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# A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1           SECTION 1. The legislature finds that 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 [~~or 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 [~~or 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-44.7~~] 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~~



1 ~~purposes and to participate in substance~~  
2 ~~abuse treatment programs; or~~  
3 ~~(ii)] One-year revocation of license and privilege~~  
4 ~~to operate a vehicle during the revocation~~  
5 ~~period and installation during the~~  
6 ~~revocation period of an ignition interlock~~  
7 ~~device on any vehicle operated by the~~  
8 ~~person;~~

- 9 (C) Any one or more of the following:
- 10 (i) Seventy-two hours of community service work;
  - 11 (ii) Not less than forty-eight hours and not more
  - 12 than five days of imprisonment; or
  - 13 (iii) A fine of not less than \$150 but not more
  - 14 than \$1,000;

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

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

20 ~~[(2) For a first offense committed by a highly intoxicated~~  
21 ~~driver, or for any offense committed by a highly~~  
22 ~~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; [~~e~~]

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 (e) 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 ~~rescinded, 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.



H.B. NO. 981  
H.D. 2  
S.D. 2  
C.D. 1

**Report Title:**

Impaired Driving; Ignition Interlock

**Description:**

Makes amendments to Hawaii Revised Statutes and Act 171, Session Laws of Hawaii 2008, reflecting recommendations of ignition interlock implementation task force. (HB981 CD1)

HB981 CD1 HMS 2009-4054

