii Supreme Court addressed the much less complex issue of restitution for lost wages in a criminal case. While the Court determined verified lost wages were appropriately ordered as part of the defendant’s restitution, the Court recognized, “[w]here lost wages cannot be verified, which may be the case if the victim was unemployed or if the request is for expected future income, adjudication will require a more extensive civil proceeding.”¹ This bill’s contemplated restitution is much

¹ State v. DeMello, 136 Hawaii at 197, P.3d at 424.

more extensive and complicated than the narrow issue of lost wages and as discussed by the Hawaii Supreme Court, should be addressed in civil court.

Most criminal cases resolve because a defendant enters a change of plea, often after reaching a plea agreement. A defendant must enter a plea intelligently, knowingly, and voluntarily and must be fully advised of all the potential consequences of entering a plea – including the possibility of paying restitution. The current Circuit Court Criminal Plea Form (Form K) requires a defendant to acknowledge the following:

I further understand that: (a) the court must order restitution for reasonable and verified losses requested by a victim or when the crime victim compensation fund makes an award; (b) the court cannot waive the restitution amount or convert it to community service; and (c) unless the amount of restitution has already been determined, the court cannot determine what a possible restitution amount will be until a later time.²

This bill would deter plea agreements and resolutions of cases as it would be impossible for defense counsel to meaningfully advise defendants about the implications of restitution. Currently, restitution is predictable and must be verifiable. This allows defense counsel to advise defendants about the likelihood and expected scope of restitution. This bill would require defendants to enter a change of plea that would expose them to an unforeseen amount of restitution and would thwart the ability to meaningfully resolve cases.

The Office of the Public Defender believes that victims of crimes should be appropriately compensated. However, this type of expansive and unpredictable compensation should be addressed by the civil courts.

Thank you for the opportunity to comment on this measure.

² <https://www.courts.state.hi.us/wp-content/uploads/2016/03/1CP851.pdf>

Hearing Date: 2/6/2025

Committee: Senate Transportation and Culture and the Arts Committee
Chair Senator Lee, Vice Chair Senator Inouye, and Members of the Committee,

I am submitting testimony in support of SB384, which seeks to ensure that individuals convicted of negligent homicide in the first degree while driving under the influence are held financially responsible for supporting the children of their victims.

When a person chooses to drive under the influence and causes a fatal crash, they do not just take a life—they leave families devastated, particularly children who may lose a parent or guardian. Beyond the emotional trauma, these children often face financial hardship, especially if the deceased was the primary provider. This bill recognizes that justice must extend beyond criminal penalties and provide tangible support to those left behind.

By requiring offenders to contribute to the financial support of surviving children until they reach adulthood—or age 23 if they are enrolled in higher education or vocational training—this legislation ensures that the burden does not fall solely on grieving families or the state. Other jurisdictions have begun to implement similar laws, recognizing that victim restitution should include long-term support for children who lose a parent due to a preventable crime.

Holding offenders accountable in this way reinforces the severity of impaired driving and serves as both a deterrent and a measure of justice for those who suffer the consequences. I strongly urge the committee to pass SB384 and take a stand for families affected by these tragedies.

Thank you for the opportunity to provide testimony.

Sincerely,

Makena Young
Mothers Against Drunk Driving Hawaii

SB-384

Submitted on: 2/3/2025 3:58:58 PM

Testimony for TCA on 2/6/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lisa Dau	Testifying for Keiki Injury Prevention Coalition	Support	Written Testimony Only

Comments:

Keiki Injury Prevention Coalition supports SB384. Please consider passing this measure.

Thank you

Lisa Dau, RN, Injury Prevention Coordinator
Keiki Injury Prevention Coalition