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# 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:**

1           SECTION 1. Section 291E-1, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4           "Highly intoxicated driver" means a person whose  
5 measurable amount of alcohol is:

6           (1) .15 or more grams of alcohol per one hundred  
7 milliliters or cubic centimeters of the person's  
8 blood; or

9           (2) .15 or more grams of alcohol per two hundred ten  
10 liters of the person's breath."

11          SECTION 2. Section 291E-3, Hawaii Revised Statutes, is  
12 amended to read as follows:

13          "**§291E-3 Evidence of intoxication.** (a) In any criminal  
14 prosecution for a violation of section 291E-61 or 291E-61.5 or  
15 in any proceeding under part III:



- 1           (1) .08 or more grams of alcohol per one hundred  
2                    milliliters or cubic centimeters of the person's  
3                    blood;
- 4           (2) .08 or more grams of alcohol per two hundred ten  
5                    liters of the person's breath; or
- 6           (3) The presence of one or more drugs in an amount  
7                    sufficient to impair the person's ability to operate a  
8                    vehicle in a careful and prudent manner,  
9           within three hours after the time of the alleged violation as  
10           shown by chemical analysis or other approved analytical  
11           techniques of the person's blood, breath, or urine shall be  
12           competent evidence that the person was under the influence of an  
13           intoxicant at the time of the alleged violation.
- 14           (b) In any criminal prosecution for a violation of section  
15           291E-61 or 291E-61.5, the amount of alcohol found in the  
16           defendant's blood or breath within three hours after the time of  
17           the alleged violation as shown by chemical analysis or other  
18           approved analytical techniques of the defendant's blood or  
19           breath shall be competent evidence concerning whether the  
20           defendant was under the influence of an intoxicant at the time



1 of the alleged violation and shall give rise to the following  
2 presumptions:

3 (1) If there were .05 or less grams of alcohol per one  
4 hundred milliliters or cubic centimeters of  
5 defendant's blood or .05 or less grams of alcohol per  
6 two hundred ten liters of defendant's breath, it shall  
7 be presumed that the defendant was not under the  
8 influence of alcohol at the time of the alleged  
9 violation; and

10 (2) If there were in excess of .05 grams of alcohol per  
11 one hundred milliliters or cubic centimeters of  
12 defendant's blood or .05 grams of alcohol per two  
13 hundred ten liters of defendant's breath, but less  
14 than .08 grams of alcohol per one hundred milliliters  
15 or cubic centimeters of defendant's blood or .08 grams  
16 of alcohol per two hundred ten liters of defendant's  
17 breath, that fact may be considered with other  
18 competent evidence in determining whether the  
19 defendant was under the influence of alcohol at the  
20 time of the alleged violation, but shall not of itself  
21 give rise to any presumption.



1        (c) In any criminal prosecution for a violation of section  
2 291E-61 or in any proceeding under part III:

3        (1) .15 or more grams of alcohol per one hundred  
4                milliliters or cubic centimeters of the person's  
5                blood; or

6        (2) .15 or more grams of alcohol per two hundred ten  
7                liters of the person's breath,

8 within three hours after the time of the alleged violation as  
9 shown by chemical analysis or other approved analytical  
10 techniques of the person's blood or breath shall be competent  
11 evidence that the person was a highly intoxicated driver at the  
12 time of the alleged violation.

13        [~~e~~] (d) Nothing in this section shall be construed as  
14 limiting the introduction, in any criminal proceeding for a  
15 violation under section 291E-61 or 291E-61.5 or in any  
16 proceeding under part III, of relevant evidence of a person's  
17 alcohol concentration or drug content obtained more than three  
18 hours after an alleged violation; provided that the evidence is  
19 offered in compliance with the Hawaii rules of evidence."

20        SECTION 3. Section 291E-38, Hawaii Revised Statutes, is  
21 amended by amending subsection (d) to read as follows:



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

3           (1) Administer oaths and affirmations;  
4           (2) Examine witnesses and take testimony;  
5           (3) Receive and determine the relevance of evidence;  
6           (4) Issue subpoenas;  
7           (5) Regulate the course and conduct of the hearing; and  
8           ~~[(6) Impose up to the maximum license revocation period as~~  
9           ~~specified under section 291E-41(b)(4); and~~  
10          ~~(7)]~~ (6) Make a final ruling."

11           SECTION 4. Section 291E-41, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "**§291E-41 Effective date, conditions, and period of**  
14 **administrative revocation; criteria.** (a) Unless an  
15 administrative revocation is reversed or the temporary permit is  
16 extended by the director, administrative revocation shall become  
17 effective on the day specified in the notice of administrative  
18 revocation. Except as provided in section 291E-44.5, no license  
19 ~~[and privilege]~~ to operate a vehicle shall be restored under any  
20 circumstances during the administrative revocation period. Upon  
21 completion of the administrative revocation period, the



1 respondent may reapply and be reissued a license pursuant to  
2 section 291E-45.

3 (b) Except as provided in paragraph (5) and in section  
4 291E-44.5, the respondent shall keep an ignition interlock  
5 device installed and operating in [~~any vehicle~~] one or more  
6 vehicles registered to, and all vehicles operated by, the  
7 respondent [~~operates~~] during the revocation period. Except as  
8 provided in section 291E-5, installation and maintenance of the  
9 ignition interlock device shall be at the respondent's expense.  
10 The periods of administrative revocation, with respect to a  
11 license [~~and privilege~~] to operate a vehicle, that shall be  
12 imposed under this part are as follows:

- 13 (1) A one year revocation of license [~~and privilege~~] to  
14 operate a vehicle, if the respondent's record shows no  
15 prior alcohol enforcement contact or drug enforcement  
16 contact during the [~~five~~] ten years preceding the date  
17 the notice of administrative revocation was issued;
- 18 (2) [~~An eighteen month~~] A two-year revocation of license  
19 [~~and privilege~~] to operate a vehicle, if the  
20 respondent's record shows one prior alcohol  
21 enforcement contact or drug enforcement contact during



1 the [~~five~~] ten years preceding the date the notice of  
2 administrative revocation was issued;

3 (3) A [~~two-year~~] four-year revocation of license and  
4 privilege to operate a vehicle, if the respondent's  
5 record shows two or more prior alcohol enforcement  
6 contacts or drug enforcement contacts during the  
7 [~~five~~] ten years preceding the date the notice of  
8 administrative revocation was issued;

9 (4) [~~A minimum of five years up to a maximum of ten years~~  
10 ~~revocation of license and privilege to operate a~~  
11 ~~vehicle, if the respondent's record shows three or~~  
12 ~~more prior alcohol enforcement contacts or drug~~  
13 ~~enforcement contacts during the ten years preceding~~  
14 ~~the date the notice of administrative revocation was~~  
15 ~~issued,] For a respondent who is a highly intoxicated  
16 driver:~~

17 (A) An eighteen-month revocation of license to  
18 operate a vehicle, with mandatory installation of  
19 an ignition interlock device in one or more  
20 vehicles registered to, and all vehicles operated  
21 by, the respondent during the revocation period,



1 if the respondent's record shows no prior alcohol  
2 enforcement contact or drug enforcement contact  
3 during the ten year preceding the date the notice  
4 of administrative revocation was issued;

5 (B) A three-year revocation of license to operate a  
6 vehicle, with mandatory installation of an  
7 ignition interlock device in one or more vehicles  
8 registered to, and all vehicles operated by, the  
9 respondent during the revocation period, if the  
10 respondent's record shows one prior alcohol  
11 enforcement contact or drug enforcement contact  
12 during the ten years preceding the date the  
13 notice of administrative revocation was issued;  
14 and

15 (C) A six-year revocation of license to operate a  
16 vehicle, with mandatory installation of an  
17 ignition interlock device in one or more vehicles  
18 registered to, and all vehicles operated by, the  
19 respondent during the revocation period, if the  
20 respondent's records show two or more prior  
21 alcohol enforcement or drug enforcement contacts



1                   during the ten years preceding the date the  
2                   notice of administrative revocation was issued;

3           (5) For respondents under the age of eighteen years who  
4           were arrested for a violation of section 291E-61 or  
5           291E-61.5, revocation of license and privilege to  
6           operate a vehicle for the appropriate revocation  
7           period provided in paragraphs (1) to [~~(4)~~] (3) or in  
8           subsection (c); provided that the respondent shall be  
9           prohibited from driving during the period preceding  
10          the respondent's eighteenth birthday and shall  
11          thereafter be subject to the ignition interlock  
12          requirement of this subsection for the balance of the  
13          revocation period; or

14          (6) For respondents, other than those excepted pursuant to  
15          section 291E-44.5(c), who do not install an ignition  
16          interlock device in [~~any vehicle~~] one or more vehicles  
17          registered to, and all vehicles operated by, the  
18          respondent [~~operates~~] during the revocation period,  
19          revocation of license [~~and privilege~~] to operate a  
20          vehicle for the period of revocation provided in



1 paragraphs (1) to [~~5~~] (4)(A) or in subsection (c);  
2 provided that:

3 (A) The respondent shall be absolutely prohibited  
4 from driving during the revocation period and  
5 subject to the penalties provided by section  
6 291E-62 if the respondent drives during the  
7 revocation period; and

8 (B) The director shall not issue an ignition  
9 interlock permit to the respondent pursuant to  
10 section 291E-44.5;

11 provided that when more than one administrative revocation,  
12 suspension, or conviction arises out of the same arrest, it  
13 shall be counted as only one prior alcohol enforcement contact  
14 or drug enforcement contact, whichever revocation, suspension,  
15 or conviction occurs later.

16 (c) If a respondent has refused to be tested after being  
17 informed:

18 (1) That the person may refuse to submit to testing in  
19 compliance with section 291E-11; and

20 (2) Of the sanctions of this part and then asked if the  
21 person still refuses to submit to a breath, blood, or



1           urine test, in compliance with the requirements of  
2           section 291E-15,  
3 the revocation imposed under subsection (b) (1), (2), or (3) [~~or~~  
4 ~~(4)~~] shall be for a period of two years, [~~three years,~~] four  
5 years, or [~~ten~~] eight years, respectively.

6           (d) Whenever a license [~~and privilege~~] to operate a  
7 vehicle is administratively revoked under this part, the  
8 respondent shall be referred to the driver's education program  
9 for an assessment, by a certified substance abuse counselor, of  
10 the respondent's substance abuse or dependence and the need for  
11 treatment. The counselor shall submit a report with  
12 recommendations to the director. If the counselor's assessment  
13 establishes that the extent of the respondent's substance abuse  
14 or dependence warrants treatment, the director shall so order.  
15 All costs for assessment and treatment shall be paid by the  
16 respondent.

17           (e) Alcohol and drug enforcement contacts that occurred  
18 prior to January 1, 2002, shall be counted in determining the  
19 administrative revocation period.



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

4 SECTION 5. Section 291E-61, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 1. By amending subsection (b) to read:

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

11 (1) [~~For~~] Except as provided in subsection (b)(4), for the  
12 first offense, or any offense not preceded within a  
13 ten-year period by a conviction for an offense under  
14 this section or section 291E-4(a):

15 (A) A fourteen-hour minimum substance abuse  
16 rehabilitation program, including education and  
17 counseling, or other comparable program deemed  
18 appropriate by the court;

19 (B) One-year revocation of license [~~and privilege~~] to  
20 operate a vehicle [~~during the revocation period~~  
21 ~~and installation~~]



1           (C) Installation during the revocation period of an  
2           ignition interlock device on any vehicle operated  
3           by the person;

4           ~~(C)~~ (D) Any one or more of the following:

5           (i) Seventy-two hours of community service work;

6           (ii) No less than forty-eight hours and no more  
7           than five days of imprisonment; or

8           (iii) A fine of no less than \$250 but no more than  
9           \$1,000;

10          ~~(D)~~ (E) A surcharge of \$25 to be deposited into the  
11          neurotrauma special fund; and

12          ~~(E)~~ (F) A surcharge, if the court so orders, of up  
13          to \$25 to be deposited into the trauma system  
14          special fund;

15          (2) For an offense that occurs within ten years of a prior  
16          conviction for an offense under this section [~~or~~  
17          ~~section 291E-4(a)~~]:

18          (A) A substance abuse program of at least thirty-six  
19          hours, including education and counseling or  
20          other comparable programs deemed appropriate by  
21          the court;



1           ~~[(A)]~~   (B)   Revocation of license to operate a vehicle  
2                                   for no less than ~~[twenty four months]~~ two years  
3                                   nor more than three years ~~[of license and~~  
4                                   ~~privilege to operate a vehicle during the~~  
5                                   ~~revocation period and installation]~~;

6           (C)   Installation during the revocation period of an  
7                                   ignition interlock device on any vehicle operated  
8                                   by the person;

9           ~~[(B)]~~   (D)   Either one of the following:

10                               (i)   No less than two hundred forty hours of  
11                               community service work; or

12                               (ii)  No less than five days but no more than  
13                               thirty days of imprisonment, of which at  
14                               least forty-eight hours shall be served  
15                               consecutively;

16           ~~[(C)]~~   (E)   A fine of no less than \$1,000 but no more  
17                               than \$3,000;

18           ~~[(D)]~~   (F)   A surcharge of \$25 to be deposited into the  
19                               neurotrauma special fund; and



1           ~~[(E)]~~ (G) A surcharge of up to \$50, if the court so  
2                           orders, to be deposited into the trauma system  
3                           special fund;

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

18           (4) In addition to a sentence imposed under paragraph (1),  
19                           for a first offense under this section, or an offense  
20                           not preceded within a ten-year period by a conviction  
21                           for an offense, any person who is convicted under this



1 section and was a highly intoxicated driver at the  
2 time of the subject incident shall be sentenced to an  
3 additional mandatory term of imprisonment for forty-  
4 eight consecutive hours and an additional mandatory  
5 revocation period of six months; provided that the  
6 total term of imprisonment for a person convicted  
7 under this paragraph shall not exceed the maximum term  
8 of imprisonment provided in paragraph (1).

9 Notwithstanding paragraph (1), the revocation period  
10 for a person sentenced under this paragraph shall be  
11 no less than eighteen months;

12 (5) In addition to a sentence under paragraph (2), for a  
13 first offense under this section, or an offense not  
14 preceded within a ten-year period by a conviction for  
15 an offense, any person who is convicted under this  
16 section and was a highly intoxicated driver at the  
17 time of the subject incident shall be sentenced to an  
18 additional mandatory term of imprisonment of ten  
19 consecutive days and additional mandatory revocation  
20 period of one year; provided that the total term of  
21 imprisonment for a person convicted under this



1 paragraph shall not exceed the maximum term of  
 2 imprisonment provided in paragraph (2), as applicable.  
 3 Notwithstanding paragraph (2), the revocation period  
 4 for a person sentenced under this paragraph shall be  
 5 no less than three years; and

6 [~~4~~] (6) If the person demonstrates to the court that the  
 7 person:

- 8 (A) Does not own or have the use of a vehicle in
- 9 which the person can install an ignition
- 10 interlock device during the revocation period; or
- 11 (B) Is otherwise unable to drive during the
- 12 revocation period,

13 the person shall be absolutely prohibited from driving  
 14 during the period of applicable revocation provided in  
 15 paragraphs (1) to (3); provided that the court shall  
 16 not issue an ignition interlock permit pursuant to  
 17 subsection (i) and the person shall be subject to the  
 18 penalties provided by section 291E-62 if the person  
 19 drives during the applicable revocation period."

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

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



- 1           (1) Conviction under this section, section 291E-4(a), or  
2                    section 291E-61.5;
- 3           (2) Conviction in any other state or federal jurisdiction  
4                    for an offense that is comparable to operating or  
5                    being in physical control of a vehicle while having  
6                    either an unlawful alcohol concentration or an  
7                    unlawful drug content in the blood or urine or while  
8                    under the influence of an intoxicant or habitually  
9                    operating a vehicle under the influence of an  
10                  intoxicant; or
- 11          (3) Adjudication of a minor for a law violation that, if  
12                    committed by an adult, would constitute a violation of  
13                    this section or an offense under section 291E-4(a), or  
14                    section 291E-61.5,
- 15 shall be considered a prior conviction for the purposes of  
16 imposing sentence under this section. Any judgment on a verdict  
17 or a finding of guilty, a plea of guilty or nolo contendere, or  
18 an adjudication, in the case of a minor, that at the time of the  
19 offense has not been expunged by pardon, reversed, or set aside  
20 shall be deemed a prior conviction under this section. [No  
21 ~~license and privilege revocation shall be imposed pursuant to~~



~~1 this section if the person's license and privilege to operate a  
2 vehicle has previously been administratively revoked pursuant to  
3 part III for the same act; provided that, if the administrative  
4 revocation is subsequently reversed, the person's license and  
5 privilege to operate a vehicle shall be revoked as provided in  
6 this section. There shall be no requirement for the  
7 installation of an ignition interlock device pursuant to this  
8 section if the requirement has previously been imposed pursuant  
9 to part III for the same act; provided that, if the requirement  
10 is subsequently reversed, a requirement for the installation of  
11 an ignition interlock device shall be imposed as provided in  
12 this section.]~~

13 (h) Whenever a court sentences a person pursuant to  
14 subsection (b), it also shall require that the offender be  
15 referred to the driver's education program for an assessment, by  
16 a certified substance abuse counselor[~~7~~] deemed appropriate by  
17 the court, of the offender's substance abuse or dependence and  
18 the need for appropriate treatment. The counselor shall submit  
19 a report with recommendations to the court. The court shall  
20 require the offender to obtain appropriate treatment if the  
21 counselor's assessment establishes the offender's substance



1 abuse or dependence. All costs for assessment and treatment  
2 shall be borne by the offender."

3 SECTION 6. Section 291E-61.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§291E-61.5 Habitually operating a vehicle under the  
6 influence of an intoxicant. (a) A person commits the offense  
7 of habitually operating a vehicle under the influence of an  
8 intoxicant if:

9 (1) The person is a habitual operator of a vehicle while  
10 under the influence of an intoxicant; and

11 (2) The person operates or assumes actual physical control  
12 of a vehicle:

13 (A) While under the influence of alcohol in an amount  
14 sufficient to impair the person's normal mental  
15 faculties or ability to care for the person and  
16 guard against casualty;

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

20 (C) With .08 or more grams of alcohol per two hundred  
21 ten liters of breath; or



1 (D) With .08 or more grams of alcohol per one hundred  
2 milliliters or cubic centimeters of blood.

3 (b) Habitually operating a vehicle while under the  
4 influence of an intoxicant is a class C felony.

5 (c) For a conviction under this section, the sentence  
6 shall be either:

7 (1) An indeterminate term of imprisonment of five years;  
8 or

9 (2) A term of probation of five years, with conditions to  
10 include:

11 (A) Mandatory revocation of license [~~and privilege~~]  
12 to operate a vehicle for a period no less than  
13 three years but no more than five years[+], with  
14 mandatory installation of an ignition interlock  
15 device in one or more vehicles registered to, and  
16 all vehicles operated by, the respondent during  
17 the revocation period;

18 (B) No less than ten days imprisonment, of which at  
19 least forty-eight hours shall be served  
20 consecutively;



- 1 (C) A fine of no less than \$2,000 but no more than  
2 \$5,000;
- 3 (D) Referral to a certified substance abuse counselor  
4 as provided in subsection [~~(d)~~] (e);
- 5 (E) A surcharge of \$25 to be deposited into the  
6 neurotrauma special fund; and
- 7 (F) [~~May be charged a~~] A surcharge of up to \$50 to be  
8 deposited into the trauma system special fund if  
9 the court so orders.

10 In addition to the foregoing, any vehicle owned and operated by  
11 the person committing the offense shall be subject to forfeiture  
12 pursuant to chapter 712A[~~, provided that the department of~~  
13 ~~transportation shall provide storage for vehicles forfeited~~  
14 ~~under this subsection]~~.

15 (d) For any person who is convicted under this section and  
16 was a highly intoxicated driver at the time of the subject  
17 incident, the offense shall be a class B felony and the person  
18 shall be sentenced to the following:

- 19 (1) An indeterminate term of imprisonment of ten years; or  
20 (2) A term of probation of five years, with conditions to  
21 include the following:



- 1           (A) Permanent revocation of license to operate a  
2           vehicle;
- 3           (B) No less than eighteen months imprisonment;
- 4           (C) A fine of no less than \$5,000 but no more than  
5           \$25,000;
- 6           (D) Referral to a certified substance abuse counselor  
7           as provided in subsection (e);
- 8           (E) A surcharge of \$50 to be deposited into the  
9           neurotrauma special fund under section 321H-4;  
10           and
- 11           (F) A surcharge of up to \$100, to be deposited into  
12           the trauma system special fund under section 321-  
13           22.5, if the court so orders.

14 In addition to the foregoing, any vehicle owned and operated by  
15 the person who committed the offense shall be subject to  
16 forfeiture pursuant to chapter 712A.

17           ~~[(d)]~~ (e) Whenever a court sentences a person under this  
18 section, it shall also require that the offender be referred to  
19 the driver's education program for an assessment, by a certified  
20 substance abuse counselor, of the offender's substance abuse or  
21 dependence and the need for appropriate treatment. The



1 counselor shall submit a report with recommendations to the  
2 court. The court shall require the offender to obtain  
3 appropriate treatment if the counselor's assessment establishes  
4 the offender's substance abuse or dependence. All costs for  
5 assessment and treatment shall be borne by the offender.

6 ~~(e)~~ (f) Notwithstanding any other law to the contrary,  
7 whenever a court revokes a person's driver's license pursuant to  
8 this section, the examiner of drivers shall not grant to the  
9 person a new driver's license until expiration of the period of  
10 revocation determined by the court. After the period of  
11 revocation is complete, the person may apply for and the  
12 examiner of drivers may grant to the person a new driver's  
13 license.

14 ~~(f)~~ (g) Any person sentenced under this section may be  
15 ordered to reimburse the county for the cost of any blood or  
16 urine tests conducted pursuant to section 291E-11. The court  
17 shall order the person to make restitution in a lump sum, or in  
18 a series of prorated installments, to the police department or  
19 other agency incurring the expense of the blood or urine test.

20 ~~(g)~~ (h) As used in this section:



1 "Convicted one or more times for offenses of habitually  
2 operating a vehicle under the influence" means that, at the time  
3 of the behavior for which the person is charged under this  
4 section, the person had one or more times within ten years of  
5 the instant offense:

6 (1) A judgment on a verdict or a finding of guilty, or a  
7 plea of guilty or nolo contendere, for a violation of  
8 this section or section 291-4.4 as that section was in  
9 effect on December 31, 2001;

10 (2) A judgment on a verdict or a finding of guilty, or a  
11 plea of guilty or nolo contendere, for an offense that  
12 is comparable to this section or section 291-4.4 as  
13 that section was in effect on December 31, 2001; or

14 (3) An adjudication of a minor for a law or probation  
15 violation that, if committed by an adult, would  
16 constitute a violation of this section or section  
17 291-4.4 as that section was in effect on December 31,  
18 2001,

19 that, at the time of the instant offense, had not been expunged  
20 by pardon, reversed, or set aside. All convictions that have  
21 been expunged by pardon, reversed, or set aside before the



1 instant offense shall not be deemed prior convictions for the  
2 purposes of proving the person's status as a habitual operator  
3 of a vehicle while under the influence of an intoxicant.

4 "Convicted two or more times for offenses of operating a  
5 vehicle under the influence" means that, at the time of the  
6 behavior for which the person is charged under this section, the  
7 person had two or more times within ten years of the instant  
8 offense:

- 9 (1) A judgment on a verdict or a finding of guilty, or a  
10 plea of guilty or nolo contendere, for a violation of  
11 section [~~291-4, 291-4.4, or 291-7 as those sections~~  
12 ~~were in effect on December 31, 2001, or section]~~  
13 291E-61 or 707-702.5;
- 14 (2) A judgment on a verdict or a finding of guilty, or a  
15 plea of guilty or nolo contendere, for an offense that  
16 is comparable to section [~~291-4, 291-4.4, or 291-7 as~~  
17 ~~those sections were in effect on December 31, 2001, or~~  
18 ~~section]~~ 291E-61 or 707-702.5; or
- 19 (3) An adjudication of a minor for a law or probation  
20 violation that, if committed by an adult, would  
21 constitute a violation of section [~~291-4, 291-4.4, or~~



1           ~~291-7 as those sections were in effect on December 31,~~  
2           ~~2001, or section]~~ 291E-61 or 707-702.5,  
3 that, at the time of the instant offense, had not been expunged  
4 by pardon, reversed, or set aside. All convictions that have  
5 been expunged by pardon, reversed, or set aside before the  
6 instant offense shall not be deemed prior convictions for the  
7 purposes of proving that the person is a habitual operator of a  
8 vehicle while under the influence of an intoxicant.

9           "Examiner of drivers" has the same meaning as provided in  
10 section 286-2.

11           "Habitual operator of a vehicle while under the influence  
12 of an intoxicant" means that the person was convicted:

13           (1) Two or more times for offenses of operating a vehicle  
14           under the influence; or

15           (2) One or more times for offenses of habitually operating  
16           a vehicle under the influence."

17           SECTION 7. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20           SECTION 8. If any provision of this Act, or the  
21 application thereof to any person or circumstance, is held



1 invalid, the invalidity does not affect other provisions or  
2 applications of the Act that can be given effect without the  
3 invalid provision or application, and to this end the provisions  
4 of this Act are severable.

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

7 SECTION 10. This Act shall take effect on July 1, 2021.



**Report Title:**

Operating a Vehicle Under the Influence of an Intoxicant; Highly Intoxicated Driver; Penalties

**Description:**

Defines "highly intoxicated driver". Provides the evidentiary standard for establishing that a person was a highly intoxicated driver. Requires that ignition interlock devices be installed and maintained on one or more vehicles registered to, and all vehicles operated by, anyone convicted of operating a vehicle under the influence of an intoxicant, during the applicable period of license revocation. Increases the license revocation period ordered by the Administrative Driver's License Revocation Office and extends the applicable lookback periods from five to ten years. Establishes higher penalties for a highly intoxicated driver operating a vehicle. Establishes higher penalties for offenses of operating a vehicle under the influence of an intoxicant. (SD1)

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

