

ACT 189

H.B. NO. 1881

A Bill for an Act Relating to Use of Intoxicants.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The purpose of this part is to reduce the maximum jail time that may be imposed upon drug impaired offenders. The effect of such a reduction will be to make the application of the right to a jury trial for driving under the influence of drugs consistent with that for operating a vehicle under the influence of intoxicating liquor. The legislature further intends that, by making these reduced penalties retroactive to pending driving under the influence of drugs cases, it be made clear that these offenders are not entitled to a jury trial, as the offense is a ‘petty offense’ in the constitutional sense.

SECTION 2. Section 291-7, Hawaii Revised Statutes, is amended to read as follows:

“§291-7 Driving under the influence of drugs. (a) A person commits the offense of driving under the influence of drugs if the person operates or assumes actual physical control of the operation of any vehicle while under the influence of any drug [which] that impairs [such] the person’s ability to operate the vehicle in a careful and prudent manner. The term “drug” as used in this section [shall mean] means any controlled substance as defined and enumerated on schedules I through IV of chapter 329.

(b) A person committing the offense of driving under the influence of drugs shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section, by:
 - (A) A fourteen-hour minimum drug abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court; and
 - (B) Ninety-day prompt suspension of license, with absolute prohibition from operating a motor vehicle during suspension of license,

or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in drug treatment programs; and

- (C) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
 - (iii) A fine of not less than \$150 but not more than \$1,000[.];
- (2) For an offense [which] that occurs within five years of a prior conviction under this section:
 - (A) Prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license;
 - (B) Either one of the following:
 - (i) Not less than eighty hours of community service work; or
 - (ii) Not less than forty-eight consecutive hours but not more than fourteen days of imprisonment[;] of which at least forty-eight hours shall be served consecutively; and
 - (C) A fine of not less than \$500 but not more than \$1,000 [.; and
- (3) For an offense [which] that occurs within five years of two prior convictions under this section, by:
 - (A) A fine of not less than \$500 but not more than \$1,000;
 - (B) Revocation of license for a period of not less than one year but not more than five years; and
 - (C) Not less than ten days but not more than [one hundred eighty] thirty days imprisonment[.] of which at least forty-eight hours shall be served consecutively.

[(4)] Notwithstanding any other law to the contrary, any conviction for driving under the influence of drugs shall be considered a prior conviction.

(c) Whenever a court sentences a person pursuant to subsection (b)(2) or (3), it also shall [also] require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender's drug dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court may require the offender to obtain appropriate treatment.

All costs for [such] the assessment or treatment or both shall be borne by the offender.

(d) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to [the provisions of] this section, the examiner of drivers shall not grant to [such] the person an application for a new driver's license for [such] a period of time as specified by the court.

(e) As used in this section[, the terms "driver"];

"Driver", "driver's license", and "examiner of drivers" shall have the same meanings as provided in section 286-2[; and the term "vehicle"].

"Vehicle" shall have the same meaning as provided in section 291C-1."

PART II

SECTION 3. The legislature finds that section 5 of the federal TEA-21 Restoration Act establishes a new program under Section 164 of Chapter 1, Title 23 U.S.C., encouraging states to enact repeat intoxicated driver laws. States that do not have a repeat intoxicated driver law by October 1, 2000, must transfer 1.5 per cent of federal aid highway funds to the state's Section 402 state and community highway safety funds for the first two years. If this part is not enacted by September 30, 2001, three per cent of the State's federal aid highway funds will be transferred until the State enacts this legislation.

The legislature further finds that each state is required to have in effect a repeat intoxicated driver law that imposes on impaired drivers who have been convicted of a previous driving under the influence violation of the following minimum penalty:

- (1) A driver's license suspension for not less than one year;
- (2) Vehicle impoundment, immobilization of each of the individual's motor vehicles, or the installation of an ignition interlock system on each of the motor vehicles;
- (3) An assessment of the individual's degree of abuse of alcohol and treatment; and
- (4) Community services for not less than thirty days or five days of imprisonment for a second offense; and not less than ten days of imprisonment for a third and subsequent offenses.

The penalties for a first time offender are unchanged.

Accordingly, the purpose of this part is to amend the law relating to the administrative revocation of driver's licenses by expanding that law to include the revocation of all motor vehicle registrations issued to a driver who has been convicted of a previous violation of driving under the influence of intoxicating liquor (section 291-4, Hawaii Revised Statutes) or habitually driving under the influence of intoxicating liquor or drugs (section 291-4.4). In addition, this part increases the penalties for subsequent convictions under section 291-4.

SECTION 4. Chapter 249, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§249- Special series plates. A qualified household member, as defined in section 286-251, or a co-owner of a motor vehicle owned by an arrestee under part XIV of this chapter, who has been granted a special motor vehicle registration under section 286-B, shall apply to the appropriate county director of finance for special license plates that shall bear a special series of numbers or letter so as to be readily identifiable by law enforcement officers. The director of finance may issue the special plates only if:

- (1) The director of finance receives written approval for the issuance of special plates from the administrative director of the courts or the administrative director's appointee under section 286-251;
- (2) The qualified household member or a co-owner of the motor vehicle has a driver's licence that has not expired or been suspended or revoked; and
- (3) The applicant pays a fee for the special license plates that is equal to the cost of the license plates and tag or emblem, plus the administrative cost of furnishing the plates and tag or emblem and effecting the registration for each motor vehicle for which special plates are issued.”

SECTION 5. Chapter 286, Hawaii Revised Statutes, is amended by adding three new sections to part XIV to be appropriately designated and to read as follows:

“**§286-A Failure to surrender license plates.** Any person who has had the person’s motor vehicle registration and license plates revoked pursuant to this part and subsequently fails to comply with an order to surrender the motor vehicle license plates shall be guilty of a misdemeanor.

§286-B Special motor vehicle registration. (a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section 286-259(i), a qualified household family member or co-owner of a motor vehicle with an arrestee who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor vehicle registration. The director may grant the request upon determining that the following conditions have been met:

- (1) The applicant is a member of the arrestee’s household or co-owner of the vehicle;
- (2) The applicant has a driver’s license that has not expired or been suspended or revoked;
- (3) The applicant is completely dependent on the motor vehicle for the necessities of life; and
- (4) The director finds that the applicant will take reasonable precautions to ensure that the arrestee will not drive the vehicle.

A person to whom a special motor vehicle registration has been granted shall apply to the appropriate county director of finance for special series license plates, as provided in section 249-

(b) The director shall revoke the special motor vehicle registration if any conditions set forth in the application no longer exist.

(c) The applicant shall be under an affirmative duty to report to the director any changes in the conditions to the special motor vehicle registration.

(d) The director shall adopt rules, pursuant to chapter 91, necessary to carry out the purposes of this section.

§286-C Transferring vehicle prohibited; exceptions. (a) A registered owner shall not sell or transfer a motor vehicle during the time period the motor vehicle’s registration has been ordered revoked and license plates surrendered or during the time the motor vehicle bears the special series license plates, unless the registered owner applies to the administrative director of the courts or the administrative director’s appointee under section 286-251 for consent to transfer title to the motor vehicle. If the director is satisfied that:

- (1) The proposed sale is in good faith and for valid consideration;
- (2) The registered owner will be deprived of the custody and control of the motor vehicle; and
- (3) The sale is not for the purpose of circumventing the provisions of this part,

the director may consent to the sale or transfer. If the director consents, the director shall issue a certified copy of the written consent to the registered owner and forward a copy to the appropriate county director of finance.

(b) The county director of finance, upon proper application and the presentation to the director of a certified copy of the written consent to the sale or transfer of a motor vehicle, shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new license plates to the new registered owner pursuant to chapter 249.

(c) Notwithstanding subsections (a) and (b), if the title to the motor vehicle is transferred by foreclosure of a chattel mortgage, cancellation of a conditional sales contract, a sale upon execution, or decree or order of a court of competent jurisdiction, after the registration and license plates have been revoked under this part, the county director of finance shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new license plates to the new registered owner pursuant to chapter 249.”

SECTION 6. Chapter 286, part XIV, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“PART XIV. ADMINISTRATIVE REVOCATION OF DRIVER’S LICENSE AND MOTOR VEHICLE REGISTRATION”

SECTION 7. Section 286-251, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to be appropriately inserted and to read: ““Household member” means:

- (1) Persons who reside in the same dwelling unit; or
- (2) Persons under twenty-one years of age who are related to the arrestee by marriage, blood, or adoption, but regardless of whether they reside in the same dwelling with the arrestee.

“Qualified household member” means a household member of the arrestee who has a driver’s license that has not expired or been suspended or revoked.

“Repeat intoxicated driver” means a person who previously:

- (1) Has been convicted of one or more violations under section 291-4 or 291-4.4 during the five years preceding the date of arrest;
- (2) Has been convicted of three or more violations under section 291-4 or 291-4.4 during the ten years preceding the date of arrest; or
- (3) Has had one prior alcohol enforcement contact during the five years preceding the date of arrest, two prior alcohol enforcement contacts during the seven years preceding the date of arrest, or three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest.”

“Temporary vehicle registration” means the portion of the notice of administrative revocation that, when completed by the arresting officer, permits the arrestee to drive the vehicles registered in the name of the arrestee for thirty days or until the time established by the director under this part.”

2. By amending the definition of “administrative revocation” to read:

““Administrative revocation” means termination of the arrestee’s driver’s license or the registration of all motor vehicles registered to the arrestee, or both, pursuant to this part and does not include any revocation imposed under section 291-4 or 291-4.4.”

3. By amending the definitions of “alcohol enforcement contact” and “arrestee” to read:

““Alcohol enforcement contact” means [any]:

- (1) Any administrative revocation ordered pursuant to this part; [any driver’s license]
- (2) Any suspension or revocation of any driver’s license or motor vehicle registration, or both, imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration in the person’s blood; or [any]
- (3) Any conviction in this or any other state or federal jurisdiction for driving, operating, or being in physical control of a motor vehicle while

having an unlawful concentration of alcohol in the blood, or while under the influence of alcohol.

“Arrestee” means a person arrested for violation of section 291-4 or 291-4.4 and, for purposes of this part, also refers to a person from whom a blood sample has been drawn pursuant to section 286-163, because there was probable cause to believe that the person has violated section 291-4[.] or 291-4.4.”

SECTION 8. Section 286-252, Hawaii Revised Statutes, is amended to read as follows:

“**§286-252 Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

- (1) Establishes that the arrestee’s driving privilege in this State shall be terminated thirty days after the date of arrest or [such] a later date as is established by the director under section 286-259, if the director administratively revokes the arrestee’s license;
- (2) Establishes that the registrations of all motor vehicles registered to an arrestee who is a repeat intoxicated driver shall be terminated thirty days after the date of an arrest pursuant to section 286-255(b);
- [2(2)] (3) Establishes the date on which administrative revocation proceedings against the arrestee were initiated; and
- [3(3)] (4) Serves as a temporary driver’s permit [to drive] and temporary motor vehicle registration as provided in section 286-255.”

SECTION 9. Section 286-254, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) to (e) to read:

“(b) The notice, when completed by the arresting officer and issued to the arrestee, shall contain at a minimum the following information relating to the arrest:

- (1) Information identifying the arrestee;
- (2) The specific violation for which the person was arrested;
- (3) The date issued and the date the administrative revocation is scheduled to go into effect;
- (4) That the arrestee was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol [content] concentration of the blood and whether or not the arrestee consented to be tested;
- (5) The expiration date of the temporary driver’s permit[;] and the temporary motor vehicle registration, if applicable; and
- (6) That the arrest will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

- (1) That the review is automatic;
- (2) That the arrestee [may], within three days of the arrest, may submit written information demonstrating why the arrestee’s driver’s license and motor vehicle registration, if applicable, should not be administratively revoked;
- (3) The address or location where the arrestee may submit the information;
- (4) That the arrestee is not entitled to be present or represented at the review; and
- (5) That the review decision shall be mailed to the arrestee no later than eight days after the date of the arrest.

(d) The notice shall state that if the arrestee’s license is not administratively revoked after the review, the arrestee’s driver’s license and motor vehicle registra-

tion and license plates, if applicable, shall be returned, unless a subsequent alcohol enforcement contact has occurred, along with a certified statement that the administrative revocation proceedings have been terminated.

(e) The notice shall state that if the arrestee's driver's license [is] and motor vehicle registration, if applicable, are administratively revoked after the review, a decision shall be mailed to the arrestee containing, at a minimum, the following information:

- (1) The reasons why the arrestee's driver's license [was] and motor vehicle registration, if applicable, were administratively revoked;
- (2) That the arrestee may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;
- (3) That if the [arrestee requests] arrestee's request for an administrative hearing is received within six days, the hearing shall be scheduled to commence no later than twenty-five days after the date of arrest;
- (4) The procedure to request an administrative hearing;
- (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
- (6) That the arrestee may regain the right to a hearing by requesting the director, within sixty days after the arrest, to schedule a hearing;
- (7) That the director shall schedule the hearing to commence no later than thirty days after the request is [made] received but that, except as provided in section 286-259(k), the temporary permit shall not[, in any event,] be extended if the arrestee fails to request an administrative hearing within the initial six-day period provided for that purpose;
- (8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated; [and]
- (9) The duration of the administrative revocation and other conditions [which] that may be imposed, including referral to the driver's education program for alcohol counseling[,] and alcohol treatment[, and installation of an ignition interlock system.]; and
- (10) That the director may grant a special registration to a qualified household member or to a co-owner of any motor vehicle owned by the arrestee upon a determination that the person is completely dependent on the motor vehicle for the necessities of life; provided that the special registration shall not be valid for use by the arrestee.'

2. By amending subsections (g) and (h) to read:

“(g) The notice shall state that if the administrative revocation is reversed after the hearing, the arrestee's driver's license and motor vehicle registration, if applicable, [and any fees collected from the arrestee under this part shall be returned] along with a certified statement that the administrative revocation proceedings have been terminated.

(h) The notice shall state that if the administrative revocation is sustained at the hearing, a decision shall be mailed to the arrestee containing, at a minimum, the following information:

- (1) The effective date of the administrative revocation;
- (2) The duration of the administrative revocation;
- (3) If applicable, the date by which all motor vehicle license plates issued to the arrestee must be surrendered to the director;
- (4) If applicable, that failure to surrender all motor vehicle license plates as required is a misdemeanor;

- [(3)] (5) Other conditions [which] that may be imposed by law; and
- [(4)] (6) The right to obtain judicial review.”

SECTION 10. Section 286-255, Hawaii Revised Statutes, is amended to read as follows:

“**§286-255 Arrest; procedures.** (a) Whenever a person is arrested for a violation of section 291-4 or 291-4.4, on a determination by the arresting officer that:

- (1) There was reasonable suspicion to stop the motor vehicle, or that the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6; and
- (2) There was probable cause to believe that the arrestee was driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;

the arresting officer immediately shall take possession of any license held by the person and request the arrestee to take a test for alcohol concentration.¹ The arresting officer shall inform the person that the person has the option to take a breath test, a blood test, or both. The arresting officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath or a blood test. Thereafter, the arresting officer shall complete and issue to the arrestee a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary driver’s permit. The notice shall serve as a temporary driver’s permit, unless, at the time of arrest, the arrestee was unlicensed, the arrestee’s license was revoked or suspended, or the arrestee had no license in the arrestee’s possession.

(b) Whenever the police determine that, as the result of a blood test performed pursuant to section 286-163(b) and (c), there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291-4[.] or 291-4.4, the police shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary driver’s permit. The notice shall serve as a temporary driver’s permit unless, at the time the notice was issued, the person was unlicensed, the person’s license was revoked or suspended, or the person had no license in the person’s possession.

(c) Whenever an arrestee under this section is a repeat intoxicated driver, the arresting officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the arrestee is registered to the arrestee, remove the license plates and issue a temporary motor vehicle registration and temporary license plates for the motor vehicle. No temporary motor vehicle registration and license plates shall be issued if the arrestee’s registration has expired or been revoked. The appropriate police department, upon determining that the arrestee is a repeat intoxicated driver, shall notify the appropriate county director of finance to enter a stopper on the motor vehicle registration files to prevent the arrestee from conducting any motor vehicle transactions, except as permitted under this part.”

SECTION 11. Section 286-256, Hawaii Revised Statutes, is amended to read as follows:

“**§286-256 Immediate restoration of license[.] and motor vehicle registration.** If a test conducted in accordance with part VII and section 321-161 and the rules adopted thereunder shows that the arrestee’s alcohol concentration was less than .08, the director or the arresting agency shall immediately return the arrestee’s

driver's license and motor vehicle registration and license plates, if applicable, along with a certified statement that administrative revocation proceedings have been terminated with prejudice."

SECTION 12. Section 286-257, Hawaii Revised Statutes, is amended to read as follows:

“§286-257 Sworn statements of law enforcement officials. (a) Whenever a person[:] is arrested for a violation of section 291-4 or 291-4.4 and submits to a test that establishes that the arrestee's alcohol concentration was .08 or more; or has been involved in a collision resulting in injury or death, and a blood test performed pursuant to section 286-163 establishes that the person's alcohol concentration was .08 or more, the following shall be immediately forwarded to the director:

- (1) A copy of the arrest report or the report of the officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting officer or the officer who issued the notice of administrative revocation stating facts that establish that:
 - (A) There was reasonable suspicion to stop the motor vehicle, the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6, or the person was tested pursuant to section 286-163;
 - (B) There was probable cause to believe that the arrestee had been driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;
 - (C) The arrestee was informed of the sanctions of this part, that criminal charges may be filed, and the consequences of refusing to be tested for alcohol concentration; and
 - (D) The arrestee agreed to be tested or the person was tested pursuant to section 286-163;
- (2) The sworn statement of the person responsible for maintenance of the testing equipment stating facts that establish that pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
 - (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (3) The sworn statement of the person who conducted the test stating facts that establish that pursuant to section 321-161 and rules adopted thereunder:
 - (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the person's alcohol concentration was at, or above, the prohibited level; and
 - (D) The person whose breath or blood was tested was the person arrested;
- (4) A copy of the notice of administrative revocation issued to the arrestee;

- (5) Any driver's license and motor vehicle registration and license plates, if applicable, taken into possession by the arresting officer; and
 - (6) A listing of any prior alcohol enforcement contacts involving the arrestee.
- (b) Whenever a person is arrested for a violation of section 291-4 or 291-4.4 and refuses to submit to a test to determine alcohol concentration [in the blood], the following shall be immediately forwarded to the director:
- (1) A copy of the arrest report and the sworn statement of the arresting officer stating facts that establish that:
 - (A) There was reasonable suspicion to stop the motor vehicle or the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6;
 - (B) There was probable cause to believe that the arrestee had been driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;
 - (C) The arrestee was informed of the sanctions of this part, that criminal charges may be filed, and the probable consequences of refusing to be tested for concentration of alcohol in the blood; and
 - (D) The arrestee refused to be tested;
 - (2) A copy of the notice of administrative revocation and the temporary driver's permit and temporary motor vehicle registration, if applicable, issued to the arrestee;
 - (3) Any driver's license and motor vehicle registration and license plates, if applicable, taken into possession; and
 - (4) A listing of all alcohol enforcement contacts involving the arrestee."

SECTION 13. Section 286-258, Hawaii Revised Statutes, is amended to read as follows:

“§286-258 Administrative review; procedures. (a) The director shall automatically review the issuance of a notice of administrative revocation, and a written decision administratively revoking the driver's license and motor vehicle registration, if applicable, or rescinding the notice of administrative revocation shall be mailed to the arrestee no later than eight days after the date the notice was issued.

(b) The arrestee shall have the opportunity to demonstrate in writing why the arrestee's driver's license and motor vehicle registration, if applicable, should not be administratively revoked and shall submit any written information within three days of the notice, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

(c) In conducting the administrative review, the director shall consider:

- (1) Any sworn or unsworn statement or other evidence provided by the arrestee;
- (2) The breath or blood test results, if any; and
- (3) The sworn statements of the law enforcement officials, and other evidence or information required by section 286-257.

(d) The director shall administratively revoke the arrestee's driver's license if the director determines that:

- (1) There existed reasonable suspicion to stop the motor vehicle, the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6, or the person was tested pursuant to section 286-163;

- (2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and
- (3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having an alcohol concentration of .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

(e) The director shall administratively revoke the registration of all vehicles owned or registered to the arrestee and impound any license plate issued to the arrestee if the director determines that the arrestee is a repeat intoxicated driver and that:

- (1) There existed reasonable suspicion to stop the motor vehicle, the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6, or the person was tested pursuant to section 286-163;
- (2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and
- (3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having an alcohol concentration of .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

[(e)] (f) If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the arrestee's driver's license and motor vehicle registration and license plates, if applicable, along with a certified statement that administrative revocation proceedings have been terminated.

[(f)] (g) If the director administratively revokes the arrestee's driver's license[,] and motor vehicle registration, if applicable, the director shall mail to the arrestee a written decision stating the reasons for the administrative revocation. The decision shall also indicate that the arrestee has six days from the date the decision is mailed to request an administrative hearing to review the director's decision. The decision shall also explain the procedure by which to request an administrative hearing, and shall be accompanied by a form, postage prepaid, which the arrestee may fill out and mail in order to request an administrative hearing. The decision shall also inform the arrestee of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of the law enforcement officials, prior to the hearing. Further, the decision shall state that the arrestee may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting officer.

[(g)] (h) Failure of the arrestee to request a hearing within the time provided in section 286-259(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The arrestee may regain the right to a hearing by requesting the director, within sixty days of the arrest, to schedule a hearing. The hearing shall be scheduled to commence no later than thirty days after the request is [made.] received by the director. The administrative review decision issued by the director under this section shall clearly explain the consequences of failure to request an administrative hearing and the procedure by which the arrestee may regain the right to a hearing."

SECTION 14. Section 286-259, Hawaii Revised Statutes, is amended to read as follows:

“§286-259 Administrative hearing. (a) If the director administratively revokes the arrestee’s driver’s license and motor vehicle registration, if applicable, after administrative review, the arrestee may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. [The] If the request for the hearing is received by the director within six days of this date, the hearing shall be scheduled to commence no later than twenty-five days from the date the notice of administrative revocation was issued. The director may continue the hearing only as provided in subsection (j).

(b) The hearing shall be held at a place designated by the director, as close to the location of the arrest as practical.

(c) The arrestee may be represented by counsel.

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

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive and determine the relevance of evidence;
- (4) Issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) Regulate the course and conduct of the hearing; and
- (6) Make a final ruling.

(e) The director shall affirm the administrative revocation only if the director determines that:

- (1) There existed reasonable suspicion to stop the motor vehicle, the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6, or the person was tested pursuant to section 286-163;
- (2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and
- (3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having an alcohol concentration of .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

(f) In addition to subsection (e), the director shall affirm the administrative revocation of the registration of all motor vehicles owned by or registered to the arrestee only if the director determines that the arrestee is a repeat intoxicated driver. If the director affirms the administrative revocation pursuant to this subsection, the director shall order the arrestee to surrender the license plates and motor vehicle registrations of all motor vehicles owned by or registered to the arrestee. The director may destroy any license plates seized from or surrendered by the arrestee.

[(f)] (g) The arrestee’s prior alcohol enforcement contacts shall be entered into evidence.

[(g)] (h) The sworn statements provided in section 286-257 shall be admitted into evidence. Upon notice to the director no later than five days prior to the hearing that the arrestee wishes to examine a law enforcement official who made a sworn statement, the director shall issue a subpoena for the official to appear at the hearing. If the official cannot appear, the official may at the discretion of the director testify by telephone.

[(h)] (i) The hearing shall be recorded in a manner to be determined by the director.

[(i)] (j) The director's decision shall be rendered in writing and mailed to the arrestee no later than five days after conclusion of the hearing. If the decision is to reverse the administrative revocation, the director shall return the arrestee's driver's license, [and any fees collected from the arrestee under this part] motor vehicle registration, and license plates if applicable, along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the arrestee a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section 286-261.

[(j)] (k) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary driver's permit or temporary motor vehicle registration, if applicable, for a period not to exceed the period of the continuance[.], unless the extension is otherwise prohibited. If a continuance is granted at the request of the arrestee, the director shall not extend the validity of the temporary driver's permit[.] or temporary motor vehicle registration, if applicable. For purposes of this section a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced other than for recesses during the day or at the end of the day or week.

(l) The director may grant a special motor vehicle registration, pursuant to section 286-8, to a qualified household member or co-owner of any motor vehicle upon determination that the person is dependent on the motor vehicle for the necessities of life. The special motor vehicle registration shall not be valid for use by the arrestee.

[(k)] (m) If the arrestee fails to appear at the hearing, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section 286-258."

SECTION 15. Section 286-259.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§286-259.5]] Fees and costs. The director shall be authorized to assess and collect a [§15] \$30 fee from the arrestee for the costs of processing the arrestee's request for an administrative hearing to cover costs which include but should not be limited to the cost of photocopying documents, the issuance of subpoenas, conditional driver's license permits or temporary motor vehicle registration and license plates, or temporary driver's permit and relicensing forms, interpreter services, law enforcement official mileage fees, and other similar costs. The director may waive the fee in the case of indigent arrestees upon an appropriate inquiry into the financial circumstances of the person seeking the waiver and an affidavit or a certificate signed by such person demonstrating the person's financial inability to pay the fee.”

SECTION 16. Section 286-261, Hawaii Revised Statutes, is amended to read as follows:

“§286-261 Effective date and period of administrative revocation; criteria. (a) Unless an administrative revocation is reversed or the temporary driver's license permit [is] and temporary motor vehicle registration and temporary license plates, if applicable, are extended by the director, administrative revocation shall become effective on the day specified in the notice. Except as provided in section 286-264, no driver's license nor motor vehicle registration and license plates, if

applicable, shall be restored under any circumstances and no conditional permit shall be issued during the administrative revocation period.

(b) The periods of administrative revocation with respect to a driver's license and motor vehicle registration, if applicable, that [may] shall be imposed under this part are as follows:

- (1) [Three] A minimum of three months[,] up to a maximum of one year revocation of driver's license, if the arrestee's driving record shows no prior alcohol enforcement contacts during the five years preceding the date of arrest;
- (2) [One] A minimum of one year up to a maximum of two years revocation of driver's license and all registrations of motor vehicles registered to the arrestee if the arrestee's driving record shows one prior alcohol enforcement contact during the five years preceding the date of arrest;
- (3) [Two] A minimum of two years up to a maximum of four years revocation of driver's license and all registrations of motor vehicles registered to the arrestee if the arrestee's driving record shows two prior alcohol enforcement contacts during the seven years preceding the date of arrest;
- (4) [For life] Lifetime revocation of driver's license and prohibition on all subsequent motor vehicles registrations by the arrestee if the arrestee's driving record shows three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest; or
- (5) For arrestees under the age of eighteen years, the revocation of the driver's license for the period remaining until the arrestee's eighteenth birthday, or for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection [(c),] (d), whichever is longer.

(c) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the arrestee.

[(c)] (d) The driver's license of an arrestee who refuses to be tested after being informed of the sanctions of this part shall be revoked under subsection (b)(1), (2), [and] (3), and (4) for a period of one year, two years, [and] four years, and a life time, respectively.

(e) In addition to subsection (d), the motor vehicle registration and license plates of an arrestee who is a repeat intoxicated driver and who refused to be tested after being informed of the sanctions of this part shall be revoked for the periods specified in subsection (d), and the arrestee shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.

[(d)] (f) Whenever a driver's license is administratively revoked under this part, the offender shall be referred to a certified substance abuse counselor for an assessment of the arrestee's alcohol abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the arrestee's alcohol abuse or dependence warrants treatment, the director [may] shall so order. All costs for assessment and treatment shall be paid by the arrestee.²

[(e)] (g) Alcohol enforcement contacts that occurred prior to August 1, 1991, shall be counted in determining the administrative revocation period.

(h) Alcohol enforcement contacts that occurred prior to the effective date of this Act shall be counted in determining the administrative revocation period for motor vehicle registration."

SECTION 17. Section 286-262, Hawaii Revised Statutes, is amended to read as follows:

“[[§286-262]] Notice to other states. When a nonresident’s driving privilege [is] or driver’s license and motor vehicle registration, if applicable, are administratively revoked under this part, the director shall notify, in writing, the officials in charge of traffic control or public safety in the nonresident’s home state and in any other state in which the nonresident has driving privileges, driver’s licenses, and motor vehicle registrations, as applicable, of the action taken in this State and shall return to the appropriate issuing authority in the other states any driver’s license and any motor vehicle registration seized under section 286-255.”

SECTION 18. Section 286-264, Hawaii Revised Statutes, is amended as follows:

1. By amending the title and subsection (a) to read:

“**§286-264 Conditional driver’s license permits.** (a) [If an arrestee subject to administrative revocation under this part submitted to a breath or blood test and has had no prior alcohol enforcement contacts during the five years preceding the date of arrest.] At the administrative hearing, the director, at the request of [the] an arrestee [at the administrative hearing,] who is subject to an administrative revocation period as provided in section 286-261(b)(1), may issue a conditional driver’s permit [allowing] that will allow the arrestee, after a minimum period of absolute license revocation of thirty days, to drive [after a minimum period of absolute license revocation of thirty days if] for the remainder of the revocation period, provided that one or more of the following conditions are met:

- (1) The arrestee is gainfully employed in a position that requires driving and will be discharged if the arrestee’s driving privileges are administratively revoked; or
- (2) The arrestee has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 286-261.

The director shall not issue a conditional permit to an arrestee whose license, during the conditional permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the arrestee is requesting a conditional permit under this section.”

2. By amending subsection (d) to read:

“(d) A conditional permit may include restrictions allowing the arrestee to drive:

- (1) Only during hours of employment for activities solely within the scope of the employment;
- (2) Only during daylight hours; or
- (3) Only for specified purposes or to specified destinations.

In addition, the director may impose any other appropriate restrictions[, including installation of an ignition interlock system].”

SECTION 19. Section 286-265, Hawaii Revised Statutes, is amended to read as follows:

“**§286-265 Eligibility for relicensing.** To be eligible for relicensing after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director or by the court;
- (2) Obtain a certified statement from the director indicating eligibility for relicensing;
- (3) Present the certified statement to the appropriate driver licensing and motor vehicle registration official; and

- (4) Successfully complete each requirement for obtaining a new driver's license and motor vehicle registration, if applicable, in this State including payment of all applicable fees."

SECTION 20. Section 291-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of driving under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For the first offense, or any offense not preceded within a five-year period by a conviction for driving under the influence of intoxicating liquor under this section or section 291-4.4 by:
 - (A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court; and
 - (B) Ninety-day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcoholism treatment programs; and
 - (C) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
 - (iii) A fine of not less than \$150 but not more than \$1,000.
- (2) For an offense that occurs within five years of a prior conviction for driving under the influence of intoxicating liquor under this section or section 291-4.4 by:
 - (A) Prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license;
 - (B) Either one of the following:
 - (i) Not less than [one] two hundred forty hours of community service work; or
 - (ii) Not less than [forty-eight consecutive hours] five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and
 - (C) A fine of not less than \$500 but not more than \$1,500.
- (3) For an offense that occurs within five years of two prior convictions for driving under the influence of intoxicating liquor under this section or section 291-4.4 by:
 - (A) A fine of not less than \$500 but not more than \$2,500;
 - (B) Revocation of license for a period not less than one year but not more than five years; and
 - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively.
- (4) Any person eighteen years of age or older, who is convicted under this section and who operated or assumed actual physical control of a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine

of \$500, and an additional mandatory term of imprisonment of forty-eight hours; provided, however, that the total term of imprisonment for a person convicted under this section shall not exceed thirty days.

Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor under this section or section 291-4.4 shall be considered a prior conviction for purposes of imposing sentence under this section.

No license suspension or revocation shall be imposed pursuant to this subsection if the person's license has previously been administratively revoked pursuant to part XIV of chapter 286 for the same offense; provided that, if the administrative revocation is subsequently reversed, the person's license shall be suspended or revoked as provided in this subsection."

SECTION 21. Section 291-4.4, Hawaii Revised Statutes, is amended to read as follows:

"§291-4.4 Habitually driving under the influence of intoxicating liquor or drugs. (a) A person commits the offense of habitually driving under the influence of intoxicating liquor or drugs if, during a ten-year period the person has been convicted three or more times for a driving under the influence offense; and

- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty;
- (2) The person operates or assumes actual physical control of the operation of any vehicle with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .08 or more grams of alcohol per two hundred ten liters of breath; or
- (3) A person operates or assumes actual physical control of the operation of any vehicle while under the influence of any drug which impairs such person's ability to operate the vehicle in a careful and prudent manner. The term "drug" as used in this section shall mean any controlled substance as defined and enumerated on schedules I through IV of chapter 329.

(b) For the purposes of this section, a driving under the influence offense means a violation of this section or section 291-4, 291-7, or 707-702.5, or violation of laws in another jurisdiction that requires proof of each element of the offenses punishable under either this section or section 291-4, 291-7, or 707-702.5 if committed in Hawaii.

(c) Habitually driving under the influence of intoxicating liquor or drugs is a class C felony. In addition to any other penalty imposed, a person convicted under this section shall be sentenced to:

- (1) Revocation of driver's license for not less than one year; and
- (2) Not less than ten days imprisonment of which at least forty-eight hours shall be served consecutively.

No license suspension or revocation shall be imposed pursuant to this subsection if the person's license has previously been administratively revoked pursuant to part XIV of chapter 286 for the same act; provided that, if the administrative revocation is subsequently reversed, the person's license shall be suspended or revoked as provided in this subsection.

(d) Whenever a court sentences a person pursuant to subsection (c), it also shall require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender's

alcohol abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's alcohol abuse or dependence.

All cost for assessment or treatment or both shall be borne by the offender."

PART III

SECTION 22. House Concurrent Resolution No. 26, H.D. 2, S.D.'1 (1998), entitled "Requesting the Department of Transportation to Review Hawaii's Impaired Driving Statutes and to Make Recommendations for Uniform Statutory Construction," directed the department of transportation to:

- (1) Review Hawaii's impaired driving statutes to identify inconsistent statutory provisions, including disparate punishment provisions for similar offenses and provisions conferring a right to jury trial for some impaired driving offenses but not others; and
- (2) Make recommendations and draft appropriate legislation to create more uniform and consistent impaired driving statutes.

The department of transportation solicited input in this effort from the governor's highway safety council impaired driving task force (task force). The task force is made up of over seventy-five individuals and organizations from around the State. Members include representatives from the department of health, police, prosecutors, defense bar, judiciary, administrative drivers' license revocation office, emergency room physicians, Mothers Against Drunk Driving, and others. The task force's efforts have resulted in proposed legislation that consolidates many provisions and provides for uniform and consistent treatment of impaired driving and boating offenses. The provisions in this part are based upon the task force's proposals.

It is the intent of the legislature to provide, where appropriate, uniform provisions, rights, and penalties, including immediate license revocation under the administrative revocation of license provisions and the same rights with respect to jury trials, for impaired driving and boating offenders. The legislature further intends that individuals who are charged under this part with an offense for operating a vehicle, including a vessel underway, under the influence of an intoxicant shall not be entitled to a jury trial if the maximum term of imprisonment for the offense does not exceed thirty days.

The legislature has previously taken steps to indicate its intent that defendants charged with driving under the influence of intoxicating liquor not be entitled to a jury trial. In Act 128, Session Laws of Hawaii 1993, the legislature clearly stated its intent that the first offense of driving under the influence of intoxicating liquor is a "petty offense" in the constitutional sense and reduced the maximum possible penalty to ensure that defendants charged with a first offense not be entitled to a jury trial. After finding a critical need to relieve the then existing first circuit court congestion of driving under the influence of intoxicating liquor cases awaiting jury trial, the legislature again took action in Act 226, Session Laws of Hawaii 1995, to reduce the maximum terms of imprisonment for second and third offenses of driving under the influence of intoxicating liquor. The maximum term of imprisonment for a second offense was reduced from sixty to fourteen days and for a third offense from one hundred eighty to thirty days to ensure that defendants charged with these offenses are not entitled to jury trials.

Furthermore, the legislature notes that in *State v. Lindsey*, 77 Haw. 162 (1994), the Hawaii supreme court ruled that "if the maximum term of imprisonment for a particular offense does not exceed thirty days, it is presumptively a petty offense to which the right to a jury trial does not attach." The court further stated that the "presumption can be overcome only in extraordinary cases when consider-

ation of other ... factors ... unequivocally demonstrates that society demands that persons charged with the offense at issue be afforded the right to a jury trial.” Consequently, the legislature finds and intends that a term of imprisonment not to exceed thirty days will not entitle a defendant under this part to a jury trial.

The legislature also is mindful that the statutory changes proposed in this part will require the judiciary and law enforcement agencies to develop new procedures and forms to ensure compliance. The legislature believes that an enactment date of January 1, 2002, will provide sufficient time to accommodate these development timetables.

Accordingly, the purpose of this part is to consolidate, for purposes of uniformity and consistency, where appropriate, the provisions relating to operating a vehicle while using an intoxicant.

SECTION 23. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
USE OF INTOXICANTS WHILE OPERATING A VEHICLE
PART I. GENERAL PROVISIONS**

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

“Administrative revocation” means termination of the respondent’s driver’s vehicle license or the privilege to operate a vessel underway on or in the waters of the State pursuant to part III, but does not include any revocation imposed under section -81.

“Alcohol” means the product of distillation of any fermented liquid, regardless of whether rectified, whatever may be the origin thereof, and includes ethyl alcohol, lower aliphatic alcohol, and phenol as well as synthetic ethyl alcohol, but not denatured or other alcohol that is considered not potable under the customs laws of the United States.

“Alcohol concentration” means either grams of alcohol per one hundred milliliters or cubic centimeters of blood or grams of alcohol per two hundred ten liters of breath.

“Alcohol enforcement contact” means: any administrative revocation ordered pursuant to part III; any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on December 31, 2001; any driver’s license suspension or revocation or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration; any conviction in this State for operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol; or a conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol.

“Certified substance abuse counselor” means any person certified by the department of health pursuant to section 321-193(10), or any other substance abuse specialist or medical practitioner the director of health may appoint to carry out the functions of a certified substance abuse counselor under this chapter.

“Director” means the administrative director of the courts or any other person within the judiciary appointed by the director to conduct administrative reviews or hearings or carry out other functions relating to administrative revocation under part III.

“Drug” means any controlled substance, as defined and enumerated on schedules I through IV of chapter 329, or its metabolites.

“Drug enforcement contact” means: any administrative revocation ordered pursuant to part III; any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on December 31, 2001; any driver’s license suspension or revocation or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for drug concentration in the person’s blood or urine; any conviction in this State for operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs; or a conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs.

“Impair” means to weaken, to lessen in power, to diminish, to damage, or to make worse by diminishing in some material respect or otherwise affecting in an injurious manner.

“Intoxicant” means alcohol or any drug, as defined in this section.

“Law enforcement officer” means any public servant, whether employed by the State, a county, or by the United States, vested by law with a duty to maintain public order or to make arrests for offenses or to enforce the criminal laws, and includes a conservation and resources enforcement officer as defined in section 199-3.

“License” means any driver’s license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State and includes:

- (1) Any learner’s permit or instruction permit;
- (2) The privilege of any person to operate a motor vehicle, regardless of whether the person holds a valid license;
- (3) Any nonresident’s operating privilege; and
- (4) The eligibility, including future eligibility, of any person to apply for a license or privilege to operate a motor vehicle.

“Measurable amount of alcohol” means a test result equal to or greater than .02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood or equal to or greater than .02 but less than .08 grams of alcohol per two hundred ten liters of breath.

“Moped” has the same meaning as in section 291C-1.

“Motor vehicle” has the same meaning as in section 291C-1, except that it specifically includes a moped.

“Nonresident’s operating privilege” means the privilege conferred by law upon a nonresident to operate a vehicle in this State.

“Notice of administrative revocation” or “notice” means the written notice issued to the respondent pursuant to section -33.

“Operate” means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway or to navigate or otherwise use or assume physical control of a vessel underway on or in the waters of the State.

“Operator” means a person who drives or assumes actual physical control of a vehicle or a person who operates, navigates, or who has an essential role in the operation of a vessel underway.

“Public way, street, road, or highway” includes:

- (1) The entire width, including beam and shoulder, of every road, alley, street, way, right of way, lane, trail, highway, or bridge;
- (2) A parking lot, when any part thereof is open for use by the public or to which the public is invited for entertainment or business purposes;

- (3) Any bicycle lane, bicycle path, bicycle route, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1; or
- (4) Any public highway, as defined in section 264-1.

“Respondent” means a person to whom a notice of administrative revocation has been issued following an arrest for a violation of section -81 or following the collection of a blood or urine sample from the person, pursuant to section -21, because there was probable cause to believe that the person has violated section -81.

“State” means: any state or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the United States Virgin Islands; American Samoa; Guam; any province or territory of the Dominion of Canada; and the Commonwealth of the Northern Mariana Islands, except when the word, in context, clearly refers to the State of Hawaii.

“Substance” and “substance abuse” have the same meanings as provided in section 321-191.

“Temporary permit” means that portion of the notice of administrative revocation that, when completed by a law enforcement officer, permits the respondent to operate a vehicle for thirty days in the case of an alcohol related offense and forty-four days in the case of a drug related offense or until such time as the director may establish under part III.

“Under the influence” means that a person:

- (1) Is under the influence of alcohol in an amount sufficient to impair the person’s normal mental faculties or ability to care for the person and guard against casualty;
- (2) Is under the influence of any drug that impairs the person’s ability to operate the vehicle in a careful and prudent manner;
- (3) Has .08 or more grams of alcohol per two hundred ten liters of the person’s breath; or
- (4) Has .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person’s blood.

“Underway” means that a vessel is not at anchor, made fast to the shore, or aground.

“Vehicle” includes a:

- (1) Motor vehicle;
- (2) Moped; and
- (3) Vessel.

“Vessel” means all description of watercraft that are used or are capable of being used as a means of transportation on or in the water.

“Waters of the State” means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shore of the State.

§ -2 **Medical services.** The several county and state government physicians shall, or any other qualified person may, make whatever tests and analyses as may be requested of them by any law enforcement officer in connection with the determination of whether a person is or was under the influence of an intoxicant or has consumed a measurable amount of alcohol for any purpose under this chapter.

§ -3 **Evidence of intoxication.** (a) In any criminal prosecution for a violation of section -81 or in any proceeding under part III:

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

- (2) .08 or more grams of alcohol per two hundred ten liters of the person's breath; or
- (3) The presence of one or more drugs in an amount sufficient to impair the person's ability to operate a vehicle in a careful and prudent manner, within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was under the influence of an intoxicant at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section -81, the amount of alcohol found in the defendant's blood or breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall be competent evidence concerning whether the defendant was under the influence of an intoxicant at the time of the alleged violation and shall give rise to the following presumptions:

- (1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 or less grams of alcohol per two hundred ten liters of defendant's breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and
- (2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 grams of alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

(c) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section -81 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence.

§ -4 Convictions and acts prior to January 1, 2002. (a) Any:

- (1) Conviction for an offense under section 200-81, 291-4, 291-4.4, or 291-7, as those sections were in effect on December 31, 2001; or
- (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant;

shall be counted as a prior offense for purposes of section -41 or -81.

(b) Any conviction of an offense under section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, shall be counted for purposes of imposing sentence for a violation under section -82.

PART II. TESTING AND IMPLIED CONSENT

§ -11 Implied consent of operator of vehicle to submit to testing to determine alcohol concentration and drug content. (a) Any person who operates a vehicle upon a public way, street, road, or highway or on or in the waters of the State shall be deemed to have given consent, subject to this part, to a test or tests approved by the director of health of the person's breath, blood, or urine for the

purpose of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable.

(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol concentration, only after:

(1) A lawful arrest; and

(2) The person has been informed by a law enforcement officer of the sanctions under part III and section -85;

(c) If there is probable cause to believe that a person is in violation of section -84, as a result of being under the age of twenty-one and having consumed a measurable amount of alcohol, or section -81, as a result of having consumed alcohol, then the person shall elect to take a breath or blood test, or both, for the purpose of determining the alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section -81, as a result of having consumed any drug, then the person shall elect to take a blood or urine test, or both, for the purpose of determining the drug content. Drug content shall be measured by the presence of any drug or its metabolic products or both.

(e) A person who chooses to submit to a breath test under subsection (c) also may be requested to submit to a blood or urine test, if the officer has probable cause to believe that the person was operating a vehicle under the influence of any drug under section -81 and the officer has probable cause to believe that a blood or urine test will reveal evidence of the person being under the influence of any drug. The officer shall state in the officer's report the facts upon which that belief is based. The person shall elect to take a blood or urine test, or both, for the purpose of determining the person's drug content. Results of a blood or urine test conducted to determine drug content also shall be admissible for the purpose of determining the person's alcohol concentration. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c).

(f) Any person tested pursuant to this section who is convicted or has the person's license suspended or revoked pursuant to this chapter may be ordered to reimburse the county for the cost of any blood or urine tests, or both, conducted pursuant to this section. If reimbursement is so ordered, the court or the director, as applicable, shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test, or both.

§ -12 Persons qualified to take blood specimen. No person, other than a physician, registered nurse, phlebotomist deemed qualified by the director of a clinical laboratory that is licensed by the State, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcohol concentration or drug content therein. This limitation shall not apply to the taking of a breath or urine specimen.

§ -13 Additional tests. The person tested may choose any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 to withdraw blood and also may choose any qualified person to administer a test or tests in addition to any administered at the direction of a law enforcement officer. The result of the test or tests may be used as provided in section -3. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests administered at the direction of a law enforcement

officer. Upon the request of the person who is tested, full information concerning the test or tests administered shall be made available to that person.

§ -14 **Consent of person incapable of refusal not withdrawn.** The consent of a person deemed to have given the person's consent pursuant to section -11 shall not be withdrawn by reason of the person's being dead, unconscious, or in any other condition that renders the person incapable of consenting to examination, and the test may be given. In such event, a test of the person's blood or urine shall be administered.

§ -15 **Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings.** If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section -21, but the person shall be subject to the procedures and sanctions under part III or section -85, as applicable.

§ -16 **Proof of refusal; admissibility.** If a legally arrested person refuses to submit to a test of the person's breath, blood, or urine, evidence of refusal shall be admissible only in a proceeding under part III or section -85 and shall not be admissible in any other action or proceeding, whether civil or criminal.

§ -17 **Other evidence not excluded.** This part shall not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of an intoxicant or was operating a vehicle while under the age of twenty-one and after consuming a measurable amount of alcohol.

§ -18 **Test results to be collected.** The results of any test for intoxicants made upon any person, including any person who has been fatally injured in a traffic collision or the operator of a vehicle involved in a collision that resulted in another person's death, shall be sent to the state director of transportation, who shall compile the data without revealing the identity of any individual tested. This data shall be available only to the state and county highway safety councils and to other agencies the director of transportation deems necessary and advisable.

§ -19 **Authorization to establish intoxicant control roadblock programs.** The police departments of the respective counties may establish and implement intoxicant control roadblock programs in accordance with the minimum standards and guidelines provided in section -20. The chief of police in any county establishing an intoxicant control roadblock program pursuant to this section shall specify the procedures to be followed in carrying out the program in rules adopted under chapter 91; provided that the procedures shall be in conformity with and not more intrusive than the standards and guidelines described in section -20. In the case of internal police standards that do not fall within the definition of "rule" under section 91-1(4), failure to comply scrupulously with such internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section -20.

§ -20 **Minimum standards for roadblock procedures.** (a) Every intoxicant control roadblock program shall:

- (1) Require that all vehicles approaching roadblocks be stopped or that certain vehicles be stopped by selecting vehicles in a specified numerical sequence or pattern;
- (2) Require that roadblocks be located at fixed locations for a maximum three-hour period;

- (3) Provide for the following minimum safety precautions at every roadblock:
 - (A) Proper illumination;
 - (B) Off-road or otherwise safe and secure holding areas for vehicles involved in any roadblock stop;
 - (C) Uniformed law enforcement officers carrying proper identification;
 - (D) Adequate advance warning of the fact and purpose of the roadblocks, either by sign posts, flares, or other alternative methods;
 - (E) Termination of roadblocks at the discretion of the law enforcement officer in charge where traffic congestion would otherwise result; and
 - (4) Provide for a sufficient quantity and visibility of uniformed officers and official vehicles to ensure speedy compliance with the purpose of the roadblocks and to move traffic with a minimum of inconvenience.
- (b) Nothing in this section shall prohibit the establishment of procedures to make roadblock programs less intrusive than required by the minimum standards provided in this section.

§ -21 Applicable scope of part; mandatory testing in the event of a collision resulting in injury or death. (a) Nothing in this part shall be construed to prevent a law enforcement officer from obtaining a sample of breath, blood, or urine, from the operator of any vehicle involved in a collision resulting in injury to or the death of any person, as evidence that the operator was under the influence of an intoxicant.

(b) If a health care provider who is providing medical care, in a health care facility, to any person involved in a vehicle collision:

- (1) Becomes aware, as a result of any blood or urine test performed in the course of medical treatment, that:
 - (A) The alcohol concentration in the person's blood meets or exceeds the amount specified in section -81(a)(4); or
 - (B) The person's blood or urine contains one or more drugs that are capable of impairing a person's ability to operate a vehicle in a careful and prudent manner; and
- (2) Has a reasonable belief that the person was the operator of a vehicle involved in the collision,

the health care provider shall notify, as soon as reasonably possible, any law enforcement officer present at the health care facility to investigate the collision. If no law enforcement officer is present, the health care provider shall notify the county police department in the county where the collision occurred. If the health care provider is aware of any blood or urine test result, as provided in paragraph (1), but lacks information to form a reasonable belief as to the identity of the operator involved in a vehicle collision, as provided in paragraph (2), then the health care provider shall give notice to a law enforcement officer present or to the county police department, as applicable, for each person involved in a vehicle collision whose alcohol concentration in the person's blood meets or exceeds the amount specified in section -81(a)(4) or whose blood or urine contains one or more drugs. The notice by the health care provider shall consist of the name of the person being treated, the blood alcohol concentration or drug content disclosed by the test, and the date and time of the administration of the test. This notice shall be deemed to satisfy the intoxication element necessary to establish the probable cause requirement set forth in subsection (c).

(c) In the event of a collision resulting in injury or death and if a law enforcement officer has probable cause to believe that a person involved in the collision has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, or -81, the law enforcement officer shall request that a sample of blood or urine be recovered from the vehicle operator or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, or -81.

(d) The law enforcement officer shall make the request under subsection (c) to the hospital or medical facility treating the person from whom the blood or urine is to be recovered. Upon the request of the law enforcement officer that blood or urine be recovered pursuant to this section, and except where the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood or urine from the person represents an imminent threat to the health of the medical personnel or others, the hospital or medical facility shall:

- (1) Provide the law enforcement officer with the blood or urine sample requested;
- (2) Recover the sample in compliance with section 321-161; and
- (3) Assign a person authorized under section -12 to withdraw the blood sample or obtain the urine.

(e) Any person complying with this section shall be exempt from liability pursuant to section 663-1.9 as a result of compliance.

(f) As used in this section, unless the context otherwise requires:

“Health care facility” includes any program, institution, place, building, or agency, or portion thereof, private or public, whether organized for profit or not, that is used, operated, or designed to provide medical diagnosis, treatment, or rehabilitative or preventive care to any person. The term includes health care facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

“Health care provider” means a person who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or practice of a profession.

§ -22 **Presence of drugs or metabolic products; admissibility.** Any results reflecting the presence of drugs or metabolic products obtained from a blood or urine specimen obtained under this part shall not be admissible in any proceeding brought under chapter 329 or 712.

PART III. ADMINISTRATIVE REVOCATION PROCESS

§ -31 **Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

- (1) Establishes that the respondent’s license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated:
 - (A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense;
 - (B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or
 - (C) Such later date as is established by the director under section -38,

if the director administratively revokes the respondent’s license;

- (2) Establishes the date on which administrative revocation proceedings against the respondent were initiated; and
- (3) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section -33.

§ -32 **Criminal prosecution.** (a) Criminal prosecution under section -81 may be commenced concurrently with administrative revocation proceedings under this part; provided that documentary and testimonial evidence provided by the respondent during the administrative proceeding shall not be admissible against the respondent in any proceeding under section -81 arising out of the same occurrence.

(b) When a person's license and privilege to operate a vehicle is revoked under this part and the person also is convicted of an offense under section -81 arising out of the same occurrence, the total period of revocation imposed in the two proceedings shall not exceed the longer period of revocation imposed in either proceeding. If the person is convicted under section -81 prior to completion of administrative proceedings, the person shall surrender the temporary permit issued under this part at the time of entry of a plea of guilty or no contest, entry of a verdict of guilty, or of sentencing, whichever occurs first.

§ -33 **Probable cause determination; issuance of notice of administrative revocation; procedures.** (a) Whenever a person is arrested for a violation of section -81 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for concentration of alcohol in the blood, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test or a blood test, or both, pursuant to section -11. In the case of a drug related offense, the person shall elect to take a blood test or a urine test, or both, pursuant to section -11. The law enforcement officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath, blood, or urine test. Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(b) Whenever a law enforcement officer determines that, as the result of a blood or urine test performed pursuant to section -21(b) or (c), there is probable cause to believe that a person being treated in a hospital or medical facility has violated section -81, the law enforcement officer immediately shall take possession of any license held by the person and shall complete and issue to the person a notice of administrative revocation and indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit unless, at the time the notice was issued: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

§ -34 **Notice of administrative revocation; contents.** (a) The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation:

- (1) The statutory authority for administrative revocation;
- (2) An explanation of the distinction between administrative revocation and a suspension or revocation imposed under section -81; and
- (3) That criminal charges filed pursuant to section -81 may be prosecuted concurrently with the administrative action.

(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:

- (1) Information identifying the respondent;
- (2) The specific violation for which the respondent was arrested;
- (3) The date issued and the date the administrative revocation is scheduled to go into effect;
- (4) That the respondent was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol concentration of the blood or drug content in the blood or urine and whether the respondent consented to be tested;
- (5) The expiration date of the temporary permit; and
- (6) That the issuance of the notice of administrative revocation will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

- (1) That the review is automatic;
- (2) That the respondent, within three days of the issuance of the notice of administrative revocation in the case of an alcohol related offense and within seventeen days of the issuance of the notice of administrative revocation in the case of a drug related offense, may submit written information demonstrating why the respondent's license and privilege to operate a vehicle should not be administratively revoked;
- (3) The address or location where the respondent may submit the information;
- (4) That the respondent is not entitled to be present or represented at the administrative review; and
- (5) That the administrative review decision shall be mailed to the respondent:
 - (A) No later than eight days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and
 - (B) No later than twenty-two days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense.

(d) The notice shall state that, if the respondent's license and privilege to operate a vehicle is not administratively revoked after the review, the respondent's license shall be returned, along with a certified statement that the administrative revocation proceedings have been terminated.

(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle are administratively revoked after the review, a decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The reasons why the respondent's license and privilege to operate a vehicle were administratively revoked;

- (2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;
 - (3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence:
 - (A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and
 - (B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;
 - (4) The procedure to request an administrative hearing;
 - (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
 - (6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;
 - (7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section 38(j), the temporary permit shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;
 - (8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated; and
 - (9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for alcohol counseling, or substance abuse counseling or treatment, or both.
- (f) The notice shall provide, at a minimum, the following information relating to administrative hearings:
- (1) That the respondent shall have six days from the date the administrative review decision was mailed to request that an administrative hearing be scheduled;
 - (2) That a request for an administrative hearing and payment of \$30 fee, unless waived, shall entitle the respondent to review and copy, prior to the hearing, all documents that were considered at the administrative review, including the arrest report and the sworn statements;
 - (3) That the respondent may be represented by an attorney, submit evidence, give testimony, and present and cross-examine witnesses;
 - (4) That, in cases where the respondent is under the age of eighteen, a parent or guardian must be present; and
 - (5) That a written decision shall be mailed no later than five days after completion of the hearing.
- (g) The notice shall state that, if the administrative revocation is reversed after the hearing, the respondent's license, along with a certified statement that the administrative revocation proceedings have been terminated.
- (h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:
- (1) The effective date of the administrative revocation;

- (2) The duration of the administrative revocation;
- (3) Other conditions that may be imposed by law; and
- (4) The right to obtain judicial review.

(i) The notice shall state that failure of the respondent, or of the parent or guardian of the respondent if the respondent is under the age of eighteen, to attend a scheduled hearing shall cause the administrative revocation to take effect as provided in the administrative review decision.

§ -35 Immediate restoration of license. (a) In cases involving an alcohol related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder shows that a respondent had an alcohol concentration less than .08, the director or the arresting law enforcement agency immediately shall return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

(b) In cases involving a drug related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder fails to show the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the director or the arresting law enforcement agency immediately shall return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

§ -36 Documents required to be submitted for administrative review; sworn statements of law enforcement officials. (a) Whenever a respondent has been arrested for a violation of section -81 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section -21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20, or the respondent was tested pursuant to section -21;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
 - (C) The respondent was informed of: the sanctions of this part; that criminal charges may be filed; and the consequences of refusing to be tested for alcohol concentration or drug content; and
 - (D) The respondent agreed to be tested or the person was tested pursuant to section -21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:

- (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
- (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
- (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
 - (D) The person whose breath or blood was tested is the respondent;
- (4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use in drug testing;
 - (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (5) In a case involving an drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
 - (D) The person whose blood or urine was tested is the respondent;
- (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
- (7) Any driver's license taken into possession by the law enforcement officer; and
- (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.
- (b) Whenever a respondent has been arrested for a violation of section -81 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:
 - (1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:

- (A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20;
- (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
- (C) The respondent was informed of:
 - (i) The sanctions of this part;
 - (ii) The possibility that criminal charges may be filed; and
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and
- (D) The respondent refused to be tested;
- (2) A copy of the notice of administrative revocation issued to the respondent;
- (3) Any driver's license taken into possession; and
- (4) A listing of all alcohol and drug enforcement contacts involving the respondent.

§ -37 Administrative review; procedures; decision. (a) The director automatically shall review the issuance of a notice of administrative revocation and shall issue a written decision administratively revoking the license and privilege to operate a vehicle or rescinding the notice of administrative revocation. The written review decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than:

- (1) Eight days after the date the notice was issued in a case involving an alcohol related offense; or
- (2) Twenty-two days after the date the notice was issued in a case involving a drug related offense.

(b) The respondent shall have the opportunity to demonstrate in writing why the respondent's license and privilege to operate a vehicle should not be administratively revoked and, within three days of receiving the notice of administrative revocation, as provided in section -33, shall submit any written information, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

- (c) In conducting the administrative review, the director shall consider:
- (1) Any sworn or unsworn written statement or other written evidence provided by the respondent;
 - (2) The breath, blood, or urine test results, if any; and
 - (3) The sworn statement of any law enforcement official or other evidence or information required by section -36.

(d) The director shall administratively revoke the respondent's license and privilege to operate a vehicle if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20, or the person was tested pursuant to section -21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed of the sanctions of this part.

(e) If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated.

(f) If the director administratively revokes the respondent's license and privilege to operate a vehicle, the director shall mail a written review decision to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen. The written review decision shall:

- (1) State the reasons for the administrative revocation;
- (2) Indicate that the respondent has six days from the date the decision is mailed to request an administrative hearing to review the director's decision;
- (3) Explain the procedure by which to request an administrative hearing;
- (4) Be accompanied by a form, postage prepaid, that the respondent may fill out and mail in order to request an administrative hearing;
- (5) Inform the respondent of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of the law enforcement officials, prior to the hearing; and
- (6) State that the respondent may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting officer.

(g) Failure of the respondent to request a hearing within the time provided in section -38(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The respondent may regain the right to an administrative hearing by requesting the director, within sixty days of the issuance of the notice of administrative revocation as provided in section -33, to schedule an administrative hearing. The administrative hearing shall be scheduled to commence no later than thirty days after the request is received by the director. The administrative review decision issued by the director under this section shall explain clearly the consequences of failure to request an administrative hearing and the procedure by which the respondent may regain the right to a hearing.

§ -38 Administrative hearing; procedure; decision. (a) If the director administratively revokes the respondent's license and privilege to operate a vehicle after the administrative review, the respondent may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. If the request for hearing is received by the director within six days of the date the decision is mailed, the hearing shall be scheduled to commence no later than:

- (1) Twenty-five days from the date the notice of administrative revocation was issued in a case involving an alcohol related offense; or
- (2) Thirty-nine days from the date the notice of administrative revocation was issued in a case involving a drug related offense.

The director may continue the hearing only as provided in subsection (j).

(b) The hearing shall be held at a place designated by the director, as close to the location where the notice of administrative revocation was issued as practical.

(c) The respondent may be represented by counsel and, if the respondent is under the age of eighteen, must be accompanied by a parent or guardian.

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

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive and determine the relevance of evidence;

- (4) Issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) Regulate the course and conduct of the hearing; and
- (6) Make a final ruling.
- (e) The director shall affirm the administrative revocation only if the director determines that:
 - (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20, or the person was tested pursuant to section -21;
 - (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
 - (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and, after being informed of the sanctions of this part, refused to submit to a breath, blood, or urine test.
- (f) The respondent's prior alcohol and drug enforcement contacts shall be entered into evidence.
- (g) The sworn statements provided in section -36 shall be admitted into evidence. Upon notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement official who made a sworn statement, the director shall issue a subpoena for the official to appear at the hearing. If the official cannot appear, the official, at the discretion of the director, may testify by telephone.
- (h) The hearing shall be recorded in a manner to be determined by the director.
- (i) The director's decision shall be rendered in writing and mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than five days after the hearing is concluded. If the decision is to reverse the administrative revocation, the director shall return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the respondent a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section -41.
- (j) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit. For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week.
- (k) If the respondent fails to appear at the hearing, or if an respondent under the age of eighteen fails to appear with a parent or guardian, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section -37.

§ -39 Fees and costs. The director may assess and collect a \$30 fee from the respondent to cover the costs of processing the respondent's request for an

administrative hearing. These costs include but should not be limited to: the cost of photocopying documents; the issuance of subpoenas, conditional permits, and relicensing forms; interpreter services; law enforcement official mileage fees; and other similar costs. The director may waive the fee in the case of an indigent respondent, upon an appropriate inquiry into the financial circumstances of the respondent seeking the waiver and an affidavit or a certificate signed by the respondent demonstrating the respondent's financial inability to pay the fee.

§ -40 Judicial review; procedure. (a) If the director sustains the administrative revocation after an administrative hearing, the respondent, or parent or guardian of an respondent under the age of eighteen, may file a petition for judicial review within thirty days after the administrative hearing decision is mailed. The petition shall be filed with the clerk of the district court in the district in which the incident occurred and shall be accompanied by the required filing fee for civil actions. The filing of the petition shall not operate as a stay of the administrative revocation, nor shall the court stay the administrative revocation pending the outcome of the judicial review. The petition shall be appropriately captioned. The petition shall state with specificity the grounds upon which the petitioner seeks reversal of the administrative revocation.

(b) The court shall schedule the judicial review as quickly as practicable, and the review shall be on the record of the administrative hearing without taking of additional testimony or evidence. If the petitioner fails to appear without just cause or, in the case of a petitioner under the age of eighteen, the petitioner fails to appear with a parent or guardian, the court shall affirm the administrative revocation.

(c) The sole issues before the court shall be whether the director:

- (1) Exceeded constitutional or statutory authority;
- (2) Erroneously interpreted the law;
- (3) Acted in an arbitrary or capricious manner;
- (4) Committed an abuse of discretion; or
- (5) Made a determination that was unsupported by the evidence in the record.

(d) The court shall not remand the matter back to the director for further proceedings consistent with its order.

§ -41 Effective date and period of administrative revocation; criteria.

(a) Unless an administrative revocation is reversed or the temporary permit is extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section -44, no license and privilege to operate a vehicle shall be restored under any circumstances and no conditional permit shall be issued during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section -45.

(b) The periods of administrative revocation that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year, if the respondent's record shows no prior alcohol or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) A minimum of one year up to a maximum of two years, if the respondent's record shows one prior alcohol or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (3) A minimum of two years up to a maximum of four years, if the respondent's record shows two prior alcohol or drug enforcement

contacts during the seven years preceding the date the notice of administrative revocation was issued;

- (4) For life, if the respondent's record shows three or more prior alcohol or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or
- (5) For respondents under the age of eighteen years who were arrested for a violation of section -81, either for the period remaining until the respondent's eighteenth birthday or for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection (c), if applicable, whichever is longer.

(c) If a respondent has refused to be tested after being informed of the sanctions of this part, the revocation imposed under subsection (b)(1), (2), and (3) shall be for a period of one year, two years, and four years, respectively.

(d) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to a certified substance abuse counselor for an assessment of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director may so order. All costs for assessment and treatment shall be paid by the respondent.

(e) Alcohol and drug enforcement contacts that occurred prior to the effective date of this Act shall be counted in determining the administrative revocation period.

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

§ -42 Notice to other states. When a nonresident's driving and boating privileges are administratively revoked under this part, the director shall:

- (1) Notify, in writing, the officials in charge of traffic control, boating control, or public safety in the nonresident's home state, and in any other state in which the nonresident has driving and boating privileges, of the action taken in this State; and
- (2) Return to the appropriate issuing authority in the other states any license seized under section -33.

§ -43 Administrative Procedure Act. Neither the administrative review nor the administrative hearing provided under this part shall be subject to the contested case requirements of chapter 91. The availability of administrative review of an order of administrative revocation shall have no effect upon the availability of judicial review under this part.

§ -44 Conditional permits. (a) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section -41(b)(1), may issue a conditional permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period, provided that one or more of the following conditions are met:

- (1) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
- (2) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section -41.

The director shall not issue a conditional permit to a respondent whose license, during the conditional permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the arrestee is requesting a conditional permit under this section.

(b) A request made pursuant to subsection (a)(1) shall be accompanied by:

- (1) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if not allowed to drive; and
- (2) A sworn statement from the respondent's employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving.

(c) A request made pursuant to subsection (a)(2) shall be accompanied by a sworn statement by the respondent attesting to the specific facts upon which the request is based, which statement shall be verified by the director.

(d) A conditional permit may include restrictions allowing the respondent to drive:

- (1) Only during hours of employment for activities solely within the scope of the employment;
- (2) Only during daylight hours; or
- (3) Only for specified purposes or to specified destinations.

In addition, the director may impose any other appropriate restrictions.

(e) The duration of the conditional permit shall be determined on the basis of the criteria set forth in subsections (b) and (c).

(f) If the respondent violates the conditions imposed under this section, the conditional permit shall be rescinded, and administrative revocation shall be immediate for the appropriate period authorized by law.

§ **-45 Eligibility for relicensing.** To be eligible for relicensing after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director or by the court;
- (2) Obtain a certified statement from the director indicating eligibility for relicensing;
- (3) Present the certified statement to the appropriate licensing official; and
- (4) Successfully complete each requirement for obtaining a new license in this State, including payment of all applicable fees.

§ **-46 Computation of time.** The time in which any act provided in this part is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday, and then it also is excluded.

PART IV. PROHIBITED CONDUCT

§ **-81 Operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
 - (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
 - (3) With .08 or more grams of alcohol per two hundred ten liters of breath;
- or

- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.
- (b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:
 - (1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section -4(a):
 - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court; and
 - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; and
 - (C) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
 - (iii) A fine of not less than \$150 but not more than \$1,000.
 - (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section -4(a):
 - (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
 - (B) Either one of the following:
 - (i) Not less than one-hundred hours of community service work; or
 - (ii) Not less than forty-eight consecutive hours but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and
 - (C) A fine of not less than \$500 but not more than \$1,500.
 - (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section -4(a):
 - (A) A fine of not less than \$500 but not more than \$2,500;
 - (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years; and
 - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively.
 - (4) For an offense that occurs within ten years of three or more prior convictions for offenses under this section, section 707-702.5, or section -4(a):
 - (1) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
 - (2) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively; and
 - (3) Referral to a substance abuse counselor as provided in subsection (d).

An offense under this paragraph is a class C felony.

- (5) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided, however, that the total term of imprisonment for a person sentenced under this paragraph and paragraphs (1), (2), or (3) shall not exceed thirty days.
- (c) Notwithstanding any other law to the contrary, any:
- (1) Conviction under this section or section -4(a); or
 - (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant;

shall be considered a prior conviction for the purposes of imposing sentence under this section. No license and privilege suspension or revocation shall be imposed pursuant to this subsection if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be revoked as provided in this subsection.

(d) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All cost for assessment or treatment or both shall be borne by the offender.

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

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

(g) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

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

§ -82 Operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant; penalties. (a) No person whose license and privilege to operate a vehicle has been revoked, suspended, or otherwise restricted pursuant to part III or section -81 or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, or 291-7, as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

- (1) In violation of any restrictions placed on the person's license;

- (2) While the person's license remains suspended or revoked; or
- (3) While the person's privilege to operate a vehicle has been revoked.
- (b) Any person convicted of violating this section shall be sentenced as follows:

- (1) For a first offense, or any offense not preceded within a five-year period by conviction for an offense under this section:
 - (A) A term of imprisonment of not less than three consecutive days but not more than thirty days;
 - (B) A fine of not less than \$250 but not more than \$1,000; and
 - (C) Revocation of license and privilege to operate a vehicle for an additional year;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section:
 - (A) Thirty days imprisonment;
 - (B) A \$1,000 fine; and
 - (C) Revocation of license and privilege to operate a vehicle for an additional two years; and
- (3) For an offense that occurs within five years of two or more prior convictions for offenses under this section:
 - (A) One year imprisonment;
 - (B) A \$2,000 fine; and
 - (C) Permanent revocation of the person's license and privilege to operate a vehicle.

The period of revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.

§ -83 Records of convictions and suspensions of operating privileges to be maintained. The department of land and natural resources shall maintain a record of all persons convicted of offenses or violations involving vessels under this part and the period of suspension of operator privileges ordered by the court under this part.

§ -84 Operating a vehicle after consuming a measurable amount of alcohol; persons under the age of twenty-one. (a) It shall be unlawful for any person under the age of twenty-one years to operate any vehicle with a measurable amount of alcohol concentration. A law enforcement officer may arrest a person under this section when the officer has probable cause to believe the arrested person is under the age of twenty-one and had been operating a motor vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol. For purposes of this section, "measurable amount of alcohol" means a test result equal to or greater than .02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood or equal to or greater than .02 but less than .08 grams of alcohol per two hundred ten liters of breath.

- (b) A person who violates this section shall be sentenced as follows:
 - (1) For a first violation or any violation not preceded within a five-year period by a prior alcohol enforcement contact:
 - (A) The court shall impose:
 - (i) A requirement that the person and, if the person is under the age of eighteen, the person's parent or guardian attend an alcohol abuse education and counseling program for not more than ten hours; and
 - (ii) One hundred eighty-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or in the

case of a person eighteen years of age or older, the court may impose, in lieu of the one hundred eighty-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the one hundred eighty-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcohol abuse education and treatment programs; and

- (B) In addition, the court may impose any one or more of the following:
 - (i) Not more than thirty-six hours of community service work; or
 - (ii) A fine of not less than \$150 but not more than \$500.
- (2) For a violation that occurs within five years of a prior alcohol enforcement contact:
 - (A) The court shall impose prompt suspension of license and privilege to operate a vehicle for a period of one year with absolute prohibition from operating a vehicle during the suspension period; and
 - (B) In addition, the court may impose any of the following:
 - (i) Not more than fifty hours of community service work; or
 - (ii) A fine of not less than \$300 but not more than \$1,000.
- (3) For a violation that occurs within five years of two prior alcohol enforcement contacts:
 - (A) The court shall impose revocation of license and privilege to operate a vehicle for a period of two years; and
 - (B) In addition, the court may impose any of the following:
 - (i) Not more than one hundred hours of community service work; or
 - (ii) A fine of not less than \$300 but not more than \$1,000.

(c) Notwithstanding any other law to the contrary, any conviction or plea under this section shall be considered a prior alcohol enforcement contact.

(d) Whenever a court sentences a person pursuant to subsection (b)(2) or (3), it also shall require that the person be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the person's alcohol abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the person to obtain appropriate treatment if the counselor's assessment establishes the person's alcohol abuse or dependence. All costs for assessment or treatment or both shall be borne by the person or by the person's parent or guardian, if the person is under the age of eighteen.

(e) Notwithstanding section 831-3.2 or any other law to the contrary, a person convicted of a first-time violation under subsection (b)(1), who had no prior alcohol enforcement contacts, may apply to the court for an expungement order upon attaining the age of twenty-one, or thereafter, if the person has fulfilled the terms of the sentence imposed by the court and has had no subsequent alcohol or drug-related enforcement contacts.

(f) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person an application for a new driver's license for a period to be determined by the court.

(g) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood tests conducted pursuant to section 321-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated

installments, to the police department or other agency incurring the expense of the blood test.

(h) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

(i) Any person who violates this section shall be guilty of a violation.

(j) As used in this section, the terms "driver's license" and "examiner of drivers" have the same meanings as provided in section 286-2.

§ -85 Refusal to submit to testing for measurable amount of alcohol; district court hearing; sanctions; appeals; admissibility. (a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section -84, refuses to submit to a breath or blood test, none shall be given, except as provided in section -21, but the arresting officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol concentration;
- (2) That the arrested person had been informed of the sanctions of this section; and
- (3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing within twenty days. The district judge shall hear and determine:

- (1) Whether the arresting officer had probable cause to believe that the person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol concentration;
- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of this section; and
- (4) Whether the person refused to submit to a test of the person's breath or blood.

(c) If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's license and privilege to operate a vehicle as follows:

- (1) For a first suspension, or any suspension not preceded within a five-year period by a suspension under this section, for a period of twelve months; and
- (2) For any subsequent suspension under this section, for a period not less than two years and not more than five years.

(d) An order of a district court issued under this section may be appealed to the supreme court.

(e) If a legally arrested person under the age of twenty-one refuses to submit to a test of the person's breath or blood, proof of refusal shall be admissible only in a hearing under this section or part III of this chapter and shall not be admissible in any other action or proceeding, whether civil or criminal."

SECTION 24. Section 199-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The conservation and resources enforcement officers, with respect to all state lands, including public lands, state parks, forest reserves, forests, aquatic life

and wildlife areas, Kaho‘olawe island reserve, and any other lands and waters subject to the jurisdiction of the department of land and natural resources, shall:

- (1) Enforce title 12, chapters 6E and 6K, and rules adopted thereunder;
- (2) Investigate complaints, gather evidence, conduct investigations, and conduct field observations and inspections as required or assigned;
- (3) Cooperate with enforcement authorities of the State, counties, and federal government in development of programs and mutual agreements for conservation and resources enforcement activities within the State;
- (4) Cooperate with established search and rescue agencies of the counties and the federal government in developing plans and programs[,] and mutual aid agreements for search and rescue activities within the State;
- (5) Check and verify all leases, permits, and licenses issued by the department of land and natural resources;
- (6) Enforce the laws relating to firearms, ammunition, and dangerous weapons contained in chapter 134;
- (7) Enforce the laws in chapter _____ relating to operating a vessel on or in the waters of the State while using intoxicants;
- [(7)] (8) Whether through a specifically designated marine patrol or otherwise, enforce the rules in the areas of boating safety, conservation, and search and rescue relative to the control and management of boating facilities owned or controlled by the State, ocean waters, and navigable streams and any activities thereon or therein, and beaches encumbered with easements in favor of the public, and the rules regulating vessels and their use in the waters of the State; and
- [(8)] (9) Carry out [such] other duties and responsibilities as the board of land and natural resources from time to time may direct.”

SECTION 25. Section 287-20, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Whenever a driver’s license has been suspended or revoked:

- (1) Pursuant to [section 286-151.5 or part XIV of chapter 286,] section _____ -85 or part III of chapter _____, except as provided in section [291-4(f);] _____ -41(f);
- (2) Upon a conviction of any offense pursuant to law; or
- (3) In the case of minors, pursuant to part V of chapter 571,

the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility; provided that this section shall not apply to a license suspended pursuant to section [291-4.3(b)(1),] _____ -81(b)(1) or _____ -84(b)(1), any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid motor vehicle insurance policy.

(b) Whenever by reason of a conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses listed in this subsection, under the laws of the State or ordinances of any [political subdivision,] county, a court of competent jurisdiction has discretion to revoke or suspend a driver’s license but does not revoke or suspend the license, the administrator [shall] nevertheless, after the expiration of thirty days from the date of conviction or adjudication, shall suspend the license and shall keep the [same] license suspended, and the person so convicted or adjudicated shall not thereafter operate a motor vehicle, unless and until the person so convicted or adjudicated furnishes and thereafter maintains proof of financial responsibility. The offenses referred to are:

- (1) Reckless or inattentive driving, operating a vehicle while under the influence of an intoxicant, driving while under the influence of intoxicating liquor, driving while under the influence of drugs, and driving while that person's license has been suspended or revoked, and operating a vehicle after license and privilege to operate a vehicle have been suspended or revoked, except when a person's license has been suspended or revoked for the first conviction of driving without a motor vehicle insurance policy; and
- (2) Conviction or adjudication under part V of chapter 571 by reason of any moving violation offense involving a motor vehicle if the motor vehicle is in any manner involved in an accident in which any person is killed or injured, or in which damage to property results to an apparent extent in excess of \$3,000 and there are reasonable grounds for the administrator to believe that the defendant is at fault."

SECTION 26. Section 663-1.9, Hawaii Revised Statutes, is amended to read as follows:

“§663-1.9 Exception to liability for health care provider³ authorized person withdrawing blood or urine at the direction of a police officer. (a) Any health care provider who, in good faith in compliance with section [286-163,] -21, provides notice concerning the alcohol concentration of a person's blood or drug content of a person's blood or urine shall be immune from any civil liability in any action based upon the compliance. The health care provider also shall [also] be immune from any civil liability for participating in any subsequent judicial proceeding relating to the person's compliance.

(b) Any authorized person who properly withdraws blood or collects urine from another person at the written request of a police officer for testing of the blood's [alcoholic] alcohol concentration or drug content[,] or the drug content of the urine, and any hospital, laboratory, or clinic, employing or utilizing the services of such person, and owning or leasing the premises on which [such] the tests are performed, shall not be liable for civil damages resulting from the authorized person's acts or omissions in withdrawing the blood[,] or collecting urine, except for such damages as may result from the authorized person's gross negligence or wanton acts or omissions.

(c) For the purpose of this section:

“Authorized person” means a person authorized under section [286-152] -12 to withdraw blood at the direction of a police officer.

“Health care provider” has the same meaning as in section [286-163.]

-21.”

SECTION 27. Chapter 200, part VII, Hawaii Revised Statutes, is repealed.

SECTION 28. Chapter 286, part VII, Hawaii Revised Statutes, is repealed.

SECTION 29. Chapter 286, part XIV, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 291-4, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 291-4.3, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 291-4.4, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 291-4.5, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 291-5, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 291-6, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 291-7, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 37. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 38. In codifying the new sections added by section 5 of part 2⁴ of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 39. The legislative reference bureau shall prepare proposed legislation as necessary to conform and consolidate the varying statutory provisions of parts I, II, and III of this Act, and to make necessary amendments to statutes affected by the repeal of part VII of chapter 200, parts VII and XIV of chapter 286, and sections 291-4, 291-4.3, 291-4.4, 291-4.5, 291-5, 291-6, and 291-7. The bureau shall transmit such proposed legislation to the legislature not later than twenty days prior to the convening of the regular session of 2001.

SECTION 40. Statutory material to be repealed is bracketed. New statutory material is underscored.⁵

SECTION 41. This Act shall take effect upon approval; provided that:

- (1) Part I shall take effect upon approval and shall apply retroactively to all pending cases for driving under the influence of drugs under section 291-7, Hawaii Revised Statutes;
- (2) Part II shall take effect on September 30, 2000; and
- (3) Part III shall take effect on January 1, 2002.

(Approved June 8, 2000.)

Notes

1. Prior to amendment "for concentration of alcohol in blood" appeared here.
2. Prior to amendment "offender" appeared here.
3. Prior to amendment, "," appeared here.
4. Should be "II".
5. Edited pursuant to HRS §23G-16.5.