
A BILL FOR AN ACT

RELATING TO INTOXICATION.

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

1 SECTION 1. The legislature finds that on April 24, 2016, a
2 vehicular collision in the State resulted in death. A driver in
3 the collision, who was allegedly intoxicated at the time, was
4 convicted on two counts, the latter of which was negligent
5 homicide in the first degree, under section 707-702.5, Hawaii
6 Revised Statutes, and the defendant filed an appeal. In that
7 case, *State v. Armitage*, 150 Hawaii 154 (Ct. App. 2021), the
8 intermediate court of appeals vacated the defendant's conviction
9 and remanded the case to the circuit court for a new trial. The
10 defendant argued that the circuit court should have suppressed
11 the result of the defendant's blood alcohol concentration test
12 because it was the result of a warrantless blood draw, in
13 violation of the defendant's constitutional rights. The appeals
14 court determined that because the prosecution failed to
15 adequately develop the record to demonstrate that police
16 officers were justified to act without a warrant, the circuit



1 court clearly erred in ruling that exigent circumstances existed
2 to justify the warrantless draw of the defendant's blood.

3 The legislature further finds that as of April 24, 2016,
4 the date of the collision in the *Armitage* case, both statutory
5 and common law allowed law enforcement officers investigating
6 similar vehicular collisions to obtain evidence of a person's
7 blood alcohol content without a warrant if there was probable
8 cause that the person operated a vehicle under the influence of
9 an intoxicant, and there was an exigent circumstance that
10 justified a warrantless blood draw. In 2002, in the case of
11 *State v. Entrekin*, 98 Hawaii 221 (2002), a driver argued that
12 obtaining a sample of blood without a warrant violated the
13 plaintiff's right to be free from unreasonable searches and
14 seizures. The supreme court of Hawaii noted that the State's
15 implied consent law (currently codified in part II of chapter
16 291E, Hawaii Revised Statutes), by its plain language,
17 authorized the police to obtain a blood sample from the driver
18 of any vehicle involved in an accident resulting in an injury to
19 or the death of any person, including the driver, so long as the
20 police have probable cause to believe that the driver was
21 driving under the influence of alcohol or drugs. The court



1 recognized that there are exceptions to the warrant requirement
2 in cases where the societal costs of obtaining a warrant,
3 including the risk of loss or destruction of evidence, outweigh
4 the reasons for prior recourse to a neutral magistrate. The
5 court noted that the "exigent circumstance" exception is present
6 when the demands of the occasion reasonably call for an
7 immediate police response, and includes situations presenting an
8 immediate threatened removal or destruction of evidence. The
9 legislature notes that because alcohol metabolizes within a
10 person's body over time, evidence of a person's intoxication may
11 be destroyed during the time it takes a police officer to obtain
12 a warrant.

13 The legislature also notes that until 2013, the *Entrekin*
14 decision was consistent with the manner in which implied consent
15 laws were enforced throughout the United States. In the case of
16 *Missouri v. McNeely*, 569 U.S. 141 (2013), the United States
17 Supreme Court determined that exigent circumstances must be
18 determined through a case-by-case assessment, and found that
19 when officers in drunk-driving investigations can reasonably
20 obtain a warrant before a blood sample can be drawn without
21 significantly undermining the efficacy of the search,



1 the Fourth Amendment mandates that they do so. Three years
2 later, in the case of *Birchfield v. North Dakota*, 579 U.S. 438
3 (2016), the United States Supreme Court held that the Fourth
4 Amendment of the United States Constitution permits warrantless
5 breath tests incident to arrests for drunk driving, but not
6 warrantless blood tests. The court noted that breath tests do
7 not require piercing of the skin, and entail a minimum of
8 inconvenience. The court also noted that blood tests, in
9 contrast, require piercing of the skin, extract a part of the
10 subject's body, and are significantly more intrusive than
11 blowing into a tube for a breath test. The court further noted
12 that a blood test also gives law enforcement a sample that can
13 be preserved and from which it is possible to extract
14 information beyond a simple blood alcohol content reading.

15 On December 5, 2016, a date that occurred after the
16 collision in the *Armitage* case, the intermediate court of
17 appeals issued a decision in the case of *State v. Niceloti-*
18 *Velazquez*, 139 Hawaii 203 (Ct. App. 2016). The defendant had
19 been convicted for operating a vehicle under the influence of an
20 intoxicant. The blood test establishing the intoxication was
21 administered without consent and without a warrant. The appeals



1 court found that the record did not support a finding that
2 police officers could not have reasonably obtained a search
3 warrant before drawing the defendant's blood sample. The
4 appeals court cited the *McNeely* case, and vacated the
5 defendant's conviction. Similarly, in the case *State v. Hewitt*,
6 149 Hawaii 71 (Ct. App. 2021), the intermediate court of appeals
7 vacated another defendant's conviction for operating a vehicle
8 under the influence of an intoxicant, as the court determined
9 that the State failed to adequately develop a record to
10 demonstrate the existence of exigent circumstances that would
11 justify requesting a warrantless blood draw.

12 The legislature finds that in light of these developments
13 in the common law, state law should be amended to reflect the
14 requirements mandated by the courts. The legislature further
15 believes that section 39-20-01.1, North Dakota Century Code, may
16 serve as a model for legislation in this State.

17 The legislature anticipates, however, that because the
18 intermediate court of appeals in the *Armitage* case applied new
19 case law to a motor vehicle collision that occurred on April 24,
20 2016, and thus before December 6, 2016, the date of the
21 *Niceloti-Velazquez* decision, it is possible that other



1 convictions based on the results of a warrantless blood draw
2 taken after vehicular collisions could be reversed. The
3 legislature wishes to avoid such an outcome, to the extent
4 permissible under constitutional law.

5 Accordingly, the purpose of this Act is to:

6 (1) Amend the procedures under which a blood, urine, or
7 breath test is administered in the event of certain
8 vehicular collisions; and

9 (2) Prohibit state courts from vacating any conviction for
10 a crime that was committed before December 5, 2016, if
11 the only basis for doing so would be a warrantless
12 blood test for an intoxicant, unless otherwise
13 required by constitutional law.

14 SECTION 2. Section 291E-21, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§291E-21~~ ~~[Applicable scope of part; mandatory]~~ Duties of
17 health care providers; chemical testing for intoxicants in the
18 event of a collision resulting in serious bodily injury or
19 death. ~~[(a) Nothing in this part shall be construed to prevent~~
20 ~~a law enforcement officer from obtaining a sample of breath,~~
21 ~~blood, or urine, from the operator of any vehicle involved in a~~



~~collision resulting in injury to or the death of any person, as
evidence that the operator was under the influence of an
intoxicant.~~

~~(b)]~~ (a) If a health care provider who is providing
medical care, in a health care facility, to any person involved
in a vehicle collision:

(1) Becomes aware, as a result of any blood or urine test
performed in the course of medical treatment, that:

(A) The alcohol concentration in the person's blood
meets or exceeds the amount specified in section
291E-61(a)(4) or 291E-61.5(a)(2)(D); or

(B) The person's blood or urine contains one or more
drugs that are capable of impairing a person's
ability to operate a vehicle in a careful and
prudent manner; and

(2) Has a reasonable belief that the person was the
operator of a vehicle involved in the collision,
the health care provider shall notify, as soon as reasonably
possible, any law enforcement officer present at the health care
facility to investigate the collision. If no law enforcement
officer is present, the health care provider shall notify the



1 county police department in the county where the collision
2 occurred. If the health care provider is aware of any blood or
3 urine test result, as provided in paragraph (1), but lacks
4 information to form a reasonable belief as to the identity of
5 the operator involved in a vehicle collision, as provided in
6 paragraph (2), then the health care provider shall give notice
7 to a law enforcement officer present or to the county police
8 department, as applicable, for each person involved in a vehicle
9 collision whose alcohol concentration in the person's blood
10 meets or exceeds the amount specified in section 291E-61(a)(4)
11 or 291E-61.5(a)(2)(D) or whose blood or urine contains one or
12 more drugs. The notice by the health care provider shall
13 consist of the name of the person being treated, the blood
14 alcohol concentration or drug content disclosed by the test, and
15 the date and time of the administration of the test. This
16 notice shall be deemed to satisfy the intoxication element
17 necessary to establish the probable cause requirement set forth
18 in subsection ~~[(e)-]~~ (b).

19 ~~[(e)-]~~ (b) In the event of a collision resulting in serious
20 bodily injury as defined in section 291C-1 or death ~~[and]~~, if a
21 law enforcement officer has probable cause to believe that [a]



1 any operator of any vehicle or any other person involved in the
2 collision has committed a violation of section [707-702.5, 707-
3 703, 707-704, 707-705, 707-706,] 291E-61, 291E-61.5, or 291E-64,
4 the law enforcement officer shall request [that a sample of
5 blood or urine be recovered from the vehicle operator or any
6 other person suspected of committing a violation of section 707-
7 702.5, 707-703, 707-704, 707-705, 707-706, 291E-61, 291E-61.5,
8 or 291E-64.] the person to submit to a chemical test or tests of
9 the person's blood or urine to determine the alcohol
10 concentration or the presence of other drugs or substances, or
11 both. If the person [involved in the collision is not injured
12 or] refuses [to be treated for any injury,] to submit to a
13 chemical test or tests of the person's blood or urine and
14 exigent circumstances are not present, the law enforcement
15 officer shall request a search warrant to compel the person to
16 submit to a chemical test or tests of the driver's blood or
17 urine to determine the alcohol concentration or the presence of
18 other drugs or substances, or both. The law enforcement officer
19 may [offer] also compel the person to submit to a breath test
20 [in lieu of a blood or urine test. If the person declines to
21 perform a breath test, the law enforcement officer shall request



1 ~~a blood or urine sample pursuant to subsection (d). The act of~~
2 ~~declining to perform a breath test under this section shall not~~
3 ~~be treated as a refusal under chapter 291E and shall not relieve~~
4 ~~the declining person from the requirement of providing a blood~~
5 ~~or urine sample under this section.~~

6 ~~(d) The law enforcement officer shall make the request~~
7 ~~under subsection (c) to the hospital or medical facility~~
8 ~~treating the person from whom the blood or urine is to be~~
9 ~~recovered. If the person is not injured or refuses to be~~
10 ~~treated for any injury, the law enforcement officer shall make~~
11 ~~the request of a blood or urine sample under subsection (c) to a~~
12 ~~person authorized under section 291E-12; provided that a law~~
13 ~~enforcement officer may transport that person to another police~~
14 ~~facility or a hospital or medical facility that is capable of~~
15 ~~conducting a breath, blood, or urine test. Upon the request of~~
16 ~~the law enforcement officer that blood or urine be recovered~~
17 ~~pursuant to this section, and except where the person to perform~~
18 ~~the withdrawal of a blood sample or to obtain a urine sample or~~
19 ~~the responsible attending personnel at the hospital or medical~~
20 ~~facility determines in good faith that recovering or attempting~~
21 ~~to recover blood or urine from the person presents an imminent~~



~~threat to the health of the medical personnel or others, the
person authorized under section 291E-12 shall:~~

~~(1) Recover the sample in compliance with section 321-161;~~

~~and~~

~~(2) Provide the law enforcement officer with the blood or
urine sample requested.]~~

to determine the person's blood alcohol content.

~~[(e)]~~ (c) Any person complying with this section shall be
exempt from liability pursuant to section 663-1.9 as a result of
compliance.

~~[(f)]~~ (d) As used in this section, unless the context
otherwise requires:

"Health care facility" includes any program, institution,
place, building, or agency, or portion thereof, private or
public, whether organized for profit or not, that is used,
operated, or designed to provide medical diagnosis, treatment,
or rehabilitative or preventive care to any person. The term
includes health care facilities that are commonly referred to as
hospitals, outpatient clinics, organized ambulatory health care
facilities, emergency care facilities and centers, health



1 maintenance organizations, and others providing similarly
2 organized services regardless of nomenclature.

3 "Health care provider" means a person who is licensed,
4 certified, or otherwise authorized or permitted by law to
5 administer health care in the ordinary course of business or
6 practice of a profession."

7 SECTION 3. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before December 5, 2016. Any conviction for a crime that
10 was committed before December 5, 2016, shall not be vacated by
11 any state court solely on the basis that the evidence of a
12 person's blood alcohol content was obtained without a warrant,
13 unless otherwise required by constitutional law.

14 SECTION 4. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

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



1 SECTION 6. This Act shall take effect on January 1, 2222.

2



Report Title:

Intoxication; Vehicular Collisions; Implied Consent; Tests

Description:

Amends the procedures under which a blood, urine, or breath test is administered in the event of certain vehicular collisions. Prohibits state courts from vacating any conviction for a crime that was committed before 12/5/2016, if the only basis for doing so would be a warrantless blood test for an intoxicant, unless otherwise required by constitutional law. Effective 1/1/2222.
(HD1)

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

