
A BILL FOR AN ACT

RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN
INTOXICANT.

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

1 SECTION 1. Section 291E-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Highly intoxicated driver" means a person whose
5 measurable amount of alcohol is:

6 (1) .15 or more grams of alcohol per one hundred
7 milliliters or cubic centimeters of the person's
8 blood; or

9 (2) .15 or more grams of alcohol per two hundred ten
10 liters of the person's breath."

11 SECTION 2. Section 291E-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§291E-3 Evidence of intoxication.** (a) In any criminal
14 prosecution for a violation of section 291E-61 or 291E-61.5 or
15 in any proceeding under part III:



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

4 (2) .08 or more grams of alcohol per two hundred ten
5 liters of the person's breath; or

6 (3) The presence of one or more drugs in an amount
7 sufficient to impair the person's ability to operate a
8 vehicle in a careful and prudent manner,
9 within three hours after the time of the alleged violation as
10 shown by chemical analysis or other approved analytical
11 techniques of the person's blood, breath, or urine shall be
12 competent evidence that the person was under the influence of an
13 intoxicant at the time of the alleged violation.

14 (b) In any criminal prosecution for a violation of section
15 291E-61 or 291E-61.5, the amount of alcohol found in the
16 defendant's blood or breath within three hours after the time of
17 the alleged violation as shown by chemical analysis or other
18 approved analytical techniques of the defendant's blood or
19 breath shall be competent evidence concerning whether the
20 defendant was under the influence of an intoxicant at the time



1 of the alleged violation and shall give rise to the following
2 presumptions:

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

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



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

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

6 (2) .15 or more grams of alcohol per two hundred ten
7 liters of the person's breath,
8 within three hours after the time of the alleged violation as
9 shown by chemical analysis or other approved analytical
10 techniques of the person's blood or breath shall be competent
11 evidence that the person was a highly intoxicated driver at the
12 time of the alleged violation.

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

20 SECTION 3. Section 291E-38, Hawaii Revised Statutes, is
21 amended by amending subsection (d) to read as follows:



1 "(d) The director shall conduct the hearing and have
2 authority to:

3 (1) Administer oaths and affirmations;

4 (2) Examine witnesses and take testimony;

5 (3) Receive and determine the relevance of evidence;

6 (4) Issue subpoenas;

7 (5) Regulate the course and conduct of the hearing;

8 ~~[(6) Impose up to the maximum license revocation period as~~
9 ~~specified under section 291E-41(b)(4);]~~ and

10 ~~[(7)]~~ (6) Make a final ruling."

11 SECTION 4. Section 291E-41, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§291E-41 Effective date, conditions, and period of**

14 **administrative revocation; criteria.** (a) Unless an

15 administrative revocation is reversed or the temporary permit is

16 extended by the director, administrative revocation shall become

17 effective on the day specified in the notice of administrative

18 revocation. Except as provided in section 291E-44.5, no license

19 ~~[and privilege]~~ to operate a vehicle shall be restored under any

20 circumstances during the administrative revocation period. Upon

21 completion of the administrative revocation period, the



1 respondent may reapply and be reissued a license pursuant to
2 section 291E-45.

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

13 (1) A one year revocation of license [~~and privilege~~] to
14 operate a vehicle, if the respondent's record shows no
15 prior 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) [~~An eighteen-month~~] A two-year revocation of license
19 [~~and privilege~~] to operate a vehicle, if the
20 respondent's record shows one prior alcohol
21 enforcement contact or drug enforcement contact during



1 the [~~five~~] ten years preceding the date the notice of
2 administrative revocation was issued;

3 (3) A [~~two-year~~] four-year revocation of license and
4 privilege to operate a vehicle, if the respondent's
5 record shows two or more prior alcohol enforcement
6 contacts or drug enforcement contacts during the
7 [~~five~~] ten years preceding the date the notice of
8 administrative revocation was 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;]~~ For a respondent who is a highly intoxicated
16 driver:

17 (A) An eighteen-month revocation of license to
18 operate a vehicle, with mandatory installation of
19 an ignition interlock device in one or more
20 vehicles registered to and all vehicles operated
21 by the respondent during the revocation period,



1 if the respondent's record shows no prior alcohol
2 enforcement contact or drug enforcement contact
3 during the ten years preceding the date the
4 notice of administrative revocation was issued;
5 (B) A three-year revocation of license to operate a
6 vehicle, with mandatory installation of an
7 ignition interlock device in one or more vehicles
8 registered to and all vehicles operated by the
9 respondent during the revocation period, if the
10 respondent's record shows one prior alcohol
11 enforcement contact or drug enforcement contact
12 during the ten years preceding the date the
13 notice of administrative revocation was issued;
14 and
15 (C) A six-year revocation of license to operate a
16 vehicle, with mandatory installation of an
17 ignition interlock device in one or more vehicles
18 registered to and all vehicles operated by the
19 respondent during the revocation period, if the
20 respondent's record shows two or more prior
21 alcohol enforcement or drug enforcement contacts



1 during the ten years preceding the date the
2 notice of administrative revocation was issued;

3 (5) For respondents under the age of eighteen years who
4 were arrested for a violation of section 291E-61 or
5 291E-61.5, revocation of license [~~and privilege~~] to
6 operate a vehicle for the appropriate revocation
7 period provided in paragraphs (1) to [~~(4)~~] (3) 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; or

14 (6) For respondents, other than those excepted pursuant to
15 section 291E-44.5(c), who do not install an ignition
16 interlock device in [~~any vehicle~~] one or more vehicles
17 registered to and all vehicles operated by the
18 respondent [~~operates~~] during the revocation period,
19 revocation of license [~~and privilege~~] to operate a
20 vehicle for the period of revocation provided in



1 paragraphs (1) to [~~5~~] (4) (A) or in subsection (c);
2 provided that:

3 (A) The respondent shall be absolutely prohibited
4 from driving during the revocation period and
5 subject to the penalties provided by section
6 291E-62 if the respondent drives during the
7 revocation period; and

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

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

16 (c) If a respondent has refused to be tested after being
17 informed:

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

20 (2) Of the sanctions of this part and then asked if the
21 person still refuses to submit to a breath, blood, or



1 urine test, in compliance with the requirements of
2 section 291E-15,
3 the revocation imposed under subsection (b) (1), (2), or (3) [~~or~~
4 ~~(4)~~] shall be for a period of two years, [~~three years,~~] four
5 years, or [~~ten~~] eight years, respectively.

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

17 (e) Alcohol and drug enforcement contacts that occurred
18 prior to January 1, 2002, shall be counted in determining the
19 administrative revocation period.



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

4 SECTION 5. Section 291E-61, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§291E-61 Operating a vehicle under the influence of an**
7 **intoxicant.** (a) A person commits the offense of operating a
8 vehicle under the influence of an intoxicant if the person
9 operates or assumes actual physical control of a vehicle:

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

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

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

19 (4) With .08 or more grams of alcohol per one hundred
20 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 without
3 possibility of probation or suspension of sentence as follows:

4 (1) [~~For~~] Except as provided in section 291E-61(b)(4)(A),
5 for the first offense, or any offense not preceded
6 within a ten-year period by a conviction for an
7 offense under this section or section 291E-4(a):

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

12 (B) One-year revocation of license [~~and privilege~~] to
13 operate a vehicle [~~during the revocation period~~
14 ~~and installation~~];

15 (C) Installation during the revocation period of an
16 ignition interlock device on [~~any vehicle~~] one or
17 more vehicles registered to and all vehicles
18 operated by the person;

19 [~~(C)~~] (D) Any one or more of the following:

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



- 1 (ii) No less than forty-eight hours and no more
2 than five days of imprisonment; or
3 (iii) A fine of no less than \$250 but no more than
4 \$1,000;
- 5 [~~(D)~~] (E) A surcharge of \$25 to be deposited into the
6 neurotrauma special fund; and
- 7 [~~(E)~~] (F) A surcharge, if the court so orders, of up
8 to \$25 to be deposited into the trauma system
9 special fund;
- 10 (2) For an offense that occurs within ten years of a prior
11 conviction for an offense under this section [~~or~~
12 ~~section 291E-4(a)~~]:
- 13 (A) A substance abuse program of at least thirty-six
14 hours, including education and counseling, or
15 other comparable program deemed appropriate by
16 the court;
- 17 [~~(A)~~] (B) Revocation of license to operate a vehicle
18 for no less than [~~twenty-four months~~] two years
19 nor more than three years [~~of license and~~
20 privilege to operate a vehicle during the
21 revocation period and installation];



1 was younger than fifteen years of age, shall be
2 sentenced to an additional mandatory fine of \$500 and
3 an additional mandatory term of imprisonment of forty-
4 eight hours; provided that the total term of
5 imprisonment for a person convicted under this
6 paragraph shall not exceed the maximum term of
7 imprisonment provided in paragraph (1) or (2), as
8 applicable. Notwithstanding paragraphs (1) and (2),
9 the revocation period for a person sentenced under
10 this paragraph shall be no less than two years; ~~and~~
11 (4) In addition to a sentence imposed under paragraph (1),
12 any person who is convicted under this section and was
13 a highly intoxicated driver at the time of the subject
14 incident shall be sentenced to an additional mandatory
15 term of imprisonment of forty-eight consecutive hours
16 and an additional mandatory revocation period of six
17 months; provided that the total term of imprisonment
18 for a person convicted under this paragraph shall not
19 exceed the maximum term of imprisonment provided in
20 paragraph (1). Notwithstanding paragraph (1), the



1 revocation period for a person sentenced under this
2 paragraph shall be no less than eighteen months;
3 (5) In addition to a sentence under paragraph (2), any
4 person who is convicted under this section and was a
5 highly intoxicated driver at the time of the subject
6 incident shall be sentenced to an additional mandatory
7 term of imprisonment of ten consecutive days and
8 additional mandatory revocation period of one year;
9 provided that the total term of imprisonment for a
10 person convicted under this paragraph shall not exceed
11 the maximum term of imprisonment provided in paragraph
12 (2), as applicable. Notwithstanding paragraph (2),
13 the revocation period for a person sentenced under
14 this paragraph shall be no less than three years; and
15 [~~(5)~~] (6) If the person demonstrates to the court that the
16 person:
17 (A) Does not own or have the use of a vehicle in
18 which the person can install an ignition
19 interlock device during the revocation period; or
20 (B) Is otherwise unable to drive during the
21 revocation period,



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

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

- 10 (1) A defendant whose license is expired, suspended, or
11 revoked as a result of action other than the instant
12 offense;
- 13 (2) A defendant who does not hold a valid license at the
14 time of the instant offense;
- 15 (3) A defendant who holds either a category 4 license
16 under section 286-102(b) or a commercial driver's
17 license under section 286-239(a), unless the ignition
18 interlock permit is restricted to a category 1, 2, or
19 3 license under section 286-102(b); or
- 20 (4) A defendant who holds a license that is a learner's
21 permit or instruction permit.



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

9 (e) A request made pursuant to subsection (d) shall be
10 accompanied by:

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

17 (2) A sworn statement from the defendant's employer
18 establishing that the employer will, in fact,
19 discharge the defendant if the defendant cannot drive
20 a vehicle that is not equipped with an ignition
21 interlock device and identifying the specific vehicle



1 the defendant will drive for purposes of employment
2 and the hours of the day, not to exceed twelve hours
3 per day, or the period of the specified assigned hours
4 of work, the defendant will drive the vehicle for
5 purposes of employment.

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

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

12 (2) Only the vehicle specified; and

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

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

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

18 (2) Conviction in any other state or federal jurisdiction
19 for an offense that is comparable to operating or
20 being in physical control of a vehicle while having
21 either an unlawful alcohol concentration or an



1 unlawful drug content in the blood or urine or while
2 under the influence of an intoxicant or habitually
3 operating a vehicle under the influence of an
4 intoxicant; or

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

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



1 ~~installation of an ignition interlock device pursuant to this~~
2 ~~section if the requirement has previously been imposed pursuant~~
3 ~~to part III for the same act; provided that, if the requirement~~
4 ~~is subsequently reversed, a requirement for the installation of~~
5 ~~an ignition interlock device shall be imposed as provided in~~
6 ~~this section.]~~

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

18 (i) Upon proof that the defendant has:

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



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

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

15 (k) Any person sentenced under this section may be ordered
16 to reimburse the county for the cost of any blood or urine tests
17 conducted pursuant to section 291E-11. The court shall order
18 the person to make restitution in a lump sum, or in a series of
19 prorated installments, to the police department or other agency
20 incurring the expense of the blood or urine test. Except as
21 provided in section 291E-5, installation and maintenance of the



1 ignition interlock device required by subsection (b) shall be at
2 the defendant's own expense.

3 (1) As used in this section, the term "examiner of
4 drivers" has the same meaning as provided in section 286-2."

5 SECTION 6. Section 291E-61.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§291E-61.5 Habitually operating a vehicle under the**
8 **influence of an intoxicant.** (a) A person commits the offense
9 of habitually operating a vehicle under the influence of an
10 intoxicant if:

11 (1) The person is a habitual operator of a vehicle while
12 under the influence of an intoxicant; and

13 (2) The person operates or assumes actual physical control
14 of a vehicle:

15 (A) While under the influence of alcohol in an amount
16 sufficient to impair the person's normal mental
17 faculties or ability to care for the person and
18 guard against casualty;

19 (B) While under the influence of any drug that
20 impairs the person's ability to operate the
21 vehicle in a careful and prudent manner;



1 (C) With .08 or more grams of alcohol per two hundred
2 ten liters of breath; or

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

5 (b) For the purposes of this section:

6 (1) "Convicted two or more times for offenses of operating
7 a vehicle under the influence" means that, at the time
8 of the behavior for which the person is charged under
9 this section, the person had two or more times within
10 ten years of the instant offense:

11 (A) A judgment on a verdict or a finding of guilty,
12 or a plea of guilty or nolo contendere, for a
13 violation of section [~~291-4, 291-4.4, or 291-7 as~~
14 ~~those sections were in effect on December 31,~~
15 ~~2001, or section]~~ 291E-61 or 707-702.5;

16 (B) A judgment on a verdict or a finding of guilty,
17 or a plea of guilty or nolo contendere, for an
18 offense that is comparable to section [~~291-4,~~
19 ~~291-4.4, or 291-7 as those sections were in~~
20 ~~effect on December 31, 2001, or section]~~ 291E-61
21 or 707-702.5; or



1 (C) An adjudication of a minor for a law or probation
2 violation that, if committed by an adult, would
3 constitute a violation of section [~~291-4, 291-~~
4 ~~4.4, or 291-7 as those sections were in effect on~~
5 ~~December 31, 2001, or section]~~ 291E-61 or
6 707-702.5,

7 that, at the time of the instant offense, had not been
8 expunged by pardon, reversed, or set aside. All
9 convictions that have been expunged by pardon,
10 reversed, or set aside before the instant offense
11 shall not be deemed prior convictions for the purposes
12 of proving that the person is a habitual operator of a
13 vehicle while under the influence of an intoxicant.

14 (2) "Convicted one or more times for offenses of
15 habitually operating a vehicle under the influence"
16 means that, at the time of the behavior for which the
17 person is charged under this section, the person had
18 one or more times within ten years of the instant
19 offense:

20 (A) A judgment on a verdict or a finding of guilty,
21 or a plea of guilty or nolo contendere, for a



1 violation of this section or section 291-4.4 as
2 that section was in effect on December 31, 2001;

3 (B) A judgment on a verdict or a finding of guilty,
4 or a plea of guilty or nolo contendere, for an
5 offense that is comparable to this section or
6 section 291-4.4 as that section was in effect on
7 December 31, 2001; or

8 (C) An adjudication of a minor for a law or probation
9 violation that, if committed by an adult, would
10 constitute a violation of this section or section
11 291-4.4 as that section was in effect on
12 December 31, 2001,
13 that, at the time of the instant offense, had not been
14 expunged by pardon, reversed, or set aside. All
15 convictions that have been expunged by pardon,
16 reversed, or set aside before the instant offense
17 shall not be deemed prior convictions for the purposes
18 of proving the person's status as a habitual operator
19 of a vehicle while under the influence of an
20 intoxicant.



1 (3) "Habitual operator of a vehicle while under the
2 influence of an intoxicant" means that the person:

3 (A) Was convicted two or more times for offenses of
4 operating a vehicle under the influence; or

5 (B) Was convicted one or more times for offenses of
6 habitually operating a vehicle under the
7 influence.

8 (c) [~~Habitually operating a vehicle while under the~~
9 ~~influence of an intoxicant is~~] Any person convicted of violating
10 this section shall be guilty of a class C felony[-

11 ~~(d) For a conviction under this section, the sentence~~
12 ~~shall be either:~~] for the first offense, or any offense not
13 preceded within a ten-year period by a conviction for an offense
14 under this section, and shall be sentenced to the following:

15 (1) An indeterminate term of imprisonment of five years;

16 or

17 (2) A term of probation of five years, with conditions to
18 include:

19 (A) Mandatory revocation of license [~~and privilege~~]
20 to operate a vehicle for a period no less than
21 three years but no more than five years[~~+~~], with



1 mandatory installation of an ignition interlock
2 device in one or more vehicles registered to and
3 all vehicles operated by the respondent during
4 the revocation period;

5 (B) No less than ten days imprisonment, of which at
6 least forty-eight hours shall be served
7 consecutively;

8 (C) A fine of no less than \$2,000 but no more than
9 \$5,000;

10 (D) Referral to a certified substance abuse counselor
11 as provided in section [~~291E-61(d);~~] 291E-61(h);

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

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

17 In addition to the foregoing, any vehicle owned and operated by
18 the person committing the offense shall be subject to forfeiture
19 pursuant to chapter 712A[~~; provided that the department of~~
20 ~~transportation shall provide storage for vehicles forfeited~~
21 ~~under this subsection].~~



1 (d) For an offense that occurs within ten years of a prior
2 conviction for an offense under this section, the offense shall
3 be a class B felony, and the person shall be sentenced to the
4 following:

5 (1) An indeterminate term of imprisonment of ten years; or

6 (2) A term of probation of five years, with conditions to
7 include the following:

8 (A) Permanent revocation of license to operate a
9 vehicle;

10 (B) No less than eighteen months imprisonment;

11 (C) A fine of no less than \$5,000 but no more than
12 \$25,000;

13 (D) Referral to a certified substance abuse counselor
14 as provided in section 291E-61(h);

15 (E) A surcharge of \$50 to be deposited into the
16 neurotrauma special fund; and

17 (F) A surcharge of up to \$100, to be deposited into
18 the trauma system special fund, if the court so
19 orders.



1 In addition to the foregoing, any vehicle owned and operated by
2 the person committing the offense shall be subject to forfeiture
3 pursuant to chapter 712A.

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

14 (f) Notwithstanding any other law to the contrary,
15 whenever a court revokes a person's driver's license pursuant to
16 this section, the examiner of drivers shall not grant to the
17 person a new driver's license until expiration of the period of
18 revocation determined by the court. After the period of
19 revocation is complete, the person may apply for and the
20 examiner of drivers may grant to the person a new driver's
21 license.



1 (g) Any person sentenced under this section may be ordered
2 to reimburse the county for the cost of any blood or urine tests
3 conducted pursuant to section 291E-11. The court shall order
4 the person to make restitution in a lump sum, or in a series of
5 prorated installments, to the police department or other agency
6 incurring the expense of the blood or urine test.

7 (h) As used in this section, the term "examiner of
8 drivers" has the same meaning as provided in section 286-2."

9 SECTION 7. 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 8. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 9. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 10. This Act shall take effect upon its approval.



Report Title:

Operating a Vehicle Under the Influence of an Intoxicant; Highly Intoxicated Driver; Penalties

Description:

Defines "highly intoxicated driver". Establishes higher penalties for a highly intoxicated driver operating a vehicle. Increases license revocation periods ordered by the Administrative Driver's License Revocation Office and extends the applicable lookback periods from 5 to 10 years. Requires that ignition interlock devices be installed and maintained on one or more vehicles registered to and all vehicles operated by anyone convicted of operating a vehicle under the influence of an intoxicant, during the applicable period of license revocation. Establishes higher penalties for persons operating a vehicle under the influence of an intoxicant who are repeat offenders, habitual offenders, or who committed the subject offense while the person's license was suspended or revoked for operating a vehicle under the influence of an intoxicant. (HD1 PROPOSED)

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