

JAN 19 2007

A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1 SECTION 1. The purpose of this Act is to establish a new
2 offense of operating a vehicle with a measurable amount of
3 illegal drugs in a person's blood or urine, without the need to
4 show that the drug must have impaired the person's ability to
5 operate the vehicle. This Act also provides for mandatory drug
6 testing to determine the drug content of any person arrested for
7 driving under the influence of an intoxicant, driving after
8 consuming a measurable amount of alcohol and being under the age
9 of twenty-one, and the new offense established by this Act.

10 The legislature recognizes that the new offense is
11 different from the existing offense of operating a vehicle under
12 the influence of an intoxicant under section 291E-61, Hawaii
13 Revised Statutes, which also imposes penalties for driving with
14 a drug in the person's blood or urine, because section 291E-61
15 requires in addition that the operator of the vehicle be "under
16 the influence" of the drug such that the drug "impairs the



1 person's ability to operate the vehicle in a careful and prudent
2 manner."

3 The legislature finds that an offense that is similar to
4 the one enacted by this Act has already been enacted in Hawaii
5 with respect to persons under age twenty-one who illegally
6 consume alcohol. In particular, section 291E-64, Hawaii Revised
7 Statutes, makes it unlawful for any person under the age of
8 twenty-one years to operate a vehicle "with a measurable amount
9 of alcohol." A law enforcement officer may arrest a person
10 under that section when the officer has probable cause to
11 believe the arrested person is under the age of twenty-one and
12 had been operating a vehicle, without the need to show that the
13 alcohol impaired the person's ability to operate the vehicle in
14 a careful and prudent manner.

15 The legislature further finds that eight other states have
16 adopted some form of "per se" or "zero tolerance" law with
17 respect to illegal drugs to improve traffic safety. Generally,
18 these laws make it a criminal offense to operate a vehicle while
19 having a drug or metabolite in one's body or bodily fluids.
20 Under these statutes, individuals can be found guilty of
21 violating the law if they operated a motor vehicle while any
22 prohibited substances were present in their system.



1 The legislature finds that this Act creates an important
2 legal distinction between having to prove a nexus, or causal
3 relationship, between the observed driver impairment and taking
4 an illegal drug and simply demonstrating that observed impaired
5 driving behavior was associated with an illegal drug in the
6 person's body while operating the motor vehicle. This Act
7 attempts to remedy the inequality of dealing with alcohol and
8 other drugs by making the drug limit "a measurable amount" of an
9 illegal drug and by making the penalties for this offense
10 equivalent to the driving under the influence of an intoxicant
11 offense.

12 SECTION 2. Chapter 291E, Hawaii Revised Statutes, is
13 amended by adding a new section to part IV to be appropriately
14 designated and to read as follows:

15 "§291E- Operating a vehicle after consuming a
16 measurable amount of illegal drugs. (a) A person commits the
17 offense of operating a vehicle with a measurable amount of
18 illegal drugs if the person operates or assumes actual physical
19 control of a vehicle with a measurable amount of any illegal
20 drug in the person's blood or urine. A finding that the person
21 was under the influence of an illegal drug that impaired the
22 person's ability to operate the vehicle in a careful and prudent



1 manner shall not be an element of the offense under this
2 section. For the purposes of this section, the presence of a
3 measurable amount of an illegal drug in the person's urine or
4 blood, which amount is clearly indicative of actual drug use and
5 not passive inhalation, as shown by chemical analysis or other
6 approved analytical techniques of the person's urine or blood,
7 shall be competent evidence that the drug is present in the
8 person's blood or urine as a result of actual use and not
9 passive inhalation. It shall be an affirmative defense that the
10 drug is present in the person's blood or urine as a result of
11 passive inhalation, or the consumption of prescribed medication
12 or other legal substance.

13 (b) A person committing the offense of operating a vehicle
14 with a measurable amount of illegal drugs shall be sentenced as
15 follows without possibility of probation or suspension of
16 sentence:

17 (1) For the first offense, or any offense not preceded
18 within a five-year period by a conviction for an
19 offense under this section or an offense involving
20 illegal drugs under section 291E-4(a) or section 291E-
21 61:



- 1 (A) A substance abuse education and counseling
- 2 program, or other comparable program deemed
- 3 appropriate by the court;
- 4 (B) A one hundred eighty-day prompt suspension of
- 5 license and privilege to operate a vehicle during
- 6 the suspension period, or the court may impose,
- 7 in lieu of the one hundred eighty-day prompt
- 8 suspension of license, a minimum thirty-day
- 9 prompt suspension of license with absolute
- 10 prohibition from operating a vehicle and, for the
- 11 remainder of the one hundred fifty-day period, a
- 12 restriction on the license that allows the person
- 13 to drive for limited work-related purposes and to
- 14 participate in substance abuse education and
- 15 counseling programs; and
- 16 (C) Any one or more of the following:
- 17 (i) Not more than thirty-six hours of community
- 18 service work; or
- 19 (ii) A fine of not less than \$150 but not more
- 20 than \$500;
- 21 (2) For an offense that occurs within five years of a
- 22 prior conviction for an offense under this section or



1 an offense involving illegal drugs under section 291E-
2 4(a) or section 291E-61:

3 (A) The court shall impose prompt suspension of
4 license and privilege to operate a vehicle for a
5 period of one year with an absolute prohibition
6 from operating a vehicle during the suspension
7 period; and

8 (B) In addition, the court may impose any of the
9 following:

10 (i) Not more than seventy-two hours of community
11 service work; or

12 (ii) A fine of not less than \$250 but not more
13 than \$1,000;

14 (3) For an offense that occurs within five years of two
15 prior convictions for an offense under this section or
16 an offense involving illegal drugs under section 291E-
17 4(a) or section 291E-61:

18 (A) The court shall impose revocation of license and
19 privilege to operate a vehicle for a period of
20 two years; and

21 (B) In addition, the court may impose any of the
22 following:



1 (i) Not more than one hundred forty-four hours
2 of community service work; or

3 (ii) A fine of not less than \$500 but not more
4 than \$1,500.

5 (c) Notwithstanding any other law to the contrary, any
6 conviction in any other state or federal jurisdiction for an
7 offense that is comparable to operating a vehicle with a
8 measurable amount of illegal drugs under this section, or
9 operating or being in physical control of a vehicle while having
10 an unlawful drug content in the blood or urine or while under
11 the influence of an intoxicant shall be considered a prior
12 conviction for the purposes of imposing sentence under this
13 section.

14 (d) Whenever a court sentences a person pursuant to
15 subsection (b) (2) or (3), it also shall require that the
16 offender be referred to the driver's education program for an
17 assessment, by a certified substance abuse counselor, of the
18 offender's substance abuse or dependence and the need for
19 appropriate treatment. The counselor shall submit a report with
20 recommendations to the court. The court shall require the
21 offender to obtain appropriate treatment if the counselor's
22 assessment establishes the offender's substance abuse or



1 dependence. All costs for assessment and treatment shall be
2 borne by the offender.

3 (e) Notwithstanding any other law to the contrary,
4 whenever a court revokes a person's driver's license pursuant to
5 this section, the examiner of drivers shall not grant to the
6 person a new driver's license until the expiration of the period
7 of revocation determined by the court. After the period of
8 revocation is completed, the person may apply for and the
9 examiner of drivers may grant to the person a new driver's
10 license.

11 (f) Any person sentenced under this section may be ordered
12 to reimburse the county for the cost of any blood or urine tests
13 conducted pursuant to section 291E-11. The court shall order
14 the person to make restitution in a lump sum, or in a series of
15 prorated installments, to the police department or other agency
16 incurring the expense of the blood or urine test.

17 (g) The requirement to provide proof of financial
18 responsibility pursuant to section 287-20 shall not be based
19 upon a sentence imposed under subsection (b) (1).

20 (h) As used in this section:

21 "Driver's license" and "examiner of drivers" have the same
22 meanings as provided in section 286-2.



1 "Illegal drug" means:

2 (1) Any controlled substance, as defined and enumerated in
3 schedules I through IV of chapter 329, or its
4 metabolites, the possession of which would be illegal
5 under state law; or

6 (2) Any dangerous drug, detrimental drug, harmful drug,
7 intoxicating compound, marijuana, or marijuana
8 concentrate as those terms are defined in section 712-
9 1240."

10 SECTION 3. Section 291E-11, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§291E-11 Implied consent of operator of vehicle to submit**
13 **to testing to determine alcohol concentration and drug content.**

14 (a) Any person who operates a vehicle upon a public way,
15 street, road, or highway or on or in the waters of the State
16 shall be deemed to have given consent, subject to this part, to
17 a test or tests approved by the director of health of the
18 person's breath, blood, or urine for the purpose of determining
19 alcohol concentration or drug content of the person's breath,
20 blood, or urine, as applicable.

21 (b) The test or tests shall be administered at the request
22 of a law enforcement officer having probable cause to believe



1 the person operating a vehicle upon a public way, street, road,
2 or highway or on or in the waters of the State is under the
3 influence of an intoxicant [~~or~~], is under the age of twenty-one
4 and has consumed a measurable amount of alcohol, [~~only after:~~

- 5 ~~(1) A lawful arrest; and~~
- 6 ~~(2) The person has been informed by a law enforcement~~
- 7 ~~officer that the person may refuse to submit to~~
- 8 ~~testing under this chapter.]~~

9 or has consumed a measurable amount of illegal drugs, only after
10 a lawful arrest.

11 (c) If there is probable cause to believe that a person is
12 in violation of section 291E-64, as a result of being under the
13 age of twenty-one and having consumed a measurable amount of
14 alcohol, or section 291E-61 or 291E-61.5, as a result of having
15 consumed alcohol, then the person shall [~~elect to~~] take a breath
16 or blood test, or both, for the purpose of determining the
17 alcohol concentration[~~or~~] but, in either case, shall take a blood
18 or urine test for the purpose of determining the person's drug
19 content under section 291E-61 and illegal drug content under
20 section 291E-_____.

21 (d) If there is probable cause to believe that a person is
22 in violation of section 291E-61 or 291E-61.5, as a result of



1 having consumed any drug, or is in violation of section 291E- ,
2 as a result of having taken any illegal drug, then the person
3 shall ~~[elect to take]~~:

4 (1) Take a blood or urine test, or both, for the purpose
5 of determining the person's drug content[-] under
6 section 291E-61; or

7 (2) Take both blood and urine tests for the purpose of
8 determining the person's illegal drug content under
9 section 291E- .

10 Drug content shall be measured by the presence of any drug or
11 its metabolic products, or both.

12 ~~[(e) A person who chooses to submit to a breath test under~~
13 ~~subsection (c) also may be requested to submit to a blood or~~
14 ~~urine test, if the law enforcement officer has probable cause to~~
15 ~~believe that the person was operating a vehicle while under the~~
16 ~~influence of any drug under section 291E-61 or 291E-61.5 and the~~
17 ~~officer has probable cause to believe that a blood or urine test~~
18 ~~will reveal evidence of the person being under the influence of~~
19 ~~any drug. The law enforcement officer shall state in the~~
20 ~~officer's report the facts upon which that belief is based. The~~
21 ~~person shall elect to take a blood or urine test, or both, for~~
22 ~~the purpose of determining the person's drug content. Results~~



1 ~~of a blood or urine test conducted to determine drug content~~
 2 ~~also shall be admissible for the purpose of determining the~~
 3 ~~person's alcohol concentration. Submission to testing for drugs~~
 4 ~~under subsection (d) or this subsection shall not be a~~
 5 ~~substitute for alcohol tests requested under subsection (e).]~~

6 [~~(f)~~] (e) The use of a preliminary alcohol screening
 7 device by a law enforcement officer shall not replace a breath,
 8 blood, or urine test required under this section. The analysis
 9 from the use of a preliminary alcohol screening device shall
 10 only be used in determining probable cause for the arrest.

11 [~~(g)~~] (f) Any person tested pursuant to this section who
 12 is convicted or has the person's license or privilege suspended
 13 or revoked pursuant to this chapter may be ordered to reimburse
 14 the county for the cost of any blood or urine tests, or both,
 15 conducted pursuant to this section. If reimbursement is so
 16 ordered, the court or the director, as applicable, shall order
 17 the person to make restitution in a lump sum, or in a series of
 18 prorated installments, to the police department or other agency
 19 incurring the expense of the blood or urine test, or both."

20 SECTION 4. This Act does not affect rights and duties that
 21 matured, penalties that were incurred, and proceedings that were
 22 begun, before its effective date.



1 SECTION 5. Statutory material to be repealed is bracketed.

2 New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

4

INTRODUCED BY: Norman Sakonfi



Report Title:

Motor Vehicles; Driving With Illegal Drugs in Blood

Description:

Establishes a new offense of operating a vehicle with a measurable amount of illegal drugs in a person's blood or urine, without the need to show that the drug must have impaired the person's ability to operate a vehicle in a careful and prudent manner. Requires drug testing for anyone arrested for DUI.

