
A BILL FOR AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE.

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

1 SECTION 1. Chapter 706, Hawaii Revised Statutes, is
2 amended by adding a new section to part III to be appropriately
3 designated and to read as follows:

4 "§706- Victim restitution; financial support for minor
5 children of victims of persons operating a vehicle under the
6 influence. (1) Notwithstanding any law to the contrary, if a
7 defendant is convicted of violating section 291E-61 or
8 707-702.5(1)(a) and the violation caused the disability or death
9 of a parent or legal guardian of a minor child, the sentencing
10 court shall order the defendant to make restitution in the form
11 of financial support to each child of the victim until the child
12 reaches:

13 (a) Eighteen years of age; or

14 (b) Nineteen years of age if the child is still enrolled
15 in high school.



1 (2) In determining an amount that is reasonable and
2 necessary for the financial support of the victim's child, the
3 court shall consider all relevant factors, including the:

4 (a) Financial needs and resources of the child;

5 (b) Financial resources and needs of the disabled parent,
6 surviving parent, or legal guardian of the child, or
7 if applicable, the financial resources of the State if
8 the child is in the custody of the department of
9 children's services;

10 (c) Standard of living to which the child is accustomed;

11 (d) Physical and emotional condition of the child and the
12 child's educational needs;

13 (e) Child's physical and legal custody arrangements; and

14 (f) Reasonable child care expenses of the disabled parent,
15 surviving parent, or legal guardian.

16 (3) The court shall order that payments made to
17 financially support the child be made first to the disabled
18 parent, surviving parent, or legal guardian. The clerk of the
19 court shall be made trustee for remittance to the child as an
20 alternative to a disabled parent, surviving parent, or legal



1 guardian, if deemed necessary. If payments are made to the
2 clerk, the clerk shall:

3 (a) Deposit all payments no later than the next working
4 day after receipt; and

5 (b) Remit the payments to the disabled parent, surviving
6 parent, or legal guardian within three working days of
7 receipt by the clerk.

8 (4) If a defendant who is ordered to make restitution in
9 the form of financial support for the child under this section
10 is incarcerated and unable to make the required restitution, the
11 defendant shall have up to one year after the release from
12 incarceration to begin payment, including entering into a
13 payment plan to address any arrearage.

14 (5) If a defendant's payments to financially support the
15 child are set to terminate but the defendant's obligation is not
16 paid in full, the payments to financially support the child
17 shall continue until the entire arrearage is paid.

18 (6) If the disabled parent, surviving parent, or legal
19 guardian of the child brings a civil action against the
20 defendant before the sentencing court orders restitution to
21 financially support the child and the disabled parent, surviving



1 parent, or legal guardian obtains a judgment and full
2 satisfaction of damages in the civil suit, restitution shall not
3 be ordered under this section.

4 (7) If the court orders the defendant to make restitution
5 to financially support the child under this section and the
6 disabled parent, surviving parent, or legal guardian
7 subsequently brings a civil action and obtains a judgment, the
8 restitution order shall be offset by the amount of the judgment
9 awarded and paid by the defendant or the defendant's insurance
10 for lost wages.

11 For the purposes of this section, "disabled":

12 (1) Means a legal disability as is measured by functional
13 inabilities; and

14 (2) Includes inabilities caused by psychological,
15 psychiatric, or stress-related trauma, and refers to
16 any person who is unable to make informed decisions
17 with respect to their physical health and safety or
18 the physical health and safety of a minor child,
19 including health care, food, shelter, clothing, or
20 personal hygiene."



1 SECTION 2. Section 291E-61, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

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

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

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

15 (B) Revocation of license to operate a vehicle for no
16 less than one year and no more than eighteen
17 months;

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 and 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, or up to \$25
- 9 to be deposited into the trauma system special
- 10 fund; and
- 11 (G) When applicable, victim restitution pursuant to
- 12 section 706- ;
- 13 (2) For an offense that occurs within ten years of a prior
- 14 conviction for an offense under this section:
- 15 (A) A substance abuse program of at least thirty-six
- 16 hours, including education and counseling, or
- 17 other comparable programs deemed appropriate by
- 18 the court;
- 19 (B) Revocation of license to operate a vehicle for no
- 20 less than two years and no more than three years;



- 1 (C) Installation during the revocation period of an
2 ignition interlock device on all vehicles
3 operated by the person;
- 4 (D) Either one of the following:
- 5 (i) No less than two hundred forty hours of
6 community service work; or
- 7 (ii) No less than five days and no more than
8 thirty days of imprisonment, of which at
9 least forty-eight hours shall be served
10 consecutively;
- 11 (E) A fine of no less than \$1,000 and no more than
12 \$3,000, to be deposited into the drug and alcohol
13 toxicology testing laboratory special fund;
- 14 (F) A surcharge of \$25 to be deposited into the
15 neurotrauma special fund; [~~and~~]
- 16 (G) A surcharge of up to \$50, if the court so orders,
17 to be deposited into the trauma system special
18 fund; and
- 19 (H) When applicable, victim restitution pursuant to
20 section 706- ;



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
8 forty-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



1 forty-eight consecutive hours and an additional
2 mandatory revocation period of six months; provided
3 that the total term of imprisonment for a person
4 convicted under this paragraph shall not exceed the
5 maximum term of imprisonment provided in paragraph
6 (1). Notwithstanding paragraph (1), the revocation
7 period for a person sentenced under this paragraph
8 shall be 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) For purposes of this subsection, "violation" means:
16 (A) Providing a sample of .04 or more grams of
17 alcohol per two hundred ten liters of breath when
18 starting the vehicle, unless a subsequent test
19 performed within ten minutes registers a breath
20 alcohol concentration lower than .02 and the



1 digital image confirmed the same person provided
2 both samples;

3 (B) Providing a sample of .04 or more grams of
4 alcohol per two hundred ten liters of breath on a
5 rolling retest, unless a subsequent test
6 performed within ten minutes registers a breath
7 alcohol concentration lower than .02 and the
8 digital image confirms the same person provided
9 both samples;

10 (C) Failing to provide a rolling retest, unless an
11 acceptable test is performed within ten minutes;

12 (D) Violating section 291E-66; or

13 (E) Failing to provide a clear photo of the person
14 when the person blows into the ignition interlock
15 device."

16 SECTION 3. 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 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Disability; Driving Under the Influence; Victim Restitution;
Child Support

Description:

Requires defendants convicted of causing the death or disability of a parent or legal guardian of a minor child by the operation of a vehicle while under the influence of an intoxicant to make restitution in the form of financial support to each child of the victim. (SD1)

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