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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 and 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 no  
4                   less than one year and no more than eighteen  
5                   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 less than forty-eight hours and no more  
12                   than five days of imprisonment; or
- 13                   (iii) A fine of no less than \$250 and no more than  
14                   \$1,000;
- 15                   (E) A surcharge of \$25 to be deposited into the  
16                   neurotrauma special fund; and
- 17                   (F) A surcharge [~~if the court so orders, or~~] of up  
18                   to \$25, if the court so orders, to be deposited  
19                   into the trauma system special fund;
- 20                   (2) For an offense that occurs within ten years of a prior  
21                   conviction for an offense under this section[+],



1           except as provided in paragraph (5), shall be  
2           sentenced without possibility of probation or  
3           suspension of sentence to each of the following:

4           (A) A substance abuse program of at least thirty-six  
5                 hours, including education and counseling, or  
6                 other comparable programs deemed appropriate by  
7                 the court;

8           (B) Revocation of license to operate a vehicle for no  
9                 less than two years and no more than three years;

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

13          (D) Either one of the following:

14                 (i) No less than two hundred forty hours of  
15                         community service work; or

16                 (ii) No less than five days and no more than  
17                         thirty days of imprisonment, of which at  
18                         least forty-eight hours shall be served  
19                         consecutively;



- 1 (E) A fine of no less than \$1,000 and no more than  
2 \$3,000, to be deposited into the drug and alcohol  
3 toxicology testing laboratory special fund;
- 4 (F) A surcharge of \$25 to be deposited into the  
5 neurotrauma special fund; and
- 6 (G) A surcharge of up to \$50, if the court so orders,  
7 to be deposited into the trauma system special  
8 fund;
- 9 (3) In addition to a sentence imposed under paragraphs (1)  
10 and (2), any person eighteen years of age or older who  
11 is convicted under this section and who operated a  
12 vehicle with a passenger, in or on the vehicle, who  
13 was younger than fifteen years of age, shall be  
14 sentenced to an additional mandatory fine of \$500 and  
15 an additional mandatory term of imprisonment of forty-  
16 eight hours; provided that the total term of  
17 imprisonment for a person convicted under this  
18 paragraph shall not exceed the maximum term of  
19 imprisonment provided in paragraph (1) or (2), as  
20 applicable. Notwithstanding paragraphs (1) and (2),



1 the revocation period for a person sentenced under  
2 this paragraph shall be [~~no~~] not less than two years;

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

16 ~~Notwithstanding paragraph (1), the revocation period~~  
17 ~~for a person sentenced under this paragraph shall be~~  
18 ~~no less than eighteen months;] guilty of a misdemeanor~~  
19 ~~and the sentence shall be sentenced to either:~~

20 (A) A term of imprisonment of no less than ten days  
21 and each of the following:





- 1                   and counseling, or other comparable programs  
2                   deemed appropriate;
- 3                   (ii) Revocation of license to operate a vehicle  
4                   for no less than eighteen months and no more  
5                   than two years;
- 6                   (iii) Install during the revocation period of an  
7                   ignition interlock device on all vehicles  
8                   operated by the person;
- 9                   (iv) A term of imprisonment of no less than five  
10                   days;
- 11                   (v) A fine of no less than \$500 and no more than  
12                   \$2,000;
- 13                   (vi) A surcharge of \$25 to be deposited into the  
14                   neurotrauma special fund; and
- 15                   (vii) A surcharge of up to \$25, if the court so  
16                   orders, to be deposited into the trauma  
17                   system special fund;
- 18                   (5) [~~In addition to a sentence under paragraph (2), for~~]  
19                   For an offense that occurs within ten years of a prior  
20                   conviction for an offense under this section, [~~any~~  
21                   ~~person who is convicted under this section]~~ and was a



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

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

14 or

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

17 (i) Commitment to a substance abuse  
18 rehabilitation program of at least thirty-  
19 six hours, including education counseling,  
20 or other comparable programs as deemed  
21 appropriate by the court;



- 1                    (ii) Revocation of license to operate a vehicle
- 2                    for no less than three years and no more
- 3                    than four years;
- 4                    (iii) Installation during the revocation period of
- 5                    an ignition interlock device on all vehicles
- 6                    operated by the person;
- 7                    (iv) A term of imprisonment of no less than
- 8                    thirty days;
- 9                    (v) A fine of no less than \$2,000 and no more
- 10                   than \$5,000, to be deposited into the drug
- 11                   and alcohol toxicology testing laboratory
- 12                   special fund;
- 13                   (vi) A surcharge of \$25 to be deposited into the
- 14                   neurotrauma special fund; and
- 15                   (vii) A surcharge of up to \$50, if the court so
- 16                   orders, to be deposited into the trauma
- 17                   system special fund;
- 18                   (6) A person sentenced pursuant to paragraph (1) (B) may
- 19                   file a motion for early termination of the applicable
- 20                   revocation period if the person:



- 1 (A) Was not sentenced to any additional mandatory  
2 revocation period pursuant to paragraph (3), ~~[or]~~  
3 (4) ~~[+]~~, or (5);
- 4 (B) Actually installed and maintained an ignition  
5 interlock device on all vehicles operated by the  
6 person for a continuous period of six months,  
7 after which the person maintained the ignition  
8 interlock device on all vehicles operated by the  
9 person for a continuous period of three months  
10 without violation;
- 11 (C) Includes with the person's motion for early  
12 termination a certified court abstract  
13 establishing that the person was not sentenced to  
14 any additional mandatory revocation period  
15 pursuant to paragraph (3), ~~[or]~~ (4) ~~[+]~~, or (5);
- 16 (D) Includes with the person's motion for early  
17 termination a certified statement from the  
18 director of transportation establishing that:  
19 (i) The person installed and maintained an  
20 ignition interlock device on all vehicles



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



1 the person shall be prohibited from driving during the  
2 period of applicable revocation provided in paragraphs  
3 (1) ~~[1]~~ through (5); provided that the person shall  
4 be sentenced to the maximum license revocation period,  
5 the court shall not issue an ignition interlock permit  
6 pursuant to subsection (i), and the person shall be  
7 subject to the penalties provided by section 291E-62  
8 if the person drives during the applicable revocation  
9 period; and  
10 (8) For the purposes of this subsection, "violation"  
11 means:  
12 (A) Providing a sample of .04 or more grams of  
13 alcohol per two hundred ten liters of breath when  
14 starting the vehicle, unless a subsequent test  
15 performed within ten minutes registers a breath  
16 alcohol concentration lower than .02 and the  
17 digital image confirmed the same person provided  
18 both samples;  
19 (B) Providing a sample of .04 or more grams of  
20 alcohol per two hundred ten liters of breath on a  
21 rolling retest, unless a subsequent test



1 performed within ten minutes registers a breath  
2 alcohol concentration lower than .02 and the  
3 digital image confirms the same person provided  
4 both samples;

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

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

8 (E) Failing to provide a clear photo of the person  
9 when the person blows into the ignition interlock  
10 device."

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

13 "(a) This chapter shall not apply when:

14 (1) The offense charged involves the intentional, knowing,  
15 reckless, or negligent killing of another person;

16 (2) The offense charged is:

17 (A) A felony that involves the intentional, knowing,  
18 or reckless bodily injury, substantial bodily  
19 injury, or serious bodily injury of another  
20 person; or



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



- 1 any conduct that if perpetrated in this State would  
2 constitute a felony;
- 3 (8) The defendant has a prior conviction for a felony  
4 committed in any state, federal, or foreign  
5 jurisdiction;
- 6 (9) A firearm was used in the commission of the offense  
7 charged;
- 8 (10) The defendant is charged with the distribution of a  
9 dangerous, harmful, or detrimental drug to a minor;
- 10 (11) The defendant has been charged with a felony offense  
11 and has been previously granted deferred acceptance of  
12 guilty plea or no contest plea for a prior offense,  
13 regardless of whether the period of deferral has  
14 already expired;
- 15 (12) The defendant has been charged with a misdemeanor  
16 offense and has been previously granted deferred  
17 acceptance of guilty plea or no contest plea for a  
18 prior felony, misdemeanor, or petty misdemeanor for  
19 which the period of deferral has not yet expired;
- 20 (13) The offense charged is:
- 21 (A) Escape in the first degree;



- 1 (B) Escape in the second degree;
- 2 (C) Promoting prison contraband in the first degree;
- 3 (D) Promoting prison contraband in the second degree;
- 4 (E) Bail jumping in the first degree;
- 5 (F) Bail jumping in the second degree;
- 6 (G) Bribery;
- 7 (H) Bribery of or by a witness;
- 8 (I) Intimidating a witness;
- 9 (J) Bribery of or by a juror;
- 10 (K) Intimidating a juror;
- 11 (L) Jury tampering;
- 12 (M) Promoting prostitution;
- 13 (N) Abuse of family or household member except as
- 14 provided in paragraph (2) and section 709-
- 15 906(18);
- 16 (O) Sexual assault in the second degree;
- 17 (P) Sexual assault in the third degree;
- 18 (Q) A violation of an order issued pursuant to
- 19 chapter 586;
- 20 (R) Promoting child abuse in the second degree;
- 21 (S) Promoting child abuse in the third degree;



- 1           (T)   Electronic enticement of a child in the first
- 2                   degree;
- 3           (U)   Electronic enticement of a child in the second
- 4                   degree;
- 5           (V)   Commercial sexual exploitation pursuant to
- 6                   section 712-1200.5;
- 7           (W)   Street prostitution and commercial sexual
- 8                   exploitation under section 712-1207(1)(b) or
- 9                   (2)(b);
- 10          (X)   Commercial sexual exploitation near schools or
- 11                   public parks under section 712-1209;
- 12          (Y)   Commercial sexual exploitation of a minor under
- 13                   section 712-1209.1;
- 14          (Z)   Habitual commercial sexual exploitation under
- 15                   section 712-1209.5;
- 16          (AA)  Violation of privacy in the first degree under
- 17                   section 711-1110.9;
- 18          (BB)  Violation of privacy in the second degree under
- 19                   section 711-1111(1)(d), (e), (f), (g), or (h);



- 1 (CC) Habitually operating a vehicle under the
- 2 influence of an intoxicant under section
- 3 291E-61.5(a);
- 4 (DD) Promoting gambling in the first degree; ~~[or]~~
- 5 (EE) Promoting gambling in the second degree; or
- 6 (FF) Operating a vehicle under the influence of an
- 7 intoxicant under section 291E-61;

- 8 (14) The defendant has been charged with:
- 9 (A) Knowingly or intentionally falsifying any report
- 10 required under part XIII of chapter 11, with the
- 11 intent to circumvent the law or deceive the
- 12 campaign spending commission; or
- 13 (B) Violating section 11-352 or 11-353; or
- 14 (15) The defendant holds a commercial driver's license and
- 15 has been charged with violating a traffic control law,
- 16 other than a parking law, in connection with the
- 17 operation of any type of motor vehicle."

18 SECTION 4. This Act does not affect rights and duties that  
 19 matured, penalties that were incurred, and proceedings that were  
 20 begun before its effective date.

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

3 SECTION 6. This Act shall take effect on July 1, 3000;  
4 provided that:

- 5 (1) The amendments made to section 291E-61, Hawaii Revised  
6 Statutes, by section 2 of this Act shall not be  
7 repealed when that section is reenacted on June 30,  
8 2028, pursuant to Act 196, Session Laws of Hawaii  
9 2021, as amended by Act 94, Session Laws of Hawaii  
10 2022, as amended by Act 148, Session Laws of Hawaii  
11 2023; and
- 12 (2) The amendments made to section 853-4(a), Hawaii  
13 Revised Statutes, by section 3 of this Act shall not  
14 be repealed when that section is reenacted on June 30,  
15 2026, 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. Effective 7/1/3000. (HD1)

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

