
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.

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



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

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

18 (1) Installation of the ignition interlock device should
19 be required for all offenders, not just repeat
20 offenders, consistent with the national trend and
21 similar laws that took effect on January 1, 2009, in
22 Alaska, Nebraska, and Washington;



- 1 (2) Unlike current law, which sanctions first offenders
2 more severely if their alcohol level meets or exceeds
3 .15, all first offenders should be treated the same
4 way, regardless of their alcohol level, and no first
5 offender should be required to post proof of financial
6 responsibility;
- 7 (3) Installation of the ignition interlock device should
8 occur as soon after arrest as possible so that the
9 offender learns that driving without the device is not
10 permissible;
- 11 (4) Stricter laws and increased enforcement are needed to
12 deter those who would try to avoid installing the
13 ignition interlock device and drive on a suspended or
14 revoked license;
- 15 (5) The offender should pay for the cost of installing and
16 servicing the ignition interlock device, with the
17 establishment of a fund to pay for those who are
18 determined to be indigent according to specified
19 criteria;
- 20 (6) Use of the ignition interlock device should be
21 overseen principally by the administrative driver's



1 license revocation program, with support from judicial
2 proceedings;

3 (7) The alcohol level at which a driver is "locked out" --
4 prevented from starting the vehicle or performing a
5 rolling retest -- should be .02 and no penalties
6 should be imposed when a driver is "locked out" or
7 fails to take a retest as the inability to start or
8 keep operating the vehicle will provide the
9 consequence for attempting to drive after drinking;

10 (8) Offenders who circumvent or tamper with the ignition
11 interlock device should be charged with an additional
12 crime;

13 (9) Offenders who refuse to be tested for alcohol content
14 should be required to use the ignition interlock
15 device for longer periods than those who take the
16 test, and other strategies that make submitting to the
17 test more appealing than refusal should be developed;

18 (10) The department of transportation should select a
19 single provider for installation and maintenance of
20 the ignition interlock device to ensure statewide
21 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. Chapter 291E, Hawaii Revised Statutes, is
8 amended by adding a new section to part IV to be appropriately
9 designated and to read as follows:

10 "§291E- Refusal to submit to a breath, blood, or urine
11 test; penalty. Refusal to submit to a breath, blood, or urine
12 test as required by part II is a petty misdemeanor."

13 SECTION 3. Section 291E-15, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§291E-15 Refusal to submit to a breath, blood, or urine
16 test; subject to administrative revocation proceedings. If a
17 person under arrest refuses to submit to a breath, blood, or
18 urine test, none shall be given, except as provided in section
19 291E-21. Upon the law enforcement officer's determination that
20 the person under arrest has refused to submit to a breath,
21 blood, or urine test, if applicable, then a law enforcement
22 officer shall:



- 1 (1) Inform the person under arrest of the sanctions under
- 2 section 291E-41 or 291E-65; and
- 3 (2) Ask the person if the person still refuses to submit
- 4 to a breath, blood, or urine test, thereby subjecting
- 5 the person to the procedures and sanctions under part
- 6 III or section 291E-65, as applicable;
- 7 provided that if the law enforcement officer fails to comply
- 8 with paragraphs (1) and (2), the person shall not be subject to
- 9 the refusal sanctions under part III or [~~section 291E-65.~~] IV."

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

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

- 21 (1) That at the time of the arrest, the arresting officer
- 22 had probable cause to believe the arrested person was



1 under the age of twenty-one and had been operating a
2 vehicle upon a public way, street, road, or highway or
3 on or in the waters of the State with a measurable
4 amount of alcohol;

5 (2) That the arrested person was informed that the person
6 may refuse to submit to a breath or blood test, in
7 compliance with section 291E-11;

8 (3) That the person had refused to submit to a breath or
9 blood test;

10 (4) That the arrested person was:

11 (A) Informed of the sanctions of this section; and
12 then

13 (B) Asked if the person still refuses to submit to a
14 breath or blood test, in compliance with the
15 requirements of section 291E-15; and

16 (5) That the arrested person continued to refuse to submit
17 to a breath or blood test.

18 (b) Upon receipt of the affidavit, the district judge
19 shall hold a hearing within twenty days. The district judge
20 shall hear and determine:

21 (1) Whether the arresting law enforcement officer had
22 probable cause to believe that the person was under



- 1 the age of twenty-one and had been operating a vehicle
2 upon a public way, street, road, or highway or on or
3 in the waters of the State with a measurable amount of
4 alcohol;
- 5 (2) Whether the person was lawfully arrested;
- 6 (3) Whether the person was informed that the person may
7 refuse to submit to a breath or blood test, in
8 compliance with section 291E-11;
- 9 (4) Whether the person refused to submit to a test of the
10 person's breath or blood;
- 11 (5) Whether the person was:
- 12 (A) Informed of the sanctions of this section; and
13 then
- 14 (B) Asked if the person still refuses to submit to a
15 breath or blood test, in compliance with the
16 requirements of section 291E-15; and
- 17 (6) Whether the person continued to refuse to submit to a
18 breath or blood test.
- 19 (c) If the district judge finds the statements contained
20 in the affidavit are true, the judge shall suspend the arrested
21 person's license and privilege to operate a vehicle as follows:



1 (1) For a first suspension, or any suspension not preceded
2 within a five-year period by a suspension under this
3 section, for a period of twelve months; and

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

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

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

14 SECTION 5. Section 706-623, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

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

20 (a) Ten years upon conviction of a class A felony;

21 (b) Five years upon conviction of a class B or class C
22 felony;



1 (c) One year upon conviction of a misdemeanor; except that
2 upon a conviction under section 586-4, 586-11, or
3 709-906, the court may sentence the defendant to a
4 period of probation not exceeding two years; [e]

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

9 (e) Eighteen months to two years upon a conviction under
10 section 291E-61(b) (2); and two years upon a conviction
11 under section 291E-61(b) (3).

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

19 SECTION 6. Section 291E-16, Hawaii Revised Statutes, is
20 repealed.

21 [~~"§291E-16] Proof of refusal; admissibility. If a~~
22 ~~legally arrested person refuses to submit to a test of the~~



1 ~~person's breath, blood, or urine, evidence of refusal shall be~~
2 ~~admissible only in a proceeding under part III or section 291E-~~
3 ~~65 and shall not be admissible in any other action or~~
4 ~~proceeding, whether civil or criminal."]~~

5 SECTION 7. Section 291E-44, Hawaii Revised Statutes, is
6 repealed.

7 [~~§291E-44 Conditional license permits.~~

8 ~~(a)(1) During the administrative hearing, the director, at~~
9 ~~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 issue a conditional license~~
12 ~~permit that will allow the respondent, after a minimum~~
13 ~~period of absolute license revocation of thirty days,~~
14 ~~to drive for the remainder of the revocation period,~~
15 ~~provided that one or more of the following conditions~~
16 ~~are met:~~

17 ~~(A) The respondent is gainfully employed in a~~
18 ~~position that requires driving and will be~~
19 ~~discharged if the respondent's driving privileges~~
20 ~~are administratively revoked; or~~

21 ~~(B) The respondent has no access to alternative~~
22 ~~transportation and therefore must drive to work~~



1 ~~er to a substance abuse treatment facility or~~
2 ~~counselor for treatment ordered by the director~~
3 ~~under section 291E-41; or~~

4 ~~(2) Notwithstanding any other law to the contrary, the~~
5 ~~director shall not issue a conditional license permit~~
6 ~~to:~~

7 ~~(A) A respondent whose license, during the~~
8 ~~conditional license permit period, is expired,~~
9 ~~suspended, or revoked as a result of action other~~
10 ~~than the instant revocation for which the~~
11 ~~respondent is requesting a conditional license~~
12 ~~permit under this section;~~

13 ~~(B) A respondent who has refused breath, blood, or~~
14 ~~urine tests for purposes of determining alcohol~~
15 ~~concentration or drug content of the person's~~
16 ~~breath, blood, or urine, as applicable;~~

17 ~~(C) A respondent who is a highly intoxicated driver,~~
18 ~~and~~

19 ~~(D) A respondent who holds either a category 4~~
20 ~~license under section 286-102(b) or a commercial~~
21 ~~driver's license under section 286-239(b) unless~~
22 ~~the conditional license permit is restricted to a~~



1 ~~category 1, 2, or 3 license under section~~
2 ~~286-102(b).~~

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

5 ~~(1) A sworn statement from the respondent containing facts~~
6 ~~establishing that the respondent currently is employed~~
7 ~~in a position that requires driving and that the~~
8 ~~respondent will be discharged if not allowed to drive,~~
9 ~~and~~

10 ~~(2) A sworn statement from the respondent's employer~~
11 ~~establishing that the employer will, in fact,~~
12 ~~discharge the respondent if the respondent is~~
13 ~~prohibited from driving.~~

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

18 ~~(d) A conditional license permit may include restrictions~~
19 ~~allowing the respondent to drive:~~

20 ~~(1) Only during hours of employment for activities solely~~
21 ~~within the scope of the employment;~~

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



1 ~~(3) Only for specified purposes or to specified~~
2 ~~destinations.~~

3 ~~In addition, the director may impose any other appropriate~~
4 ~~restrictions.~~

5 ~~(e) The duration of the conditional license permit shall~~
6 ~~be determined on the basis of the criteria set forth in~~
7 ~~subsections (b) and (c).~~

8 ~~(f) If the respondent violates the conditions imposed~~
9 ~~under this section, the conditional license permit shall be~~
10 ~~rescinded, and administrative revocation shall be immediate for~~
11 ~~the appropriate period authorized by law."]~~

12 SECTION 8. Act 171, Session Laws of Hawaii 2008, is
13 amended as follows:

14 1. By amending subsections (c) and (d) of the new section
15 291E-5, Hawaii Revised Statutes, added by section 2 of the Act
16 to read:

17 "(c) The cost of installing and operating ignition
18 interlock devices required by this chapter [~~or chapter 804~~] for
19 indigent persons shall be paid by the director of transportation
20 from the ignition interlock special fund. Whether a person is
21 an indigent person shall be determined pursuant to subsection
22 (d) by the director or the court, as appropriate.



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

2 (1) Any individual whose income is not greater than [~~one~~
3 ~~hundred twenty five~~] _____ per cent of the official
4 poverty line established by the Secretary of Health
5 and Human Services under the Community Services Block
6 Grant Act, 42 United States Code [~~section~~] Section
7 9902; or

8 (2) Any individual who is eligible for free services under
9 the Older Americans Act or Developmentally Disabled
10 Act."

11 2. By amending subsections (a) through (e) of the new
12 section 291E-6, Hawaii Revised Statutes, added by section 3 of
13 the Act to read:

14 "(a) The director of transportation shall establish and
15 administer a statewide program relating to certification and
16 monitoring of ignition interlock devices installed pursuant to
17 chapter 291E or 804 and [~~the vendors who~~] shall select a single
18 vendor to install and maintain them.

19 (b) The program shall include standards and procedures for
20 the certification of ignition interlock devices installed
21 pursuant to chapter 291E [~~or 804~~]. At a minimum, the standards
22 shall require that the devices:



- 1 (1) Be certified by a nationally recognized certification
2 organization to meet or exceed all standards and
3 specifications provided as guidelines by the National
4 Highway Traffic Safety Administration. "Nationally
5 recognized certification organization" means a testing
6 laboratory or analytical chemist not affiliated with a
7 manufacturer of ignition interlock devices that is
8 qualified to test ignition interlock devices or
9 reference samples and is approved by the United States
10 Department of Transportation. The nationally
11 recognized certification organization must be able to
12 administer performance tests of an ignition interlock
13 device or a sample provided by the vendor;
- 14 (2) Operate using an alcohol-specific sensor technology;
- 15 (3) 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 (4) 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; and



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

3 (c) The program shall include standards and procedures for
4 the certification [~~for vendors who~~] of the vendor selected to
5 install and maintain ignition interlock devices pursuant to
6 chapter 291E [~~ex-804~~]. At a minimum, the standards shall
7 require that [~~vendors+~~] the vendor:

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

10 (2) Offer or contract for ignition interlock device
11 installation and maintenance statewide;

12 (3) Train drivers who are required to install an ignition
13 interlock device, pursuant to chapter 291E [~~ex-804~~],
14 in how to use the device;

15 (4) Schedule the driver for all necessary readings and
16 maintenance of the device; and

17 (5) Provide periodic reports regarding the use of each
18 ignition interlock device installed pursuant to
19 chapter 291E [~~ex-804~~], including incidents of test
20 failure, attempts to circumvent the device, and dates,
21 times, and distances the vehicle was driven.



1 (d) ~~[Each vendor who sells or installs an]~~ The vendor
2 selected for installation and maintenance of ignition interlock
3 ~~[device]~~ devices pursuant to chapter 291E ~~[ex-804]~~ shall be
4 certified annually by the director of transportation pursuant to
5 this section and the rules adopted thereunder. The vendor shall
6 pay a certification fee to the director of transportation who
7 shall deposit the fee into the ignition interlock special fund
8 established pursuant to section 291E-5.

9 (e) The director of transportation shall adopt rules
10 pursuant to chapter 91 necessary for the purposes of this
11 section~~[-]~~ and section 291-5."

12 4. By amending subsections (b) and (c) of section 291E-41,
13 Hawaii Revised Statutes, as amended by section 7 of the Act to
14 read:

15 "(b) Except as provided in paragraph ~~[-(6)-]~~ (5) and in
16 section ~~[291E-44,]~~ 291E-44.5, the respondent shall keep an
17 ignition interlock device installed and operating on any vehicle
18 the respondent operates during the revocation period. Except as
19 provided in section 291E-5, installation and maintenance of the
20 ignition interlock device shall be at the respondent's own
21 expense. The periods of administrative revocation with respect



1 to a license and privilege to operate a vehicle that shall be
2 imposed under this part are as follows:

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

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

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

17 (2) An eighteen month revocation of license and
18 privilege to operate a vehicle, if the respondent's
19 record shows one prior alcohol enforcement contact or
20 drug enforcement contact during the [~~five~~] ten years
21 preceding the date the notice of administrative
22 revocation was issued;



1 [~~(4)~~] (3) A [~~minimum of two years up to a maximum of four~~
2 years] two-year revocation of license and privilege to
3 operate a vehicle, if the respondent's record shows
4 two prior alcohol enforcement contacts or drug
5 enforcement contacts during the [~~five~~] ten years
6 preceding the date the notice of administrative
7 revocation was issued;

8 [~~(5)~~] (4) A minimum of five years up to a maximum of ten
9 years revocation of license and privilege to operate a
10 vehicle, if the respondent's record shows three or
11 more prior alcohol enforcement contacts or drug
12 enforcement contacts during the [~~five~~] ten years
13 preceding the date the notice of administrative
14 revocation was issued; or

15 [~~(6)~~] (5) For respondents under the age of eighteen years
16 who were arrested for a violation of section 291E-61
17 or 291E-61.5, revocation of license and privilege to
18 operate a vehicle for the appropriate revocation
19 period provided in paragraphs (1) to [~~(5)~~] (4) or in
20 subsection (c); provided that the respondent shall be
21 prohibited from driving during the period preceding
22 the respondent's eighteenth birthday and shall



1 thereafter be subject to the ignition interlock
2 requirement of this subsection for the balance of the
3 revocation period; and

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

10 (A) The respondent shall be absolutely prohibited
11 from driving during the revocation period and
12 subject to the penalties provided by section
13 291E-62; and

14 (B) The director shall not issue an ignition
15 interlock permit to the respondent pursuant to
16 section 291E-44.5;

17 provided further that when more than one administrative
18 revocation, suspension, or conviction arises out of the same
19 arrest, it shall be counted as only one prior alcohol
20 enforcement contact or drug enforcement contact, whichever
21 revocation, suspension, or conviction occurs later.



1 (c) If a respondent has refused to be tested after being
2 informed:

- 3 (1) That the person may refuse to submit to testing in
- 4 compliance with section 291E-11; and
- 5 (2) Of the sanctions of this part and then asked if the
- 6 person still refuses to submit to a breath, blood, or
- 7 urine test, in compliance with the requirements of
- 8 section 291E-15,

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

12 5. By amending subsections (b) and (c) of section 291E-61,
13 Hawaii Revised Statutes, as amended by section 8 of the Act to
14 read:

15 "(b) A person committing the offense of operating a
16 vehicle under the influence of an intoxicant shall be guilty of
17 a petty misdemeanor and shall be sentenced without possibility
18 of suspension of sentence as follows:

- 19 (1) [~~Except as provided in paragraphs (2) and (5), for~~]
- 20 For the first offense, or any offense not preceded
- 21 within a [~~five year~~] ten-year period by a conviction
- 22 for an offense under this section or section



1 291E-4 (a) [~~, and notwithstanding section 706-623, by~~
2 ~~probation for not less than one year nor more than two~~
3 ~~years on the following conditions]~~ :

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

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

20 ~~(ii)]~~ One-year revocation of license and privilege
21 to operate a vehicle during the revocation
22 period and installation during the



1 revocation period of an ignition interlock
2 device on any vehicle operated by the
3 person;

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

- 5 (i) Seventy-two hours of community service work;
6 (ii) Not less than forty-eight hours and not more
7 than ~~[five]~~ thirty days of imprisonment; or
8 (iii) A fine of not less than \$150 but not more
9 than \$1,000;

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

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

15 ~~[(2) For a first offense committed by a highly intoxicated~~
16 ~~driver, or for any offense committed by a highly~~
17 ~~intoxicated driver not preceded within a five year~~
18 ~~period by a conviction for an offense under this~~
19 ~~section or section 291E 4(a), and notwithstanding~~
20 ~~section 706 623, by probation for not less than two~~
21 ~~years nor more than four years on the following~~
22 ~~conditions:~~



- 1 ~~(A) A fourteen-hour minimum substance abuse~~
- 2 ~~rehabilitation program, including education and~~
- 3 ~~counseling, or other comparable program deemed~~
- 4 ~~appropriate by the court;~~
- 5 ~~(B) A two-year revocation of license and privilege to~~
- 6 ~~operate a vehicle during the revocation period~~
- 7 ~~and installation during the revocation period of~~
- 8 ~~an ignition interlock device on any vehicle~~
- 9 ~~operated by the person;~~
- 10 ~~(C) Any one or more of the following:~~
- 11 ~~(i) Seventy-two hours of community service work;~~
- 12 ~~(ii) Not less than forty-eight hours and not more~~
- 13 ~~than five days of imprisonment; or~~
- 14 ~~(iii) A fine of not less than \$150 but not more~~
- 15 ~~than \$1,000;~~
- 16 ~~(D) A surcharge of \$25 to be deposited into the~~
- 17 ~~neurotrauma special fund; and~~
- 18 ~~(E) May be charged a surcharge of up to \$50 to be~~
- 19 ~~deposited into the trauma system special fund if~~
- 20 ~~the court so orders;~~
- 21 ~~(3)]~~ (2) For an offense that occurs within [five] ten
- 22 years of a prior conviction for an offense under this



1 section or section 291E-4(a), and notwithstanding
2 section 706-623, by probation for not less than [~~two~~
3 years] eighteen months nor more than [~~four~~] two years
4 on the following conditions:

5 (A) [~~A two-year revocation~~] Revocation of license and
6 privilege to operate a vehicle during the
7 [~~revocation~~] probation period and installation
8 during the [~~revocation~~] probation period of an
9 ignition interlock device on any vehicle operated
10 by the person;

11 (B) Either one of the following:

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

14 (ii) [~~Not less than five days but not more than~~
15 ~~fourteen~~] Up to five days of imprisonment of
16 which at least forty-eight hours shall be
17 served consecutively;

18 (C) A fine of not less than \$500 but not more than
19 \$1,500;

20 (D) A surcharge of \$25 to be deposited into the
21 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 [~~4~~] (3) For an offense that occurs within [~~five~~] ten
5 years of two prior convictions for offenses under this
6 section or section 291E-4(a), and notwithstanding
7 section 706-623, by probation for [~~not less than three~~
8 ~~years nor more than five~~] two years on the following
9 conditions:

10 (A) A fine of not less than \$500 but not more than
11 \$2,500;

12 (B) [~~Three-year revocation~~] Revocation of license and
13 privilege to operate a vehicle during the
14 [~~revocation~~] probation period and installation
15 during the [~~revocation~~] probation period of an
16 ignition interlock device on any vehicle operated
17 by the person;

18 (C) [~~Not less than ten days but not more than thirty~~]
19 Up to five days imprisonment of which at least
20 forty-eight hours shall be served consecutively;

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; [~~and~~]

4 [~~+5~~] (4) In addition to a sentence imposed under
5 paragraphs (1) through [~~+4~~] (3), any person eighteen
6 years of age or older who is convicted under this
7 section and who operated a vehicle with a passenger,
8 in or on the vehicle, who was younger than fifteen
9 years of age, shall be sentenced to an additional
10 mandatory fine of \$500 and an additional mandatory
11 term of imprisonment of forty-eight hours; provided
12 that the total term of imprisonment for a person
13 convicted under this paragraph shall not exceed the
14 maximum term of imprisonment provided in paragraph
15 (1), [~~+3~~, ~~or +4~~] (2), or (3). Notwithstanding
16 paragraph [~~+1~~] (2), the probation period for a
17 person sentenced under this paragraph shall be not
18 less than two years [~~-~~]; and

19 (5) If the person demonstrates to the court that the
20 person does not own or have the use of a vehicle in
21 which the person can install an ignition interlock
22 device during the probation period, or demonstrates to



1 the court that the person is otherwise unable to drive
2 during the probation period, the person shall be
3 absolutely prohibited from driving during the period
4 of probation provided in paragraphs (2) to (4);
5 provided that the court shall not issue an ignition
6 interlock permit pursuant to subsection (i) and the
7 person shall be subject to the penalties provided by
8 section 291E-62 if the person drives thereafter.

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

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

14 (2) A defendant who holds either a category 4 license
15 under section 286-102(b) or a commercial driver's
16 license under section 286-239(b) [-], unless the
17 ignition interlock permit is restricted to a category
18 1, 2, or 3 license under section 286-102(b)."

19 6. By amending subsection (b) of section 291E-62, Hawaii
20 Revised Statutes, as amended by section 9 of the Act to read:



1 "(b) Any person convicted of violating this section shall
2 be sentenced without possibility of probation or suspension of
3 sentence as follows:

4 (1) For a first offense, or any offense not preceded
5 within a five-year period by conviction for an offense
6 under this section or under section 291-4.5 as that
7 section was in effect on December 31, 2001:

8 (A) A term of imprisonment of not less than three
9 consecutive days but not more than thirty days;

10 (B) A fine of not less than \$250 but not more than
11 \$1,000; and

12 (C) Revocation of license and privilege to operate a
13 vehicle for an additional year;

14 (2) For an offense that occurs within five years of a
15 prior conviction for an offense under this section or
16 under section 291-4.5 as that section was in effect on
17 December 31, 2001:

18 (A) Thirty days imprisonment;

19 (B) A \$1,000 fine; and

20 (C) Revocation of license and privilege to operate a
21 vehicle for an additional two years; and



1 (3) For an offense that occurs within five years of two or
2 more prior convictions for offenses under this section
3 or under section 291-4.5 as that section was in effect
4 on December 31, 2001:

5 (A) One year imprisonment;

6 (B) A \$2,000 fine; and

7 (C) Permanent revocation of the person's license and
8 privilege to operate a vehicle.

9 The period of revocation shall commence upon the release of the
10 person from the period of imprisonment imposed pursuant to this
11 section."

12 7. By amending subsection (g) of section 12 of the Act to
13 read:

14 "(g) The Hawaii ignition interlock implementation task
15 force shall cease to exist after [~~June 30, 2010.~~] January 1,
16 2011."

17 8. By amending section 20 of the Act to read:

18 "SECTION 20. This Act shall take effect on July 1, 2008;
19 provided that sections 2 through 9 and 11 shall take effect on
20 [~~July 1, 2010;~~] January 1, 2011; provided further that sections
21 15 and 16 shall be repealed on [~~June 30, 2010.~~] December 31,
22 2010 and sections 287-20(a) and 291E-61(g), Hawaii Revised



1 Statutes, shall be reenacted in the form in which they read on
2 June 30, 2008."

3 9. By repealing section 10 of the Act:

4 [~~SECTION 10. Section 804 7.1, Hawaii Revised Statutes, is~~
5 ~~amended to read as follows:~~

6 ~~§804 7.1 Conditions of release on bail, recognizance, or~~
7 ~~supervised release. (a) Upon a showing that there exists a~~
8 ~~danger that the defendant will commit a serious crime or will~~
9 ~~seek to intimidate witnesses, or will otherwise unlawfully~~
10 ~~interfere with the orderly administration of justice, the~~
11 ~~judicial officer named in section 804 5 may deny the defendant's~~
12 ~~release on bail, recognizance, or supervised release.~~

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

15 ~~(1) Prohibiting the defendant from approaching or~~
16 ~~communicating with particular persons or classes of~~
17 ~~persons, except that no such order should be deemed to~~
18 ~~prohibit any lawful and ethical activity of~~
19 ~~defendant's counsel;~~

20 ~~(2) Prohibiting the defendant from going to certain~~
21 ~~described geographical areas or premises;~~



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



1 ~~(g) Requiring the defendant to satisfy any other condition~~
2 ~~reasonably necessary to assure the appearance of the~~
3 ~~person as required and to assure the safety of any~~
4 ~~other person or community; or~~
5 ~~(10) Imposing any combination of conditions listed above.~~
6 ~~The judicial officer may revoke a defendant's bail upon~~
7 ~~proof that the defendant has breached any of the conditions~~
8 ~~imposed.~~
9 ~~(e) In addition to the conditions in subsection (b) and~~
10 ~~except as provided in subsection (d), when the defendant is~~
11 ~~charged with an offense under section 291E 61, except an offense~~
12 ~~for which the defendant would be sentenced pursuant to section~~
13 ~~291E 61(b) (1), the court shall order as a condition of release~~
14 ~~on bail, recognizance, or supervised release that, within~~
15 ~~fifteen days, the defendant install an ignition interlock~~
16 ~~device, as defined in section 291E 1, on any vehicle that the~~
17 ~~defendant will operate during the defendant's release on bail,~~
18 ~~recognizance, or supervised release. 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 period of the~~



1 ~~defendant's release on bail, recognizance, or supervised~~
2 ~~release.~~

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

5 ~~(1) A defendant whose license is expired, suspended, or~~
6 ~~revoked as a result of action other than the instant~~
7 ~~offense, or~~

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

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

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

17 SECTION 9. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun, before its effective date.

20 SECTION 10. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 11. This Act shall take effect on July 1, 2020;
2 provided that the amendments made by section 7 to section 12,
3 subsection (g), of Act 171, Session Laws of Hawaii 2008, shall
4 take effect on June 29, 2010.



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 HD2)

