THE SENATE
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

S.B. NO. 356

JAN 15 2025

A BILL FOR AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"**§706- Victim restitution; financial support for minor children of victims of persons operating a vehicle under the influence.** (1) Notwithstanding any law to the contrary, if a defendant is convicted of violating section 291E-61 or 707-702.5(1)(a) and the violation caused the disability or death of a parent or legal guardian of a minor child, the sentencing court shall order the defendant to make restitution in the form of financial support to each child of the victim until the child reaches:

(a) Eighteen years of age; or

(b) Nineteen years of age if the child is still enrolled in high school.

(2) In determining an amount that is reasonable and necessary for the financial support of the victim's child, the court shall consider all relevant factors, including the:

(a) Financial needs and resources of the child;

(b) Financial resources and needs of the disabled parent, surviving parent, or legal guardian of the child, or if applicable, the financial resources of the State if the child is in the custody of the department of children's services;

(c) Standard of living to which the child is accustomed;

(d) Physical and emotional condition of the child and the child's educational needs;

(e) Child's physical and legal custody arrangements; and

(f) Reasonable child care expenses of the disabled parent, surviving parent, or legal guardian.

(3) The court shall order that payments made to financially support the child be made first to the disabled parent, surviving parent, or legal guardian. The clerk of the court shall be made trustee for remittance to the child as an alternative to a disabled parent, surviving parent, or legal

guardian, if deemed necessary. If payments are made to the clerk, the clerk shall:

(a) Deposit all payments no later than the next working day after receipt; and

(b) Remit the payments to the disabled parent, surviving parent, or legal guardian within three working days of receipt by the clerk.

(4) If a defendant who is ordered to make restitution in the form of financial support for the child under this section is incarcerated and unable to make the required restitution, the defendant shall have up to one year after the release from incarceration to begin payment, including entering into a payment plan to address any arrearage.

(5) If a defendant's payments to financially support the child are set to terminate but the defendant's obligation is not paid in full, the payments to financially support the child shall continue until the entire arrearage is paid.

(6) If the disabled parent, surviving parent, or legal guardian of the child brings a civil action against the defendant before the sentencing court orders restitution to financially support the child and the disabled parent, surviving

parent, or legal guardian obtains a judgment and full satisfaction of damages in the civil suit, restitution shall not be ordered under this section.

(7) If the court orders the defendant to make restitution to financially support the child under this section and the disabled parent, surviving parent, or legal guardian subsequently brings a civil action and obtains a judgment, the restitution order shall be offset by the amount of the judgment awarded and paid by the defendant or the defendant's insurance for lost wages.

For the purposes of this section, "disabled":

(1) Means a legal disability as is measured by functional inabilities; and

(2) Includes inabilities caused by psychological, psychiatric, or stress-related trauma, and refers to any person who is unable to make informed decisions with respect to their physical health and safety or the physical health and safety of a minor child, including health care, food, shelter, clothing, or personal hygiene."

SECTION 2. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced without possibility of probation or suspension of sentence as follows:

(1) Except as provided in paragraph (4), for the first offense, or any offense not preceded within a ten-year period by a conviction for an offense under this section or section 291E-4(a):

(A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court;

(B) Revocation of license to operate a vehicle for no less than one year and no more than eighteen months;

(C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;

(D) Any one or more of the following:

(i) Seventy-two hours of community service work;

(ii) No less than forty-eight hours and no more than five days of imprisonment; or

(iii) A fine of no less than $250 and no more than $1,000;

(E) A surcharge of $25 to be deposited into the neurotrauma special fund; [~~and~~]

(F) A surcharge, if the court so orders, or up to $25 to be deposited into the trauma system special fund; and

(G) When applicable, victim restitution pursuant to section 706- ; and

(2) For an offense that occurs within ten years of a prior conviction for an offense under this section:

(A) A substance abuse program of at least thirty-six hours, including education and counseling, or other comparable programs deemed appropriate by the court;

(B) Revocation of license to operate a vehicle for no less than two years and no more than three years;

(C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;

(D) Either one of the following:

(i) No less than two hundred forty hours of community service work; or

(ii) No less than five days and no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;

(E) A fine of no less than $1,000 and no more than $3,000, to be deposited into the drug and alcohol toxicology testing laboratory special fund;

(F) A surcharge of $25 to be deposited into the neurotrauma special fund; [~~and~~]

(G) A surcharge of up to $50, if the court so orders, to be deposited into the trauma system special fund; and

(H) When applicable, victim restitution pursuant to section 706- .

(3) In addition to a sentence imposed under paragraphs (1) and (2), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of $500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1) or (2), as applicable. Notwithstanding paragraphs (1) and (2), the revocation period for a person sentenced under this paragraph shall be no less than two years;

(4) In addition to a sentence imposed under paragraph (1), for a first offense under this section, or an offense not preceded within a ten-year period by a conviction for an offense, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment for forty-

eight consecutive hours and an additional mandatory revocation period of six months; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1). Notwithstanding paragraph (1), the revocation period for a person sentenced under this paragraph shall be no less than eighteen months;

(5) In addition to a sentence under paragraph (2), for an offense that occurs within ten years of a prior conviction for an offense under this section, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment of ten consecutive days and an additional mandatory revocation period of one year; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (2), as applicable. Notwithstanding paragraph (2),

the revocation period for a person sentenced under this paragraph shall be no less than three years;

(6) A person sentenced pursuant to paragraph (1)(B) may file a motion for early termination of the applicable revocation period if the person:

(A) Was not sentenced to any additional mandatory revocation period pursuant to paragraph (3) or (4);

(B) Actually installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months, after which the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation;

(C) Includes with the person's motion for early termination a certified court abstract establishing that the person was not sentenced to any additional mandatory revocation period pursuant to paragraph (3) or (4);

(D) Includes with the person's motion for early termination a certified statement from the director of transportation establishing that:

(i) The person installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months; and

(ii) After the six-month period, the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation; and

(E) Has complied with all other sentencing requirements.

Nothing in this paragraph shall require a court to grant early termination of the revocation period if the court finds that continued use of the ignition interlock device will further the person's rehabilitation or compliance with this section;

(7) If the person demonstrates to the court that the person:

(A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the revocation period; or

(B) Is otherwise unable to drive during the revocation period,

the person shall be prohibited from driving during the period of applicable revocation provided in paragraphs (1) to (5); provided that the person shall be sentenced to the maximum license revocation period, the court shall not issue an ignition interlock permit pursuant to subsection (i), and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the applicable revocation period; and

(8) For purposes of this subsection, "violation" means:

(A) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath when starting the vehicle, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than .02 and the

digital image confirmed the same person provided both samples;

(B) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath on a rolling retest, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than .02 and the digital image confirms the same person provided both samples;

(C) Failing to provide a rolling retest, unless an acceptable test is performed within ten minutes;

(D) Violating section 291E-66; or

(E) Failing to provide a clear photo of the person when the person blows into the ignition interlock device."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

S.B. NO. 356

Report Title:
Disability; Driving Under the Influence; Victim Restitution; Child Support

Description:
Requires defendants convicted of causing the 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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.