

## ACT 60

S.B. NO. 412

A Bill for an Act Relating to Operating a Vehicle Under the Influence of an Intoxicant.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291E-15, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-15 Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings.** If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section 291E-21[-], or pursuant to a search warrant issued by a judge upon a finding of probable cause supported by oath or affirmation, or pursuant to any other basis permissible under the Constitution of the State of Hawaii and laws of this State. Upon the law enforcement officer’s determination that the person under arrest has refused to submit to a breath, blood, or urine test, if applicable, then a law enforcement officer shall:

- (1) Inform the person under arrest of the sanctions under section 291E-41 or 291E-65; and
- (2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, thereby subjecting the person to the procedures and sanctions under part III or section 291E-65, as applicable;

provided that if the law enforcement officer fails to comply with paragraphs (1) and (2), the person shall not be subject to the refusal sanctions under part III or IV.”

SECTION 2. Section 853-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
  - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
  - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;

provided that the prohibition in this paragraph shall not apply to offenses described in section 709-906(18);

- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
  - (A) Escape in the first degree;
  - (B) Escape in the second degree;
  - (C) Promoting prison contraband in the first degree;
  - (D) Promoting prison contraband in the second degree;
  - (E) Bail jumping in the first degree;
  - (F) Bail jumping in the second degree;
  - (G) Bribery;
  - (H) Bribery of or by a witness;
  - (I) Intimidating a witness;

- (J) Bribery of or by a juror;
  - (K) Intimidating a juror;
  - (L) Jury tampering;
  - (M) Promoting prostitution;
  - (N) Abuse of family or household member except as provided in paragraph (2) and section 709-906(18);
  - (O) Sexual assault in the second degree;
  - (P) Sexual assault in the third degree;
  - (Q) A violation of an order issued pursuant to chapter 586;
  - (R) Promoting child abuse in the second degree;
  - (S) Promoting child abuse in the third degree;
  - (T) Electronic enticement of a child in the first degree;
  - (U) Electronic enticement of a child in the second degree;
  - (V) Prostitution pursuant to section 712-1200(1)(b);
  - (W) Street solicitation of prostitution under section 712-1207(1)(b);
  - (X) Solicitation of prostitution near schools or public parks under section 712-1209;
  - (Y) Habitual solicitation of prostitution under section 712-1209.5; ~~[or]~~
  - (Z) Solicitation of a minor for prostitution under section 712-1209.1; or
  - (AA) Habitually operating a vehicle under the influence of an intoxicant under section 291E-61.5(a);
- (14) The defendant has been charged with:
- (A) Knowingly or intentionally falsifying any report required under chapter 11, part XIII with the intent to circumvent the law or deceive the campaign spending commission; or
  - (B) Violating section 11-352 or 11-353; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 23, 2021.)