

SHOPO



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS

Robert Cavaco
State Board President

" A Police Organization for Police Officers Only "
Founded 1971

Term of Office
1-2022 to 12-2025

February 11, 2025

The Honorable David A. Tarnas, Chair
The Honorable Mahina Poepoe, Vice Chair
House Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: **HB 711 – Relating to Driving Under the Influence**

Dear Chair Tarnas, Vice-Chair Poepoe, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write to you on behalf of our Union in support to HB 711, which seeks to amend Chapter 706 of the Hawaii Revised Statutes to provide financial restitution to minor children who have lost a parent or legal guardian due to the negligent actions of individuals driving under the influence of drugs or alcohol.

According to MADD, every 79 seconds someone in our country is killed or injured in a drunken driving crash. SHOPO is dedicated to promoting local, state, and federal policies that protect public safety. This bill aligns with SHOPO's mission to enhance public safety and support victims of crime, ensuring that justice extends beyond the courtroom to provide tangible support to those affected. The crucial financial support required by this bill will no doubt help to alleviate the economic burden placed on families who have lost a primary caregiver due to such a tragic and preventable crime. Moreover, by imposing financial restitution obligations on the DUI offender, this bill may serve as a deterrent to potential offenders, reinforcing the serious consequences of driving under the influence.

In summary, HB 711 represents a significant step forward in supporting the families of DUI victims and enhancing the deterrent effect of Hawai'i's DUI laws. SHOPO urges the legislature to pass this bill, demonstrating a commitment to justice and the well-being of our community's most vulnerable members.

Respectfully submitted,
ROBERT CAVACO
SHOPO President

RC: ja

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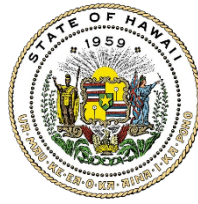
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February 12, 2025

H.B. 711: RELATING TO DRIVING UNDER THE INFLUENCE

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

The Office of the Public Defender **opposes HB 711.**

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. 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

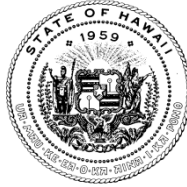
This bill would deter plea agreements and resolutions of cases as it would be impossible for defense counsel to meaningfully advise defendants about the implications of restitution. Currently, restitution is predictable and must be verifiable. This allows defense counsel to advise defendants about the 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>

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February 13, 2025
2:00 p.m.
State Capitol, Room 325 & Videoconference

**H.B. 711
RELATING TO DRIVING UNDER THE INFLUENCE**

House Committee on Judiciary and Hawaiian Affairs

The Hawaii Department of Transportation (HDOT) **supports H.B. 711**, relating to driving under the influence. This proposed bill 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.

H.B. 711 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 percent of car drivers and 22 percent of pickup truck drivers admitted to driving while feeling buzzed in the past six months. In addition, 24 percent 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, as well as spare our families and communities the financial pain of losing loved ones 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.

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 711

A BILL FOR AN ACT
RELATING TO
DRIVING UNDER THE INFLUENCE

COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS
Representative David Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

Thursday, February 13, 2025 at 2:00 p.m.
Via Videoconference and
State Capitol Conference Room 325
415 South Beretania Street

Honorable Chair Tarnas, Vice-Chair Poepoe, and Members of the Committee on Judiciary & Hawaiian Affairs. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of House Bill No. 711.

This bill was drafted with the intention 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.

This bill acknowledges the devastating impact that driving under the influence (DUI) has on innocent victims and their families. When a loved one is killed in a preventable collision, the emotional pain is immeasurable. In addition, the financial burdens and impacts that often accompany such tragedies such as funeral expenses, medical bills, and lost wages only adds to the hardship incurred by surviving family members . . . and most importantly our keiki. This bill provides a means for families to receive financial restitution to help ease some of their financial burdens and ensure that surviving family members are still afforded the same opportunities that they would have but for the loss of their loved one(s).

Furthermore, HB 711 serves as a deterrent. Holding those who choose to drive while impaired accountable for the consequences of their actions sends a clear message that their behavior will not be tolerated. This bill emphasizes the importance of responsible driving and the need to protect our communities from impaired drivers.

This bill is not punitive, but restorative in nature. It acknowledges that those who cause harm must take responsibility for their actions, particularly when it comes to the impact on the lives of victims and their families. We must ensure that the victims of DUI related collisions are not left to bear the financial costs of someone else's selfishness.

The County of Hawai'i, Office of the Prosecuting Attorney remains committed to pursuing justice with integrity and commitment. We urge this committee to support House Bill 711 to protect the rights of victims and families affected by DUI related fatalities. For the foregoing reasons, the County of Hawai'i, Office of the Prosecuting Attorney supports the passage of House Bill No. 711. Thank you for the opportunity to testify on this matter.



Testimony in Support of HB711 Related to Driving Under The Influence

February 13, 2025

Lisa Dau, RN, Injury Prevention Coordinator
Keiki Injury Prevention Coalition (KIPC)

Rep. David Tarnas, Chair, Rep. Mahina Poepoe, Vice Chair, and Members of the Committee on Judiciary & Hawaiian Affairs,

Testimony in Support of Restitution for Surviving Children of DUI Victims

Chairperson and Members of the Committee,

Thank you for the opportunity to submit testimony in support of HB 711, which relates to driving under the influence and requires convicted defendants to provide financial restitution to children whose parent or legal guardian was killed by an impaired driver.

Driving under the influence of drugs and alcohol is a preventable crime that has devastating consequences. When a parent is lost, children endure emotional and financial challenges. This bill ensures that those responsible contribute to their welfare, covering essential needs such as housing, food, healthcare, and education.

This measure focuses on accountability and justice, not vengeance. It aligns with similar efforts nationwide and serves as a deterrent to impaired driving. I urge you to support and pass HB 711 to safeguard vulnerable children.

Thank you for your time and consideration.

Sincerely,
Lisa Dau, RN, MBA, BSN, CPSTI
KIPC, Injury Prevention Coordinator

The Keiki Injury Prevention Coalition's (KIPC) mission is to prevent and reduce injuries to children in Hawaii. <https://kipchawaii.org/>

Hafa Adai and Aloha,

My name is Eric Borja. I am from the island Guam and I am a student at the University of Hawai'i at Manoa. I am a Masters of Social Work student and set to graduate this year in May. I am also a person in long term recovery and recently celebrated 15 years of no use of substances including alcohol. I am also a certified drug and alcohol counselor for the past five years.

The reason I chose to write this testimony was to show my support for H.B. NO. 711. I am not only supporting this bill because I am a recovering individual from substances but I am supporting this bill because I feel this is a productive way to deter operating motor vehicles on any road. In my career I spend many hours teaching individuals about their issues with alcohol and see many individuals who have been pulled over for DUI's and also have been involved in vehicle accidents. When I was looking for a bill to testify on I chose H.B. 711 as a perfect opportunity.

I can understand that drinking is legal to a certain standpoint and becomes illegal when a person gets behind the wheel of a vehicle. I understand the term "drink responsibly" and I teach that concept to my clients. For example, when a person drinks at home or at a bar or restaurant, it is perfectly legal when it is consumed in the venue or home is their business. When an individual who has been drinking or using any other substance like marijuana, heroin, cocaine, etc, gets behind the wheel and drives on public roads, it becomes the communities business cause now not just the driver is at stake, but every one driving on the road or even walking on the sidewalks or basically anywhere that the individual is at.

I would like to encourage those who do use substances that what you do is your business. When it comes to the safety of the community and my family, it becomes personal. I highly recommend and support this bill because I love what it stands for and how it can benefit the community in many ways. I am all about safe roads. Since getting sober, I have devoted my time to become a designated driver for the past years. I'm not saying that I don't like people who use substances but I ask that they think what

dangerous behaviors it is to be on the public roads driving under the influence of substances. These are peoples lives that we are messing with and I feel that they should be held accountable and responsible for driving under the influence. We need to think of the families they will leave behind and that if in a case that an adult is killed I fully support that the defendant financially support the minor childrens the way that the parent would have if they were not killed by a DUI driver. I pray that does not happen and that people can learn to drink responsibly. I am grateful that this bill was introduced and I am proud to say that I support this bill and that I hope it can become a law as soon as possible.

Thank you for listening to my testimony,

Sincerely,

Eric Borja

UH MSW student from Guam

HB-711

Submitted on: 2/13/2025 2:41:00 PM

Testimony for JHA on 2/13/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kealiiokalani Kaauamo	Individual	Support	Written Testimony Only

Comments:

This is very important for our entire community anywhere. There have been many deaths regarding to car crashes. Some can be less or more fatal than others. The NHTSA says that over 11,000 people have passed from being under the influence while driving from 2013 till today. We should enforce the law and enforce the police department with more officers. Places must also ask if they will drive before they hand the person a drink.