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# A BILL FOR AN ACT

RELATING TO PROBATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 291E-61, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

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

7           (1) For the first offense, or any offense not preceded  
8 within a five-year period by a conviction for an  
9 offense under this section or section 291E-4(a):

10           (A) A fourteen-hour minimum substance abuse  
11 rehabilitation program, including education and  
12 counseling, or other comparable program deemed  
13 appropriate by the court;

14           (B) One-year revocation of license and privilege to  
15 operate a vehicle during the revocation period  
16 and installation during the revocation period of  
17 an ignition interlock device on any vehicle  
18 operated by the person;



- 1 (C) Any one or more of the following:
  - 2 (i) Seventy-two hours of community service work;
  - 3 (ii) Not less than forty-eight hours and not more
  - 4 than five days of imprisonment; [~~e~~]
  - 5 (iii) A fine of not less than \$150 but not more
  - 6 than \$1,000; or
  - 7 (iv) Notwithstanding section 706-623, by
  - 8 probation for not less than one year nor
  - 9 more than two years;
- 10 (D) A surcharge of \$25 to be deposited into the
- 11 neurotrauma special fund; and
- 12 (E) A surcharge, if the court so orders, of up to \$25
- 13 to be deposited into the trauma system special
- 14 fund;
- 15 (2) For an offense that occurs within five years of a
- 16 prior conviction for an offense under this section or
- 17 section 291E-4(a):
  - 18 (A) Revocation for not less than eighteen months nor
  - 19 more than two years of license and privilege to
  - 20 operate a vehicle during the revocation period
  - 21 and installation during the revocation period of



- 1           an ignition interlock device on any vehicle
- 2           operated by the person;
- 3           (B) ~~[Either one]~~ Any one or more of the following:
- 4               (i) Not less than two hundred forty hours of
- 5               community service work; ~~[or]~~
- 6               (ii) Not less than five days but not more than
- 7               thirty days of imprisonment, of which at
- 8               least forty-eight hours shall be served
- 9               consecutively; or
- 10            (iii) Notwithstanding section 706-623, by
- 11               probation for not less than one year nor
- 12               more than two years;
- 13            (C) A fine of not less than \$500 but not more than
- 14               \$1,500;
- 15            (D) A surcharge of \$25 to be deposited into the
- 16               neurotrauma special fund; and
- 17            (E) A surcharge of up to \$50 if the court so orders,
- 18               to be deposited into the trauma system special
- 19               fund;



- 1           (3) For an offense that occurs within five years of two  
2           prior convictions for offenses under this section or  
3           section 291E-4(a):
- 4           (A) A fine of not less than \$500 but not more than  
5           \$2,500;
- 6           (B) Revocation for two years of license and privilege  
7           to operate a vehicle during the revocation period  
8           and installation during the revocation period of  
9           an ignition interlock device on any vehicle  
10          operated by the person;
- 11          (C) Not less than ten days but not more than thirty  
12          days imprisonment, of which at least forty-eight  
13          hours shall be served consecutively;
- 14          (D) A surcharge of \$25 to be deposited into the  
15          neurotrauma special fund; [~~and~~]
- 16          (E) A surcharge of up to \$50 if the court so orders,  
17          to be deposited into the trauma system special  
18          fund; and
- 19          (F) Notwithstanding section 706-623, by probation for  
20          not less than two years nor more than three  
21          years;



- 1           (4) In addition to a sentence imposed under paragraphs (1)  
2           through (3), any person eighteen years of age or older  
3           who is convicted under this section and who operated a  
4           vehicle with a passenger, in or on the vehicle, who  
5           was younger than fifteen years of age, shall be  
6           sentenced to an additional mandatory fine of \$500 and  
7           an additional mandatory term of imprisonment of forty-  
8           eight hours; provided that the total term of  
9           imprisonment for a person convicted under this  
10          paragraph shall not exceed the maximum term of  
11          imprisonment provided in paragraph (1), (2), or (3),  
12          as applicable. Notwithstanding paragraphs (1) and  
13          (2), the revocation period for a person sentenced  
14          under this paragraph shall be not less than two  
15          years[+]. Further, notwithstanding paragraph (1), the  
16          probation period for a person sentenced under this  
17          paragraph shall be not less than two years; and  
18          (5) If the person demonstrates to the court that the  
19          person:



1 (A) Does not own or have the use of a vehicle in  
 2 which the person can install an ignition  
 3 interlock device during the revocation period; or  
 4 (B) Is otherwise unable to drive during the  
 5 revocation period,  
 6 the person shall be absolutely prohibited from driving during  
 7 the period of applicable revocation provided in paragraphs (1)  
 8 to (4); provided that the court shall not issue an ignition  
 9 interlock permit pursuant to subsection (i) and the person shall  
 10 be subject to the penalties provided by section 291E-62 if the  
 11 person drives during the applicable revocation period."

12 SECTION 2. Section 291E-62, Hawaii Revised Statutes, is  
 13 amended by amending subsection (b) to read as follows:

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

17 (1) For a first offense, or any offense not preceded  
 18 within a five-year period by conviction for an offense  
 19 under this section, section 291E-66, or section  
 20 291-4.5 as that section was in effect on December 31,  
 21 2001[+], and notwithstanding section 706-623, by



1 probation for not less than one year nor more than two  
2 years on the following conditions:

3 (A) A term of imprisonment of not less than three  
4 consecutive days but not more than thirty days;

5 (B) A fine of not less than \$250 but not more than  
6 \$1,000;

7 (C) Revocation of license and privilege to operate a  
8 vehicle for an additional year; and

9 (D) Loss of the privilege to operate a vehicle  
10 equipped with an ignition interlock device, if  
11 applicable;

12 (2) For an offense that occurs within five years of a  
13 prior conviction for an offense under this section,  
14 section 291E-66, or section 291-4.5 as that section  
15 was in effect on December 31, 2001[+], and  
16 notwithstanding section 706-623, by probation for not  
17 less than two years nor more than four years on the  
18 following conditions:

19 (A) Thirty days imprisonment;

20 (B) A \$1,000 fine;



1 (C) Revocation of license and privilege to operate a  
2 vehicle for an additional two years; and

3 (D) Loss of the privilege to operate a vehicle  
4 equipped with an ignition interlock device, if  
5 applicable; and

6 (3) For an offense that occurs within five years of two or  
7 more prior convictions for offenses under this  
8 section, section 291E-66, or section 291-4.5 as that  
9 section was in effect on December 31, 2001, or any  
10 combination thereof[+], and notwithstanding section  
11 706-623, by probation for not less than three years  
12 nor more than five years on the following conditions:

13 (A) One year imprisonment;

14 (B) A \$2,000 fine;

15 (C) Permanent revocation of the person's license and  
16 privilege to operate a vehicle; and

17 (D) Loss of the privilege to operate a vehicle  
18 equipped with an ignition interlock device, if  
19 applicable."

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





- 1           "(a) This chapter shall not apply when:
- 2           (1) The offense charged involves the intentional, knowing,
- 3           reckless, or negligent killing of another person;
- 4           (2) The offense charged is:
- 5           (A) A felony that involves the intentional, knowing,
- 6           or reckless bodily injury, substantial bodily
- 7           injury, or serious bodily injury of another
- 8           person; or
- 9           (B) A misdemeanor or petty misdemeanor that carries a
- 10           mandatory minimum sentence and that involves the
- 11           intentional, knowing, or reckless bodily injury,
- 12           substantial bodily injury, or serious bodily
- 13           injury of another person;
- 14           (3) The offense charged involves a conspiracy or
- 15           solicitation to intentionally, knowingly, or
- 16           recklessly kill another person or to cause serious
- 17           bodily injury to another person;
- 18           (4) The offense charged is a class A felony;
- 19           (5) The offense charged is nonprobationable;
- 20           (6) The defendant has been convicted of any offense
- 21           defined as a felony by the Hawaii Penal Code or has



1           been convicted for any conduct that if perpetrated in  
2           this State would be punishable as a felony;

3           (7) The defendant is found to be a law violator or  
4           delinquent child for the commission of any offense  
5           defined as a felony by the Hawaii Penal Code or for  
6           any conduct that if perpetrated in this State would  
7           constitute a felony;

8           (8) The defendant has a prior conviction for a felony  
9           committed in any state, federal, or foreign  
10          jurisdiction;

11          (9) A firearm was used in the commission of the offense  
12          charged;

13          (10) The defendant is charged with the distribution of a  
14          dangerous, harmful, or detrimental drug to a minor;

15          (11) The defendant has been charged with a felony offense  
16          and has been previously granted deferred acceptance of  
17          guilty plea status for a prior offense, regardless of  
18          whether the period of deferral has already expired;

19          (12) The defendant has been charged with a misdemeanor  
20          offense and has been previously granted deferred  
21          acceptance of guilty plea status for a prior felony,



- 1           misdemeanor, or petty misdemeanor for which the period  
2           of deferral has not yet expired;
- 3       (13) The offense charged is:
- 4           (A) Escape in the first degree;
- 5           (B) Escape in the second degree;
- 6           (C) Promoting prison contraband in the first degree;
- 7           (D) Promoting prison contraband in the second degree;
- 8           (E) Bail jumping in the first degree;
- 9           (F) Bail jumping in the second degree;
- 10          (G) Bribery;
- 11          (H) Bribery of or by a witness;
- 12          (I) Intimidating a witness;
- 13          (J) Bribery of or by a juror;
- 14          (K) Intimidating a juror;
- 15          (L) Jury tampering;
- 16          (M) Promoting prostitution in the second degree;
- 17          (N) Abuse of family or household member;
- 18          (O) Sexual assault in the second degree;
- 19          (P) Sexual assault in the third degree;
- 20          (Q) A violation of an order issued pursuant to  
21             chapter 586;



- 1 (R) Promoting child abuse in the second degree;
- 2 (S) Promoting child abuse in the third degree;
- 3 (T) Electronic enticement of a child in the first
- 4 degree;
- 5 (U) Electronic enticement of a child in the second
- 6 degree;
- 7 (V) Prostitution pursuant to section 712-1200(1)(b);
- 8 (W) Street solicitation of prostitution under section
- 9 712-1207(1)(b);
- 10 (X) Solicitation of prostitution near schools or
- 11 public parks under section 712-1209;
- 12 (Y) Habitual solicitation of prostitution under
- 13 section 712-1209.5; [~~or~~]
- 14 (Z) Solicitation of a minor for prostitution under
- 15 section 712-1209.1; or
- 16 (AA) An offense under part IV, chapter 291E;

- 17 (14) The defendant has been charged with:
- 18 (A) Knowingly or intentionally falsifying any report
- 19 required under chapter 11, part XIII with the
- 20 intent to circumvent the law or deceive the
- 21 campaign spending commission; or



1 (B) Violating section 11-352 or 11-353; or  
2 (15) The defendant holds a commercial driver's license and  
3 has been charged with violating a traffic control law,  
4 other than a parking law, in connection with the  
5 operation of any type of motor vehicle."

6 SECTION 4. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 5. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Operating a Vehicle; Probation

**Description:**

Provides for a period of probation for any person convicted of the offense of operating a vehicle under the influence of an intoxicant. Mandates a period of probation for any person convicted of operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant. (SD1)

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