

JAN 24 2018

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# A BILL FOR AN ACT

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RELATING TO MOTOR VEHICLE SAFETY.

**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 .15 or more grams of alcohol per  
6   one hundred milliliters or cubic centimeters of the person's  
7   blood, or .15 or more grams of alcohol per two hundred ten  
8   liters of the person's breath, as measured at the time of the  
9   offense, or within three hours of the time of the offense."

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

12       "**§291E-3   Evidence of intoxication.**   (a)   In any criminal  
13   prosecution for a violation of section 291E-61 or 291E-61.5 or  
14   in any proceeding under part III:

15       (1)   .08 or more grams of alcohol per one hundred  
16            milliliters or cubic centimeters of the person's  
17            blood;



1           (2) .08 or more grams of alcohol per two hundred ten

2           liters of the person's breath; or

3           (3) The presence of one or more drugs in an amount

4           sufficient to impair the person's ability to operate a

5           vehicle in a careful and prudent manner,

6   within three hours after the time of the alleged violation as

7   shown by chemical analysis or other approved analytical

8   techniques of the person's blood, breath, or urine shall be

9   competent evidence that the person was under the influence of an

10   intoxicant at the time of the alleged violation.

11          (b) In any criminal prosecution for a violation of section

12   291E-61 or 291E-61.5, the amount of alcohol found in the

13   defendant's blood or breath within three hours after the time of

14   the alleged violation as shown by chemical analysis or other

15   approved analytical techniques of the defendant's blood or

16   breath shall be competent evidence concerning whether the

17   defendant was under the influence of an intoxicant at the time

18   of the alleged violation and shall give rise to the following

19   presumptions:

20          (1) If there were .05 or less grams of alcohol per one

21          hundred milliliters or cubic centimeters of



1 defendant's blood or .05 or less grams of alcohol per  
2 two hundred ten liters of defendant's breath, it shall  
3 be presumed that the defendant was not under the  
4 influence of alcohol at the time of the alleged  
5 violation; and

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

18 (c) In any criminal prosecution for a violation of section  
19 291E-61 or 291E-61.5 or in any proceeding under part III:



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

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

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

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

SECTION 3. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as provided in paragraph [~~(5)~~] (6) and in section 291E-44.5, the respondent shall keep an ignition



1 interlock device installed and operating in any vehicle the  
2 respondent operates during the revocation period. Except as  
3 provided in section 291E-5, installation and maintenance of the  
4 ignition interlock device shall be at the respondent's expense.  
5 The periods of administrative revocation, with respect to a  
6 license and privilege to operate a vehicle, that shall be  
7 imposed under this part are as follows:

8 (1) [A] Except as provided in paragraph (5), a one year  
9 revocation of license and privilege to operate a  
10 vehicle, if the respondent's record shows no prior  
11 alcohol enforcement contact or drug enforcement  
12 contact during the five years preceding the date the  
13 notice of administrative revocation was issued;

14 (2) An eighteen month revocation of license and privilege  
15 to operate a vehicle, if the respondent's record shows  
16 one prior alcohol enforcement contact or drug  
17 enforcement contact during the five years preceding  
18 the date the notice of administrative revocation was  
19 issued;

20 (3) A two-year revocation of license and privilege to  
21 operate a vehicle, if the respondent's record shows



1 two prior alcohol enforcement contacts or drug  
2 enforcement contacts during the five years preceding  
3 the date the notice of administrative revocation was  
4 issued;

5 (4) A minimum of five years up to a maximum of ten years  
6 revocation of license and privilege to operate a  
7 vehicle, if the respondent's record shows three or  
8 more prior alcohol enforcement contacts or drug  
9 enforcement contacts during the ten years preceding  
10 the date the notice of administrative revocation was  
11 issued;

12 (5) For a respondent who is a highly intoxicated driver,  
13 if the respondent's record shows no prior alcohol  
14 enforcement contact or drug enforcement contact during  
15 the five years preceding the date the notice of  
16 administrative revocation was issued, an eighteen  
17 month revocation of license and privilege to operate a  
18 vehicle and a minimum of six months up to a maximum of  
19 one year revocation of the registration of any motor  
20 vehicle registered to the highly intoxicated driver;



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

12       ~~[(6)]~~ (7) For respondents, other than those excepted  
13          pursuant to section 291E-44.5(c), who do not install  
14          an ignition interlock device in any vehicle the  
15          respondent operates during the revocation period,  
16          revocation of license and privilege to operate a  
17          vehicle for the period of revocation provided in  
18          paragraphs (1) to ~~[(5)]~~ (6) or in subsection (c);  
19          provided that:

20           (A) The respondent shall be absolutely prohibited  
21           from driving during the revocation period and



1 subject to the penalties provided by section  
2 291E-62 if the respondent drives during the  
3 revocation period; and

4 (B) The director shall not issue an ignition  
5 interlock permit to the respondent pursuant to  
6 section 291E-44.5;

7 provided that when more than one administrative revocation,  
8 suspension, or conviction arises out of the same arrest, it  
9 shall be counted as only one prior alcohol enforcement contact  
10 or drug enforcement contact, whichever revocation, suspension,  
11 or conviction occurs later."

12 SECTION 4. Section 291E-61, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

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

18 (1) ~~[Fer]~~ Except as provided in paragraph (4), for the  
19 first offense, or any offense not preceded within a  
20 five-year period by a conviction for an offense under  
21 this section or section 291E-4(a):





- 1 (A) A fourteen-hour minimum substance abuse  
2 rehabilitation program, including education and  
3 counseling, or other comparable program deemed  
4 appropriate by the court;
- 5 (B) One-year revocation of license and privilege to  
6 operate a vehicle during the revocation period  
7 and installation during the revocation period of  
8 an ignition interlock device on any vehicle  
9 operated by the person;
- 10 (C) Any one or more of the following:
- 11 (i) Seventy-two hours of community service work;  
12 (ii) Not less than forty-eight hours and not more  
13 than five days of imprisonment; or  
14 (iii) A fine of not less than \$150 but not more  
15 than \$1,000;
- 16 (D) A surcharge of \$25 to be deposited into the  
17 neurotrauma special fund; and
- 18 (E) A surcharge, if the court so orders, of up to \$25  
19 to be deposited into the trauma system special  
20 fund;



(2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a):

(A) Revocation for not less than eighteen months nor more than two years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;

(B) Either one of the following:

(i) Not less than two hundred forty hours of community service work; or

(ii) Not less than five days but not more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;

(C) A fine of not less than \$500 but not more than \$1,500;

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



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

4 (3) For an offense that occurs within five years of two  
5 prior convictions for offenses under this section or  
6 section 291E-4(a):

7 (A) A fine of not less than \$500 but not more than  
8 \$2,500;

9 (B) Revocation for two years of license and privilege  
10 to operate a vehicle during the revocation period  
11 and installation during the revocation period of  
12 an ignition interlock device on any vehicle  
13 operated by the person;

14 (C) Not less than ten days but not more than thirty  
15 days imprisonment, of which at least forty-eight  
16 hours shall be served consecutively;

17 (D) A surcharge of \$25 to be deposited into the  
18 neurotrauma special fund; and

19 (E) A surcharge of up to \$50 if the court so orders,  
20 to be deposited into the trauma system special  
21 fund;



1       (4) For a first offense committed by a highly intoxicated  
2       driver, or for any offense committed by a highly  
3       intoxicated driver not preceded within a five-year  
4       period by a conviction for an offense under this  
5       section or section 291E-4(a):

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

10      (B) Revocation for eighteen months of license and  
11      privilege to operate a vehicle during the  
12      revocation period and installation during the  
13      revocation period of an ignition interlock device  
14      on any vehicle operated by the person;

15      (C) Any one or more of the following:

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

17           (ii) Not less than forty-eight hours and not more  
18           than ten days of imprisonment; or

19           (iii) A fine of not less than \$150 but not more  
20           than \$1,000;



1           (D) A surcharge of \$25 to be deposited into the  
2           neurotrauma special fund; and

3           (E) A surcharge, if the court so orders, of up to \$25  
4           to be deposited into the trauma system special  
5           fund;

6       ~~[(4)]~~ (5) In addition to a sentence imposed under  
7       paragraphs (1) through ~~[(3)]~~ (4), any person eighteen  
8       years of age or older who is convicted under this  
9       section and who operated a vehicle with a passenger,  
10      in or on the vehicle, who was younger than fifteen  
11      years of age, shall be sentenced to an additional  
12      mandatory fine of \$500 and an additional mandatory  
13      term of imprisonment of forty-eight hours; provided  
14      that the total term of imprisonment for a person  
15      convicted under this paragraph shall not exceed the  
16      maximum term of imprisonment provided in paragraph  
17      (1), (2), ~~[or]~~ (3), or (4), as applicable.  
18      Notwithstanding paragraphs (1) ~~[and]~~ (2), and (4),  
19      the revocation period for a person sentenced under  
20      this paragraph shall be not less than two years; and



1       ~~[(5)]~~ (6) If the person demonstrates to the court that the  
2               person:

3               (A) Does not own or have the use of a vehicle in  
4                       which the person can install an ignition  
5                       interlock device during the revocation period; or

6               (B) Is otherwise unable to drive during the  
7                       revocation period,

8 the person shall be absolutely prohibited from driving during  
9 the period of applicable revocation provided in paragraphs (1)  
10 to ~~[(4)]~~ (5); provided that the court shall not issue an  
11 ignition interlock permit pursuant to subsection (i) and the  
12 person shall be subject to the penalties provided by section  
13 291E-62 if the person drives during the applicable revocation  
14 period."

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

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

20



1 SECTION 7. This Act shall take effect on July 1, 2018.

2

INTRODUCED BY: AMN. M.  
**By Request**



# S.B. NO. 2841

**Report Title:**

Motor Vehicle Safety; Highly Intoxicated Drivers

**Description:**

Adds definition for highly intoxicated driver. Establishes evidence and sentencing parameters for highly intoxicated drivers. Establishes minimum and maximum administrative license revocation periods for highly intoxicated drivers.

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

