

JAN 23 2008

A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1 SECTION 1. Numerous steps have been taken by the
2 legislature over the past twenty-five years to address the toll
3 exacted from our community by those who operate a motor vehicle
4 under the influence of alcohol or drugs, or both. These include
5 providing increased criminal penalties, from larger fines and
6 longer license suspensions and prison terms to forfeiture of the
7 motor vehicle involved in the crime. New criminal offenses have
8 been created, from causing death with a motor vehicle while
9 under the influence of alcohol or drugs to habitually driving
10 under the influence. Administrative license revocation has been
11 enacted to quickly revoke the driver's license while the courts
12 determine what penalties are appropriate. Special attention has
13 been given to repeat offenders, offenders who are highly
14 intoxicated, youthful offenders, and those who drive under the
15 influence with a child in the vehicle.

16 The legislature also finds that, while gains have been made
17 in reducing both driving under the influence arrests and the
18 total number of alcohol-related fatalities, today's offender is



1 more likely to have a highly elevated alcohol concentration and,
2 as a whole, Hawaii's rate of alcohol-related fatalities remains
3 unacceptably high. At the same time, people whose licenses have
4 been revoked still need to get to work, to transport their
5 families, and to fulfill other obligations, and there often is
6 no efficient alternative to driving. Just as there is no single
7 cause of this problem, there is no single solution, and Hawaii
8 needs another tool to address it. Clearly, we cannot stop
9 people from drinking, and we have had only limited success in
10 stopping people from driving. Hawaii needs a tool to stop
11 people from drinking, then driving, and from driving, then
12 drinking.

13 The purpose of this Act is to implement use of an ignition
14 interlock device to prevent drivers arrested for driving under
15 the influence from starting or operating a motor vehicle with
16 more than a minimal alcohol concentration while their case is
17 pending and while their license is revoked. Rather than
18 prohibiting driving and taking custody of the motor vehicle
19 registration, number plates, or even the car itself, this Act
20 requires installation of an ignition interlock device shortly
21 after arrest so that the person can drive, but is prevented from
22 drinking and driving, during the pendency of the case and the



1 revocation period thereafter. Thus, the requirement of
2 installation of an ignition interlock device would replace the
3 provisions to take custody of the motor vehicle registration and
4 number plates and to issue conditional license permits.

5 This Act also provides for an extended period of probation
6 supervision of the driver while using the ignition interlock
7 device so that the person cannot drink and drive during that
8 period. Attempts to do so will be recorded and reported for
9 appropriate action, including extension of the period of
10 required ignition interlock device use and other sanctions.
11 Most importantly, probation supervision, using test results and
12 other information generated by the device, can be an important
13 bridge to getting the driver into treatment so that, once the
14 device is removed, the driver possesses the tools to refrain
15 from drinking and driving altogether. Recognizing the need to
16 resolve a number of outstanding issues related to transitioning
17 to requiring installation of ignition interlock device. The Act
18 establishes a task force to study these issues and make
19 recommendations for implementation of the use of the ignition
20 interlock device, which would take effect July 1, 2010.



1 SECTION 2. Chapter 291E, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 **"§291E-A Ignition interlock special fund; surcharge;**

5 **indigents.** (a) There is established in the state treasury a
6 special fund to be known as the ignition interlock special fund
7 to be administered by the director of transportation. The fund
8 shall consist of amounts collected under this section and
9 section 321-161. Moneys in the fund shall be expended by the
10 director of transportation to fund the cost of installing and
11 operating ignition interlock devices in the vehicles of persons
12 who are required to install the device but who are indigent
13 persons, as determined under subsection (d).

14 (b) Every person who installs an ignition interlock device
15 pursuant to this chapter shall pay the ignition interlock device
16 vendor a surcharge of \$ _____ when the device is installed.
17 The surcharge shall be remitted by the ignition interlock device
18 vendor to the director of transportation within ten days
19 following the end of the month in which the surcharge was
20 collected. The surcharges collected by the vendor pursuant to
21 this subsection shall not be subject to any tax, fee, or other
22 assessment, nor are they considered revenue of the vendor. The



1 director of transportation shall deposit the surcharge amounts
2 into the ignition interlock special fund.

3 (c) The cost of installing and operating ignition
4 interlock devices required by this chapter or chapter 804 for
5 indigent persons shall be paid by the director of transportation
6 from the ignition interlock special fund. Whether a person is
7 an indigent person shall be determined pursuant to subsection
8 (d) by the director or the court, as appropriate.

9 (d) For purposes of this section, "indigent person" means:

10 (1) Any individual whose income is not greater than one
11 hundred twenty-five per cent of the official poverty
12 line established by the Secretary of Health and Human
13 Services under the Community Services Block Grant Act,
14 42 U.S.C. section 9902; or

15 (2) Any individual who is eligible for free services under
16 the Older Americans Act or Developmentally Disabled
17 Act."

18 SECTION 3. Section 291E-1, Hawaii Revised Statutes, is
19 amended by adding a new definition to be appropriately inserted
20 and to read as follows:

21 "Ignition interlock device" means a device certified by
22 the director of transportation and approved for use pursuant to



1 section 321-161 and rules adopted thereunder that, when affixed
2 to the ignition system of a motor vehicle, prevents the vehicle
3 from being started without first testing, and thereafter from
4 being operated without periodically retesting, a deep-lung
5 breath sample of the person required to use the device that
6 indicates the person's alcohol concentration is less than .02."

7 SECTION 4. Section 291E-34, Hawaii Revised Statutes, is
8 amended by amending subsection (h) to read as follows:

9 "(h) The notice shall state that, if the administrative
10 revocation is sustained at the hearing, a written decision shall
11 be mailed to the respondent, or to the parent or guardian of the
12 respondent if the respondent is under the age of eighteen, that
13 shall contain, at a minimum, the following information:

14 (1) The effective date of the administrative revocation;

15 (2) The duration of the administrative revocation;

16 ~~(3) If applicable, the date by which any outstanding motor~~
17 ~~vehicle number plates issued to the respondent must be~~
18 ~~surrendered to the director;~~

19 ~~(4) If applicable, that failure to surrender any motor~~
20 ~~vehicle number plates as required is a misdemeanor;~~

21 ~~(5)]~~ (3) Other conditions that may be imposed by law~~],~~
22 including the use of an ignition interlock device; and



1 ~~[(6)]~~ (4) The right to obtain judicial review."

2 SECTION 5. Section 291E-41, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "**§291E-41 Effective date, conditions, and period of**
5 **administrative revocation; criteria.** (a) Unless an
6 administrative revocation is reversed or the temporary permit~~[,~~
7 ~~and temporary motor vehicle registration and temporary number~~
8 ~~plates if applicable, are]~~ is extended by the director,
9 administrative revocation shall become effective on the day
10 specified in the notice of administrative revocation. Except as
11 provided in section 291E-44, no license and privilege to operate
12 a vehicle~~[, nor motor vehicle registration and number plates if~~
13 ~~applicable,]~~ shall be restored under any circumstances~~[, and no~~
14 ~~conditional license permit shall be issued]~~ during the
15 administrative revocation period. Upon completion of the
16 administrative revocation period, the respondent may reapply and
17 be reissued a license pursuant to section 291E-45.

18 (b) Except as provided in paragraph (6), the respondent
19 shall keep an ignition interlock device installed and operating
20 on any vehicle the person operates during the revocation period.
21 Except as provided in section 291E-A, installation and
22 maintenance of the ignition interlock device shall be at the



1 respondent's own expense. The periods of administrative
2 revocation with respect to a license and privilege to operate a
3 vehicle[~~, and motor vehicle registration if applicable,~~] that
4 shall be imposed under this part are as follows:

5 (1) A minimum of three months up to a maximum of one year
6 revocation of license and privilege to operate a
7 vehicle, if the respondent's record shows no prior
8 alcohol enforcement contact or drug enforcement
9 contact during the five years preceding the date the
10 notice of administrative revocation was issued;

11 (2) For a respondent who is a highly intoxicated driver,
12 if the respondent's record shows no prior alcohol
13 enforcement contact or drug enforcement contact during
14 the five years preceding the date the notice of
15 administrative revocation was issued, a minimum of six
16 months up to a maximum of one year revocation of
17 license and privilege to operate a vehicle [~~and of the~~
18 ~~registration of any motor vehicle registered to the~~
19 ~~highly intoxicated driver; provided that the highly~~
20 ~~intoxicated driver shall not qualify for a conditional~~
21 ~~license permit under section 291E 44];~~

- 1 (3) A minimum of one year up to a maximum of two years
2 revocation of license and privilege to operate a
3 vehicle [~~and of the registration of any motor vehicle~~
4 ~~registered to the respondent~~], if the respondent's
5 record shows one prior alcohol enforcement contact or
6 drug enforcement contact during the five years
7 preceding the date the notice of administrative
8 revocation was issued;
- 9 (4) A minimum of two years up to a maximum of four years
10 revocation of license and privilege to operate a
11 vehicle [~~and of the registration of any motor vehicle~~
12 ~~registered to the respondent~~], if the respondent's
13 record shows two prior alcohol enforcement contacts or
14 drug enforcement contacts during the [~~seven~~] five
15 years preceding the date the notice of administrative
16 revocation was issued;
- 17 (5) [~~Lifetime~~] A minimum of five years up to a maximum of
18 ten years revocation of license and privilege to
19 operate a vehicle [~~and of the registration of any~~
20 ~~motor vehicle registered to the respondent and a~~
21 ~~lifetime prohibition on any subsequent registration of~~
22 ~~motor vehicles by the respondent~~], if the respondent's



1 record shows three or more prior alcohol enforcement
2 contacts or drug enforcement contacts during the ~~ten~~
3 five years preceding the date the notice of
4 administrative revocation was issued; or
5 (6) For respondents under the age of eighteen years who
6 were arrested for a violation of section 291E-61 or
7 291E-61.5, revocation of license and privilege to
8 operate a vehicle ~~[either for the period remaining~~
9 ~~until the respondent's eighteenth birthday or, if~~
10 ~~applicable,]~~ for the appropriate revocation period
11 provided in paragraphs (1) to (5) or in subsection
12 ~~[(d), whichever is longer and such respondents shall~~
13 ~~not qualify for a conditional permit,]~~ (c); provided
14 that the respondent shall be prohibited from driving
15 during the period preceding the respondent's
16 eighteenth birthday and shall thereafter be subject to
17 the ignition interlock requirement of this subsection
18 for the balance of the revocation period;
19 provided that when more than one administrative revocation,
20 suspension, or conviction arises out of the same arrest, it
21 shall be counted as only one prior alcohol enforcement contact



1 or drug enforcement contact, whichever revocation, suspension,
2 or conviction occurs later.

3 ~~[(c) Whenever a motor vehicle registration is revoked~~
4 ~~under this part, the director shall cause the revocation to be~~
5 ~~entered electronically into the motor vehicle registration file~~
6 ~~of the respondent.~~

7 ~~(d)]~~ (c) If a respondent has refused to be tested after
8 being informed:

9 (1) That the person may refuse to submit to testing in
10 compliance with section 291E-11; and

11 (2) Of the sanctions of this part and then asked if the
12 person still refuses to submit to a breath, blood, or
13 urine test, in compliance with the requirements of
14 section 291E-15,

15 the revocation imposed under subsection (b)(1), (3), (4), and
16 (5) shall be for a period of one year, two years, four years,
17 and ~~[a lifetime,]~~ ten years, respectively.

18 ~~[(c) In addition to subsection (d), any motor vehicle~~
19 ~~registration of a respondent who is a repeat intoxicated driver~~
20 ~~and who refused to be tested after being informed:~~

21 ~~(1) That the person may refuse to submit to testing in~~
22 ~~compliance with section 291E-11; and~~



1 ~~(2) Of the sanctions of this part and then asked if the~~
2 ~~person still refuses to submit to a breath, blood, or~~
3 ~~urine test, in compliance with the requirements of~~
4 ~~section 291E-15,~~
5 ~~shall be revoked for the periods specified in subsection (d),~~
6 ~~and the respondent shall be prohibited from subsequently~~
7 ~~registering any motor vehicle for the applicable revocation~~
8 ~~period.~~

9 ~~(f)]~~ (d) Whenever a license and privilege to operate a
10 vehicle is administratively revoked under this part, the
11 respondent shall be referred to the driver's education program
12 for an assessment, by a certified substance abuse counselor, of
13 the respondent's substance abuse or dependence and the need for
14 treatment. The counselor shall submit a report with
15 recommendations to the director. If the counselor's assessment
16 establishes that the extent of the respondent's substance abuse
17 or dependence warrants treatment, the director shall so order.
18 All costs for assessment and treatment shall be paid by the
19 respondent.

20 ~~(g)]~~ (e) Alcohol and drug enforcement contacts that
21 occurred prior to January 1, 2002, shall be counted in
22 determining the administrative revocation period.



1 ~~[-h-]~~ (f) The requirement to provide proof of financial
2 responsibility pursuant to section 287-20 shall not be based
3 upon a revocation under subsection (b)(1)."

4 SECTION 6. Section 291E-44, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§291E-44** ~~[Conditional license]~~ Ignition interlock
7 permits[-]; driving for employment.

8 (a) (1) ~~[During the administrative hearing, the director,~~
9 ~~at the request of a respondent who is subject to~~
10 ~~administrative revocation for a period as provided in~~
11 ~~section 291E 41(b)(1), may]~~ Except as provided in
12 paragraph (2), upon proof that the respondent has
13 installed an ignition interlock device in the
14 respondent's vehicle, the director shall issue [a
15 ~~conditional license]~~ an ignition interlock permit that
16 will allow the respondent~~[-, after a minimum period of~~
17 ~~absolute license revocation of thirty days,~~] to drive
18 ~~[for the remainder of]~~ a vehicle equipped with an
19 ignition interlock device during the revocation
20 period[+ provided that one or more of the following
21 conditions are met+.



- 1 ~~(A) The respondent is gainfully employed in a~~
2 ~~position that requires driving and will be~~
3 ~~discharged if the respondent's driving privileges~~
4 ~~are administratively revoked; or~~
- 5 ~~(B) The respondent has no access to alternative~~
6 ~~transportation and therefore must drive to work~~
7 ~~or to a substance abuse treatment facility or~~
8 ~~counselor for treatment ordered by the director~~
9 ~~under section 291E-41]; or~~
- 10 (2) Notwithstanding any other law to the contrary, the
11 director shall not issue ~~[a conditional license]~~ an
12 ignition interlock permit to:
- 13 (A) A respondent whose license~~[, during the~~
14 ~~conditional license permit period,]~~ is expired,
15 suspended, or revoked as a result of action other
16 than the instant revocation ~~[for which the~~
17 ~~respondent is requesting a conditional license~~
18 ~~permit under this section;~~
- 19 ~~(B) A respondent who has refused breath, blood, or~~
20 ~~urine tests for purposes of determining alcohol~~
21 ~~concentration or drug content of the person's~~
22 ~~breath, blood, or urine, as applicable;~~



1 ~~[(1)]~~ (A) A sworn statement from the respondent containing
2 facts establishing that the respondent currently
3 is employed in a position that requires driving
4 and that the respondent will be discharged if
5 ~~[not allowed to drive,]~~ prohibited from driving a
6 vehicle not equipped with an ignition interlock
7 device; and

8 ~~[(2)]~~ (B) A sworn statement from the respondent's employer
9 establishing that the employer will, in fact,
10 discharge the respondent if the respondent is
11 prohibited from driving~~[r]~~ a vehicle not equipped
12 with an ignition interlock device and identifying
13 the specific vehicle and hours of the day the
14 respondent will drive, not to exceed twelve hours
15 per day, for purposes of employment.

16 ~~[(c) A request made pursuant to subsection [(a)(1)(B)]~~
17 ~~shall be accompanied by a sworn statement by the respondent~~
18 ~~attesting to the specific facts upon which the request is based,~~
19 ~~which statement shall be verified by the director.~~

20 ~~-(d) A conditional license may]~~ (c) A permit issued
21 pursuant to subsection (b) shall include restrictions allowing
22 the respondent to drive:



- 1 (1) Only during specified hours of employment, not to
- 2 exceed twelve hours per day, and only for activities
- 3 solely within the scope of the employment;
- 4 (2) Only [~~during daylight hours; or~~] the vehicle
- 5 specified; and
- 6 (3) Only [~~for specified purposes or to specified~~
- 7 ~~destinations~~] if the permit is kept in the
- 8 respondent's possession while operating the employer's
- 9 vehicle.

10 In addition, the director may impose any other appropriate
 11 restrictions.

12 [~~(e) The duration of the conditional license permit shall~~
 13 ~~be determined on the basis of the criteria set forth in~~
 14 ~~subsections (b) and (c).~~

15 [~~(f) If the respondent violates the conditions imposed~~
 16 ~~under this section, the conditional license permit shall be~~
 17 ~~rescinded, and administrative revocation shall be immediate for~~
 18 ~~the appropriate period authorized by law.]"~~

19 SECTION 7. Section 291E-61, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "**§291E-61 Operating a vehicle under the influence of an**
 22 **intoxicant.** (a) A person commits the offense of operating a



1 vehicle under the influence of an intoxicant if the person
2 operates or assumes actual physical control of a vehicle:

3 (1) While under the influence of alcohol in an amount
4 sufficient to impair the person's normal mental
5 faculties or ability to care for the person and guard
6 against casualty;

7 (2) While under the influence of any drug that impairs the
8 person's ability to operate the vehicle in a careful
9 and prudent manner;

10 (3) With .08 or more grams of alcohol per two hundred ten
11 liters of breath; or

12 (4) With .08 or more grams of alcohol per one hundred
13 milliliters or cubic centimeters of blood.

14 (b) A person committing the offense of operating a vehicle
15 under the influence of an intoxicant shall be sentenced as
16 follows [~~without possibility of probation or suspension of~~
17 ~~sentence~~]:

18 (1) Except as provided in [~~paragraph~~] paragraphs (2) [7]
19 and (5), for the first offense, or any offense not
20 preceded within a five-year period by a conviction for
21 an offense under this section or section 291E-4(a) [+],
22 and notwithstanding section 706-623, by probation for



1 not less than one year nor more than two years on the
2 following conditions:

3 (A) A fourteen-hour minimum substance abuse
4 rehabilitation program, including education and
5 counseling, or other comparable program deemed
6 appropriate by the court;

7 (B) [~~Ninety day prompt suspension of license and~~
8 ~~privilege to operate a vehicle during the~~
9 ~~suspension period, or the court may impose, in~~
10 ~~lieu of the ninety day prompt suspension of~~
11 ~~license, a minimum thirty day prompt suspension~~
12 ~~of license with absolute prohibition from~~
13 ~~operating a vehicle and, for the remainder of the~~
14 ~~ninety day period, a restriction on the license~~
15 ~~that allows the person to drive for limited~~
16 ~~work related purposes and to participate in~~
17 ~~substance abuse treatment programs,] One-year
18 revocation of license and privilege to operate a
19 vehicle during the revocation period and
20 installation during the revocation period of an
21 ignition interlock device on any vehicle operated
22 by the person;~~



- 1 (C) Any one or more of the following:
 - 2 (i) Seventy-two hours of community service work;
 - 3 (ii) Not less than forty-eight hours and not more
 - 4 than five days of imprisonment; or
 - 5 (iii) A fine of not less than \$150 but not more
 - 6 than \$1,000; and
- 7 (D) A surcharge of \$25 to be deposited into the
- 8 neurotrauma special fund;
- 9 (2) For a first offense committed by a highly intoxicated
- 10 driver, or for any offense committed by a highly
- 11 intoxicated driver not preceded within a five-year
- 12 period by a conviction for an offense under this
- 13 section or section 291E-4(a) [+], and notwithstanding
- 14 section 706-623, by probation for not less than two
- 15 years nor more than four years on the following
- 16 conditions:
 - 17 (A) A fourteen-hour minimum substance abuse
 - 18 rehabilitation program, including education and
 - 19 counseling, or other comparable program deemed
 - 20 appropriate by the court;
 - 21 (B) [~~Prompt suspension of a license and privilege to~~
 - 22 ~~operate a vehicle for a period of six months with~~



1 ~~an absolute prohibition from operating a vehicle~~
 2 ~~during the suspension period;]~~ Two-year
 3 revocation of license and privilege to operate a
 4 vehicle during the revocation period and
 5 installation during the revocation period of an
 6 ignition interlock device on any vehicle operated
 7 by the person;

8 (C) Any one or more of the following:

9 (i) Seventy-two hours of community service work;

10 (ii) Not less than forty-eight hours and not more
 11 than five days of imprisonment; or

12 (iii) A fine of not less than \$150 but not more
 13 than \$1,000; and

14 (D) A surcharge of \$25 to be deposited into the
 15 neurotrauma special fund;

16 (3) For an offense that occurs within five years of a
 17 prior conviction for an offense under this section or
 18 section 291E-4(a) ~~[by:]~~, and notwithstanding section
 19 706-623, by probation for not less than two years nor
 20 more than four years on the following conditions:

21 (A) ~~[Prompt suspension of license and privilege to~~
 22 ~~operate a vehicle for a period of one year with~~



1 ~~an absolute prohibition from operating a vehicle~~
2 ~~during the suspension period,] Two-year~~
3 ~~revocation of license and privilege to operate a~~
4 ~~vehicle during the revocation period and~~
5 ~~installation during the revocation period of an~~
6 ~~ignition interlock device on any vehicle operated~~
7 ~~by the person;~~

8 (B) Either one of the following:

9 (i) Not less than two hundred forty hours of
10 community service work; or

11 (ii) Not less than five days but not more than
12 fourteen days of imprisonment of which at
13 least forty-eight hours shall be served
14 consecutively;

15 (C) A fine of not less than \$500 but not more than
16 \$1,500; and

17 (D) A surcharge of \$25 to be deposited into the
18 neurotrauma special fund;

19 (4) For an offense that occurs within five years of two
20 prior convictions for offenses under this section or
21 section 291E-4(a) [+], and notwithstanding section



1 706-623, by probation for not less than three years
2 nor more than five years on the following conditions:

3 (A) A fine of not less than \$500 but not more than
4 \$2,500;

5 (B) [~~Revocation of license and privilege to operate a~~
6 ~~vehicle for a period not less than one year but~~
7 ~~not more than five years;~~] Three-year revocation
8 of license and privilege to operate a vehicle
9 during the revocation period and installation
10 during the revocation period of an ignition
11 interlock device on any vehicle operated by the
12 person;

13 (C) Not less than ten days but not more than thirty
14 days imprisonment of which at least forty-eight
15 hours shall be served consecutively;

16 (D) A surcharge of \$25 to be deposited into the
17 neurotrauma special fund; and

18 [~~(E) Forfeiture under chapter 712A of the vehicle~~
19 ~~owned and operated by the person committing the~~
20 ~~offense; provided that the department of~~
21 ~~transportation shall provide storage for vehicles~~
22 ~~forfeited under this subsection; and]~~



1 (5) [Any] In addition to a sentence imposed under
2 paragraphs (1) through (4), any person eighteen years
3 of age or older who is convicted under this section
4 and who operated a vehicle with a passenger, in or on
5 the vehicle, who was younger than fifteen years of
6 age, shall be sentenced to an additional mandatory
7 fine of \$500 and an additional mandatory term of
8 imprisonment of forty-eight hours; provided that the
9 total term of imprisonment for a person convicted
10 under this paragraph shall not exceed the maximum term
11 of imprisonment provided in paragraph (1), (3), or
12 (4). Notwithstanding paragraph (1), the probation
13 period for a person sentenced under this paragraph
14 shall be not less than two years.

15 (c) Notwithstanding any other law to the contrary, the
16 court shall not issue an ignition interlock permit to:

17 (1) A defendant whose license is expired, suspended, or
18 revoked as a result of action other than the instant
19 offense; or

20 (2) A defendant who holds either a category 4 license
21 under section 286-102(b) or a commercial driver's
22 license under section 286-239(b).



1 (d) The court may issue a separate permit authorizing a
2 defendant to operate a vehicle owned by the defendant's employer
3 during the period of revocation without installation of an
4 ignition interlock device if the defendant is gainfully employed
5 in a position that requires driving and the defendant will be
6 discharged if prohibited from driving a vehicle not equipped
7 with an ignition interlock device.

8 (e) A request made pursuant to subsection (d) shall be
9 accompanied by:

10 (1) A sworn statement from the defendant containing facts
11 establishing that the defendant currently is employed
12 in a position that requires driving and that the
13 defendant will be discharged if prohibited from
14 driving a vehicle not equipped with an ignition
15 interlock device; and

16 (2) A sworn statement from the defendant's employer
17 establishing that the employer will, in fact,
18 discharge the defendant if the defendant is prohibited
19 from driving a vehicle not equipped with an ignition
20 interlock device and identifying the specific vehicle
21 and hours of the day, not to exceed twelve hours per



1 day, the defendant will drive for purposes of
2 employment.

3 (f) A permit issued pursuant to subsection (d) shall
4 include restrictions allowing the defendant to drive:

5 (1) Only during specified hours of employment, not to
6 exceed twelve hours per day, and only for activities
7 solely within the scope of the employment;

8 (2) Only the vehicle specified; and

9 (3) Only if the permit is kept in the defendant's
10 possession while operating the employer's vehicle.

11 ~~(e)~~ (g) Notwithstanding any other law to the contrary,
12 any:

13 (1) Conviction under this section, section 291E-4(a), or
14 section 291E-61.5;

15 (2) Conviction in any other state or federal jurisdiction
16 for an offense that is comparable to operating or
17 being in physical control of a vehicle while having
18 either an unlawful alcohol concentration or an
19 unlawful drug content in the blood or urine or while
20 under the influence of an intoxicant or habitually
21 operating a vehicle under the influence of an
22 intoxicant; or



1 (3) Adjudication of a minor for a law violation that, if
2 committed by an adult, would constitute a violation of
3 this section or an offense under section 291E-4(a), or
4 section 291E-61.5;
5 shall be considered a prior conviction for the purposes of
6 imposing sentence under this section. Any judgment on a verdict
7 or a finding of guilty, a plea of guilty or nolo contendere, or
8 an adjudication, in the case of a minor, that at the time of the
9 offense has not been expunged by pardon, reversed, or set aside
10 shall be deemed a prior conviction under this section. No
11 license and privilege suspension or revocation shall be imposed
12 pursuant to this section if the person's license and privilege
13 to operate a vehicle has previously been administratively
14 revoked pursuant to part III for the same act; provided that, if
15 the administrative suspension or revocation is subsequently
16 reversed, the person's license and privilege to operate a
17 vehicle shall be suspended or revoked as provided in this
18 section.

19 [~~(d)~~] (h) Whenever a court sentences a person pursuant to
20 subsection (b), it also shall require that the offender be
21 referred to the driver's education program for an assessment, by
22 a certified substance abuse counselor, of the offender's



1 substance abuse or dependence and the need for appropriate
2 treatment. The counselor shall submit a report with
3 recommendations to the court. The court shall require the
4 offender to obtain appropriate treatment if the counselor's
5 assessment establishes the offender's substance abuse or
6 dependence. All costs for assessment and treatment shall be
7 borne by the offender.

8 ~~[(e)]~~ (i) Upon proof that the defendant has installed an
9 ignition interlock device in the defendant's vehicle pursuant to
10 subsection (b), the court shall issue an ignition interlock
11 permit that will allow the defendant to drive a vehicle equipped
12 with an ignition interlock device during the revocation period.

13 (j) Notwithstanding any other law to the contrary,
14 whenever a court revokes a person's driver's license pursuant to
15 this section, the examiner of drivers shall not grant to the
16 person a new driver's license until the expiration of the period
17 of revocation determined by the court. After the period of
18 revocation is completed, the person may apply for and the
19 examiner of drivers may grant to the person a new driver's
20 license.

21 ~~[(f)]~~ (k) Any person sentenced under this section may be
22 ordered to reimburse the county for the cost of any blood or



1 urine tests conducted pursuant to section 291E-11. The court
 2 shall order the person to make restitution in a lump sum, or in
 3 a series of prorated installments, to the police department or
 4 other agency incurring the expense of the blood or urine test.
 5 Except as provided in section 291E-A, installation and
 6 maintenance of the ignition interlock device required by
 7 subsection (b) shall be at the defendant's own expense.

8 [~~g~~] (l) The requirement to provide proof of financial
 9 responsibility pursuant to section 287-20 shall not be based
 10 upon a sentence imposed under subsection (b)(1).

11 [~~h~~] (m) As used in this section, the term "examiner of
 12 drivers" has the same meaning as provided in section 286-2."

13 SECTION 8. Section 291E-62, Hawaii Revised Statutes, is
 14 amended by amending subsection (a) to read as follows:

15 "(a) No person whose license and privilege to operate a
 16 vehicle have been revoked, suspended, or otherwise restricted
 17 pursuant to this section or to part III or section 291E-61 or
 18 291E-61.5, or to part VII or part XIV of chapter 286 or section
 19 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions
 20 were in effect on December 31, 2001, shall operate or assume
 21 actual physical control of any vehicle:



- 1 (1) In violation of any restrictions placed on the
- 2 person's license; [~~or~~]
- 3 (2) While the person's license or privilege to operate a
- 4 vehicle remains suspended or revoked[~~or~~];
- 5 (3) Without installing an ignition interlock device
- 6 required by this chapter; or
- 7 (4) After disabling or circumventing an ignition interlock
- 8 device required by this chapter."

9 SECTION 9. Section 804-7.1, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 **"§804-7.1 Conditions of release on bail, recognizance, or**
 12 **supervised release.** (a) Upon a showing that there exists a
 13 danger that the defendant will commit a serious crime or will
 14 seek to intimidate witnesses, or will otherwise unlawfully
 15 interfere with the orderly administration of justice, the
 16 judicial officer named in section 804-5 may deny the defendant's
 17 release on bail, recognizance, or supervised release.

18 (b) Upon the defendant's release on bail, recognizance, or
 19 supervised release, however, the court may enter an order:

- 20 (1) Prohibiting the defendant from approaching or
- 21 communicating with particular persons or classes of
- 22 persons, except that no such order should be deemed to



- 1 prohibit any lawful and ethical activity of
2 defendant's counsel;
- 3 (2) Prohibiting the defendant from going to certain
4 described geographical areas or premises;
- 5 (3) Prohibiting the defendant from possessing any
6 dangerous weapon, engaging in certain described
7 activities, or indulging in intoxicating liquors [~~or~~]
8 certain drugs;
- 9 (4) Requiring the defendant to report regularly to and
10 remain under the supervision of an officer of the
11 court;
- 12 (5) Requiring the defendant to maintain employment, or, if
13 unemployed, to actively seek employment, or attend an
14 educational or vocational institution;
- 15 (6) Requiring the defendant to comply with a specified
16 curfew;
- 17 (7) Requiring the defendant to seek and maintain mental
18 health treatment or testing, including treatment for
19 drug or alcohol dependency, or to remain in a
20 specified institution for that purpose;
- 21 (8) Requiring the defendant to remain in the jurisdiction
22 of the judicial circuit in which the charges are



1 pending unless approval is obtained from a court of
2 competent jurisdiction to leave the jurisdiction of
3 the court;

4 (9) Requiring the defendant to satisfy any other condition
5 reasonably necessary to assure the appearance of the
6 person as required and to assure the safety of any
7 other person or community; or

8 (10) Imposing any combination of conditions listed above.

9 The judicial officer may revoke a defendant's bail upon
10 proof that the defendant has breached any of the conditions
11 imposed.

12 (c) In addition to the conditions in subsection (b) and
13 except as provided in subsection (d), when the defendant is
14 charged with an offense under section 291E-61, the court shall
15 order as a condition of bail that, within fifteen days, the
16 defendant install an ignition interlock device, as defined in
17 section 291E-1, on any vehicle that the defendant will operate
18 during the defendant's release on bail. Upon proof that the
19 defendant has installed an ignition interlock device in the
20 defendant's vehicle, the court shall issue an ignition interlock
21 permit that will allow the defendant to drive a vehicle equipped
22 with an ignition interlock device during the revocation period.



1 (d) Notwithstanding any other law to the contrary, the
2 court shall not issue an ignition interlock permit to:

3 (1) A defendant whose license is expired, suspended, or
4 revoked as a result of action other than the instant
5 revocation; or

6 (2) A defendant who holds either a category 4 license
7 under section 286-102(b) or a commercial driver's
8 license under section 286-239(b).

9 (e) The court may issue a separate permit authorizing a
10 defendant to operate a vehicle owned by the defendant's employer
11 while released on bail as provided in section 291E-61.

12 (f) Except as provided in section 291E-A, installation and
13 maintenance of the ignition interlock device required by
14 subsection (c) shall be at the defendant's own expense."

15 SECTION 10. Section 853-4, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§853-4 Chapter not applicable; when.** This chapter shall
18 not apply when:

19 (1) The offense charged involves the intentional, knowing,
20 reckless, or negligent killing of another person;

21 (2) The offense charged is:



- 1 any conduct that if perpetrated in this State would
2 constitute a felony;
- 3 (8) The defendant has a prior conviction for a felony
4 committed in any state, federal, or foreign
5 jurisdiction;
- 6 (9) A firearm was used in the commission of the offense
7 charged;
- 8 (10) The defendant is charged with the distribution of a
9 dangerous, harmful, or detrimental drug to a minor;
- 10 (11) The defendant has been charged with a felony offense
11 and has been previously granted deferred acceptance of
12 guilty plea status for a prior offense, regardless of
13 whether the period of deferral has already expired;
- 14 (12) The defendant has been charged with a misdemeanor
15 offense and has been previously granted deferred
16 acceptance of guilty plea status for a prior felony,
17 misdemeanor, or petty misdemeanor for which the period
18 of deferral has not yet expired;
- 19 (13) The offense charged is:
- 20 (A) Escape in the first degree;
- 21 (B) Escape in the second degree;
- 22 (C) Promoting prison contraband in the first degree;



- 1 (D) Promoting prison contraband in the second degree;
- 2 (E) Bail jumping in the first degree;
- 3 (F) Bail jumping in the second degree;
- 4 (G) Bribery;
- 5 (H) Bribery of a witness;
- 6 (I) Intimidating a witness;
- 7 (J) Bribery of or by a juror;
- 8 (K) Intimidating a juror;
- 9 (L) Jury tampering;
- 10 (M) Promoting prostitution in the first degree;
- 11 (N) Promoting prostitution in the second degree;
- 12 (O) Promoting prostitution in the third degree;
- 13 (P) Abuse of family or household members;
- 14 (Q) Sexual assault in the second degree;
- 15 (R) Sexual assault in the third degree;
- 16 (S) A violation of an order issued pursuant to
- 17 chapter 586;
- 18 (T) Promoting child abuse in the second degree;
- 19 (U) Promoting child abuse in the third degree;
- 20 (V) Electronic enticement of a child in the first
- 21 degree; [ø]



1 (W) Electronic enticement of a child in the second
2 degree; or

3 (X) An offense under part IV, chapter 291E.

4 (14) The defendant has been charged with:

5 (A) Knowingly or intentionally falsifying any report
6 required under chapter 11, subpart B of part XII,
7 with the intent to circumvent the law or deceive
8 the campaign spending commission; or

9 (B) Violating section 11-201 or 11-202; or

10 (15) The defendant holds a commercial driver's license and
11 has been charged with violating a traffic control law,
12 other than a parking law, in connection with the
13 operation of any type of motor vehicle.

14 The court may adopt by rule other criteria in this area."

15 SECTION 11. Section 321-161, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§321-161 Chemical testing for alcohol concentration or**
18 **drug content.** (a) The department of health shall establish and
19 administer a statewide program relating to chemical testing of
20 alcohol concentrations or drug content for the purposes of
21 chapters 286, 291, 291C, and 291E, with the consultation of the



1 state director of transportation. Under the program,
2 appropriate procedures shall be established for specifying:

- 3 (1) The qualifications of personnel who administer
4 chemical tests used to determine alcohol
5 concentrations or drug content;
- 6 (2) The procedures for specimen selection, collection,
7 handling, and analysis; and
- 8 (3) The manner of reporting and tabulating the results.

9 (b) The program shall include standards and procedures for
10 the certification of ignition interlock devices installed
11 pursuant to chapters 291E and 804 and for vendors who install
12 and maintain them. At a minimum, the standards shall require
13 that the device:

- 14 (1) Operate using an alcohol-specific sensor technology;
15 (2) Employ a digital camera by which a photograph of the
16 person using the device can be incorporated into the
17 electronic record generated by each use of the device;
18 (3) Require a rolling retest by which the driver must,
19 within a specified period of time or distance driven
20 after starting the vehicle, be retested and found to
21 have an alcohol concentration of less than .02, with a
22 margin of error of .01;



1 (4) Generate a record of vehicle usage, including dates,
2 times, and distances driven; and

3 (5) Meet or exceed any applicable standards of the
4 National Highway Traffic Safety Administration.

5 (c) The program shall include standards and procedures for
6 the certification for vendors who install and maintain ignition
7 interlock devices pursuant to chapters 291E and 804. At a
8 minimum, the standards shall require that a vendor:

9 (1) Offer or contract for ignition interlock device
10 installation and maintenance statewide;

11 (2) Train drivers required to install an ignition
12 interlock device pursuant to chapters 291E and 804 how
13 to use the device;

14 (3) Schedule the driver for all necessary readings and
15 maintenance of the device; and

16 (4) Provide periodic reports regarding the use of each
17 ignition interlock device installed pursuant to
18 chapter 291E or 804, including incidents of test
19 failure, attempts to circumvent the device, and dates,
20 times, and distances the vehicle was driven.

21 (d) Each vendor who sells or installs an ignition
22 interlock device pursuant to chapter 291E or 804 shall be



1 certified annually by the director of transportation pursuant to
2 this section and the rules adopted under it. The vendor shall
3 pay a certification fee to the director of transportation who
4 shall deposit the fee into the ignition interlock special fund
5 established pursuant to section 291E-A.

6 [~~b~~] (e) The director of health [~~may~~] shall adopt rules
7 pursuant to chapter 91 necessary for the purposes of this
8 section."

9 SECTION 12. (a) There is established the Hawaii ignition
10 interlock implementation task force. The task force shall be
11 comprised of the following:

- 12 (1) Two members of the senate, appointed by the president
13 of the senate;
- 14 (2) Two members of the house of representatives, appointed
15 by the speaker of the house of representatives;
- 16 (3) Two members appointed by the chief justice of the
17 Hawaii supreme court; provided that one member shall
18 be a district court judge and one shall be a
19 representative of the administrative driver's license
20 revocation office;
- 21 (4) The director of transportation;
- 22 (5) The director of health;



- 1 (6) The attorney general;
- 2 (7) The state public defender;
- 3 (8) The chief of police of the counties of Hawaii, Kauai,
- 4 and Maui and the city and county of Honolulu;
- 5 (9) The prosecuting attorney of the counties of Hawaii,
- 6 Kauai, and Maui and the city and county of Honolulu;
- 7 (10) The examiner of drivers of the counties of Hawaii,
- 8 Kauai, and Maui and the city and county of Honolulu;
- 9 (11) The executive director and a member of the board of
- 10 directors of Mothers Against Drunk Driving, Hawaii
- 11 Chapter;
- 12 (12) A representative, to be appointed by the governor, of
- 13 an ignition interlock device vendor operating in at
- 14 least one other state that sells and installs an
- 15 ignition interlock device that meets or exceeds any
- 16 applicable standards of the National Highway Traffic
- 17 Safety Administration; and
- 18 (13) A member of the Hawaii Association of Criminal Defense
- 19 Lawyers, appointed by its president.
- 20 (b) The members of the task force shall select the
- 21 chairperson of the task force and shall be reimbursed for
- 22 reasonable expenses, including travel expenses, necessary for



1 the performance of their duties. Members of the task force may
2 designate a representative for the purpose of attendance at task
3 force meetings.

4 (c) The task force shall:

5 (1) Meet as necessary to plan for the implementation of
6 this Act, including the preparation of reports and
7 proposed legislation;

8 (2) Address the following issues:

9 (A) Whether an alternative to the ignition interlock
10 device requirement of this Act should be offered
11 to those who drive a vehicle, such as a
12 motorcycle, for which the device might not be
13 available, or who claim not to have a car or not
14 to wish to drive, including use of a secure
15 continuous remote alcohol monitor, or whether a
16 person should be required to pay the same fees as
17 a person who has the device installed, as a means
18 of reducing the incentive to drive a vehicle
19 without an ignition interlock device;

20 (B) Whether additional or different criteria for
21 determining indigency are appropriate;



- 1 (C) Whether drivers under the age of eighteen should
2 be subject to the ignition interlock device
3 requirement of this Act;
- 4 (D) Whether and how a new license with a photograph,
5 instead of an ignition interlock permit issued by
6 the court or the director of the administrative
7 driver's license revocation office, should be
8 issued and whether it should contain a statement,
9 appearing similar to that required by section
10 286-109(a)(3), Hawaii Revised Statutes, that the
11 person is permitted to drive only a vehicle
12 equipped with an ignition interlock device;
- 13 (E) Whether provision should be made for an
14 "emergency override" so that the driver can start
15 and operate the vehicle with, for example, an
16 alcohol concentration of .04 because of a medical
17 emergency or a mechanical failure and, if so, how
18 an override should be documented, including, for
19 example, with a 911 telephone call or a police
20 report;
- 21 (F) What agency is best suited to receive reports
22 generated by the vendor from the ignition



1 interlock device, to monitor use of the device by
2 individual drivers, and what resources will be
3 required to make that monitoring effective;

4 (G) How the data produced by an ignition interlock
5 device, including information on drinking and
6 driving patterns, can best be used to facilitate
7 effective alcohol treatment for the person so
8 that the person is less likely to resume drinking
9 and driving once the ignition interlock device is
10 removed;

11 (H) Whether drivers sentenced to probation should be
12 assessed a probation fee to help fund additional
13 personnel necessary to monitor the use of the
14 ignition interlock device;

15 (I) Whether drivers should be allowed to terminate
16 probation early if they have complied with all
17 ignition interlock device requirements for a
18 specified period of time, number of vehicle
19 starts, or number of miles driven;

20 (J) What sanctions should be imposed for failing the
21 ignition interlock device test, including, for
22 example, revocation of probation or extension of



1 the probation period and the period of required
2 ignition interlock device use;

3 (K) What sanctions should be imposed for failing to
4 install an ignition interlock device as a
5 condition of bail, including, for example,
6 surrender of motor vehicle license plates or
7 revocation of and commitment without bail;

8 (L) Whether additional legislation or other action is
9 necessary to ensure that the periods during, and
10 conditions under, which use of an ignition
11 interlock device is ordered pursuant to chapters
12 291E and 804, Hawaii Revised Statutes, are
13 consistent with each other and with this Act;

14 (M) Whether the exemption from the financial
15 responsibility requirement afforded by sections
16 291E-41 and 291E-61, Hawaii Revised Statutes, is
17 still desirable or necessary;

18 (N) Under what circumstances, including the number of
19 test failures and the relative elevation of blood
20 concentrations, the driver should face revocation
21 of probation and what sanctions are appropriate,



1 including resentencing to an additional period of
2 ignition interlock device use;

3 (O) Whether judicial supervision of ignition
4 interlock device use, and of driving under the
5 influence offenders generally, should take place
6 in the context of a "DUI Court" modeled along the
7 lines of drug court programs now in successful
8 use;

9 (P) Whether the State should, through a request for
10 proposals or similar approach, select a single
11 vendor to provide uniform, statewide ignition
12 interlock program services with fees set by the
13 State or whether multiple vendors should be
14 encouraged to enter and compete in the
15 marketplace;

16 (Q) Whether use of an ignition interlock device and
17 issuance of an ignition interlock permit or
18 license should be made retroactive such that,
19 when the ignition interlock device requirements
20 of this Act take effect, persons whose licenses
21 have been suspended or revoked, pursuant to
22 chapter 291E, Hawaii Revised Statutes, prior to



1 this Act's effective date may apply to use the
2 device and receive an ignition interlock permit
3 or license;

4 (R) Whether statutory amendments need to be made to
5 conform this Act to existing law; and

6 (S) Any other issues pertinent to the implementation
7 of this Act;

8 (3) Identify the resources necessary for the State to
9 implement and maximize benefits from use of the
10 ignition interlock device;

11 (4) Identify all sources of funding, including federal
12 grants and legislative appropriations, available to
13 implement use of the ignition interlock device; and

14 (5) Draft additional proposed legislation necessary to
15 implement use of the ignition interlock device.

16 (d) The department of transportation shall provide the
17 administrative, technical, and clerical support services
18 necessary to assist the task force in achieving its purpose as
19 required under this Act.

20 (e) The task force shall submit a report of its initial
21 findings and recommendations for implementation of the use of
22 the ignition interlock device, including any proposed



1 legislation, no later than twenty days prior to the convening of
2 the regular session of 2009.

3 (f) The task force shall submit a final plan for
4 implementation of the use of the ignition interlock device,
5 including any proposed legislation, no later than twenty days
6 prior to the convening of the regular session of 2010.

7 (g) The Hawaii ignition interlock implementation task
8 force shall cease to exist after June 30, 2010.

9 SECTION 13. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so much
11 thereof as may be necessary for fiscal year 2008-2009 for the
12 purpose of supporting the work of the ignition interlock
13 implementation task force.

14 The sum appropriated shall be expended by the department of
15 transportation for the purposes of this Act.

16 SECTION 14. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun, before its effective date.

19 SECTION 15. In codifying the new sections added by section
20 2 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 the new sections in this Act.



S.B. NO. 3234

1 SECTION 16. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 17. This Act shall take effect on July 1, 2008;
4 provided that sections 2 through 11 shall take effect on July 1,
5 2010.

6

INTRODUCED BY:

Mike Gillard

~~_____~~
Clarence K. Fukushima

Clarence K. Fukushima

~~_____~~

Jill

Rosely H. Park

Will Spwo

Bruner Kohler

Norman Sakomfo

Joanna

Elizabeth Chum Oakland



Report Title:

Highway Safety; Ignition Interlock Systems

Description:

Requires installation of ignition interlock device on the vehicle of a person arrested for driving under the influence that prevents the person from starting or operating a motor vehicle with more than a minimal alcohol concentration while their case is pending and while their license is revoked pursuant to chapter 291E, HRS. Provides for certification of devices and vendors and funds installation of devices for the indigent with surcharges on offenders and fees on vendors. Effective 7/1/10. Establishes a task force to prepare for implementation. Appropriates funds for the task force. Effective 7/1/08.

