
A BILL FOR AN ACT

RELATING TO THE IGNITION INTERLOCK PROGRAM.

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

1 SECTION 1. The legislature finds that it is in the
2 interest of the State to decrease incidents of persons operating
3 a vehicle under the influence of an intoxicant. Therefore, it
4 is vitally important that the State's ignition interlock program
5 be strengthened by requiring compliance with the program prior
6 to removal of an interlock device and expanded by providing
7 courts with the option to use a constant sobriety monitoring
8 system. It is equally vital that persons convicted of operating
9 a vehicle under the influence of an intoxicant not be allowed to
10 "sit out" the interlock period and drive non-ignition interlock
11 vehicles.

12 The purpose of this Act is to augment the State's existing
13 ignition interlock program and to establish rulemaking authority
14 within the department of transportation to develop, implement,
15 and manage compliance-based provisions.

16 SECTION 2. Section 291E-61, Hawaii Revised Statutes, is
17 amended to read as follows:



1 "§291E-61 Operating a vehicle under the influence of an
2 intoxicant. (a) A person commits the offense of operating a
3 vehicle under the influence of an intoxicant if the person
4 operates or assumes actual physical control of a vehicle:

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

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

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

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

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

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



- 1 (A) A fourteen-hour minimum substance abuse
- 2 rehabilitation program, including education and
- 3 counseling, or other comparable program deemed
- 4 appropriate by the court;
- 5 (B) One-year revocation of license and privilege to
- 6 operate a vehicle during the revocation period
- 7 and installation during the revocation period of
- 8 an ignition interlock device on any vehicle
- 9 operated by the person;
- 10 (C) Any one or more of the following:
- 11 (i) Seventy-two hours of community service work;
- 12 (ii) Not less than forty-eight hours and not more
- 13 than five days of imprisonment; or
- 14 (iii) A fine of not less than \$150 but not more
- 15 than \$1,000;
- 16 (D) A surcharge of \$25 to be deposited into the
- 17 neurotrauma special fund; and
- 18 (E) A surcharge, if the court so orders, of up to \$25
- 19 to be deposited into the trauma system special
- 20 fund;



- 1 (2) For an offense that occurs within five years of a
2 prior conviction for an offense under this section or
3 section 291E-4(a):
- 4 (A) Revocation for not less than eighteen months nor
5 more than two years of license and privilege to
6 operate a vehicle during the revocation period
7 and installation during the revocation period of
8 an ignition interlock device on any vehicle
9 operated by the person;
- 10 (B) Either one of the following:
- 11 (i) Not less than two hundred forty hours of
12 community service work; or
- 13 (ii) Not less than five days but not more than
14 thirty days of imprisonment, of which at
15 least forty-eight hours shall be served
16 consecutively;
- 17 (C) A fine of not less than \$500 but not more than
18 \$1,500;
- 19 (D) A surcharge of \$25 to be deposited into the
20 neurotrauma special fund; and



- 1 (E) A surcharge of up to \$50 if the court so orders,
2 to be deposited into the trauma system special
3 fund;
- 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):
 - 7 (A) A fine of not less than \$500 but not more than
8 \$2,500;
 - 9 (B) Revocation for two years of license and privilege
10 to operate a vehicle during the revocation period
11 and installation during the revocation period of
12 an ignition interlock device on any vehicle
13 operated by the person;
 - 14 (C) Not less than ten days but not more than thirty
15 days imprisonment, of which at least forty-eight
16 hours shall be served consecutively;
 - 17 (D) A surcharge of \$25 to be deposited into the
18 neurotrauma special fund; and
 - 19 (E) A surcharge of up to \$50 if the court so orders,
20 to be deposited into the trauma system special
21 fund;



1 (4) In addition to a sentence imposed under paragraphs (1)
2 through (3), any person eighteen years of age or older
3 who is convicted under this section and who operated a
4 vehicle with a passenger, in or on the vehicle, who
5 was younger than fifteen years of age, shall be
6 sentenced to an additional mandatory fine of \$500 and
7 an additional mandatory term of imprisonment of forty-
8 eight hours; provided that the total term of
9 imprisonment for a person convicted under this
10 paragraph shall not exceed the maximum term of
11 imprisonment provided in paragraph (1), (2), or (3),
12 as applicable. Notwithstanding paragraphs (1) and
13 (2), the revocation period for a person sentenced
14 under this paragraph shall be not less than two years;
15 and

16 (5) If the person demonstrates to the court that the
17 person:

18 (A) Does not own or have the use of a vehicle in
19 which the person can install an ignition
20 interlock device during the revocation period; or



1 (B) Is otherwise unable to drive during the
2 revocation period,
3 the person shall be absolutely prohibited from driving during
4 the period of applicable revocation provided in paragraphs (1)
5 to (4); provided that the court shall not issue an ignition
6 interlock permit pursuant to subsection (i) and the person shall
7 be subject to the penalties provided by section 291E-62 if the
8 person drives during the applicable revocation period.

9 (c) Except as provided in sections 286-118.5 and 291E-
10 61.6, the court shall not issue an ignition interlock permit to:

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

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

16 (3) A defendant who holds either a category 4 license
17 under section 286-102(b) or a commercial driver's
18 license under section 286-239(a), unless the ignition
19 interlock permit is restricted to a category 1, 2, or
20 3 license under section 286-102(b); or



1 (4) A defendant who holds a license that is a learner's
2 permit or instruction permit.

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

11 (e) A request made pursuant to subsection (d) shall be
12 accompanied by:

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

19 (2) A sworn statement from the defendant's employer
20 establishing that the employer will, in fact,
21 discharge the defendant if the defendant cannot drive



1 a vehicle that is not equipped with an ignition
 2 interlock device and identifying the specific vehicle
 3 the defendant will drive for purposes of employment
 4 and the hours of the day, not to exceed twelve hours
 5 per day, or the period of the specified assigned hours
 6 of work, the defendant will drive the vehicle for
 7 purposes of employment.

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

10 (1) Only during specified hours of employment, not to
 11 exceed twelve hours per day, or the period of the
 12 specified assigned hours of work, and only for
 13 activities solely within the scope of the employment;

14 (2) Only the vehicle specified; and

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

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

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

20 (2) Conviction in any other state or federal jurisdiction
 21 for an offense that is comparable to operating or



1 being in physical control of a vehicle while having
2 either an unlawful alcohol concentration or an
3 unlawful drug content in the blood or urine or while
4 under the influence of an intoxicant or habitually
5 operating a vehicle under the influence of an
6 intoxicant; or

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

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



1 privilege to operate a vehicle shall be revoked as provided in
2 this section. There shall be no requirement for the
3 installation of an ignition interlock device pursuant to this
4 section if the requirement has previously been imposed pursuant
5 to part III for the same act; provided that, if the requirement
6 is subsequently reversed, a requirement for the installation of
7 an ignition interlock device shall be imposed as provided in
8 this section.

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

20 (i) Upon proof that the defendant has:



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

9 (j) Notwithstanding any other law to the contrary,
10 whenever a court revokes a person's driver's license pursuant to
11 this section, the examiner of drivers shall not grant to the
12 person a new driver's license until the expiration of the period
13 of revocation determined by the court [-] or as extended pursuant
14 to subsection (1) After the period of revocation is completed,
15 the person may apply for and the examiner of drivers may grant
16 to the person a new driver's license.

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



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

5 (l) The period of license restriction under subsection (b)
6 shall be tolled for any period in which the person does not have
7 an ignition interlock device installed on a vehicle owned or
8 operated by the person unless the person receives a
9 determination from the department that the person is unable to
10 operate an ignition interlock device due to a physical
11 disability. The department's determination that a person is
12 unable to operate an ignition interlock device due to a physical
13 disability shall be reasonable and shall be based upon a showing
14 of substantial evidence. This determination shall be subject to
15 review by a court of competent jurisdiction. The department may
16 charge a person seeking an exemption under this subsection a
17 reasonable fee for an assessment.

18 (m) Any restriction under subsection (b) or (l) shall
19 remain in effect until the department receives a declaration
20 from the person's ignition interlock device vendor, in a form
21 provided or approved by the department, certifying that none of



1 the following have occurred in the one hundred eighty days prior
2 to the date of release from the license restriction:

- 3 (1) An attempt to start the vehicle with a breath alcohol
4 concentration of 0.04 or more unless a subsequent test
5 performed within ten minutes registers a breath
6 alcohol concentration lower than 0.04 and the digital
7 image confirms the same person provided both samples;
- 8 (2) Failure to take any random test unless a review of the
9 digital image confirms that the vehicle was not
10 occupied by the driver at the time of the missed test;
- 11 (3) Failure to pass any random retest with a breath
12 alcohol concentration of 0.025 or lower unless a
13 subsequent test performed within ten minutes registers
14 a breath alcohol concentration lower than 0.025, and
15 the digital image confirms the same person provided
16 both samples; or
- 17 (4) Failure of the person to appear at the ignition
18 interlock device vendor when required for maintenance,
19 repair, calibration, monitoring, inspection, or
20 replacement of the device.



H.B. NO. 753

1 (n) The director of transportation shall adopt rules
2 pursuant to chapter 91 necessary for the purposes of this
3 section.

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

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2019.

9

INTRODUCED BY:



JAN 22 2019



H.B. NO. 753

Report Title:

Ignition Interlock; Operating a Vehicle under the Influence of an Intoxicant

Description:

Requires compliance with the ignition interlock program before an interlock device is removed. Allows for a constant sobriety program. Authorizes rulemaking.

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

