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A BILL FOR AN ACT

RELATING TO PENAL LIABILITY.

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

1 SECTION 1. Section 702-230, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§702-230 Intoxication[~~-~~]; self-induced; not self-induced;  
4 pathological; affirmative defense. (1) Self-induced  
5 intoxication is prohibited as a defense to any offense, except  
6 as specifically provided in this section.

7 (2) Evidence of the [~~nonself-induced or pathological~~]  
8 intoxication of the defendant that is pathological or that is  
9 not self-induced shall be admissible to prove or [~~negative~~]  
10 disprove the conduct alleged or the state of mind sufficient to  
11 establish an element of the offense. Evidence of self-induced  
12 intoxication of the defendant is admissible to prove or  
13 [~~negative~~] disprove conduct or to prove state of mind sufficient  
14 to establish an element of an offense. Evidence of self-induced  
15 intoxication of the defendant is not admissible to [~~negative~~]  
16 disprove the state of mind sufficient to establish an element of  
17 the offense.

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1           (3) Intoxication does not, in itself, constitute a  
2 physical or mental disease, disorder, or defect within the  
3 meaning of section 704-400.

4           (4) Intoxication that is:

5           (a) Not self-induced; or

6           (b) Pathological,

7 is [a] an affirmative defense if by reason of the intoxication  
8 the defendant at the time of the defendant's conduct lacks  
9 substantial capacity [~~either~~] to engage in the alleged conduct,  
10 to have the state of mind sufficient to establish an element of  
11 the offense, to appreciate its wrongfulness, or to conform the  
12 defendant's conduct to the requirements of law.

13           (5) In this section:

14           "Intoxication" means a disturbance of mental or physical  
15 capacities resulting from the introduction of substances into  
16 the body.

17           "Lacks substantial capacity" means capacity that has been  
18 impaired to such a degree that only an extremely limited amount  
19 remains.

20           "Pathological intoxication" means intoxication grossly  
21 excessive in degree, given the amount of the intoxicant, to  
22 which the defendant does not know the defendant is susceptible

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1 and [~~which~~] that results from a physical abnormality of the  
2 defendant.

3 "Self-induced intoxication" means intoxication caused by  
4 substances [~~which~~] that the defendant knowingly introduces into  
5 the defendant's body, the tendency of which to cause  
6 intoxication the defendant knows or ought to know, unless the  
7 defendant introduces them pursuant to medical advice or under  
8 such circumstances as would afford a defense to a charge of a  
9 penal offense."

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

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:                     *M. N. M.*                    

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BY REQUEST

# S.B. NO. 3034

**Report Title:**

Penal Liability; Intoxication; Affirmative Defense

**Description:**

Explicitly categorizes defenses based on intoxication that is pathological or not self-induced as affirmative defenses.

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

## JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO PENAL LIABILITY.

PURPOSE: To explicitly categorize defenses based on intoxication that is pathological or that is not self-induced as affirmative defenses.

MEANS: Amend section 702-230, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Defenses based on intoxication that is pathological or that is not self-induced may never be readily known or apparent to law enforcement or the prosecution until it is much too late to rebut evidentiarily. Designation of each as an affirmative defense will: (1) assign some burden of proof upon the accused to reasonably establish the defense, and (2) permit the prosecution to more fairly refute the defense within the parameters of factual and constitutional constraints. Consequently, this bill amends section 702-230, HRS, to include affirmative defense provisions and define "lack of substantial capacity" consistent with legal precedent.

Impact on the public: Categorization of intoxication that is pathological and intoxication that is not self-induced as affirmative defenses will ensure that only those who are genuinely so afflicted will benefit from these defenses; thus, ensuring that victims receive appropriate justice.

Impact on the department and other agencies: All prosecutorial agencies and law enforcement will benefit from these revisions.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

None.

OTHER AFFECTED  
AGENCIES:

County prosecutor's offices and the  
Department of Law Enforcement.

EFFECTIVE DATE:

Upon approval.