



GOV. MSG. NO. **625**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 14, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

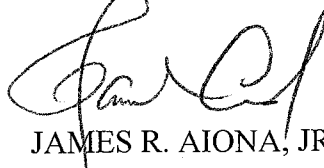
Dear Madam President and Members of the Senate:

This is to inform you that on June 14, 2010, the following bill was signed into law:

SB2897 SD2 HD3 CD1

A BILL FOR AN ACT
RELATING TO HIGHWAY SAFETY.
ACT 166 (10)

Sincerely,



JAMES R. AIONA, JR.

JAMES R. AIONA JR.

ACTING GOVERNOR

on JUN 14 2010

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

ACT 166
S.B. NO. 2897
S.D. 2
H.D. 3
C.D. 1

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
18 the period of required ignition interlock device use and



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

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

16 The Hawaii ignition interlock implementation task force had
17 multiple discussions about probation supervision of convicted
18 offenders. These discussions resulted in a recommendation to
19 the legislature in 2009 that only second and third offenders be
20 supervised using a probationary model. The task force concluded
21 that these repeat offenders pose the greatest risk to themselves
22 and to the community because they have not shown themselves



1 amenable to changing their behavior, despite intervention
2 following their first offense. This recommendation was adopted
3 by the legislature in Act 88, Session Laws of Hawaii 2009.

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

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



1 the issue of probation for convicted second and third offenders
2 be revisited and implemented.

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

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

10 "§291E-A Circumvention of, or tampering with, an ignition
11 interlock device by a person who has been restricted to
12 operating a vehicle equipped with an ignition interlock device;
13 penalties. (a) No person whose driving privileges have been
14 restricted to operating a vehicle equipped with an ignition
15 interlock device shall knowingly:

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



1 (2) Tamper with an ignition interlock device with the
2 intent 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 another person who has been
14 restricted by law to operating only a vehicle equipped
15 with an ignition interlock device;

16 (2) Tamper with an ignition interlock device with the
17 intent 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 another person who
22 has 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 [No] Except as provided in section 291E-B, no person shall
3 authorize or knowingly permit a motor vehicle or moped owned by
4 that person or under that person's control to be driven upon any
5 highway by any person who is not authorized under law to drive
6 the motor vehicle or moped."

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

9 "(a) Whenever a driver's license has been suspended or
10 revoked:

11 (1) Pursuant to section 291E-65 or part III of chapter
12 291E, except as provided in section 291E-41(f);

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

19 (3) In the case of minors, pursuant to part V of chapter
20 571,

21 the license shall not at any time thereafter be issued to the
22 person whose license has been suspended or revoked, nor shall



1 the person thereafter operate a motor vehicle, unless and until
2 the person has furnished and thereafter maintains proof of
3 financial responsibility; provided that this section shall not
4 apply to a license suspended or revoked pursuant to section
5 291E-61(b) (1) or 291E-64(b) (1), any conviction of a moving
6 violation, any administrative license suspension pursuant to
7 chapter 291A, or the first conviction within a five-year period
8 for driving without a valid motor vehicle insurance policy.

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

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

13 1. By adding a new definition to be appropriately inserted
14 and to read:

15 "Valid license" means a license that:

16 (1) Is issued by an authorized licensing official in any
17 state;

18 (2) Authorizes an individual to operate a motor vehicle on
19 public streets, roads, or highways; and

20 (3) Has not expired or been revoked, suspended, or
21 canceled."



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

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

12 3. By repealing the definition of "highly intoxicated
13 driver":

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

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



1 **"§291E-3 Evidence of intoxication.** (a) In any criminal
2 prosecution for a violation of section 291E-61 or 291E-61.5 or
3 in any proceeding under part III:

4 (1) .08 or more grams of alcohol per one hundred
5 milliliters or cubic centimeters of the person's
6 blood;

7 (2) .08 or more grams of alcohol per two hundred ten
8 liters of the person's breath; or

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

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

17 (b) In any criminal prosecution for a violation of section
18 291E-61 or 291E-61.5, the amount of alcohol found in the
19 defendant's blood or breath within three hours after the time of
20 the alleged violation as shown by chemical analysis or other
21 approved analytical techniques of the defendant's blood or
22 breath shall be competent evidence concerning whether the



1 defendant was under the influence of an intoxicant at the time
2 of the alleged violation and shall give rise to the following
3 presumptions:

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

11 (2) If there were in excess of .05 grams of alcohol per
12 one hundred milliliters or cubic centimeters of
13 defendant's blood or .05 grams of alcohol per two
14 hundred ten liters of defendant's breath, but less
15 than .08 grams of alcohol per one hundred milliliters
16 or cubic centimeters of defendant's blood or .08 grams
17 of alcohol per two hundred ten liters of defendant's
18 breath, that fact may be considered with other
19 competent evidence in determining whether the
20 defendant was under the influence of alcohol at the
21 time of the alleged violation, but shall not of itself
22 give rise to any presumption.



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

3 ~~(1) .15 or more grams of alcohol per one hundred~~
4 ~~milliliters or cubic centimeters of the person's~~
5 ~~blood; or~~

6 ~~(2) .15 or more grams of alcohol per two hundred ten~~
7 ~~liters of the person's breath,~~

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

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

20 SECTION 7. Section 291E-5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "~~§291E-5 Ignition interlock [special fund, surcharge,~~
2 ~~indigents.] user affordability. [(a) There is established in~~
3 ~~the state treasury a special fund to be known as the ignition~~
4 ~~interlock special fund to be administered by the director of~~
5 ~~transportation. The fund shall consist of amounts collected~~
6 ~~under this section and section 291E-6. Moneys in the fund shall~~
7 ~~be expended by the director of transportation to fund the cost~~
8 ~~of installing and operating ignition interlock devices in the~~
9 ~~vehicles of persons who are required to install the device but~~
10 ~~who are indigent persons, as determined under subsection (d).~~
11 ~~(b) Every person who installs an ignition interlock device~~
12 ~~pursuant to this chapter shall pay the ignition interlock device~~
13 ~~vendor a surcharge of \$ _____ when the device is installed.~~
14 ~~The surcharge shall be remitted by the ignition interlock device~~
15 ~~vendor to the director of transportation within ten days~~
16 ~~following the end of the month in which the surcharge was~~
17 ~~collected. The surcharges collected by the vendor pursuant to~~
18 ~~this subsection shall not be subject to any tax, fee, or other~~
19 ~~assessment, nor are they considered revenue of the vendor. The~~
20 ~~director of transportation shall deposit the surcharge amounts~~
21 ~~into the ignition interlock special fund.~~



1 ~~(c) The cost of installing and operating ignition~~
2 ~~interlock devices required by this chapter for indigent persons~~
3 ~~shall be paid by the director of transportation from the~~
4 ~~ignition interlock special fund. Whether a person is an~~
5 ~~indigent person shall be determined pursuant to subsection (d)~~
6 ~~by the director or the court, as appropriate.~~

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

8 ~~(1) Any individual whose income is not greater than one~~
9 ~~hundred twenty five per cent of the official poverty~~
10 ~~line established by the Secretary of Health and Human~~
11 ~~Services under the Community Services Block Grant Act,~~
12 ~~42 United States Code Section 9902, or~~

13 ~~(2) Any individual who is eligible for free services under~~
14 ~~the Older Americans Act or Developmentally Disabled~~
15 ~~Act.~~

16 ~~(e) The director of transportation shall adopt rules~~
17 ~~pursuant to chapter 91 for the purposes of this section.] The~~
18 ~~director of transportation shall contract with the selected~~
19 ~~ignition interlock vendor to provide partial financial relief~~
20 ~~for the installation and the periodic calibration charges to~~
21 ~~offenders who apply for such assistance and who are recipients,~~
22 ~~at the time of license revocation or suspension, of either food~~



1 stamps under the Supplemental Nutrition Assistance Program, or
2 free services under the Older Americans Act or Developmentally
3 Disabled Assistance and Bill of Rights Act."

4 SECTION 8. Section 291E-6, Hawaii Revised Statutes, is
5 amended to read as follows:

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

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

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

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



1 ~~qualified to test ignition interlock devices or~~
2 ~~reference samples and is approved by the United States~~
3 ~~Department of Transportation. The nationally~~
4 ~~recognized certification organization must be able to~~
5 ~~administer performance tests of an ignition interlock~~
6 ~~device or a sample provided by the vendor];~~

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

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

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

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

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



- 1 (1) Install only an ignition interlock device that is
- 2 certified pursuant to this section;
- 3 (2) Offer or contract for ignition interlock device
- 4 installation and maintenance statewide;
- 5 (3) Train drivers who are required to install an ignition
- 6 interlock device, pursuant to chapter 291E [~~or 804~~],
- 7 in how to use the device;
- 8 (4) Schedule the driver for all necessary readings and
- 9 maintenance of the device; and
- 10 (5) Provide periodic reports regarding the use of each
- 11 ignition interlock device installed pursuant to
- 12 chapter 291E, including incidents of test failure,
- 13 attempts to circumvent the device, and dates, times,
- 14 and distances the vehicle was driven.
- 15 (d) The vendor selected for installation and maintenance
- 16 of ignition interlock devices pursuant to chapter 291E shall be
- 17 [~~certified~~] audited annually by the director of transportation
- 18 pursuant to this section and the rules adopted thereunder. [~~The~~
- 19 ~~vendor shall pay a certification fee to the director of~~
- 20 ~~transportation who shall deposit the fee into the ignition~~
- 21 ~~interlock special fund established pursuant to section 291E 5.]~~



1 The director may require the vendor to pay for all or part of
2 the costs incurred in conducting the audit.

3 (e) The director of transportation shall adopt rules
4 pursuant to chapter 91 necessary for the purposes of this
5 section."

6 SECTION 9. Section 291E-7, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

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

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

14 (2) The maximum of which may be \$25 if the violation is an
15 offense under [+]section[+] 291E-61(a) (1),
16 291E-61(a) (3), or 291E-61(a) (4);

17 (3) The maximum of which may be \$50 if the violation is an
18 offense under [+]section[+] 291E-61(a) (2) or 291E-61.5
19 or ~~[the offense under [section] 291E 61(a) (3) or 291E-~~
20 ~~61(a) (4) was committed by a highly intoxicated driver~~
21 ~~as defined by section 291E 1, or]~~ if the offense under
22 [+]section[+] 291E-61(a) (3) or 291E-61(a) (4) is a



1 second or subsequent offense that occurred within five
2 years of the first offense."

3 SECTION 10. Section 291E-15, Hawaii Revised Statutes, is
4 amended to read as follows:

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

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

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

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



1 SECTION 11. Section 291E-31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§291E-31 Notice of administrative revocation; effect.** As
4 used in this part, the notice of administrative revocation:

5 (1) Establishes that the respondent's license and
6 privilege to operate a vehicle in the State or on or
7 in the waters of the State shall be terminated:

8 (A) Thirty days after the date the notice of
9 administrative revocation is issued in the case
10 of an alcohol related offense;

11 (B) Forty-four days after the date the notice of
12 administrative revocation is issued in the case
13 of a drug related offense; or

14 (C) Such later date as is established by the director
15 under section 291E-38,

16 if the director administratively revokes the
17 respondent's license and privilege;

18 (2) Establishes that the registration of any motor vehicle
19 registered to a respondent who is a repeat intoxicated
20 driver [~~or a highly intoxicated driver~~] shall be

21 terminated thirty days after the date of an arrest

22 pursuant to section 291E-33(c);



1 (3) Establishes the date on which administrative
2 revocation proceedings against the respondent were
3 initiated; ~~and~~

4 (4) Serves as a temporary permit, if applicable, to
5 operate a vehicle as provided in section 291E-33 ~~[=]~~;
6 and

7 (5) Notifies the respondent that the respondent shall keep
8 an ignition interlock device installed and operating
9 in any vehicle the respondent operates during the
10 revocation period if the respondent had a valid
11 license at the time of the arrest."

12 SECTION 12. Section 291E-33, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

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



1 revoked. The applicable police department, upon determining
2 that the respondent is a repeat intoxicated driver [~~or highly~~
3 ~~intoxicated driver~~], shall notify the [~~appropriate county~~
4 director of [~~financee~~] the appropriate county agency to enter a
5 stopper on the motor vehicle registration files to prevent the
6 respondent from conducting any motor vehicle transactions,
7 except as permitted under this part."

8 SECTION 13. Section 291E-34, Hawaii Revised Statutes, is
9 amended as follows:

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

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

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

21 (2) That the respondent may request the director, within
22 six days of the date the decision is mailed, to



1 schedule an administrative hearing to review the
2 administrative revocation;

3 (3) That, if the respondent's request for an
4 administrative hearing is received by the director
5 within six days of the date the decision was mailed,
6 the hearing shall be scheduled to commence:

7 (A) No later than twenty-five days after the date of
8 the issuance of the notice of administrative
9 revocation in the case of an alcohol related
10 offense; and

11 (B) No later than thirty-nine days after the date of
12 the issuance of the notice of administrative
13 revocation in the case of a drug related offense;

14 (4) The procedure to request an administrative hearing;

15 (5) That failure to request an administrative hearing
16 within the time provided shall cause the
17 administrative revocation to take effect for the
18 period and under the conditions established by the
19 director in the decision;

20 (6) That the respondent may regain the right to a hearing
21 by requesting the director, within sixty days after



1 the issuance of the notice of administrative
2 revocation, to schedule a hearing;

3 (7) That the director shall schedule the hearing to
4 commence no later than thirty days after a request
5 under paragraph (6) is received, but that, except as
6 provided in section 291E-38(k), the temporary permit,
7 and temporary motor vehicle registration and temporary
8 number plates if applicable, shall not be extended if
9 the respondent fails to request an administrative
10 hearing within the initial six-day period provided for
11 that purpose;

12 (8) That failure to attend the hearing shall cause the
13 administrative revocation to take effect for the
14 period and under the conditions indicated;

15 (9) The duration of the administrative revocation and
16 other conditions that may be imposed, including:
17 referral to the driver's education program for an
18 assessment of the respondent's substance abuse or
19 dependence and the need for treatment; ~~and~~

20 (10) That, pursuant to section 291E-48, the director may
21 grant a special motor vehicle registration to a
22 qualified household member or to a co-owner of any



1 motor vehicle owned by the respondent, upon a
2 determination that the person is completely dependent
3 on the motor vehicle for the necessities of life;
4 provided that the special motor vehicle registration
5 shall not be valid for use by the respondent [-]; and

6 (11) That the respondent shall obtain an ignition interlock
7 permit in order to operate a vehicle during the
8 revocation period if the respondent had a valid
9 license at the time of the arrest."

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

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

- 16 (1) The effective date of the administrative revocation;
17 (2) The duration of the administrative revocation;
18 (3) If applicable, the date by which any outstanding motor
19 vehicle number plates issued to the respondent must be
20 surrendered to the director;
21 (4) If applicable, that failure to surrender any motor
22 vehicle number plates as required is a misdemeanor;



1 ~~[(3)]~~ (5) Other conditions that may be imposed by law,
 2 including the use of an ignition interlock device; and
 3 ~~[(4)]~~ (6) The right to obtain judicial review."

4 SECTION 14. Section 291E-38, Hawaii Revised Statutes, is
 5 amended by amending subsection (1) to read as follows:

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

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

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

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

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

19 "**§291E-41 Effective date, conditions, and period of**
 20 **administrative revocation; criteria.** (a) Unless an
 21 administrative revocation is reversed or the temporary permit
 22 ~~[is]~~, and temporary motor vehicle registration and temporary



1 number plates, if applicable, are extended by the director,
2 administrative revocation shall become effective on the day
3 specified in the notice of administrative revocation. Except as
4 provided in section [~~291E-44,]~~ 291E-44.5, no license and
5 privilege to operate a vehicle shall be restored under any
6 circumstances during the administrative revocation period. Upon
7 completion of the administrative revocation period, the
8 respondent may reapply and be reissued a license pursuant to
9 section 291E-45.

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

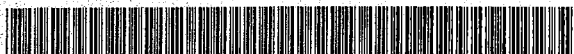
20 (1) A one year revocation of license and privilege to
21 operate a vehicle, if the respondent's record shows no
22 prior alcohol enforcement contact or drug enforcement



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



- 1 during the [~~five~~] ten years preceding the date the
2 notice of administrative revocation was issued; [~~or~~]
- 3 (5) For respondents under the age of eighteen years who
4 were arrested for a violation of section 291E-61 or
5 291E-61.5, revocation of license and privilege to
6 operate a vehicle for the appropriate revocation
7 period provided in paragraphs (1) to (4) or in
8 subsection [~~(e)~~] (d); provided that the respondent
9 shall be prohibited from driving during the period
10 preceding the respondent's eighteenth birthday and
11 shall thereafter be subject to the ignition interlock
12 requirement of this subsection for the balance of the
13 revocation period; or
- 14 (6) For respondents, other than those excepted pursuant to
15 section 491E-44.5(b), who do not install an ignition
16 interlock device in [~~the respondent's vehicle~~] any
17 vehicle the respondent operates during the revocation
18 period, revocation of license and privilege to operate
19 a vehicle for the period of revocation provided in
20 paragraphs (1) to (5) or in subsection (c); provided
21 that:



1 (A) The respondent shall be absolutely prohibited
 2 from driving during the revocation period and
 3 subject to the penalties provided by section
 4 291E-62 if the respondent drives during the
 5 revocation period; and

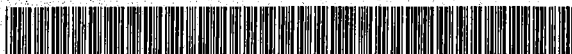
6 (B) The director shall not issue an ignition
 7 interlock permit to the respondent pursuant to
 8 section 291E-44.5;

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

14 (c) Whenever a motor vehicle registration is revoked under
 15 this part, the director shall cause the revocation to be entered
 16 electronically into the motor vehicle registration file of the
 17 respondent.

18 [~~(e)~~] (d) If a respondent has refused to be tested after
 19 being informed:

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



1 (2) Of the sanctions of this part and then asked if the
2 person still refuses to submit to a breath, blood, or
3 urine test, in compliance with the requirements of
4 section 291E-15,
5 the revocation imposed under subsection (b) (1), (2), (3), or (4)
6 shall be for a period of two years, three years, four years, and
7 ten years, respectively.

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

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



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

4 SECTION 16. Section 291E-44.5, Hawaii Revised Statutes, is
5 amended by amending subsections (a) and (b) to read as follows:

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

13 (2) Notwithstanding any other law to the contrary, the
14 director shall not issue an ignition interlock permit
15 to:

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

19 (B) A respondent who does not hold a valid license at
20 the time of arrest for the violation of section
21 291E-61; or



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

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

16 (2) A request made pursuant to paragraph (1) shall be
17 accompanied by:

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



1 prohibited from driving a vehicle not equipped
2 with an ignition interlock device; and

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

11 SECTION 17. Section 291E-45, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

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

16 (1) Submit proof to the director of compliance with all
17 conditions imposed by the director;

18 (2) Obtain a certified statement from the director
19 indicating eligibility for registration of a motor
20 vehicle;



1 (3) Present the certified statement to the [appropriate
2 county] director of [~~finance,~~] the appropriate county
3 agency; and

4 (4) Successfully complete each requirement, as provided in
5 chapter 286, for obtaining a new certificate of
6 registration for a motor vehicle in this State,
7 including payment of all applicable fees."

8 SECTION 18. Section 291E-48, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Anytime after the effective date of revocation or
11 after the administrative hearing decision is mailed pursuant to
12 section 291E-38(j), a qualified household member or co-owner of
13 a motor vehicle with a respondent who has had a motor vehicle
14 registration revoked under this part may submit a sworn
15 statement to the director requesting a special motor vehicle
16 registration. The director may grant the request upon
17 determining that the following conditions have been met:

- 18 (1) The applicant is a household member of the
19 respondent's or a co-owner of the vehicle;
- 20 (2) The applicant has a license that has not expired or
21 been suspended or revoked;



- 1 (3) The applicant is completely dependent on the motor
2 vehicle for the necessities of life; [and]
3 (4) The director finds that the applicant will take
4 reasonable precautions to ensure that the respondent
5 will not drive the vehicle[-]; and
6 (5) The respondent does not have a valid ignition
7 interlock permit.

8 A person to whom a special motor vehicle registration has been
9 granted shall apply to the [~~appropriate county~~] director of
10 [~~finance~~] the appropriate county agency for special series
11 number plates, as provided in section 249-9.4."

12 SECTION 19. Section 291E-61, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§291E-61 Operating a vehicle under the influence of an**
15 **intoxicant.** (a) A person commits the offense of operating a
16 vehicle under the influence of an intoxicant if the person
17 operates or assumes actual physical control of a vehicle:

- 18 (1) While under the influence of alcohol in an amount
19 sufficient to impair the person's normal mental
20 faculties or ability to care for the person and guard
21 against casualty;



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

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

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

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

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

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

18 (B) One-year revocation of license and privilege to
19 operate a vehicle during the revocation period
20 and installation during the revocation period of
21 an ignition interlock device on any vehicle
22 operated by the person;



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

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

3 (ii) Not less than forty-eight hours and not more
4 than five days of imprisonment; or

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

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

9 (E) ~~[May be charged a]~~ A surcharge, if the court so
10 orders, of up to \$25 to be deposited into the
11 trauma system special fund ~~[if the court so~~
12 ~~orders]~~;

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 for not less than eighteen months nor
20 more than two years of license and privilege to
21 operate a vehicle during the ~~[probation]~~
22 revocation period and installation during the



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

4 (B) Either one of the following:

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

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

11 (C) A fine of not less than \$500 but not more than
12 \$1,500;

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

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

19 (3) For an offense that occurs within five years of two
20 prior convictions for offenses under this section or
21 section 291E-4 (a) ~~[, and notwithstanding section 706-~~

1 ~~623, by probation for two years on the following~~
2 ~~conditions]:~~

3 (A) A fine of not less than \$500 but not more than
4 \$2,500;

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

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

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

16 (E) [~~May be charged a]~~ A surcharge of up to \$50 if
17 the court so orders, to be deposited into the
18 trauma system special fund [~~if the court so~~
19 ~~orders];~~

20 (4) In addition to a sentence imposed under paragraphs (1)
21 through (3), any person eighteen years of age or older
22 who is convicted under this section and who operated a



1 vehicle with a passenger, in or on the vehicle, who
2 was younger than fifteen years of age, shall be
3 sentenced to an additional mandatory fine of \$500 and
4 an additional mandatory term of imprisonment of forty-
5 eight hours; provided that the total term of
6 imprisonment for a person convicted under this
7 paragraph shall not exceed the maximum term of
8 imprisonment provided in paragraph (1), (2), or (3),
9 as applicable. Notwithstanding ~~[paragraph]~~ paragraphs
10 (1) and (2), the ~~[probation]~~ revocation period for a
11 person sentenced under this paragraph shall be not
12 less than two years; and

13 (5) If the person demonstrates to the court that the
14 person:

15 (A) Does not own or have the use of a vehicle in
16 which the person can install an ignition
17 interlock device during the ~~[probation]~~
18 revocation period; or

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

21 the person shall be absolutely prohibited from driving during
22 the period of ~~[probation]~~ applicable revocation provided in



1 paragraphs (1) to (4); provided that the court shall not issue
2 an ignition interlock permit pursuant to subsection (i) and the
3 person shall be subject to the penalties provided by section
4 291E-62 if the person drives during the [~~probation~~] applicable
5 revocation period.

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

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

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

13 [~~2~~] (3) A defendant who holds either a category 4 license
14 under section 286-102(b) or a commercial driver's
15 license under section 286-239(b), unless the ignition
16 interlock permit is restricted to a category 1, 2, or
17 3 license under section 286-102(b).

18 (d) [~~The~~] Except as provided in subsection (c), the court
19 may issue a separate permit authorizing a defendant to operate a
20 vehicle owned by the defendant's employer during the period of
21 revocation without installation of an ignition interlock device
22 if the defendant is gainfully employed in a position that



1 requires driving and the defendant will be discharged if
2 prohibited from driving a vehicle not equipped with an ignition
3 interlock device.

4 (e) A request made pursuant to subsection (d) shall be
5 accompanied by:

6 (1) A sworn statement from the defendant containing facts
7 establishing that the defendant currently is employed
8 in a position that requires driving and that the
9 defendant will be discharged if prohibited from
10 driving a vehicle not equipped with an ignition
11 interlock device; and

12 (2) A sworn statement from the defendant's employer
13 establishing that the employer will, in fact,
14 discharge the defendant if the defendant is prohibited
15 from driving a vehicle not equipped with an ignition
16 interlock device and identifying the specific vehicle
17 and hours of the day, not to exceed twelve hours per
18 day, the defendant will drive for purposes of
19 employment.

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



- 1 (1) Only during specified hours of employment, not to
2 exceed twelve hours per day, and only for activities
3 solely within the scope of the employment;
- 4 (2) Only the vehicle specified; and
- 5 (3) Only if the permit is kept in the defendant's
6 possession while operating the employer's vehicle.
- 7 (g) Notwithstanding any other law to the contrary, any:
- 8 (1) Conviction under this section, section 291E-4(a), or
9 section 291E-61.5;
- 10 (2) Conviction in any other state or federal jurisdiction
11 for an offense that is comparable to operating or
12 being in physical control of a vehicle while having
13 either an unlawful alcohol concentration or an
14 unlawful drug content in the blood or urine or while
15 under the influence of an intoxicant or habitually
16 operating a vehicle under the influence of an
17 intoxicant; or
- 18 (3) Adjudication of a minor for a law violation that, if
19 committed by an adult, would constitute a violation of
20 this section or an offense under section 291E-4(a), or
21 section 291E-61.5 [7],



1 shall be considered a prior conviction for the purposes of
2 imposing sentence under this section. Any judgment on a verdict
3 or a finding of guilty, a plea of guilty or nolo contendere, or
4 an adjudication, in the case of a minor, that at the time of the
5 offense has not been expunged by pardon, reversed, or set aside
6 shall be deemed a prior conviction under this section. No
7 license and privilege [~~suspension or~~] revocation shall be
8 imposed pursuant to this section if the person's license and
9 privilege to operate a vehicle has previously been
10 administratively revoked pursuant to part III for the same act;
11 provided that, if the administrative [~~suspension or~~] revocation
12 is subsequently reversed, the person's license and privilege to
13 operate a vehicle shall be [~~suspended or~~] revoked as provided in
14 this section. There shall be no requirement for the
15 installation of an ignition interlock device pursuant to this
16 section if the requirement has previously been imposed pursuant
17 to part III for the same act; provided that, if the requirement
18 is subsequently reversed, a requirement for the installation of
19 an ignition interlock device shall be imposed as provided in
20 this section.

21 (h) Whenever a court sentences a person pursuant to
22 subsection (b), it also shall require that the offender be



1 referred to the driver's education program for an assessment, by
2 a certified substance abuse counselor, of the offender's
3 substance abuse or dependence and the need for appropriate
4 treatment. The counselor shall submit a report with
5 recommendations to the court. The court shall require the
6 offender to obtain appropriate treatment if the counselor's
7 assessment establishes the offender's substance abuse or
8 dependence. All costs for assessment and treatment shall be
9 borne by the offender.

- 10 (i) Upon proof that the defendant has [~~installed~~]:
11 (1) Installed an ignition interlock device in [the
12 defendant's] any vehicle the defendant operates
13 pursuant to subsection (b) [7]; and
14 (2) Obtained motor vehicle insurance or self-insurance
15 that complies with the requirements under either
16 section 431:10C-104 or section 431:10C-105,

17 the court shall issue an ignition interlock permit that will
18 allow the defendant to drive a vehicle equipped with an ignition
19 interlock device during the revocation period.

20 (j) Notwithstanding any other law to the contrary,
21 whenever a court revokes a person's driver's license pursuant to
22 this section, the examiner of drivers shall not grant to the



1 person a new driver's license until the expiration of the period
2 of revocation determined by the court. After the period of
3 revocation is completed, the person may apply for and the
4 examiner of drivers may grant to the person a new driver's
5 license.

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

15 ~~[(1) 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).]~~

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

20 SECTION 20. Section 291E-62, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§291E-62 Operating a vehicle after license and privilege
2 have been suspended or revoked for operating a vehicle under the
3 influence of an intoxicant; penalties. (a) No person whose
4 license and privilege to operate a vehicle have been revoked,
5 suspended, or otherwise restricted pursuant to this section or
6 to part III or section 291E-61 or 291E-61.5, or to part VII or
7 part XIV of chapter 286 or section 200-81, 291-4, 291-4.4,
8 291-4.5, or 291-7 as those provisions were in effect on
9 December 31, 2001, shall operate or assume actual physical
10 control of any vehicle:

- 11 (1) In violation of any restrictions placed on the
12 person's license;
- 13 (2) While the person's license or privilege to operate a
14 vehicle remains suspended or revoked; or
- 15 (3) Without installing an ignition interlock device
16 required by this chapter [~~+~~ ~~or~~
- 17 ~~(4) After disabling or circumventing an ignition interlock~~
18 ~~device required by this chapter].~~

19 (b) Any person convicted of violating this section shall
20 be sentenced as follows [~~+~~] without possibility of probation or
21 suspension of sentence:



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

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

8 (B) A fine of not less than \$250 but not more than
9 \$1,000; [~~and~~]

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

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

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

19 (A) Thirty days imprisonment;

20 (B) A \$1,000 fine; [~~and~~]

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



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

4 (3) For an offense that occurs within five years of two or
5 more prior convictions for offenses under this
6 section, section 291E-A, or ~~[under]~~ section 291-4.5 as
7 that section was in effect on December 31, 2001[+], or
8 any combination thereof:

9 (A) One year imprisonment;

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

11 (C) Permanent revocation of the person's license and
12 privilege to operate a vehicle~~[-]~~; and

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

16 ~~[The period of revocation shall commence upon the release of the~~
17 ~~person from the period of imprisonment imposed pursuant to this~~
18 ~~section.]~~

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



1 SECTION 21. Section 706-623, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) When the court has sentenced a defendant to be placed
4 on probation, the period of probation shall be as follows,
5 unless the court enters the reason therefor on the record and
6 sentences the defendant to a shorter period of probation:

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

8 (b) Five years upon conviction of a class B or class C
9 felony;

10 (c) One year upon conviction of a misdemeanor; except that
11 upon a conviction under section 586-4, 586-11, or
12 709-906, the court may sentence the defendant to a
13 period of probation not exceeding two years; or

14 (d) [~~Except as provided in paragraph (e), six~~] Six months
15 upon conviction of a petty misdemeanor; provided that
16 up to one year may be imposed upon a finding of good
17 cause [~~;~~ ~~or~~]

18 (e) ~~Eighteen months to two years upon conviction under~~
19 ~~section 291E-61(b)(2), and two years upon a conviction~~
20 ~~under section 291E-61(b)(3)].~~

21 The court, on application of a probation officer, on application
22 of the defendant, or on its own motion, may discharge the



1 defendant at any time. Prior to granting early discharge, the
2 court shall afford the prosecuting attorney an opportunity to be
3 heard. The terms of probation provided in this part, other than
4 in this section, shall not apply to sentences of probation
5 imposed under section 706-606.3."

6 SECTION 22. Section 853-4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§853-4 Chapter not applicable; when.** This chapter shall
9 not apply when:

- 10 (1) The offense charged involves the intentional, knowing,
11 reckless, or negligent killing of another person;
- 12 (2) The offense charged is:
- 13 (A) A felony that involves the intentional, knowing,
14 or reckless bodily injury, substantial bodily
15 injury, or serious bodily injury of another
16 person; or
- 17 (B) A misdemeanor or petty misdemeanor that carries a
18 mandatory minimum sentence and that involves the
19 intentional, knowing, or reckless bodily injury,
20 substantial bodily injury, or serious bodily
21 injury of another person;



- 1 (3) The offense charged involves a conspiracy or
- 2 solicitation to intentionally, knowingly, or
- 3 recklessly kill another person or to cause serious
- 4 bodily injury to another person;
- 5 (4) The offense charged is a class A felony;
- 6 (5) The offense charged is nonprobationable;
- 7 (6) The defendant has been convicted of any offense
- 8 defined as a felony by the Hawaii Penal Code or has
- 9 been convicted for any conduct that if perpetrated in
- 10 this State would be punishable as a felony;
- 11 (7) The defendant is found to be a law violator or
- 12 delinquent child for the commission of any offense
- 13 defined as a felony by the Hawaii Penal Code or for
- 14 any conduct that if perpetrated in this State would
- 15 constitute a felony;
- 16 (8) The defendant has a prior conviction for a felony
- 17 committed in any state, federal, or foreign
- 18 jurisdiction;
- 19 (9) A firearm was used in the commission of the offense
- 20 charged;
- 21 (10) The defendant is charged with the distribution of a
- 22 dangerous, harmful, or detrimental drug to a minor;



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

5 (12) The defendant has been charged with a misdemeanor
6 offense and has been previously granted deferred
7 acceptance of guilty plea status for a prior felony,
8 misdemeanor, or petty misdemeanor for which the period
9 of deferral has not yet expired;

10 (13) The offense charged is:

- 11 (A) Escape in the first degree;
- 12 (B) Escape in the second degree;
- 13 (C) Promoting prison contraband in the first degree;
- 14 (D) Promoting prison contraband in the second degree;
- 15 (E) Bail jumping in the first degree;
- 16 (F) Bail jumping in the second degree;
- 17 (G) Bribery;
- 18 (H) Bribery of a witness;
- 19 (I) Intimidating a witness;
- 20 (J) Bribery of or by a juror;
- 21 (K) Intimidating a juror;
- 22 (L) Jury tampering;



- 1 (M) Promoting prostitution in the first degree;
- 2 (N) Promoting prostitution in the second degree;
- 3 (O) Promoting prostitution in the third degree;
- 4 (P) Abuse of family or household members;
- 5 (Q) Sexual assault in the second degree;
- 6 (R) Sexual assault in the third degree;
- 7 (S) A violation of an order issued pursuant to
- 8 chapter 586;
- 9 (T) Promoting child abuse in the second degree;
- 10 (U) Promoting child abuse in the third degree;
- 11 (V) Electronic enticement of a child in the first
- 12 degree; or
- 13 (W) Electronic enticement of a child in the second
- 14 degree; [~~or~~
- 15 ~~(X) An offense under part IV, chapter 291E,]~~
- 16 (14) The defendant has been charged with:
- 17 (A) Knowingly or intentionally falsifying any report
- 18 required under chapter 11, subpart B of part XII,
- 19 with the intent to circumvent the law or deceive
- 20 the campaign spending commission; or
- 21 (B) Violating section 11-201 or 11-202; or



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

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

6 SECTION 23. In codifying the new sections added by section
7 2 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

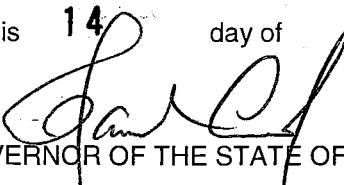
10 SECTION 24. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun before its effective date.

13 SECTION 25. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 26. This Act shall take effect on January 1, 2011
16 and the provisions of this Act shall be incorporated with the
17 provisions of sections 2 through 11 of Act 88, Session Laws of
18 Hawaii 2009.

19

APPROVED this 14 day of JUN, 2010


GOVERNOR OF THE STATE OF HAWAII
JAMES R. AIONA JR.