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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  
 4           guilty for persons convicted of operating a vehicle  
 5           under the 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 more  
20 than thirty days of imprisonment, of which



1                   at least forty-eight hours shall be served  
2                   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 of at least  
20 thirty-six hours, including education



- 1                   counseling, or other comparable programs as
- 2                   deemed 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) [~~to~~] 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 guilty for persons convicted of operating a vehicle under the influence of an intoxicant. (SD1)

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

