
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 by amending subsections (c) and (d) to read as follows:

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

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

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

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

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

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

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

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

- 1 reference samples and is approved by the United States
2 Department of Transportation. The nationally
3 recognized certification organization must be able to
4 administer performance tests of an ignition interlock
5 device or a sample provided by the vendor;
- 6 (2) Operate using an alcohol-specific sensor technology;
- 7 (3) Employ a digital camera by which a photograph of the
8 person using the device can be incorporated into the
9 electronic record generated by each use of the device;
- 10 (4) Require a rolling retest by which the driver must,
11 within a specified period of time or distance driven
12 after starting the vehicle, be retested and found to
13 have an alcohol concentration of less than .02, with a
14 margin of error of .01; ~~and~~
- 15 (5) Permit an emergency override of the system only when
16 necessary to promote highway safety; and
- 17 ~~(5)~~ (6) Generate a record of vehicle usage, including
18 dates, times, and distances driven.
- 19 (c) The program shall include standards and procedures for
20 the certification ~~[for vendors who]~~ of the vendor selected to
21 install and maintain ignition interlock devices pursuant to

1 chapter 291E [~~or 804~~]. At a minimum, the standards shall
2 require that [~~vendors~~] the vendor:

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

5 (2) Offer or contract for ignition interlock device
6 installation and maintenance statewide;

7 (3) Train drivers who are required to install an ignition
8 interlock device, pursuant to chapter 291E or 804, in
9 how to use the device;

10 (4) Schedule the driver for all necessary readings and
11 maintenance of the device; and

12 (5) Provide periodic reports regarding the use of each
13 ignition interlock device installed pursuant to
14 chapter 291E [~~or 804~~], including incidents of test
15 failure, attempts to circumvent the device, and dates,
16 times, and distances the vehicle was driven.

17 (d) [~~Each vendor who sells or installs an~~] The vendor
18 selected for installation and maintenance of ignition interlock
19 [~~device~~] devices pursuant to chapter 291E [~~or 804~~] shall be
20 certified annually by the director of transportation pursuant to
21 this section and the rules adopted thereunder. The vendor shall
22 pay a certification fee to the director of transportation who

1 shall deposit the fee into the ignition interlock special fund
2 established pursuant to section 291E-5."

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

5 **"§291E-15 Refusal to submit to breath, blood, or urine**
6 **test; subject to administrative revocation proceedings.** If a
7 person under arrest refuses to submit to a breath, blood, or
8 urine test, none shall be given, except as provided in section
9 291E-21. Upon the law enforcement officer's determination that
10 the person under arrest has refused to submit to a breath,
11 blood, or urine test, if applicable, then a law enforcement
12 officer shall:

13 (1) Inform the person under arrest of the sanctions under
14 section 291E-41 or 291E-65; and

15 (2) Ask the person if the person still refuses to submit
16 to a breath, blood, or urine test, thereby subjecting
17 the person to the procedures and sanctions under part
18 III or section 291E-65, as applicable;

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

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

3 "(b) Except as provided in paragraph ~~[(6)]~~ (5) and in
4 section ~~[291E-44,]~~ 291E-44.5, the respondent shall keep an
5 ignition interlock device installed and operating on any vehicle
6 the respondent operates during the revocation period. Except as
7 provided in section 291E-5, installation and maintenance of the
8 ignition interlock device shall be at the respondent's own
9 expense. The periods of administrative revocation with respect
10 to a license and privilege to operate a vehicle that shall be
11 imposed under this part are as follows:

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

18 ~~[(2) For a respondent who is a highly intoxicated driver,~~
19 ~~if the respondent's record shows no prior alcohol~~
20 ~~enforcement contact or drug enforcement contact during~~
21 ~~the five years preceding the date the notice of~~
22 ~~administrative revocation was issued, a minimum of six~~

1 ~~months up to a maximum of one year revocation of~~
2 ~~license and privilege to operate a vehicle;~~

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

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

17 ~~[(5)]~~ (4) A minimum of five years up to a maximum of ten
18 years revocation of license and privilege to operate a
19 vehicle, if the respondent's record shows three or
20 more prior alcohol enforcement contacts or drug
21 enforcement contacts during the [~~five~~] ten years

1 preceding the date the notice of administrative
2 revocation was issued; or

3 ~~[(6)]~~ (5) For respondents under the age of eighteen years
4 who were arrested for a violation of section 291E-61
5 or 291E-61.5, revocation of license and privilege to
6 operate a vehicle for the appropriate revocation
7 period provided in paragraphs (1) to ~~[(5)]~~ (4) or in
8 subsection (c); provided that the respondent shall be
9 prohibited from driving during the period preceding
10 the respondent's eighteenth birthday and shall
11 thereafter be subject to the ignition interlock
12 requirement of this subsection for the balance of the
13 revocation period;

14 (6) For respondents who do not install an ignition
15 interlock device in the respondent's vehicle during
16 the revocation period, revocation of license and
17 privilege to operate a vehicle for the period of
18 revocation provided in paragraphs (1) to (5); provided
19 that:

20 (A) The respondent shall be absolutely prohibited
21 from driving during the revocation period and
22 subject to the penalties provided by section

1 291E-62 if the respondent drives during the
2 revocation period; and

3 (B) The director shall not issue an ignition
4 interlock permit to the respondent pursuant to
5 section 291E-44.5;

6 provided that when more than one administrative revocation,
7 suspension, or conviction arises out of the same arrest, it
8 shall be counted as only one prior alcohol enforcement contact
9 or drug enforcement contact, whichever revocation, suspension,
10 or conviction occurs later.

11 (c) If a respondent has refused to be tested after being
12 informed:

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

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

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

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

3 "(b) A person committing the offense of operating a
4 vehicle under the influence of an intoxicant shall be guilty of
5 a petty misdemeanor and shall be sentenced, without the
6 possibility of suspension of sentence, as follows:

7 (1) [~~Except as provided in paragraphs (2) and (5), for~~]
8 For the first offense, or any offense not preceded
9 within a [~~five-year~~] ten-year period by a conviction
10 for an offense under this section or section
11 291E-4 (a) [~~, and notwithstanding section 706-623, by~~
12 ~~probation for not less than one year nor more than two~~
13 ~~years on the following conditions]~~:

14 (A) A fourteen-hour minimum substance abuse
15 rehabilitation program, including education and
16 counseling, or other comparable program deemed
17 appropriate by the court;

18 (B) [~~(i) Ninety-day prompt suspension of license and~~
19 ~~privilege to operate a vehicle during the~~
20 ~~suspension period, or the court may impose,~~
21 ~~in lieu of the ninety-day prompt suspension~~
22 ~~of license, a minimum thirty-day prompt~~

- 1 ~~suspension of license with absolute~~
2 ~~prohibition from operating a vehicle and,~~
3 ~~for the remainder of the ninety-day period,~~
4 ~~a restriction on the license that allows the~~
5 ~~person to drive for limited work-related~~
6 ~~purposes and to participate in substance~~
7 ~~abuse treatment programs; or~~
- 8 ~~(ii)]~~ One-year revocation of license and privilege
9 to operate a vehicle during the revocation
10 period and installation during the
11 revocation period of an ignition interlock
12 device on any vehicle operated by the
13 person;
- 14 (C) Any one or more of the following:
- 15 (i) Seventy-two hours of community service work;
- 16 (ii) Not less than forty-eight hours and not more
17 than [~~five~~] thirty days of imprisonment; or
- 18 (iii) A fine of not less than \$150 but not more
19 than \$1,000;
- 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 \$25 to be
2 deposited into the trauma system special fund if
3 the court so orders;

4 ~~[(2) For a first offense committed by a highly intoxicated~~
5 ~~driver, or for any offense committed by a highly~~
6 ~~intoxicated driver not preceded within a five-year~~
7 ~~period by a conviction for an offense under this~~
8 ~~section or section 291E-4(a), and notwithstanding~~
9 ~~section 706-623, by probation for not less than two~~
10 ~~years nor more than four years on the following~~
11 ~~conditions:~~

12 ~~(A) A fourteen-hour minimum substance abuse~~
13 ~~rehabilitation program, including education and~~
14 ~~counseling, or other comparable program deemed~~
15 ~~appropriate by the court;~~

16 ~~(B) A two-year revocation of license and privilege to~~
17 ~~operate a vehicle during the revocation period~~
18 ~~and installation during the revocation period of~~
19 ~~an ignition interlock device on any vehicle~~
20 ~~operated by the person;~~

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

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

- 1 ~~(ii) Not less than forty-eight hours and not more~~
2 ~~than five days of imprisonment; or~~
- 3 ~~(iii) A fine of not less than \$150 but not more~~
4 ~~than \$1,000;~~
- 5 ~~(D) A surcharge of \$25 to be deposited into the~~
6 ~~neurotrauma special fund; and~~
- 7 ~~(E) May be charged a surcharge of up to \$50 to be~~
8 ~~deposited into the trauma system special fund if~~
9 ~~the court so orders;~~
- 10 ~~(3)]~~ (2) For an offense that occurs within [~~five~~] ten
11 years of a prior conviction for an offense under this
12 section or section 291E-4(a), and notwithstanding
13 section 706-623, by probation for not less than [~~two~~
14 ~~years~~] eighteen months nor more than [~~four~~] two years
15 on the following conditions:
- 16 (A) [~~A two-year revocation~~] Revocation of license and
17 privilege to operate a vehicle during the
18 [~~revocation~~] probation period and installation
19 during the [~~revocation~~] probation period of an
20 ignition interlock device on any vehicle operated
21 by the person;
- 22 (B) Either one of the following:

- 1 (i) Not less than two hundred forty hours of
2 community service work; or
- 3 (ii) Not [~~less than five days but not more than~~
4 ~~fourteen~~] more than _____ days of imprisonment
5 of which at least forty-eight hours shall be
6 served consecutively;
- 7 (C) A fine of not less than \$500 but not more than
8 \$1,500;
- 9 (D) A surcharge of \$25 to be deposited into the
10 neurotrauma special fund; and
- 11 (E) May be charged a surcharge of up to \$50 to be
12 deposited into the trauma system special fund if
13 the court so orders;
- 14 [~~(4)~~] (3) For an offense that occurs within [~~five~~] ten
15 years of two prior convictions for offenses under this
16 section or section 291E-4(a), and notwithstanding
17 section 706-623, by probation for [~~not less than three~~
18 ~~years nor more than five~~] two years on the following
19 conditions:
- 20 (A) A fine of not less than \$500 but not more than
21 \$2,500;

1 (B) [~~Three-year revocation~~] Revocation of license and
2 privilege to operate a vehicle during the
3 [~~revocation~~] probation period and installation
4 during the [~~revocation~~] probation period of an
5 ignition interlock device on any vehicle operated
6 by the person;

7 (C) Not [~~less than ten~~] less than five days but not
8 more than thirty days imprisonment of which at
9 least forty-eight hours shall be served
10 consecutively;

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

13 (E) May be charged a surcharge of up to \$50 to be
14 deposited into the trauma system special fund if
15 the court so orders; [~~and~~]

16 [~~+5~~] (4) In addition to a sentence imposed under
17 paragraphs (1) through [~~+4~~], (3), any person eighteen
18 years of age or older who is convicted under this
19 section and who operated a vehicle with a passenger,
20 in or on the vehicle, who was younger than fifteen
21 years of age, shall be sentenced to an additional
22 mandatory fine of \$500 and an additional mandatory

1 term of imprisonment of forty-eight hours; provided
2 that the total term of imprisonment for a person
3 convicted under this paragraph shall not exceed [~~the~~
4 ~~maximum term of imprisonment provided in paragraph~~
5 ~~(1), (3), or (4).~~] the maximum term of imprisonment
6 provided in paragraph (1), (2), or (3), as applicable.

7 Notwithstanding paragraph [~~(1),~~] (2), the probation
8 period for a person sentenced under this paragraph
9 shall be not less than two years[~~;~~]; and

10 (5) If the person demonstrates to the court that the
11 person:

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

15 (B) Is otherwise unable to drive during the probation
16 period,

17 the person shall be absolutely prohibited from driving during
18 the period of probation provided in paragraphs (1) to (4);
19 provided that the court shall not issue an ignition interlock
20 permit pursuant to subsection (i) and the person shall be
21 subject to the penalties provided by section 291E-62 if the
22 person drives during the probation period.

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

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

6 (2) A defendant who holds either a category 4 license
7 under section 286-102(b) or a commercial driver's
8 license under section 286-239(b) ~~[-]~~, unless the
9 ignition interlock permit is restricted to a category
10 1, 2, or 3 license under section 286-102(b)."

11 SECTION 7. Section 291E-62, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) Any person convicted of violating this section shall
14 be sentenced as follows~~[+]~~ without possibility of probation or
15 suspension of sentence:

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

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

- 1 (B) A fine of not less than \$250 but not more than
2 \$1,000; and
- 3 (C) Revocation of license and privilege to operate a
4 vehicle for an additional year;
- 5 (2) For an offense that occurs within five years of a
6 prior conviction for an offense under this section or
7 under section 291-4.5 as that section was in effect on
8 December 31, 2001:
- 9 (A) Thirty days imprisonment;
- 10 (B) A \$1,000 fine; and
- 11 (C) Revocation of license and privilege to operate a
12 vehicle for an additional two years; and
- 13 (3) For an offense that occurs within five years of two or
14 more prior convictions for offenses under this section
15 or under section 291-4.5 as that section was in effect
16 on December 31, 2001:
- 17 (A) One year imprisonment;
- 18 (B) A \$2,000 fine; and
- 19 (C) Permanent revocation of the person's license and
20 privilege to operate a vehicle.

1 The period of revocation shall commence upon the release of the
2 person from the period of imprisonment imposed pursuant to this
3 section."

4 SECTION 8. 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 9. 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) [~~Si*~~] 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 10. 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 11. Act 171, Session Laws of Hawaii 2008, is
8 amended by amending section 12(g) to read as follows:

9 "(g) The Hawaii ignition interlock implementation task
10 force shall cease to exist after ~~[June 30, 2010.]~~ June 30,
11 2011."

12 SECTION 12. Act 171, Session Laws of Hawaii 2008, is
13 amended by amending section 20 to read as follows:

14 "SECTION 20. This Act shall take effect on July 1, 2008;
15 provided that sections 2 through 11 shall take effect on
16 ~~[July 1, 2010;]~~ January 1, 2011; provided further that sections
17 15 and 16 shall be repealed on ~~[June 30, 2010.]~~ December 31,
18 2010; and provided further that sections 287-20(a) and 291E-
19 61(g), Hawaii Revised Statutes, shall be reenacted in the form
20 in which it read on June 30, 2008."

21 SECTION 13. Section 291E-16, Hawaii Revised Statutes, is
22 repealed.

1 ~~["§291E-16] Proof of refusal; admissibility. If a~~
2 ~~legally arrested person refuses to submit to a test of the~~
3 ~~person's breath, blood, or urine, evidence of refusal shall be~~
4 ~~admissible only in a proceeding under part III or section~~
5 ~~291E-65 and shall not be admissible in any other action or~~
6 ~~proceeding, whether civil or criminal."]~~

7 SECTION 14. Section 291E-44, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§291E-44 Conditional license permits.~~

10 ~~(a) (1) During the administrative hearing, the director, at~~
11 ~~the request of a respondent who is subject to~~
12 ~~administrative revocation for a period as provided in~~
13 ~~section 291E-41(b)(1), may issue a conditional license~~
14 ~~permit that will allow the respondent, after a minimum~~
15 ~~period of absolute license revocation of thirty days,~~
16 ~~to drive for the remainder of the revocation period;~~
17 ~~provided that one or more of the following conditions~~
18 ~~are met:~~

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

- 1 ~~(B) The respondent has no access to alternative~~
2 ~~transportation and therefore must drive to work~~
3 ~~or to a substance abuse treatment facility or~~
4 ~~counselor for treatment ordered by the director~~
5 ~~under section 291E-41; or~~
- 6 ~~(2) Notwithstanding any other law to the contrary, the~~
7 ~~director shall not issue a conditional license permit~~
8 ~~to:~~
- 9 ~~(A) A respondent whose license, during the~~
10 ~~conditional license permit period, is expired,~~
11 ~~suspended, or revoked as a result of action other~~
12 ~~than the instant revocation for which the~~
13 ~~respondent is requesting a conditional license~~
14 ~~permit under this section;~~
- 15 ~~(B) A respondent who has refused breath, blood, or~~
16 ~~urine tests for purposes of determining alcohol~~
17 ~~concentration or drug content of the person's~~
18 ~~breath, blood, or urine, as applicable;~~
- 19 ~~(C) A respondent who is a highly intoxicated driver;~~
20 ~~and~~
- 21 ~~(D) A respondent who holds either a category 4~~
22 ~~license under section 286-102(b) or a commercial~~

1 ~~driver's license under section 286-239(b) unless~~
2 ~~the conditional license permit is restricted to a~~
3 ~~category 1, 2, or 3 license under section~~
4 ~~286-102(b).~~

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

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

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

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

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

- 1 ~~(1) Only during hours of employment for activities solely~~
2 ~~within the scope of the employment;~~
- 3 ~~(2) Only during daylight hours; or~~
- 4 ~~(3) Only for specified purposes or to specified~~
5 ~~destinations.~~

6 ~~In addition, the director may impose any other appropriate~~
7 ~~restrictions.~~

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

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

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

18 SECTION 16. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 17. This Act shall take effect on January 1, 2011;
21 provided that section 12 shall take effect on December 31, 2010.

1 SECTION 18. Notwithstanding section 17, this Act shall
2 take effect on July 1, 2050.

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. Effective 7/1/2050. (SD2)