
A BILL FOR AN ACT

RELATING TO USE OF INTOXICANTS.

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

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

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

7 (1) While under the influence of alcohol in an amount
8 sufficient to impair the person's normal mental
9 faculties or ability to care for the person and guard
10 against casualty;

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

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

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



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

5 (1) For the first offense, or any offense not preceded
6 within a five-year period by a conviction for an
7 offense under this section or section 291E-4(a):

8 (A) A fourteen-hour minimum substance abuse
9 rehabilitation program, including education and
10 counseling, or other comparable program deemed
11 appropriate by the court;

12 (B) Ninety-day prompt suspension of license and
13 privilege to operate a vehicle during the
14 suspension period, or the court may impose, in
15 lieu of the ninety-day prompt suspension of
16 license, a minimum thirty-day prompt suspension
17 of license with absolute prohibition from
18 operating a vehicle and, for the remainder of the
19 ninety-day period, a restriction on the license
20 that allows the person to drive for limited
21 work-related purposes and to participate in
22 substance abuse treatment programs;



- 1 (C) Any one or more of the following:
 - 2 (i) Seventy-two hours of community service work;
 - 3 (ii) Not less than forty-eight hours and not more
 - 4 than five days of imprisonment; or
 - 5 (iii) A fine of not less than \$150 but not more
 - 6 than \$1,000; and
- 7 (D) A surcharge of \$25 to be deposited into the
- 8 neurotrauma special fund;
- 9 (2) For an offense committed by a highly intoxicated
- 10 driver, prompt suspension of license and privilege to
- 11 operate a vehicle for a period of six months with an
- 12 absolute prohibition from operating a vehicle during
- 13 the suspension period;
- 14 (3) For an offense that occurs within five years of a
- 15 prior conviction for an offense under this section or
- 16 section 291E-4(a) by:
 - 17 (A) Prompt suspension of license and privilege to
 - 18 operate a vehicle for a period of one year with
 - 19 an absolute prohibition from operating a vehicle
 - 20 during the suspension period;
 - 21 (B) Either one of the following:



- 1 (i) Not less than two hundred forty hours of
- 2 community service work; or
- 3 (ii) Not less than five days but not more than
- 4 fourteen days of imprisonment of which at
- 5 least forty-eight hours shall be served
- 6 consecutively;
- 7 (C) A fine of not less than \$500 but not more than
- 8 \$1,500; and
- 9 (D) A surcharge of \$25 to be deposited into the
- 10 neurotrauma special fund;
- 11 (4) For an offense that occurs within five years of two
- 12 prior convictions for offenses under this section or
- 13 section 291E-4(a):
- 14 (A) A fine of not less than \$500 but not more than
- 15 \$2,500;
- 16 (B) Revocation of license and privilege to operate a
- 17 vehicle for a period not less than one year but
- 18 not more than five years;
- 19 (C) Not less than ten days but not more than thirty
- 20 days imprisonment of which at least forty-eight
- 21 hours shall be served consecutively;



- 1 (D) A surcharge of \$25 to be deposited into the
- 2 neurotrauma special fund; and
- 3 (E) Forfeiture under chapter 712A of the vehicle
- 4 owned and operated by the person committing the
- 5 offense; provided that the department of
- 6 transportation shall provide storage for vehicles
- 7 forfeited under this subsection; and
- 8 (5) Any person eighteen years of age or older who is
- 9 convicted under this section and who operated a
- 10 vehicle with a passenger, in or on the vehicle, who
- 11 was younger than fifteen years of age, shall be
- 12 sentenced to an additional mandatory fine of \$500 and
- 13 an additional mandatory term of imprisonment of
- 14 forty-eight hours; provided that the total term of
- 15 imprisonment for a person convicted under this
- 16 paragraph shall not exceed the maximum term of
- 17 imprisonment provided in paragraph (1), [†](3)[†], or
- 18 [†](4)[†].
- 19 (c) Notwithstanding any other law to the contrary, any:
- 20 (1) Conviction under this section, section 291E-4(a), or
- 21 section 291E-61.5;



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

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

13 shall be considered a prior conviction for the purposes of
14 imposing sentence under this section. Any judgment on a verdict
15 or a finding of guilty, a plea of guilty or nolo contendere, or
16 an adjudication in the case of a minor, that at the time of the
17 offense has not been expunged by pardon, reversed, or set aside
18 shall be deemed a prior conviction under this section. No
19 license and privilege suspension or revocation shall be imposed
20 pursuant to this section if the person's license and privilege
21 to operate a vehicle has previously been administratively
22 revoked pursuant to part III for the same act; provided that, if



1 the administrative suspension or revocation is subsequently
2 reversed, the person's license and privilege to operate a
3 vehicle shall be suspended or revoked as provided in this
4 section.

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

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



1 examiner of drivers may grant to the person a new driver's
2 license.

3 (f) Any person sentenced under this section may be ordered
4 to reimburse the county for the cost of any blood or urine tests
5 conducted pursuant to section 291E-11. The court shall order
6 the person to make restitution in a lump sum, or in a series of
7 prorated installments, to the police department or other agency
8 incurring the expense of the blood or urine test.

9 (g) In addition to any other penalties and liabilities, a
10 person who is adjudicated of violating this section shall be
11 fined \$100, payable to the clerk of the court, who shall
12 distribute the money to the law enforcement agency that made the
13 arrest. All moneys received by a law enforcement agency under
14 this subsection may be used for law enforcement, including in-
15 car cameras, radar and laser speed detection devices, alcohol
16 breath testers, enforcement overtime, and court overtime.

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

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



1 SECTION 2. Section 291E-64, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§291E-64 Operating a vehicle after consuming a measurable**
4 **amount of alcohol; persons under the age of twenty-one.** (a) It
5 shall be unlawful for any person under the age of twenty-one
6 years to operate any vehicle with a measurable amount of
7 alcohol. A law enforcement officer may arrest a person under
8 this section when the officer has probable cause to believe the
9 arrested person is under the age of twenty-one and had been
10 operating a vehicle upon a public way, street, road, or highway
11 or on or in the waters of the State with a measurable amount of
12 alcohol.

13 (b) A person who violates this section shall be sentenced
14 as follows:

15 (1) For a first violation or any violation not preceded
16 within a five-year period by a prior alcohol
17 enforcement contact:

18 (A) The court shall impose:

19 (i) A requirement that the person and, if the
20 person is under the age of eighteen, the
21 person's parent or guardian attend an



1 alcohol abuse education and counseling
2 program for not more than ten hours; and
3 (ii) A one hundred eighty-day prompt suspension
4 of license and privilege to operate a
5 vehicle with absolute prohibition from
6 operating a vehicle during the suspension
7 period, or in the case of a person eighteen
8 years of age or older, the court may impose,
9 in lieu of the one hundred eighty-day prompt
10 suspension of license, a minimum thirty-day
11 prompt suspension of license with absolute
12 prohibition from operating a vehicle and,
13 for the remainder of the one hundred eighty-
14 day period, a restriction on the license
15 that allows the person to drive for limited
16 work-related purposes and to participate in
17 alcohol abuse education and treatment
18 programs; and

19 (B) In addition, the court may impose any one or more
20 of the following:

21 (i) Not more than thirty-six hours of community
22 service work; or



1 (ii) A fine of not less than \$150 but not more
2 than \$500;

3 (2) For a violation committed by a highly intoxicated
4 driver or that occurs within five years of a prior
5 alcohol enforcement contact:

6 (A) The court shall impose prompt suspension of
7 license and privilege to operate a vehicle for a
8 period of one year with absolute prohibition from
9 operating a vehicle during the suspension period;
10 and

11 (B) In addition, the court may impose any of the
12 following:

13 (i) Not more than fifty hours of community
14 service work; or

15 (ii) A fine of not less than \$300 but not more
16 than \$1,000; and

17 (3) For a violation that occurs within five years of two
18 prior alcohol enforcement contacts:

19 (A) The court shall impose revocation of license and
20 privilege to operate a vehicle for a period of
21 two years; and



1 (B) In addition, the court may impose any of the
2 following:

3 (i) Not more than one hundred hours of community
4 service work; or

5 (ii) A fine of not less than \$300 but not more
6 than \$1,000.

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

10 (d) Whenever a court sentences a person pursuant to
11 subsection (b)(2) or (3), it also shall require that the person
12 be referred to the driver's education program for an assessment,
13 by a certified substance abuse counselor, of the person's
14 alcohol abuse or dependence and the need for appropriate
15 treatment. The counselor shall submit a report with
16 recommendations to the court. The court shall require the
17 person to obtain appropriate treatment if the counselor's
18 assessment establishes the person's alcohol abuse or dependence.
19 All costs for assessment and treatment shall be borne by the
20 person or by the person's parent or guardian, if the person is
21 under the age of eighteen.



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

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

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

20 (h) In addition to any other penalties and liabilities, a
21 person who is adjudicated of violating this section shall be
22 fined \$100, payable to the clerk of the court, who shall



1 distribute the money to the law enforcement agency that made the
 2 arrest. All moneys received by a law enforcement agency under
 3 this subsection may be used for law enforcement, including in-
 4 car cameras, radar and laser speed detection devices, alcohol
 5 breath testers, enforcement overtime, and court overtime.

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

9 [~~i~~] (j) Any person who violates this section shall be
 10 guilty of a violation.

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

14 SECTION 3. This Act does not affect rights and duties that
 15 matured, penalties that were incurred, and proceedings that were
 16 begun, before its effective date.

17 SECTION 4. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect on July 1, 2007.

INTRODUCED BY: Calvin K. Ay
 JAN 24 2007



Report Title:

Operating a vehicle under the influence of an intoxicant;
Penalties

Description:

Establishes a \$100 fine for operating a vehicle under the influence of an intoxicant and for persons under the age of twenty-one who operate a vehicle after consuming a measurable amount of alcohol, that may be used by the arresting police jurisdiction for law enforcement.

