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# A BILL FOR AN ACT

RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN  
INTOXICANT.

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

1           SECTION 1. Section 291E-15, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§291E-15 Refusal to submit to breath, blood, or urine  
4 test; subject to administrative revocation proceedings. If a  
5 person under arrest refuses to submit to a breath, blood, or  
6 urine test, none shall be given, except as provided in  
7 section 291E-21[-], or pursuant to a search warrant issued by a  
8 judge upon a finding of probable cause supported by oath or  
9 affirmation, or pursuant to any other basis permissible under  
10 the Constitution of the State of Hawaii and laws of this State.  
11 Upon the law enforcement officer's determination that the person  
12 under arrest has refused to submit to a breath, blood, or urine  
13 test, if applicable, then a law enforcement officer shall:  
14           (1) Inform the person under arrest of the sanctions under  
15           section 291E-41 or 291E-65; and  
16           (2) Ask the person if the person still refuses to submit  
17           to a breath, blood, or urine test, thereby subjecting



1           the person to the procedures and sanctions under  
2           part III or section 291E-65, as applicable;  
3 provided that if the law enforcement officer fails to comply  
4 with paragraphs (1) and (2), the person shall not be subject to  
5 the refusal sanctions under part III or IV."

6           SECTION 2. Section 853-4, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8           "(a) This chapter shall not apply when:

9           (1) The offense charged involves the intentional, knowing,  
10           reckless, or negligent killing of another person;

11           (2) The offense charged is:

12           (A) A felony that involves the intentional, knowing,  
13           or reckless bodily injury, substantial bodily  
14           injury, or serious bodily injury of another  
15           person; or

16           (B) A misdemeanor or petty misdemeanor that carries a  
17           mandatory minimum sentence and that involves the  
18           intentional, knowing, or reckless bodily injury,  
19           substantial bodily injury, or serious bodily  
20           injury of another person;



1 provided that the prohibition in this paragraph shall  
2 not apply to offenses described in  
3 section 709-906(18);

4 (3) The offense charged involves a conspiracy or  
5 solicitation to intentionally, knowingly, or  
6 recklessly kill another person or to cause serious  
7 bodily injury to another person;

8 (4) The offense charged is a class A felony;

9 (5) The offense charged is nonprobationable;

10 (6) The defendant has been convicted of any offense  
11 defined as a felony by the Hawaii Penal Code or has  
12 been convicted for any conduct that if perpetrated in  
13 this State would be punishable as a felony;

14 (7) The defendant is found to be a law violator or  
15 delinquent child for the commission of any offense  
16 defined as a felony by the Hawaii Penal Code or for  
17 any conduct that if perpetrated in this State would  
18 constitute a felony;

19 (8) The defendant has a prior conviction for a felony  
20 committed in any state, federal, or foreign  
21 jurisdiction;



- 1           (9)    A firearm was used in the commission of the offense  
2                    charged;
- 3           (10)   The defendant is charged with the distribution of a  
4                    dangerous, harmful, or detrimental drug to a minor;
- 5           (11)   The defendant has been charged with a felony offense  
6                    and has been previously granted deferred acceptance of  
7                    guilty plea or no contest plea for a prior offense,  
8                    regardless of whether the period of deferral has  
9                    already expired;
- 10          (12)   The defendant has been charged with a misdemeanor  
11                    offense and has been previously granted deferred  
12                    acceptance of guilty plea or no contest plea for a  
13                    prior felony, misdemeanor, or petty misdemeanor for  
14                    which the period of deferral has not yet expired;
- 15          (13)   The offense charged is:
- 16                    (A)    Escape in the first degree;
- 17                    (B)    Escape in the second degree;
- 18                    (C)    Promoting prison contraband in the first degree;
- 19                    (D)    Promoting prison contraband in the second degree;
- 20                    (E)    Bail jumping in the first degree;
- 21                    (F)    Bail jumping in the second degree;



- 1 (G) Bribery;
- 2 (H) Bribery of or by a witness;
- 3 (I) Intimidating a witness;
- 4 (J) Bribery of or by a juror;
- 5 (K) Intimidating a juror;
- 6 (L) Jury tampering;
- 7 (M) Promoting prostitution;
- 8 (N) Abuse of family or household member except as
- 9 provided in paragraph (2) and
- 10 section 709-906(18);
- 11 (O) Sexual assault in the second degree;
- 12 (P) Sexual assault in the third degree;
- 13 (Q) A violation of an order issued pursuant to
- 14 chapter 586;
- 15 (R) Promoting child abuse in the second degree;
- 16 (S) Promoting child abuse in the third degree;
- 17 (T) Electronic enticement of a child in the first
- 18 degree;
- 19 (U) Electronic enticement of a child in the second
- 20 degree;
- 21 (V) Prostitution pursuant to section 712-1200(1)(b);



- 1 (W) Street solicitation of prostitution under
- 2 section 712-1207(1) (b) ;
- 3 (X) Solicitation of prostitution near schools or
- 4 public parks under section 712-1209;
- 5 (Y) Habitual solicitation of prostitution under
- 6 section 712-1209.5; [~~or~~]
- 7 (Z) Solicitation of a minor for prostitution under
- 8 section 712-1209.1; or
- 9 (AA) Habitually operating a vehicle under the
- 10 influence of an intoxicant under
- 11 section 291E-61.5(a) ;
- 12 (14) The defendant has been charged with:
- 13 (A) Knowingly or intentionally falsifying any report
- 14 required under chapter 11, part XIII with the
- 15 intent to circumvent the law or deceive the
- 16 campaign spending commission; or
- 17 (B) Violating section 11-352 or 11-353; or
- 18 (15) The defendant holds a commercial driver's license and
- 19 has been charged with violating a traffic control law,
- 20 other than a parking law, in connection with the
- 21 operation of any type of motor vehicle."



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

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

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



**Report Title:**

Honolulu Prosecuting Attorney Package; Habitual OVUII;  
Penalties; Implied Consent; Search Warrant; Criminal Procedure

**Description:**

Clarifies implied consent law to make an exception for giving a breath, blood, or urine test pursuant to a search warrant or any other basis permissible under the Constitution of the State of Hawaii and state law. Excludes habitually operating a vehicle under the influence of an intoxicant from qualifying for deferred acceptance of guilty plea or nolo contendere plea.

(CD1)

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