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OFFICE OF THE PUBLIC DEFENDER

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March 12, 2024

**S.B. 2017, SD1: RELATING TO FINANCIAL SUPPORT OF A CHILD
AFTER DRIVING UNDER THE INFLUENCE**

Chair Tarnas, Vice-Chair Takayama, and Members of the Committee:

The Office of the Public Defender OPPOSES S.B. 2017, SD1.

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 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.

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

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
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a Ho'oponopono Ola*
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and
Programs

No. _____

TESTIMONY ON SENATE BILL 2017, SENATE DRAFT 1
RELATING TO FINANCIAL SUPPORT OF A CHILD
AFTER DRIVING UNDER THE INFLUENCE

by

Tommy Johnson, Director
Department of Corrections and Rehabilitation

House Committee on Judiciary & Hawaiian Affairs
Representative David T. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, March 13, 2024; 2:00 p.m.
State Capitol, Conference Room 325 & via Videoconference

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) offers comments on Senate Bill (SB) 2017, Senate Draft (SD) 1, which proposes to require defendants convicted of causing the death of a parent or legal guardian of a minor child by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol to make restitution in the form of financial support to each surviving child of the victim.

Most justice-involved individuals have suffered some form of trauma in their youth. Minors that have experienced the trauma of suddenly losing the stability and support of a parent or legal guardian typically gravitate towards sources that will fill that void. The financial hardship that usually accompanies this type of sudden loss only compounds what the minor is feeling anxiety, fear, anger, hopelessness, frustration, etc.

If enacted, this measure would provide the funding necessary to access professional counseling that could help the minor work through their trauma constructively and provide the guidance and support they need to overcome the

Senate Bill 2017, Senate Draft 1 Relating to Financial Support of a Child
House Committee on Judiciary & Hawaiian Affairs
March 13, 2024
Page 2

tragedy. Funding this bill may provide the minor with the tools necessary to develop the social skills needed to get through the trauma, move forward and become a well-adjusted productive member of society.

Thank you for the opportunity to provide comments on SB 2017, SD 1.



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
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STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
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HONOLULU, HAWAII 96813-5097

March 13, 2024
2:00 p.m.
State Capitol, Conference RM 325

S.B. 2017, S.D. 1
RELATING TO FINANCIAL SUPPORT OF A CHILD
AFTER DRIVING UNDER THE INFLUENCE

House Committees on Judiciary & Hawaiian Affairs and Agriculture & Food Systems

The Department of Transportation (DOT) **supports S.B. 2017, S.D. 1**, which requires defendants convicted of causing the death of a parent or legal guardian of a minor child by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol to make restitution in the form of financial support to each surviving child of the victim.

SB 2017, S.D. 1, 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 four other states (Tennessee, Kentucky, Texas, and Maine) during the past three years.

According to the National Highway Traffic Safety Administration (NHTSA), in 2021 Hawaii experienced 28 alcohol-impaired driving fatalities (BAC .08+), which were all 100 percent preventable. Additionally, 2021 state data shows that 45.67 percent of impaired drivers involved in fatal crashes tested positive for alcohol and/or drugs.

An innovative legislative solution such as SB 2017, S.D. 1, could cause drivers to consider the tragic impacts of their decision to drive under the influence of alcohol and/or drugs and subsequently, serve as an additional deterrent from initially driving under the influence.

We respectfully urge the Committee to pass this proposed bill.

Thank you for the opportunity to provide testimony.



Mothers Against Drunk Driving
Hawaii State Office
madd.org/Hawaii

745 Fort Street
Suite 303
Honolulu, HI 96813

808.532.6232 direct
877.MADD.HELP victim support
877.ASK.MADD

February 13, 2024

To: Representative David Tarnas, Chair, House Committee on Judiciary & Hawaiian Affairs,
Representative Gregg Takayama, Vice Chair; and Members of the Committee

From: Alice Liu, Program Director; Mothers Against Drunk Driving (MADD) Hawaii

Re: Senate Bill 2017 SD1– RELATING TO FINANCIAL SUPPORT OF A CHILD AFTER
DRIVING UNDER THE INFLUENCE.

Thank you for this opportunity to represent the members of Mothers Against Drunk Driving Hawaii in support of Senate Bill 2017 SD1.

The genesis of this initiative — known as Bentley's Law — is less than three years old, the response to a grieving grandmother in Missouri. Its momentum is remarkable, having already been enacted by four states – Tennessee, Kentucky, Texas and Maine.

To drive impaired is still the most frequently occurring violent crime in America. To kill someone while driving impaired is far worse. When that someone is a parent or guardian of a minor child, the crime is unspeakable. SB 2017 seeks to provide some financial support for the remainder of that child's minority.

We urge the Committee to pass this bill.

Alice Liu, Program Director; Mothers Against Drunk Driving (MADD) Hawaii

SB-2017-SD-1

Submitted on: 3/9/2024 11:39:59 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacqueline S. Ambrose	Individual	Support	Written Testimony Only

Comments:

Aloha,

Yes to requiring defendants convicted of causing the death of a parent or legal guardian of a minor child or adult dependent child with disabilities by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol to make restitution in the form of financial support to each surviving child of the victim

SB-2017-SD-1

Submitted on: 3/9/2024 11:53:42 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support

SB-2017-SD-1

Submitted on: 3/10/2024 3:43:33 PM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Teri Heede	Individual	Support	Written Testimony Only

Comments:

This is all about accountability and being responsible for one's own actions.

I support this bill 100%

SB-2017-SD-1

Submitted on: 3/11/2024 10:44:33 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael EKM Olderr	Individual	Support	Written Testimony Only

Comments:

I support this bill. It won't bring back the family member or loved one back. But it will make sure that those left behind will be taken care of.

SB-2017-SD-1

Submitted on: 3/12/2024 7:42:59 AM

Testimony for JHA on 3/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

SUPPORT.

MAHALO!