

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

RICK BLANGIARDI
MAYOR



RADE K. VANIG
INTERIM CHIEF

OUR REFERENCE AP-TK

March 18, 2022

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 2337, H.D. 1, Relating to Highway Safety

I am Andre Peters, Acting Captain of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2337 H.D. 1, 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 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 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. 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.

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and Members
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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 needed to combat the rise of drug-impaired driving that we are prevalently seeing on our roadways.

The HPD urges you to support House Bill No. 2337, H.D. 1, Relating to Highway Safety.

Thank you for the opportunity to testify.

Sincerely,



Andre Peters, Acting Captain
Traffic Division

APPROVED:



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

March 18, 2022

To: The Honorable Karl Rhoads, Chair, Senator Jarrett Keohokalole, Vice
Chair, Senate Committee on Judiciary, and Committee Members

From: Arkie Koehl, Public Policy Committee; Mothers Against Drunk
Driving (MADD) Hawaii

Re: House Bill 2337 HD 1 – Relating to Highway Safety

I am Arkie Koehl, a MADD volunteer speaking on behalf of the members of Mothers Against Drunk Driving Hawaii in STRONG SUPPORT of House Bill 2337 HD 1, which would broaden the terms “drug” and “substance” and add “substance abuse” for purposes of OVUII violations.

Constant changes in the production of legal and illegal drugs are rendering efforts to accurately identify them futile. With language more inclusive of natural and/or synthetic impairing substances, HB 2337 will increase law enforcement’s ability to make our roadways safer.

Thank you for the opportunity to testify.

LATE

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

March 18, 2022
9:30 A.M.

State Capitol, Conference Room 016/Teleconference

H.B. 2337, H.D. 1
RELATING TO HIGHWAY SAFETY

Senate Committee on Judiciary

The Department of Transportation (DOT) **supports** H.B. 2337, H.D. 1, 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: When the Law Misses the Mark”), a

review of impaired driving cases in Palm Beach County, Florida, from 2007-2018 revealed that 21 percent of all drug-positive blood specimens and 47 percent 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 wouldn't 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 driving under the influence 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 for this measure, which will improve law enforcement's ability to separate impaired drivers from our roadways.

Thank you for the opportunity to provide testimony.

March 18, 2022

TO: Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Members of the Judiciary Committee

RE: **HB2337 HD1 Relating to Highway Safety. – SUPPORTS**

AAA Hawaii **SUPPORTS** HB2337 HD1, which extends the definition of drugs, substances, and substance abuse. This bill will better ensure drivers remain prohibited from operating motor vehicles if impaired from the use of cannabis or cannabis derivatives, irrespective of its status as a controlled substance. HB2337 HD1 will also provide a broader definition of drugs and substances (natural or synthetic) within the context of the state's impaired driving laws.

Drunk driving kills over 10,000 people nationwide each but we need to recognize drugged driving is also a serious problem. In 2017, 20.5 million people aged 16 or older drove under the influence of alcohol but 12.6 million drove under the influence of illicit drugs. (Center for Behavioral Health Statistics and Quality, 2019) In addition to illicit drugs, federal statistics suggest that 1 in every 10 people get behind the wheel after using prescription or over-the-counter medicines that can impair driving. (AAA, n.d.) AAA Hawaii recognizes all substances that lead to impairment prior to getting behind the wheel can lead to deadly consequences, which is why closing loopholes relative to definitions "drugs" and "substances" is very important to us.

AAA has also been concerned that the legalization of recreational cannabis due to the expected increase in motor vehicle crashes, injuries, and fatalities. Fatal crashes involving drivers who recently used cannabis doubled in Washington state after legalization, according to research by the AAA Foundation for Traffic Safety (2020) (Tefft, 2020). In addition, data from the Colorado Division of Criminal Justice showed us the number of fatalities with cannabinoid-only or cannabinoid-in-combination (with other drugs and alcohol) positive drivers increased 153%, from 55 in 2013 to 139 in 2017. (Colorado Department of Public Safety, 2018). While we remained opposed to cannabis legalization for recreation, we believe HB2337 HD1 helps ensure cannabis impaired drivers will be held accountable under the state's existing motor vehicle laws.

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 171,000 members in Hawaii and 60 million nationwide, service to and the safety of our members, other motorists, and all road users is our founding and continuing purpose.

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

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This is especially true in Hawaii where alcohol and drug impaired driving fatalities remains a persistent problem. Accordingly, AAA Hawaii supports HB 2337.

Respectfully Submitted,



Amanda Gualderama
Government Affairs Specialist

Liane Sumida

Liane Sumida
Regional Manager

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HB-2337-HD-1

Submitted on: 3/15/2022 9:43:02 AM

Testimony for JDC on 3/18/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
matthew cohen	Individual	Oppose	Written Testimony Only

Comments:

Committee: I think, as written, a person could drive aggressively after drinking two red bulls, and potentially have committed a DUI.

- Caffeine is a natural chemical
- A natural chemical is a substance (pursuant to the new definition of substance)
- A substance is a drug (pursuant to the new definition of drug)
- A drug is an intoxicant (pursuant to the existing definition of intoxicant).

I'm not suggesting people are entitled to drive aggressively, just questioning whether a DUI, with all its penalties, is appropriate.