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# A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1           SECTION 1. The legislature finds that Act 171, Session  
2 Laws of Hawaii 2008 established an ignition interlock program.  
3 The purpose of the program is to require drivers whose licenses  
4 have been administratively revoked for, or who have been  
5 convicted of, operating a vehicle under the influence of an  
6 intoxicant to install an ignition interlock device on their  
7 vehicles. The device will prevent these drivers from starting  
8 or operating their vehicles when the driver has more than a  
9 minimal alcohol concentration.

10           Act 171 also provided for the probationary supervision of  
11 drivers convicted of operating a vehicle under the influence of  
12 an intoxicant, stating:

13           "This Act also provides for an extended period of probation  
14 supervision of the driver while using the ignition  
15 interlock device so that the person cannot drink and drive  
16 during that period. Attempts to do so will be recorded and  
17 reported for appropriate action, including extensions of

1 the period of required ignition interlock device use and  
2 other sanctions. Most importantly, probation supervision,  
3 using test results and other information generated by the  
4 device, can be an important bridge to getting the driver  
5 into treatment so that, once the device is removed, the  
6 driver possesses the tools to refrain from drinking and  
7 driving altogether."

8 Act 171 established the Hawaii ignition interlock  
9 implementation task force to study the issues surrounding  
10 implementation of the program and to make recommendations to  
11 address them. The Hawaii ignition interlock implementation task  
12 force met numerous times in committees and as a whole, had  
13 comprehensive discussions on a multitude of issues relating to  
14 the implementation of the ignition interlock program, and made  
15 recommendations for statutory amendments necessary to implement  
16 the program.

17 The Hawaii ignition interlock implementation task force had  
18 multiple discussions about probation supervision of convicted  
19 offenders. These discussions resulted in a recommendation to  
20 the legislature in 2009 that only second and third offenders be  
21 supervised using a probationary model. The task force concluded  
22 that these repeat offenders pose the greatest risk to themselves

1 and to the community because they have not shown themselves  
2 amenable to changing their behavior, despite intervention  
3 following their first offense. This recommendation was adopted  
4 by the legislature in Act 88, Session Laws of Hawaii 2009.

5 The legislature also finds, and the Hawaii ignition  
6 interlock implementation task force recognizes, that since the  
7 time Acts 171 and 88 established a probationary model of  
8 supervision for convicted second and third offenders, the  
9 State's economy has taken a significant downturn. While the  
10 Hawaii ignition interlock implementation task force still  
11 prefers the probationary model of supervision for convicted  
12 second and third time offenders, the task force also recognizes  
13 that the availability of resources necessary for implementation  
14 of the probationary model on January 1, 2011, is very uncertain,  
15 at best.

16 Accordingly, the Hawaii ignition interlock implementation  
17 task force amended its previous recommendation to the  
18 legislature and proposed instead that probation be eliminated  
19 for convicted second and third offenders and that an existing  
20 practice, known as "proof of compliance," which is less  
21 intensive -- and less expensive -- be used for all convicted  
22 offenders. The Hawaii ignition interlock implementation task

1 force recommended that when the State's fiscal outlook improves,  
2 the issue of probation for convicted second and third offenders  
3 be revisited and implemented.

4 The purpose of this Act is to make amendments to the  
5 State's ignition interlock law recommended by the Hawaii  
6 ignition interlock implementation task force pursuant to Act  
7 171, Session Laws of Hawaii 2008.

8 SECTION 2. Chapter 291E, Hawaii Revised Statutes, is  
9 amended by adding three new sections to part IV to be  
10 appropriately designated and to read as follows:

11 "§291E-A Circumvention of, or tampering with, an ignition  
12 interlock device by a person who has been restricted to  
13 operating a vehicle equipped with an ignition interlock device;  
14 penalties. (a) No person whose driving privileges have been  
15 restricted to operating a vehicle equipped with an ignition  
16 interlock device shall knowingly:

17 (1) Request, solicit, direct, or authorize another person  
18 to blow into an ignition interlock device or start a  
19 vehicle equipped with the device for the purpose of  
20 providing an operable vehicle to a person who has been  
21 restricted by law to operating only a vehicle so  
22 equipped; or

1       (2) Tamper with an ignition interlock device with intent  
2       to render it inaccurate or inoperable.

3       (b) Any person required under subsection (a) to drive  
4 using an ignition interlock device, who violates subsection (a)  
5 shall be sentenced without possibility of probation or  
6 suspension of sentence as follows:

7       (1) For a first offense, or any offense not preceded  
8       within a five-year period by conviction under this  
9       section or section 291E-62(a)(3):

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

12       (B) A fine of not less than \$250 but not more than  
13       \$1,000; and

14       (C) Loss of the privilege to operate a vehicle  
15       equipped with an ignition interlock device;

16       (2) For an offense that occurs within five years of a  
17       prior conviction for an offense under this section or  
18       section 291E-62(a)(3):

19       (A) Thirty days imprisonment;

20       (B) A \$1,000 fine; and

21       (C) Loss of the privilege to operate a vehicle  
22       equipped with an ignition interlock device; 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 section 291E-62(a) (3), or any combination thereof:

4       (A) One year imprisonment;

5       (B) A \$2,000 fine; and

6       (C) Loss of the privilege to operate a vehicle  
7       equipped with an ignition interlock device.

8       **§291E-B Assisting or abetting the circumvention of, or**  
9       **tampering with, an ignition interlock device; penalties.** (a)

10      No person shall knowingly:

11       (1) Blow into or start a vehicle equipped with an ignition  
12       interlock device for the purposes of providing an  
13       operable vehicle to a person who has been restricted  
14       by law to operating only a vehicle equipped with an  
15       ignition interlock device;

16       (2) Tamper with an ignition interlock device with intent  
17       to render it inaccurate or inoperable to permit  
18       another person, who has been restricted by law to  
19       operating only a vehicle equipped with an ignition  
20       interlock device, to operate the vehicle; or

21       (3) Rent, lease, or lend a vehicle to a person who has  
22       been restricted by law to operating only vehicles

1 equipped with an ignition interlock device, when the  
2 rented, leased, or loaned vehicle is not equipped with  
3 a functioning certified ignition interlock device.

4 (b) Subsection (a) shall not apply to any act taken for  
5 the purpose of safety or mechanical repair of the device;  
6 provided that the person who is restricted to operating a  
7 vehicle equipped with the interlock device does not operate the  
8 vehicle.

9 (c) Any person who violates this section shall be:

10 (1) Fined not more than \$1,000 or imprisoned not more than  
11 thirty days, or both, for any offense that does not  
12 occur within five years of two prior convictions for  
13 this offense; and

14 (2) Fined not less than \$500 but not more than \$1,000 or  
15 imprisoned not more than one year, or both, if the  
16 person has two or more prior convictions for the  
17 offense in the preceding five-year period.

18 **§291E-C Refusal to submit to a breath, blood, or urine**  
19 **test; penalty. Refusal to submit to a breath, blood, or urine**  
20 **test as required by part II is a petty misdemeanor."**

21 SECTION 3. Section 286-133, Hawaii Revised Statutes, is  
22 amended to read as follows:

1           **"§286-133 Unlawful to permit unauthorized person to drive.**

2   (a) No person shall authorize or knowingly permit a motor  
3 vehicle or moped owned by that person or under that person's  
4 control to be driven upon any highway by any person who is not  
5 authorized under law to drive the motor vehicle or moped.

6           (b) This section shall not apply to any person who  
7 knowingly provides, lends, leases, or rents an operable vehicle,  
8 which is equipped with an ignition interlock device, to a driver  
9 whose driving privileges are restricted to operating vehicles  
10 equipped with an ignition interlock device."

11           SECTION 4. Section 287-20, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13           "(a) Whenever a driver's license has been suspended or  
14 revoked:

15           (1) Pursuant to section 291E-65 or part III of chapter  
16 291E, except as provided in section 291E-41(f);

17           (2) Upon a conviction of any offense pursuant to law~~(+)~~,  
18 except where the conduct giving rise to the instant  
19 offense is also a violation of part III of chapter  
20 291E and a requirement to furnish and maintain proof  
21 of financial responsibility has already been imposed  
22 pursuant to that part; or



1           (3) In the case of minors, pursuant to part V of chapter  
2                   571,  
3 the license shall not at any time thereafter be issued to the  
4 person whose license has been suspended or revoked, nor shall  
5 the person thereafter operate a motor vehicle, unless and until  
6 the person has furnished and thereafter maintains proof of  
7 financial responsibility; provided that this section shall not  
8 apply to a license suspended pursuant to section 291E-61(b)(1)  
9 or 291E-64(b)(1), any conviction of a moving violation, any  
10 administrative license suspension pursuant to chapter 291A, or  
11 the first conviction within a five-year period for driving  
12 without a valid motor vehicle insurance policy.

13           This subsection shall not apply to a suspension or  
14 revocation of a provisional license under section 286-102.6(d)."

15           SECTION 5. Section 291E-1, Hawaii Revised Statutes, is  
16 amended as follows:

17           1. By adding a new definition to be appropriately inserted  
18 and to read:

19           "Valid license" means a license that:

20           (1) Is issued by an authorized licensing official in any  
21           state;

- 1        (2) Authorizes an individual to operate a motor vehicle on  
2            public streets, roads, or highways; and
- 3        (3) Has not expired or been revoked, suspended, or  
4            canceled."

5            2. By amending the definition of "ignition interlock  
6 device" to read:

7            ""Ignition interlock device" means a breath alcohol  
8 ignition interlock device that is certified [~~by the director of~~  
9 ~~transportation and approved for use]~~ pursuant to section 291E-6  
10 and rules adopted thereunder that, when affixed to the ignition  
11 system of a motor vehicle, prevents the vehicle from being  
12 started without first testing, and thereafter from being  
13 operated without periodically retesting, a deep-lung breath  
14 sample of the person required to use the device that indicates  
15 the person's alcohol concentration is less than .02."

16            3. By repealing the definition of "highly intoxicated  
17 driver":

18            [~~"Highly intoxicated driver" means a person whose~~  
19 ~~measurable amount of alcohol is 0.15 or more grams of alcohol~~  
20 ~~per one hundred milliliters or cubic centimeters of the person's~~  
21 ~~blood, or 0.15 or more grams of alcohol per two hundred ten~~  
22 ~~liters of the person's breath."]~~

1 SECTION 6. Section 291E-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§291E-3 Evidence of intoxication.** (a) In any criminal  
4 prosecution for a violation of section 291E-61 or 291E-61.5 or  
5 in any proceeding under part III:

6 (1) .08 or more grams of alcohol per one hundred  
7 milliliters or cubic centimeters of the person's  
8 blood;

9 (2) .08 or more grams of alcohol per two hundred ten  
10 liters of the person's breath; or

11 (3) The presence of one or more drugs in an amount  
12 sufficient to impair the person's ability to operate a  
13 vehicle in a careful and prudent manner,

14 within three hours after the time of the alleged violation as  
15 shown by chemical analysis or other approved analytical  
16 techniques of the person's blood, breath, or urine shall be  
17 competent evidence that the person was under the influence of an  
18 intoxicant at the time of the alleged violation.

19 (b) In any criminal prosecution for a violation of section  
20 291E-61 or 291E-61.5, the amount of alcohol found in the  
21 defendant's blood or breath within three hours after the time of  
22 the alleged violation as shown by chemical analysis or other

1 approved analytical techniques of the defendant's blood or  
2 breath shall be competent evidence concerning whether the  
3 defendant was under the influence of an intoxicant at the time  
4 of the alleged violation and shall give rise to the following  
5 presumptions:

6 (1) If there were .05 or less grams of alcohol per one  
7 hundred milliliters or cubic centimeters of  
8 defendant's blood or .05 or less grams of alcohol per  
9 two hundred ten liters of defendant's breath, it shall  
10 be presumed that the defendant was not under the  
11 influence of alcohol at the time of the alleged  
12 violation; and

13 (2) If there were in excess of .05 grams of alcohol per  
14 one hundred milliliters or cubic centimeters of  
15 defendant's blood or .05 grams of alcohol per two  
16 hundred ten liters of defendant's breath, but less  
17 than .08 grams of alcohol per one hundred milliliters  
18 or cubic centimeters of defendant's blood or .08 grams  
19 of alcohol per two hundred ten liters of defendant's  
20 breath, that fact may be considered with other  
21 competent evidence in determining whether the  
22 defendant was under the influence of alcohol at the

1           time of the alleged violation, but shall not of itself  
2           give rise to any presumption.

3           ~~[(c) In any criminal prosecution for a violation of~~  
4 ~~section 291E-61 or in any proceeding under part III:~~

5           ~~(1) .15 or more grams of alcohol per one hundred~~  
6           ~~milliliters or cubic centimeters of the person's~~  
7           ~~blood; or~~

8           ~~(2) .15 or more grams of alcohol per two hundred ten~~  
9           ~~liters of the person's breath,~~

10 ~~within three hours after the time of the alleged violation as~~  
11 ~~shown by chemical analysis or other approved analytical~~  
12 ~~techniques of the person's blood, breath, or urine shall be~~  
13 ~~competent evidence that the person was a highly intoxicated~~  
14 ~~driver at the time of the alleged violation.~~

15           ~~(d)]~~ (c) Nothing in this section shall be construed as  
16 limiting the introduction, in any criminal proceeding for a  
17 violation under section 291E-61 or 291E-61.5 or in any  
18 proceeding under part III, of relevant evidence of a person's  
19 alcohol concentration or drug content obtained more than three  
20 hours after an alleged violation; provided that the evidence is  
21 offered in compliance with the Hawaii rules of evidence."

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

3 **"§291E-6 Ignition interlock devices; certification. (a)**

4 The director of transportation shall establish and administer a  
5 statewide program relating to certification and monitoring of  
6 ignition interlock devices installed pursuant to chapter 291E  
7 and shall select a single vendor to install and maintain them.

8 (b) The program shall include standards and procedures for  
9 the certification of ignition interlock devices installed  
10 pursuant to chapter 291E. At a minimum, the standards shall  
11 require that the devices:

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

1 ~~recognized certification organization must be able to~~  
2 ~~administer performance tests of an ignition interlock~~  
3 ~~device or a sample provided by the vendor];~~

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

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

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

13 (5) Generate a record of vehicle usage, including dates[~~7~~]  
14 and times[~~7~~ and ~~distances~~] driven.

15 (c) The program shall include standards and procedures for  
16 the certification of the vendor selected to install and maintain  
17 ignition interlock devices pursuant to chapter 291E. At a  
18 minimum, the standards shall require that the vendor:

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

21 (2) Offer or contract for ignition interlock device  
22 installation and maintenance statewide;

1 (3) Train drivers who are required to install an ignition  
2 interlock device, pursuant to chapter 291E [~~or 804~~],  
3 in how to use the device;

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

6 (5) Provide periodic reports regarding the use of each  
7 ignition interlock device installed pursuant to  
8 chapter 291E, including incidents of test failure,  
9 attempts to circumvent the device, and dates, times,  
10 and distances the vehicle was driven.

11 (d) The vendor selected for installation and maintenance  
12 of ignition interlock devices pursuant to chapter 291E shall be  
13 [~~certified~~] audited annually by the director of transportation  
14 pursuant to this section and the rules adopted thereunder. [~~The~~  
15 ~~vendor shall pay a certification fee to the director of~~  
16 ~~transportation who shall deposit the fee into the ignition~~  
17 ~~interlock special fund established pursuant to section 291E-5.]  
18 The director may require the vendor to pay for all or part of  
19 the costs incurred in conducting the audit.~~

20 (e) The director of transportation shall adopt rules  
21 pursuant to chapter 91 necessary for the purposes of this  
22 section."



1 SECTION 8. Section 291E-7, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) In addition to any other civil penalties ordered by  
4 the court, a person who violates any offense under this part may  
5 be ordered to pay a trauma system surcharge, provided that:

6 (1) The maximum of which may be \$10 if the violator is not  
7 already required to pay a trauma system surcharge  
8 pursuant to the violation of the offense;

9 (2) The maximum of which may be \$25 if the violation is an  
10 offense under [†]section[†] 291E-61(a)(1), 291E-  
11 61(a)(3), or 291E-61(a)(4);

12 (3) The maximum of which may be \$50 if the violation is an  
13 offense under [†]section[†] 291E-61(a)(2) or 291E-61.5  
14 or [~~the offense under [section] 291E-61(a)(3) or 291E-~~  
15 ~~61(a)(4) was committed by a highly intoxicated driver~~  
16 ~~as defined by section 291E-1, or]~~ if the offense under  
17 [†]section[†] 291E-61(a)(3) or 291E-61(a)(4) is a  
18 second or subsequent offense that occurred within five  
19 years of the first offense."

20 SECTION 9. Section 291E-15, Hawaii Revised Statutes, is  
21 amended to read as follows:

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

9           (1) Inform the person under arrest of the sanctions under  
10           section 291E-41, 291E-C, or 291E-65; and

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

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

18           SECTION 10. Section 291E-31, Hawaii Revised Statutes, is  
19 amended to read as follows:

20           **"§291E-31 Notice of administrative revocation; effect.** As  
21 used in this part, the notice of administrative revocation:

- 1 (1) Establishes that the respondent's license and  
2 privilege to operate a vehicle in the State or on or  
3 in the waters of the State shall be terminated:
- 4 (A) Thirty days after the date the notice of  
5 administrative revocation is issued in the case  
6 of an alcohol related offense;
- 7 (B) Forty-four days after the date the notice of  
8 administrative revocation is issued in the case  
9 of a drug related offense; or
- 10 (C) Such later date as is established by the director  
11 under section 291E-38,  
12 if the director administratively revokes the  
13 respondent's license and privilege;
- 14 (2) Establishes that the registration of any motor vehicle  
15 registered to a respondent who is a repeat intoxicated  
16 driver [~~or a highly intoxicated driver~~] shall be  
17 terminated thirty days after the date of an arrest  
18 pursuant to section 291E-33(c);
- 19 (3) Establishes the date on which administrative  
20 revocation proceedings against the respondent were  
21 initiated; [~~and~~]

- 1 (4) Serves as a temporary permit, if applicable, to  
2 operate a vehicle as provided in section 291E-33[~~-~~];  
3 and  
4 (5) Notifies the respondent that the respondent shall keep  
5 an ignition interlock device installed and operating  
6 in any vehicle the respondent operates during the  
7 revocation period if the respondent had a valid  
8 license at the time of the arrest."

9 SECTION 11. Section 291E-33, Hawaii Revised Statutes, is  
10 amended by amending subsection (c) to read as follows:

11 "(c) Whenever a respondent under this section is a repeat  
12 intoxicated driver [~~or highly intoxicated driver~~], the arresting  
13 law enforcement officer shall take possession of the motor  
14 vehicle registration and, if the motor vehicle being driven by  
15 the respondent is registered to the respondent, remove the  
16 number plates and issue a temporary motor vehicle registration  
17 and temporary number plates for the motor vehicle. No temporary  
18 motor vehicle registration or temporary number plates shall be  
19 issued if the respondent's registration has expired or been  
20 revoked. The applicable police department, upon determining  
21 that the respondent is a repeat intoxicated driver [~~or highly~~  
22 ~~intoxicated driver~~], shall notify the appropriate county

1 director of finance to enter a stopper on the motor vehicle  
2 registration files to prevent the respondent from conducting any  
3 motor vehicle transactions, except as permitted under this  
4 part."

5 SECTION 12. Section 291E-34, Hawaii Revised Statutes, is  
6 amended as follows:

7 1. By amending subsection (e) to read:

8 "(e) The notice shall state that, if the respondent's  
9 license and privilege to operate a vehicle, and motor vehicle  
10 registration if applicable, are administratively revoked after  
11 the review, a decision shall be mailed to the respondent, or to  
12 the parent or guardian of the respondent if the respondent is  
13 under the age of eighteen, that shall contain, at a minimum, the  
14 following information:

15 (1) The reasons why the respondent's license and privilege  
16 to operate a vehicle, and motor vehicle registration  
17 if applicable, were administratively revoked;

18 (2) That the respondent may request the director, within  
19 six days of the date the decision is mailed, to  
20 schedule an administrative hearing to review the  
21 administrative revocation;

- 1           (3) That, if the respondent's request for an  
2           administrative hearing is received by the director  
3           within six days of the date the decision was mailed,  
4           the hearing shall be scheduled to commence:
- 5           (A) No later than twenty-five days after the date of  
6           the issuance of the notice of administrative  
7           revocation in the case of an alcohol related  
8           offense; and
- 9           (B) No later than thirty-nine days after the date of  
10          the issuance of the notice of administrative  
11          revocation in the case of a drug related offense;
- 12          (4) The procedure to request an administrative hearing;
- 13          (5) That failure to request an administrative hearing  
14          within the time provided shall cause the  
15          administrative revocation to take effect for the  
16          period and under the conditions established by the  
17          director in the decision;
- 18          (6) That the respondent may regain the right to a hearing  
19          by requesting the director, within sixty days after  
20          the issuance of the notice of administrative  
21          revocation, to schedule a hearing;

- 1           (7) That the director shall schedule the hearing to  
2           commence no later than thirty days after a request  
3           under paragraph (6) is received, but that, except as  
4           provided in section 291E-38(k), the temporary permit,  
5           and temporary motor vehicle registration and temporary  
6           number plates if applicable, shall not be extended if  
7           the respondent fails to request an administrative  
8           hearing within the initial six-day period provided for  
9           that purpose;
- 10          (8) That failure to attend the hearing shall cause the  
11          administrative revocation to take effect for the  
12          period and under the conditions indicated;
- 13          (9) The duration of the administrative revocation and  
14          other conditions that may be imposed, including:  
15          referral to the driver's education program for an  
16          assessment of the respondent's substance abuse or  
17          dependence and the need for treatment; [~~and~~]
- 18          (10) That, pursuant to section 291E-48, the director may  
19          grant a special motor vehicle registration to a  
20          qualified household member or to a co-owner of any  
21          motor vehicle owned by the respondent, upon a  
22          determination that the person is completely dependent

1 on the motor vehicle for the necessities of life;  
2 provided that the special motor vehicle registration  
3 shall not be valid for use by the respondent~~[+]~~; and  
4 (11) That the respondent shall obtain an ignition interlock  
5 permit in order to operate a vehicle during the  
6 revocation period if the respondent had a valid  
7 license at the time of the arrest."

8 2. By amending subsection (h) to read:

9 "(h) The notice shall state that, if the administrative  
10 revocation is sustained at the hearing, a written decision shall  
11 be mailed to the respondent, or to the parent or guardian of the  
12 respondent if the respondent is under the age of eighteen, that  
13 shall contain, at a minimum, the following information:

- 14 (1) The effective date of the administrative revocation;  
15 (2) The duration of the administrative revocation;  
16 (3) If applicable, the date by which any outstanding motor  
17 vehicle number plates issued to the respondent must be  
18 surrendered to the director;  
19 (4) If applicable, that failure to surrender any motor  
20 vehicle number plates as required is a misdemeanor;  
21 ~~[+3]~~ (5) Other conditions that may be imposed by law,  
22 including the use of an ignition interlock device; and



1       ~~[-(4)]~~ (6) The right to obtain judicial review."

2       SECTION 13. Section 291E-38, Hawaii Revised Statutes, is  
3 amended by amending subsection (1) to read as follows:

4       "(1) The director may grant a special motor vehicle  
5 registration, pursuant to section 291E-48, to a qualified  
6 household member or a co-owner of any motor vehicle upon  
7 determination that ~~[the]~~:

8       (1) The person is completely dependent on the motor  
9       vehicle for the necessities of life[-]; and

10       (2) At the time of the application for a special motor  
11       vehicle registration, the respondent does not have a  
12       valid ignition interlock permit.

13 The special motor vehicle registration shall not be valid for  
14 use by the respondent."

15       SECTION 14. Section 291E-41, Hawaii Revised Statutes, is  
16 amended to read as follows:

17       "**§291E-41 Effective date and period of administrative**  
18 **revocation; criteria.** (a) Unless an administrative revocation  
19 is reversed or the temporary permit ~~[is]~~, and temporary motor  
20 vehicle registration and temporary number plates, if applicable,  
21 are extended by the director, administrative revocation shall  
22 become effective on the day specified in the notice of

1 administrative revocation. Except as provided in section [~~291E-~~  
2 ~~44,~~] 291E-44.5, no license and privilege to operate a vehicle  
3 shall be restored under any circumstances during the  
4 administrative revocation period. Upon completion of the  
5 administrative revocation period, the respondent may reapply and  
6 be reissued a license pursuant to section 291E-45.

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

17 (1) A one year revocation of license and privilege to  
18 operate a vehicle, if the respondent's record shows no  
19 prior alcohol enforcement contact or drug enforcement  
20 contact during the five years preceding the date the  
21 notice of administrative revocation was issued;

- 1           (2) An eighteen month revocation of license and privilege  
2           to operate a vehicle[7] and of the registration of any  
3           motor vehicle registered to the respondent, if the  
4           respondent's record shows one prior alcohol  
5           enforcement contact or drug enforcement contact during  
6           the five years preceding the date the notice of  
7           administrative revocation was issued;
- 8           (3) A two-year revocation of license and privilege to  
9           operate a vehicle[7] and of the registration of any  
10          motor vehicle registered to the respondent, if the  
11          respondent's record shows two prior alcohol  
12          enforcement contacts or drug enforcement contacts  
13          during the five years preceding the date the notice of  
14          administrative revocation was issued;
- 15          (4) A minimum of five years up to a maximum of ten years  
16          revocation of license and privilege to operate a  
17          vehicle[7] and of the registration of any motor  
18          vehicle registered to the respondent, if the  
19          respondent's record shows three or more prior alcohol  
20          enforcement contacts or drug enforcement contacts  
21          during the [~~five~~] ten years preceding the date the  
22          notice of administrative revocation was issued; [~~or~~]

- 1 (5) For respondents under the age of eighteen years who  
2 were arrested for a violation of section 291E-61 or  
3 291E-61.5, revocation of license and privilege to  
4 operate a vehicle for the appropriate revocation  
5 period provided in paragraphs (1) to (4) or in  
6 subsection ~~[(e)]~~ (d); provided that the respondent  
7 shall be prohibited from driving during the period  
8 preceding the respondent's eighteenth birthday and  
9 shall thereafter be subject to the ignition interlock  
10 requirement of this subsection for the balance of the  
11 revocation period; or
- 12 (6) For respondents, other than those excepted pursuant to  
13 section 291E-44.5(b), who do not install an ignition  
14 interlock device in ~~[the respondent's vehicle]~~ any  
15 vehicle the respondent operates during the revocation  
16 period, revocation of license and privilege to operate  
17 a vehicle for the period of revocation provided in  
18 paragraphs (1) to (5) or in subsection (c); 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) Whenever a motor vehicle registration is revoked under  
12 this part, the director shall cause the revocation to be entered  
13 electronically into the motor vehicle registration file of the  
14 respondent.

15                   ~~(e)~~ (d) If a respondent has refused to be tested after  
16 being informed:

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

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

1 the revocation imposed under subsection (b) (1), (2), (3), or (4)  
2 shall be for a period of two years, three years, four years, and  
3 ten years, respectively.

4 ~~[(d)]~~ (e) Whenever a license and privilege to operate a  
5 vehicle is administratively revoked under this part, the  
6 respondent shall be referred to the driver's education program  
7 for an assessment, by a certified substance abuse counselor, of  
8 the respondent's substance abuse or dependence and the need for  
9 treatment. The counselor shall submit a report with  
10 recommendations to the director. If the counselor's assessment  
11 establishes that the extent of the respondent's substance abuse  
12 or dependence warrants treatment, the director shall so order.  
13 All costs for assessment and treatment shall be paid by the  
14 respondent.

15 ~~[(e)]~~ (f) Alcohol and drug enforcement contacts that  
16 occurred prior to January 1, 2002, shall be counted in  
17 determining the administrative revocation period.

18 ~~[(f)]~~ (g) The requirement to provide proof of financial  
19 responsibility pursuant to section 287-20 shall not be based  
20 upon a revocation under subsection (b) (1)."

21 SECTION 15. Section 291E-44.5, Hawaii Revised Statutes, is  
22 amended by amending subsections (a) and (b) to read as follows:

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1    "(a) (1)   Except as provided in paragraph (2), upon proof that  
2               the respondent has installed an ignition interlock  
3               device in the respondent's vehicle, the director shall  
4               issue an ignition interlock permit that will allow the  
5               respondent to drive a vehicle equipped with an  
6               ignition interlock device during the revocation  
7               period; or

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

11             (A)   A respondent whose license is expired, suspended,  
12             or revoked as a result of action other than the  
13             instant revocation; [~~or~~]

14             (B)   A respondent who does not hold a valid license at  
15             the time of arrest for the violation of section  
16             291E-61; or

17             [~~(B)~~] (C)   A respondent who holds either a category 4  
18             license under section 286-102(b) or a commercial  
19             driver's license under section 286-239(b) unless  
20             the ignition interlock permit is restricted to a  
21             category 1, 2, or 3 license under section 286-  
22             102(b) .

1 (b) (1) [~~The~~] Except as provided in subsection (a) (2), the  
2 director may issue a separate permit authorizing a  
3 respondent to operate a vehicle owned by the  
4 respondent's employer during the period of revocation  
5 without installation of an ignition interlock device  
6 if the respondent is gainfully employed in a position  
7 that requires driving and the respondent will be  
8 discharged if prohibited from driving a vehicle not  
9 equipped with an ignition interlock device.

10 (2) A request made pursuant to paragraph (1) shall be  
11 accompanied by:

12 (A) A sworn statement from the respondent containing  
13 facts establishing that the respondent currently  
14 is employed in a position that requires driving  
15 and that the respondent will be discharged if  
16 prohibited from driving a vehicle not equipped  
17 with an ignition interlock device; and

18 (B) A sworn statement from the respondent's employer  
19 establishing that the employer will, in fact,  
20 discharge the respondent if the respondent is  
21 prohibited from driving a vehicle not equipped  
22 with an ignition interlock device and identifying



1           the specific vehicle and hours of the day the  
2           respondent will drive, not to exceed twelve hours  
3           per day, for purposes of employment."

4           SECTION 16. Section 291E-45, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6           "(b) To be eligible for reregistration of a motor vehicle,  
7 if applicable, after a period of administrative revocation has  
8 expired, the person shall:

- 9           (1) Submit proof to the director of compliance with all  
10           conditions imposed by the director;
- 11           (2) Obtain a certified statement from the director  
12           indicating eligibility for registration of a motor  
13           vehicle;
- 14           (3) Present the certified statement to the [~~appropriate~~  
15           ~~county~~] director of [~~finance~~] the appropriate county  
16           agency; and
- 17           (4) Successfully complete each requirement, as provided in  
18           chapter 286, for obtaining a new certificate of  
19           registration for a motor vehicle in this State,  
20           including payment of all applicable fees."

21           SECTION 17. Section 291E-48, Hawaii Revised Statutes, is  
22 amended by amending subsection (a) to read as follows:

1           "(a) Anytime after the effective date of revocation or  
2 after the administrative hearing decision is mailed pursuant to  
3 section 291E-38(j), a qualified household member or co-owner of  
4 a motor vehicle with a respondent who has had a motor vehicle  
5 registration revoked under this part may submit a sworn  
6 statement to the director requesting a special motor vehicle  
7 registration. The director may grant the request upon  
8 determining that the following conditions have been met:

- 9           (1) The applicant is a household member of the  
10           respondent's or a co-owner of the vehicle;
- 11           (2) The applicant has a license that has not expired or  
12           been suspended or revoked;
- 13           (3) The applicant is completely dependent on the motor  
14           vehicle for the necessities of life; ~~and~~
- 15           (4) The director finds that the applicant will take  
16           reasonable precautions to ensure that the respondent  
17           will not drive the vehicle[-]; and
- 18           (5) The respondent does not have a valid ignition  
19           interlock permit.

20 A person to whom a special motor vehicle registration has been  
21 granted shall apply to the appropriate county director of

1 finance for special series number plates, as provided in section  
2 249-9.4."

3 SECTION 18. Section 291E-61, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§291E-61 Operating a vehicle under the influence of an**  
6 **intoxicant.** (a) A person commits the offense of operating a  
7 vehicle under the influence of an intoxicant if the person  
8 operates or assumes actual physical control of a vehicle:

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

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

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

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

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

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- 1           (1) For the first offense, or any offense not preceded  
2           within a five-year period by a conviction for an  
3           offense under this section or section 291E-4(a):
- 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) One-year revocation of license and privilege to  
9           operate a vehicle during the revocation period  
10          and installation during the revocation period of  
11          an ignition interlock device on any vehicle  
12          operated by the person;
- 13          (C) Any one or more of the following:
- 14               (i) Seventy-two hours of community service work;
- 15               (ii) Not less than forty-eight hours and not more  
16               than five days of imprisonment; or
- 17               (iii) A fine of not less than \$150 but not more  
18               than \$1,000;
- 19          (D) A surcharge of \$25 to be deposited into the  
20          neurotrauma special fund; and
- 21          (E) ~~[May be charged a]~~ A surcharge, if the court so  
22          orders, of up to \$25 to be deposited into the

1 trauma system special fund if the court so  
2 orders;

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

8 (A) Revocation for not less than eighteen months nor  
9 more than two years of license and privilege to  
10 operate a vehicle during the [~~probation~~]  
11 revocation period and installation during the  
12 [~~probation~~] revocation period of an ignition  
13 interlock device on any vehicle operated by the  
14 person;

15 (B) Either one of the following:

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

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

- 1 (C) A fine of not less than \$500 but not more than  
2 \$1,500;
- 3 (D) A surcharge of \$25 to be deposited into the  
4 neurotrauma special fund; and
- 5 (E) ~~[May be charged a]~~ A surcharge of up to \$50 if  
6 the court so orders, to be deposited into the  
7 trauma system special fund ~~[if the court so~~  
8 ~~orders];~~
- 9 (3) For an offense that occurs within five years of two  
10 prior convictions for offenses under this section or  
11 section 291E-4(a) ~~[, and notwithstanding section 706-~~  
12 ~~623, by probation for two years on the following~~  
13 ~~conditions]:~~
- 14 (A) A fine of not less than \$500 but not more than  
15 \$2,500;
- 16 (B) Revocation for two years of license and privilege  
17 to operate a vehicle during the ~~[probation]~~  
18 revocation period and installation during the  
19 ~~[probation]~~ revocation period of an ignition  
20 interlock device on any vehicle operated by the  
21 person;

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

1 person sentenced under this paragraph shall be not  
2 less than two years; and

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

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

9 (B) Is otherwise unable to drive during the  
10 [~~probation~~] revocation period,

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

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

20 (1) A defendant whose license is expired, suspended, or  
21 revoked as a result of action other than the instant  
22 offense; [~~or~~]



1        (2) A defendant who does not hold a valid license at the  
2        time of the instant offense; or

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

8        (d) [~~The~~] Except as provided in subsection (c), the court  
9        may issue a separate permit authorizing a defendant to operate a  
10       vehicle owned by the defendant's employer during the period of  
11       revocation without installation of an ignition interlock device  
12       if the defendant is gainfully employed in a position that  
13       requires driving and the defendant will be discharged if  
14       prohibited from driving a vehicle not equipped with an ignition  
15       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  
20 imposed pursuant to this section if the person's license and  
21 privilege to operate a vehicle has previously been  
22 administratively revoked pursuant to part III for the same act;

1 provided that, if the administrative [~~suspension or~~] revocation  
2 is subsequently reversed, the person's license and privilege to  
3 operate a vehicle shall be [~~suspended or~~] revoked as provided in  
4 this section. There shall be no requirement for the  
5 installation of an ignition interlock device pursuant to this  
6 section if the requirement has previously been imposed pursuant  
7 to part III for the same act; provided that, if the requirement  
8 is subsequently reversed, a requirement for the installation of  
9 an ignition interlock device shall be imposed as provided in  
10 this section.

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

22 (i) Upon proof that the defendant has [~~installed~~]:

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1       (1) Installed an ignition interlock device in [~~the~~  
2       ~~defendant's~~] any vehicle the defendant operates  
3       pursuant to subsection (b) [~~7~~]; and  
4       (2) Motor vehicle insurance or self-insurance that  
5       complies with the requirements under either section  
6       431:10C-104 or section 431:10C-105;  
7       the court shall issue an ignition interlock permit that will  
8       allow the defendant to drive a vehicle equipped with an ignition  
9       interlock device during the revocation period.

10       (j) Notwithstanding any other law to the contrary,  
11       whenever a court revokes a person's driver's license pursuant to  
12       this section, the examiner of drivers shall not grant to the  
13       person a new driver's license until the expiration of the period  
14       of revocation determined by the court. After the period of  
15       revocation is completed, the person may apply for and the  
16       examiner of drivers may grant to the person a new driver's  
17       license.

18       (k) Any person sentenced under this section may be ordered  
19       to reimburse the county for the cost of any blood or urine tests  
20       conducted pursuant to section 291E-11. The court shall order  
21       the person to make restitution in a lump sum, or in a series of  
22       prorated installments, to the police department or other agency

1 incurring the expense of the blood or urine test. Except as  
2 provided in section 291E-5, installation and maintenance of the  
3 ignition interlock device required by subsection (b) shall be at  
4 the defendant's own expense.

5 ~~[(1) The requirement to provide proof of financial~~  
6 ~~responsibility pursuant to section 287-20 shall not be based~~  
7 ~~upon a sentence imposed under subsection (b) (1).]~~

8 ~~[(m)]~~ (1) As used in this section, the term "examiner of  
9 drivers" has the same meaning as provided in section 286-2."

10 SECTION 19. Section 291E-62, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§291E-62 Operating a vehicle after license and privilege**  
13 **have been suspended or revoked for operating a vehicle under the**  
14 **influence of an intoxicant; penalties.** (a) No person whose  
15 license and privilege to operate a vehicle have been revoked,  
16 suspended, or otherwise restricted pursuant to this section or  
17 to part III or section 291E-61 or 291E-61.5, or to part VII or  
18 part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-  
19 4.5, or 291-7 as those provisions were in effect on December 31,  
20 2001, shall operate or assume actual physical control of any  
21 vehicle:

- 1 (1) In violation of any restrictions placed on the  
2 person's license;
- 3 (2) While the person's license or privilege to operate a  
4 vehicle remains suspended or revoked; or
- 5 (3) Without installing an ignition interlock device  
6 required by this chapter[~~;~~ ~~or~~
- 7 ~~(4) After disabling or circumventing an ignition interlock~~  
8 ~~device required by this chapter].~~

9 (b) Any person convicted of violating this section shall  
10 be sentenced as follows[~~;~~] without possibility of probation or  
11 suspension of sentence:

12 (1) For a first offense, or any offense not preceded  
13 within a five-year period by conviction for an offense  
14 under this section, section 291E-A, or [~~under~~] section  
15 291-4.5 as that section was in effect on December 31,  
16 2001:

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

19 (B) A fine of not less than \$250 but not more than  
20 \$1,000; [~~and~~]

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

1           (D) Loss of the privilege to operate a vehicle  
2                   equipped with an ignition interlock device, if  
3                   applicable;

4           (2) For an offense that occurs within five years of a  
5           prior conviction for an offense under this section,  
6           section 291E-A, or [under] section 291-4.5 as that  
7           section was in effect on December 31, 2001:

8           (A) Thirty days imprisonment;

9           (B) A \$1,000 fine; [and]

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

12           (D) Loss of the privilege to operate a vehicle  
13                   equipped with an ignition interlock device, if  
14                   applicable; and

15           (3) For an offense that occurs within five years of two or  
16           more prior convictions for offenses under this  
17           section, section 291E-A, or [under] section 291-4.5 as  
18           that section was in effect on December 31, 2001[÷], or  
19           any combination thereof:

20           (A) One year imprisonment;

21           (B) A \$2,000 fine; [and]



1 (C) Permanent revocation of the person's license and  
2 privilege to operate a vehicle~~[—]~~; and

3 (D) Loss of the privilege to operate a vehicle  
4 equipped with an ignition interlock device, if  
5 applicable.

6 ~~[The period of revocation shall commence upon the release of the~~  
7 ~~person from the period of imprisonment imposed pursuant to this~~  
8 ~~section.]~~

9 (c) The applicable period of revocation in subsection (b)  
10 shall commence upon the release of the person from the period of  
11 imprisonment imposed pursuant to this section."

12 SECTION 20. Section 706-623, Hawaii Revised Statutes, is  
13 amended by amending subsection (1) to read as follows:

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

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

19 (b) Five years upon conviction of a class B or class C  
20 felony;

21 (c) One year upon conviction of a misdemeanor; except that  
22 upon a conviction under section 586-4, 586-11, or 709-

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

3 (d) [~~Except as provided in paragraph (e), six~~] 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 21. Section 853-4, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§853-4 Chapter not applicable; when.** This chapter shall  
20 not apply when:

21 (1) The offense charged involves the intentional, knowing,  
22 reckless, or negligent killing of another person;

- 1           (2) The offense charged is:
  - 2                   (A) A felony that involves the intentional, knowing,
  - 3                           or reckless bodily injury, substantial bodily
  - 4                           injury, or serious bodily injury of another
  - 5                           person; or
  - 6                   (B) A misdemeanor or petty misdemeanor that carries a
  - 7                           mandatory minimum sentence and that involves the
  - 8                           intentional, knowing, or reckless bodily injury,
  - 9                           substantial bodily injury, or serious bodily
  - 10                           injury of another person;
- 11          (3) The offense charged involves a conspiracy or
- 12                   solicitation to intentionally, knowingly, or
- 13                   recklessly kill another person or to cause serious
- 14                   bodily injury to another person;
- 15          (4) The offense charged is a class A felony;
- 16          (5) The offense charged is nonprobationable;
- 17          (6) The defendant has been convicted of any offense
- 18                   defined as a felony by the Hawaii Penal Code or has
- 19                   been convicted for any conduct that if perpetrated in
- 20                   this State would be punishable as a felony;
- 21          (7) The defendant is found to be a law violator or
- 22                   delinquent child for the commission of any offense

1 defined as a felony by the Hawaii Penal Code or for  
2 any conduct that if perpetrated in this State would  
3 constitute a felony;

4 (8) The defendant has a prior conviction for a felony  
5 committed in any state, federal, or foreign  
6 jurisdiction;

7 (9) A firearm was used in the commission of the offense  
8 charged;

9 (10) The defendant is charged with the distribution of a  
10 dangerous, harmful, or detrimental drug to a minor;

11 (11) The defendant has been charged with a felony offense  
12 and has been previously granted deferred acceptance of  
13 guilty plea status for a prior offense, regardless of  
14 whether the period of deferral has already expired;

15 (12) The defendant has been charged with a misdemeanor  
16 offense and has been previously granted deferred  
17 acceptance of guilty plea status for a prior felony,  
18 misdemeanor, or petty misdemeanor for which the period  
19 of deferral has not yet expired;

20 (13) The offense charged is:

21 (A) Escape in the first degree;

22 (B) Escape in the second degree;

- 1 (C) Promoting prison contraband in the first degree;
- 2 (D) Promoting prison contraband in the second degree;
- 3 (E) Bail jumping in the first degree;
- 4 (F) Bail jumping in the second degree;
- 5 (G) Bribery;
- 6 (H) Bribery of a witness;
- 7 (I) Intimidating a witness;
- 8 (J) Bribery of or by a juror;
- 9 (K) Intimidating a juror;
- 10 (L) Jury tampering;
- 11 (M) Promoting prostitution in the first degree;
- 12 (N) Promoting prostitution in the second degree;
- 13 (O) Promoting prostitution in the third degree;
- 14 (P) Abuse of family or household members;
- 15 (Q) Sexual assault in the second degree;
- 16 (R) Sexual assault in the third degree;
- 17 (S) A violation of an order issued pursuant to
- 18 chapter 586;
- 19 (T) Promoting child abuse in the second degree;
- 20 (U) Promoting child abuse in the third degree;
- 21 (V) Electronic enticement of a child in the first
- 22 degree; or

1 (W) Electronic enticement of a child in the second  
2 degree; [~~or~~

3 ~~(X) An offense under part IV, chapter 291E,]~~

4 (14) The defendant has been charged with:

5 (A) Knowingly or intentionally falsifying any report  
6 required under chapter 11, subpart B of part XII,  
7 with the intent to circumvent the law or deceive  
8 the campaign spending commission; or

9 (B) Violating section 11-201 or 11-202; or

10 (15) The defendant holds a commercial driver's license and  
11 has been charged with violating a traffic control law,  
12 other than a parking law, in connection with the  
13 operation of any type of motor vehicle.

14 The court may adopt by rule other criteria in this area."

15 SECTION 22. Section 291E-5, Hawaii Revised Statutes, is  
16 repealed.

17 [~~"§291E-5 Ignition interlock special fund; surcharge;~~

18 ~~indigents. (a) There is established in the state treasury a~~  
19 ~~special fund to be known as the ignition interlock special fund~~  
20 ~~to be administered by the director of transportation. The fund~~  
21 ~~shall consist of amounts collected under this section and~~  
22 ~~section 291E-6. Moneys in the fund shall be expended by the~~

1 ~~director of transportation to fund the cost of installing and~~  
2 ~~operating ignition interlock devices in the vehicles of persons~~  
3 ~~who are required to install the device but who are indigent~~  
4 ~~persons, as determined under subsection (d).~~

5 ~~(b) Every person who installs an ignition interlock device~~  
6 ~~pursuant to this chapter shall pay the ignition interlock device~~  
7 ~~vendor a surcharge of \$ \_\_\_\_\_ when the device is installed.~~  
8 ~~The surcharge shall be remitted by the ignition interlock device~~  
9 ~~vendor to the director of transportation within ten days~~  
10 ~~following the end of the month in which the surcharge was~~  
11 ~~collected. The surcharges collected by the vendor pursuant to~~  
12 ~~this subsection shall not be subject to any tax, fee, or other~~  
13 ~~assessment, nor are they considered revenue of the vendor. The~~  
14 ~~director of transportation shall deposit the surcharge amounts~~  
15 ~~into the ignition interlock special fund.~~

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

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

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- 1       ~~(1) Any individual whose income is not greater than one~~  
2           ~~hundred twenty-five per cent of the official poverty~~  
3           ~~line established by the Secretary of Health and Human~~  
4           ~~Services under the Community Services Block Grant Act,~~  
5           ~~42 United States Code Section 9902; or~~
- 6       ~~(2) Any individual who is eligible for free services under~~  
7           ~~the Older Americans Act or Developmentally Disabled~~  
8           ~~Act.~~
- 9       ~~(c) The director of transportation shall adopt rules~~  
10       ~~pursuant to chapter 91 for the purposes of this section." ]~~

11           SECTION 23. In codifying the new sections added by section  
12       2 of this Act, the revisor of statutes shall substitute  
13       appropriate section numbers for the letters used in designating  
14       the new sections in this Act.

15           SECTION 24. 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 25. Statutory material to be repealed is bracketed  
19       and stricken. New statutory material is underscored.

20           SECTION 26. This Act shall take effect on January 2, 2011.

21



**Report Title:**

Highway Safety; Ignition Interlock Program

**Description:**

Enacts the recommendations of the Ignition Interlock Implementation Task Force made pursuant to Act 171, Session Laws of Hawaii 2008. (SD1)

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