
A BILL FOR AN ACT

RELATING TO DANGEROUS INTOXICATION.

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

1 SECTION 1. Chapter 711, Hawaii Revised Statutes, is
2 amended by adding to part I two new sections to be appropriately
3 designated and to read as follows:

4 "§711-A Dangerous intoxication. (1) A person commits the
5 offense of dangerous intoxication if the person is on any public
6 property while under the influence of alcohol or any drug, or
7 both, and the person:

8 (a) Is unable to safely care for oneself by reason of
9 substantial incapacitation;

10 (b) Engages in affirmative conduct that, because of
11 substantial incapacitation, creates an immediate and
12 substantial risk of physical harm to the person or to
13 others; or

14 (c) Obstructs or interferes with the free use of a street,
15 sidewalk, or other public way while exhibiting signs
16 of substantial incapacitation, after being provided a
17 reasonable opportunity to comply with a lawful request
18 to move.

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1 (2) It shall be an affirmative defense to a prosecution
2 under this section that the alcohol or drug was lawfully
3 prescribed and was taken as directed and without misuse.

4 (3) Dangerous intoxication shall be a petty misdemeanor.

5 (4) Notwithstanding subsection (3), if a law enforcement
6 officer has probable cause to believe that a person has
7 committed the offense of dangerous intoxication, the law
8 enforcement officer shall place the person under civil
9 protective custody, rather than arrest or issuance of a
10 citation, if the law enforcement officer is reasonably able to
11 do so. If the person is placed in civil protective custody, the
12 law enforcement officer shall to the extent practicable
13 transport the person for an emergency examination pursuant to
14 section 334-45; provided that the emergency examination shall be
15 conducted within twenty-four hours of the person being placed in
16 civil protective custody; provided further that if emergency
17 medical stabilization is required, the twenty-four-hour period
18 shall commence upon medical stabilization. If the person
19 requires emergency medical stabilization, the person shall be
20 transported or caused to be transported to an appropriate
21 medical facility for stabilization prior to any emergency
22 examination pursuant to section 334-45. A person who is placed

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1 in civil protective custody shall not thereafter be subject to
2 criminal prosecution under this section or, if a juvenile, shall
3 not be subject to family court proceedings under this section
4 based on the facts giving rise to the civil protective custody.

5 (5) Subsection (4) shall not apply if:

6 (a) The law enforcement officer has probable cause to
7 believe the person has, in addition to the offense of
8 dangerous intoxication, committed:

9 (i) A felony;

10 (ii) Any violent crime as provided in section 351-32;

11 or

12 (iii) The offense of operating a vehicle under the
13 influence of an intoxicant under section 291E-61;

14 (b) The person has outstanding felony arrest warrants; or

15 (c) The law enforcement officer in good faith believes the
16 person presents an immediate and serious risk of
17 escape or physical harm to the person or others that
18 cannot be safely managed by medical personnel.

19 (6) Once a person is placed in civil protective custody,
20 the receiving facility shall proceed in accordance with the
21 procedures set forth in part IV of chapter 334.

22 (7) As used in this section:

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1 "Alcohol" means ethanol or any substance containing
2 ethanol.

3 "Civil protective custody" means a temporary, noncriminal
4 detention for transport to a psychiatric facility or other
5 facility designated by the director of health for an emergency
6 examination pursuant to section 334-45.

7 "Drug" means any controlled substance, as defined and
8 enumerated in schedules I through V of chapter 329, or its
9 metabolites.

10 "Impair" means to weaken, to lessen in power, to diminish,
11 to damage, or to make worse by diminishing in some material
12 respect or otherwise affecting in an injurious manner.

13 "Medical stabilization" means the point at which a treating
14 physician or other licensed health care provider determines that
15 the person's medical condition has been stabilized such that the
16 person may safely undergo an emergency examination pursuant to
17 section 334-45.

18 "Public property" includes a public park, beach, school,
19 street, sidewalk, bridge, overpass, underpass, or other public
20 right-of-way, and any public land located beneath those
21 structures.

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1 "Substance" means any plant, medication, poison, natural or
2 synthetic chemical, or any compound or combination of these, and
3 includes but is not limited to central nervous system
4 depressants, central nervous systems stimulants, hallucinogens,
5 dissociative anesthetics, narcotic analgesics, inhalants, and
6 cannabis.

7 "Substantial incapacitation" means loss of consciousness,
8 extreme disorientation, severe impairment of motor coordination,
9 inability to ambulate safely, inability to comprehend or respond
10 appropriately to simple questions or instructions, or inability
11 to protect oneself from foreseeable harm.

12 "Under the influence" means that a person shows observable
13 physical signs of impairment caused by alcohol, a drug, or both,
14 including signs affecting the person's speech, coordination,
15 appearance, behavior, or physical condition.

16 **§711-B Habitual dangerous intoxication.** (1) A person
17 commits the offense of habitual dangerous intoxication if the
18 person is a habitual dangerous intoxication offender and commits
19 the offense of dangerous intoxication.

20 (2) For purposes of this section, "habitual dangerous
21 intoxication offender" means a person who, within three years of
22 the instant offense, has three or more prior convictions under

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1 section 711-A. The prior convictions shall be for separate
2 incidents on separate dates. The prosecution is not required to
3 prove any state of mind with respect to the person's status as a
4 habitual dangerous intoxication offender. Proof that the person
5 has the requisite minimum prior convictions shall be sufficient
6 to establish this element.

7 (3) Habitual dangerous intoxication shall be a
8 misdemeanor.

9 (4) For a conviction under this section, the court shall
10 impose a term of probation of one year. As conditions of
11 probation, the court shall require the defendant to participate
12 in a substance-use disorder treatment program and to comply with
13 any assessment, treatment plan, and aftercare or continuing care
14 recommended by a health care provider or certified substance
15 abuse counselor. The treatment program may include residential
16 treatment if clinically indicated and ordered by the court as a
17 condition of probation. If the defendant violates a condition
18 of probation imposed under this section, the court may revoke
19 probation and may impose a term of imprisonment of no less than
20 ninety days.

21 (5) As used in this section:

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1 "Clinically indicated" means recommended by a health care
2 provider or a certified substance abuse counselor based on an
3 assessment of the defendant.

4 "Certified substance abuse counselor" means a substance
5 abuse counselor certified by the department of health pursuant
6 to section 321-193(10).

7 "Health care provider" has the same meaning as in section
8 334-1.

9 "Substance-use disorder treatment program" means a program
10 of assessment, counseling, treatment, medication-assisted
11 treatment, case management, or residential treatment for a
12 substance-use disorder that is provided by or through a health
13 care provider or a certified substance abuse counselor and
14 approved by the court."

15 SECTION 2. Section 334-41, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§334-41 Emergency procedures.** The emergency procedures
18 in this subpart shall consist of emergency transportation,
19 emergency examination, and emergency hospitalization for
20 individuals who may be mentally ill or suffering from substance
21 abuse and imminently dangerous to self or others. Nothing in
22 this section shall be construed to limit emergency examination

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1 pursuant to section 334-45 for a person transported pursuant to
2 section 711-A(4)."

3 SECTION 3. Section 334-45, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§334-45 Emergency examination.** (a) A licensed
6 physician, medical resident under the supervision of a licensed
7 physician, physician assistant, psychologist, or advanced
8 practice registered nurse may conduct an initial examination and
9 screening of a patient transported under section 334-42, 334-43,
10 ~~[or]~~ 334-44, or 711-A(4) to determine whether the criteria for
11 involuntary hospitalization listed in section 334-60.2
12 ~~[persists]~~ persist and administer treatment as indicated by good
13 medical practice; provided that if after the examination,
14 screening, and treatment, the licensed physician, medical
15 resident under the supervision of a licensed physician,
16 physician assistant, psychologist, or advanced practice
17 registered nurse determines that the involuntary hospitalization
18 criteria persists, then the patient shall be further examined by
19 a qualified psychiatric examiner to diagnose the presence or
20 absence of a mental illness or substance use disorder, further
21 assess the risk that the patient may be dangerous to self or
22 others, and assess whether or not the patient continues to meet

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1 the criteria for involuntary hospitalization as provided in
2 section 334-60.2. If no initial examination and screening of
3 the patient is conducted, a qualified psychiatric examiner shall
4 conduct an emergency examination of a patient transported under
5 section 334-42, 334-43, ~~[or]~~ 334-44, or 711-A(4) without
6 unnecessary delay and provide the patient with treatment as
7 indicated by good medical practice; provided that the emergency
8 examination shall include a determination of whether the patient
9 meets the criteria for involuntary hospitalization as provided
10 in section 334-60.2.

11 (b) If, following an emergency examination of a patient
12 under subsection (a), a qualified psychiatric examiner
13 determines that the criteria for involuntary hospitalization do
14 not exist, the patient shall be discharged expeditiously;
15 provided that if the patient is not under an order for assisted
16 community treatment, a qualified psychiatric examiner shall
17 conduct an examination pursuant to section 334-121.5 before the
18 discharge. A patient under criminal charges shall be returned
19 to the custody of a law enforcement officer.

20 (c) For purposes of an emergency examination conducted
21 pursuant to this section for a person transported pursuant to

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1 section 711-A(4), the examination shall be conducted within the
2 time required under section 711-A(4)."

3 SECTION 4. Section 334-121.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§334-121.5 Examination for assisted community treatment**
6 **indication.** A qualified psychiatric examiner associated with
7 the psychiatric facility where a patient is located who was
8 committed to involuntary hospitalization, delivered for
9 emergency examination or emergency hospitalization, or
10 voluntarily admitted to inpatient treatment at a psychiatric
11 facility pursuant to part IV or section 711-A(4) shall, before
12 the patient's discharge, examine the patient to determine
13 whether an assisted community treatment plan is indicated
14 pursuant to this part. If a plan is indicated, the qualified
15 psychiatric examiner shall prepare the certificate specified by
16 section 334-123. The department of the attorney general shall
17 assist with the preparation and filing of any petition brought
18 pursuant to section 334-123 and with the presentation of the
19 case at any related court proceedings; provided that, if the
20 petitioner is a private provider or other private individual,
21 the petitioner may decline the assistance. The psychiatric
22 facility may notify another mental health program for assistance

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1 with the coordination of care in the community for the person.
2 Nothing in this section shall delay the appropriate discharge of
3 a patient from the psychiatric facility after the examination
4 for assisted community treatment indication has been completed."

5 SECTION 5. Section 334-127.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§334-127.5 Records and disclosure of information.** (a) A
8 treatment provider who provided or is providing medical,
9 psychiatric, therapeutic, or social services treatment to an
10 individual shall provide relevant treatment information, if
11 available, to the department of the attorney general upon the
12 department's request for the purpose of preparing a petition for
13 assisted community treatment. The treatment information may
14 include a certificate issued pursuant to section 334-123(c), a
15 treatment plan prepared pursuant to section 334-126(g), records
16 related to actions or proceedings pursuant to part IV, records
17 relating to the individual's treatment history, and other
18 records deemed relevant by the individual's treatment provider.

19 (b) The petitioner of an assisted community treatment
20 order, department of the attorney general, and family court
21 shall disclose an assisted community treatment order to state
22 and county law enforcement agencies, an assisted community

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1 treatment provider, or any other entity necessary to carry out
2 the terms of the assisted community treatment order.

3 (c) This section shall apply, as appropriate, to records
4 and information obtained or created in connection with an
5 emergency examination conducted pursuant to section 334-45 for a
6 person transported pursuant to section 711-A(4)."

7 SECTION 6. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 7. In codifying the new sections added by section
11 1 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect upon its approval.

17
18 INTRODUCED BY:

Melanie K. Markum

19 BY REQUEST

JAN 26 2026

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Report Title:

Penal Code; Offenses Against Public Order; Dangerous Intoxication

Description:

Establishes the offenses of dangerous intoxication and habitual dangerous intoxication. Provides for civil protective custody and transport for emergency examination under section 334-45, HRS, in lieu of arrest for dangerous intoxication in specified circumstances, and bars prosecution when civil protective custody is used. Requires probation with mandatory treatment for habitual dangerous intoxication, with incarceration only upon probation violation. Makes conforming amendments to chapter 334, HRS.

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: Law Enforcement

TITLE: A BILL FOR AN ACT RELATING TO DANGEROUS INTOXICATION.

PURPOSE: To promote public safety by establishing the offenses dangerous intoxication and habitual dangerous intoxication, providing for civil protective custody and transport for emergency examination under section 334-45, Hawaii Revised Statutes (HRS), in lieu of arrest for dangerous intoxication in specified circumstances, and requiring probation with mandatory treatment for habitual dangerous intoxication, with incarceration only upon probation violation.

MEANS: Add two new sections to chapter 711, part I, HRS; amend sections 334-41, 334-45, 334-121.5, 334-127.5, HRS.

JUSTIFICATION: The bill is needed to address public safety concerns and health concerns that arise when persons are substantially incapacitated by alcohol or drugs in public spaces and, as a result, are unable to care for themselves, engage in conduct that creates a risk of physical harm, or obstruct public ways. The bill focuses on dangerous behavior and substantial incapacitation rather than intoxication alone and provide clear standards for intervention when immediate action is necessary to prevent injury, exposure, or disruption.

The bill prioritizes a health-oriented response by establishing civil protective custody as the response to the offense of dangerous intoxication when feasible. This approach authorizes transport for emergency medical examination pursuant section 334-45, HRS. When civil protective custody is used, the bill bars criminal prosecution for dangerous intoxication based on the same facts, encouraging timely, treatment-oriented intervention rather than punitive

enforcement. At the same time, the bill preserves accountability for repeated dangerous conduct by creating the offense of habitual dangerous intoxication, requiring probation with mandatory substance-use disorder treatment and allowing incarceration only after a judicial finding of a probation violation.

Impact on the public: The bill will improve public safety by allowing timely intervention and medical evaluation when a person's intoxication results in dangerous conduct or inability to self-care in a public place or obstruction of public ways.

Impact on the department and other agencies: The bill will provide law enforcement and health agencies with clear authority and procedures to respond to public safety incidents involving intoxicated individuals through coordinated, treatment-oriented intervention.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Department of Health; Department of Law Enforcement; Department of the Attorney General; the Judiciary; county prosecutors; and county police departments.

EFFECTIVE DATE: Upon approval.