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## A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1 SECTION 1. The legislature finds that Act 171, Session 2 Laws of Hawaii 2008, was adopted to implement the use of an 3 ignition interlock device to prevent drivers previously arrested 4 for driving under the influence of intoxicants from starting or 5 operating a motor vehicle with more than a minimal alcohol 6 concentration while their case is pending or while their license 7 is revoked. Rather than taking a punitive approach that prohibits driving, Act 171 takes a pragmatic approach that 8 9 requires installation of an ignition interlock device shortly 10 after arrest so that the person can drive, but is prevented from 11 drinking and driving.

Recognizing the need to resolve a number of outstanding issues in transitioning to the use of ignition interlock devices, the legislature delayed the effective date of Act 171 to July 1, 2010. The legislature also established a task force to study the issues identified in Act 171 during the interim and make recommendations for additional legislation necessary to implement use of the ignition interlock devices. The task force HB981 HD2 HMS 2009-2892

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1 consists of two members each from the senate and the house of 2 representatives; two members representing the judiciary; one member representing each of the state departments of 3 4 transportation, health, and the attorney general; one member 5 representing the office of public defender; one member 6 representing the police departments in each of the four 7 counties; one member representing the department of the prosecuting attorney in each of the four counties; one member 8 9 representing the examiner of drivers in each of the four 10 counties; two members representing Mothers Against Drunk 11 Driving; and one member of the Hawaii association of criminal 12 defense lawyers.

13 The task force addressed each of the issues identified in
14 Act 171 and made recommendations on a number of them, while
15 deferring the remainder until the 2010 session. The task force
16 continued to stress a pragmatic approach, as opposed to a
17 punitive one, with the following key positions:

18 (1) Installation of the ignition interlock device should
19 be required for all offenders, not just repeat
20 offenders, consistent with the national trend and
21 similar laws that took effect on January 1, 2009, in
22 Alaska, Nebraska, and Washington;



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1 Unlike current law, which sanctions first offenders (2)2 more severely if their alcohol level meets or exceeds 3 .15, all first offenders should be treated the same 4 way, regardless of their alcohol level, and no first 5 offender should be required to post proof of financial 6 responsibility; Installation of the ignition interlock device should 7 (3) 8 occur as soon after arrest as possible so that the 9 offender learns that driving without the device is not 10 permissible; 11 (4)Stricter laws and increased enforcement are needed to 12 deter those who would try to avoid installing the ignition interlock device and drive on a suspended or 13 revoked license; 14 15 (5) The offender should pay for the cost of installing and servicing the ignition interlock device, with the 16 establishment of a fund to pay for those who are 17 18 determined to be indigent according to specified 19 criteria; 20 (6) Use of the ignition interlock device should be

overseen principally by the administrative driver's

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1 license revocation program, with support from judicial 2 proceedings; 3 The alcohol level at which a driver is "locked out" --(7) 4 prevented from starting the vehicle or performing a 5 rolling retest -- should be .02 and no penalties should be imposed when a driver is "locked out" or 6 7 fails to take a retest as the inability to start or 8 keep operating the vehicle will provide the 9 consequence for attempting to drive after drinking; Offenders who circumvent or tamper with the ignition 10 (8) 11 interlock device should be charged with an additional 12 crime; 13 (9) Offenders who refuse to be tested for alcohol content 14 should be required to use the ignition interlock device for longer periods than those who take the 15 16 test, and other strategies that make submitting to the 17 test more appealing than refusal should be developed; The department of transportation should select a 18 (10) 19 single provider for installation and maintenance of 20 the ignition interlock device to ensure statewide 21 uniformity in the program; and

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1	(11) Clear expectations and performance standards should be
2	established for the chosen ignition interlock device
3	vendor.
4	The purpose of this Act is to enact recommendations made by
5	the ignition interlock implementation task force pursuant to Act
6	171, Session Laws of Hawaii 2008.
7	SECTION 2. Chapter 291E, Hawaii Revised Statutes, is
8	amended by adding a new section to part IV to be appropriately
9	designated and to read as follows:
10	" <u>§291E-</u> Refusal to submit to a breath, blood, or urine
11	test; penalty. Refusal to submit to a breath, blood, or urine
12	test as required by part II is a petty misdemeanor."
13	SECTION 3. Section 291E-15, Hawaii Revised Statutes, is
14	amended to read as follows:
15	"§291E-15 Refusal to submit to <u>a</u> breath, blood, or urine
16	test; subject to administrative revocation proceedings. If a
17	person under arrest refuses to submit to a breath, blood, or
18	urine test, none shall be given, except as provided in section
19	291E-21. Upon the law enforcement officer's determination that
20	the person under arrest has refused to submit to a breath,
21	blood, or urine test, if applicable, then a law enforcement
22	officer shall:



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Inform the person under arrest of the sanctions under 1 (1)section 291E-41 or 291E-65; and 2 Ask the person if the person still refuses to submit 3 (2)to a breath, blood, or urine test, thereby subjecting 4 5 the person to the procedures and sanctions under part 6 III or section 291E-65, as applicable; provided that if the law enforcement officer fails to comply 7 with paragraphs (1) and (2), the person shall not be subject to 8 the refusal sanctions under part III or [section 291E-65.] IV." 9 SECTION 4. Section 291E-65, Hawaii Revised Statutes, is 10 amended to read as follows: 11 "§291E-65 Refusal to submit to testing for measurable 12 amount of alcohol; district court hearing; sanctions; appeals; 13 admissibility. (a) If a person under arrest for operating a 14 15 vehicle after consuming a measurable amount of alcohol, pursuant to section 291E-64, refuses to submit to a breath or blood test, 16 none shall be given, except as provided in section 291E-21, but 17 the arresting law enforcement officer, as soon as practicable, 18 shall submit an affidavit to a district judge of the circuit in 19 which the arrest was made, stating: 20

(1) That at the time of the arrest, the arresting officer
 had probable cause to believe the arrested person was
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1		under	the age of twenty-one and had been operating a
2		vehic	cle upon a public way, street, road, or highway or
3		on oi	r in the waters of the State with a measurable
4		amour	nt of alcohol;
5	(2)	That	the arrested person was informed that the person
6		may 1	refuse to submit to a breath or blood test, in
7		comp]	liance with section 291E-11;
8	(3)	That	the person had refused to submit to a breath or
9		blood	l test;
10	(4)	That	the arrested person was:
11		(A)	Informed of the sanctions of this section; and
12			then
13		(B)	Asked if the person still refuses to submit to a
14			breath or blood test, in compliance with the
15			requirements of section 291E-15; and
16	(5)	That	the arrested person continued to refuse to submit
17		to a	breath or blood test.
18	(b)	Upon	receipt of the affidavit, the district judge
19	shall hol	d a he	earing within twenty days. The district judge
20	shall hea	r and	determine:
21	(1)	Wheth	her the arresting law enforcement officer had
22		proba	ble cause to believe that the person was under



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1		the age of twenty-one and had been operating a vehicle
2	·	upon a public way, street, road, or highway or on or
3		in the waters of the State with a measurable amount of
4		alcohol;
5	(2)	Whether the person was lawfully arrested;
6	(3)	Whether the person was informed that the person may
7		refuse to submit to a breath or blood test, in
8		compliance with section 291E-11;
9	(4)	Whether the person refused to submit to a test of the
10		person's breath or blood;
11	(5)	Whether the person was:
12		(A) Informed of the sanctions of this section; and
13		then
14		(B) Asked if the person still refuses to submit to a
15		breath or blood test, in compliance with the
16		requirements of section 291E-15; and
17	(6)	Whether the person continued to refuse to submit to a
18		breath or blood test.
19	(c)	If the district judge finds the statements contained
20	in the af	fidavit are true, the judge shall suspend the arrested
21	person's	license and privilege to operate a vehicle as follows:



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1	(1)	For a first suspension, or any suspension not preceded
2		within a five-year period by a suspension under this
3		section, for a period of twelve months; and
4	(2)	For any subsequent suspension under this section, for
5		a period not less than two years and not more than
6		five years.
7	(d)	An order of a district court issued under this section
8	may be ap	pealed to the supreme court.
9	[ <del>-(e)</del>	If a legally arrested person under the age of twenty-
10	<del>one-refus</del>	es to submit to a test of the person's breath or blood,
11	<del>proof of</del>	refusal shall be admissible only in a hearing under
12	this sect	ion or part III and shall not be admissible in any
13	<del>other act</del>	ion or proceeding, whether civil or criminal.]"
14	SECT	ION 5. Section 706-623, Hawaii Revised Statutes, is
15	amended b	y amending subsection (1) to read as follows:
16	"(1)	When the court has sentenced a defendant to be placed
17	on probat	ion, the period of probation shall be as follows,
18	unless th	e court enters the reason therefor on the record and
19	sentences	the defendant to a shorter period of probation:
20	(a)	Ten years upon conviction of a class A felony;
21	(b)	Five years upon conviction of a class B or class C
22		felony;



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1	(c)	One year upon conviction of a misdemeanor; except that
2		upon a conviction under section 586-4, 586-11, or
3		709-906, the court may sentence the defendant to a
4		period of probation not exceeding two years; [ <del>or</del> ]
5	(d)	[ <del>Six</del> ] <u>Except as provided in paragraph (e), six</u> months
6		upon conviction of a petty misdemeanor; provided that
7		up to one year may be imposed upon a finding of good
8		cause [-] ; or
9	<u>(e)</u>	Eighteen months to two years upon a conviction under
10		section 291E-61(b)(2); and two years upon a conviction
11		under section 291E-61(b)(3).
12	The court	, on application of a probation officer, on application
13	of the de	fendant, or on its own motion, may discharge the
14	defendant	at any time. Prior to granting early discharge, the
15	court sha	ll afford the prosecuting attorney an opportunity to be
16	heard. T	he terms of probation provided in this part, other than
17	in this s	ection, shall not apply to sentences of probation
18	imposed u	nder section 706-606.3."

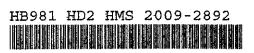
19 SECTION 6. Section 291E-16, Hawaii Revised Statutes, is20 repealed.

21 ["[§291E-16] Proof of refusal; admissibility. If a
 22 legally arrested person refuses to submit to a test of the



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1	person's breath, blood, or urine, evidence of refusal shall be
2	admissible only in a proceeding under part III or section 291E-
3	65 and shall not be admissible in any other action or
4	proceeding, whether civil or criminal."]
5	SECTION 7. Section 291E-44, Hawaii Revised Statutes, is
6	repealed.
7	["§291E-44 Conditional license permits.
8	(a)(1) During the administrative hearing, the director, at
9	the request of a respondent who is subject to
10	administrative revocation for a period as provided in
11	section 291E-41(b)(1), may issue a conditional license
12	permit that will allow the respondent, after a minimum
13	period of absolute license revocation of thirty days,
14	to drive for the remainder of the revocation period;
15	provided that one or more of the following conditions
16	are met:
17	(A) The respondent is gainfully employed in a
18	position that requires driving and will be
19	discharged if the respondent's driving privileges
20	are administratively revoked; or
21	(B) The respondent has no access to alternative
22	transportation and therefore must drive to work



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1			or to a substance abuse treatment facility or
2			counselor for treatment ordered by the director
3			under-section 291E-41; or
4	<del>(2)</del>	Notw	ithstanding any other law to the contrary, the
5		<del>dir</del> e	ctor shall not issue a conditional license permit
6		<del>to:</del>	
7		<del>(Å)</del>	A respondent whose license, during the
8			conditional license permit period, is expired,
9			suspended, or revoked as a result of action other
10			than the instant revocation for which the
11			respondent is requesting a conditional license
12			permit under this section;
13		<del>(B)</del>	A-respondent who has refused breath, blood, or
14			urine tests for purposes of determining alcohol
15			concentration or drug content of the person's
16			breath, blood, or urine, as applicable;
17		<del>-(€)</del>	A respondent who is a highly intoxicated driver;
18			and
19		<del>-(Ð)</del> -	A respondent who holds either a category 4
20			license under section 286-102(b) or a commercial
21			driver's license under section 286-239(b) unless
22			the conditional license permit is restricted to a



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1		<del>category 1, 2, or 3 license under section</del>	
2		<del>286-102(b).</del>	
3	- <del>(b)</del>	A request made pursuant to subsection [(a)(1)(A)]	
4	<del>shall be</del> -	accompanied by:	
5	(1)	A sworn statement from the respondent containing facts	-
6		establishing that the respondent currently is employed	:
7		in a position that requires driving and that the	
8		respondent-will be discharged if not allowed to drive;	
9		and	
10	<del>(2)</del>	A sworn statement from the respondent's employer	
11		establishing that the employer will, in fact,	
12		discharge the respondent if the respondent is	
13		prohibited from driving.	
14.	<del>(c)</del>	A request made pursuant to subsection [(a)(1)(B)]	
15	<del>shall be</del>	accompanied by a sworn statement by the respondent	
16	attesting	to the specific facts upon which the request is based,	
17	<del>which sta</del>	tement shall be verified by the director.	
18	- <del>(d)</del> -	-A-conditional license permit may include restrictions	
19	allowing	the respondent to drive:	
20	<del>(1)</del>	Only during hours of employment for activities solely	
21		within the scope of the employment;	
22	<del>-(2)</del>	Only during daylight hours; or	
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1	(3) Only for specified purposes or to specified
2	destinations.
3	In addition, the director may impose any other appropriate
4	restrictions.
5	(e) The duration of the conditional license permit shall
6	be determined on the basis of the criteria set forth in
7	subsections (b) and (c).
8	(f) If the respondent violates the conditions imposed
9	under this section, the conditional license permit shall be
10	rescinded, and administrative revocation shall be immediate for
11	the appropriate period authorized by law."]
12	SECTION 8. Act 171, Session Laws of Hawaii 2008, is
13	amended as follows:
14	1. By amending subsections (c) and (d) of the new section
15	291E-5, Hawaii Revised Statutes, added by section 2 of the Act
16	to read:
17	"(c) The cost of installing and operating ignition
18	interlock devices required by this chapter [ <del>or chapter 804</del> ] for
19	indigent persons shall be paid by the director of transportation
20	from the ignition interlock special fund. Whether a person is
21	an indigent person shall be determined pursuant to subsection
22	(d) by the director or the court, as appropriate.
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1	(d)	For purposes of this section, "indigent person" means:
2	(1)	Any individual whose income is not greater than [one
3		hundred twenty five] per cent of the official
4		poverty line established by the Secretary of Health
5		and Human Services under the Community Services Block
6		Grant Act, 42 United States Code [section] Section
7		9902; or
8	(2)	Any individual who is eligible for free services under
9		the Older Americans Act or Developmentally Disabled
10		Act."
11	2. ]	By amending subsections (a) through (e) of the new
12	section 2	91E-6, Hawaii Revised Statutes, added by section 3 of
13	the Act to	o read:
14	"(a)	The director of transportation shall establish and
15	administe:	r a statewide program relating to certification and
16	monitoring	g of ignition interlock devices installed pursuant to
17	chapter 2	91E or 804 and [ <del>the vendors who</del> ] shall select a single
18	<u>vendor to</u>	install and maintain them.
19	(b)	The program shall include standards and procedures for
20	the certi:	fication of ignition interlock devices installed
21	pursuant (	to chapter 291E [ <del>or 804</del> ]. At a minimum, the standards
22	shall requ	uire that the devices:
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Be certified by a nationally recognized certification 1 (1)organization to meet or exceed all standards and 2 3 specifications provided as quidelines by the National Highway Traffic Safety Administration. "Nationally 4 5 recognized certification organization" means a testing laboratory or analytical chemist not affiliated with a 6 7 manufacturer of ignition interlock devices that is qualified to test ignition interlock devices or 8 9 reference samples and is approved by the United States 10 Department of Transportation. The nationally 11 recognized certification organization must be able to 12 administer performance tests of an ignition interlock device or a sample provided by the vendor; 13 Operate using an alcohol-specific sensor technology; 14 (2)Employ a digital camera by which a photograph of the 15 (3)person using the device can be incorporated into the 16 electronic record generated by each use of the device; 17 Require a rolling retest by which the driver must, 18 (4)19 within a specified period of time or distance driven after starting the vehicle, be retested and found to 20 21 have an alcohol concentration of less than .02, with a margin of error of .01; and 22

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1	(5)	Generate a record of vehicle usage, including dates,
2		times, and distances driven.
3	(c)	The program shall include standards and procedures for
4	the certi	fication [ <del>for vendors who</del> ] of the vendor selected to
5	install a	nd maintain ignition interlock devices pursuant to
6	chapter 2	91E [ <del>or 804</del> ]. At a minimum, the standards shall
7	require t	hat [ <del>vendors:</del> ] <u>the vendor:</u>
8	(1)	Install only an ignition interlock device that is
9		certified pursuant to this section;
10	(2)	Offer or contract for ignition interlock device
11		installation and maintenance statewide;
12	(3)	Train drivers who are required to install an ignition
13		interlock device, pursuant to chapter 291E [ <del>or 804</del> ],
14		in how to use the device;
15	(4)	Schedule the driver for all necessary readings and
16		maintenance of the device; and
17	(5)	Provide periodic reports regarding the use of each
18		ignition interlock device installed pursuant to
19		chapter 291E [ <del>or 804</del> ], including incidents of test
20		failure, attempts to circumvent the device, and dates,
21	(	times, and distances the vehicle was driven.

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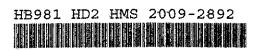
1 (d) [Each vendor who sells or installs an] The vendor 2 selected for installation and maintenance of ignition interlock 3 [device] devices pursuant to chapter 291E [or 804] shall be certified annually by the director of transportation pursuant to 4 5 this section and the rules adopted thereunder. The vendor shall 6 pay a certification fee to the director of transportation who 7 shall deposit the fee into the ignition interlock special fund 8 established pursuant to section 291E-5. 9 (e) The director of transportation shall adopt rules 10 pursuant to chapter 91 necessary for the purposes of this 11 section [-] and section 291-5." 12 4. By amending subsections (b) and (c) of section 291E-41, 13 Hawaii Revised Statutes, as amended by section 7 of the Act to 14 read: 15 Except as provided in paragraph [-(6)] (5) and in "(b) section [291E-44,] 291E-44.5, the respondent shall keep an 16 17 ignition interlock device installed and operating on any vehicle 18 the respondent operates during the revocation period. Except as provided in section 291E-5, installation and maintenance of the 19 20 ignition interlock device shall be at the respondent's own 21 expense. The periods of administrative revocation with respect

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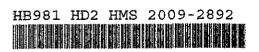
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1	to a lice	nse and privilege to operate a vehicle that shall be
2	imposed u	nder this part are as follows:
3	(1)	A [minimum of-three months up-to-a maximum of] one
4		year revocation of license and privilege to operate a
5		vehicle, if the respondent's record shows no prior
6		alcohol enforcement contact or drug enforcement
7		contact during the [five] ten years preceding the date
8		the notice of administrative revocation was issued;
9	[ <del>(2)</del> -	For a respondent who is a highly intoxicated driver,
10		if the respondent's record shows no prior alcohol
11		enforcement contact or drug enforcement contact during
12		the five years preceding the date the notice of
13		administrative revocation was issued, a minimum of six
14		months-up-to-a maximum-of-one year-revocation of
15		license and privilege to operate a vehicle;
16	<del>(3)</del>	A minimum of one year up to a maximum of two years]
17		(2) An eighteen month revocation of license and
18		privilege to operate a vehicle, if the respondent's
19		record shows one prior alcohol enforcement contact or
20		drug enforcement contact during the [five] ten years
21		preceding the date the notice of administrative
22		revocation was issued;



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1	[ <del>-(4)</del> ]	(3) A [minimum of two years up to a maximum of four
2		years] two-year revocation of license and privilege to
3		operate a vehicle, if the respondent's record shows
4	、	two prior alcohol enforcement contacts or drug
5		enforcement contacts during the [five] ten years
6		preceding the date the notice of administrative
7		revocation was issued;
8	[ <del>(5)</del> ]	(4) A minimum of five years up to a maximum of ten
9		years revocation of license and privilege to operate a
10		vehicle, if the respondent's record shows three or
11		more prior alcohol enforcement contacts or drug
12		enforcement contacts during the [five] ten years
13		preceding the date the notice of administrative
14		revocation was issued; or
15	[ <del>(6)</del> ]	(5) For respondents under the age of eighteen years
16		who were arrested for a violation of section 291E-61
17		or 291E-61.5, revocation of license and privilege to
18		operate a vehicle for the appropriate revocation
19		period provided in paragraphs (1) to $[-(5)]$ (4) or in
20		subsection (c); provided that the respondent shall be
21		prohibited from driving during the period preceding
22		the respondent's eighteenth birthday and shall



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1		ther	eafter be subject to the ignition interlock
2		requ	irement of this subsection for the balance of the
3		revo	cation period; <u>and</u>
4	(6)	For	respondents who do not install an ignition
5		<u>inte</u>	rlock device in the respondent's vehicle during
6		the	revocation period, revocation of license and
7		<u>priv</u>	ilege to operate a vehicle for the period of
8		revo	cation provided in paragraphs (1) to (5) or in
9		subs	ection (c); provided that:
10		<u>(A)</u>	The respondent shall be absolutely prohibited
11			from driving during the revocation period and
12			subject to the penalties provided by section
13			291E-62; and
14		<u>(B)</u>	The director shall not issue an ignition
15			interlock permit to the respondent pursuant to
16			section 291E-44.5;
17	provided :	furth	er that when more than one administrative
18	revocation	n, su	spension, or conviction arises out of the same
19	arrest, i	t sha	ll be counted as only one prior alcohol
20	enforcemen	nt co:	ntact or drug enforcement contact, whichever
21	revocation	n, su	spension, or conviction occurs later.

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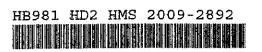
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1	(c)	If a respondent has refused to be tested after being
2	informed:	
3	(1)	That the person may refuse to submit to testing in
4		compliance with section 291E-11; and
5	(2)	Of the sanctions of this part and then asked if the
6		person still refuses to submit to a breath, blood, or
7		urine test, in compliance with the requirements of
8		section 291E-15,
9	the revoc	ation imposed under subsection (b)(1), $(2)$ , (3), or
10	(4) [ <del>, and</del>	<del>(5)</del> ] shall be for a period of [ <del>one year,</del> ] two years,
11	three yea:	rs, four years, and ten years, respectively."
12	5.	By amending subsections (b) and (c) of section 291E-61,
13	Hawaii Re	vised Statutes, as amended by section 8 of the Act to
14	read:	
15	"(b)	A person committing the offense of operating a
16	vehicle u	nder the influence of an intoxicant shall be guilty of
17	a petty m	isdemeanor and shall be sentenced without possibility
18	of suspens	sion of sentence as follows:
19	(1)	[Except as provided in paragraphs (2) and (5), for]
20		For the first offense, or any offense not preceded
21		within a [ <del>five-year</del> ] <u>ten-year</u> period by a conviction
22		for an offense under this section or section
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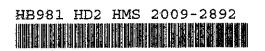
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1	291E-4 (a)	[ <del>, and notwithstanding section 706-623, by</del>
2	<del>probation</del>	for not less than one year nor more than two
3	<del>years on</del>	the following conditions]:
4	(A) A fo	ourteen-hour minimum substance abuse
5	reha	bilitation program, including education and
6	cour	seling, or other comparable program deemed
7	appr	opriate by the court;
8	(B) [ <del>(i)</del>	Nincty-day prompt-suspension of license and
9		privilege to operate a vehicle during the
10		suspension period, or the court may impose,
11		in-lieu of the ninety-day-prompt suspension
12		of license, a minimum thirty day prompt
13		suspension of license with absolute
14		prohibition from operating a vehicle and,
15		for the remainder of the ninety-day period,
16		a-restriction on the license that allows the
17		person to drive for limited work-related
18		purposes and to participate in substance
19		abuse-treatment-programs; or
20	<del>(ii)</del> ]	One-year revocation of license and privilege
21		to operate a vehicle during the revocation
22		period and installation during the



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1		revocation period of an ignition interlock
2		device on any vehicle operated by the
3		person;
4	-	(C) Any one or more of the following:
5		(i) Seventy-two hours of community service work;
6		(ii) Not less than forty-eight hours and not more
7		than [ <del>five</del> ] thirty days of imprisonment; or
8		(iii) A fine of not less than \$150 but not more
9		than \$1,000;
10		(D) A surcharge of \$25 to be deposited into the
11		neurotrauma special fund; and
12		(E) May be charged a surcharge of up to \$25 to be
13		deposited into the trauma system special fund if
14		the court so orders;
15	[ <del>(2)</del>	For a first offense committed by a highly intoxicated
16		driver, or for any offense committed by a highly
17		intoxicated driver not preceded within a five year
18		period by a conviction for an offense under this
19		section or section 291E-4(a), and notwithstanding
20		section 706-623, by probation for not less than two
21		years nor more than four years on the following
22		conditions:



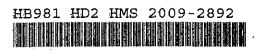
# H.B. NO. <sup>981</sup> H.D. 2

1		<del>(A)</del>	<del>A f</del> e	urteen-hour minimum substance abuse
2			<del>reha</del>	bilitation program, including education and
3	- -		coun	scling, or other comparable program deemed
4			appr	opriate by the court;
5		<del>-(B)</del> -	<del>A tw</del>	<del>o-year-revocation of license and privilege to</del>
6			oper	ate a vehicle during the revocation period
7			and -	installation during the revocation period of
8			<del>an i</del>	gnition interlock device on any vehicle
9			oper	ated by the person;
10		<del>(C)</del>	<del>Any</del>	one or more of the following:
11			<del>(i)</del>	Seventy-two hours of community service work;
12		-	<del>(ii)</del>	Not less than forty eight hours and not more
13				than five days of imprisonment; or
14		-(:	<del>iii)</del>	A fine of not less than \$150 but not more
15				<del>than \$1,000;</del>
16		<del>(D)</del>	<del>A su</del>	rcharge of \$25 to be deposited into the
17			neur	otrauma-special fund; and
18		<del>(E)</del>	May	be charged a surcharge of up to \$50 to be
19			<del>depo</del>	sited into the trauma system special fund if
20			the-	<del>court so orders;</del>
21	<del>(3)</del> ]	(2)	For	an offense that occurs within [ <del>five</del> ] <u>ten</u>
22		year	s of	a prior conviction for an offense under this
	HB981 HD2	HMS :	2009-	2892 28



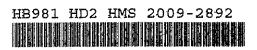
# H.B. NO. <sup>981</sup> H.D. 2

1	section or section 291E-4(a), and notwithstanding
2	section 706-623, by probation for not less than [ <del>two</del>
3	<del>years</del> ] <u>eighteen months</u> nor more than [ <del>four</del> ] <u>two</u> years
4	on the following conditions:
5	(A) [A two year revocation] Revocation of license and
6	privilege to operate a vehicle during the
7	[revocation] probation period and installation
8	during the [ <del>revocation</del> ] probation period of an
9	ignition interlock device on any vehicle operated
10	by the person;
11	(B) Either one of the following:
12	(i) Not less than two hundred forty hours of
13	community service work; or
14	(ii) [ <del>Not less than five days but not more than</del>
15	fourteen] Up to five days of imprisonment of
16	which at least forty-eight hours shall be
17	served consecutively;
18	(C) A fine of not less than \$500 but not more than
19	\$1,500;
20	(D) A surcharge of \$25 to be deposited into the
21	neurotrauma special fund; and



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1		(E)	May be charged a surcharge of up to \$50 to be
2			deposited into the trauma system special fund if
3			the court so orders;
4	[ <del>-(4)</del> -]	(3)	For an offense that occurs within [ <del>five</del> ] <u>ten</u>
5		year	s of two prior convictions for offenses under this
6		sect	ion or section 291E-4(a), and notwithstanding
7		sect	ion 706-623, by probation for [ <del>not less than three</del>
8		<del>year</del>	<del>s nor more than five</del> ] <u>two</u> years on the following
9		cond	itions:
10		(A)	A fine of not less than \$500 but not more than
11			\$2,500;
12		(B)	[Three year revocation] <u>Revocation</u> of license and
13			privilege to operate a vehicle during the
14			[revocation] probation period and installation
15			during the [ <del>revocation</del> ] probation period of an
16			ignition interlock device on any vehicle operated
17			by the person;
18	·	(C)	[Not less than ten days but not more than thirty]
19			Up to five days imprisonment of which at least
20			forty-eight hours shall be served consecutively;
21	~	(D)	A surcharge of \$25 to be deposited into the
22			neurotrauma special fund; and



## H.B. NO. 981 H.D. 2

1		(E) May be charged a surcharge of up to \$50 to be
2		deposited into the trauma system special fund if
3		the court so orders; [and]
4	[ <del>-(5)</del> ]	(4) In addition to a sentence imposed under
5		paragraphs (1) through $\left[\frac{4}{7}\right]$ (3), any person eighteen
6		years of age or older who is convicted under this
7		section and who operated a vehicle with a passenger,
8		in or on the vehicle, who was younger than fifteen
9		years of age, shall be sentenced to an additional
10		mandatory fine of \$500 and an additional mandatory
11		term of imprisonment of forty-eight hours; provided
12		that the total term of imprisonment for a person
13		convicted under this paragraph shall not exceed the
14		maximum term of imprisonment provided in paragraph
15		(1), [ <del>(3), or (4).</del> ] <u>(2), or (3).</u> Notwithstanding
16		paragraph $[(1), ]$ (2), the probation period for a
17		person sentenced under this paragraph shall be not
18		less than two years [-]; and
19	(5)	If the person demonstrates to the court that the
20		person does not own or have the use of a vehicle in
21		which the person can install an ignition interlock
22		device during the probation period, or demonstrates to
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1		the court that the person is otherwise unable to drive
2		during the probation period, the person shall be
3		absolutely prohibited from driving during the period
4		of probation provided in paragraphs (2) to (4);
5		provided that the court shall not issue an ignition
6		interlock permit pursuant to subsection (i) and the
7		person shall be subject to the penalties provided by
8		section 291E-62 if the person drives thereafter.
9	(c)	Notwithstanding any other law to the contrary, the
10	court sha	ll not issue an ignition interlock permit to:
11	(1)	A defendant whose license is expired, suspended, or
12		revoked as a result of action other than the instant
13		offense; or
14	(2)	A defendant who holds either a category 4 license
15		under section 286-102(b) or a commercial driver's
16		license under section 286-239(b) [-], unless the
17		ignition interlock permit is restricted to a category
18		1, 2, or 3 license under section 286-102(b)."
19	6.	By amending subsection (b) of section 291E-62, Hawaii
20	Revised S	tatutes, as amended by section 9 of the Act to read:

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## H.B. NO. 981 H.D. 2

1	"(b)	Any person convicted of violating this section shall
2	be senten	ced without possibility of probation or suspension of
3	sentence	as follows:
4	(1)	For a first offense, or any offense not preceded
5		within a five-year period by conviction for an offense
6		under this section or under section 291-4.5 as that
7		section was in effect on December 31, 2001:
8		(A) A term of imprisonment of not less than three
9		consecutive days but not more than thirty days;
10		(B) A fine of not less than \$250 but not more than
11		\$1,000; and
12		(C) Revocation of license and privilege to operate a
13		vehicle for an additional year;
14	(2)	For an offense that occurs within five years of a
15		prior conviction for an offense under this section or
16		under section 291-4.5 as that section was in effect on
17		December 31, 2001:
18		(A) Thirty days imprisonment;
19		(B) A \$1,000 fine; and
20		(C) Revocation of license and privilege to operate a
21		vehicle for an additional two years; and

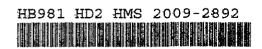


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1	(3) Fo:	r an offense that occurs within five years of two or		
2	mo:	re prior convictions for offenses under this section		
3	or	under section 291-4.5 as that section was in effect		
4	on	December 31, 2001:		
5	(A)	One year imprisonment;		
6	(B)	A \$2,000 fine; and		
7	(C)	Permanent revocation of the person's license and		
8		privilege to operate a vehicle.		
9	The period of	f revocation shall commence upon the release of the		
10	person from t	the period of imprisonment imposed pursuant to this		
11	section."			
12	7. By amending subsection (g) of section 12 of the Act to			
13	read:			
14	"(g) Th	ne Hawaii ignition interlock implementation task		
15	force shall cease to exist after [June 30, 2010.] January 1,			
16	2011."			
17	8. By a	amending section 20 of the Act to read:		
18	"SECTION	1 20. This Act shall take effect on July 1, 2008;		
19	provided that	sections 2 through <u>9 and</u> 11 shall take effect on		
20	[ <del>July-1, 201</del>	;] January 1, 2011; provided further that sections		
21	15 and 16 sha	all be repealed on [ <del>June 30, 2010.</del> ] <u>December 31,</u>		
22	2010 and sect	ions 287-20(a) and 291E-61(g), Hawaii Revised		
	HB981 HD2 HMS	5 2009-2892 »		

#### H.B. NO. 981 H.D. 2

1	Statutes, shall be reenacted in the form in which they read on
2	June 30, 2008."
3	9. By repealing section 10 of the Act:
4	["SECTION-10. Section 804-7.1, Hawaii-Revised Statutes, is
5	amended to read as follows:
6	§804-7.1 Conditions of release on bail, recognizance, or
7	supervised release. (a) Upon a showing that there exists a
8	danger that the defendant will commit a serious crime or will
9	seek-to-intimidate-witnesses, or will otherwise unlawfully
10	interfere with the orderly administration of justice, the
11	judicial officer named in section 804-5 may deny the defendant's
12	release on bail, recognizance, or supervised release.
13	(b) Upon the defendant's release on bail, recognizance, or
14	supervised release, however, the court may enter an order:
15	(1) Prohibiting the defendant from approaching or
16	communicating with particular persons or classes of
17	persons, except that no such order should be deemed to
18	prohibit any lawful and ethical activity of
19	defendant's counsel;
20	(2) Prohibiting the defendant from going to certain
21	described geographical areas or premises;



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6 VI 4 IV 0	( <del>4)</del>	Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors or certain drugs, Requiring the defendant to report regularly to and remain under the supervision of an officer of the
	(4)	Requiring the defendant to report regularl remain under the supervision of an officer court;
r 8 e	<del>(5)</del>	<del>eourt;</del> Requiring the defendant to maintain employment, or; unemployed, to actively seek employment, or attend
11 12	<del>(6)</del>	Requiring the defendant to comply with a specified eurfew;
13 14	<del>(7)</del>	Requiring the defendant to seek and maintain mental health treatment or testing, including treatment fo
15 16		drug or alcohol dependency, or to remain in a specified institution for that purpose,
17	<del>(8)</del>	<u>Requiring the defendant to remain in the jurisdiction</u>
18		<del>of the judicial circuit in which the charges are</del>
19		<u>pending unless approval is obtained from a court</u>
20		competent jurisdiction to leave the jurisdiction
21		the court,

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and subsections.	1

22 21 20 19 18 17 16 13 12 15 14 11 10 ø 8 ~1 9 Uň LL. N with an ignition interlock device during the period of the permit recognizance, or supervised release. HB981 defendant's vehicle, the court shall issue an ignition interlock defendant has installed an ignition interlock device in the defendant will operate during the defendant's release on bail, device, fifteen days, the defendant install an ignition interlock on bail, recognizance, 291E 61(b)(1), the court shall order as a condition of release for which the defendant would be sentenced pursuant to section charged with an offense under section 291E-61, except an offense except as provided in subsection (d), when the defendant is imposed. proof that the defendant has breached any of the conditions ŧ The judicial officer may revoke a defendant's bail upon HD2 HMS 2009-2892 that -as defined in section 291E 1, In addition to the conditions in subsection (b) and Imposing any combination of conditions listed above. other person or community; or person as required and to assure the safety of any reasonably necessary to assure the appearance of will allow the defendant or supervised release that, ф ф foord uod on any vehicle that the drive a vehicle that the within equipped 1 ¥

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Requiring-the

<u>defendant to satisfy any other condition</u>

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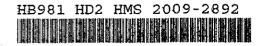
1	defendant's release on bail, recognizance, or supervised
2	<del>release.</del>
3	(d) Notwithstanding any other law to the contrary, the
4	court shall not issue an ignition interlock permit to:
5	(1) A defendant whose license is expired, suspended, or
6	revoked as a result of action other than the instant
7	<del>offense; or</del>
8	(2) A defendant who holds either a category 4 license
9	under-section 286-102(b) or a commercial driver's
10	license under section 286-239(b).
11	(e) The court may issue a separate permit authorizing a
12	defendant to operate a vehicle owned by the defendant's employer
13	while released [on] bail as provided in section 291E 61.
14	(f) Except as provided in section 291E-5, installation and
15	maintenance of the ignition interlock device required by
16	subsection (c) shall be at the defendant's own expense."]
17	SECTION 9. 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 10. Statutory material to be repealed is bracketed
21	and stricken. New statutory material is underscored.

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SECTION 11. This Act shall take effect on July 1, 2020;
 provided that the amendments made by section 7 to section 12,
 subsection (g), of Act 171, Session Laws of Hawaii 2008, shall
 take effect on June 29, 2010.



#### Report Title:

Impaired Driving; Ignition Interlock

#### Description:

Makes amendments to Hawaii Revised Statutes and Act 171, Session Laws of Hawaii 2008, reflecting recommendations of Ignition Interlock Implementation Task Force. (HB981 HD2)

