

A Bill for an Act Relating to Operating a Vehicle Under the Influence of an Intoxicant.

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

SECTION 1. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) Except as provided in paragraph (4), for the first offense, or any offense not preceded within a ten-year period by a conviction for an offense under this section or section 291E-4(a):
 - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable ~~[program]~~ programs deemed appropriate by the court;
 - (B) ~~[One-year revocation]~~ Revocation of license to operate a vehicle~~;~~ for no less than one year and no more than eighteen months;
 - (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;
 - (D) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) No less than forty-eight hours and no more than five days of imprisonment; or
 - (iii) A fine of no less than \$250 ~~[but]~~ and no more than \$1,000;
 - (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (F) A surcharge, if the court so orders, of up to \$25 to be deposited into the trauma system special fund;
- (2) For an offense that occurs within ten years of a prior conviction for an offense under this section:
 - (A) A substance abuse program of at least thirty-six hours, including education and counseling, or other comparable programs deemed appropriate by the court;
 - (B) Revocation of license to operate a vehicle for no less than two years ~~[but]~~ and no more than three years;
 - (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;
 - (D) Either one of the following:
 - (i) No less than two hundred forty hours of community service work; or
 - (ii) No less than five days ~~[but]~~ and no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;
 - (E) A fine of no less than \$1,000 ~~[but]~~ and no more than \$3,000, to be deposited into the state drug and alcohol toxicology testing laboratory special fund;
 - (F) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (G) A surcharge of up to \$50, if the court so orders, to be deposited into the trauma system special fund;

- (3) In addition to a sentence imposed under paragraphs (1) and (2), 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 that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1) or (2), as applicable. Notwithstanding paragraphs (1) and (2), the revocation period for a person sentenced under this paragraph shall be no less than two years;
- (4) In addition to a sentence imposed under paragraph (1), for a first offense under this section, or an offense not preceded within a ten-year period by a conviction for an offense, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment for forty-eight consecutive hours and an additional mandatory revocation period of six months; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1). Notwithstanding paragraph (1), the revocation period for a person sentenced under this paragraph shall be no less than eighteen months;
- (5) In addition to a sentence under paragraph (2), for an offense that occurs within ten years of a prior conviction for an offense under this section, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment of ten consecutive days and an additional mandatory revocation period of one year; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (2), as applicable. Notwithstanding paragraph (2), the revocation period for a person sentenced under this paragraph shall be no less than three years; ~~and~~
- (6) A person sentenced pursuant to paragraph (1)(B) may file a motion for early termination of the applicable revocation period if the person:
- (A) Was not sentenced to any additional mandatory revocation period pursuant to paragraph (3) or (4);
 - (B) Actually installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months, after which the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation;
 - (C) Includes with their motion for early termination a certified court abstract establishing that they were not sentenced to any additional mandatory revocation period pursuant to paragraph (3) or (4);
 - (D) Includes with their motion for early termination a certified statement from the director of transportation establishing that:

- (i) The person installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months; and
- (ii) After the six-month period, the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation; and

(E) Has complied with all other sentencing requirements. Nothing in this paragraph shall require a court to grant early termination of the revocation period if the court finds that continued use of the ignition interlock device will further the person’s rehabilitation or compliance with this section;

- [(6)] (7) If the person demonstrates to the court that the person:
 - (A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the revocation period; or
 - (B) Is otherwise unable to drive during the revocation period, the person shall be ~~[absolutely]~~ prohibited from driving during the period of applicable revocation provided in paragraphs (1) to [(3)]; (5); provided that the person shall be sentenced to the maximum license revocation period, the court shall not issue an ignition interlock permit pursuant to subsection (i), and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the applicable revocation period[-]; and
- (8) For purposes of this subsection, “violation” means:
 - (A) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath when starting the vehicle, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than .02 and the digital image confirmed the same person provided both samples;
 - (B) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath on a rolling retest, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than .02 and the digital image confirms the same person provided both samples;
 - (C) Failing to provide a rolling retest, unless an acceptable test is performed within ten minutes;
 - (D) Violating section 291E-66; or
 - (E) Failing to provide a clear photo of the person when the person blows into the ignition interlock device.”

SECTION 2. Section 291E-62, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to this section ~~[or to]~~, part III ~~[or]~~, section 291E-61 or 291E-61.5, or ~~[to]~~ part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, 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 or privilege to operate a vehicle remains suspended or revoked;

- (3) Without installing an ignition interlock device required by this chapter; or
- (4) With an ignition interlock permit unless the person has the ignition interlock permit and government-issued identification in the person's immediate possession. For purposes of this paragraph, "government-issued identification" means:
- (A) A passport issued by the United States of America; or
- (B) A photo identification card issued by any federal, state, or local government."
2. By amending subsection (c) to read:
- "(c) Any person convicted of violating this section 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]~~ ten-year period by conviction for an offense under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001:
- (A) A term of imprisonment of no less than three consecutive days ~~[but]~~ and no more than thirty days;
- (B) A fine of no less than \$250 ~~[but]~~ and no more than \$1,000, to be deposited into the state drug and alcohol toxicology testing laboratory special fund; and
- (C) Revocation of license and privilege to operate a vehicle for an additional year; ~~and~~
- ~~(D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable;]~~
- (2) For an offense that occurs within ~~[five]~~ ten years of a prior conviction for an offense under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001:
- (A) Thirty days imprisonment;
- (B) A \$1,000 fine, to be deposited into the state drug and alcohol toxicology testing laboratory special fund; and
- (C) Revocation of license and privilege to operate a vehicle for an additional two years; ~~and~~
- ~~(D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable; and]~~
- (3) For an offense that occurs within ~~[five]~~ ten years of two or more prior convictions for offenses under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001, or any combination thereof:
- (A) ~~[One]~~ No less than six months and no more than one year imprisonment;
- (B) A \$2,000 fine, to be deposited into the state drug and alcohol toxicology testing laboratory special fund; and
- (C) Permanent revocation of the person's license and privilege to operate a vehicle; and
- ~~[(D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable.]~~
- (4) In addition to a sentence imposed under paragraphs (1) through (3), any person who is convicted under this section and also convicted under section 291E-61 or 291E-61.5, for an offense based on the same incident or arising from the same episode, shall be sentenced to terms of imprisonment for both offenses, which shall be served consecutively."

SECTION 3. Section 291E-66, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291E-66]]~~ Circumvention of, or tampering with, an ignition interlock device by a person who has been restricted to operating a vehicle equipped with an ignition interlock device; penalties. (a) No person whose driving privileges have been restricted to operating a vehicle equipped with an ignition interlock device shall knowingly~~[:]~~ circumvent or tamper with an ignition interlock device in any way, including but not limited to:

- (1) ~~[Request, solicit, direct, or authorize]~~ Requesting, soliciting, directing, or authorizing another person to blow into an ignition interlock device or start a vehicle equipped with the device for the purpose of providing an operable vehicle to a person who has been restricted by law to operating only a vehicle so equipped; ~~[ø]~~
- (2) ~~[Tamper]~~ Tampering with an ignition interlock device with the intent to render it inaccurate or inoperable~~[-];~~
- (3) Obscuring a camera lens associated with an ignition interlock device; or
- (4) Failing to provide a picture of the driver.

(b) Any person required under subsection (a) to drive using an ignition interlock device~~[-]~~ who violates subsection (a) shall be sentenced without possibility of probation or suspension of sentence as follows:

- (1) For a first offense, or any offense not preceded within a ~~[five-year]~~ ten-year period by conviction under this section or section 291E-62(a)(3):
 - (A) A term of imprisonment of ~~[not]~~ no less than three consecutive days ~~[but not]~~ and no more than thirty days;
 - (B) A fine of ~~[not]~~ no less than \$250 ~~[but not]~~ and no more than \$1,000; and
 - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device;
- (2) For an offense that occurs within ~~[five]~~ ten years of a prior conviction for an offense under this section or section 291E-62(a)(3):
 - (A) Thirty days imprisonment;
 - (B) A \$1,000 fine; and
 - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device; and
- (3) For an offense that occurs within ~~[five]~~ ten years of two or more prior convictions for offenses under this section or section 291E-62(a)(3), or any combination thereof:
 - (A) One year imprisonment;
 - (B) A \$2,000 fine; and
 - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device.”

SECTION 4. Act 216, Session Laws of Hawaii 2021, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on July 1, 2021~~[-];~~ provided that the amendments made to sections 291E-61 and 291E-61.5, Hawaii Revised Statutes, by sections 5 and 6, respectively, of this Act shall not be repealed when those sections are reenacted on June 30, 2026, pursuant to section 11 of Act 196, Session Laws of Hawaii 2021.”

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 2023; provided that the amendments made to sections 291E-61 and 291E-62, Hawaii Revised Statutes, by sections 1 and 2, respectively, of this Act shall not be repealed when those sections are reenacted on June 30, 2026, pursuant to section 11 of Act 196, Session Laws of Hawaii 2021.

(Approved June 17, 2022.)