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## A BILL FOR AN ACT

RELATING TO OPERATING A VEHICLE WHILE INTOXICATED.

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

1           SECTION 1. The legislature finds that driving while  
2 intoxicated continues to be a serious problem in Hawaii. Hawaii  
3 averages about six thousand driving under the influence (DUI)  
4 arrests each year. In 2008, forty per cent of the car crash  
5 deaths in Hawaii involved a driver who had .08 per cent blood-  
6 alcohol content (the legal limit) or higher. There were forty-  
7 two of such deaths in 2008, all of which were preventable.

8           In May of 2009, a one-year-old Big Island girl, Aliyah  
9 Braden, was killed and her mother, Mayvelyn, was critically  
10 injured when their car was struck by a pickup truck whose driver  
11 had just run a red light. The truck driver was suspected of  
12 drunk driving. The driver had a prior DUI conviction for which  
13 she was sentenced, twenty-one years to the day before the fatal  
14 accident, to a ninety-day license suspension and a fine of \$150.

15           Aliyah's father, Wayne Braden, has urged the legislature to  
16 more rigorously address drunk driving, for Aliyah and for others  
17 who may become statistics in the future: "Another lost child, a



1 lost mother and father, grandmothers and grandfathers, friends  
2 and neighbors lost to alcohol-related traffic fatality, must end  
3 now. Any injury or death is unacceptable. . . . No one is to  
4 see the waxy skin of your dead child. We are to make the effort  
5 to protect them on the roadway and see them all grow and  
6 experience the lovely things of life."

7 The purpose of this Act is to ensure that our roadways are  
8 safer by:

- 9 (1) Mandating license suspension for liquor licensees who  
10 repeatedly over-serve their clients;
- 11 (2) Increasing the penalties for repeat DUI offenders and  
12 those drivers convicted of operating a vehicle while  
13 being highly intoxicated by requiring impoundment of  
14 the vehicle used in the commission of the offense, a  
15 mandatory prison sentence, or mandatory alcohol  
16 treatment; and
- 17 (3) Appropriate funds to be used by the counties to, among  
18 other things, increase the number of sobriety  
19 checkpoints at high risk areas.

20 SECTION 2. Section 281-78, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:



1           "(b) At no time under any circumstances shall any licensee  
2 or its employee:

3           (1) Sell, serve, or furnish any liquor to, or allow the  
4 consumption of any liquor by:

5           (A) Any minor;

6           ~~[(D) Any person at the time under the influence of~~  
7           ~~liquor;~~

8           ~~-(E)]~~ (B) Any person known to the licensee to be  
9 addicted to the excessive use of intoxicating  
10 liquor; or

11           ~~-(D)]~~ (C) Any person for consumption in any vehicle  
12 that is licensed to travel on public highways;  
13 provided that the consumption or sale of liquor to a  
14 minor shall not be deemed to be a violation of this  
15 subsection if, in making the sale or allowing the  
16 consumption of any liquor by a minor, the licensee was  
17 misled by the appearance of the minor and the  
18 attending circumstances into honestly believing that  
19 the minor was of legal age and the licensee acted in  
20 good faith; and provided further that it shall be  
21 incumbent upon the licensee to prove that the licensee  
22 so acted in good faith;



- 1           (2) Permit any liquor to be consumed on the premises of  
2           the licensee or on any premises connected therewith,  
3           whether there purchased or not, except as permitted by  
4           the terms of its license;
- 5           (3) Permit any liquor to be sold or served by any person  
6           eighteen to twenty years of age except in licensed  
7           establishments where selling or serving the  
8           intoxicating liquor is part of the minor's employment,  
9           and where there is proper supervision of these minor  
10          employees to ensure that the minors shall not consume  
11          the intoxicating liquor;
- 12          (4) Permit any liquor to be sold or served by any person  
13          below the age of eighteen years upon any licensed  
14          premises, except in individually specified licensed  
15          establishments found to be otherwise suitable by the  
16          liquor commission in which an approved program of job  
17          training and employment for dining room waiters and  
18          waitresses is being conducted in cooperation with the  
19          University of Hawaii, the state community college  
20          system, or a federally sponsored personnel development  
21          and training program, under arrangements that ensure  
22          proper control and supervision of employees;



- 1           (5) Knowingly permit any person under the influence of  
2           liquor or disorderly person to be or remain in or on  
3           the licensed premises;
- 4           (6) Fail immediately to prevent or suppress any violent,  
5           quarrelsome, disorderly, lewd, immoral, or unlawful  
6           conduct of any person on the premises;
- 7           (7) Sell any draught beer unless upon the faucet, spigot,  
8           or outlet wherefrom the beer is drawn there is  
9           attached a clear and legible notice, placard, or  
10          marker which in the English language indicates and  
11          declares the name or brand adopted by the manufacturer  
12          of the draught beer, so situated as to be clearly  
13          legible for a distance of at least ten feet from the  
14          spigot, faucet, or outlet, to a purchaser with normal  
15          vision;
- 16          (8) Receive from a person, as payment or as a  
17          consideration for liquor, any personal or household  
18          goods, including clothing and food, or any implements  
19          of trade. Any person violating this paragraph shall  
20          be guilty of a misdemeanor and upon conviction shall  
21          be punished as provided in section 281-102[-]; or



1       (9) Sell, serve, or furnish any liquor to, or allow the  
2       consumption of any liquor by any person at the time  
3       under the influence of liquor. In addition to any  
4       criminal penalties which may be otherwise imposed upon  
5       the licensee by a court of law, any licensee who  
6       violates this paragraph more than twice within a two-  
7       year period shall have its license suspended as  
8       provided in part VI; provided, however, that the  
9       liquor commission or liquor control adjudication board  
10       may consider mitigating circumstances in determining  
11       the time period for which the suspension shall apply.  
12       In the event that there are no violations under this  
13       paragraph within twenty-four successive months from  
14       the date of the last violation, then the next  
15       violation shall be treated as the first violation."

16       SECTION 3. Section 291E-61, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "**§291E-61 Operating a vehicle under the influence of an**  
19 **intoxicant.** (a) A person commits the offense of operating a  
20 vehicle under the influence of an intoxicant if the person  
21 operates or assumes actual physical control of a vehicle:



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

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

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

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

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

16 (1) Except as provided in paragraph (2), for the first  
17 offense, or any offense not preceded within a five-  
18 year period by a conviction for an offense under this  
19 section or section 291E-4(a):

20 (A) A fourteen-hour minimum substance abuse  
21 rehabilitation program, including education and



- 1 counseling, or other comparable program deemed  
2 appropriate by the court;
- 3 (B) Ninety-day prompt suspension of license and  
4 privilege to operate a vehicle during the  
5 suspension period, or the court may impose, in  
6 lieu of the ninety-day prompt suspension of  
7 license, a minimum thirty-day prompt suspension  
8 of license with absolute prohibition from  
9 operating a vehicle and, for the remainder of the  
10 ninety-day period, a restriction on a category  
11 (1), (2), or (3) license under section 286-102(b)  
12 that allows the person to drive for limited work-  
13 related purposes and to participate in substance  
14 abuse treatment programs;
- 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~~] If the court so orders, a  
2 surcharge of up to \$25 to be deposited into the  
3 trauma system special fund [~~if the court so~~  
4 orders];

5 (2) For a first offense committed by a highly intoxicated  
6 driver, or for any offense committed by a highly  
7 intoxicated driver not preceded within a five-year  
8 period by a conviction for an offense under this  
9 section or section 291E-4(a):

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

14 (B) Prompt suspension of a license and privilege to  
15 operate a vehicle for a period of six months with  
16 an absolute prohibition from operating a vehicle  
17 during the suspension period;

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

19 (i) Seventy-two hours of community service work;  
20 (ii) Not less than forty-eight hours and not more  
21 than five days of imprisonment; or



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

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

5 (E) ~~[May be charged]~~ If the court so orders, a  
6 surcharge of up to \$50 to be deposited into the  
7 trauma system special fund ~~[if the court so~~  
8 ~~orders]~~; and

9 (F) By order of the court, seizure and impoundment  
10 for a period of one year of any vehicle used in  
11 the commission of the offense, whether or not  
12 owned by the defendant, at the sole cost and  
13 expense of the owner of the vehicle;

14 (3) For an offense that occurs within five years of a  
15 prior conviction for an offense under this section or  
16 section 291E-4(a) by:

17 (A) Prompt suspension of license and privilege to  
18 operate a vehicle for a period of one year with  
19 an absolute prohibition from operating a vehicle  
20 during the suspension period;

21 (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 days of imprisonment of which at
- 5 least forty-eight hours shall be served
- 6 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]~~ If the court so orders, a
- 12 surcharge of up to \$50 to be deposited into the
- 13 trauma system special fund ~~[if the court so~~
- 14 ~~orders]~~;
- 15 (F) Enrollment in and completion of a substance abuse
- 16 rehabilitation program, including education and
- 17 counseling, or other comparable program of a
- 18 duration deemed appropriate by the court; and
- 19 (G) By order of the court, seizure and impoundment
- 20 for a period of one year of any vehicle used in
- 21 the commission of the offense, whether or not



- 1                   owned by the defendant, at the sole cost and  
2                   expense of the owner of the vehicle;
- 3           (4) For an offense that occurs within five years of two  
4           prior convictions for offenses under this section or  
5           section 291E-4(a):
- 6           (A) A fine of not less than \$500 but not more than  
7           \$2,500;
- 8           (B) Revocation of license and privilege to operate a  
9           vehicle for a period not less than one year but  
10           not more than five years;
- 11           (C) ~~[Not less than ten days but not more than thirty~~  
12           ~~days imprisonment of which at least forty eight~~  
13           ~~hours shall be served consecutively;]~~ A mandatory  
14           minimum sentence of one year of imprisonment;
- 15           (D) A surcharge of \$25 to be deposited into the  
16           neurotrauma special fund;
- 17           (E) ~~[May be charged]~~ If the court so orders, a  
18           surcharge of up to \$50 to be deposited into the  
19           trauma system special fund ~~[if the court so~~  
20           ~~orders];~~ and
- 21           (F) Either one of the following:



1            (i) Forfeiture under chapter 712A of the vehicle  
 2            owned and operated by the person committing  
 3            the offense; provided that the department of  
 4            transportation shall provide storage for  
 5            vehicles forfeited under this subsection;  
 6            [~~and~~] or

7            (ii) By order of the court, seizure and  
 8            impoundment for a period of five years of  
 9            any vehicle used in the commission of the  
 10           offense, if not owned by the defendant, at  
 11           the sole cost and expense of the owner of  
 12           the vehicle; and

13           (G) Enrollment in and completion of a substance abuse  
 14           rehabilitation program, including education and  
 15           counseling, or other comparable program of a  
 16           duration deemed appropriate by the court;

17           (5) Any person eighteen years of age or older who is  
 18           convicted under this section and who operated a  
 19           vehicle with a passenger, in or on the vehicle, who  
 20           was younger than fifteen years of age, shall be  
 21           sentenced to an additional mandatory fine of \$500 and  
 22           an additional mandatory term of imprisonment of forty-



1           eight hours; provided that the total term of  
2           imprisonment for a person convicted under this  
3           paragraph shall not exceed the maximum term of  
4           imprisonment provided in paragraph (1), (3), or (4).

5           (c) Notwithstanding any other law to the contrary, any:

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

8           (2) Conviction in any other state or federal jurisdiction  
9           for an offense that is comparable to operating or  
10          being in physical control of a vehicle while having  
11          either an unlawful alcohol concentration or an  
12          unlawful drug content in the blood or urine or while  
13          under the influence of an intoxicant or habitually  
14          operating a vehicle under the influence of an  
15          intoxicant; or

16          (3) Adjudication of a minor for a law violation that, if  
17          committed by an adult, would constitute a violation of  
18          this section or an offense under section 291E-4(a), or  
19          section 291E-61.5;

20 shall be considered a prior conviction for the purposes of  
21 imposing sentence under this section. Any judgment on a verdict  
22 or a finding of guilty, a plea of guilty or nolo contendere, or



1 an adjudication in the case of a minor, that at the time of the  
2 offense has not been expunged by pardon, reversed, or set aside  
3 shall be deemed a prior conviction under this section. No  
4 license and privilege suspension or revocation shall be imposed  
5 pursuant to this section if the person's license and privilege  
6 to operate a vehicle has previously been administratively  
7 revoked pursuant to part III for the same act; provided that, if  
8 the administrative suspension or revocation is subsequently  
9 reversed, the person's license and privilege to operate a  
10 vehicle shall be suspended or revoked as provided in this  
11 section.

12 (d) Whenever a court sentences a person pursuant to  
13 subsection (b), it also shall require that the offender be  
14 referred to the driver's education program for an assessment, by  
15 a certified substance abuse counselor, of the offender's  
16 substance abuse or dependence and the need for appropriate  
17 treatment. The counselor shall submit a report with  
18 recommendations to the court. The court shall require the  
19 offender to obtain appropriate treatment if the counselor's  
20 assessment establishes the offender's substance abuse or  
21 dependence. All costs for assessment and treatment shall be  
22 borne by the offender.

1 (e) Notwithstanding any other law to the contrary,  
2 whenever a court revokes a person's driver's license pursuant to  
3 this section, the examiner of drivers shall not grant to the  
4 person a new driver's license until the expiration of the period  
5 of revocation determined by the court. After the period of  
6 revocation is completed, the person may apply for and the  
7 examiner of drivers may grant to the person a new driver's  
8 license.

9 (f) Any person sentenced under this section may be ordered  
10 to reimburse the county for the cost of any blood or urine tests  
11 conducted pursuant to section 291E-11. The court shall order  
12 the person to make restitution in a lump sum, or in a series of  
13 prorated installments, to the police department or other agency  
14 incurring the expense of the blood or urine test.

15 (g) The requirement to provide proof of financial  
16 responsibility pursuant to section 287-20 shall not be based  
17 upon a sentence imposed under subsection (b)(1) or (b)(2).

18 (h) For any vehicle impoundment pursuant to subsection  
19 (b), the following shall apply:

20 (1) Within twenty-four hours of sentencing, the defendant  
21 shall surrender the vehicle to the appropriate  
22 authorities. If the vehicle is not owned by the





1           defendant or the defendant does not surrender the  
2           vehicle, then the vehicle may be seized pursuant to a  
3           court order;

4           (2) The court, within seventy-two hours of impoundment,  
5           shall send, or cause to be sent, by certified mail,  
6           return receipt requested, a notice of impoundment to  
7           all registered or documented owners and any lien  
8           holders of the vehicle;

9           (3) The State shall have a lien upon the vehicle in favor  
10           of the State, arising as of the date of the  
11           defendant's sentencing, and, from and after the time  
12           the lien arises, it shall be a paramount lien upon the  
13           vehicle and rights to the vehicle against all parties,  
14           whether their interest arose before or after that  
15           time; and

16           (4) Custody of the vehicle shall be returned to the  
17           vehicle's owner when the impoundment period has  
18           expired, except that custody may be transferred and  
19           the lien against the vehicle may be released at an  
20           earlier date as provided below:

21           (A) If the vehicle is sold to a third party during  
22           the impoundment period, then upon payment to the



1                   State of all impoundment fees as of the date of  
2                   transfer of ownership of the vehicle and other  
3                   finer due and owing to the State by the  
4                   defendant, the lien shall be released and custody  
5                   of the vehicle may be given to the third party  
6                   upon presentation of proof of sale;

7                   (B) If the vehicle is repossessed by a lien holder of  
8                   the vehicle, then upon payment to the State of  
9                   all impoundment fees as of the date of  
10                   repossession and other fines due and owing to the  
11                   State by the defendant, the lien shall be  
12                   released and custody of the vehicle may be given  
13                   to the lien holder of the vehicle upon  
14                   presentation of proof of lawful repossession of  
15                   the vehicle; or

16                   (C) If the vehicle used in the commission of the  
17                   offense is not owned by the defendant at the time  
18                   of the defendant's sentencing, then upon payment  
19                   to the State of all impoundment fees for the  
20                   entire impoundment period and any other fines due  
21                   and owing to the State by the defendant, the lien  
22                   shall be released and custody of the vehicle may



1                   be given to the registered owner of the vehicle  
2                   upon presentation of proof of lawful ownership of  
3                   the vehicle.

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

6           SECTION 4. Section 291E-61, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "§291E-61 Operating a vehicle under the influence of an  
9 intoxicant. (a) A person commits the offense of operating a  
10 vehicle under the influence of an intoxicant if the person  
11 operates or assumes actual physical control of a vehicle:

12           (1) While under the influence of alcohol in an amount  
13           sufficient to impair the person's normal mental  
14           faculties or ability to care for the person and guard  
15           against casualty;

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

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

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



1 (b) A person committing the offense of operating a vehicle  
2 under the influence of an intoxicant shall be sentenced as  
3 follows:

4 (1) For the first offense, or any offense not preceded  
5 within a five-year period by a conviction for an  
6 offense under this section or section 291E-4(a):

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

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

16 (C) Any one or more of the following:  
17 (i) Seventy-two hours of community service work;  
18 (ii) Not less than forty-eight hours and not more  
19 than five days of imprisonment; or  
20 (iii) A fine of not less than \$150 but not more  
21 than \$1,000;



- 1 (D) A surcharge of \$25 to be deposited into the
- 2 neurotrauma special fund; [~~and~~]
- 3 (E) [~~May be charged~~] If the court so orders, a
- 4 surcharge of up to \$25 to be deposited into the
- 5 trauma system special fund [~~if the court so~~
- 6 ~~orders~~]; and
- 7 (F) If the offense was committed by a highly
- 8 intoxicated driver, then seizure and impoundment
- 9 of the vehicle used in the commission of the
- 10 offense at the sole cost and expense of the owner
- 11 of the vehicle by order of the court, whether or
- 12 not the vehicle owned by the defendant;
- 13 (2) For an offense that occurs within five years of a
- 14 prior conviction for an offense under this section or
- 15 section 291E-4(a), and notwithstanding section
- 16 706-623, by probation for not less than eighteen
- 17 months nor more than two years on the following
- 18 conditions:
- 19 (A) Revocation of license and privilege to operate a
- 20 vehicle during the probation period and
- 21 installation during the probation period of an



1 ignition interlock device on any vehicle operated  
2 by the person;

3 (B) Either one of the following:

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

6 (ii) Not more than five days of imprisonment of  
7 which at least forty-eight hours shall be  
8 served consecutively;

9 (C) A fine of not less than \$500 but not more than  
10 \$1,500;

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

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

17 (F) Enrollment in and completion of a substance abuse  
18 rehabilitation program, including education and  
19 counseling, or other comparable program of a  
20 duration deemed appropriate by the court; and

21 (G) By order of the court, seizure and impoundment  
22 for a period of one year of any vehicle used in



1                   the commission of the offense, whether or not  
 2                   owned by the defendant, at the sole cost and  
 3                   expense of the owner of the vehicle;

4           (3) For an offense that occurs within five years of two  
 5           prior convictions for offenses under this section or  
 6           section 291E-4(a), and notwithstanding section  
 7           706-623, by probation for two years on the following  
 8           conditions:

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

11           (B) Revocation of license and privilege to operate a  
 12           vehicle during the probation period and  
 13           installation during the probation period of an  
 14           ignition interlock device on any vehicle operated  
 15           by the person;

16           (C) ~~[Up to five days imprisonment of which at least~~  
 17           ~~forty eight hours shall be served consecutively,]~~  
 18           A mandatory minimum sentence of one year of  
 19           imprisonment;

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



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

5 (F) Enrollment in and completion of a substance abuse  
6 rehabilitation program, including education and  
7 counseling, or other comparable program of a  
8 duration deemed appropriate by the court; and

9 (G) By order of the court, seizure and impoundment  
10 for a period of five years of any vehicle used in  
11 the commission of the offense, whether or not  
12 owned by the defendant, at the sole cost and  
13 expense of the owner of the vehicle;

14 (4) In addition to a sentence imposed under paragraphs (1)  
15 through (3), any person eighteen years of age or older  
16 who is convicted under this section and who operated a  
17 vehicle with a passenger, in or on the vehicle, who  
18 was younger than fifteen years of age, shall be  
19 sentenced to an additional mandatory fine of \$500 and  
20 an additional mandatory term of imprisonment of forty-  
21 eight hours; provided that the total term of  
22 imprisonment for a person convicted under this





1 paragraph shall not exceed the maximum term of  
2 imprisonment provided in paragraph (1), (2), or (3),  
3 as applicable. Notwithstanding paragraph (2), the  
4 probation period for a person sentenced under this  
5 paragraph shall be not less than two years; and

6 (5) If the person demonstrates to the court that the  
7 person:

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

11 (B) Is otherwise unable to drive during the probation  
12 period,

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

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



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

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

9           (d) The court may issue a separate permit authorizing a  
10          defendant to operate a vehicle owned by the defendant's employer  
11          during the period of revocation without installation of an  
12          ignition interlock device if the defendant is gainfully employed  
13          in a position that requires driving and the defendant will be  
14          discharged if prohibited from driving a vehicle not equipped  
15          with an ignition interlock device.

16          (e) A request made pursuant to subsection (d) shall be  
17          accompanied by:

18           (1) A sworn statement from the defendant containing facts  
19           establishing that the defendant currently is employed  
20           in a position that requires driving and that the  
21           defendant will be discharged if prohibited from



1 driving a vehicle not equipped with an ignition  
2 interlock device; and  
3 (2) A sworn statement from the defendant's employer  
4 establishing that the employer will, in fact,  
5 discharge the defendant if the defendant is prohibited  
6 from driving a vehicle not equipped with an ignition  
7 interlock device and identifying the specific vehicle  
8 and hours of the day, not to exceed twelve hours per  
9 day, the defendant will drive for purposes of  
10 employment.

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

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

16 (2) Only the vehicle specified; and

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

19 (g) Notwithstanding any other law to the contrary, any:

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



1           (2) Conviction in any other state or federal jurisdiction  
2           for an offense that is comparable to operating or  
3           being in physical control of a vehicle while having  
4           either an unlawful alcohol concentration or an  
5           unlawful drug content in the blood or urine or while  
6           under the influence of an intoxicant or habitually  
7           operating a vehicle under the influence of an  
8           intoxicant; or  
9           (3) Adjudication of a minor for a law violation that, if  
10          committed by an adult, would constitute a violation of  
11          this section or an offense under section 291E-4(a), or  
12          section 291E-61.5;  
13 shall be considered a prior conviction for the purposes of  
14 imposing sentence under this section. Any judgment on a verdict  
15 or a finding of guilty, a plea of guilty or nolo contendere, or  
16 an adjudication, in the case of a minor, that at the time of the  
17 offense has not been expunged by pardon, reversed, or set aside  
18 shall be deemed a prior conviction under this section. No  
19 license and privilege suspension or revocation shall be imposed  
20 pursuant to this section if the person's license and privilege  
21 to operate a vehicle has previously been administratively  
22 revoked pursuant to part III for the same act; provided that, if



1 the administrative suspension or revocation is subsequently  
2 reversed, the person's license and privilege to operate a  
3 vehicle shall be suspended or revoked as provided in this  
4 section.

5 (h) Whenever a court sentences a person pursuant to  
6 subsection (b), it also shall require that the offender be  
7 referred to the driver's education program for an assessment, by  
8 a certified substance abuse counselor, of the offender's  
9 substance abuse or dependence and the need for appropriate  
10 treatment. The counselor shall submit a report with  
11 recommendations to the court. The court shall require the  
12 offender to obtain appropriate treatment if the counselor's  
13 assessment establishes the offender's substance abuse or  
14 dependence. All costs for assessment and treatment shall be  
15 borne by the offender.

16 (i) Upon proof that the defendant has installed an  
17 ignition interlock device in the defendant's vehicle pursuant to  
18 subsection (b), the court shall issue an ignition interlock  
19 permit that will allow the defendant to drive a vehicle equipped  
20 with an ignition interlock device during the revocation period.

21 (j) Notwithstanding any other law to the contrary,  
22 whenever a court revokes a person's driver's license pursuant to



1 this section, the examiner of drivers shall not grant to the  
2 person a new driver's license until the expiration of the period  
3 of revocation determined by the court. After the period of  
4 revocation is completed, the person may apply for and the  
5 examiner of drivers may grant to the person a new driver's  
6 license.

7 (k) Any person sentenced under this section may be ordered  
8 to reimburse the county for the cost of any blood or urine tests  
9 conducted pursuant to section 291E-11. The court shall order  
10 the person to make restitution in a lump sum, or in a series of  
11 prorated installments, to the police department or other agency  
12 incurring the expense of the blood or urine test. Except as  
13 provided in section 291E-5, installation and maintenance of the  
14 ignition interlock device required by subsection (b) shall be at  
15 the defendant's own expense.

16 (l) The requirement to provide proof of financial  
17 responsibility pursuant to section 287-20 shall not be based  
18 upon a sentence imposed under subsection (b)(1).

19 (m) For any vehicle impoundment pursuant to subsection  
20 (b), the following shall apply:

21 (1) Within twenty-four hours of sentencing, the defendant  
22 shall surrender the vehicle to the appropriate



1 authorities. If the vehicle is not owned by the  
2 defendant or the defendant does not surrender the  
3 vehicle, then the vehicle may be seized pursuant to a  
4 court order;

5 (2) The court, within seventy-two hours of impoundment,  
6 shall send, or cause to be sent, by certified mail,  
7 return receipt requested, a notice of impoundment to  
8 all registered or documented owners and any lien  
9 holders of the vehicle;

10 (3) The State shall have a lien in favor of the State upon  
11 the vehicle, arising as of the date of the defendant's  
12 sentencing, and, from and after the time the lien  
13 arises, it shall be a paramount lien upon the vehicle  
14 and rights to the vehicle against all parties, whether  
15 their interest arose before or after that time; and

16 (4) Custody of the vehicle shall be returned to the  
17 vehicle's owner when the impoundment period has  
18 expired, except that custody may be transferred and  
19 the lien against the vehicle may be released at an  
20 earlier dated as provided below:

21 (A) If the vehicle is sold to a third party during  
22 the impoundment period, then upon payment to the



1           State of all impoundment fees as of the date of  
2           transfer of ownership of the vehicle and other  
3           finer due and owing to the State by the  
4           defendant, the lien shall be released and custody  
5           of the vehicle may be given to the third party  
6           upon presentation of proof of sale;

7           (B) If the vehicle is repossessed by a lien holder of  
8           the vehicle, then upon payment to the State of  
9           all impoundment fees as of the date of  
10           repossession and other fines due and owing to the  
11           State by the defendant, the lien shall be  
12           released and custody of the vehicle may be given  
13           to the lien holder of the vehicle upon  
14           presentation of proof of lawful repossession of  
15           the vehicle;

16           (C) If the vehicle used in the commission of the  
17           offense is not owned by the defendant at the time  
18           of the defendant's sentencing, then upon payment  
19           to the State of all impoundment fees for the  
20           entire impoundment period and any other fines due  
21           and owing to the State by the defendant, the lien  
22           shall be released and custody of the vehicle may





1 be given to the registered owner of the vehicle  
2 upon presentation of proof of lawful ownership of  
3 the vehicle; or

4 (D) If the defendant is the owner of the vehicle or  
5 will have access to the vehicle, the owner of the  
6 vehicle may petition the court to return custody  
7 of the vehicle to the owner and to have the lien  
8 against the vehicle released provided that all  
9 impoundment fees for the entire impoundment  
10 period and any other fines due and owing to the  
11 State by the defendant are paid and the vehicle  
12 owner makes arrangements to have an ignition  
13 interlock system installed on the vehicle within  
14 ten days of release of the vehicle;

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

17 SECTION 5. There is appropriated out of the general  
18 revenues of the State of Hawaii the sum of \$1,000,000 or so much  
19 thereof as may be necessary for fiscal year 2010-2011 for the  
20 counties for the purposes of this Act, and to increase the  
21 number of sobriety checkpoints at all high risk sites. The



1 appropriation to each county for fiscal year 2010-2011 shall be  
2 as follows:

- 3 (A) City and county of Honolulu \$
- 4 (B) Hawaii county \$
- 5 (C) Kauai county \$
- 6 (D) Maui county \$

7 The sum appropriated shall be expended by the respective  
8 counties for the purposes of this section.

9 SECTION 6. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun, before its effective date.

12 SECTION 7. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 8. This Act shall take effect on July 1, 2010;  
15 provided that the amendments made to section 291E-61(b), Hawaii  
16 Revised Statutes, by section 3 of this Act shall be repealed on  
17 December 31, 2010; and provided further that section 4 shall  
18 take effect on January 1, 2011.

19

INTRODUCED BY:

*John W. Waihe'o*  


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*Jim Lauer*



**Report Title:**

DUI; Impoundment of Vehicles; Penalties; Appropriation

**Description:**

Requires the impoundment of the vehicle used by the defendant for highly intoxicated drivers and repeat offenders. Institutes a one-year mandatory prison for offenders who have two prior convictions for DUI. Requires alcohol treatment for repeat offenders.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

