
A BILL FOR AN ACT

RELATED TO DRIVING UNDER THE INFLUENCE OF AN INTOXICANT.

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

1 SECTION 1. The legislature finds that driving under the
2 influence of an intoxicant is a major problem in the State of
3 Hawaii. The 2021 Annual Report from the Honolulu Police
4 Department shows that there were 2,391 adults arrested for
5 driving under the influence in 2021, up from 1,884 arrested in
6 2020. In 2019, there were a total of thirty-six alcohol-impaired
7 driving fatalities in Hawaii. In 2022, the number of traffic-
8 related fatalities eclipsed the number of traffic-related
9 fatalities recorded in 2021. The sheer number of arrests for
10 driving under the influence of an intoxicant indicates that
11 there poses a significant risk to the safety of many drivers on
12 Hawaii roads.

13 The legislature further finds that deterring driving under
14 the influence, while also creating restitution measures for
15 victims, are both social goods that are worth pursuing. This
16 measure is intended to achieve both.



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

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

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

8 (1) Except as provided in paragraph (4), for the first
9 offense, or any offense not preceded within a ten-year
10 period by a conviction for an offense under this
11 section or section 291E-4(a):

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

16 (B) One-year revocation of license to operate a
17 vehicle;

18 (C) Installation during the revocation period of an
19 ignition interlock device on all vehicles
20 operated by the person;

21 (D) Any one or more of the following:



- 1 (i) Seventy-two hours of community service work;
- 2 (ii) No less than forty-eight hours and no more
- 3 than five days of imprisonment; or
- 4 (iii) A fine of no less than \$250 but no more than
- 5 \$1,000;
- 6 (E) A surcharge of \$25 to be deposited into the
- 7 neurotrauma special fund; and
- 8 (F) A surcharge, if the court so orders, of up to \$25
- 9 to be deposited into the trauma system special
- 10 fund;
- 11 (2) For an offense that occurs within ten years of a prior
- 12 conviction for an offense under this section:
- 13 (A) A substance abuse program of at least thirty-six
- 14 hours, including education and counseling or
- 15 other comparable programs deemed appropriate by
- 16 the court;
- 17 (B) Revocation of license to operate a vehicle for no
- 18 less than two years but no more than three years;
- 19 (C) Installation during the revocation period of an
- 20 ignition interlock device on all vehicles
- 21 operated by the person;



- 1 (D) Either one of the following:
 - 2 (i) No less than two hundred forty hours of
 - 3 community service work; or
 - 4 (ii) No less than five days but no more than
 - 5 thirty days of imprisonment, of which at
 - 6 least forty-eight hours shall be served
 - 7 consecutively;
- 8 (E) A fine of no less than \$1,000 but no more than
- 9 \$3,000, to be deposited into the state drug and
- 10 alcohol toxicology testing laboratory special
- 11 fund;
- 12 (F) A surcharge of \$25 to be deposited into the
- 13 neurotrauma special fund; and
- 14 (G) A surcharge of up to \$50, if the court so orders,
- 15 to be deposited into the trauma system special
- 16 fund;
- 17 (3) In addition to a sentence imposed under paragraphs (1)
- 18 and (2), any person eighteen years of age or older who
- 19 is convicted under this section and who operated a
- 20 vehicle with a passenger, in or on the vehicle, who
- 21 was younger than fifteen years of age, shall be



1 sentenced to an additional mandatory fine of \$500 and
2 an additional mandatory term of imprisonment of forty-
3 eight hours; provided that the total term of
4 imprisonment for a person convicted under this
5 paragraph shall not exceed the maximum term of
6 imprisonment provided in paragraph (1) or (2), as
7 applicable. Notwithstanding paragraphs (1) and (2),
8 the revocation period for a person sentenced under
9 this paragraph shall be no less than two years;

10 (4) In addition to a sentence imposed under paragraph (1),
11 for a first offense under this section, or an offense
12 not preceded within a ten-year period by a conviction
13 for an offense, any person who is convicted under this
14 section and was a highly intoxicated driver at the
15 time of the subject incident shall be sentenced to an
16 additional mandatory term of imprisonment for forty-
17 eight consecutive hours and an additional mandatory
18 revocation period of six months; provided that the
19 total term of imprisonment for a person convicted
20 under this paragraph shall not exceed the maximum term
21 of imprisonment provided in paragraph (1).



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

4 (5) In addition to a sentence under paragraph (2), for an
5 offense that occurs within ten years of a prior
6 conviction for an offense under this section, any
7 person who is convicted under this section and was a
8 highly intoxicated driver at the time of the subject
9 incident shall be sentenced to an additional mandatory
10 term of imprisonment of ten consecutive days and an
11 additional mandatory revocation period of one year;
12 provided that the total term of imprisonment for a
13 person convicted under this paragraph shall not exceed
14 the maximum term of imprisonment provided in paragraph
15 (2), as applicable. Notwithstanding paragraph (2),
16 the revocation period for a person sentenced under
17 this paragraph shall be no less than three years; and

18 (6) If the person demonstrates to the court that the
19 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 absolutely prohibited from driving
7 during the period of applicable revocation provided in
8 paragraphs (1) to (3); provided that the court shall
9 not issue an ignition interlock permit pursuant to
10 subsection (i) and the person shall be subject to the
11 penalties provided by section 291E-62 if the person
12 drives during the applicable revocation period.
13 (c) Except as provided in sections 286-118.5 and 291E-
14 61.6, the court shall not issue an ignition interlock permit to:
15 (1) A defendant whose license is expired, suspended, or
16 revoked as a result of action other than the instant
17 offense;
18 (2) A defendant who does not hold a valid license at the
19 time of the instant offense;
20 (3) A defendant who holds either a category 4 license
21 under section 286-102(b) or a commercial driver's



1 license under section 286-239(a), unless the ignition
2 interlock permit is restricted to a category 1, 2, or
3 3 license under section 286-102(b); or

4 (4) A defendant who holds a license that is a learner's
5 permit or instruction permit.

6 (d) Except as provided in subsection (c), the court may
7 issue a separate permit authorizing a defendant to operate a
8 vehicle owned by the defendant's employer during the period of
9 revocation without installation of an ignition interlock device
10 if the defendant is gainfully employed in a position that
11 requires driving and the defendant will be discharged if
12 prohibited from driving a vehicle not equipped with an ignition
13 interlock device.

14 (e) A request made pursuant to subsection (d) shall be
15 accompanied by:

16 (1) A sworn statement from the defendant containing facts
17 establishing that the defendant currently is employed
18 in a position that requires driving and that the
19 defendant will be discharged if prohibited from
20 driving a vehicle not equipped with an ignition
21 interlock device; and



1 (2) A sworn statement from the defendant's employer
2 establishing that the employer will, in fact,
3 discharge the defendant if the defendant cannot drive
4 a vehicle that is not equipped with an ignition
5 interlock device and identifying the specific vehicle
6 the defendant will drive for purposes of employment
7 and the hours of the day, not to exceed twelve hours
8 per day, or the period of the specified assigned hours
9 of work, the defendant will drive the vehicle for
10 purposes of employment.

11 (f) A permit issued pursuant to subsection (d) shall
12 include restrictions allowing the defendant to drive:

13 (1) Only during specified hours of employment, not to
14 exceed twelve hours per day, or the period of the
15 specified assigned hours of work, and only for
16 activities solely within the scope of the employment;

17 (2) Only the vehicle specified; and

18 (3) Only if the permit is kept in the defendant's
19 possession while operating the employer's vehicle.

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



1 (1) Conviction under this section, section 291E-4(a), or
2 section 291E-61.5;
3 (2) Conviction in any other state or federal jurisdiction
4 for an offense that is comparable to operating or
5 being in physical control of a vehicle while having
6 either an unlawful alcohol concentration or an
7 unlawful drug content in the blood or urine or while
8 under the influence of an intoxicant or habitually
9 operating a vehicle under the influence of an
10 intoxicant; or
11 (3) Adjudication of a minor for a law violation that, if
12 committed by an adult, would constitute a violation of
13 this section or an offense under section 291E-4(a), or
14 section 291E-61.5,
15 shall be considered a prior conviction for the purposes of
16 imposing sentence under this section. Any judgment on a verdict
17 or a finding of guilty, a plea of guilty or nolo contendere, or
18 an adjudication, in the case of a minor, that at the time of the
19 offense has not been expunged by pardon, reversed, or set aside
20 shall be deemed a prior conviction under this section.



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

12 (i) Upon proof that the defendant has:
13 (1) Installed an ignition interlock device in any vehicle
14 the defendant operates pursuant to subsection (b); and
15 (2) Obtained motor vehicle insurance or self-insurance
16 that complies with the requirements under either
17 section 431:10C-104 or section 431:10C-105,
18 the court shall issue an ignition interlock permit that will
19 allow the defendant to drive a vehicle equipped with an ignition
20 interlock device during the revocation period.



1 (j) Notwithstanding any other law to the contrary,
2 whenever a court revokes a person's driver's license pursuant to
3 this section, the examiner of drivers shall not grant to the
4 person a new driver's license until the expiration of the period
5 of revocation determined by the court. After the period of
6 revocation is completed, the person may apply for and the
7 examiner of drivers may grant to the person a new driver's
8 license.

9 (k) Any person sentenced under this section may be ordered
10 to reimburse the county for the cost of any blood or urine tests
11 conducted pursuant to section 291E-11. The court shall order
12 the person to make restitution in a lump sum, or in a series of
13 prorated installments, to the police department or other agency
14 incurring the expense of the blood or urine test. Except as
15 provided in section 291E-5, installation and maintenance of the
16 ignition interlock device required by subsection (b) shall be at
17 the defendant's own expense.

18 (l) As used in this section, the term "examiner of
19 drivers" has the same meaning as provided in section 286-2.

20 (m) Notwithstanding any law to the contrary, if a defendant
21 is convicted of a violation of this section, and the deceased



1 victim of the offense was the parent of a minor child, then the
2 sentencing court shall order the defendant to pay restitution in
3 the form of child maintenance to each of the victim's children
4 until each child reaches eighteen (18) years of age and has
5 graduated from high school, or the class of which the child is a
6 member when the child reached eighteen (18) years of age has
7 graduated from high school.

8 (n) The court shall determine an amount that is reasonable
9 and necessary for the maintenance of the victim's child after
10 considering all relevant factors, including:

- 11 (1) The financial needs and resources of the child;
12 (2) The financial resources and needs of the surviving
13 parent or guardian of the child, including the state if the
14 child is in the custody of the department of children's
15 services;
16 (3) The standard of living to which the child is
17 accustomed;
18 (4) The physical and emotional condition of the child and
19 the child's educational needs;
20 (5) The child's physical and legal custody arrangements;
21 and



1 (6) The reasonable work-related child care expenses of the
2 surviving parent or guardian.

3 (o) The court shall order that child maintenance payments
4 be made to the clerk of court as trustee for remittance to the
5 child's surviving parent or guardian. The clerk shall remit the
6 payments to the surviving parent or guardian within three (3)
7 working days of receipt by the clerk. The clerk shall deposit
8 all payments no later than the next working day after receipt.

9 (p) If a defendant who is ordered to pay child maintenance
10 under this section is incarcerated and unable to pay the
11 required maintenance, the defendant must have up to one (1) year
12 after the release from incarceration to begin payment, including
13 entering a payment plan to address any arrearage. If a
14 defendant's child maintenance payments are set to terminate but
15 the defendant's obligation is not paid in full, the child
16 maintenance payments shall continue until the entire arrearage
17 is paid.

18 (q) If the surviving parent or guardian of the child brings
19 a civil action against the defendant prior to the sentencing
20 court ordering child maintenance payments as restitution and the
21 surviving parent or guardian obtains a judgment in the civil



1 suit, no maintenance shall be ordered under this section. If the
2 court orders the defendant to make child maintenance payments as
3 restitution under this section and the surviving parent or
4 guardian subsequently brings a civil action and obtains a
5 judgment, the child maintenance order shall be offset by the
6 amount of the judgment awarded in the civil action."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect on January 1, 2024.

10

INTRODUCED BY:



JAN 20 2023



H.B. NO. 683

Report Title:

DUII; child support.

Description:

Establishes a penalty of child support costs for motorists who operate a motor vehicle under the influence of an intoxicant and in the process kill the parent of a minor child.

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

HB HMIA 2023-39-05

