

JAN 22 2010

A BILL FOR AN ACT

RELATING TO OPERATING A VEHICLE WHILE INTOXICATED.

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

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

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

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



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

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

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

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



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

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

5 (A) Any minor;

6 ~~[(B) Any person at the time under the influence of~~
7 ~~liquor,~~

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

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



1 (2) Permit any liquor to be consumed on the premises of
2 the licensee or on any premises connected therewith,
3 whether there purchased or not, except as permitted by
4 the terms of its license;

5 (3) Permit any liquor to be sold or served by any person
6 eighteen to twenty years of age except in licensed
7 establishments where selling or serving the
8 intoxicating liquor is part of the minor's employment,
9 and where there is proper supervision of these minor
10 employees to ensure that the minors shall not consume
11 the intoxicating liquor;

12 (4) Permit any liquor to be sold or served by any person
13 below the age of eighteen years upon any licensed
14 premises, except in individually specified licensed
15 establishments found to be otherwise suitable by the
16 liquor commission in which an approved program of job
17 training and employment for dining room waiters and
18 waitresses is being conducted in cooperation with the
19 University of Hawaii, the state community college
20 system, or a federally sponsored personnel development
21 and training program, under arrangements that ensure
22 proper control and supervision of employees;



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



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

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

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



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

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

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

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

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

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

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



1 counseling, or other comparable program deemed
2 appropriate by the court;

3 (B) Ninety-day prompt suspension of license and
4 privilege to operate a vehicle during the
5 suspension period, or the court may impose, in
6 lieu of the ninety-day prompt suspension of
7 license, a minimum thirty-day prompt suspension
8 of license with absolute prohibition from
9 operating a vehicle and, for the remainder of the
10 ninety-day period, a restriction on a category
11 (1), (2), or (3) license under section 286-102(b)
12 that allows the person to drive for limited work-
13 related purposes and to participate in substance
14 abuse treatment programs;

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

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



1 (E) ~~[May be charged]~~ If the court so orders, a
2 surcharge of up to \$25 to be deposited into the
3 trauma system special fund ~~[if the court so~~
4 ~~orders]~~;

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

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

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

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



- 1 (iii) A fine of not less than \$150 but not more
- 2 than \$1,000;
- 3 (D) A surcharge of \$25 to be deposited into the
- 4 neurotrauma special fund; ~~and~~
- 5 (E) ~~[May be charged]~~ If the court so orders, a
- 6 surcharge of up to \$50 to be deposited into the
- 7 trauma system special fund ~~[if the court so~~
- 8 ~~orders]~~; and
- 9 (F) By order of the court, seizure and impoundment
- 10 for a period of one year of any vehicle used in
- 11 the commission of the offense, whether or not
- 12 owned by the defendant, at the sole cost and
- 13 expense of the owner of the vehicle;
- 14 (3) For an offense that occurs within five years of a
- 15 prior conviction for an offense under this section or
- 16 section 291E-4(a) by:
 - 17 (A) Prompt suspension of license and privilege to
 - 18 operate a vehicle for a period of one year with
 - 19 an absolute prohibition from operating a vehicle
 - 20 during the suspension period;
 - 21 (B) Either one of the following:



- 1 (i) Not less than two hundred forty hours of
- 2 community service work; or
- 3 (ii) Not less than five days but not more than
- 4 fourteen days of imprisonment of which at
- 5 least forty-eight hours shall be served
- 6 consecutively;
- 7 (C) A fine of not less than \$500 but not more than
- 8 \$1,500;
- 9 (D) A surcharge of \$25 to be deposited into the
- 10 neurotrauma special fund; ~~[and]~~
- 11 (E) ~~[May be charged]~~ If the court so orders, a
- 12 surcharge of up to \$50 to be deposited into the
- 13 trauma system special fund ~~[if the court so~~
- 14 ~~orders];~~
- 15 (F) Enrollment in and completion of a substance abuse
- 16 rehabilitation program, including education and
- 17 counseling, or other comparable program of a
- 18 duration deemed appropriate by the court; and
- 19 (G) By order of the court, seizure and impoundment
- 20 for a period of one year of any vehicle used in
- 21 the commission of the offense, whether or not



1 owned by the defendant, at the sole cost and
2 expense of the owner of the vehicle;

3 (4) For an offense that occurs within five years of two
4 prior convictions for offenses under this section or
5 section 291E-4(a):

6 (A) A fine of not less than \$500 but not more than
7 \$2,500;

8 (B) Revocation of license and privilege to operate a
9 vehicle for a period not less than one year but
10 not more than five years;

11 (C) [~~Not less than ten days but not more than thirty~~
12 ~~days imprisonment of which at least forty eight~~
13 ~~hours shall be served consecutively;~~] A mandatory
14 minimum sentence of one year of imprisonment;

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

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

21 (F) Either one of the following:



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

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

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

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



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

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

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

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

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

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



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

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



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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

3 (E) ~~[May be charged]~~ If the court so orders, a
4 surcharge of up to \$25 to be deposited into the
5 trauma system special fund ~~[if the court so~~
6 ~~orders]~~; and

7 (F) If the offense was committed by a highly
8 intoxicated driver, then seizure and impoundment
9 of the vehicle used in the commission of the
10 offense at the sole cost and expense of the owner
11 of the vehicle by order of the court, whether or
12 not the vehicle owned by the defendant;

13 (2) For an offense that occurs within five years of a
14 prior conviction for an offense under this section or
15 section 291E-4(a), and notwithstanding section
16 706-623, by probation for not less than eighteen
17 months nor more than two years on the following
18 conditions:

19 (A) Revocation of license and privilege to operate a
20 vehicle during the probation period and
21 installation during the probation period of an



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

3 (B) Either one of the following:

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

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

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

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

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

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

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



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

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

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

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

16 (C) [~~Up to five days imprisonment of which at least~~
17 ~~forty eight hours shall be served consecutively;~~]

18 A mandatory minimum sentence of one year of
19 imprisonment;

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



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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

16 (2) Only the vehicle specified; and

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

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

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



1 (2) Conviction in any other state or federal jurisdiction
2 for an offense that is comparable to operating or
3 being in physical control of a vehicle while having
4 either an unlawful alcohol concentration or an
5 unlawful drug content in the blood or urine or while
6 under the influence of an intoxicant or habitually
7 operating a vehicle under the influence of an
8 intoxicant; or

9 (3) Adjudication of a minor for a law violation that, if
10 committed by an adult, would constitute a violation of
11 this section or an offense under section 291E-4(a), or
12 section 291E-61.5;

13 shall be considered a prior conviction for the purposes of
14 imposing sentence under this section. Any judgment on a verdict
15 or a finding of guilty, a plea of guilty or nolo contendere, or
16 an adjudication, in the case of a minor, that at the time of the
17 offense has not been expunged by pardon, reversed, or set aside
18 shall be deemed a prior conviction under this section. No
19 license and privilege suspension or revocation shall be imposed
20 pursuant to this section if the person's license and privilege
21 to operate a vehicle has previously been administratively
22 revoked pursuant to part III for the same act; provided that, if



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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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



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

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

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

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

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

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

19

INTRODUCED BY:

John Muenks

Phzanne Chun Oakland
Amid Y. Lee

Will Egan
Richard [unclear]
Committee

Report Title:

DUI; Impoundment of Vehicles; Penalties; Appropriation

Description:

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

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

