
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)

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