

**ACT 171**

H.B. NO. 3377

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. Numerous steps have been taken by the legislature over the past 25 years to address the toll exacted from our community by those who operate a motor vehicle under the influence of alcohol or drugs, or both. These include providing increased criminal penalties, from larger fines and longer license suspensions and prison terms to forfeiture of the motor vehicle involved in the crime. New criminal offenses have been created, from causing death with a motor vehicle while under the

influence of alcohol or drugs to habitually driving under the influence. Administrative license revocation has been enacted to quickly revoke the driver's license while the courts determine what penalties are appropriate. Special attention has been given to repeat offenders, offenders who are highly intoxicated, youthful offenders, and those who drive under the influence with a child in the vehicle.

The legislature also finds that, while gains have been made in reducing both driving under the influence arrests and the total number of alcohol-related fatalities, today's offender is more likely to have a highly elevated alcohol concentration and, as a whole, Hawaii's rate of alcohol-related fatalities remains unacceptably high. At the same time, people whose licenses have been revoked still need to get to work, to transport their families, and to fulfill other obligations, and there often is no efficient alternative to driving. Just as there is no single cause of this problem, there is no single solution, and Hawaii needs another tool to address it. Hawaii needs a tool to stop people from drinking, then driving, and from driving, then drinking.

The purpose of this Act is to implement use of an ignition interlock device to prevent drivers previously arrested for driving under the influence from starting or operating a motor vehicle with more than a minimal alcohol concentration while their case is pending or while their license is revoked. Rather than prohibiting driving and taking custody of the motor vehicle registration, number plates, or even the car itself, this Act requires installation of an ignition interlock device shortly after arrest so that the person can drive, but is prevented from drinking and driving, during the pendency of the case and the revocation period thereafter. Thus, the requirement of installation of an ignition interlock device would replace the provisions to take custody of the motor vehicle registration and number plates and to issue conditional license permits.

This Act also provides for an extended period of probation supervision of the driver while using the ignition interlock device so that the person cannot drink and drive during that period. Attempts to do so will be recorded and reported for appropriate action, including extension of the period of required ignition interlock device use and other sanctions. Most importantly, probation supervision, using test results and other information generated by the device, can be an important bridge to getting the driver into treatment so that, once the device is removed, the driver possesses the tools to refrain from drinking and driving altogether. Recognizing the need to resolve a number of outstanding issues in the transition to requiring installation of ignition interlock devices, this Act establishes a task force to study these issues and make recommendations for implementation of the use of the ignition interlock device, which would take effect July 1, 2010.

SECTION 2. Chapter 291E, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

**“§291E-A Ignition interlock special fund; surcharge; indigents.** (a) There is established in the state treasury a special fund to be known as the ignition interlock special fund to be administered by the director of transportation. The fund shall consist of amounts collected under this section and section 291E-B. Moneys in the fund shall be expended by the director of transportation to fund the cost of installing and operating ignition interlock devices in the vehicles of persons who are required to install the device but who are indigent persons, as determined under subsection (d).

(b) Every person who installs an ignition interlock device pursuant to this chapter shall pay the ignition interlock device vendor a surcharge of \$ \_\_\_\_\_ when the device is installed. The surcharge shall be remitted by the ignition interlock device vendor to the director of transportation within ten days following the end of the month in which the surcharge was collected. The surcharges collected by the vendor pursuant to this subsection shall not be subject to any tax, fee, or other assessment,

nor are they considered revenue of the vendor. The director of transportation shall deposit the surcharge amounts into the ignition interlock special fund.

(c) The cost of installing and operating ignition interlock devices required by this chapter or chapter 804 for indigent persons shall be paid by the director of transportation from the ignition interlock special fund. Whether a person is an indigent person shall be determined pursuant to subsection (d) by the director or the court, as appropriate.

(d) For purposes of this section, "indigent person" means:

- (1) Any individual whose income is not greater than one hundred twenty-five per cent of the official poverty line established by the Secretary of Health and Human Services under the Community Services Block Grant Act, 42 United States Code Section 9902; or
- (2) Any individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act.

**§291E-B Certification.** (a) The director of transportation shall establish and administer a statewide program relating to certification and monitoring of ignition interlock devices installed pursuant to chapter 291E or 804 and the vendors who install and maintain them.

(b) The program shall include standards and procedures for the certification of ignition interlock devices installed pursuant to chapter 291E or 804. At a minimum, the standards shall require that the devices:

- (1) Be certified by a nationally recognized certification organization to meet or exceed all standards and specifications provided as guidelines by the National Highway Traffic Safety Administration. "Nationally recognized certification organization" means a testing laboratory or analytical chemist not affiliated with a manufacturer of ignition interlock devices that is qualified to test ignition interlock devices or reference samples and is approved by the United States Department of Transportation. The nationally recognized certification organization must be able to administer performance tests of an ignition interlock device or a sample provided by the vendor;
- (2) Operate using an alcohol-specific sensor technology;
- (3) Employ a digital camera by which a photograph of the person using the device can be incorporated into the electronic record generated by each use of the device;
- (4) Require a rolling retest by which the driver must, within a specified period of time or distance driven after starting the vehicle, be retested and found to have an alcohol concentration of less than .02, with a margin of error of .01; and
- (5) Generate a record of vehicle usage, including dates, times, and distances driven.

(c) The program shall include standards and procedures for the certification for vendors who install and maintain ignition interlock devices pursuant to chapter 291E or 804. At a minimum, the standards shall require that vendors:

- (1) Install only an ignition interlock device that is certified pursuant to this section;
- (2) Offer or contract for ignition interlock device installation and maintenance statewide;
- (3) Train drivers who are required to install an ignition interlock device, pursuant to chapter 291E or 804, in how to use the device;
- (4) Schedule the driver for all necessary readings and maintenance of the device; and
- (5) Provide periodic reports regarding the use of each ignition interlock device installed pursuant to chapter 291E or 804, including incidents

of test failure, attempts to circumvent the device, and dates, times, and distances the vehicle was driven.

(d) Each vendor who sells or installs an ignition interlock device pursuant to chapter 291E or 804 shall be certified annually by the director of transportation pursuant to this section and the rules adopted thereunder. The vendor shall pay a certification fee to the director of transportation who shall deposit the fee into the ignition interlock special fund established pursuant to section 291E-A.

(e) The director of transportation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 3. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§291E-C Ignition interlock permits; driving for employment.**

- (a)(1) Except as provided in paragraph (2), upon proof that the respondent has installed an ignition interlock device in the respondent’s vehicle, the director shall issue an ignition interlock permit that will allow the respondent to drive a vehicle equipped with an ignition interlock device during the revocation period; or
- (2) Notwithstanding any other law to the contrary, the director shall not issue an ignition interlock permit to:
  - (A) A respondent whose license is expired, suspended, or revoked as a result of action other than the instant revocation; or
  - (B) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver’s license under section 286-239(b) unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b).
- (b)(1) The director may issue a separate permit authorizing a respondent to operate a vehicle owned by the respondent’s employer during the period of revocation without installation of an ignition interlock device if the respondent is gainfully employed in a position that requires driving and the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.
- (2) A request made pursuant to paragraph (1) shall be accompanied by:
  - (A) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and
  - (B) A sworn statement from the respondent’s employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle and hours of the day the respondent will drive, not to exceed twelve hours per day, for purposes of employment.
- (c) A permit issued pursuant to subsection (b) shall include restrictions allowing the respondent to drive:
  - (1) Only during specified hours of employment, not to exceed twelve hours per day, and only for activities solely within the scope of the employment;
  - (2) Only the vehicle specified; and
  - (3) Only if the permit is kept in the respondent’s possession while operating the employer’s vehicle.

In addition, the director may impose other appropriate restrictions.”

SECTION 4. Section 291E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Ignition interlock device” means a device certified by the director of transportation and approved for use pursuant to section 291E-B and rules adopted thereunder that, when affixed to the ignition system of a motor vehicle, prevents the vehicle from being started without first testing, and thereafter from being operated without periodically retesting, a deep-lung breath sample of the person required to use the device that indicates the person’s alcohol concentration is less than .02.”

SECTION 5. Section 291E-34, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

(h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The effective date of the administrative revocation;
- (2) The duration of the administrative revocation;
- ~~(3) If applicable, the date by which any outstanding motor vehicle number plates issued to the respondent must be surrendered to the director;~~
- ~~(4) If applicable, that failure to surrender any motor vehicle number plates as required is a misdemeanor;~~
- (5) (3) Other conditions that may be imposed by law[;], including the use of an ignition interlock device; and
- ~~(6) (4) The right to obtain judicial review.”~~

SECTION 6. Section 291E-41, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-41 Effective date, conditions, and period of administrative revocation; criteria.** (a) Unless an administrative revocation is reversed or the temporary permit~~[,] and temporary motor vehicle registration and temporary number plates if applicable, are]~~ is extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section 291E-44, no license and privilege to operate a vehicle~~[,] nor motor vehicle registration and number plates if applicable,]~~ shall be restored under any circumstances~~[,] and no conditional license permit shall be issued]~~ during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) Except as provided in paragraph (6) and in section 291E-44, the respondent shall keep an ignition interlock device installed and operating on any vehicle the respondent operates during the revocation period. Except as provided in section 291E-A, installation and maintenance of the ignition interlock device shall be at the respondent’s own expense. The periods of administrative revocation with respect to a license and privilege to operate a vehicle~~[,] and motor vehicle registration if applicable,]~~ that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year revocation of license and privilege to operate a vehicle, if the respondent’s record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) For a respondent who is a highly intoxicated driver, if the respondent’s record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued, a minimum of six months up to a maxi-

imum of one year revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the highly intoxicated driver; provided that the highly intoxicated driver shall not qualify for a conditional license permit under section 291E-44];~~

- (3) A minimum of one year up to a maximum of two years revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent]~~, if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (4) A minimum of two years up to a maximum of four years revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent]~~, if the respondent's record shows two prior alcohol enforcement contacts or drug enforcement contacts during the ~~[seven]~~ five years preceding the date the notice of administrative revocation was issued;
- (5) ~~[Lifetime]~~ A minimum of five years up to a maximum of ten years revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent]~~, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ~~[ten]~~ five years preceding the date the notice of administrative revocation was issued; or
- (6) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle ~~[either for the period remaining until the respondent's eighteenth birthday or, if applicable,]~~ for the appropriate revocation period provided in paragraphs (1) to (5) or in subsection ~~[(d); whichever is longer and such respondents shall not qualify for a conditional permit;]~~ (c); provided that the respondent shall be prohibited from driving during the period preceding the respondent's eighteenth birthday and shall thereafter be subject to the ignition interlock requirement of this subsection for the balance of the revocation period;

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later.

~~[(e) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the respondent.]~~

~~(d)]~~ (c) If a respondent has refused to be tested after being informed:

- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and
- (2) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

the revocation imposed under subsection (b)(1), (3), (4), and (5) shall be for a period of one year, two years, four years, and ~~[a lifetime;]~~ ten years, respectively.

~~[(e) In addition to subsection (d), any motor vehicle registration of a respondent who is a repeat intoxicated driver and who refused to be tested after being informed:~~

- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and

- (2) ~~Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,~~

shall be revoked for the periods specified in subsection (d), and the respondent shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.

(f) (d) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director shall so order. All costs for assessment and treatment shall be paid by the respondent.

~~(g)~~ (e) Alcohol and drug enforcement contacts that occurred prior to January 1, 2002, shall be counted in determining the administrative revocation period.

~~(h)~~ (f) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1)."

SECTION 7. Section 291E-44, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

**"§291E-44 Conditional license and ignition interlock permits.**

- (a) (1) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue either a conditional license permit ~~[that will]~~ pursuant to this section or an ignition interlock permit pursuant to section 291E-C. If the director issues a conditional license permit pursuant to this section, the permit shall allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period; provided that one or more of the following conditions are met:
- (A) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
- (B) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41; or
- (2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:
- (A) A respondent whose license, during the conditional license permit period, is expired, suspended, or revoked as a result of action other than the instant revocation for which the respondent is requesting a conditional license permit under this section;
- (B) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable;
- (C) A respondent who is a highly intoxicated driver; and
- (D) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b) unless the conditional license permit is restricted to a category 1, 2, or 3 license under section 286-102(b)."

SECTION 8. Section 291E-61, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-61 Operating a vehicle under the influence of an intoxicant. (a)** A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person’s normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person’s ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or
- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

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

- (1) Except as provided in ~~[[paragraph]]~~ paragraphs (2)[:] and (5), for the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a)[:], and notwithstanding section 706-623, by probation for not less than one year nor more than two years on the following conditions:
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) (i) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; or
    - (ii) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (2) For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a)[:], and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions:



- (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) ~~[Prompt suspension of a license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;]~~ A two-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (3) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a)~~[by:]~~, and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions:
- (A) ~~[Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;]~~ A two-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (4) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a)~~[:]~~, and notwithstanding section 706-623, by probation for not less than three years nor more than five years on the following conditions:
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) ~~[Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;]~~ Three-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - ~~[(E) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection; and]~~

- (5) [Any] In addition to a sentence imposed under paragraphs (1) through (4), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; 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), (3), or (4). Notwithstanding paragraph (1), the probation period for a person sentenced under this paragraph shall be not less than two years.

(c) Notwithstanding any other law to the contrary, the court shall not issue an ignition interlock permit to:

- (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense; or
- (2) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).

(d) The court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer during the period of revocation without installation of an ignition interlock device if the defendant is gainfully employed in a position that requires driving and the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.

(e) A request made pursuant to subsection (d) shall be accompanied by:

- (1) A sworn statement from the defendant containing facts establishing that the defendant currently is employed in a position that requires driving and that the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and
- (2) A sworn statement from the defendant's employer establishing that the employer will, in fact, discharge the defendant if the defendant is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle and hours of the day, not to exceed twelve hours per day, the defendant will drive for purposes of employment.

(f) A permit issued pursuant to subsection (d) shall include restrictions allowing the defendant to drive:

- (1) Only during specified hours of employment, not to exceed twelve hours per day, and only for activities solely within the scope of the employment;
- (2) Only the vehicle specified; and
- (3) Only if the permit is kept in the defendant's possession while operating the employer's vehicle.

[(e)] (g) Notwithstanding any other law to the contrary, any:

- (1) Conviction under this section, section 291E-4(a), or section 291E-61.5;
- (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or
- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5;

shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo

contendere, or an adjudication, in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this section.

~~[(d)]~~ (h) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(i) Upon proof that the defendant has installed an ignition interlock device in the defendant's vehicle pursuant to subsection (b), the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the revocation period.

~~[(e)]~~ (j) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

~~[(f)]~~ (k) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test. Except as provided in section 291E-A, installation and maintenance of the ignition interlock device required by subsection (b) shall be at the defendant's own expense.

~~[(g)]~~ (l) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

~~[(h)]~~ (m) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2."

SECTION 9. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to this section or to part III or section 291E-61 or 291E-61.5, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

- (1) In violation of any restrictions placed on the person's license; ~~[(e)]~~
- (2) While the person's license or privilege to operate a vehicle remains suspended or revoked[-];
- (3) Without installing an ignition interlock device required by this chapter;  
or
- (4) After disabling or circumventing an ignition interlock device required by this chapter."

SECTION 10. Section 804-7.1, Hawaii Revised Statutes, is amended to read as follows:

**“§804-7.1 Conditions of release on bail, recognizance, or supervised release.** (a) Upon a showing that there exists a danger that the defendant will commit a serious crime or will seek to intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judicial officer named in section 804-5 may deny the defendant’s release on bail, recognizance, or supervised release.

(b) Upon the defendant’s release on bail, recognizance, or supervised release, however, the court may enter an order:

- (1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant’s counsel;
- (2) Prohibiting the defendant from going to certain described geographical areas or premises;
- (3) Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors [ ]or[ ] certain drugs;
- (4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an educational or vocational institution;
- (6) Requiring the defendant to comply with a specified curfew;
- (7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;
- (8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;
- (9) Requiring the defendant to satisfy any other condition reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person or community; or
- (10) Imposing any combination of conditions listed above.

The judicial officer may revoke a defendant’s bail upon proof that the defendant has breached any of the conditions imposed.

(c) In addition to the conditions in subsection (b) and except as provided in subsection (d), when the defendant is charged with an offense under section 291E-61, except an offense for which the defendant would be sentenced pursuant to section 291E-61(b)(1), the court shall order as a condition of release on bail, recognizance, or supervised release that, within fifteen days, the defendant install an ignition interlock device, as defined in section 291E-1, on any vehicle that the defendant will operate during the defendant’s release on bail, recognizance, or supervised release. Upon proof that the defendant has installed an ignition interlock device in the defendant’s vehicle, the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the period of the defendant’s release on bail, recognizance, or supervised release.

(d) Notwithstanding any other law to the contrary, the court shall not issue an ignition interlock permit to:

- (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense; or

(2) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).

(e) The court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer while released or bail as provided in section 291E-61.

(f) Except as provided in section 291E-A, installation and maintenance of the ignition interlock device required by subsection (c) shall be at the defendant's own expense."

SECTION 11. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

when: **“§853-4 Chapter not applicable; when.** This chapter shall not apply

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
  - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
  - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
  - (A) Escape in the first degree;
  - (B) Escape in the second degree;
  - (C) Promoting prison contraband in the first degree;
  - (D) Promoting prison contraband in the second degree;
  - (E) Bail jumping in the first degree;

- (F) Bail jumping in the second degree;
  - (G) Bribery;
  - (H) Bribery of a witness;
  - (I) Intimidating a witness;
  - (J) Bribery of or by a juror;
  - (K) Intimidating a juror;
  - (L) Jury tampering;
  - (M) Promoting prostitution in the first degree;
  - (N) Promoting prostitution in the second degree;
  - (O) Promoting prostitution in the third degree;
  - (P) Abuse of family or household members;
  - (Q) Sexual assault in the second degree;
  - (R) Sexual assault in the third degree;
  - (S) A violation of an order issued pursuant to chapter 586;
  - (T) Promoting child abuse in the second degree;
  - (U) Promoting child abuse in the third degree;
  - (V) Electronic enticement of a child in the first degree; [øf]
  - (W) Electronic enticement of a child in the second degree; or
  - (X) An offense under part IV, chapter 291E;
- (14) The defendant has been charged with:
- (A) Knowingly or intentionally falsifying any report required under chapter 11, subpart B of part XII, with the intent to circumvent the law or deceive the campaign spending commission; or
  - (B) Violating section 11-201 or 11-202; or
- (15) The defendant holds a commercial driver’s license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle.
- The court may adopt by rule other criteria in this area.”

SECTION 12. (a) There is established the Hawaii ignition interlock implementation task force. The task force shall be comprised of the following:

- (1) Two members of the senate, appointed by the president of the senate;
- (2) Two members of the house of representatives, appointed by the speaker of the house of representatives;
- (3) Two members appointed by the chief justice of the Hawaii supreme court; provided that one member shall be a district court judge and one shall be a representative of the administrative driver’s license revocation office;
- (4) The director of transportation;
- (5) The director of health;
- (6) The attorney general;
- (7) The state public defender;
- (8) The chiefs of police of the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu;
- (9) The prosecuting attorneys of the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu;
- (10) The examiners of drivers of the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu;
- (11) The executive director and a member of the Council of Mothers Against Drunk Driving, Hawaii Chapter;
- (12) A representative, to be appointed by the governor, of an ignition interlock device vendor operating in at least one other state that sells and installs an ignition interlock device that meets or exceeds any applicable standards of the National Highway Traffic Safety Administration; and

- (13) A member of the Hawaii Association of Criminal Defense Lawyers, appointed by its president.
  - (b) The members of the task force shall select the chairperson of the task force and shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties. Members of the task force may designate a representative for the purpose of attendance at task force meetings.
    - (c) The task force shall:
      - (1) Meet as necessary to plan for the implementation of this Act, including the preparation of reports and proposed legislation;
      - (2) Address the following issues:
        - (A) Whether an alternative to the ignition interlock device requirement of this Act should be offered to those offenders who drive a vehicle, such as a motorcycle, for which the device might not be available, or who claim not to have a car or not to wish to drive, including use of a secure continuous remote alcohol monitor, or whether a person should be required to pay the same fees as a person who has the device installed, as a means of reducing the incentive to drive a vehicle without an ignition interlock device;
        - (B) Whether additional or different criteria for determining indigency are appropriate;
        - (C) Whether drivers under the age of eighteen should be subject to the ignition interlock device requirement of this Act;
        - (D) Whether and how a new license with a photograph, instead of an ignition interlock permit issued by the court or the director of the administrative driver's license revocation office, should be issued and whether it should contain a statement, appearing similar to that required by section 286-109(a)(3), Hawaii Revised Statutes, that the person is permitted to drive only a vehicle equipped with an ignition interlock device;
        - (E) Whether provision should be made for an "emergency override" so that the driver can start and operate the vehicle with, for example, an alcohol concentration of .04 because of a medical emergency or a mechanical failure and, if so, how an override should be documented, including, for example, with a 911 telephone call or a police report;
        - (F) What agency is best suited to receive reports generated by the vendor from the ignition interlock device, to monitor use of the device by individual drivers, and what resources will be required to make that monitoring effective;
        - (G) How the data produced by an ignition interlock device, including information on drinking and driving patterns, can best be used to facilitate effective alcohol treatment for the person so that the person is less likely to resume drinking and driving once the ignition interlock device is removed;
        - (H) Whether drivers sentenced to probation should be assessed a probation fee to help fund additional personnel necessary to monitor the use of the ignition interlock device;
        - (I) Whether drivers should be allowed to terminate probation early if they have complied with all ignition interlock device requirements for a specified period of time, number of vehicle starts, or number of miles driven;
        - (J) What sanctions should be imposed for failing the ignition interlock device test, including, for example, revocation of probation

or extension of the probation period and the period of required ignition interlock device use;

- (K) What sanctions should be imposed for failing to install an ignition interlock device as a condition of bail, including, for example, surrender of motor vehicle license plates or revocation of and commitment without bail;
  - (L) Whether additional legislation or other action is necessary to ensure that the periods during, and conditions under, which use of an ignition interlock device is ordered pursuant to chapters 291E and 804, Hawaii Revised Statutes, are consistent with each other and with this Act;
  - (M) Whether the exemption from the financial responsibility requirement afforded by sections 291E-41 and 291E-61, Hawaii Revised Statutes, is still desirable or necessary;
  - (N) Under what circumstances, including the number of test failures and the relative elevation of blood concentrations, the driver should face revocation of probation and what sanctions are appropriate, including resentencing to an additional period of ignition interlock device use;
  - (O) Whether judicial supervision of ignition interlock device use, and of driving under the influence offenders generally, should take place in the context of a "DUI Court" modeled along the lines of drug court programs now in successful use;
  - (P) Whether the State should, through a request for proposals or similar approach, select a single vendor to provide uniform, statewide ignition interlock program services with fees set by the State or whether multiple vendors should be encouraged to enter and compete in the marketplace;
  - (Q) Whether use of an ignition interlock device and issuance of an ignition interlock permit or license should be made retroactive such that, when the ignition interlock device requirements of this Act take effect, persons whose licenses have been suspended or revoked, pursuant to chapter 291E, Hawaii Revised Statutes, prior to this Act's effective date may apply to use the device and receive an ignition interlock permit or license;
  - (R) Whether conforming statutory amendments are necessary to make this Act and existing law consistent with each other; and
  - (S) Any other issues pertinent to the implementation of this Act;
- (3) Identify the resources necessary for the State to implement and maximize benefits from use of the ignition interlock device;
  - (4) Identify all sources of funding, including federal grants and legislative appropriations, available to implement use of the ignition interlock device; and
  - (5) Draft additional proposed legislation necessary to implement use of the ignition interlock device.
- (d) The department of transportation shall provide the administrative, technical, and clerical support services necessary to assist the task force in achieving its purpose as required under this Act.
- (e) The task force shall submit a report of its initial findings and recommendations for implementation of the use of the ignition interlock device, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2009.



(f) The task force shall submit a final plan for implementation of the use of the ignition interlock device, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2010.

(g) The Hawaii ignition interlock implementation task force shall cease to exist after June 30, 2010.

SECTION 13. There is appropriated out of the driver education and training special fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2008-2009 to be deposited into the state highway fund for the purpose of supporting the work of the ignition interlock implementation task force.

SECTION 14. There is appropriated out of the state highway fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the purpose of supporting the work of the ignition interlock implementation task force.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

## PART II.

SECTION 15. Section 287-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a driver’s license has been suspended or revoked:

(1) Pursuant to section 291E-65 or part III of chapter 291E, except as provided in section 291E-41(f);

(2) Upon a conviction of any offense pursuant to law; or

(3) In the case of minors, pursuant to part V of chapter 571,

the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility; provided that this section shall not apply to a license suspended pursuant to section 291E-61(b)(1) or (b)(2) or section 291E-64(b)(1), any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid motor vehicle insurance policy.

This subsection shall not apply to a suspension or revocation of a provisional license under section 286-102.6(d).”

SECTION 16. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1) [–] or (b)(2).”

## PART III.

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

SECTION 18. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

## **ACT 171**

SECTION 20. This Act shall take effect on July 1, 2008; provided that sections 2 through 11 shall take effect on July 1, 2010; provided further that sections 15 and 16 shall be repealed on June 30, 2010.

(Approved June 13, 2008.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.