
A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Section 291C-105, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§291C-105 Excessive speeding. (a) No person shall drive
4 a motor vehicle at a speed exceeding:

5 (1) The applicable state or county speed limit by thirty
6 miles per hour or more; or

7 (2) Eighty miles per hour or more irrespective of the
8 applicable state or county speed limit.

9 (b) For the purposes of this section, "the applicable
10 state or county speed limit" means:

11 (1) The maximum speed limit established by county
12 ordinance;

13 (2) The maximum speed limit established by official signs
14 placed by the director of transportation on highways
15 under the director's jurisdiction; or

16 (3) The maximum speed limit established pursuant to
17 section 291C-104 by the director of transportation or



1 the counties for school zones and construction areas
2 in their respective jurisdictions.

3 (c) Any person who violates this section shall be guilty
4 of a petty misdemeanor and shall be sentenced as follows without
5 the possibility of probation or suspension of sentence:

6 (1) For a first offense not preceded by a prior conviction
7 for an offense under this section in the preceding
8 five years:

9 (A) A fine of not less than \$500 and not more than
10 \$1,000;

11 (B) Thirty-day prompt suspension of license and
12 privilege to operate a vehicle during the
13 suspension period, or the court may impose, in
14 lieu of the thirty-day prompt suspension of
15 license, a minimum fifteen-day prompt suspension
16 of license with absolute prohibition from
17 operating a vehicle and, for the remainder of the
18 thirty-day period, a restriction on the license
19 that allows the person to drive for limited
20 work-related purposes;

21 (C) Attendance in a course of instruction in driver
22 retraining;



- 1 (D) A surcharge of \$25 to be deposited into the
- 2 neurotrauma special fund;
- 3 (E) An assessment for driver education pursuant to
- 4 section 286G-3; and
- 5 (F) Either one of the following:
 - 6 (i) Thirty-six hours of community service work;
 - 7 or
 - 8 (ii) Not less than forty-eight hours and not more
 - 9 than five days of imprisonment;
- 10 (2) For an offense that occurs within five years of a
- 11 prior conviction for an offense under this section,
- 12 by:
 - 13 (A) A fine of not less than \$750 and not more than
 - 14 \$1,000;
 - 15 (B) Prompt suspension of license and privilege to
 - 16 operate a vehicle for a period of thirty days
 - 17 with an absolute prohibition from operating a
 - 18 vehicle during the suspension period;
 - 19 (C) Attendance in a course of instruction in driver
 - 20 retraining;
 - 21 (D) A surcharge of \$25 to be deposited into the
 - 22 neurotrauma special fund;



- 1 (E) An assessment for driver education pursuant to
2 section 286G-3; and
- 3 (F) Either one of the following:
- 4 (i) Not less than one hundred twenty hours of
5 community service work; or
- 6 (ii) Not less than five days but not more than
7 fourteen days of imprisonment of which at
8 least forty-eight hours shall be served
9 consecutively; and
- 10 (3) For an offense that occurs within five years of two
11 prior convictions for offenses under this section, by:
- 12 (A) A fine of \$1,000;
- 13 (B) Revocation of license and privilege to operate a
14 vehicle for a period of not less than ninety days
15 but not more than one year;
- 16 (C) Attendance in a course of instruction in driver
17 retraining;
- 18 (D) No fewer than ten days but no more than thirty
19 days of imprisonment of which at least
20 forty-eight hours shall be served consecutively;
- 21 (E) A surcharge of \$25 to be deposited into the
22 neurotrauma special fund; and



1 (F) An assessment for driver education pursuant to
2 section 286G-3.

3 (d) The requirement to provide proof of financial
4 responsibility pursuant to section 287-20 shall not be based
5 upon a sentence imposed under subsection (c)(1)."

6 SECTION 2. Section 338-18, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) The department shall not permit inspection of public
9 health statistics records, or issue a certified copy of any such
10 record or part thereof, unless it is satisfied that the
11 applicant has a direct and tangible interest in the record. The
12 following persons shall be considered to have a direct and
13 tangible interest in a public health statistics record:

- 14 (1) The registrant;
15 (2) The spouse of the registrant;
16 (3) A parent of the registrant;
17 (4) A descendant of the registrant;
18 (5) A person having a common ancestor with the registrant;
19 (6) A legal guardian of the registrant;
20 (7) A person or agency acting on behalf of the registrant;
21 (8) A personal representative of the registrant's estate;



- 1 (9) A person whose right to inspect or obtain a certified
2 copy of the record is established by an order of a
3 court of competent jurisdiction;
- 4 (10) Adoptive parents who have filed a petition for
5 adoption and who need to determine the death of one or
6 more of the prospective adopted child's natural or
7 legal parents;
- 8 (11) A person who needs to determine the marital status of
9 a former spouse in order to determine the payment of
10 alimony;
- 11 (12) A person who needs to determine the death of a
12 nonrelated co-owner of property purchased under a
13 joint tenancy agreement; [~~and~~]
- 14 (13) A person who needs a death certificate for the
15 determination of payments under a credit insurance
16 policy[-]; and
- 17 (14) A law enforcement officer, as defined by section 710-
18 1000(13), who needs a birth or death certificate as
19 evidence in a sexual assault or homicide
20 investigation; provided that the law enforcement
21 officer requests the records by providing
22 identification and submitting to the department a



1 signed statement verifying, under penalty of criminal
2 prosecution for false swearing in official matters
3 that:

4 (A) The officer is a law enforcement officer as
5 defined by section 710-1000(13);

6 (B) The officer, acting in the officer's official
7 capacity, is investigating a sexual assault or a
8 homicide; and

9 (C) The birth certificate, in the case of a sexual
10 assault investigation, or the death certificate,
11 in the case of a homicide investigation, is
12 needed as evidence."

13 SECTION 3. Section 707-702, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§707-702 **Manslaughter.** (1) A person commits the offense
16 of manslaughter if:

17 (a) The person recklessly causes the death of another
18 person; or

19 (b) The person intentionally causes another person to
20 commit suicide.

21 (2) In a prosecution for murder or attempted murder in the
22 first and second degrees it is an affirmative defense, which



1 reduces the offense to manslaughter or attempted manslaughter,
2 that the defendant was, at the time the defendant caused the
3 death of the other person, under the influence of extreme mental
4 or emotional disturbance for which there is a reasonable
5 explanation. The reasonableness of the explanation shall be
6 determined from the viewpoint of a reasonable person in the
7 circumstances as the defendant believed them to be.

8 (3) Notwithstanding section 705-500, in a prosecution for
9 attempted murder in the first and second degrees it is a
10 defense, which reduces the offense to attempted manslaughter,
11 that the defendant, with intent to do serious bodily injury to
12 another person, engaged in a course of conduct in reckless
13 disregard of a substantial risk of killing the other person.

14 [~~3~~] (4) Manslaughter is a class A felony. "

15 SECTION 4. Section 708-831, Hawaii Revised Statutes, is
16 amended by amending subsection (1) to read as follows:

17 "(1) A person commits the offense of theft in the second
18 degree if the person commits theft:

19 (a) Of property from the person of another;

20 (b) Of property or services the value of which exceeds

21 [~~\$300,~~] \$1,000;



- 1 (c) Of an aquacultural product or part thereof from
2 premises that is fenced or enclosed in a manner
3 designed to exclude intruders or there is prominently
4 displayed on the premises a sign or signs sufficient
5 to give notice and reading as follows: "Private
6 Property"; or
- 7 (d) Of agricultural equipment, supplies, or products, or
8 part thereof, the value of which exceeds \$100 but does
9 not exceed \$20,000, or of agricultural products that
10 exceed twenty-five pounds, from premises that are
11 fenced, enclosed, or secured in a manner designed to
12 exclude intruders or there is prominently displayed on
13 the premises a sign or signs sufficient to give notice
14 and reading as follows: "Private Property". The sign
15 or signs, containing letters not less than two inches
16 in height, shall be placed along the boundary line of
17 the land in a manner and in such position as to be
18 clearly noticeable from outside the boundary line.
19 Possession of agricultural products without ownership
20 and movement certificates, when a certificate is
21 required pursuant to chapter 145, is prima facie
22 evidence that the products are or have been stolen."



1 SECTION 5. Section 708-841, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of robbery in the second
4 degree if, in the course of committing theft or non-consensual
5 taking of a motor vehicle:

6 (a) The person uses force against the person of anyone
7 present with the intent to overcome that person's
8 physical resistance or physical power of resistance;
9 provided that use of force in the flight after the
10 attempt or commission of a theft that constitutes
11 shoplifting as defined in section 708-830(8) shall not
12 constitute an offense under this section;

13 (b) The person threatens the imminent use of force against
14 the person of anyone who is present with intent to
15 compel acquiescence to the taking of or escaping with
16 the property; or

17 (c) The person recklessly inflicts serious bodily injury
18 upon another."

19 SECTION 6. Section 802E-2, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+] §802E-2 [+] Court advisement concerning alien status
22 required. Prior to [acceptance] entry of a plea of guilty or



1 nolo contendere to any offense punishable as a crime under state
2 law, except offenses designated as infractions under state law,
3 the court shall ~~[administer the following advisement on the~~
4 ~~record to the defendant: If you are]~~ address the defendant
5 personally in open court and determine that the defendant
6 understands that if the defendant is not a citizen of the United
7 States, [you are hereby advised that conviction of the offense
8 for which you have been charged] a conviction or a plea of
9 guilty or no contest, whether acceptance of the plea is deferred
10 or not, may have the consequences of deportation, exclusion from
11 admission to the United States, or denial of naturalization
12 pursuant to the laws of the United States. Upon request, the
13 court shall allow the defendant additional time to consider the
14 appropriateness of the plea in light of the advisement as
15 described in this section."

16 SECTION 7. Section 806-83, Hawaii Revised Statutes, is
17 amended by amending subsection (a), as effective on July 1,
18 2008, to read as follows:

19 "(a) Criminal charges may be instituted by written
20 information for a felony when the charge is a class C felony
21 under section 19-3.5 (voter fraud); section 128D-10 (knowing
22 releases); section 132D-14(a)(1), (2)(A), and (3) (penalties for



1 failure to comply with requirements of sections 132D-7, 132D-10,
2 and 132D-16); section 134-24 (place to keep unloaded firearms
3 other than pistols and revolvers); section 134-7(a) and (b)
4 (ownership or possession prohibited); section 134-8 (prohibited
5 ownership); section 134-9 (licenses to carry); section 134-17(a)
6 (relating to false information or evidence concerning
7 psychiatric or criminal history); section 134-51 (deadly
8 weapons); section 134-52 (switchblade knives); section 134-53
9 (butterfly knives); section 188-23 (possession or use of
10 explosives, electrofishing devices, and poisonous substances in
11 state waters prohibited); section 231-34 (attempt to evade or
12 defeat tax); section 231-36 (false and fraudulent statements);
13 section 245-37 (sale or purchase of packages of cigarettes
14 without stamps); section 245-38 (vending unstamped cigarettes);
15 section 245-51 (sale of export cigarettes prohibited); section
16 245-52 (alteration of packaging prohibited); section 291C-12.5
17 (accidents involving substantial bodily injury); section
18 291E-61.5 (habitually operating a vehicle under the influence of
19 an intoxicant); section 329-41 (prohibited acts B); section
20 329-42 (prohibited acts C); section 329-43.5 (prohibited acts
21 related to drug paraphernalia); section 329C-2 (manufacture,
22 distribution, or possession with intent to distribute an



1 imitation controlled substance to a person under eighteen years
2 of age); section 346-34(d)(2) and (e) (fraud involving food
3 stamps or coupons with a value exceeding \$300); section 346-43.5
4 (medical assistance fraud); section 383-141 (falsely obtaining
5 benefits); section 431:10C-307.7 (insurance fraud); section
6 482D-7 (violation of fineness standards and stamping
7 requirements); section 485A-301 (registration of securities);
8 section 485A-401 (registration of broker-dealers); section
9 485A-402 (registration of agents); section 485A-403
10 (registration of investment advisors); section 485A-404
11 (registration of investment advisor representatives); section
12 485A-405 (registration of federal covered investment advisors);
13 section 485A-501 (general fraud); section 485A-502 (prohibited
14 conduct in providing investment advice); section 707-703
15 (negligent homicide in the second degree); section 707-705
16 (negligent injury in the first degree); section 707-711 (assault
17 in the second degree); section 707-713 (reckless endangering in
18 the first degree); section 707-721 (unlawful imprisonment in the
19 first degree); section 707-726 (custodial interference in the
20 first degree); section 707-757 (electronic enticement of a child
21 in the second degree); section 707-766 (extortion in the second
22 degree); section 708-811 (burglary in the second degree);



1 section 708-812.6 (unauthorized entry in a dwelling); section
2 708-821 (criminal property damage in the second degree); section
3 708-831 (theft in the second degree); section 708-833.5
4 (shoplifting); section 708-835.5 (theft of livestock); section
5 708-836 (unauthorized control of propelled vehicle); section
6 708-836.5 (unauthorized entry into motor vehicle); section
7 708-839.5 (theft of utility services); section 708-839.55
8 (unauthorized possession of confidential personal information);
9 section 708-839.8 (identity theft in the third degree); section
10 708-852 (forgery in the second degree); section 708-854
11 (criminal possession of a forgery device); section 708-858
12 (suppressing a testamentary or recordable instrument); section
13 708-875 (trademark counterfeiting); section 708-891.5 (computer
14 fraud in the second degree); section 708-892.5 (computer damage
15 in the second degree); section 708-895.6 (unauthorized computer
16 access in the second degree); section 708-8100 (fraudulent use
17 of a credit card); section 708-8102 (theft/forgery of credit
18 cards); section 708-8103 (credit card fraud by a provider of
19 goods or services); section 708-8104 (possession of unauthorized
20 credit card machinery or incomplete cards); section 708-8200
21 (cable television service fraud in the first degree); section
22 708-8202 (telecommunication service fraud in the first degree);



1 section 709-903.5 (endangering the welfare of a minor in the
2 first degree); section 709-906 (abuse of family or household
3 members); section 710-1016.3 (obtaining a government-issued
4 identification document under false pretenses in the first
5 degree); section 710-1016.6 (impersonating a law enforcement
6 officer in the first degree); section 710-1017.5 (sale or
7 manufacture of deceptive identification document); section
8 710-1018 (securing the proceeds of an offense); section 710-1021
9 (escape in the second degree); section 710-1023 (promoting
10 prison contraband in the second degree); section 710-1024 (bail
11 jumping in the first degree); section 710-1029 (hindering
12 prosecution in the first degree); section 710-1060 (perjury);
13 section 710-1072.5 (obstruction of justice); section 711-1103
14 (riot); section 711-1109.3 (cruelty to animals/fighting dogs);
15 section 711-1110.9 (violation of privacy in the first degree);
16 section 711-1112 (interference with the operator of a public
17 transit vehicle); section 712-1221 (promoting gambling in the
18 first degree); section 712-1222.5 (promoting gambling aboard
19 ships); section 712-1224 (possession of gambling records in the
20 first degree); section 712-1243 (promoting a dangerous drug in
21 the third degree); section 712-1246 (promoting a harmful drug in
22 the third degree); section 712-1247 (promoting a detrimental



1 drug in the first degree); section 712-1249.6 (promoting a
2 controlled substance in, on, or near schools or school
3 vehicles); section 803-42 (interception, access, and disclosure
4 of wire, oral, or electronic communications, use of pen
5 register, trap and trace device, and mobile tracking device
6 prohibited); section 844D-111 (refusal or failure to provide
7 specimen for forensic identification); or section [~~846E-9(b)~~].
8 846E-9 (failure to comply with covered offender registration
9 requirements)."

10 SECTION 8. Section 806-83, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Criminal charges may be instituted by written
13 information for a felony when the charge is a class B felony
14 under section 134-23 (place to keep loaded firearms other than
15 pistols and revolvers); section 134-25 (place to keep pistol or
16 revolver); section 134-26 (carrying or possessing a loaded
17 firearm on a public highway); section 134-7(b) (ownership or
18 possession prohibited); section 329-43.5 (prohibited acts
19 related to drug paraphernalia); section 708-810 (burglary in the
20 first degree); section 708-830 (theft in the first degree);
21 section 708-839.7 (identity theft in the second degree); section
22 708-851 (forgery in the first degree); section 708-891 (computer



1 fraud in the first degree); section 708-892 (computer damage in
2 the first degree); section 712-1240.8 (methamphetamine
3 trafficking in the second degree); section 712-1242 (promoting a
4 dangerous drug in the second degree); section 712-1245
5 (promoting a harmful drug in the second degree); or section 712-
6 1249.5 (commercial promotion of marijuana in the second
7 degree)."

8 SECTION 9. Section 844D-35, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The person shall have any required blood specimens[~~7~~
11 ~~samples, or print impressions~~] collected within twenty working
12 days of being notified by the court[~~7~~] or a law enforcement
13 agency or other entity authorized by the department. The buccal
14 swab samples or print impressions shall be collected from the
15 person at any time after the person is notified by the court or
16 a law enforcement agency or other entity authorized by the
17 department. The specimens, samples, or print impressions shall
18 be collected in accordance with section 844D-21 at a
19 correctional facility or a state, county, private, or other
20 facility designated for this collection."

21 SECTION 10. Section 844D-37, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) If the person is not confined, the blood specimens [~~7~~
2 ~~samples, or print impressions~~] required by this chapter shall be
3 provided within twenty working days after the person reports to
4 the supervising agent or within five calendar days of notice to
5 the person, whichever occurs first. The buccal swab samples or
6 print impressions required by this chapter shall be provided
7 after the person reports to the supervising agent or after the
8 person is notified of the samples and impressions required by
9 this chapter, whichever occurs first. The person shall report
10 to a correctional facility in the county where the person
11 resides or temporarily is located to have the specimens,
12 samples, or print impressions collected pursuant to this
13 chapter. The specimens, samples, or print impressions shall be
14 collected in accordance with this chapter."

15 SECTION 11. Section 844D-111, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§844D-111 Refusal or failure to provide specimen for**
18 **forensic identification.** (a) A person commits the offense of
19 refusal or failure to provide specimen for forensic
20 identification if the person is required by this chapter to
21 provide any blood specimens, buccal swab samples, or print
22 impressions and [~~intentionally or~~] knowingly or negligently



1 refuses or fails to provide any of the required blood specimens,
2 buccal swab samples, or print impressions after the person has
3 received written notice from the department, the department of
4 public safety, any law enforcement personnel, or an officer of
5 the court that the person is required to provide each and every
6 one of the blood specimens, buccal swab samples, and print
7 impressions required by this chapter.

8 (b) Any person who knowingly violates subsection (a) shall
9 be guilty of a class C felony.

10 [~~(b)~~] (c) Any person who negligently [~~or recklessly fails~~
11 ~~to comply with this section~~] violates subsection (a) shall be
12 guilty of a misdemeanor."

13 SECTION 12. This Act does not affect rights and duties
14 that matured, penalties that were incurred, and proceedings that
15 were begun, before its effective date; provided that section 1
16 of this Act shall apply to all sentencing proceedings pending on
17 or commenced after the effective date of this Act, whether the
18 offense was committed prior to, on, or after the effective date
19 of this Act; provided further that section 6 of this Act shall
20 apply only to pleas entered or accepted after the effective date
21 of this Act. Nothing in section 6 shall require the vacation of
22 judgment and withdrawal of the plea or constitute grounds for



1 finding a prior conviction invalid with respect to pleas entered
2 or accepted prior to the effective date of this Act.

3 SECTION 13. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 14. This Act shall take effect on July 1, 2112,
6 except that section 7 shall take effect on July 1, 2111.



Report Title:

Crimes; Criminal Procedure.

Description:

Exempts a first offense of excessive speeding from the requirement to post financial responsibility. Authorizes access to birth and death records by a law enforcement office for purposes of a sex assault or homicide investigation. Makes it a defense to the charge of attempted murder that reduces the offense to attempted manslaughter that the defendant acted with intent to cause serious bodily injury to another person in reckless disregard of the risk that the other person would be killed. Increases the value of services or property necessary to establish the offense of theft in the second degree from \$300 to \$1,000. Provides that the use of force in flight from the attempt or commission of a theft that constitutes shoplifting is not robbery. Clarifies the process by which a court advises a defendant pleading guilty or no contest of the immigration status consequences of the plea. Adds various offenses to the class of offenses that may be charged by information instead of indictment or complaint. Clarifies the process by which certain offenders must submit blood specimens fingerprints, and buccal swab samples for the purpose of forensic identification. Makes it a class C felony to knowingly refuse to give blood specimen, fingerprints, or buccal swab samples for forensic identification purposes. Effective 7/1/2112. (HB3041 HD1)

