

JAN 23 2025

A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1 SECTION 1. The legislature finds that the amount of
2 traffic fatalities is greatly reflected in the legal limit of
3 blood alcohol concentration. Driving with a blood alcohol
4 concentration of even .05 grams of alcohol per one hundred
5 milliliters of blood can impair driving ability and lead to a
6 greater chance of a fatal crash. The National Highway Traffic
7 Safety Administration reported in 2022 that thirty-two per cent
8 of all traffic crash fatalities in the United States involved
9 drunk drivers. Over fifty countries around the world have a
10 legal limit of .05 grams blood alcohol concentration including
11 Belgium, Demark, Egypt, France, the Philippines, and more.
12 Studies provide evidence that lower thresholds for driving under
13 the influence citations help prevent crashes and deaths
14 especially between .05 grams and .08 grams blood alcohol
15 concentration, as people are more conscientious and wait longer
16 before driving.



1 The legislature further finds that the blood alcohol
2 concentration of .05 grams is beneficial for restaurant and bar
3 business sales. As a result of increased precaution with lower
4 blood alcohol limits, people feel they can freely order more
5 drinks on average than they otherwise would because they may
6 spend more time at restaurants and bars, and more frequently
7 plan to arrange designated drivers, rideshares, or alternate
8 transportation.

9 The legislature further notes that there is significant
10 evidence at both the international and national level in
11 countless cities, states, and countries that lowering the legal
12 limit of blood alcohol concentration reduces drunk driving. In
13 1980, more than half of the United States had a legal limit of
14 .10 grams blood alcohol concentration including Hawaii. In
15 2000, only nineteen states had lowered their blood alcohol
16 concentration limits to .08 grams, which became the new national
17 standard four years later. A study funded by the National
18 Institutes of Health found that between 1982 and 2014, states
19 lowering their blood alcohol concentration limits to .08 grams
20 reduced annual fatalities by 10.4 per cent.

21 Accordingly, the purpose of this Act is to:



- 1 (1) Increase safer transportation and reduce deaths on
- 2 Hawaii's roadways due to alcohol consumption by
- 3 establishing a new traffic fine for those driving with
- 4 a blood alcohol concentration between .05 grams and
- 5 .079 grams; and
- 6 (2) Prohibit a prosecuting attorney from dismissing a
- 7 charge for violation of operating a vehicle under the
- 8 influence of an intoxicant in exchange for a
- 9 defendant's agreement to a change of plea on a lesser
- 10 charge.

11 SECTION 2. Chapter 291E, Hawaii Revised Statutes, is
12 amended by adding a new section to part IV to be appropriately
13 designated and to read as follows:

14 "~~S291E-~~ **Operating a vehicle while impaired.** (a) A
15 person commits the offense of operating a vehicle while impaired
16 if the person operates or assumes actual physical control of a
17 vehicle while having a blood alcohol concentration equal to or
18 greater than .05 grams but less than .08 grams of alcohol per
19 one hundred milliliters or cubic centimeters of blood, or .05
20 grams but less than .08 grams of alcohol per two hundred ten
21 liters of breath.



1 (b) A person committing the offense of operating a vehicle
2 while impaired shall be fined \$ _____ .

3 (c) The penalty established under this section shall be in
4 addition to any other penalty established and imposed under this
5 chapter.

6 (d) The department of transportation may implement
7 administrative actions against any person who violates this
8 section."

9 SECTION 3. Section 291E-61, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§291E-61 Operating a vehicle under the influence of an**
12 **intoxicant.** (a) A person commits the offense of operating a
13 vehicle under the influence of an intoxicant if the person
14 operates or assumes actual physical control of a vehicle:

15 (1) 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 guard
18 against casualty;

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



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

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

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

8 (1) Except as provided in paragraph (4), for the first
9 offense, or any offense not preceded within a ten-year
10 period by a conviction for an offense under this
11 section or section 291E-4(a):

12 (A) A fourteen-hour minimum substance abuse
13 rehabilitation program, including education and
14 counseling, or other comparable programs deemed
15 appropriate by the court;

16 (B) Revocation of license to operate a vehicle for no
17 less than one year and no more than eighteen
18 months;

19 (C) Installation during the revocation period of an
20 ignition interlock device on all vehicles
21 operated by the person;



- 1 (D) Any one or more of the following:
- 2 (i) Seventy-two hours of community service work;
- 3 (ii) [~~no~~] Not less than forty-eight hours and
- 4 [~~no~~] not more than five days of
- 5 imprisonment; or
- 6 (iii) A fine of [~~no~~] not less than \$250 and [~~no~~]
- 7 not more than \$1,000;
- 8 (E) A surcharge of \$25 to be deposited into the
- 9 neurotrauma special fund; and
- 10 (F) A surcharge, if the court so orders, or up to \$25
- 11 to be deposited into the trauma system special
- 12 fund;
- 13 (2) For an offense that occurs within ten years of a prior
- 14 conviction for an offense under this section:
- 15 (A) A substance abuse program of at least thirty-six
- 16 hours, including education and counseling, or
- 17 other comparable programs deemed appropriate by
- 18 the court;
- 19 (B) Revocation of license to operate a vehicle for
- 20 [~~no~~] not less than two years and [~~no~~] not more
- 21 than three years;



- 1 (C) Installation during the revocation period of an
- 2 ignition interlock device on all vehicles
- 3 operated by the person;
- 4 (D) Either one of the following:
 - 5 (i) [~~Ne~~] Not less than two hundred forty hours
 - 6 of community service work; or
 - 7 (ii) [~~Ne~~] Not less than five days and [~~ne~~] not
 - 8 more than thirty days of imprisonment, of
 - 9 which at least forty-eight hours shall be
 - 10 served consecutively;
- 11 (E) A fine of [~~ne~~] not less than \$1,000 and [~~ne~~] not
- 12 more than \$3,000, to be deposited into the drug
- 13 and alcohol toxicology testing laboratory special
- 14 fund;
- 15 (F) A surcharge of \$25 to be deposited into the
- 16 neurotrauma special fund; and
- 17 (G) A surcharge of up to \$50, if the court so orders,
- 18 to be deposited into the trauma system special
- 19 fund;
- 20 (3) In addition to a sentence imposed under paragraphs (1)
- 21 and (2), any person eighteen years of age or older who



1 is convicted under this section and who operated a
2 vehicle with a passenger, in or on the vehicle, who
3 was younger than fifteen years of age, shall be
4 sentenced to an additional mandatory fine of \$500 and
5 an additional mandatory term of imprisonment of forty-
6 eight hours; provided that the total term of
7 imprisonment for a person convicted under this
8 paragraph shall not exceed the maximum term of
9 imprisonment provided in paragraph (1) or (2), as
10 applicable. Notwithstanding paragraphs (1) and (2),
11 the revocation period for a person sentenced under
12 this paragraph shall be ~~no~~ not less than two years;

13 (4) In addition to a sentence imposed under paragraph (1),
14 for a first offense under this section, or an offense
15 not preceded within a ten-year period by a conviction
16 for an offense, any person who is convicted under this
17 section and was a highly intoxicated driver at the
18 time of the subject incident shall be sentenced to an
19 additional mandatory term of imprisonment for forty-
20 eight consecutive hours and an additional mandatory
21 revocation period of six months; provided that the



1 total term of imprisonment for a person convicted
2 under this paragraph shall not exceed the maximum term
3 of imprisonment provided in paragraph (1).

4 Notwithstanding paragraph (1), the revocation period
5 for a person sentenced under this paragraph shall be
6 ~~not~~ not less than eighteen months;

7 (5) In addition to a sentence under paragraph (2), for an
8 offense that occurs within ten years of a prior
9 conviction for an offense under this section, any
10 person who is convicted under this section and was a
11 highly intoxicated driver at the time of the subject
12 incident shall be sentenced to an additional mandatory
13 term of imprisonment of ten consecutive days and an
14 additional mandatory revocation period of one year;
15 provided that the total term of imprisonment for a
16 person convicted under this paragraph shall not exceed
17 the maximum term of imprisonment provided in paragraph
18 (2), as applicable. Notwithstanding paragraph (2),
19 the revocation period for a person sentenced under
20 this paragraph shall be ~~not~~ not less than three
21 years;



1 (6) A person sentenced pursuant to paragraph (1)(B) may
2 file a motion for early termination of the applicable
3 revocation period if the person:

4 (A) Was not sentenced to any additional mandatory
5 revocation period pursuant to paragraph (3) or
6 (4);

7 (B) Actually installed and maintained an ignition
8 interlock device on all vehicles operated by the
9 person for a continuous period of six months,
10 after which the person maintained the ignition
11 interlock device on all vehicles operated by the
12 person for a continuous period of three months
13 without violation;

14 (C) Includes with the person's motion for early
15 termination a certified court abstract
16 establishing that the person was not sentenced to
17 any additional mandatory revocation period
18 pursuant to paragraph (3) or (4);

19 (D) Includes with the person's motion for early
20 termination a certified statement from the
21 director of transportation establishing that:



1 (i) The person installed and maintained an
2 ignition interlock device on all vehicles
3 operated by the person for a continuous
4 period of six months; and

5 (ii) After the six-month period, the person
6 maintained the ignition interlock device on
7 all vehicles operated by the person for a
8 continuous period of three months without
9 violation; and

10 (E) Has complied with all other sentencing
11 requirements.

12 Nothing in this paragraph shall require a court to
13 grant early termination of the revocation period if
14 the court finds that continued use of the ignition
15 interlock device will further the person's
16 rehabilitation or compliance with this section;

17 (7) If the person demonstrates to the court that the
18 person:

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



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

12 (8) For purposes of this subsection, "violation" means:

13 (A) Providing a sample of .04 or more grams of
14 alcohol per two hundred ten liters of breath when
15 starting the vehicle, unless a subsequent test
16 performed within ten minutes registers a breath
17 alcohol concentration lower than .02 and the
18 digital image confirmed the same person provided
19 both samples;

20 (B) Providing a sample of .04 or more grams of
21 alcohol per two hundred ten liters of breath on a



1 rolling retest, unless a subsequent test
2 performed within ten minutes registers a breath
3 alcohol concentration lower than .02 and the
4 digital image confirms the same person provided
5 both samples;

6 (C) Failing to provide a rolling retest, unless an
7 acceptable test is performed within ten minutes;

8 (D) Violating section 291E-66; or

9 (E) Failing to provide a clear photo of the person
10 when the person blows into the ignition interlock
11 device.

12 (c) Except as provided in sections 286-118.5 and 291E-
13 61.6, the court shall not issue an ignition interlock permit to:

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

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

19 (3) A defendant who holds either a category 4 license
20 under section 286-102(b) or a commercial driver's
21 license under section 286-239(a), unless the ignition



1 interlock permit is restricted to a category 1, 2, or
2 3 license under section 286-102(b); or

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

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

13 (e) A request made pursuant to subsection (d) shall be
14 accompanied by:

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



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

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

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

17 (2) Only the vehicle specified; and

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

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



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

3 (2) Conviction in any other state or federal jurisdiction
4 for an offense that is comparable to operating or
5 being in physical control of a vehicle while having
6 either an unlawful alcohol concentration or an
7 unlawful drug content in the blood or urine or while
8 under the influence of an intoxicant or habitually
9 operating a vehicle under the influence of an
10 intoxicant; or

11 (3) Adjudication of a minor for a law violation that, if
12 committed by an adult, would constitute a violation of
13 this section or an offense under section 291E-4(a), or
14 section 291E-61.5,

15 shall be considered a prior conviction for the purposes of
16 imposing sentence under this section. Any judgment on a verdict
17 or a finding of guilty, a plea of guilty or nolo contendere, or
18 an adjudication, in the case of a minor, that at the time of the
19 offense has not been expunged by pardon, reversed, or set aside
20 shall be deemed a prior conviction under this section.



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

12 (i) Upon proof that the defendant has:

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

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

18 the court shall issue an ignition interlock permit that will
19 allow the defendant to drive a vehicle equipped with an ignition
20 interlock device during the revocation period.



1 (j) Notwithstanding any other law to the contrary,
2 whenever a court revokes a person's driver's license pursuant to
3 this section, the examiner of drivers shall not grant to the
4 person a new driver's license until the expiration of the period
5 of revocation determined by the court. After the period of
6 revocation is completed, the person may apply for and the
7 examiner of drivers may grant to the person a new driver's
8 license.

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

18 (l) A prosecuting attorney shall not dismiss a charge for
19 a violation of this section in exchange for a defendant's
20 agreement to a change of plea on a lesser charge, including a
21 charge for a violation of section 291E- , or for any other



1 reason, unless the charge is not supported by probable cause or
2 cannot be proven at trial.

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

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

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

10 SECTION 6. This Act shall take effect on July 1, 2025.

11

INTRODUCED BY: _____



S.B. NO. 1285

Report Title:

DOT; Impaired Driving; Blood Alcohol Concentration; Prohibited;
Penalties

Description:

Establishes the offense of operating a vehicle while impaired and penalties. Authorizes the Department of Transportation to take administrative action. Prohibits plea deals allowing a person charged with operating a vehicle under the influence of an intoxicant to plea down to a lesser charge of operating a vehicle while impaired.

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