
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-41, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:



1 "(b) Except as provided in paragraph (5) and in section
 2 291E-44.5, the respondent shall keep an ignition interlock
 3 device installed and operating in any vehicle the respondent
 4 operates during the revocation period. Except as provided in
 5 section 291E-5, installation and maintenance of the ignition
 6 interlock device shall be at the respondent's expense. The
 7 interlock device shall not be removed until the conditions of
 8 subsection 291E-61(m) are satisfied. The periods of
 9 administrative revocation, with respect to a license and
 10 privilege to operate a vehicle, that shall be imposed under this
 11 part are as follows:

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



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

3 (3) A two-year revocation of license and privilege to
4 operate a vehicle, if the respondent's record shows
5 two prior alcohol enforcement contacts or drug
6 enforcement contacts during the five years preceding
7 the date the notice of administrative revocation was
8 issued;

9 (4) A minimum of five years up to a maximum of ten years
10 revocation of license and privilege to operate a
11 vehicle, if the respondent's record shows three or
12 more prior alcohol enforcement contacts or drug
13 enforcement contacts during the ten years preceding
14 the date the notice of administrative revocation was
15 issued;

16 (5) For respondents under the age of eighteen years who
17 were arrested for a violation of section 291E-61 or
18 291E-61.5, revocation of license and privilege to
19 operate a vehicle for the appropriate revocation
20 period provided in paragraphs (1) to (4) or in
21 subsection (c); provided that the respondent shall be



1 prohibited from driving during the period preceding
2 the respondent's eighteenth birthday and shall
3 thereafter be subject to the ignition interlock
4 requirement of this subsection for the balance of the
5 revocation period; or

6 (6) For respondents, other than those excepted pursuant to
7 section 291E-44.5(c), who do not install an ignition
8 interlock device in any vehicle the respondent
9 operates during the revocation period, revocation of
10 license and privilege to operate a vehicle for the
11 period of revocation provided in paragraphs (1) to (5)
12 or in subsection (c); provided that:

13 (A) The respondent shall be absolutely prohibited
14 from driving during the revocation period and
15 subject to the penalties provided by section
16 291E-62 if the respondent drives during the
17 revocation period; and

18 (B) The director shall not issue an ignition
19 interlock permit to the respondent pursuant to
20 section 291E-44.5;



1 provided that when more than one administrative revocation,
2 suspension, or conviction arises out of the same arrest, it
3 shall be counted as only one prior alcohol enforcement contact
4 or drug enforcement contact, whichever revocation, suspension,
5 or conviction occurs later."

6 SECTION 3. 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



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

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

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

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

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

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



1 least forty-eight hours shall be served
2 consecutively;

3 (C) A fine of not less than \$500 but not more than
4 \$1,500;

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

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

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

13 (A) A fine of not less than \$500 but not more than
14 \$2,500;

15 (B) Revocation for two years of license and privilege
16 to operate a vehicle during the revocation period
17 and installation during the revocation period of
18 an ignition interlock device on any vehicle
19 operated by the person;



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



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

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

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

8 (B) Is otherwise unable to drive during the
9 revocation period,

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

16 (c) Except as provided in sections 286-118.5 and 291E-
17 61.6, the court shall not issue an ignition interlock permit to:

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



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

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

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

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

18 (e) A request made pursuant to subsection (d) shall be
19 accompanied by:

20 (1) A sworn statement from the defendant containing facts
21 establishing that the defendant currently is employed



1 in a position that requires driving and that the
2 defendant will be discharged if prohibited from
3 driving a vehicle not equipped with an ignition
4 interlock device; and

5 (2) A sworn statement from the defendant's employer
6 establishing that the employer will, in fact,
7 discharge the defendant if the defendant cannot drive
8 a vehicle that is not equipped with an ignition
9 interlock device and identifying the specific vehicle
10 the defendant will drive for purposes of employment
11 and the hours of the day, not to exceed twelve hours
12 per day, or the period of the specified assigned hours
13 of work, the defendant will drive the vehicle for
14 purposes of employment.

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

17 (1) Only during specified hours of employment, not to
18 exceed twelve hours per day, or the period of the
19 specified assigned hours of work, and only for
20 activities solely within the scope of the employment;

21 (2) Only the vehicle specified; and



1 (3) Only if the permit is kept in the defendant's
2 possession while operating the employer's vehicle.
3 (g) Notwithstanding any other law to the contrary, any:
4 (1) Conviction under this section, section 291E-4(a), or
5 section 291E-61.5;
6 (2) Conviction in any other state or federal jurisdiction
7 for an offense that is comparable to operating or
8 being in physical control of a vehicle while having
9 either an unlawful alcohol concentration or an
10 unlawful drug content in the blood or urine or while
11 under the influence of an intoxicant or habitually
12 operating a vehicle under the influence of an
13 intoxicant; or
14 (3) Adjudication of a minor for a law violation that, if
15 committed by an adult, would constitute a violation of
16 this section or an offense under section 291E-4(a), or
17 section 291E-61.5,
18 shall be considered a prior conviction for the purposes of
19 imposing sentence under this section. Any judgment on a verdict
20 or a finding of guilty, a plea of guilty or nolo contendere, or
21 an adjudication, in the case of a minor, that at the time of the



1 offense has not been expunged by pardon, reversed, or set aside
2 shall be deemed a prior conviction under this section. No
3 license and privilege revocation shall be imposed pursuant to
4 this section if the person's license and privilege to operate a
5 vehicle has previously been administratively revoked pursuant to
6 part III for the same act; provided that, if the administrative
7 revocation is subsequently reversed, the person's license and
8 privilege to operate a vehicle shall be revoked as provided in
9 this section. There shall be no requirement for the
10 installation of an ignition interlock device pursuant to this
11 section if the requirement has previously been imposed pursuant
12 to part III for the same act; provided that, if the requirement
13 is subsequently reversed, a requirement for the installation of
14 an ignition interlock device shall be imposed as provided in
15 this section.

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



1 recommendations to the court. The court shall require the
2 offender to obtain appropriate treatment if the counselor's
3 assessment establishes the offender's substance abuse or
4 dependence. All costs for assessment and treatment shall be
5 borne by the offender.

6 (i) Upon proof that the defendant has:

7 (1) Installed an ignition interlock device in any vehicle
8 the defendant operates pursuant to subsection (b); and

9 (2) Obtained motor vehicle insurance or self-insurance
10 that complies with the requirements under either
11 section 431:10C-104 or section 431:10C-105,

12 the court shall issue an ignition interlock permit that will
13 allow the defendant to drive a vehicle equipped with an ignition
14 interlock device during the revocation period.

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



1 to the person a new driver's license[-]; provided that the
2 person has complied with the conditions of subsections (l) and
3 (m) of this section.

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

13 (l) The period of license restriction under subsection (b)
14 shall be tolled for any period in which the person does not have
15 an ignition interlock device installed on a vehicle owned or
16 operated by the person for a continuous period of one hundred
17 eighty days unless the person receives a determination from the
18 department that the person is unable to operate an ignition
19 interlock device due to a physical disability. The department's
20 determination that a person is unable to operate an ignition
21 interlock device due to a physical disability shall be



1 reasonable and shall be based upon a showing of substantial
2 evidence. This determination shall be subject to review by a
3 court of competent jurisdiction. The department may charge a
4 person seeking an exemption under this subsection a reasonable
5 fee for an assessment.

6 (m) Any restriction under subsection (b) or (l) shall
7 remain in effect until the department receives a declaration
8 from the person's ignition interlock device vendor, in a form
9 provided or approved by the department, certifying that none of
10 the following have occurred in the one hundred eighty days prior
11 to the date of release from the license restriction:

12 (1) An attempt to start the vehicle with a breath alcohol
13 concentration of 0.04 or more unless a subsequent test
14 performed within ten minutes registers a breath
15 alcohol concentration lower than 0.04 and the digital
16 image confirms the same person provided both samples;

17 (2) Failure to take any random test unless a review of the
18 digital image confirms that the vehicle was not
19 occupied by the driver at the time of the missed test;

20 (3) Failure to pass any random retest with a breath
21 alcohol concentration of 0.025 or lower unless a



1 subsequent test performed within ten minutes registers
2 a breath alcohol concentration lower than 0.025, and
3 the digital image confirms the same person provided
4 both samples; or

5 (4) Failure of the person to appear at the ignition
6 interlock device vendor when required for maintenance,
7 repair, calibration, monitoring, inspection, or
8 replacement of the device.

9 (n) The director of transportation shall adopt rules
10 pursuant to chapter 91 necessary for the purposes of this
11 section.

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

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

16 SECTION 5. This Act shall take effect on July 1, 2019.



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. (HB753 HD1)

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

