

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1           SECTION 1. The legislature finds that Act 171, Session  
2 Laws of Hawaii 2008, was adopted to implement the use of an  
3 ignition interlock device to prevent drivers previously arrested  
4 for driving under the influence of intoxicants from starting or  
5 operating a motor vehicle with more than a minimal alcohol  
6 concentration while their case is pending or while their license  
7 is revoked. Rather than taking a punitive approach that  
8 prohibits driving, Act 171 takes a pragmatic approach that  
9 requires installation of an ignition interlock device shortly  
10 after arrest so that the person can drive, but is prevented from  
11 drinking and driving, during the pendency of the case and the  
12 revocation period thereafter.

13           Recognizing the need to resolve a number of outstanding  
14 issues in the transition to use of ignition interlock devices,  
15 the legislature delayed the effective date of Act 171 to July 1,  
16 2010. The legislature also established a task force to study  
17 the issues identified in Act 171 during the interim and make  
18 recommendations for additional legislation necessary to



1 implement use of the ignition interlock devices. The task force  
2 consists of two members each from the senate and the house of  
3 representatives; one member representing each of the state  
4 departments of transportation, health, and the attorney general;  
5 one member representing the office of public defender; one  
6 member representing the police departments in each of the four  
7 counties; one member representing the department of the  
8 prosecuting attorney in each of the four counties; one member  
9 representing the examiner of drivers in each of the four  
10 counties; two members representing Mothers Against Drunk  
11 Driving; and one member of the Hawaii association of criminal  
12 defense lawyers.

13 The task force addressed each of the issues identified in  
14 Act 171 and made recommendations on a number of them, while  
15 deferring the remainder until the 2010 session. The task force  
16 continued to stress a pragmatic approach, as opposed to a  
17 punitive one, with key positions including:

18 (1) Installation of the ignition interlock device should  
19 be required for all offenders, not just repeat  
20 offenders, consistent with the national trend and  
21 similar laws that took effect on January 1, 2009, in  
22 Alaska, Nebraska, and Washington;



- 1 (2) Unlike current law, which sanctions first offenders  
2 more severely if their alcohol level meets or exceeds  
3 .15, all first offenders should be treated the same  
4 way, regardless of their alcohol level, and no first  
5 offender should be required to post proof of financial  
6 responsibility;
- 7 (3) Installation of the ignition interlock device should  
8 occur as soon after arrest as possible so that the  
9 offender learns that driving without the device is not  
10 permissible;
- 11 (4) Stricter laws and increased enforcement are needed to  
12 deter those who would try to avoid installing the  
13 ignition interlock device and drive on a suspended or  
14 revoked license and for those who assert that they  
15 have no vehicle or will not drive at all;
- 16 (5) The offender should pay for the cost of installing and  
17 servicing the ignition interlock device, with the  
18 establishment of a fund to pay for those who are  
19 determined to be indigent according to specified  
20 criteria;
- 21 (6) Use of the ignition interlock device should be  
22 overseen principally by the administrative driver's



- 1 license revocation program, with support from judicial  
2 proceedings;
- 3 (7) The alcohol level at which a driver is "locked out" --  
4 prevented from starting the vehicle or performing a  
5 rolling retest -- should be .02 and no penalties  
6 should be imposed when a driver is "locked out" or  
7 fails to take a retest because the inability to start  
8 or keep operating the vehicle will act as the  
9 consequence for attempting to drive after drinking;
- 10 (8) Offenders who circumvent or tamper with the ignition  
11 interlock device should be charged with another crime;
- 12 (9) Offenders who refuse to be tested for alcohol content  
13 should be required to use the ignition interlock  
14 device for longer periods than those who take the  
15 test, and other strategies that make submitting to the  
16 test more appealing than refusal should be developed;
- 17 (10) The department of transportation should select a  
18 single provider for installation and maintenance of  
19 the ignition interlock device to ensure statewide  
20 uniformity in the program; and



1 (11) Clear expectations and performance standards should be  
2 established for the chosen ignition interlock device  
3 vendor.

4 The purpose of this Act is to enact recommendations made by  
5 the ignition interlock implementation task force pursuant to Act  
6 171, Session Laws of Hawaii 2008.

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

10 "§291E- Refusal to submit to a breath, blood, or urine  
11 test; penalty. Refusal to submit to a breath, blood, or urine  
12 test as required by part II is a petty misdemeanor."

13 SECTION 3. Section 291E-5, Hawaii Revised Statutes, is  
14 amended by amending subsection (d) to read as follows:

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

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



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

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

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

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

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



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

- 6 (2) Operate using an alcohol-specific sensor technology;
- 7 (3) Employ a digital camera by which a photograph of the  
8 person using the device can be incorporated into the  
9 electronic record generated by each use of the device;
- 10 (4) Require a rolling retest by which the driver must,  
11 within a specified period of time or distance driven  
12 after starting the vehicle, be retested and found to  
13 have an alcohol concentration of less than .02, with a  
14 margin of error of .01; [and]
- 15 (5) Permit an emergency override of the system only when  
16 necessary to promote highway safety; and

17 [+5+] (6) Generate a record of vehicle usage, including  
18 dates, times, and distances driven.

19 (c) The program shall include standards and procedures for  
20 the certification [~~for vendors who~~] of the vendor selected to  
21 install and maintain ignition interlock devices pursuant to



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

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

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

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

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

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

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



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

3 SECTION 5. Section 291E-15, Hawaii Revised Statutes, is  
4 amended to read as follows:

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

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

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

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



1 SECTION 6. Section 291E-41, Hawaii Revised Statutes, is  
2 amended by amending subsections (b) and (c) to read as follows:

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

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

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



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



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

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

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

20 (A) The respondent shall be absolutely prohibited  
21 from driving during the revocation period and



1                   subject to the penalties provided by section  
2                   291E-62; and

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

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

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

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

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

19 the revocation imposed under subsection (b) (1), (2), (3), or  
20 (4) [~~7~~ and ~~(5)~~] shall be for a period of [~~one year~~,] two years,  
21 three years, four years, and ten years, respectively."



1 SECTION 7. Section 291E-61, Hawaii Revised Statutes, is  
2 amended by amending subsections (b) and (c) to read as follows:

3 "(b) A person committing the offense of operating a  
4 vehicle under the influence of an intoxicant shall be guilty of  
5 a petty misdemeanor and shall be sentenced as follows:

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

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

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



1 ~~prohibition from operating a vehicle and,~~  
2 ~~for the remainder of the ninety day period,~~  
3 ~~a restriction on the license that allows the~~  
4 ~~person to drive for limited work related~~  
5 ~~purposes and to participate in substance~~  
6 ~~abuse treatment programs; or~~

7 ~~(ii)]~~ One-year revocation of license and privilege  
8 to operate a vehicle during the revocation  
9 period and installation during the  
10 revocation period of an ignition interlock  
11 device on any vehicle operated by the  
12 person;

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

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

15 (ii) Not less than forty-eight hours and not more  
16 than ~~[five]~~ thirty days of imprisonment; or

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

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



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

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

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

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

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

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





1                   ~~(ii) Not less than forty eight hours and not more~~  
2                                   ~~than five days of imprisonment, or~~

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

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

7                   ~~(E) May be charged a surcharge of up to \$50 to be~~  
8                                   ~~deposited into the trauma system special fund if~~  
9                                   ~~the court so orders;~~

10           ~~(3)]~~ (2) For an offense that occurs within [~~five~~] ten  
11                                   years of a prior conviction for an offense under this  
12                                   section or section 291E-4(a), and notwithstanding  
13                                   section 706-623, by probation for not less than [~~two~~  
14                                   years] eighteen months nor more than [~~four~~] two years  
15                                   on the following conditions:

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

22                   (B) Either one of the following:



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



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



1 that the total term of imprisonment for a person  
2 convicted under this paragraph shall not exceed [the  
3 ~~maximum term of imprisonment provided in paragraph~~  
4 ~~(1), (3), or (4).~~] thirty days. Notwithstanding  
5 paragraph [~~(1),~~] (2), the probation period for a  
6 person sentenced under this paragraph shall be not  
7 less than two years.

8 (6) If the person demonstrates to the court that the  
9 person does not own or have the use of a vehicle in  
10 which the person can install an ignition interlock  
11 device during the probation period or who demonstrates  
12 to the court that the person is otherwise unable to  
13 drive during the probation period, the person shall be  
14 absolutely prohibited from driving during the maximum  
15 period of probation provided in paragraphs (1) to (5);  
16 provided that the court shall not issue an ignition  
17 interlock permit pursuant to subsection (i) and the  
18 person shall be subject to the penalties provided by  
19 section 291E-62.

20 (c) Notwithstanding any other law to the contrary, the  
21 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  
7 ignition interlock permit is restricted to a category  
8 1, 2, or 3 license under section 286-102(b)."

9 SECTION 8. Section 291E-62, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

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

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

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

20 (B) A fine of not less than \$250 but not more than  
21 \$1,000; and



- 1 (C) Revocation of license and privilege to operate a  
2 vehicle for an additional year;
- 3 (2) For an offense that occurs within five years of a  
4 prior conviction for an offense under this section or  
5 under section 291-4.5 as that section was in effect on  
6 December 31, 2001:
- 7 (A) Thirty days imprisonment;  
8 (B) A \$1,000 fine; and  
9 (C) Revocation of license and privilege to operate a  
10 vehicle for an additional two years; and
- 11 (3) For an offense that occurs within five years of two or  
12 more prior convictions for offenses under this section  
13 or under section 291-4.5 as that section was in effect  
14 on December 31, 2001:
- 15 (A) One year imprisonment;  
16 (B) A \$2,000 fine; and  
17 (C) Permanent revocation of the person's license and  
18 privilege to operate a vehicle.
- 19 The period of revocation shall commence upon the release of the  
20 person from the period of imprisonment imposed pursuant to this  
21 section."



1 SECTION 9. Section 291E-65, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§291E-65 Refusal to submit to testing for measurable  
4 amount of alcohol; district court hearing; sanctions; appeals;  
5 admissibility. (a) If a person under arrest for operating a  
6 vehicle after consuming a measurable amount of alcohol, pursuant  
7 to section 291E-64, refuses to submit to a breath or blood test,  
8 none shall be given, except as provided in section 291E-21, but  
9 the arresting law enforcement officer, as soon as practicable,  
10 shall submit an affidavit to a district judge of the circuit in  
11 which the arrest was made, stating:

12 (1) That at the time of the arrest, the arresting officer  
13 had probable cause to believe the arrested person was  
14 under the age of twenty-one and had been operating a  
15 vehicle upon a public way, street, road, or highway or  
16 on or in the waters of the State with a measurable  
17 amount of alcohol;

18 (2) That the arrested person was informed that the person  
19 may refuse to submit to a breath or blood test, in  
20 compliance with section 291E-11;

21 (3) That the person had refused to submit to a breath or  
22 blood test;



- 1           (4) That the arrested person was:
- 2                 (A) Informed of the sanctions of this section; and
- 3                 then
- 4                 (B) Asked if the person still refuses to submit to a
- 5                 breath or blood test, in compliance with the
- 6                 requirements of section 291E-15; and
- 7           (5) That the arrested person continued to refuse to submit
- 8                 to a breath or blood test.
- 9           (b) Upon receipt of the affidavit, the district judge
- 10 shall hold a hearing within twenty days. The district judge
- 11 shall hear and determine:
- 12           (1) Whether the arresting law enforcement officer had
- 13                 probable cause to believe that the person was under
- 14                 the age of twenty-one and had been operating a vehicle
- 15                 upon a public way, street, road, or highway or on or
- 16                 in the waters of the State with a measurable amount of
- 17                 alcohol;
- 18           (2) Whether the person was lawfully arrested;
- 19           (3) Whether the person was informed that the person may
- 20                 refuse to submit to a breath or blood test, in
- 21                 compliance with section 291E-11;





1 (4) Whether the person refused to submit to a test of the  
2 person's breath or blood;

3 (5) Whether the person was:

4 (A) Informed of the sanctions of this section; and  
5 then

6 (B) Asked if the person still refuses to submit to a  
7 breath or blood test, in compliance with the  
8 requirements of section 291E-15; and

9 (6) Whether the person continued to refuse to submit to a  
10 breath or blood test.

11 (c) If the district judge finds the statements contained  
12 in the affidavit are true, the judge shall suspend the arrested  
13 person's license and privilege to operate a vehicle as follows:

14 (1) For a first suspension, or any suspension not preceded  
15 within a five-year period by a suspension under this  
16 section, for a period of twelve months; and

17 (2) For any subsequent suspension under this section, for  
18 a period not less than two years and not more than  
19 five years.

20 (d) An order of a district court issued under this section  
21 may be appealed to the supreme court.



1       ~~[(e) If a legally arrested person under the age of twenty~~  
2 ~~one refuses to submit to a test of the person's breath or blood,~~  
3 ~~proof of refusal shall be admissible only in a hearing under~~  
4 ~~this section or part III and shall not be admissible in any~~  
5 ~~other action or proceeding, whether civil or criminal.]"~~

6       SECTION 10. Section 804-7.1, Hawaii Revised Statutes, is  
7 amended to read as follows:

8       "**§804-7.1 Conditions of release on bail, recognizance, or**  
9 **supervised release.** ~~[(a)]~~ Upon a showing that there exists a  
10 danger that the defendant will commit a serious crime or will  
11 seek to intimidate witnesses, or will otherwise unlawfully  
12 interfere with the orderly administration of justice, the  
13 judicial officer named in section 804-5 may deny the defendant's  
14 release on bail, recognizance, or supervised release.

15       ~~[(b)]~~ Upon the defendant's release on bail, recognizance,  
16 or supervised release, however, the court may enter an order:

- 17       (1) Prohibiting the defendant from approaching or  
18           communicating with particular persons or classes of  
19           persons, except that no such order should be deemed to  
20           prohibit any lawful and ethical activity of  
21           defendant's counsel;



- 1           (2) Prohibiting the defendant from going to certain
- 2           described geographical areas or premises;
- 3           (3) Prohibiting the defendant from possessing any
- 4           dangerous weapon, engaging in certain described
- 5           activities, or indulging in intoxicating liquors or
- 6           certain drugs;
- 7           (4) Requiring the defendant to report regularly to and
- 8           remain under the supervision of an officer of the
- 9           court;
- 10          (5) Requiring the defendant to maintain employment, or, if
- 11          unemployed, to actively seek employment, or attend an
- 12          educational or vocational institution;
- 13          (6) Requiring the defendant to comply with a specified
- 14          curfew;
- 15          (7) Requiring the defendant to seek and maintain mental
- 16          health treatment or testing, including treatment for
- 17          drug or alcohol dependency, or to remain in a
- 18          specified institution for that purpose;
- 19          (8) Requiring the defendant to remain in the jurisdiction
- 20          of the judicial circuit in which the charges are
- 21          pending unless approval is obtained from a court of



1 competent jurisdiction to leave the jurisdiction of  
2 the court;

3 (9) Requiring the defendant to satisfy any other condition  
4 reasonably necessary to assure the appearance of the  
5 person as required and to assure the safety of any  
6 other person or community; or

7 (10) Imposing any combination of conditions listed above.

8 The judicial officer may revoke a defendant's bail upon  
9 proof that the defendant has breached any of the conditions  
10 imposed.

11 ~~[(c) In addition to the conditions in subsection (b) and~~  
12 ~~except as provided in subsection (d), when the defendant is~~  
13 ~~charged with an offense under section 291E-61, except an offense~~  
14 ~~for which the defendant would be sentenced pursuant to section~~  
15 ~~291E-61(b)(1), the court shall order as a condition of release~~  
16 ~~on bail, recognizance, or supervised release that, within~~  
17 ~~fifteen days, the defendant install an ignition interlock~~  
18 ~~device, as defined in section 291E-1, on any vehicle that the~~  
19 ~~defendant will operate during the defendant's release on bail,~~  
20 ~~recognizance, or supervised release. Upon proof that the~~  
21 ~~defendant has installed an ignition interlock device in the~~  
22 ~~defendant's vehicle, the court shall issue an ignition interlock~~



1 ~~permit that will allow the defendant to drive a vehicle equipped~~  
2 ~~with an ignition interlock device during the period of the~~  
3 ~~defendant's release on bail, recognizance, or supervised~~  
4 ~~release.~~

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

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

10 ~~(2) A defendant who holds either a category 4 license~~  
11 ~~under section 286-102(b) or a commercial driver's~~  
12 ~~license under section 286-239(b).~~

13 ~~(e) The court may issue a separate permit authorizing a~~  
14 ~~defendant to operate a vehicle owned by the defendant's employer~~  
15 ~~while released [on] bail as provided in section 291E-61.~~

16 ~~(f) Except as provided in section 291E-5, installation and~~  
17 ~~maintenance of the ignition interlock device required by~~  
18 ~~subsection (c) shall be at the defendant's own expense.] "~~

19 SECTION 11. Act 171, Session Laws of Hawaii 2008, is  
20 amended by amending section 20 to read as follows:

21 "SECTION 20. This Act shall take effect on July 1, 2008;  
22 provided that sections 2 through 9 and 11 shall take effect on



1 ~~[July 1, 2010,]~~ January 1, 2011; provided further that sections  
 2 15 and 16 shall be repealed on ~~[June 30, 2010.]~~ December 31,  
 3 2010; and provided further that sections 287-20(a) and 291E-  
 4 61(g), Hawaii Revised Statutes, shall be reenacted in the form  
 5 in which they read on June 30, 2008."

6 SECTION 12. Section 291E-16, Hawaii Revised Statutes, is  
 7 repealed.

8 ~~["§291E-16] Proof of refusal; admissibility. If a~~  
 9 ~~legally arrested person refuses to submit to a test of the~~  
 10 ~~person's breath, blood, or urine, evidence of refusal shall be~~  
 11 ~~admissible only in a proceeding under part III or section 291E-~~  
 12 ~~65 and shall not be admissible in any other action or~~  
 13 ~~proceeding, whether civil or criminal."]~~

14 SECTION 13. Section 291E-44, Hawaii Revised Statutes, is  
 15 repealed.

16 ~~["§291E-44 Conditional license permits.~~  
 17 ~~(a)(1) During the administrative hearing, the director, at~~  
 18 ~~the request of a respondent who is subject to~~  
 19 ~~administrative revocation for a period as provided in~~  
 20 ~~section 291E-41(b)(1), may issue a conditional license~~  
 21 ~~permit that will allow the respondent, after a minimum~~  
 22 ~~period of absolute license revocation of thirty days,~~



1 ~~to drive for the remainder of the revocation period,~~  
2 ~~provided that one or more of the following conditions~~  
3 ~~are met:~~

4 ~~(A) The respondent is gainfully employed in a~~  
5 ~~position that requires driving and will be~~  
6 ~~discharged if the respondent's driving privileges~~  
7 ~~are administratively revoked; or~~

8 ~~(B) The respondent has no access to alternative~~  
9 ~~transportation and therefore must drive to work~~  
10 ~~or to a substance abuse treatment facility or~~  
11 ~~counselor for treatment ordered by the director~~  
12 ~~under section 291E 41; or~~

13 ~~(2) Notwithstanding any other law to the contrary, the~~  
14 ~~director shall not issue a conditional license permit~~  
15 ~~to:~~

16 ~~(A) A respondent whose license, during the~~  
17 ~~conditional license permit period, is expired,~~  
18 ~~suspended, or revoked as a result of action other~~  
19 ~~than the instant revocation for which the~~  
20 ~~respondent is requesting a conditional license~~  
21 ~~permit under this section;~~



- 1           ~~(B) A respondent who has refused breath, blood, or~~
- 2           ~~urine tests for purposes of determining alcohol~~
- 3           ~~concentration or drug content of the person's~~
- 4           ~~breath, blood, or urine, as applicable,~~
- 5           ~~(C) A respondent who is a highly intoxicated driver,~~
- 6           ~~and~~
- 7           ~~(D) A respondent who holds either a category 4~~
- 8           ~~license under section 286-102(b) or a commercial~~
- 9           ~~driver's license under section 286-239(b) unless~~
- 10           ~~the conditional license permit is restricted to a~~
- 11           ~~category 1, 2, or 3 license under section~~
- 12           ~~286-102(b).~~
  
- 13           ~~(b) A request made pursuant to subsection [(a) (1) (A)]~~
- 14           ~~shall be accompanied by:~~
  
- 15           ~~(1) A sworn statement from the respondent containing facts~~
- 16           ~~establishing that the respondent currently is employed~~
- 17           ~~in a position that requires driving and that the~~
- 18           ~~respondent will be discharged if not allowed to drive,~~
- 19           ~~and~~
- 20           ~~(2) A sworn statement from the respondent's employer~~
- 21           ~~establishing that the employer will, in fact,~~





1 discharge the respondent if the respondent is  
2 prohibited from driving.

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

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

9 ~~(1) Only during hours of employment for activities solely~~  
10 ~~within the scope of the employment;~~

11 ~~(2) Only during daylight hours; or~~

12 ~~(3) Only for specified purposes or to specified~~  
13 ~~destinations.~~

14 ~~In addition, the director may impose any other appropriate~~  
15 ~~restrictions.~~

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

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



1 SECTION 14. This Act does not affect rights and duties  
 2 that matured, penalties that were incurred, and proceedings that  
 3 were begun, before its effective date.

4 SECTION 15. Statutory material to be repealed is bracketed  
 5 and stricken. New statutory material is underscored.

6 SECTION 16. This Act shall take effect upon its approval.

7

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**Report Title:**

Impaired Driving; Ignition Interlock

**Description:**

Makes amendments to Act 171, Session Laws of Hawaii 2008, reflecting recommendations of Ignition Interlock Implementation Task Force.

