DISSENTING OPINION BY NAKAYAMA, J.,
WITH WHOM RAMIL, J., JOINS

I respectfully dissent from the majority's opinion. In my view, State v. Wilson, 92 Hawai'i 45, 987 P.2d 580 (1997), was wrongly decided and should be overruled. Therefore, in the present case, I would vacate the circuit court's findings of fact, conclusions of law, and order granting Garcia's motion to suppress the intoxilyzer results.

The arguments that Wilson was incorrectly decided are set out at length in my dissent in Wilson. 92 Hawai'i at 54, 987 P.2d at 277 (Nakayama, J., with whom Ramil, J., joins, dissenting). In particular, the inconsistency between Wilson and our case law regarding the exclusionary rule and this court's supervisory powers warrants emphasis here.

This court has previously recognized that: "'A defendant who seeks to benefit from the protections of the exclusionary rule has the burden of establishing not only that the evidence sought to excluded was unlawfully secured, but also that his own constitutional rights were violated by the search and seizure challenged.'" State v. Pattioay, 78 Hawai'i 455, 466, 896 P.2d 911, 922 (1995) (quoting State v. Scanlan, 65 Haw. 159, 160-61, 649 P.2d 737, 738 (1982)). However, under appropriate circumstances, evidence obtained in violation of statutes or rules, but without constitutional violation, may be suppressed "under the authority of this court's supervisory powers in the administration of criminal justice in the courts of

our state." See id. at 469, 896 P.2d at 925. We cautioned that "the courts' inherent powers must be exercised with restraint and discretion and only in exceptional circumstances" and that "invocation of a court's inherent power is legitimate only . . . when reasonably necessary to carry out and protect the court's constitutional authority." Id. at 469 n.28, 896 P.2d at 925 n.28 (citations and internal quotation marks omitted). Thus, as emphasized in the concurring opinion in Pattioay, this exception to the exclusionary rule "should only be applied in very limited situations." Id. at 470, 896 P.2d at 926 (Ramil, J., concurring). This court should determine "on a case-by-case basis . . . whether the rationales underlying the exclusionary rule are served and whether the law violation warrants its application." Id. at 471, 896 P.2d at 927.

In my view, the majority's holding in Wilson is inconsistent with the principle that this court's supervisory powers should only be exercised in exceptional circumstances. I cannot agree that such exceptional circumstances existed in Wilson because the implied consent statute does not create a right of voluntary choice and does not expressly provide for the remedy of suppression in criminal DUI prosecutions where the defendant was not fully informed of the administrative consequences. See 92 Hawai'i at 55-58, 987 P.2d at 278-82 (Nakayama, J., dissenting). The majority in Wilson argued that

> [i]t cannot be the intent of the implied consent statute to allow a blood sample to be taken in violation of its terms, to suppress it in the driver's administrative revocation proceeding as being violative of the law, and then to allow its admission in the driver's corresponding criminal DUI prosecution because there was no infirmity in its acquisition.

92 Hawai'i at 52, 987 P.2d at 276. However, there was no allegation that the officer erroneously warned Wilson regarding potential criminal penalties. Where the infirmity in the warning lies in the administrative consequences, the remedy should lie in the administrative proceeding. Therefore, it would not have been inconsistent to admit the test results in the DUI prosecution even if they were not admissible in the administrative proceedings.

Further, even assuming that the remedy of suppression is available in the DUI prosecution, I do not believe that the warning Wilson received was so misleading as to warrant the exceptional action of suppressing the evidence under this court's supervisory powers. The warning given to Wilson did not imply that taking the test was a "safe harbor, free of adverse consequences." See Wilson, 92 Hawai'i at 59, 987 P.2d at 282 (Nakayama, J., dissenting) (quoting South Dakota v. Neville, 459 U.S. 553, 566 (1983)) (emphasis and internal quotation marks omitted). The form read to him stated that he would have his license revoked for one year if he refused to take the test, as opposed to three months if he took the test and failed. Id. at 46-47, 987 P.2d at 269-70. However, pursuant to HRS § 286-261

(Supp. 1998), as interpreted by Gray v. Administrative Director of the Court, State of Hawai‘i, 84 Hawai‘i 138, 931 P.2d 580 (1997), his license could have been revoked from three months up to one year. The officer's warning, although not fully educating Wilson of the administrative consequences of taking the test, did convey that taking the test was a more attractive alternative than refusing the test. The error in the warning given to Wilson was not so misleading as to have "tricked" or "coerced" him into consenting. That being the case, this court should not have exercised its supervisory powers to affirm the suppression of Wilson's test results.

Finally, although I agree with the majority that the principle of stare decisis has added force when the legislature has relied upon a judicial decision, see Majority opinion at 16 (quoting Hilton v. South Carolina Pub. Ry. Comm'n, 502 U.S. 197, 202 (1991)), I do not believe such deference is appropriate here. In adopting Act 189 in 2000, the legislature stated that it was:

> Codifying existing appellate case law, (See State v. Wilson, 92 Haw. 45, 987 P.2d 268 (1999) and Gray v. Administrative Director of the Court, 84 Haw. 138, 931 P.2d 580 (1997)) concerning the minimum and maximum periods of administrative revocation possible under section 286-261(b)(1)-(3), HRS[.]

Conf. Comm. Rep. No. 25, in 2000 House Journal at 855 (emphasis added). Act 189 amended HRS § 286-261 in pertinent part:

> (b) The periods of administrative revocation with respect to a driver's license and motor vehicle registration, if applicable, that [may] shall be imposed under this part are as follows:
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> (1) [Three] A minimum of three months[,] up to a maximum of one year

> revocation of driver's license, if the arrestee's driving record shows no prior alcohol enforcement contacts during the five years preceding the date of arrest;
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> (2) [One] A minimum of one year up to a maximum of two years revocation of driver's license and all registrations of motor vehicles registered to the arrestee if the arrestee's driving record shows one prior alcohol enforcement contact during the five years preceding the date of arrest;
>
> (3) [Two] A minimum of two years up to a maximum of four years revocation of driver's license and all registrations of motor vehicles registered to the arrestee if the arrestee's driving record shows two prior alcohol enforcement contacts during the seven years preceding the date of arrest;
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> . . . .
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> [(c)] (d) The driver's license of an arrestee who refuses to be tested after being informed of the sanctions of this part shall be revoked under subsection (b)(1), (2), [and] (3), and (4) for a period of one year, two years, [and] four years, and a life time, respectively.

2000 Haw. Sess. L. Act 189, § 16, at 401-02 (relevant additions underscored and relevant deletions bracketed). The legislature did not amend HRS § 286-261 in reliance upon this court's holding in Wilson concerning whether suppression is appropriate in a DUI prosecution where there was an erroneous advisement regarding the administrative penalties.[1] Therefore, the legislature's amendment of HRS § 286-261 would not be called into question if this court overruled Wilson.

Based on the foregoing, I would overrule Wilson and

[1] I also note that none of the other amendments to HRS Chapter 286, Part XIV, Administrative Revocation of Driver's License, or to HRS §§ 291-4, Driving under the influence of intoxicating liquor, or 291-4.4, Habitually driving under the influence of intoxicating liquor or drugs, relied upon these portions of Wilson. Further, the legislature did not amend HRS § 286-151, the implied consent statute. [[sess. laws cite]]

hold that the circuit court in the present case erroneously granted Garcia's motion to suppress the results of his intoxilyzer test.