

JAN 18 2019

A BILL FOR AN ACT

RELATING TO CONVICTIONS.

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

1 SECTION 1. The legislature finds that operating a vehicle
2 under the influence of an intoxicant is dangerous to the person
3 operating the vehicle as well as others in the vicinity of that
4 person. By engaging in such conduct, an individual can destroy
5 the lives of others and have a profoundly negative impact on
6 their own future.

7 The legislature further finds that the punishment of those
8 who operate a vehicle while under the influence of an intoxicant
9 is justified and necessitated by the severe threat of harm and
10 injury to the public caused by such actions. Significant and
11 appropriate legal consequences for intoxicated driving
12 convictions can:

- 13 (1) Deter persons who might otherwise drive while
14 intoxicated from doing so; and
15 (2) Indicate how seriously the State takes intoxicated
16 driving and the harms it can cause.



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1 However, the legislature additionally finds that an
2 individual can learn a lifetime lesson from such a conviction
3 and cease any such behavior in the future. In such cases, a
4 conviction for operating a vehicle under the influence of an
5 intoxicant can significantly reduce that person's ability to
6 find employment and build a future long after their conviction,
7 even if the person has scrupulously avoided any unlawful conduct
8 ever since the conviction. The legislature additionally finds
9 that over twenty states have enacted some mechanism by which a
10 person who is convicted of operating a vehicle under the
11 influence of an intoxicant may expunge the conviction from their
12 record if they maintain a clean criminal history record for a
13 period of time after their conviction.

14 The purpose of this Act is to allow first-time offenders
15 convicted of misdemeanor operating a vehicle under the influence
16 of an intoxicant offenses to expunge the offense from their
17 record if they maintain a clean criminal history record for ten
18 years following the conviction.

19 SECTION 2. Section 291E-61, Hawaii Revised Statutes, is
20 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):



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- 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;



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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. After the period of
14 revocation is completed, the person may apply for and the
15 examiner of drivers may grant to the person a new driver's
16 license.

17 (k) Notwithstanding section 831-3.2 or any other law to
18 the contrary, a person convicted of a first-time violation under
19 subsection (a) in which no persons were injured, who had no
20 prior alcohol or drug related enforcement contacts, may apply to



1 the court for an expungement order ten years after the date of
2 conviction, or thereafter, if the person:

3 (1) Has fulfilled the terms of the sentence imposed by the
4 court;

5 (2) Has not recorded any violations during the first six
6 months on the ignition interlock device required to be
7 installed on any vehicle operated by the person
8 pursuant to subsection (b) (1) (B); and

9 (3) Has had no subsequent arrests or convictions for any
10 offense.

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

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




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

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

6 SECTION 5. This Act shall take effect upon its approval.

7

INTRODUCED BY: *By Request* 



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Report Title:

Operating a Vehicle Under the Influence of an Intoxicant; First-Time Offenders; Conviction; Expungement

Description:

Allows first-time offenders convicted of misdemeanor operating a vehicle under the influence of an intoxicant offenses in which no persons were injured to expunge the offense from their record if they maintain a clean criminal history record for ten years following the conviction.

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

