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# 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 two new sections to part I 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



1           reasonable opportunity to comply with a lawful request  
2           to move.

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

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

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



1 transported or caused to be transported to an appropriate  
2 medical facility for stabilization before any emergency  
3 examination is conducted pursuant to section 334-45. A person  
4 who is placed in civil protective custody shall not thereafter  
5 be subject to criminal prosecution under this section or, if a  
6 juvenile, shall not be subject to family court proceedings under  
7 this section based on the facts giving rise to the civil  
8 protective custody.

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

10 (a) The law enforcement officer has probable cause to  
11 believe the person has, in addition to the offense of  
12 dangerous intoxication, committed:

13 (i) A felony;

14 (ii) Any violent crime as provided in section 351-32;  
15 or

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

18 (b) The person has any outstanding felony arrest warrant;  
19 or

20 (c) The law enforcement officer in good faith believes the  
21 person presents an immediate and serious risk of



1           escape or physical harm to the person or others that  
2           cannot be safely managed by medical personnel.

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

6           (7) For the purposes of this section:

7           "Alcohol" means ethanol or any substance containing  
8 ethanol.

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

13           "Drug" means any controlled substance, as defined and  
14 enumerated in schedules I through V of chapter 329, or its  
15 metabolites.

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

19           "Medical stabilization" means the point at which a treating  
20 physician or other licensed health care provider determines that  
21 the person's medical condition has been stabilized such that the



1 person may safely undergo an emergency examination pursuant to  
2 section 334-45.

3 "Public property" includes a public park, beach, school,  
4 street, sidewalk, bridge, overpass, underpass, or other public  
5 right-of-way, and any public land located beneath those  
6 structures.

7 "Substance" means any plant, medication, poison, natural or  
8 synthetic chemical, or any compound or combination of these, and  
9 includes but is not limited to central nervous system  
10 depressants, central nervous systems stimulants, hallucinogens,  
11 dissociative anesthetics, narcotic analgesics, inhalants, and  
12 cannabis.

13 "Substantial incapacitation" means loss of consciousness,  
14 extreme disorientation, severe impairment of motor coordination,  
15 inability to ambulate safely, inability to comprehend or respond  
16 appropriately to simple questions or instructions, or inability  
17 to protect oneself from foreseeable harm.

18 "Under the influence" means that a person shows observable  
19 physical signs of impairment caused by alcohol, a drug, or both,  
20 including signs affecting the person's speech, coordination,  
21 appearance, behavior, or physical condition.



1        §711-B Habitual dangerous intoxication. (1) A person  
2        commits the offense of habitual dangerous intoxication if the  
3        person is a habitual dangerous intoxication offender and commits  
4        the offense of dangerous intoxication.

5        (2) Habitual dangerous intoxication shall be a  
6        misdemeanor.

7        (3) For a conviction under this section, the court shall  
8        impose a term of probation of one year. As conditions of  
9        probation, the court shall require the defendant to participate  
10       in a substance use disorder treatment program and to comply with  
11       any assessment, treatment plan, and aftercare or continuing care  
12       recommended by a health care provider or certified substance  
13       abuse counselor. The treatment program may include residential  
14       treatment if clinically indicated and ordered by the court as a  
15       condition of probation. If the defendant violates a condition  
16       of probation imposed under this section, the court may revoke  
17       probation and may impose a term of imprisonment of not less than  
18       ninety days.

19       (4) For the purposes of this section:



1       "Certified substance abuse counselor" means a substance  
2 abuse counselor certified by the department of health pursuant  
3 to section 321-193(10).

4       "Clinically indicated" means recommended by a health care  
5 provider or a certified substance abuse counselor based on an  
6 assessment of the defendant.

7       "Habitual dangerous intoxication offender" means a person  
8 who, within three years of the instant offense, has three or  
9 more prior convictions under section 711-A. The prior  
10 convictions shall be for separate incidents on separate dates.  
11 The prosecution shall not be required to prove any state of mind  
12 with respect to the person's status as a habitual dangerous  
13 intoxication offender. Proof that the person has the requisite  
14 minimum prior convictions shall be sufficient to establish this  
15 element.

16       "Health care provider" has the same meaning as defined in  
17 section 334-1.

18       "Substance-use disorder treatment program" means a program  
19 of assessment, counseling, treatment, medication-assisted  
20 treatment, case management, or residential treatment for a  
21 substance-use disorder that is provided by or through a health



1 care provider or a certified substance abuse counselor and  
2 approved by the court."

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

5 "**§334-41 Emergency procedures.** The emergency procedures  
6 in this subpart shall consist of emergency transportation,  
7 emergency examination, and emergency hospitalization for  
8 individuals who may be mentally ill or suffering from substance  
9 abuse and imminently dangerous to self or others. Nothing in  
10 this section shall be construed to limit an emergency  
11 examination conducted pursuant to section 334-45 for a person  
12 transported pursuant to section 711-A(4)."

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

15 "**§334-45 Emergency examination.** (a) A licensed  
16 physician, medical resident under the supervision of a licensed  
17 physician, physician assistant, psychologist, or advanced  
18 practice registered nurse may conduct an initial examination and  
19 screening of a patient transported under section 334-42, 334-43,  
20 [~~or~~] 334-44, or 711-A(4) to determine whether the criteria for  
21 involuntary hospitalization listed in section 334-60.2



1 ~~[persists]~~ persist and administer treatment as indicated by good  
2 medical practice; provided that if after the examination,  
3 screening, and treatment, the licensed physician, medical  
4 resident under the supervision of a licensed physician,  
5 physician assistant, psychologist, or advanced practice  
6 registered nurse determines that the involuntary hospitalization  
7 criteria persists, then the patient shall be further examined by  
8 a qualified psychiatric examiner to diagnose the presence or  
9 absence of a mental illness or substance use disorder, further  
10 assess the risk that the patient may be dangerous to self or  
11 others, and assess whether ~~[or not]~~ the patient continues to  
12 meet the criteria for involuntary hospitalization as provided in  
13 section 334-60.2. If no initial examination and screening of  
14 the patient is conducted, a qualified psychiatric examiner shall  
15 conduct an emergency examination of a patient transported under  
16 section 334-42, 334-43, ~~[or]~~ 334-44, or 711-A(4) without  
17 unnecessary delay and provide the patient with treatment as  
18 indicated by good medical practice; provided that the emergency  
19 examination shall include a determination of whether the patient  
20 meets the criteria for involuntary hospitalization as provided  
21 in section 334-60.2.



1 (b) If, following an emergency examination of a patient  
2 under subsection (a), a qualified psychiatric examiner  
3 determines that the criteria for involuntary hospitalization do  
4 not exist, the patient shall be discharged expeditiously;  
5 provided that if the patient is not under an order for assisted  
6 community treatment, a qualified psychiatric examiner shall  
7 conduct an examination pursuant to section 334-121.5 before the  
8 discharge. A patient under criminal charges shall be returned  
9 to the custody of a law enforcement officer.

10 (c) For the purposes of an emergency examination conducted  
11 pursuant to this section for a person transported pursuant to  
12 section 711-A(4), the examination shall be conducted within the  
13 time required under section 711-A(4)."

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

16 "**§334-121.5 Examination for assisted community treatment**  
17 **indication.** A qualified psychiatric examiner associated with  
18 the psychiatric facility where a patient is located who was  
19 committed to involuntary hospitalization, delivered for  
20 emergency examination or emergency hospitalization, or  
21 voluntarily admitted to inpatient treatment at a psychiatric



1 facility pursuant to part IV or section 711-A(4) shall, before  
2 the patient's discharge, examine the patient to determine  
3 whether an assisted community treatment plan is indicated  
4 pursuant to this part. If a plan is indicated, the qualified  
5 psychiatric examiner shall prepare the certificate specified by  
6 section 334-123. The department of the attorney general shall  
7 assist with the preparation and filing of any petition brought  
8 pursuant to section 334-123 and with the presentation of the  
9 case at any related court proceedings; provided that, if the  
10 petitioner is a private provider or other private individual,  
11 the petitioner may decline the assistance. The psychiatric  
12 facility may notify another mental health program for assistance  
13 with the coordination of care in the community for the ~~[person.]~~  
14 patient. Nothing in this section shall delay the appropriate  
15 discharge of a patient from the psychiatric facility after the  
16 examination for assisted community treatment indication has been  
17 completed."

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

20 "**§334-127.5 Records and disclosure of information.** (a) A  
21 treatment provider who provided or is providing medical,



1 psychiatric, therapeutic, or social services treatment to an  
2 individual shall provide relevant treatment information, if  
3 available, to the department of the attorney general upon the  
4 department's request for the purpose of preparing a petition for  
5 assisted community treatment. The treatment information may  
6 include a certificate issued pursuant to section 334-123(c), a  
7 treatment plan prepared pursuant to section 334-126(g), records  
8 related to actions or proceedings pursuant to part IV, records  
9 relating to the individual's treatment history, and other  
10 records deemed relevant by the individual's treatment provider.

11 (b) The petitioner of an assisted community treatment  
12 order, department of the attorney general, and family court  
13 shall disclose an assisted community treatment order to state  
14 and county law enforcement agencies, an assisted community  
15 treatment provider, or any other entity necessary to carry out  
16 the terms of the assisted community treatment order.

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



1 SECTION 6. 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 7. In codifying the new sections added by  
5 section 1 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

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

10 SECTION 9. This Act shall take effect on January 30, 2050;  
11 provided that sections 1 through 5 shall take effect on July 1,  
12 2036.



**Report Title:**

Penal Code; Offenses Against Public Order; Dangerous Intoxication; Habitual 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. Effective 1/30/2050. Implementation effective 7/1/2036. (SD2)

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

