



GOV. MSG. NO. 705

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

June 3, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 3, 2009, the following bill was signed into law:

HB981 HD2 SD2 CD1

A BILL FOR AN ACT
RELATING TO HIGHWAY SAFETY.
ACT 088 (09)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

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 Act 171, Session
2 Laws of Hawaii 2008, was adopted to implement the use of an
3 ignition interlock device to prevent drivers previously arrested
4 for driving under the influence of intoxicants from starting or
5 operating a motor vehicle with more than a minimal alcohol
6 concentration while their case is pending or while their license
7 is revoked. Rather than taking a punitive approach that
8 prohibits driving, Act 171 takes a pragmatic approach that
9 requires installation of an ignition interlock device shortly
10 after arrest so that the person can drive, but is prevented from
11 drinking and driving, during the pendency of the case and the
12 revocation period thereafter.

13 Recognizing the need to resolve a number of outstanding
14 issues in the transition to use of ignition interlock devices,
15 the legislature delayed the effective date of Act 171 to July 1,
16 2010. The legislature also established a task force to study
17 the issues identified in Act 171 during the interim and make
18 recommendations for additional legislation necessary to



1 implement use of the ignition interlock devices. The task force
2 consists of two members each from the senate and the house of
3 representatives; two members each representing the judiciary;
4 one member representing each of the state departments of
5 transportation, health, and the attorney general; one member
6 representing the office of the public defender; one member
7 representing the police departments in each of the four
8 counties; one member representing the department of the
9 prosecuting attorney in each of the four counties; one member
10 representing the examiner of drivers in each of the four
11 counties; two members representing Mothers Against Drunk
12 Driving; and one member of the Hawaii association of criminal
13 defense lawyers.

14 The task force addressed each of the issues identified in
15 Act 171 and made recommendations on a number of them, while
16 deferring the remainder until the 2010 session. The task force
17 continued to stress a pragmatic approach, as opposed to a
18 punitive one, with key positions including:

19 (1) Installation of the ignition interlock device should
20 be required for all offenders, not just repeat
21 offenders, consistent with the national trend and



1 similar laws that took effect on January 1, 2009, in
2 Alaska, Nebraska, and Washington;

3 (2) Unlike current law, which sanctions first offenders
4 more severely if their alcohol level meets or exceeds
5 .15, all first offenders should be treated the same
6 way, regardless of their alcohol level, and no first
7 offender should be required to post proof of financial
8 responsibility;

9 (3) Installation of the ignition interlock device should
10 occur as soon after arrest as possible so that the
11 offender learns that driving without the device is not
12 permissible;

13 (4) Stricter laws and increased enforcement are needed to
14 deter those who would try to avoid installing the
15 ignition interlock device and drive on a suspended or
16 revoked license;

17 (5) The offender should pay for the cost of installing and
18 servicing the ignition interlock device, with the
19 establishment of a fund to pay for those who are
20 determined to be indigent according to specified
21 criteria;



- 1 (6) Use of the ignition interlock device should be
2 overseen principally by the administrative driver's
3 license revocation program, with support from judicial
4 proceedings;
- 5 (7) The alcohol level at which a driver is "locked out" --
6 prevented from starting the vehicle or performing a
7 rolling retest -- should be .02 and no penalties
8 should be imposed when a driver is "locked out" or
9 fails to take a retest because the inability to start
10 or keep operating the vehicle will act as the
11 consequence for attempting to drive after drinking;
- 12 (8) Offenders who circumvent or tamper with the ignition
13 interlock device should be charged with another crime;
- 14 (9) Offenders who refuse to be tested for alcohol content
15 should be required to use the ignition interlock
16 device for longer periods than those who take the
17 test, and other strategies that make submitting to the
18 test more appealing than refusal should be developed;
- 19 (10) The department of transportation should select a
20 single provider for installation and maintenance of
21 the ignition interlock device to ensure statewide
22 uniformity in the program; and



1 (11) Clear expectations and performance standards should be
2 established for the chosen ignition interlock device
3 vendor.

4 The purpose of this Act is to enact recommendations made by
5 the ignition interlock implementation task force pursuant to Act
6 171, Session Laws of Hawaii 2008.

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

9 "[+] §291E-5 [+] Ignition interlock special fund; surcharge;

10 indigents. (a) There is established in the state treasury a
11 special fund to be known as the ignition interlock special fund
12 to be administered by the director of transportation. The fund
13 shall consist of amounts collected under this section and
14 section 291E-6. Moneys in the fund shall be expended by the
15 director of transportation to fund the cost of installing and
16 operating ignition interlock devices in the vehicles of persons
17 who are required to install the device but who are indigent
18 persons, as determined under subsection (d).

19 (b) Every person who installs an ignition interlock device
20 pursuant to this chapter shall pay the ignition interlock device
21 vendor a surcharge of \$ when the device is installed.

22 The surcharge shall be remitted by the ignition interlock device



1 vendor to the director of transportation within ten days
2 following the end of the month in which the surcharge was
3 collected. The surcharges collected by the vendor pursuant to
4 this subsection shall not be subject to any tax, fee, or other
5 assessment, nor are they considered revenue of the vendor. The
6 director of transportation shall deposit the surcharge amounts
7 into the ignition interlock special fund.

8 (c) The cost of installing and operating ignition
9 interlock devices required by this chapter [~~or chapter 804~~] for
10 indigent persons shall be paid by the director of transportation
11 from the ignition interlock special fund. Whether a person is
12 an indigent person shall be determined pursuant to subsection
13 (d) by the director or the court, as appropriate.

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

15 (1) Any individual whose income is not greater than one
16 hundred twenty-five per cent of the official poverty
17 line established by the Secretary of Health and Human
18 Services under the Community Services Block Grant Act,
19 42 United States Code [~~section~~] Section 9902; or

20 (2) Any individual who is eligible for free services under
21 the Older Americans Act or Developmentally Disabled
22 Act.



1 (e) The director of transportation shall adopt rules
2 pursuant to chapter 91 for the purposes of this section."

3 SECTION 3. Section 291E-6, Hawaii Revised Statutes, is
4 amended by amending subsections (a) to (d) to read as follows:

5 "(a) The director of transportation shall establish and
6 administer a statewide program relating to certification and
7 monitoring of ignition interlock devices installed pursuant to
8 chapter 291E [~~ex-804~~] and [~~the vendors who~~] shall select a
9 single vendor to install and maintain them.

10 (b) The program shall include standards and procedures for
11 the certification of ignition interlock devices installed
12 pursuant to chapter 291E [~~ex-804~~]. At a minimum, the standards
13 shall require that the devices:

14 (1) Be certified by a nationally recognized certification
15 organization to meet or exceed all standards and
16 specifications provided as guidelines by the National
17 Highway Traffic Safety Administration. "Nationally
18 recognized certification organization" means a testing
19 laboratory or analytical chemist not affiliated with a
20 manufacturer of ignition interlock devices that is
21 qualified to test ignition interlock devices or
22 reference samples and is approved by the United States



1 Department of Transportation. The nationally
2 recognized certification organization must be able to
3 administer performance tests of an ignition interlock
4 device or a sample provided by the vendor;

5 (2) Operate using an alcohol-specific sensor technology;

6 (3) Employ a digital camera by which a photograph of the
7 person using the device can be incorporated into the
8 electronic record generated by each use of the device;

9 (4) Require a rolling retest by which the driver must,
10 within a specified period of time or distance driven
11 after starting the vehicle, be retested and found to
12 have an alcohol concentration of less than .02, with a
13 margin of error of .01; and

14 (5) Generate a record of vehicle usage, including dates,
15 times, and distances driven.

16 (c) The program shall include standards and procedures for
17 the certification [~~for vendors who~~] of the vendor selected to
18 install and maintain ignition interlock devices pursuant to
19 chapter 291E [~~or 804~~]. At a minimum, the standards shall
20 require that [~~vendors~~] the vendor:

21 (1) Install only an ignition interlock device that is
22 certified pursuant to this section;



- 1 (2) Offer or contract for ignition interlock device
2 installation and maintenance statewide;
- 3 (3) Train drivers who are required to install an ignition
4 interlock device, pursuant to chapter 291E or 804, in
5 how to use the device;
- 6 (4) Schedule the driver for all necessary readings and
7 maintenance of the device; and
- 8 (5) Provide periodic reports regarding the use of each
9 ignition interlock device installed pursuant to
10 chapter 291E [~~or 804~~], including incidents of test
11 failure, attempts to circumvent the device, and dates,
12 times, and distances the vehicle was driven.
- 13 (d) [~~Each vendor who sells or installs an~~] The vendor
14 selected for installation and maintenance of ignition interlock
15 [device] devices pursuant to chapter 291E [~~or 804~~] shall be
16 certified annually by the director of transportation pursuant to
17 this section and the rules adopted thereunder. The vendor shall
18 pay a certification fee to the director of transportation who
19 shall deposit the fee into the ignition interlock special fund
20 established pursuant to section 291E-5."

21 SECTION 4. Section 291E-15, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§291E-15 Refusal to submit to breath, blood, or urine
2 test; subject to administrative revocation proceedings. If a
3 person under arrest refuses to submit to a breath, blood, or
4 urine test, none shall be given, except as provided in section
5 291E-21. Upon the law enforcement officer's determination that
6 the person under arrest has refused to submit to a breath,
7 blood, or urine test, if applicable, then a law enforcement
8 officer shall:

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

15 provided that if the law enforcement officer fails to comply
16 with paragraphs (1) and (2), the person shall not be subject to
17 the refusal sanctions under part III or [~~section 291E-65.~~] IV."

18 SECTION 5. Section 291E-41, Hawaii Revised Statutes, is
19 amended by amending subsections (b) and (c) to read as follows:

20 "(b) Except as provided in paragraph [~~(6)~~] (5) and in
21 section [~~291E-44,~~] 291E-44.5, the respondent shall keep an
22 ignition interlock device installed and operating on any vehicle



1 the respondent operates during the revocation period. Except as
2 provided in section 291E-5, installation and maintenance of the
3 ignition interlock device shall be at the respondent's own
4 expense. The periods of administrative revocation with respect
5 to a license and privilege to operate a vehicle that shall be
6 imposed under this part are as follows:

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

13 [~~(2) For a respondent who is a highly intoxicated driver,~~
14 ~~if the respondent's record shows no prior alcohol~~
15 ~~enforcement contact or drug enforcement contact during~~
16 ~~the five years preceding the date the notice of~~
17 ~~administrative revocation was issued, a minimum of six~~
18 ~~months up to a maximum of one year revocation of~~
19 ~~license and privilege to operate a vehicle,~~

20 ~~(3) A minimum of one year up to a maximum of two years]~~

21 (2) An eighteen month revocation of license and
22 privilege to operate a vehicle, if the respondent's



1 record shows one prior alcohol enforcement contact or
2 drug enforcement contact during the five years
3 preceding the date the notice of administrative
4 revocation was issued;

5 ~~[(4)]~~ (3) A ~~[minimum of two years up to a maximum of four~~
6 ~~years]~~ two-year revocation of license and privilege to
7 operate a vehicle, if the respondent's record shows
8 two prior alcohol enforcement contacts or drug
9 enforcement contacts during the five years preceding
10 the date the notice of administrative revocation was
11 issued;

12 ~~[(5)]~~ (4) A minimum of five years up to a maximum of ten
13 years revocation of license and privilege to operate a
14 vehicle, if the respondent's record shows three or
15 more prior alcohol enforcement contacts or drug
16 enforcement contacts during the five years preceding
17 the date the notice of administrative revocation was
18 issued; or

19 ~~[(6)]~~ (5) For respondents under the age of eighteen years
20 who were arrested for a violation of section 291E-61
21 or 291E-61.5, revocation of license and privilege to
22 operate a vehicle for the appropriate revocation



1 period provided in paragraphs (1) to [~~5~~] (4) or in
2 subsection (c); provided that the respondent shall be
3 prohibited from driving during the period preceding
4 the respondent's eighteenth birthday and shall
5 thereafter be subject to the ignition interlock
6 requirement of this subsection for the balance of the
7 revocation period;

8 (6) For respondents who do not install an ignition
9 interlock device in the respondent's vehicle during
10 the revocation period, revocation of license and
11 privilege to operate a vehicle for the period of
12 revocation provided in paragraphs (1) to (5) or in
13 subsection (c); provided that:

14 (A) The respondent shall be absolutely prohibited
15 from driving during the revocation period and
16 subject to the penalties provided by section
17 291E-62 if the respondent drives during the
18 revocation period; and

19 (B) The director shall not issue an ignition
20 interlock permit to the respondent pursuant to
21 section 291E-44.5;



1 provided that when more than one administrative revocation,
2 suspension, or conviction arises out of the same arrest, it
3 shall be counted as only one prior alcohol enforcement contact
4 or drug enforcement contact, whichever revocation, suspension,
5 or conviction occurs later.

6 (c) If a respondent has refused to be tested after being
7 informed:

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

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

14 the revocation imposed under subsection (b) (1), (2), (3), or
15 (4) [~~and (5)~~] shall be for a period of [~~one year,~~] two years,
16 three years, four years, and ten years, respectively."

17 SECTION 6. Section 291E-61, Hawaii Revised Statutes, is
18 amended by amending subsections (b) and (c) to read as follows:

19 "(b) A person committing the offense of operating a
20 vehicle under the influence of an intoxicant shall be sentenced
21 as follows:

1 (1) ~~[Except as provided in paragraphs (2) and (5), for]~~
2 For the first offense, or any offense not preceded
3 within a five-year period by a conviction for an
4 offense under this section or section 291E-4(a) ~~[, and~~
5 ~~notwithstanding section 706-623, by probation for not~~
6 ~~less than one year nor more than two years on the~~
7 ~~following conditions]:~~

8 (A) A fourteen-hour minimum substance abuse
9 rehabilitation program, including education and
10 counseling, or other comparable program deemed
11 appropriate by the court;

12 (B) ~~[(i) Ninety day prompt suspension of license and~~
13 ~~privilege to operate a vehicle during the~~
14 ~~suspension period, or the court may impose,~~
15 ~~in lieu of the ninety day prompt suspension~~
16 ~~of license, a minimum thirty day prompt~~
17 ~~suspension of license with absolute~~
18 ~~prohibition from operating a vehicle and,~~
19 ~~for the remainder of the ninety day period,~~
20 ~~a restriction on the license that allows the~~
21 ~~person to drive for limited work related~~



~~purposes and to participate in substance
abuse treatment programs; or~~

~~(ii)] One-year revocation of license and privilege
to operate a vehicle during the revocation
period and installation during the
revocation period of an ignition interlock
device on any vehicle operated by the
person;~~

(C) Any one or more of the following:

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

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

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

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

(E) May be charged a surcharge of up to \$25 to be
deposited into the trauma system special fund if
the court so orders;

~~[(2) For a first offense committed by a highly intoxicated
driver, or for any offense committed by a highly
intoxicated driver not preceded within a five year~~



1 ~~period by a conviction for an offense under this~~
2 ~~section or section 291E 4(a), and notwithstanding~~
3 ~~section 706 623, by probation for not less than two~~
4 ~~years nor more than four years on the following~~
5 ~~conditions:~~

6 ~~(A) A fourteen hour minimum substance abuse~~
7 ~~rehabilitation program, including education and~~
8 ~~counseling, or other comparable program deemed~~
9 ~~appropriate by the court;~~

10 ~~(B) A two year revocation of license and privilege to~~
11 ~~operate a vehicle during the revocation period~~
12 ~~and installation during the revocation period of~~
13 ~~an ignition interlock device on any vehicle~~
14 ~~operated by the person;~~

15 ~~(C) Any one or more of the following:~~

16 ~~(i) Seventy two hours of community service work;~~

17 ~~(ii) Not less than forty eight hours and not more~~
18 ~~than five days of imprisonment; or~~

19 ~~(iii) A fine of not less than \$150 but not more~~
20 ~~than \$1,000;~~

21 ~~(D) A surcharge of \$25 to be deposited into the~~
22 ~~neurotrauma special fund; and~~



1 ~~(E) May be charged a surcharge of up to \$50 to be~~
2 ~~deposited into the trauma system special fund if~~
3 ~~the court so orders;~~

4 ~~(3)]~~ (2) For an offense that occurs within five years of a
5 prior conviction for an offense under this section or
6 section 291E-4(a), and notwithstanding section 706-
7 623, by probation for not less than ~~[two years]~~
8 eighteen months nor more than ~~[four]~~ two years on the
9 following conditions:

10 (A) ~~[A two year revocation]~~ Revocation of license and
11 privilege to operate a vehicle during the
12 ~~[revocation]~~ probation period and installation
13 during the ~~[revocation]~~ probation period of an
14 ignition interlock device on any vehicle operated
15 by the person;

16 (B) Either one of the following:

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

19 (ii) Not ~~[less than five days but not more than~~
20 ~~fourteen]~~ more than five days of
21 imprisonment of which at least forty-eight
22 hours shall be served consecutively;



- 1 (C) A fine of not less than \$500 but not more than
2 \$1,500;
- 3 (D) A surcharge of \$25 to be deposited into the
4 neurotrauma special fund; and
- 5 (E) May be charged a surcharge of up to \$50 to be
6 deposited into the trauma system special fund if
7 the court so orders;
- 8 ~~[(4)]~~ (3) For an offense that occurs within five years of
9 two prior convictions for offenses under this section
10 or section 291E-4(a), and notwithstanding section 706-
11 623, by probation for ~~[not less than three years nor~~
12 ~~more than five]~~ two years on the following conditions:
- 13 (A) A fine of not less than \$500 but not more than
14 \$2,500;
- 15 (B) ~~[Three-year revocation]~~ Revocation of license and
16 privilege to operate a vehicle during the
17 ~~[revocation]~~ probation period and installation
18 during the ~~[revocation]~~ probation period of an
19 ignition interlock device on any vehicle operated
20 by the person;
- 21 (C) ~~[Not less than ten days but not more than thirty~~
22 ~~days]~~ Up to five days imprisonment of which at



1 least forty-eight hours shall be served
2 consecutively;
3 (D) A surcharge of \$25 to be deposited into the
4 neurotrauma special fund; and
5 (E) May be charged a surcharge of up to \$50 to be
6 deposited into the trauma system special fund if
7 the court so orders; [~~and~~]
8 [~~(5)~~] (4) In addition to a sentence imposed under
9 paragraphs (1) through [~~(4)~~], (3), any person eighteen
10 years of age or older who is convicted under this
11 section and who operated a vehicle with a passenger,
12 in or on the vehicle, who was younger than fifteen
13 years of age, shall be sentenced to an additional
14 mandatory fine of \$500 and an additional mandatory
15 term of imprisonment of forty-eight hours; provided
16 that the total term of imprisonment for a person
17 convicted under this paragraph shall not exceed [~~the~~
18 ~~maximum term of imprisonment provided in paragraph~~
19 ~~(1), (3), or (4).~~] the maximum term of imprisonment
20 provided in paragraph (1), (2), or (3), as applicable.
21 Notwithstanding paragraph [~~(1)~~] (2), the probation



1 period for a person sentenced under this paragraph
2 shall be not less than two years[-]; and

3 (5) If the person demonstrates to the court that the
4 person:

5 (A) Does not own or have the use of a vehicle in
6 which the person can install an ignition
7 interlock device during the probation period; or

8 (B) Is otherwise unable to drive during the probation
9 period,

10 the person shall be absolutely prohibited from driving during
11 the period of probation provided in paragraphs (1) to (4);
12 provided that the court shall not issue an ignition interlock
13 permit pursuant to subsection (i) and the person shall be
14 subject to the penalties provided by section 291E-62 if the
15 person drives during the probation period.

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

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

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



1 license under section 286-239(b) [-], unless the
2 ignition interlock permit is restricted to a category
3 1, 2, or 3 license under section 286-102(b)."

4 SECTION 7. Section 291E-65, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§291E-65 Refusal to submit to testing for measurable
7 amount of alcohol; district court hearing; sanctions; appeals;
8 admissibility. (a) If a person under arrest for operating a
9 vehicle after consuming a measurable amount of alcohol, pursuant
10 to section 291E-64, refuses to submit to a breath or blood test,
11 none shall be given, except as provided in section 291E-21, but
12 the arresting law enforcement officer, as soon as practicable,
13 shall submit an affidavit to a district judge of the circuit in
14 which the arrest was made, stating:

15 (1) That at the time of the arrest, the arresting officer
16 had probable cause to believe the arrested person was
17 under the age of twenty-one and had been operating a
18 vehicle upon a public way, street, road, or highway or
19 on or in the waters of the State with a measurable
20 amount of alcohol;



- 1 (2) That the arrested person was informed that the person
- 2 may refuse to submit to a breath or blood test, in
- 3 compliance with section 291E-11;
- 4 (3) That the person had refused to submit to a breath or
- 5 blood test;
- 6 (4) That the arrested person was:
- 7 (A) Informed of the sanctions of this section; and
- 8 then
- 9 (B) Asked if the person still refuses to submit to a
- 10 breath or blood test, in compliance with the
- 11 requirements of section 291E-15; and
- 12 (5) That the arrested person continued to refuse to submit
- 13 to a breath or blood test.
- 14 (b) Upon receipt of the affidavit, the district judge
- 15 shall hold a hearing within twenty days. The district judge
- 16 shall hear and determine:
- 17 (1) Whether the arresting law enforcement officer had
- 18 probable cause to believe that the person was under
- 19 the age of twenty-one and had been operating a vehicle
- 20 upon a public way, street, road, or highway or on or
- 21 in the waters of the State with a measurable amount of
- 22 alcohol;



- 1 (2) Whether the person was lawfully arrested;
- 2 (3) Whether the person was informed that the person may
- 3 refuse to submit to a breath or blood test, in
- 4 compliance with section 291E-11;
- 5 (4) Whether the person refused to submit to a test of the
- 6 person's breath or blood;
- 7 (5) Whether the person was:
 - 8 (A) Informed of the sanctions of this section; and
 - 9 then
 - 10 (B) Asked if the person still refuses to submit to a
 - 11 breath or blood test, in compliance with the
 - 12 requirements of section 291E-15; and
- 13 (6) Whether the person continued to refuse to submit to a
- 14 breath or blood test.
- 15 (c) If the district judge finds the statements contained
- 16 in the affidavit are true, the judge shall suspend the arrested
- 17 person's license and privilege to operate a vehicle as follows:
 - 18 (1) For a first suspension, or any suspension not preceded
 - 19 within a five-year period by a suspension under this
 - 20 section, for a period of twelve months; and



1 (2) For any subsequent suspension under this section, for
2 a period not less than two years and not more than
3 five years.

4 (d) An order of a district court issued under this section
5 may be appealed to the supreme court.

6 ~~[(e) If a legally arrested person under the age of twenty-~~
7 ~~one refuses to submit to a test of the person's breath or blood,~~
8 ~~proof of refusal shall be admissible only in a hearing under~~
9 ~~this section or part III and shall not be admissible in any~~
10 ~~other action or proceeding, whether civil or criminal.] "~~

11 SECTION 8. Section 706-623, Hawaii Revised Statutes, is
12 amended by amending subsection (1) to read as follows:

13 "(1) When the court has sentenced a defendant to be placed
14 on probation, the period of probation shall be as follows,
15 unless the court enters the reason therefor on the record and
16 sentences the defendant to a shorter period of probation:

- 17 (a) Ten years upon conviction of a class A felony;
- 18 (b) Five years upon conviction of a class B or class C
19 felony;
- 20 (c) One year upon conviction of a misdemeanor; except that
21 upon a conviction under section 586-4, 586-11, or



1 709-906, the court may sentence the defendant to a
2 period of probation not exceeding two years; ~~[or]~~

3 (d) ~~[Six]~~ Except as provided in paragraph (e), six months
4 upon conviction of a petty misdemeanor; provided that
5 up to one year may be imposed upon a finding of good
6 cause[-]; or

7 (e) Eighteen months to two years upon conviction under
8 section 291E-61(b) (2), and two years upon a conviction
9 under section 291E-61(b) (3).

10 The court, on application of a probation officer, on application
11 of the defendant, or on its own motion, may discharge the
12 defendant at any time. Prior to granting early discharge, the
13 court shall afford the prosecuting attorney an opportunity to be
14 heard. The terms of probation provided in this part, other than
15 in this section, shall not apply to sentences of probation
16 imposed under section 706-606.3."

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

19 "**§804-7.1 Conditions of release on bail, recognizance, or**
20 **supervised release.** ~~[(a)]~~ Upon a showing that there exists a
21 danger that the defendant will commit a serious crime or will
22 seek to intimidate witnesses, or will otherwise unlawfully



1 interfere with the orderly administration of justice, the
2 judicial officer named in section 804-5 may deny the defendant's
3 release on bail, recognizance, or supervised release.

4 [~~(b)~~] Upon the defendant's release on bail, recognizance,
5 or supervised release, however, the court may enter an order:

- 6 (1) Prohibiting the defendant from approaching or
7 communicating with particular persons or classes of
8 persons, except that no such order should be deemed to
9 prohibit any lawful and ethical activity of
10 defendant's counsel;
- 11 (2) Prohibiting the defendant from going to certain
12 described geographical areas or premises;
- 13 (3) Prohibiting the defendant from possessing any
14 dangerous weapon, engaging in certain described
15 activities, or indulging in intoxicating liquors or
16 certain drugs;
- 17 (4) Requiring the defendant to report regularly to and
18 remain under the supervision of an officer of the
19 court;
- 20 (5) Requiring the defendant to maintain employment, or, if
21 unemployed, to actively seek employment, or attend an
22 educational or vocational institution;



- 1 (6) Requiring the defendant to comply with a specified
2 curfew;
- 3 (7) Requiring the defendant to seek and maintain mental
4 health treatment or testing, including treatment for
5 drug or alcohol dependency, or to remain in a
6 specified institution for that purpose;
- 7 (8) Requiring the defendant to remain in the jurisdiction
8 of the judicial circuit in which the charges are
9 pending unless approval is obtained from a court of
10 competent jurisdiction to leave the jurisdiction of
11 the court;
- 12 (9) Requiring the defendant to satisfy any other condition
13 reasonably necessary to assure the appearance of the
14 person as required and to assure the safety of any
15 other person or community; or
- 16 (10) Imposing any combination of conditions listed above.

17 The judicial officer may revoke a defendant's bail upon
18 proof that the defendant has breached any of the conditions
19 imposed.

20 ~~[(c) In addition to the conditions in subsection (b) and~~
21 ~~except as provided in subsection (d), when the defendant is~~
22 ~~charged with an offense under section 291E 61, except an offense~~



1 ~~for which the defendant would be sentenced pursuant to section~~
2 ~~291E 61(b) (1), the court shall order as a condition of release~~
3 ~~on bail, recognizance, or supervised release that, within~~
4 ~~fifteen days, the defendant install an ignition interlock~~
5 ~~device, as defined in section 291E 1, on any vehicle that the~~
6 ~~defendant will operate during the defendant's release on bail,~~
7 ~~recognizance, or supervised release. Upon proof that the~~
8 ~~defendant has installed an ignition interlock device in the~~
9 ~~defendant's vehicle, the court shall issue an ignition interlock~~
10 ~~permit that will allow the defendant to drive a vehicle equipped~~
11 ~~with an ignition interlock device during the period of the~~
12 ~~defendant's release on bail, recognizance, or supervised~~
13 ~~release.~~

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

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

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



1 ~~(e) The court may issue a separate permit authorizing a~~
2 ~~defendant to operate a vehicle owned by the defendant's employer~~
3 ~~while released [on] bail as provided in section 291E-61.~~

4 ~~(f) Except as provided in section 291E-5, installation and~~
5 ~~maintenance of the ignition interlock device required by~~
6 ~~subsection (c) shall be at the defendant's own expense.] "~~

7 SECTION 10. Section 291E-16, Hawaii Revised Statutes, is
8 repealed.

9 ~~"[§291E-16] Proof of refusal, admissibility. If a~~
10 ~~legally arrested person refuses to submit to a test of the~~
11 ~~person's breath, blood, or urine, evidence of refusal shall be~~
12 ~~admissible only in a proceeding under part III or section~~
13 ~~291E-65 and shall not be admissible in any other action or~~
14 ~~proceeding, whether civil or criminal.] "~~

15 SECTION 11. Section 291E-44, Hawaii Revised Statutes, is
16 repealed.

17 ~~"[§291E-44 Conditional license and ignition interlock~~
18 ~~permits.~~

19 ~~(a) (1) During the administrative hearing, the director, at~~
20 ~~the request of a respondent who is subject to~~
21 ~~administrative revocation for a period as provided in~~
22 ~~section 291E-41(b)(1), may issue either a conditional~~



1 ~~license permit pursuant to this section or an ignition~~
2 ~~interlock permit pursuant to section 291E 44.5. If~~
3 ~~the director issues a conditional license permit~~
4 ~~pursuant to this section, the permit shall allow the~~
5 ~~respondent, after a minimum period of absolute license~~
6 ~~revocation of thirty days, to drive for the remainder~~
7 ~~of the revocation period; provided that one or more of~~
8 ~~the following conditions are met:~~

9 ~~(A) The respondent is gainfully employed in a~~
10 ~~position that requires driving and will be~~
11 ~~discharged if the respondent's driving privileges~~
12 ~~are administratively revoked; or~~

13 ~~(B) The respondent has no access to alternative~~
14 ~~transportation and therefore must drive to work~~
15 ~~or to a substance abuse treatment facility or~~
16 ~~counselor for treatment ordered by the director~~
17 ~~under section 291E 41; or~~

18 ~~(2) Notwithstanding any other law to the contrary, the~~
19 ~~director shall not issue a conditional license permit~~
20 ~~to:~~

21 ~~(A) A respondent whose license, during the~~
22 ~~conditional license permit period, is expired,~~



1 ~~suspended, or revoked as a result of action other~~
2 ~~than the instant revocation for which the~~
3 ~~respondent is requesting a conditional license~~
4 ~~permit under this section;~~

5 ~~(B) A respondent who has refused breath, blood, or~~
6 ~~urine tests for purposes of determining alcohol~~
7 ~~concentration or drug content of the person's~~
8 ~~breath, blood, or urine, as applicable;~~

9 ~~(C) A respondent who is a highly intoxicated driver;~~
10 ~~and~~

11 ~~(D) A respondent who holds either a category 4~~
12 ~~license under section 286 102 (b) or a commercial~~
13 ~~driver's license under section 286 239 (b) unless~~
14 ~~the conditional license permit is restricted to a~~
15 ~~category 1, 2, or 3 license under section 286-~~
16 ~~102 (b).~~

17 ~~(b) A request made pursuant to subsection [(a) (1) (A)]~~
18 ~~shall be accompanied by:~~

19 ~~(1) A sworn statement from the respondent containing facts~~
20 ~~establishing that the respondent currently is employed~~
21 ~~in a position that requires driving and that the~~



1 ~~respondent will be discharged if not allowed to drive,~~

2 ~~and~~

3 ~~(2) A sworn statement from the respondent's employer~~

4 ~~establishing that the employer will, in fact,~~

5 ~~discharge the respondent if the respondent is~~

6 ~~prohibited from driving.~~

7 ~~(c) A request made pursuant to subsection [(a) (1) (B)]~~

8 ~~shall be accompanied by a sworn statement by the respondent~~

9 ~~attesting to the specific facts upon which the request is based,~~

10 ~~which statement shall be verified by the director.~~

11 ~~(d) A conditional license permit may include restrictions~~

12 ~~allowing the respondent to drive:~~

13 ~~(1) Only during hours of employment for activities solely~~

14 ~~within the scope of the employment,~~

15 ~~(2) Only during daylight hours; or~~

16 ~~(3) Only for specified purposes or to specified~~

17 ~~destinations.~~

18 ~~In addition, the director may impose any other appropriate~~

19 ~~restrictions.~~

20 ~~(e) The duration of the conditional license permit shall~~

21 ~~be determined on the basis of the criteria set forth in~~

22 ~~subsections (b) and (c).~~



1 ~~(f) If the respondent violates the conditions imposed~~
2 ~~under this section, the conditional license permit shall be~~
3 ~~reseinded, and administrative revocation shall be immediate for~~
4 ~~the appropriate period authorized by law.]~~

5 SECTION 12. Act 171, Session Laws of Hawaii 2008, is
6 amended by amending section 12(g) to read as follows:

7 "(g) The Hawaii ignition interlock implementation task
8 force shall cease to exist after [~~June 30, 2010.~~] June 30,
9 2011."

10 SECTION 13. Act 171, Session Laws of Hawaii 2008, is
11 amended by amending section 20 to read as follows:

12 "SECTION 20. This Act shall take effect on July 1, 2008;
13 provided that sections 2 through 11 shall take effect on
14 [~~July 1, 2010,~~] January 1, 2011; provided further that sections
15 15 and 16 shall be repealed on [~~June 30, 2010.~~] December 31,
16 2010; and provided further that sections 287-20(a) and 291E-
17 61(g), Hawaii Revised Statutes, shall be reenacted in the form
18 in which they read on June 30, 2008."

19 SECTION 14. The department of transportation shall adopt
20 rules pursuant to chapter 91, Hawaii Revised Statutes, to
21 effectuate the purposes of sections 291E-5 and 291E-6, Hawaii



1 Revised Statutes, to be enacted on January 1, 2011, pursuant to
2 Act 171, Session Laws of Hawaii 2008 as amended by this Act.

3 SECTION 15. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun, before its effective date.

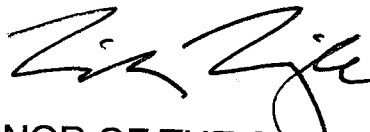
6 SECTION 16. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 17. This Act shall take effect on January 1, 2009;
9 provided that:

10 (1) Section 4, section 7, section 8, and section 10 shall
11 take effect on January 1, 2011; and

12 (2) Section 2, section 3, section 5, section 6, section 9,
13 and section 11 shall take effect upon the enactment of
14 sections 2 through 11 of Act 171, Session Laws of
15 Hawaii 2008, on January 1, 2011.

APPROVED this 3 day of JUN , 2009



GOVERNOR OF THE STATE OF HAWAII

