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# 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 (1) Specifying that operating a vehicle under the  
9 influence of an intoxicant while a highly intoxicated  
10 driver is a misdemeanor for a first offense, or any  
11 offense not preceded within a ten-year period;
- 12 (2) Specifying and imposing additional sentencing and  
13 probation requirements for a person convicted of a  
14 misdemeanor operating a vehicle under the influence of  
15 an intoxicant offense;
- 16 (3) Upgrading the offense of operating a vehicle under the  
17 influence of an intoxicant while a highly intoxicated  
18 driver to a class C felony under certain conditions;
- 19 (4) Specifying and imposing additional sentencing and  
20 probation requirements for a class C felony offense of



1 operating a vehicle under the influence of an  
2 intoxicant while a highly intoxicated driver; and  
3 (5) Prohibiting a deferred acceptance of guilty plea for  
4 persons convicted of operating a vehicle under the  
5 influence of an intoxicant.

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

8 "(b) A person committing the offense of operating a  
9 vehicle under the influence of an intoxicant [~~shall be sentenced~~  
10 ~~without possibility of probation or suspension of sentence as~~  
11 ~~follows~~]:

12 (1) [~~Except as provided in paragraph (4), for~~] For the  
13 first offense, or any offense not preceded within a  
14 ten-year period by a conviction for an offense under  
15 this section or section 291E-4(a), except as provided  
16 in paragraph (4), shall be sentenced without  
17 possibility of probation or suspension of sentence to  
18 each of the following:

19 (A) A fourteen-hour minimum substance abuse  
20 rehabilitation program, including education and



1 counseling, or other comparable programs deemed  
2 appropriate by the court;

3 (B) Revocation of license to operate a vehicle for  
4 ~~[no]~~ not less than one year and ~~[no]~~ not more  
5 than eighteen months;

6 (C) Installation during the revocation period of an  
7 ignition interlock device on all vehicles  
8 operated by the person;

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

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

11 (ii) ~~[No]~~ Not less than forty-eight hours and  
12 ~~[no]~~ not more than five days of  
13 imprisonment; or

14 (iii) A fine of ~~[no]~~ not less than \$250 and ~~[no]~~  
15 not more than \$1,000;

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

18 (F) A surcharge [~~, if the court so orders, or~~] of up  
19 to \$25, if the court so orders, to be deposited  
20 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 except as provided in paragraph (5), shall be  
4 sentenced without possibility of probation or  
5 suspension of sentence to each of the following:
- 6 (A) A substance abuse program of at least thirty-six  
7 hours, including education and counseling, or  
8 other comparable programs deemed appropriate by  
9 the court;
- 10 (B) Revocation of license to operate a vehicle for  
11 [~~no~~] not less than two years and [~~no~~] not more  
12 than three years;
- 13 (C) Installation during the revocation period of an  
14 ignition interlock device on all vehicles  
15 operated by the person;
- 16 (D) Either one of the following:
- 17 (i) [~~no~~] Not less than two hundred forty hours  
18 of community service work; or
- 19 (ii) [~~no~~] Not less than five days and [~~no~~] not  
20 more than thirty days of imprisonment, of



1                   which at least forty-eight hours shall be  
2                   served consecutively;

3           (E) A fine of [~~no~~] not less than \$1,000 and [~~no~~] not  
4           more than \$3,000, to be deposited into the drug  
5           and alcohol toxicology testing laboratory special  
6           fund;

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

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

12       (3) In addition to a sentence imposed under paragraphs (1)  
13       and (2), any person eighteen years of age or older who  
14       is convicted under this section and who operated a  
15       vehicle with a passenger, in or on the vehicle, who  
16       was younger than fifteen years of age, shall be  
17       sentenced to an additional mandatory fine of \$500 and  
18       an additional mandatory term of imprisonment of forty-  
19       eight hours; provided that the total term of  
20       imprisonment for a person convicted under this  
21       paragraph shall not exceed the maximum term of



1 imprisonment provided in paragraph (1) or (2), as  
2 applicable. Notwithstanding paragraphs (1) and (2),  
3 the revocation period for a person sentenced under  
4 this paragraph shall be ~~[no]~~ not less than two years;

- 5 (4) ~~[In addition to a sentence imposed under paragraph~~  
6 ~~(1), for a] For the first offense ~~[under this section,~~  
7 ~~or an] or any offense not preceded within a ten-year~~  
8 period by a conviction for an offense ~~[, any person who~~  
9 ~~is convicted] under this section,~~ and was a highly  
10 intoxicated driver at the time of the subject  
11 incident, shall be ~~[sentenced to an additional~~  
12 ~~mandatory term of imprisonment for forty-eight~~  
13 ~~consecutive hours and an additional mandatory~~  
14 ~~revocation period of six months; provided that the~~  
15 ~~total term of imprisonment for a person convicted~~  
16 ~~under this paragraph shall not exceed the maximum term~~  
17 ~~of imprisonment provided in paragraph (1)].~~  
18 ~~Notwithstanding paragraph (1), the revocation period~~  
19 ~~for a person sentenced under this paragraph shall be~~  
20 ~~no less than eighteen months;] guilty of a misdemeanor~~  
21 and the sentence shall be either:~~



1           (A) A term of imprisonment of not less than ten days  
2           and each of the following:

3           (i) A fourteen-hour minimum substance abuse  
4           rehabilitation program, including education  
5           and counseling, or other comparable programs  
6           deemed appropriate by the court;

7           (ii) Revocation of license to operate a vehicle  
8           for not less than eighteen months and not  
9           more than two years;

10          (iii) Installation during the revocation period of  
11          an ignition interlock device on all vehicles  
12          operated by the person;

13          (iv) A fine of not less than \$500 and not more  
14          than \$2,000;

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

17          (vi) A surcharge of up to \$25, if the court so  
18          orders, to be deposited into the neurotrauma  
19          special fund; or

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



- 1            (i) A fourteen-hour minimum substance abuse  
2            rehabilitation program, including education  
3            and counseling, or other comparable programs  
4            deemed appropriate;
- 5            (ii) Revocation of license to operate a vehicle  
6            for not less than eighteen months and not  
7            more than two years;
- 8            (iii) Install during the revocation period of an  
9            ignition interlock device on all vehicles  
10           operated by the person;
- 11           (iv) A term of imprisonment of not less than five  
12           days;
- 13           (v) A fine of not less than \$500 and not more  
14           than \$2,000;
- 15           (vi) A surcharge of \$25 to be deposited into the  
16           neurotrauma special fund; and
- 17           (vii) A surcharge of up to \$25, if the court so  
18           orders, to be deposited into the trauma  
19           system special fund;
- 20           (5) [~~In addition to a sentence under paragraph (2), for]~~  
21           For an offense that occurs within ten years of a prior



1 conviction for an offense under this section, [~~any~~  
2 ~~person who is convicted under this section]~~ and was a  
3 highly intoxicated driver at the time of the subject  
4 incident, shall be [~~sentenced to an additional~~  
5 ~~mandatory term of imprisonment of ten consecutive days~~  
6 ~~and an additional mandatory revocation period of one~~  
7 ~~year; provided that the total term of imprisonment for~~  
8 ~~a person convicted under this paragraph shall not~~  
9 ~~exceed the maximum term of imprisonment provided in~~  
10 ~~paragraph (2), as applicable. Notwithstanding~~  
11 ~~paragraph (2), the revocation period for a person~~  
12 ~~sentenced under this paragraph shall be no less than~~  
13 ~~three years,]~~ guilty of a class C felony and shall be  
14 sentenced to either:

15 (A) An indefinite term of imprisonment of five years;

16 or

17 (B) A term of probation of four years, with the

18 following conditions:

19 (i) Commitment to a substance abuse

20 rehabilitation program of at least thirty-

21 six hours, including education counseling,



- 1                   or other comparable programs as deemed  
2                   appropriate by the court;
- 3           (ii)   Revocation of license to operate a vehicle  
4                   for not less than three years and not more  
5                   than four years;
- 6           (iii)   Installation during the revocation period of  
7                   an ignition interlock device on all vehicles  
8                   operated by the person;
- 9           (iv)   A term of imprisonment of not less than  
10                   thirty days;
- 11           (v)   A fine of not less than \$2,000 and not more  
12                   than \$5,000, to be deposited into the drug  
13                   and alcohol toxicology testing laboratory  
14                   special fund;
- 15           (vi)   A surcharge of \$25 to be deposited into the  
16                   neurotrauma special fund; and
- 17           (vii)   A surcharge of up to \$50, if the court so  
18                   orders, to be deposited into the trauma  
19                   system special fund;



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

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

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

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

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



- 1 (i) The person installed and maintained an
- 2 ignition interlock device on all vehicles
- 3 operated by the person for a continuous
- 4 period of six months; and
- 5 (ii) After the six-month period, the person
- 6 maintained the ignition interlock device on
- 7 all vehicles operated by the person for a
- 8 continuous period of three months without
- 9 violation; and
- 10 (E) Has complied with all other sentencing
- 11 requirements.
- 12 Nothing in this paragraph shall require a court to
- 13 grant early termination of the revocation period if
- 14 the court finds that continued use of the ignition
- 15 interlock device will further the person's
- 16 rehabilitation or compliance with this section;
- 17 (7) If the person demonstrates to the court that the
- 18 person:
- 19 (A) Does not own or have the use of a vehicle in
- 20 which the person can install an ignition
- 21 interlock device during the revocation period; or



1 (B) Is otherwise unable to drive during the  
2 revocation period,  
3 the person shall be prohibited from driving during the  
4 period of applicable revocation provided in paragraphs  
5 (1) [~~2~~] through (5); provided that the person shall  
6 be sentenced to the maximum license revocation period,  
7 the court shall not issue an ignition interlock permit  
8 pursuant to subsection (i), and the person shall be  
9 subject to the penalties provided by section 291E-62  
10 if the person drives during the applicable revocation  
11 period; and

12 (8) For the purposes of this subsection, "violation"  
13 means:

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



- 1 (B) Providing a sample of .04 or more grams of
- 2 alcohol per two hundred ten liters of breath on a
- 3 rolling retest, unless a subsequent test
- 4 performed within ten minutes registers a breath
- 5 alcohol concentration lower than .02 and the
- 6 digital image confirms the same person provided
- 7 both samples;
- 8 (C) Failing to provide a rolling retest, unless an
- 9 acceptable test is performed within ten minutes;
- 10 (D) Violating section 291E-66; or
- 11 (E) Failing to provide a clear photo of the person
- 12 when the person blows into the ignition interlock
- 13 device."

14 SECTION 3. Section 853-4, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

- 16 "(a) This chapter shall not apply when:
- 17 (1) The offense charged involves the intentional, knowing,
- 18 reckless, or negligent killing of another person;
- 19 (2) The offense charged is:
  - 20 (A) A felony that involves the intentional, knowing,
  - 21 or reckless bodily injury, substantial bodily



1 injury, or serious bodily injury of another  
2 person; or  
3 (B) A misdemeanor or petty misdemeanor that carries a  
4 mandatory minimum sentence and that involves the  
5 intentional, knowing, or reckless bodily injury,  
6 substantial bodily injury, or serious bodily  
7 injury of another person;  
8 provided that the prohibition in this paragraph shall  
9 not apply to offenses described in section  
10 709-906(18);  
11 (3) The offense charged involves a conspiracy or  
12 solicitation to intentionally, knowingly, or  
13 recklessly kill another person or to cause serious  
14 bodily injury to another person;  
15 (4) The offense charged is a class A felony;  
16 (5) The offense charged is nonprobationable;  
17 (6) The defendant has been convicted of any offense  
18 defined as a felony by the Hawaii Penal Code or has  
19 been convicted for any conduct that if perpetrated in  
20 this State would be punishable as a felony;



- 1           (7) The defendant is found to be a law violator or
- 2           delinquent child for the commission of any offense
- 3           defined as a felony by the Hawaii Penal Code or for
- 4           any conduct that if perpetrated in this State would
- 5           constitute a felony;
- 6           (8) The defendant has a prior conviction for a felony
- 7           committed in any state, federal, or foreign
- 8           jurisdiction;
- 9           (9) A firearm was used in the commission of the offense
- 10          charged;
- 11          (10) The defendant is charged with the distribution of a
- 12          dangerous, harmful, or detrimental drug to a minor;
- 13          (11) The defendant has been charged with a felony offense
- 14          and has been previously granted deferred acceptance of
- 15          guilty plea or no contest plea for a prior offense,
- 16          regardless of whether the period of deferral has
- 17          already expired;
- 18          (12) The defendant has been charged with a misdemeanor
- 19          offense and has been previously granted deferred
- 20          acceptance of guilty plea or no contest plea for a



- 1 prior felony, misdemeanor, or petty misdemeanor for  
2 which the period of deferral has not yet expired;
- 3 (13) The offense charged is:
- 4 (A) Escape in the first degree;
  - 5 (B) Escape in the second degree;
  - 6 (C) Promoting prison contraband in the first degree;
  - 7 (D) Promoting prison contraband in the second degree;
  - 8 (E) Bail jumping in the first degree;
  - 9 (F) Bail jumping in the second degree;
  - 10 (G) Bribery;
  - 11 (H) Bribery of or by a witness;
  - 12 (I) Intimidating a witness;
  - 13 (J) Bribery of or by a juror;
  - 14 (K) Intimidating a juror;
  - 15 (L) Jury tampering;
  - 16 (M) Promoting prostitution;
  - 17 (N) Abuse of family or household member except as  
18 provided in paragraph (2) and section 709-  
19 906(18);
  - 20 (O) Sexual assault in the second degree;
  - 21 (P) Sexual assault in the third degree;



- 1 (Q) A violation of an order issued pursuant to
- 2 chapter 586;
- 3 (R) Promoting child abuse in the second degree;
- 4 (S) Promoting child abuse in the third degree;
- 5 (T) Electronic enticement of a child in the first
- 6 degree;
- 7 (U) Electronic enticement of a child in the second
- 8 degree;
- 9 (V) Commercial sexual exploitation pursuant to
- 10 section 712-1200.5;
- 11 (W) Street prostitution and commercial sexual
- 12 exploitation under section 712-1207(1)(b) or
- 13 (2)(b);
- 14 (X) Commercial sexual exploitation near schools or
- 15 public parks under section 712-1209;
- 16 (Y) Commercial sexual exploitation of a minor under
- 17 section 712-1209.1;
- 18 (Z) Habitual commercial sexual exploitation under
- 19 section 712-1209.5;
- 20 (AA) Violation of privacy in the first degree under
- 21 section 711-1110.9;



- 1 (BB) Violation of privacy in the second degree under  
2 section 711-1111(1)(d), (e), (f), (g), or (h);
- 3 (CC) Habitually operating a vehicle under the  
4 influence of an intoxicant under section  
5 291E-61.5(a);
- 6 (DD) Promoting gambling in the first degree; [~~or~~]
- 7 (EE) Promoting gambling in the second degree; or
- 8 (FF) Operating a vehicle under the influence of an  
9 intoxicant under section 291E-61;
- 10 (14) The defendant has been charged with:
- 11 (A) Knowingly or intentionally falsifying any report  
12 required under part XIII of chapter 11, with the  
13 intent to circumvent the law or deceive the  
14 campaign spending commission; or
- 15 (B) Violating section 11-352 or 11-353; or
- 16 (15) The defendant holds a commercial driver's license and  
17 has been charged with violating a traffic control law,  
18 other than a parking law, in connection with the  
19 operation of any type of motor vehicle."



1 SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 5. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval;  
7 provided that the amendments made to section 291E-61, Hawaii  
8 Revised Statutes, by section 2 of this Act shall not be repealed  
9 when that section is reenacted on June 30, 2028, pursuant to Act  
10 196, Session Laws of Hawaii 2021, as amended by Act 148, Session  
11 Laws of Hawaii 2023; provided further that the amendments made  
12 to section 853-4(a)(13), Hawaii Revised Statutes shall not be  
13 repealed when that section is reenacted on June 30, 2026,  
14 pursuant to Act 19, Session Laws of Hawaii 2020.



**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 misdemeanor for a first offense, or any offense not preceded within a ten-year period. Specifies and imposes additional sentencing and probation requirements for a person convicted of a misdemeanor operating a vehicle under the influence of an intoxicant offense. Upgrades the offense of operating a vehicle under the influence of an intoxicant while a highly intoxicated driver to a class C felony under certain conditions. Specifies and imposes additional sentencing and probation requirements for a class C felony offense of operating a vehicle under the influence of an intoxicant while a highly intoxicated driver. Prohibits a deferred acceptance of guilty plea for persons convicted of operating a vehicle under the influence of an intoxicant. (SD2)

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

