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## A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1           SECTION 1. The legislature finds that there is a need to  
2 amend the definition of "drug" for offenses under chapter 291E,  
3 Hawaii Revised Statutes, involving the use of intoxicants while  
4 operating a vehicle. For example, in order to convict an  
5 offender of the offense of operating a vehicle under the  
6 influence of an intoxicant when the intoxicant is a drug under  
7 section 291E-61(a)(2), Hawaii Revised Statutes, the prosecution  
8 must prove beyond a reasonable doubt that:

9           (1) The person was operating a vehicle; and

10           (2) The person was under the influence of any drug that  
11           impaired the person's ability to operate the vehicle  
12           in a careful and prudent manner.

13           However, because the term "drug" is defined for purposes of  
14 chapter 291E, Hawaii Revised Statutes, as any controlled  
15 substance listed in schedules I through IV of chapter 329,  
16 Hawaii Revised Statutes, it can be difficult for the prosecution  
17 to prove the second prong of the foregoing offense because many  
18 drugs like kava and certain muscle relaxants can cause serious

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1 impairment of drivers but are not scheduled as controlled  
2 substances. In addition, there have been recent attempts at the  
3 federal and state levels to remove marijuana and  
4 tetrahydrocannabinols from the schedule of controlled  
5 substances. If these were to succeed, persons found to be  
6 driving while impaired by marijuana could not be prosecuted  
7 under Hawaii's current operating a vehicle under the influence  
8 of an intoxicant statute.

9 The legislature further finds that the process of placing a  
10 drug or substance on the schedule of controlled substances does  
11 not respond quickly enough to emerging drugs. Synthetic drugs  
12 can be manufactured very rapidly and can avoid law enforcement  
13 when they are created by changing the chemical composition of an  
14 existing drug; in this manner, synthetic drugs like "spice" and  
15 "bath salts" evade the scheduling process. In order to quickly  
16 adapt and prosecute offenders using new emerging drugs, law  
17 enforcement should not be forced to rely solely on the  
18 controlled substance schedules for certain offenses.

19 The purpose of this Act is to amend the definition of  
20 "drug" for purposes of operating a vehicle under the influence  
21 of an intoxicant violations.

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1 SECTION 2. Section 291E-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "drug" to read as follows:

3 ""Drug" means any controlled substance, as defined and  
4 enumerated in schedules I through IV of chapter 329, or its  
5 metabolites~~[-]~~, and/or any substance that, when taken into the  
6 human body, can impair the ability of a person to operate a  
7 vehicle safely."

8 SECTION 3. 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 4. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: 

BY REQUEST

JAN 22 2018

# H .B. NO. 2399

**Report Title:**

Transportation; Drug; Intoxicants; Impairment

**Description:**

Clarifies the definition of "drug" in chapter 291E, Hawaii Revised Statutes, regarding the use of intoxicants while operating a vehicle.

*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: Transportation

TITLE: A BILL FOR AN ACT RELATING TO HIGHWAY SAFETY.

PURPOSE: To amend the definition of "drug" for offenses under chapter 291E, Hawaii Revised Statutes, involving the use of intoxicants while operating a vehicle.

MEANS: Amend section 291E-1, Hawaii Revised Statutes.

JUSTIFICATION: Under chapter 291E-61(a)(2), Hawaii Revised Statutes, in order to convict an offender of operating a vehicle under the influence of an intoxicant (OVUII) when the intoxicant is a drug, the prosecution must prove beyond a reasonable doubt that:

- (1) The person was operating a vehicle; and
- (2) The person was under the influence of any drug that impaired the person's ability to operate the vehicle in a careful and prudent manner.

However, because the term "drug" is defined for purposes of chapter 291E, Hawaii Revised Statutes, as any controlled substance listed in schedules I through IV of chapter 329, Hawaii Revised Statutes, it can be difficult for the prosecution to prove the second prong of the foregoing offense because many drugs like kava, certain muscle relaxants and some over-the-counter medications can cause serious impairment of drivers but are not scheduled as controlled substances. In addition, there have been recent attempts at the federal and state levels to remove marijuana and tetrahydrocannabinols from the schedule of controlled substances. If these were to succeed, persons found to be driving while impaired by marijuana could not be prosecuted under Hawaii's current OVUII statute. This would be especially

problematic as the Hawaii Department of Transportation expects there to be an increase in marijuana-impaired driving with the opening of the medical marijuana retail dispensaries. Furthermore, the process of placing a drug or substance on the schedule of controlled substances does not respond quickly enough to emerging drugs. Synthetic drugs can be manufactured very rapidly and can avoid law enforcement when they are created by changing the chemical composition of an existing drug; in this manner, synthetic drugs like "spice" and "bath salts" evade the scheduling process. In order to quickly adapt and prosecute offenders using new emerging drugs, law enforcement should not be forced to rely solely on the controlled substance schedules for certain offenses.

Impact on the public: Keeping the definition of "drug" as it is for purposes of chapter 291E, Hawaii Revised Statutes, would mean that drivers impaired by substances not listed on the schedule of controlled substances would not be prosecuted under 291E-61(a)(2). Knowing this, more and more drivers may look to these substances to become intoxicated, putting all roadway users at risk for serious injury and/or fatal crashes.

Impact on the department and other agencies: The Drug Recognition Expert (DRE) program, which is highly recognized and supported by the National Highway Traffic Safety Administration and the International Association of Chiefs of Police, specially trains law enforcement officers to detect drug impairment in drivers. The proposed definition aligns with the DRE program's definition of drugs. Changing our definition to the definition used by DREs across the nation and internationally would create consistency and allow prosecutors to rely more on the testimonies of these specially trained officers to prove impairment.

The Hawaii Department of Transportation is responsible for the administration and coordination of the DRE program in Hawaii.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: TRN XXX.

OTHER AFFECTED  
AGENCIES: County police departments, Sheriff Division,  
County prosecuting attorneys.

EFFECTIVE DATE: Upon approval.