
A BILL FOR AN ACT

RELATING TO TRAFFIC SAFETY.

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

1 SECTION 1. The legislature finds that studies indicate
2 that many traffic collisions and fatalities involve "highly
3 intoxicated" impaired drivers. For nearly a decade, traffic
4 safety advocates across the State have collaborated to promote
5 traffic safety legislation to deter impaired driving, strive for
6 accountability in the criminal justice system, and save lives.
7 Furthermore, alcohol abuse trends demonstrate a need to take
8 appropriate action to promote public health and protect public
9 safety.

10 Under existing law, enhancements exist for individuals
11 convicted of the offense of operating a vehicle under the
12 influence of an intoxicant deemed to be a highly intoxicated
13 driver. However, these enhancements are limited to additional
14 fines, minimal jail time, and an additional driver's license
15 revocation period, while the offense itself remains a petty
16 misdemeanor. These enhancements are not sufficient to address
17 the concerns and deter this hazardous conduct. In addition to



1 the possibility of a prison term, if the facts and circumstances
2 so warrant, a class C felony sanction will provide court
3 supervision authorities with an appropriate period to assess,
4 monitor, and rehabilitate highly intoxicated drivers and
5 properly address any potential alcohol abuse or dependence needs
6 through appropriate treatment.

7 The purpose of this Act is to enhance public safety by
8 upgrading the offense of operating a vehicle under the influence
9 of an intoxicant while a highly intoxicated driver to a class C
10 felony and specifying additional probation requirements.

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

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

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



- (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court;
- (B) Revocation of license to operate a vehicle for no less than one year and no more than eighteen months;
- (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;
- (D) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) No less than forty-eight hours and no more than five days of imprisonment; or
 - (iii) A fine of no less than \$250 and no more than \$1,000;
- (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
- (F) A surcharge, if the court so orders, ~~or~~ of up to \$25 to be deposited into the trauma system special fund;



1 (2) For an offense that occurs within ten years of a prior
2 conviction for an offense under this section:
3 (A) A substance abuse program of at least thirty-six
4 hours, including education and counseling, or
5 other comparable programs deemed appropriate by
6 the court;
7 (B) Revocation of license to operate a vehicle for no
8 less than two years and no more than three years;
9 (C) Installation during the revocation period of an
10 ignition interlock device on all vehicles
11 operated by the person;
12 (D) Either one of the following:
13 (i) No less than two hundred forty hours of
14 community service work; or
15 (ii) No less than five days and no more than
16 thirty days of imprisonment, of which at
17 least forty-eight hours shall be served
18 consecutively;
19 (E) A fine of no less than \$1,000 and no more than
20 \$3,000, to be deposited into the drug and alcohol
21 toxicology testing laboratory special fund;



1 (F) A surcharge of \$25 to be deposited into the
2 neurotrauma special fund; and
3 (G) A surcharge of up to \$50, if the court so orders,
4 to be deposited into the trauma system special
5 fund;

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

20 (4) In addition to a sentence imposed under paragraph (1),
21 ~~[for a first offense under this section, or an offense~~



not preceded within a ten year period by a conviction for an offense,] any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be guilty of a class C felony and the sentence shall be either:

(A) A term of imprisonment of five years; or

(B) A term of probation of four years, with the following conditions:

(i) [sentenced to an additional mandatory term] No less than ten days of imprisonment [for], including at least forty-eight consecutive hours; [and an]

(ii) An additional mandatory revocation period of [six months; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1). Notwithstanding paragraph (1), the revocation period for a person sentenced under this paragraph shall be no less than



eighteen months;] no less than two years and
no more than three years;

(iii) A fine of no less than \$2,000 and no more than \$5,000, to be deposited into the drug and alcohol toxicology testing laboratory special fund;

(iv) Referral to a certified substance abuse counselor as provided in subsection (h); and

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

(5) [In addition to a sentence under paragraph (2), for an offense that occurs within ten years of a prior conviction for an offense under this section, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment of ten consecutive days and an additional mandatory revocation period of one year; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed



~~the maximum term of imprisonment provided in paragraph (2), as applicable. Notwithstanding paragraph (2), the revocation period for a person sentenced under this paragraph shall be no less than three years;~~

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

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

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

(C) Includes with the person's motion for early termination a certified court abstract establishing that the person was not sentenced to



any additional mandatory revocation period pursuant to paragraph (3) or (4);

(D) Includes with the person's motion for early termination a certified statement from the director of transportation establishing that

(i) The person installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months; and

(ii) After the six-month period, the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation; and

(E) Has complied with all other sentencing requirements.

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



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

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

18 (A) Providing a sample of .04 or more grams of
19 alcohol per two hundred ten liters of breath when
20 starting the vehicle, unless a subsequent test
21 performed within ten minutes registers a breath



1 alcohol concentration lower than .02 and the
2 digital image confirmed the same person provided
3 both samples;

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

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

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

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

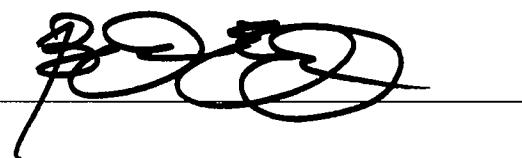
17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

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



1 SECTION 5. This Act shall take effect upon its approval;
2 provided that the amendments made to section 291E-61, Hawaii
3 Revised Statutes, by section 2 of this Act shall not be repealed
4 when that section is reenacted on June 30, 2028, pursuant to Act
5 196, Session Laws of Hawaii 2021, as amended by Act 148, Session
6 Laws of Hawaii 2023.

7

INTRODUCED BY: 



S.B. NO. 2392

Report Title:

Traffic Code; Operating a Vehicle Under the Influence of an Intoxicant; Highly Intoxicated Driver

Description:

Specifies that operating a vehicle under the influence of an intoxicant while a highly intoxicated driver is a class C felony and outlines additional requirements for probation.

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

