
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; and

10 (b) Engages in affirmative conduct that, because of
11 substantial incapacitation, poses an imminent danger
12 to themselves or others.

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

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



1 (4) Notwithstanding subsection (3), if a law enforcement
2 officer has probable cause to believe that a person has
3 committed the offense of dangerous intoxication, the law
4 enforcement officer shall place the person under civil
5 protective custody, rather than arrest or issuance of a
6 citation, if the law enforcement officer is reasonably able to
7 do so. If the person is placed in civil protective custody, the
8 law enforcement officer shall, to the extent practicable,
9 transport the person for an emergency examination pursuant to
10 section 334-45; provided that the emergency examination shall be
11 conducted within twenty-four hours of the person being placed in
12 civil protective custody; provided further that if emergency
13 medical stabilization is required, the twenty-four-hour period
14 shall commence upon medical stabilization. Any person placed
15 into civil protective custody shall be transported in accordance
16 with section 334-42(c). A person who is placed in civil
17 protective custody shall not thereafter be subject to criminal
18 prosecution under this section or, if a juvenile, shall not be
19 subject to family court proceedings under this section based on
20 the facts giving rise to the civil protective custody.

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



- 1 (a) The law enforcement officer has probable cause to
2 believe the person has, in addition to the offense of
3 dangerous intoxication, committed:
- 4 (i) A felony;
5 (ii) Any violent crime as provided in section 351-32;
6 or
7 (iii) The offense of operating a vehicle under the
8 influence of an intoxicant under section 291E-61;
- 9 (b) The person has any outstanding felony arrest warrant;
10 or
- 11 (c) The law enforcement officer in good faith believes the
12 person presents an immediate and serious risk of
13 escape or physical harm to the person or others that
14 cannot be safely managed by medical personnel.
- 15 (6) Once a person is placed in civil protective custody,
16 the receiving facility shall proceed in accordance with the
17 procedures set forth in part IV of chapter 334.
- 18 (7) For the purposes of this section:
19 "Alcohol" means ethanol or any substance containing
20 ethanol.



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

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

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

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

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

20 "Substantial incapacitation" means loss of consciousness,
21 extreme disorientation, severe impairment of motor coordination,



1 inability to ambulate safely, inability to comprehend or respond
2 appropriately to simple questions or instructions, or inability
3 to protect oneself from foreseeable harm.

4 "Under the influence" means that a person shows observable
5 physical signs of impairment caused by alcohol, a drug, or both,
6 including signs affecting the person's speech, coordination,
7 appearance, behavior, or physical condition.

8 **§711-B Habitual dangerous intoxication.** (1) A person
9 commits the offense of habitual dangerous intoxication if the
10 person is a habitual dangerous intoxication offender and commits
11 the offense of dangerous intoxication.

12 (2) Habitual dangerous intoxication shall be a
13 misdemeanor.

14 (3) For a conviction under this section, the court shall
15 impose a term of probation of one year. As conditions of
16 probation, the court shall require the defendant to participate
17 in a substance use disorder treatment program and to comply with
18 any assessment, treatment plan, and aftercare or continuing care
19 recommended by a health care provider or certified substance
20 abuse counselor. The substance use disorder treatment program
21 may include residential treatment if clinically indicated and



1 ordered by the court as a condition of probation. If the
2 defendant violates a condition of probation imposed under this
3 section, the court may revoke probation and may impose a term of
4 imprisonment of no less than ninety days.

5 (4) For the purposes of this section:

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

9 "Clinically indicated" means recommended by a health care
10 provider or a certified substance abuse counselor based on an
11 assessment of the defendant.

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



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

3 "Substance use disorder treatment program" means a program
4 of assessment, counseling, treatment, medication-assisted
5 treatment, case management, or residential treatment for a
6 substance use disorder that is provided by or through a health
7 care provider or a certified substance abuse counselor and
8 approved by the court."

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

11 "[+]§334-41[+] **Emergency procedures.** The emergency
12 procedures in this subpart shall consist of emergency
13 transportation, emergency examination, and emergency
14 hospitalization for individuals who may be mentally ill or
15 suffering from substance abuse and imminently dangerous to self
16 or others. Nothing in this section shall be construed to limit
17 an emergency examination conducted pursuant to section 334-45
18 for a person transported pursuant to section 711-A(4)."

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



1 "~~[+]§334-45[+]~~ **Emergency examination.** (a) A licensed
2 physician, medical resident under the supervision of a licensed
3 physician, physician assistant, psychologist, or advanced
4 practice registered nurse may conduct an initial examination and
5 screening of a patient transported under section 334-42, 334-43,
6 [~~or~~] 334-44, or 711-A(4) to determine whether the criteria for
7 involuntary hospitalization listed in section ~~[+]334-60.2[+]~~
8 [~~persists~~] persist and administer treatment as indicated by good
9 medical practice; provided that if after the examination,
10 screening, and treatment, the licensed physician, medical
11 resident under the supervision of a licensed physician,
12 physician assistant, psychologist, or advanced practice
13 registered nurse determines that the involuntary hospitalization
14 criteria [~~persists,~~] persist, then the patient shall be further
15 examined by a qualified psychiatric examiner to diagnose the
16 presence or absence of a mental illness or substance use
17 disorder, further assess the risk that the patient may be
18 dangerous to self or others, and assess whether [~~or not~~] the
19 patient continues to meet the criteria for involuntary
20 hospitalization as provided in section 334-60.2. If no initial
21 examination and screening of the patient is conducted, a



1 qualified psychiatric examiner shall conduct an emergency
2 examination of a patient transported under section 334-42, 334-
3 43, [~~or~~] 334-44, or 711-A(4) without unnecessary delay and
4 provide the patient with treatment as indicated by good medical
5 practice; provided that the emergency examination shall include
6 a determination of whether the patient meets the criteria for
7 involuntary hospitalization as provided in section 334-60.2.

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

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



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

3 **"§334-121.5 Examination for assisted community treatment**
4 **indication.** A qualified psychiatric examiner associated with
5 the psychiatric facility where a patient is located who was
6 committed to involuntary hospitalization, delivered for
7 emergency examination or emergency hospitalization, or
8 voluntarily admitted to inpatient treatment at a psychiatric
9 facility pursuant to part IV or section 711-A(4) shall, before
10 the patient's discharge, examine the patient to determine
11 whether an assisted community treatment plan is indicated
12 pursuant to this part. If a plan is indicated, the qualified
13 psychiatric examiner shall prepare the certificate specified by
14 section 334-123. The department of the attorney general shall
15 assist with the preparation and filing of any petition brought
16 pursuant to section 334-123 and with the presentation of the
17 case at any related court proceedings; provided that, if the
18 petitioner is a private provider or other private individual,
19 the petitioner may decline the assistance. The psychiatric
20 facility may notify another mental health program for assistance
21 with the coordination of care in the community for the [~~person.~~]



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

8 (a) A 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



1 and county law enforcement agencies, an assisted community
2 treatment provider, or any other entity necessary to carry out
3 the terms of the assisted community treatment order.

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

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

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

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

17 SECTION 9. This Act shall take effect on July 1, 3000;
18 provided that sections 1 through 5 shall take effect one year
19 after the effective date of this Act.



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 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, relating to admission to psychiatric facilities and assisted community treatment. Delays implementation by one year. Effective 7/1/3000. (HD1)

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

