
A BILL FOR AN ACT

RELATING TO THE USE OF INTOXICANTS WHILE OPERATING A VEHICLE.

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

1 SECTION 1. The legislature finds that in 2013, the
2 National Transportation Safety Board recommended that all fifty
3 states adopt a blood alcohol concentration cutoff of 0.05
4 compared to the 0.08 standard. According to the National
5 Transportation Safety Board, lowering the rate to 0.05 would
6 save approximately five hundred to eight hundred lives annually.
7 According to the National Transportation Safety Board, a driver
8 having a blood alcohol concentration of 0.05 would be affected
9 by exaggerated behavior, loss of small-muscle control and eye
10 focus, impaired judgment, lowered alertness, and release of
11 inhibition. This would result in reduced coordination, reduced
12 ability to track moving objects, difficulty steering, and
13 reduced response to emergency driving situations. The
14 legislature further finds that lowering the threshold of blood
15 alcohol concentration cutoff to 0.05 would save lives, prevent
16 catastrophic injuries, and decrease medical costs.

17 Accordingly, the purpose of this Act is to:



- 1 (1) Lower the threshold of blood alcohol concentration
- 2 from 0.08 to 0.05 for the offense of operating a
- 3 vehicle while under the influence of an intoxicant;
- 4 (2) Make persons with a blood alcohol concentration
- 5 between 0.05 and 0.08 eligible for a deferred
- 6 acceptance of guilty plea or nolo contendere plea,
- 7 under certain circumstances; and
- 8 (3) Appropriate funds from the state highway special fund
- 9 for the purposes of a public education campaign
- 10 informing the public of the new blood alcohol
- 11 concentration limit.

12 SECTION 2. Section 291E-1, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By amending the definition of "measurable amount of
15 alcohol" to read:

16 ""Measurable amount of alcohol" means a test result equal
17 to or greater than .02 but less than [~~.08~~] .05 grams of alcohol
18 per one hundred milliliters or cubic centimeters of blood or
19 equal to or greater than .02 but less than [~~.08~~] .05 grams of
20 alcohol per two hundred ten liters of breath."



1 2. By amending the definition of "under the influence" to
2 read:

3 ""Under the influence" means that a person:

4 (1) Is under the influence of alcohol in an amount
5 sufficient to impair the person's normal mental
6 faculties or ability to care for the person and guard
7 against casualty;

8 (2) Is under the influence of any drug that impairs the
9 person's ability to operate the vehicle in a careful
10 and prudent manner;

11 (3) Has [~~.08~~] .05 or more grams of alcohol per two hundred
12 ten liters of the person's breath; or

13 (4) Has [~~.08~~] .05 or more grams of alcohol per one hundred
14 milliliters or cubic centimeters of the person's
15 blood."

16 SECTION 3. Section 291E-3, Hawaii Revised Statutes, is
17 amended by amending subsections (a) and (b) to read as follows:

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



- 1 (1) [~~.08~~] .05 or more grams of alcohol per one hundred
2 milliliters or cubic centimeters of the person's
3 blood;
- 4 (2) [~~.08~~] .05 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~~] .02 or less grams of alcohol per
4 one hundred milliliters or cubic centimeters of
5 defendant's blood or [~~.05~~] .02 or less grams of
6 alcohol per two hundred ten liters of defendant's
7 breath, it shall be presumed that the defendant was
8 not under the influence of alcohol at the time of the
9 alleged violation; and

10 (2) If there were in excess of [~~.05~~] .02 grams of alcohol
11 per one hundred milliliters or cubic centimeters of
12 defendant's blood or [~~.05~~] .02 grams of alcohol per
13 two hundred ten liters of defendant's breath, but less
14 than [~~.08~~] .05 grams of alcohol per one hundred
15 milliliters or cubic centimeters of defendant's blood
16 or [~~.08~~] .05 grams of alcohol per two hundred ten
17 liters of defendant's breath, that fact may be
18 considered with other competent evidence in
19 determining whether the defendant was under the
20 influence of alcohol at the time of the alleged



1 violation, but shall not of itself give rise to any
2 presumption."

3 SECTION 4. Section 291E-35, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) In cases involving an alcohol related offense, if a
6 test conducted in accordance with part II and section 321-161
7 and the rules adopted thereunder shows that a respondent had an
8 alcohol concentration less than [~~.08~~] .05, the director or the
9 arresting law enforcement agency immediately shall return the
10 respondent's license along with a certified statement that
11 administrative revocation proceedings have been terminated with
12 prejudice."

13 SECTION 5. Section 291E-36, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Whenever a respondent has been arrested for a
16 violation of section 291E-61 or 291E-61.5 and submits to a test
17 that establishes: the respondent's alcohol concentration was
18 [~~.08~~] .05 or more; the presence, in the respondent's blood or
19 urine, of any drug that is capable of impairing the respondent's
20 ability to operate a vehicle in a careful and prudent manner; or
21 whenever a respondent has been involved in a collision resulting



1 in injury or death and a blood or urine test performed pursuant
2 to section 291E-21 establishes that the respondent's alcohol
3 concentration was [~~+.08~~] .05 or more or establishes the presence
4 in the respondent's blood or urine of any drug that is capable
5 of impairing the respondent's ability to operate a vehicle in a
6 careful and prudent manner, the following shall be forwarded
7 immediately to the director:

8 (1) A copy of the arrest report or the report of the law
9 enforcement officer who issued the notice of
10 administrative revocation to the person involved in a
11 collision resulting in injury or death and the sworn
12 statement of the arresting law enforcement officer or
13 the officer who issued the notice of administrative
14 revocation, stating facts that establish that:

15 (A) There was reasonable suspicion to stop the
16 vehicle, the vehicle was stopped at an intoxicant
17 control roadblock established and operated in
18 compliance with sections 291E-19 and 291E-20, or
19 the respondent was tested pursuant to section
20 291E-21;



1 (B) There was probable cause to believe that the
2 respondent had been operating the vehicle while
3 under the influence of an intoxicant; and

4 (C) The respondent agreed to be tested or the person
5 was tested pursuant to section 291E-21;

6 (2) In a case involving an alcohol related offense, the
7 sworn statement of the person responsible for
8 maintenance of the testing equipment, stating facts
9 that establish that, pursuant to section 321-161 and
10 rules adopted thereunder:

11 (A) The equipment used to conduct the test was
12 approved for use as an alcohol testing device in
13 this State;

14 (B) The person had been trained and at the time the
15 test was conducted was certified and capable of
16 maintaining the testing equipment; and

17 (C) The testing equipment used had been properly
18 maintained and was in good working condition when
19 the test was conducted;

20 (3) In a case involving an alcohol related offense, the
21 sworn statement of the person who conducted the test,

1 stating facts that establish that, pursuant to section
2 321-161 and rules adopted thereunder:

3 (A) The person was trained and at the time the test
4 was conducted was certified and capable of
5 operating the testing equipment;

6 (B) The person followed the procedures established
7 for conducting the test;

8 (C) The equipment used to conduct the test functioned
9 in accordance with operating procedures and
10 indicated that the respondent's alcohol
11 concentration was at, or above, the prohibited
12 level; and

13 (D) The person whose breath or blood was tested is
14 the respondent;

15 (4) In a case involving a drug related offense, the sworn
16 statement of the person responsible for maintenance of
17 the testing equipment, stating facts that establish
18 that, pursuant to section 321-161 and rules adopted
19 thereunder:

20 (A) The equipment used to conduct the test was
21 approved for use in drug testing;



- 1 (B) The person conducting the test had been trained
2 and, at the time of the test, was certified and
3 capable of maintaining the testing equipment; and
- 4 (C) The testing equipment used had been properly
5 maintained and was in good working condition when
6 the test was conducted;
- 7 (5) In a case involving a drug related offense, the sworn
8 statement of the person who conducted the test,
9 stating facts that establish that, pursuant to section
10 321-161 and rules adopted thereunder:
- 11 (A) At the time the test was conducted, the person
12 was trained and capable of operating the testing
13 equipment;
- 14 (B) The person followed the procedures established
15 for conducting the test;
- 16 (C) The equipment used to conduct the test functioned
17 in accordance with operating procedures and
18 indicated the presence of one or more drugs or
19 their metabolites in the respondent's blood or
20 urine; and



1 (D) The person whose blood or urine was tested is the
2 respondent;

3 (6) A copy of the notice of administrative revocation
4 issued by the law enforcement officer to the
5 respondent;

6 (7) Any license taken into possession by the law
7 enforcement officer; and

8 (8) A listing of any prior alcohol or drug enforcement
9 contacts involving the respondent."

10 SECTION 6. Section 291E-61, Hawaii Revised Statutes, is
11 amended by amending subsections (a) and (b) to read as follows:

12 "(a) A person commits the offense of operating a vehicle
13 under the influence of an intoxicant if the person operates or
14 assumes actual physical control of a vehicle:

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

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



- 1 (3) With [~~.08~~] .05 or more grams of alcohol per two
2 hundred ten liters of breath; or
- 3 (4) With [~~.08~~] .05 or more grams of alcohol per one
4 hundred milliliters or cubic centimeters of blood.
- 5 (b) [A] Except as provided in paragraph (8), a person
6 committing the offense of operating a vehicle under the
7 influence of an intoxicant shall be sentenced without
8 possibility of probation or suspension of sentence as follows:
- 9 (1) Except as provided in paragraph (4), for the first
10 offense, or any offense not preceded within a ten-year
11 period by a conviction for an offense under this
12 section or section 291E-4(a):
- 13 (A) A fourteen-hour minimum substance abuse
14 rehabilitation program, including education and
15 counseling, or other comparable programs deemed
16 appropriate by the court;
- 17 (B) Revocation of license to operate a vehicle for no
18 less than one year and no more than eighteen
19 months;



- 1 (C) Installation during the revocation period of an
- 2 ignition interlock device on all vehicles
- 3 operated by the person;
- 4 (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 and no more than
 - 9 \$1,000;
- 10 (E) A surcharge of \$25 to be deposited into the
- 11 neurotrauma special fund; and
- 12 (F) A surcharge, if the court so orders, or up to \$25
- 13 to be deposited into the trauma system special
- 14 fund;
- 15 (2) For an offense that occurs within ten years of a prior
- 16 conviction for an offense under this section:
 - 17 (A) A substance abuse program of at least thirty-six
 - 18 hours, including education and counseling, or
 - 19 other comparable programs deemed appropriate by
 - 20 the court;



- 1 (B) Revocation of license to operate a vehicle for no
- 2 less than two years and no more than three years;
- 3 (C) Installation during the revocation period of an
- 4 ignition interlock device on all vehicles
- 5 operated by the person;
- 6 (D) Either one of the following:
- 7 (i) No less than two hundred forty hours of
- 8 community service work; or
- 9 (ii) No less than five days and no more than
- 10 thirty days of imprisonment, of which at
- 11 least forty-eight hours shall be served
- 12 consecutively;
- 13 (E) A fine of no less than \$1,000 and no more than
- 14 \$3,000, to be deposited into the drug and alcohol
- 15 toxicology testing laboratory special fund;
- 16 (F) A surcharge of \$25 to be deposited into the
- 17 neurotrauma special fund; and
- 18 (G) A surcharge of up to \$50, if the court so orders,
- 19 to be deposited into the trauma system special
- 20 fund;



- 1 (3) In addition to a sentence imposed under paragraphs (1)
2 and (2), any person eighteen years of age or older who
3 is convicted under this section and who operated a
4 vehicle with a passenger, in or on the vehicle, who
5 was younger than fifteen years of age, shall be
6 sentenced to an additional mandatory fine of \$500 and
7 an additional mandatory term of imprisonment of forty-
8 eight hours; provided that the total term of
9 imprisonment for a person convicted under this
10 paragraph shall not exceed the maximum term of
11 imprisonment provided in paragraph (1) or (2), as
12 applicable. Notwithstanding paragraphs (1) and (2),
13 the revocation period for a person sentenced under
14 this paragraph shall be no less than two years;
- 15 (4) In addition to a sentence imposed under paragraph (1),
16 for a first offense under this section, or an offense
17 not preceded within a ten-year period by a conviction
18 for an offense, any person who is convicted under this
19 section and was a highly intoxicated driver at the
20 time of the subject incident shall be sentenced to an
21 additional mandatory term of imprisonment for forty-



1 eight consecutive hours and an additional mandatory
2 revocation period of six months; provided that the
3 total term of imprisonment for a person convicted
4 under this paragraph shall not exceed the maximum term
5 of imprisonment provided in paragraph (1).

6 Notwithstanding paragraph (1), the revocation period
7 for a person sentenced under this paragraph shall be
8 no less than eighteen months;

9 (5) In addition to a sentence under paragraph (2), for an
10 offense that occurs within ten years of a prior
11 conviction for an offense under this section, any
12 person who is convicted under this section and was a
13 highly intoxicated driver at the time of the subject
14 incident shall be sentenced to an additional mandatory
15 term of imprisonment of ten consecutive days and an
16 additional mandatory revocation period of one year;
17 provided that the total term of imprisonment for a
18 person convicted under this paragraph shall not exceed
19 the maximum term of imprisonment provided in paragraph
20 (2), as applicable. Notwithstanding paragraph (2),



1 the revocation period for a person sentenced under
2 this paragraph shall be no less than three years;

3 (6) A person sentenced pursuant to paragraph (1)(B) may
4 file a motion for early termination of the applicable
5 revocation period if the person:

6 (A) Was not sentenced to any additional mandatory
7 revocation period pursuant to paragraph (3) or
8 (4);

9 (B) Actually installed and maintained an ignition
10 interlock device on all vehicles operated by the
11 person for a continuous period of six months,
12 after which the person maintained the ignition
13 interlock device on all vehicles operated by the
14 person for a continuous period of three months
15 without violation;

16 (C) Includes with the person's motion for early
17 termination a certified court abstract
18 establishing that the person was not sentenced to
19 any additional mandatory revocation period
20 pursuant to paragraph (3) or (4);



- 1 (D) Includes with the person's motion for early
- 2 termination a certified statement from the
- 3 director of transportation establishing that:
- 4 (i) The person installed and maintained an
- 5 ignition interlock device on all vehicles
- 6 operated by the person for a continuous
- 7 period of six months; and
- 8 (ii) After the six-month period, the person
- 9 maintained the ignition interlock device on
- 10 all vehicles operated by the person for a
- 11 continuous period of three months without
- 12 violation; and
- 13 (E) Has complied with all other sentencing
- 14 requirements.

15 Nothing in this paragraph shall require a court to
16 grant early termination of the revocation period if
17 the court finds that continued use of the ignition
18 interlock device will further the person's
19 rehabilitation or compliance with this section;

- 20 (7) If the person demonstrates to the court that the
- 21 person:

1 (A) Does not own or have the use of a vehicle in
2 which the person can install an ignition
3 interlock device during the revocation period; or
4 (B) Is otherwise unable to drive during the
5 revocation period,
6 the person shall be prohibited from driving during the
7 period of applicable revocation provided in paragraphs
8 (1) to (5); provided that the person shall be
9 sentenced to the maximum license revocation period,
10 the court shall not issue an ignition interlock permit
11 pursuant to subsection (i), and the person shall be
12 subject to the penalties provided by section 291E-62
13 if the person drives during the applicable revocation
14 period; [~~and~~]
15 (8) A person with .05 or more grams and less than .08
16 grams of alcohol per two hundred ten liters of breath
17 or with .05 or more grams and less than .08 grams of
18 alcohol per one hundred milliliters or cubic
19 centimeters of blood shall be eligible for a deferred
20 acceptance of guilty plea or nolo contendere plea
21 under chapter 853 if the person:



1 (A) Has not committed any other offense under this
2 section;

3 (B) Has no prior convictions for an offense under
4 this section within a ten-year period;

5 (C) Does not have a commercial driver's license; and

6 (D) Has not received a prior deferral under chapter
7 853 for an offense under this section; and

8 ~~(8)~~ (9) For purposes of this subsection, "violation"
9 means:

10 (A) Providing a sample of .04 or more grams of
11 alcohol per two hundred ten liters of breath when
12 starting the vehicle, unless a subsequent test
13 performed within ten minutes registers a breath
14 alcohol concentration lower than .02 and the
15 digital image confirmed the same person provided
16 both samples;

17 (B) Providing a sample of .04 or more grams of
18 alcohol per two hundred ten liters of breath on a
19 rolling retest, unless a subsequent test
20 performed within ten minutes registers a breath
21 alcohol concentration lower than .02 and the



- 1 digital image confirms the same person provided
- 2 both samples;
- 3 (C) Failing to provide a rolling retest, unless an
- 4 acceptable test is performed within ten minutes;
- 5 (D) Violating section 291E-66; or
- 6 (E) Failing to provide a clear photo of the person
- 7 when the person blows into the ignition interlock
- 8 device."

9 SECTION 7. Section 291E-61.5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) A person commits the offense of habitually operating
12 a vehicle under the influence of an intoxicant if:

- 13 (1) The person is a habitual operator of a vehicle while
- 14 under the influence of an intoxicant; and
- 15 (2) The person operates or assumes actual physical control
- 16 of a vehicle:
 - 17 (A) While under the influence of alcohol in an amount
 - 18 sufficient to impair the person's normal mental
 - 19 faculties or ability to care for the person and
 - 20 guard against casualty;



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

4 (C) With [~~.08~~] .05 or more grams of alcohol per two
5 hundred ten liters of breath; or

6 (D) With [~~.08~~] .05 or more grams of alcohol per one
7 hundred milliliters or cubic centimeters of
8 blood."

9 SECTION 8. There is appropriated out of the state highway
10 special fund the sum of \$ or so much thereof as may be
11 necessary for fiscal year 2024-2025 for a public education
12 campaign to inform the public of the new blood alcohol
13 concentration limit under this Act.

14 The sum appropriated shall be expended by the department of
15 transportation for the purposes of this Act.

16 SECTION 9. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 10. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 11. This Act shall take effect on July 1, 3000;
2 provided that the amendments made to section 291E-61, Hawaii
3 Revised Statutes, by section 6 of this Act shall not be repealed
4 when that section is repealed and reenacted pursuant to Act 148,
5 Session Laws of Hawaii 2023.



Report Title:

Vehicles; Operation; Intoxicants; Blood Alcohol Concentration; Deferred Acceptance of Guilty Plea; Nolo Contendere; State Highway Special Fund; Appropriation.

Description:

Lowers the threshold blood alcohol concentration for the offenses of operating a vehicle under the influence of an intoxicant and habitually operating a vehicle under the influence of an intoxicant. Makes eligible for a deferred acceptance of guilty plea or nolo contendere plea persons with a blood alcohol concentration between .05 and .08, under certain circumstances. Appropriates funds from the State Highway Special Fund for a public education campaign. Effective 7/1/3000. (HD1)

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