



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 6, 2025
9:15 a.m.
State Capitol, Room 16 & Videoconference

S.B. 356
RELATING TO DRIVING UNDER THE INFLUENCE

Senate Committee on Judiciary

The Hawaii Department of Transportation (HDOT) **supports S.B. 356**, relating to driving under the influence. This proposed bill would require defendants convicted of causing 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.

SB 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 (NHTSA), 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.

JON N. IKENAGA
PUBLIC DEFENDER

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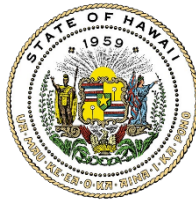
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February 5, 2025

LATE

S.B. 356: RELATING TO DRIVING UNDER THE INFLUENCE

Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee:

The Office of the Public Defender opposes SB 356.

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>

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i

February 5, 2025

RE: S.B. 356; RELATING TO DRIVING UNDER THE INFLUENCE.

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in support of S.B. 356.

The National Highway Traffic Safety Administration estimates that about 37 people in the United States die in drunk-driving crashes—about one person every 39 minutes.¹ The Hawai'i Alcohol Policy Alliance reported that from 2011-2022, at least 40 percent of traffic fatalities in Hawai'i involved alcohol, outpacing the national average.²

Hawai'i recognizes that victims of crime have a mandatory right to restitution.³ Statistics cannot convey the unsparing grief when a loved one dies. And money cannot make survivors whole. But if drunk drivers lack the power to restore the dead victims, the least the law should ask is some provision for the orphans they have made.

Thank you for the opportunity to testify.

¹ *Drunk Driving*, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (online), available at <https://www.nhtsa.gov/risky-driving/drunk-driving>.

² Press Release, Hawai'i Alcohol Policy Alliance, Hawai'i's Alcohol-Related Traffic Fatality Rate Outpaces National Average (Feb. 3, 2025), available at <https://www.hiapa.org/news/hawaiis-alcohol-related-traffic-fatality-rate-outpaces-national-average>.

³ HRS § 706-646(2). See also *State v. Kealoha*, 142 Hawai'i 46, 61, 414 P.3d 98, 113 (2018) (“[Si]nce 2006, restitution has been a *mandatory* disposition of convicted defendants whenever it is requested by a victim and shown to be reasonable and verifiable[.]”) (emphasis in original); *State v. Demello*, 136 Hawai'i 193, 196, 361 P.3d 420, 423 (2015).

Hearing Date: 2/6/2025

Committee: Senate Judiciary Committee

Chair Senator Karl Rhoads, Vice Chair Senator Mike Gabbard, and Members of the Committee,

I am submitting testimony in **support** of SB356, which seeks to provide financial restitution to minor children when a parent or guardian is killed or disabled by a driver operating a vehicle under the influence.

As a representative of Mothers Against Drunk Driving (MADD) Hawaii, I have witnessed the devastating effects of impaired driving on families. The consequences extend beyond the immediate loss or injury—children of victims face lifelong hardships, including financial instability, emotional trauma, and the loss of parental guidance. This bill ensures that offenders take accountability for the harm they have caused, helping to provide necessary financial support for affected children.

By requiring convicted offenders to pay restitution in the form of financial support, SB356 aligns with principles of justice and responsibility. The proposed considerations in determining the restitution amount, such as the child's needs, standard of living, and custodial arrangements, ensure a fair and balanced approach. Furthermore, provisions addressing enforcement, including payment plans for incarcerated offenders and offsets for civil judgments, help maintain the bill's practicality and effectiveness.

We must do everything possible to support the innocent victims of these preventable tragedies. Holding offenders accountable for the long-term impact of their actions not only aids affected families but also reinforces the message that impaired driving has severe and lasting consequences.

For these reasons, I respectfully urge the committee to pass SB356. Thank you for the opportunity to provide testimony.

Sincerely,

Makena Young

Mothers Against Drunk Driving Hawaii

LATE

SB-356

Submitted on: 2/6/2025 5:57:04 AM

Testimony for JDC on 2/6/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Cecilia Williams	Individual	Support	Remotely Via Zoom

Comments:

My name is Cecilia Williams, I'm testifying in support of sb 356. In April 2021 my son ,daughter in law and 4month old grandson were killed by a drunk driver. In May 2021, I created Legislation called Bentleys Law, to hold those who cause the death of a parent/parents to pay a child restitution for the children left behind. Many families face a financial hardship when being faced with raising children due to a impaired driver. Bentleys law gives a option for families to receive that extra help needed for food, clothing and school. So far versions of Bentley's law has passed in Tennessee, Kentucky, Maine, Texas ,Utah, south Dakota and recently the Cayman Islands and in Korea, many states are adopting this measures to help combat the problem of impaired driving. From the beginning it has been my goal to make this important bill nationwide. Driving under the influence is not a accident, it's a choice people make the minute they decide to not designate a sober driver knowing that they plan on drinking. I've talked with many families like mine who suffer daily from such a tremendous loss of a loved one due to a drunk or drugged driver, please in favor of this bill

Testimony in Support of SB356

Senator Karl Rhoads, Chair, Senator Mike Gabbard, Vice Chair

Introducer: Rhoads, Mckelvey

Aloha Members of the Hawaii State Senate,

I am writing to express my strong support for SB356, which would require defendants convicted of causing the death or disability of a parent or legal guardian of a minor child—through the operation of a vehicle while under the influence of an intoxicant—to make restitution in form of financial support to each child of the victim.

As a resident and a commuter, I drop my sibling off at Mid-Pacific every morning and pick her up every afternoon. During these daily trips, I've witnessed firsthand the dangers on the road—drunk drivers, negligent behavior, and near crashes. My greatest fear while driving is encountering a careless driver, especially when my youngest sibling is in the car. The safety of my 'ohana, especially my sibling, is top priority.

SB356 is a step towards accountability for those who make the reckless decision to drive while intoxicated. I have discussed this bill with many members of my 'ohana, and they all agree: those who cause harm or death due to their conscious decision to get behind the wheel while impaired should be held fully accountable. With the availability of safe transportation options like Uber and Lyft, there should be no excuse for driving under the influence.

I believe SB356 is a great idea. It will help protect our keiki and families by ensuring that those responsible for such tragic outcomes contribute to the welfare of those they've harmed. By requiring them to financially support the families they've affected, the bill addresses the ripple effect caused by their actions.

I fully support SB356 and urge you to pass this important bill. Thank you for your time and for your commitment to making Hawaii a better place for everyone.

With aloha,
Xavier Durnell
808-439-7405

roninx@hawaii.edu

SB-356

Submitted on: 1/31/2025 2:03:15 PM

Testimony for JDC on 2/6/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Bronson Teixeira	Individual	Support	Written Testimony Only

Comments:

I support this measure