

**ACT 166**

S.B. NO. 2897

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. The legislature finds that Act 171, Session Laws of Hawaii 2008, established an ignition interlock program. The purpose of the program is

to require drivers whose licenses have been administratively revoked for, or who have been convicted of, operating a vehicle under the influence of an intoxicant to install an ignition interlock device on their vehicles. The device will prevent these drivers from starting or operating their vehicles when the driver has more than a minimal alcohol concentration.

Act 171 also provided for the probationary supervision of drivers convicted of operating a vehicle under the influence of an intoxicant, stating:

“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 extensions 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.”

Act 171 established the Hawaii ignition interlock implementation task force to study the issues surrounding implementation of the program and to make recommendations to address them. The Hawaii ignition interlock implementation task force met numerous times in committees and as a whole, had comprehensive discussions on a multitude of issues relating to the implementation of the ignition interlock program, and made recommendations for statutory amendments necessary to implement the program.

The Hawaii ignition interlock implementation task force had multiple discussions about probation supervision of convicted offenders. These discussions resulted in a recommendation to the legislature in 2009 that only second and third offenders be supervised using a probationary model. The task force concluded that these repeat offenders pose the greatest risk to themselves and to the community because they have not shown themselves amenable to changing their behavior, despite intervention following their first offense. This recommendation was adopted by the legislature in Act 88, Session Laws of Hawaii 2009.

The legislature also finds, and the Hawaii ignition interlock implementation task force recognizes, that since the time Acts 171 and 88 established a probationary model of supervision for convicted second and third offenders, the State’s economy has taken a significant downturn. While the Hawaii ignition interlock implementation task force still prefers the probationary model of supervision for convicted second and third time offenders, the task force also recognizes that the availability of resources necessary for implementation of the probationary model on January 1, 2011, is very uncertain, at best.

Accordingly, the Hawaii ignition interlock implementation task force amended its previous recommendation to the legislature and proposed instead that probation be eliminated for convicted second and third offenders and that an existing practice, known as “proof of compliance,” which is less intensive—and less expensive—be used for all convicted offenders. The Hawaii ignition interlock implementation task force recommended that when the State’s fiscal outlook improves, the issue of probation for convicted second and third offenders be revisited and implemented.

The purpose of this Act is to make amendments to the State’s ignition interlock law recommended by the Hawaii ignition interlock implementation task force pursuant to Act 171, Session Laws of Hawaii 2008.

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

**“§291E-A Circumvention of, or tampering with, an ignition interlock device by a person who has been restricted to operating a vehicle equipped with an ignition interlock device; penalties.** (a) No person whose driving privileges have been restricted to operating a vehicle equipped with an ignition interlock device shall knowingly:

- (1) Request, solicit, direct, or authorize another person to blow into an ignition interlock device or start a vehicle equipped with the device for the purpose of providing an operable vehicle to a person who has been restricted by law to operating only a vehicle so equipped; or
  - (2) Tamper with an ignition interlock device with the intent to render it inaccurate or inoperable.
- (b) Any person required under subsection (a) to drive using an ignition interlock device, who violates subsection (a) shall be sentenced without possibility of probation or suspension of sentence as follows:
- (1) For a first offense, or any offense not preceded within a five-year period by conviction under this section or section 291E-62(a)(3):
    - (A) A term of imprisonment of not less than three consecutive days but not more than thirty days;
    - (B) A fine of not less than \$250 but not more than \$1,000; and
    - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device;
  - (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-62(a)(3):
    - (A) Thirty days imprisonment;
    - (B) A \$1,000 fine; and
    - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device; and
  - (3) For an offense that occurs within five years of two or more prior convictions for offenses under this section or section 291E-62(a)(3), or any combination thereof:
    - (A) One year imprisonment;
    - (B) A \$2,000 fine; and
    - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device.

**§291E-B Assisting or abetting the circumvention of, or tampering with, an ignition interlock device; penalties.** (a) No person shall knowingly:

- (1) Blow into or start a vehicle equipped with an ignition interlock device for the purposes of providing an operable vehicle to another person who has been restricted by law to operating only a vehicle equipped with an ignition interlock device;
- (2) Tamper with an ignition interlock device with the intent to render it inaccurate or inoperable to permit another person, who has been restricted by law to operating only a vehicle equipped with an ignition interlock device, to operate the vehicle; or
- (3) Rent, lease, or lend a vehicle to another person who has been restricted by law to operating only vehicles equipped with an ignition interlock device, when the rented, leased, or loaned vehicle is not equipped with a functioning certified ignition interlock device.

(b) Subsection (a) shall not apply to any act taken for the purpose of safety or mechanical repair of the device; provided that the person who is restricted to operating a vehicle equipped with the interlock device does not operate the vehicle.

(c) Any person who violates this section shall be:

- (1) Fined not more than \$1,000 or imprisoned not more than thirty days, or both, for any offense that does not occur within five years of two prior convictions for this offense; and
- (2) Fined not less than \$500 but not more than \$1,000 or imprisoned not more than one year, or both, if the person has two or more prior convictions for the offense in the preceding five-year period.

**§291E-C Refusal to submit to a breath, blood, or urine test; penalty.** Refusal to submit to a breath, blood, or urine test as required by part II is a petty misdemeanor.”

SECTION 3. Section 286-133, Hawaii Revised Statutes, is amended to read as follows:

“**§286-133 Unlawful to permit unauthorized person to drive.** ~~[No]~~ Except as provided in section 291E-B, no person shall authorize or knowingly permit a motor vehicle or moped owned by that person or under that person’s control to be driven upon any highway by any person who is not authorized under law to drive the motor vehicle or moped.”

SECTION 4. 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]~~, except where the conduct giving rise to the instant offense is also a violation of part III of chapter 291E and a requirement to furnish and maintain proof of financial responsibility has already been imposed pursuant to that part; 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 or revoked pursuant to section 291E-61(b)(1) or 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 5. Section 291E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Valid license” means a license that:

- (1) Is issued by an authorized licensing official in any state;
- (2) Authorizes an individual to operate a motor vehicle on public streets, roads, or highways; and

(3) Has not expired or been revoked, suspended, or canceled."

2. By amending the definition of "ignition interlock device" to read:

"Ignition interlock device" means a breath alcohol ignition interlock device that is certified [by the director of transportation and approved for use] pursuant to section 291E-6 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."

3. By repealing the definition of "highly intoxicated driver":

[~~"Highly intoxicated driver" means a person whose measurable amount of alcohol is 0.15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood, or 0.15 or more grams of alcohol per two hundred ten liters of the person's breath."~~]

SECTION 6. Section 291E-3, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-3 Evidence of intoxication.** (a) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5 or in any proceeding under part III:

- (1) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood;
- (2) .08 or more grams of alcohol per two hundred ten liters of the person's breath; or
- (3) The presence of one or more drugs in an amount sufficient to impair the person's ability to operate a vehicle in a careful and prudent manner,

within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was under the influence of an intoxicant at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5, the amount of alcohol found in the defendant's blood or breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall be competent evidence concerning whether the defendant was under the influence of an intoxicant at the time of the alleged violation and shall give rise to the following presumptions:

- (1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 or less grams of alcohol per two hundred ten liters of defendant's breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and
- (2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 grams of alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

[~~(c) In any criminal prosecution for a violation of section 291E-61 or in any proceeding under part III:~~

- (1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood; or
- (2) .15 or more grams of alcohol per two hundred ten liters of the person's breath;

within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was a highly intoxicated driver at the time of the alleged violation.

(d) (c) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291E-61 or 291E-61.5 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence."

SECTION 7. Section 291E-5, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-5 Ignition interlock [special fund; surcharge; indigents.] user affordability.** (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-6. 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 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.~~

~~(e) The director of transportation shall adopt rules pursuant to chapter 91 for the purposes of this section.] The director of transportation shall contract with the selected ignition interlock vendor to provide partial financial relief for the installation and the periodic calibration charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance~~

Program, or free services under the Older Americans Act or Developmentally Disabled Assistance and Bill of Rights Act.”

SECTION 8. Section 291E-6, Hawaii Revised Statutes, is amended to read as follows:

“§291E-6 **Ignition interlock devices; 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 and shall select a single vendor to install and maintain them.

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

- (1) Be certified by ~~[a nationally recognized certification organization]~~ an independent laboratory to meet or exceed ~~[all standards and specifications provided as]~~ the guidelines published 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~~[-]~~ and times~~[-]~~ and distances driven.

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

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

(d) The vendor selected for installation and maintenance of ignition interlock devices pursuant to chapter 291E shall be ~~[certified]~~ audited 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 transpor-~~

tation who shall deposit the fee into the ignition interlock special fund established pursuant to section 291E-5.] The director may require the vendor to pay for all or part of the costs incurred in conducting the audit.

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

SECTION 9. Section 291E-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

- (1) The maximum of which may be \$10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense;
- (2) The maximum of which may be \$25 if the violation is an offense under ~~[[section]]~~ 291E-61(a)(1), 291E-61(a)(3), or 291E-61(a)(4);
- (3) The maximum of which may be \$50 if the violation is an offense under ~~[[section]]~~ 291E-61(a)(2) or 291E-61.5 or ~~[the offense under [section] 291E-61(a)(3) or 291E-61(a)(4) was committed by a highly intoxicated driver as defined by section 291E-1, or]~~ if the offense under ~~[[section]]~~ 291E-61(a)(3) or 291E-61(a)(4) is a second or subsequent offense that occurred within five years of the first offense.”

SECTION 10. Section 291E-15, Hawaii Revised Statutes, is amended to read as follows:

“**§291E-15 Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings.** If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section 291E-21. Upon the law enforcement officer’s determination that the person under arrest has refused to submit to a breath, blood, or urine test, if applicable, then a law enforcement officer shall:

- (1) Inform the person under arrest of the sanctions under section 291E-41, ~~291E-C,~~ or 291E-65; and
  - (2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, thereby subjecting the person to the procedures and sanctions under part III or section 291E-65, as applicable;
- provided that if the law enforcement officer fails to comply with paragraphs (1) and (2), the person shall not be subject to the refusal sanctions under part III or IV.”

SECTION 11. Section 291E-31, Hawaii Revised Statutes, is amended to read as follows:

“**§291E-31 Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

- (1) Establishes that the respondent’s license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated:
  - (A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense;
  - (B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or



- (C) Such later date as is established by the director under section 291E-38,  
if the director administratively revokes the respondent's license and privilege;
- (2) Establishes that the registration of any motor vehicle registered to a respondent who is a repeat intoxicated driver [~~or a highly intoxicated driver~~] shall be terminated thirty days after the date of an arrest pursuant to section 291E-33(c);
  - (3) Establishes the date on which administrative revocation proceedings against the respondent were initiated; ~~and~~
  - (4) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section 291E-33[-]; ~~and~~
  - (5) Notifies the respondent that the respondent shall keep an ignition interlock device installed and operating in any vehicle the respondent operates during the revocation period if the respondent had a valid license at the time of the arrest.

SECTION 12. Section 291E-33, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whenever a respondent under this section is a repeat intoxicated driver [~~or highly intoxicated driver~~], the arresting law enforcement officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the respondent is registered to the respondent, remove the number plates and issue a temporary motor vehicle registration and temporary number plates for the motor vehicle. No temporary motor vehicle registration or temporary number plates shall be issued if the respondent's registration has expired or been revoked. The applicable police department, upon determining that the respondent is a repeat intoxicated driver [~~or highly intoxicated driver~~], shall notify the [~~appropriate county~~] director of [~~finance~~] the appropriate county agency to enter a stopper on the motor vehicle registration files to prevent the respondent from conducting any motor vehicle transactions, except as permitted under this part.”

SECTION 13. Section 291E-34, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (e) to read:

“(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, are administratively revoked after the review, a 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 reasons why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, were administratively revoked;
- (2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;
- (3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence:
  - (A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and

- (B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;
- (4) The procedure to request an administrative hearing;
- (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
- (6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;
- (7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section 291E-38(k), the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;
- (8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated;
- (9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for an assessment of the respondent's substance abuse or dependence and the need for treatment; ~~and~~
- (10) That, pursuant to section 291E-48, the director may grant a special motor vehicle registration to a qualified household member or to a co-owner of any motor vehicle owned by the respondent, upon a determination that the person is completely dependent on the motor vehicle for the necessities of life; provided that the special motor vehicle registration shall not be valid for use by the respondent[-]; and
- (11) That the respondent shall obtain an ignition interlock permit in order to operate a vehicle during the revocation period if the respondent had a valid license at the time of the arrest."

2. By amending subsection (h) to read:

"(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;
- [3] (5) Other conditions that may be imposed by law, including the use of an ignition interlock device; and
- [4] (6) The right to obtain judicial review."

SECTION 14. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

“(1) The director may grant a special motor vehicle registration, pursuant to section 291E-48, to a qualified household member or a co-owner of any motor vehicle upon determination that ~~the~~:

- (1) The person is completely dependent on the motor vehicle for the necessities of life[-]; and
- (2) At the time of the application for a special motor vehicle registration, the respondent does not have a valid ignition interlock permit.

The special motor vehicle registration shall not be valid for use by the respondent.”

SECTION 15. 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 ~~is~~, and temporary motor vehicle registration and temporary number plates, if applicable, are 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,]~~ 291E-44.5, no license and privilege to operate a vehicle shall be restored under any circumstances 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 (5) and in section 291E-44.5, the respondent shall keep an ignition interlock device installed and operating ~~on~~ in any vehicle the respondent operates during the revocation period. Except as provided in section 291E-5, 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 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) An eighteen month 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;
- (3) A two-year 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 five years preceding the date the notice of administrative revocation was issued;
- (4) 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, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ~~five~~ ten years preceding the date the notice of administrative revocation was issued; ~~or~~

- (5) 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 for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection [(e)]; (d); 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; or
- (6) For respondents, other than those excepted pursuant to section 491E-44.5(b)<sup>1</sup>, who do not install an ignition interlock device in [~~the respondent's vehicle~~] any vehicle the respondent operates during the revocation period, revocation of license and privilege to operate a vehicle for the period of revocation provided in paragraphs (1) to (5) or in subsection (c); provided that:
  - (A) The respondent shall be absolutely prohibited from driving during the revocation period and subject to the penalties provided by section 291E-62 if the respondent drives during the revocation period; and
  - (B) The director shall not issue an ignition interlock permit to the respondent pursuant to section 291E-44.5;

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.

(c) 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.

- [(e)] (d) 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), (2), (3), or (4) shall be for a period of two years, three years, four years, and ten years, respectively.

[(e)] (e) 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.

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

[(f)] (g) 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 16. Section 291E-44.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(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; [ø]
- (B) A respondent who does not hold a valid license at the time of arrest for the violation of section 291E-61; or
- [ø] (C) 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] Except as provided in subsection (a)(2), 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."

SECTION 17. Section 291E-45, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) To be eligible for reregistration of a motor vehicle, if applicable, after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director;
- (2) Obtain a certified statement from the director indicating eligibility for registration of a motor vehicle;
- (3) Present the certified statement to the [~~appropriate county~~] director of [~~finance~~] the appropriate county agency; and
- (4) Successfully complete each requirement, as provided in chapter 286, for obtaining a new certificate of registration for a motor vehicle in this State, including payment of all applicable fees."

SECTION 18. Section 291E-48, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section 291E-38(j), a qualified household member or co-owner of a motor vehicle with a respondent who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor vehicle registration. The

director may grant the request upon determining that the following conditions have been met:

- (1) The applicant is a household member of the respondent's or a co-owner of the vehicle;
- (2) The applicant has a license that has not expired or been suspended or revoked;
- (3) The applicant is completely dependent on the motor vehicle for the necessities of life; ~~and~~
- (4) The director finds that the applicant will take reasonable precautions to ensure that the respondent will not drive the vehicle~~[-]; and~~
- (5) The respondent does not have a valid ignition interlock permit.

A person to whom a special motor vehicle registration has been granted shall apply to the ~~[appropriate county]~~ director of ~~[finance]~~ the appropriate county agency for special series number plates, as provided in section 249-9.4."

SECTION 19. 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 without possibility of probation or suspension of sentence as follows:

- (1) 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):
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) 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;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) ~~[May be charged a]~~ A surcharge, if the court so orders, of up to \$25 to be deposited into the trauma system special fund ~~[if the court so orders];~~

- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a)[, and notwithstanding section 706-623, by probation for not less than eighteen months nor more than two years on the following conditions]:
- (A) Revocation for not less than eighteen months nor more than two years of license and privilege to operate a vehicle during the [probation] revocation period and installation during the [probation] 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 ~~more~~ less than five days but not more than thirty 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;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) ~~[May be charged a]~~ A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund ~~[if the court so orders]~~;
- (3) 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 two years on the following conditions]:
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation for two years of license and privilege to operate a vehicle during the [probation] revocation period and installation during the [probation] revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) ~~[Up to five]~~ 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) ~~[May be charged a]~~ A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund ~~[if the court so orders]~~;
- (4) In addition to a sentence imposed under paragraphs (1) through (3), 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), (2), or (3), as applicable. Notwithstanding [paragraph] paragraphs (1) and (2), the [probation] revocation period for a person sentenced under this paragraph shall be not less than two years; and
- (5) If the person demonstrates to the court that the person:
- (A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the [probation] revocation period; or

(B) Is otherwise unable to drive during the [~~probation~~] revocation period,

the person shall be absolutely prohibited from driving during the period of [~~probation~~] applicable revocation provided in paragraphs (1) to (4); provided that the court shall not issue an ignition interlock permit pursuant to subsection (i) and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the [~~probation~~] applicable revocation period.

(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 does not hold a valid license at the time of the instant offense; or
- [~~2~~] (3) 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), unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b).

(d) [~~The~~] Except as provided in subsection (c), 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.

(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. There shall be no requirement for the installation of an ignition interlock device pursuant to this section if the requirement has previously been imposed pursuant to part III for the same act; provided that, if the requirement is subsequently reversed, a requirement for the installation of an ignition interlock device shall be imposed as provided in this section.

(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~~]:

- (1) Installed an ignition interlock device in [the defendant's] any vehicle the defendant operates pursuant to subsection (b)[;] and
- (2) Obtained motor vehicle insurance or self-insurance that complies with the requirements under either section 431:10C-104 or section 431:10C-105.

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.

(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.

(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-5, installation and maintenance of the ignition interlock device required by subsection (b) shall be at the defendant's own expense.

~~[(h) 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).]~~

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

SECTION 20. Section 291E-62, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-62 Operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant; penalties.** (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;
- (2) While the person’s license or privilege to operate a vehicle remains suspended or revoked; or
- (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.~~

(b) Any person convicted of violating this section shall be sentenced as follows[;] without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a five-year period by conviction for an offense under this section, section 291E-A, or ~~[under]~~ section 291-4.5 as that section was in effect on December 31, 2001:
  - (A) A term of imprisonment of not less than three consecutive days but not more than thirty days;
  - (B) A fine of not less than \$250 but not more than \$1,000; ~~[and]~~
  - (C) Revocation of license and privilege to operate a vehicle for an additional year; and
  - (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section, section 291E-A, or ~~[under]~~ section 291-4.5 as that section was in effect on December 31, 2001:
  - (A) Thirty days imprisonment;
  - (B) A \$1,000 fine; ~~[and]~~
  - (C) Revocation of license and privilege to operate a vehicle for an additional two years; and
  - (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable; and
- (3) For an offense that occurs within five years of two or more prior convictions for offenses under this section, section 291E-A, or ~~[under]~~ section 291-4.5 as that section was in effect on December 31, 2001[;], or any combination thereof:
  - (A) One year imprisonment;
  - (B) A \$2,000 fine; ~~[and]~~
  - (C) Permanent revocation of the person’s license and privilege to operate a vehicle[;]; and
  - (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable.

~~[The period of revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.]~~

(c) The applicable period of revocation in subsection (b) shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.”

SECTION 21. Section 706-623, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

- (a) Ten years upon conviction of a class A felony;
- (b) Five years upon conviction of a class B or class C felony;
- (c) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, or 709-906, the court may sentence the defendant to a period of probation not exceeding two years; or
- (d) ~~Except as provided in paragraph (e), six~~ Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause; ~~or~~
- (e) ~~Eighteen months to two years upon conviction under section 291E-61(b)(2), and two years upon a conviction under section 291E-61(b)(3).~~

The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to granting early discharge, the court shall afford the prosecuting attorney an opportunity to be heard. The terms of probation provided in this part, other than in this section, shall not apply to sentences of probation imposed under section 706-606.3.”

SECTION 22. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

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

- (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; or
    - (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 23. In codifying the new sections added by section 2 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 24. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 25. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 26. This Act shall take effect on January 1, 2011 and the provisions of this Act shall be incorporated with the provisions of sections 2 through 11 of Act 88, Session Laws of Hawaii 2009.

(Approved June 14, 2010.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.