

JAN 18 2019

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 the incidence of operating a
3 vehicle under the influence of an intoxicant. Therefore, it is
4 vitally important that the State's ignition interlock program be
5 strengthened and expanded by requiring compliance with the
6 program prior to removal of an interlock device by providing
7 courts the option to utilize a sobriety monitoring system. It
8 is equally vital that persons convicted of operating a vehicle
9 under the influence of an intoxicant not be allowed to "sit out"
10 the interlock period thereby driving 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 a rule-making
14 authority within the department of transportation to develop,
15 implement, and manage the compliance-based provisions of this
16 Act.



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

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

- 7 (1) While under the influence of alcohol in an amount
8 sufficient to impair the person's normal mental
9 faculties or ability to care for the person and guard
10 against casualty;
- 11 (2) While under the influence of any drug that impairs the
12 person's ability to operate the vehicle in a careful
13 and prudent manner;
- 14 (3) With .08 or more grams of alcohol per two hundred ten
15 liters of breath; or
- 16 (4) With .08 or more grams of alcohol per one hundred
17 milliliters or cubic centimeters of blood.

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



- 1 (1) For the first offense, or any offense not preceded
2 within a five-year period by a conviction for an
3 offense under this section or section 291E-4(a):
- 4 (A) A fourteen-hour minimum substance abuse
5 rehabilitation program, including education and
6 counseling, or other comparable program deemed
7 appropriate by the court;
- 8 (B) One-year revocation of license and privilege to
9 operate a vehicle during the revocation period
10 and installation during the revocation period of
11 an ignition interlock device on any vehicle
12 operated by the 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 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) A surcharge, if the court so orders, of up to \$25
2 to be deposited into the trauma system special
3 fund;

4 (2) For an offense that occurs within five years of a
5 prior conviction for an offense under this section or
6 section 291E-4(a):

7 (A) Revocation for not less than eighteen months nor
8 more than two years of license and privilege to
9 operate a vehicle during the revocation period
10 and installation during the revocation period of
11 an ignition interlock device on any vehicle
12 operated by the person;

13 (B) Either one of the following:

14 (i) Not less than two hundred forty hours of
15 community service work; or

16 (ii) Not less than five days but not more than
17 thirty days of imprisonment, of which at
18 least forty-eight hours shall be served
19 consecutively;

20 (C) A fine of not less than \$500 but not more than
21 \$1,500;



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- 1 (D) A surcharge of \$25 to be deposited into the
2 neurotrauma special fund; and
- 3 (E) A surcharge of up to \$50 if the court so orders,
4 to be deposited into the trauma system special
5 fund;
- 6 (3) For an offense that occurs within five years of two
7 prior convictions for offenses under this section or
8 section 291E-4(a):
- 9 (A) A fine of not less than \$500 but not more than
10 \$2,500;
- 11 (B) Revocation for two years of license and privilege
12 to operate a vehicle during the revocation period
13 and installation during the revocation period of
14 an ignition interlock device on any vehicle
15 operated by the person;
- 16 (C) Not less than ten days but not more than thirty
17 days imprisonment, of which at least forty-eight
18 hours shall be served consecutively;
- 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 (4) In addition to a sentence imposed under paragraphs (1)
5 through (3), any person eighteen years of age or older
6 who is convicted under this section and who operated a
7 vehicle with a passenger, in or on the vehicle, who
8 was younger than fifteen years of age, shall be
9 sentenced to an additional mandatory fine of \$500 and
10 an additional mandatory term of imprisonment of forty-
11 eight hours; provided that the total term of
12 imprisonment for a person convicted under this
13 paragraph shall not exceed the maximum term of
14 imprisonment provided in paragraph (1), (2), or (3),
15 as applicable. Notwithstanding paragraphs (1) and
16 (2), the revocation period for a person sentenced
17 under this paragraph shall be not less than two years;
18 and

19 (5) If the person demonstrates to the court that the
20 person:



- 1 (A) Does not own or have the use of a vehicle in
2 which the person can install an ignition
3 interlock device during the revocation period;
4 [~~or~~]
- 5 (B) Is otherwise unable to drive during the
6 revocation period~~[7]~~; or
- 7 (C) After a determination from the department of
8 transportation that the person is unable to
9 operate an ignition interlock due to a physical
10 disability; provided that the department of
11 transportation's determination that a person is
12 unable to operate an ignition interlock device
13 shall be reasonable and based on substantial
14 evidence; provided further that this
15 determination is subject to review by a court of
16 competent jurisdiction; provided further that the
17 department of transportation may charge a person
18 seeking a medical exemption under this
19 subparagraph a reasonable fee for the assessment,
20 the person shall be absolutely prohibited from driving during
21 the period of applicable revocation provided in paragraphs (1)



1 to (4); provided that the court shall not issue an ignition
2 interlock permit pursuant to subsection (i) and the person shall
3 be subject to the penalties provided by section 291E-62 if the
4 person drives during the applicable revocation period[-];
5 provided that the revocation period may be extended pursuant to
6 subsection (l); provided further that the revocation shall
7 remain in effect until the requirements of subsection (n) are
8 met.

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

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

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

17 (3) A defendant who holds either a category 4 license
18 under section 286-102(b) or a commercial driver's
19 license under section 286-239(a), unless the ignition
20 interlock permit is restricted to a category 1, 2, or
21 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 section (l). 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 (1) 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 in a vehicle owned or
8 operated by the person, unless otherwise provided by law.

9 (m) A person who is required to install an ignition
10 interlock device in a vehicle pursuant to this chapter, but does
11 not install the required ignition interlock device, may be
12 sentenced as follows:

13 (1) For the first offense, or any offense not preceded
14 within a ten-year period, a minimum of sixty days in a
15 sobriety program, of which the last thirty days the
16 person shall be in full compliance;

17 (2) For the second offense, a minimum of ninety days in a
18 sobriety program, of which the last thirty days the
19 person shall be in full compliance; or

20 (3) For the third offense, and any subsequent offense
21 after, a minimum of one hundred twenty days in a



1 sobriety program, of which the last thirty days the
2 person shall be in full compliance.

3 (n) A restriction imposed under subsection (b) shall
4 remain in effect until the department of transportation receives
5 a declaration from the person's ignition interlock device
6 vendor, in a form to be determined by the department of
7 transportation, certifying that there have been none of the
8 following incidents in the one hundred eighty consecutive days
9 prior to the date of release:

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

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

18 (3) Failure to pass any random retest with a breath
19 alcohol concentration of 0.025 or lower unless a
20 subsequent test performed within ten minutes registers
21 a breath alcohol concentration lower than 0.025, and



1 the digital image confirms the same person provided
2 both samples; or

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

7 (o) In addition to the revocation period imposed under
8 subsection (b), a court may require a defendant to enroll in an
9 alcohol or substance abuse education or treatment program or a
10 sobriety program; provided that a defendant may choose to enroll
11 in such a program prior to conviction; provided further that if
12 a defendant chooses to enroll, prior to conviction, in a
13 compliant program, participation in that program shall count
14 toward the period of alcohol or substance abuse education or
15 treatment program, or a sobriety program participation, if such
16 participation is later ordered by the judge.

17 For purposes of this subsection "sobriety program" means a
18 sobriety and drug monitoring program which requires a person to:

19 (1) Abstain from alcohol and controlled substances for a
20 specified period; or



1 (2) Be subject to testing to determine whether alcohol or
2 a controlled substance is present in the person's body
3 in the following manner:

4 (A) At least twice per day at a central location, to
5 be determined by the department of
6 transportation, where an immediate sanction can
7 be effectively applied; or

8 (B) If testing creates a documented hardship or is
9 geographically impractical, allow an alternative
10 method of random alcohol monitoring and testing,
11 approved by the department of transportation and
12 consistent with a timely sanction.

13 (p) The director of transportation shall adopt rules
14 pursuant to chapter 91 necessary for the purposes of this
15 section.

16 [~~1~~] (q) As used in this section, the term "examiner of
17 drivers" has the same meaning as provided in section 286-2."

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



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

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

4

INTRODUCED BY: Karl Rhoad



S.B. NO. 645

Report Title:

Traffic Safety; Ignition Interlock Device; Motor Vehicles;
Substance Abuse; Sobriety Program

Description:

Requires that the revocation of license period be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person. Establishes requirements for removal of the ignition interlock device. Allows a defendant to enroll in an alcohol or substance abuse education or treatment program, or a sobriety program.

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