

JAN 22 2010

A BILL FOR AN ACT

RELATING TO HOMICIDE.

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

PART I

1
2 SECTION 1. The legislature finds that pedestrian deaths
3 caused by negligent drivers are a longstanding problem on
4 Hawaii's roadways. Between 2001 and 2006, one hundred eighty-
5 one pedestrians died across the State, an average of over thirty
6 per year. Although pedestrian fatalities dropped to twenty-nine
7 in 2006 from thirty-six in 2005, Hawaii still ranked eleventh
8 nationally in pedestrian deaths and first in deaths among
9 pedestrians age sixty-five or older.

10 The legislature finds that penalties for bad drivers,
11 especially negligent ones who kill pedestrians, do not reflect
12 the seriousness of the problem for example, from 2003 to 2006,
13 sixteen defendants pleaded guilty or no contest to negligent
14 homicide in the third degree. Fourteen of those defendants, or
15 eighty-seven and one-half per cent, received no jail time as
16 part of their sentence. Of these fourteen defendants, all but
17 three were granted deferred acceptance of their guilty or nolo



1 contendere pleas. When a plea is deferred, the negligent
2 homicide charge is dismissed and the defendant is discharged if
3 the defendant is able to comply with the terms of probation-like
4 supervision for a period not to exceed a year. In these
5 situations, the defendant is not considered to have been
6 convicted. A defendant who has been discharged can later apply
7 to have the negligent homicide charge expunged from the
8 defendant's record.

9 The purpose of this Act is to protect the public by
10 disallowing the use of deferred acceptance of guilty pleas and
11 deferred acceptance of nolo contendere pleas in cases involving
12 negligent homicide, imposing mandatory minimum sentences of
13 imprisonment for all negligent homicide convictions involving
14 the death of a pedestrian, and ensuring that persons who
15 accumulate four or more moving violations within a seven-year
16 period will have their licenses revoked for a minimum of five
17 years and a maximum of ten years.

PART II

19 SECTION 2. Section 707-702.5, Hawaii Revised Statutes, is
20 amended by amending subsection (2) to read as follows:

21 "(2) Negligent homicide in the first degree is a class B
22 felony. When a person is convicted under this section for

1 causing the death of a pedestrian, the person shall be sentenced
2 to a mandatory minimum term of imprisonment of not less than
3 seven years without possibility of probation or suspension of
4 sentence."

5 SECTION 3. Section 707-703, Hawaii Revised Statutes, is
6 amended by amending subsection (2) to read as follows:

7 "(2) Negligent homicide in the second degree is a class C
8 felony. When a person is convicted under this section for
9 causing the death of a pedestrian, the person shall be sentenced
10 to a mandatory minimum term of imprisonment of not less than
11 without possibility of probation or suspension of
12 sentence."

13 SECTION 4. Section 707-704, Hawaii Revised Statutes, is
14 amended by amending subsection (3) to read as follows:

15 "(3) Negligent homicide in the third degree is a
16 misdemeanor. When a person is convicted under this section for
17 causing the death of a pedestrian, the person shall be sentenced
18 to a mandatory minimum term of imprisonment of not less than
19 without possibility of probation or suspension of
20 sentence."

21 SECTION 5. Section 853-4, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§853-4 Chapter not applicable; when. This chapter shall
2 not apply when:

3 (1) The offense charged involves the [~~intentional,~~
4 ~~knowing, reckless, or negligent~~] killing of another
5 person;

6 (2) The offense charged is:

7 (A) A felony that involves the intentional, knowing,
8 or reckless bodily injury, substantial bodily
9 injury, or serious bodily injury of another
10 person; or

11 (B) A misdemeanor or petty misdemeanor that carries a
12 mandatory minimum sentence and that involves the
13 intentional, knowing, or reckless bodily injury,
14 substantial bodily injury, or serious bodily
15 injury of another person;

16 (3) The offense charged involves a conspiracy or
17 solicitation to intentionally, knowingly, or
18 recklessly kill another person or to cause serious
19 bodily injury to another person;

20 (4) The offense charged is a class A felony;

21 (5) The offense charged is nonprobationable;



- 1 (6) The defendant has been convicted of any offense
2 defined as a felony by the Hawaii Penal Code or has
3 been convicted for any conduct that if perpetrated in
4 this State would be punishable as a felony;
- 5 (7) The defendant is found to be a law violator or
6 delinquent child for the commission of any offense
7 defined as a felony by the Hawaii Penal Code or for
8 any conduct that if perpetrated in this State would
9 constitute a felony;
- 10 (8) The defendant has a prior conviction for a felony
11 committed in any state, federal, or foreign
12 jurisdiction;
- 13 (9) A firearm was used in the commission of the offense
14 charged;
- 15 (10) The defendant is charged with the distribution of a
16 dangerous, harmful, or detrimental drug to a minor;
- 17 (11) The defendant has been charged with a felony offense
18 and has been previously granted deferred acceptance of
19 guilty plea status for a prior offense, regardless of
20 whether the period of deferral has already expired;
- 21 (12) The defendant has been charged with a misdemeanor
22 offense and has been previously granted deferred



1 acceptance of guilty plea status for a prior felony,
2 misdemeanor, or petty misdemeanor for which the period
3 of deferral has not yet expired;

4 (13) The offense charged is:

- 5 (A) Escape in the first degree;
- 6 (B) Escape in the second degree;
- 7 (C) Promoting prison contraband in the first degree;
- 8 (D) Promoting prison contraband in the second degree;
- 9 (E) Bail jumping in the first degree;
- 10 (F) Bail jumping in the second degree;
- 11 (G) Bribery;
- 12 (H) Bribery of a witness;
- 13 (I) Intimidating a witness;
- 14 (J) Bribery of or by a juror;
- 15 (K) Intimidating a juror;
- 16 (L) Jury tampering;
- 17 (M) Promoting prostitution in the first degree;
- 18 (N) Promoting prostitution in the second degree;
- 19 (O) Promoting prostitution in the third degree;
- 20 (P) Abuse of family or household members;
- 21 (Q) Sexual assault in the second degree;
- 22 (R) Sexual assault in the third degree;



- 1 (S) A violation of an order issued pursuant to
- 2 chapter 586;
- 3 (T) Promoting child abuse in the second degree;
- 4 (U) Promoting child abuse in the third degree;
- 5 (V) Electronic enticement of a child in the first
- 6 degree;
- 7 (W) Electronic enticement of a child in the second
- 8 degree; or
- 9 (X) An offense under part IV, chapter 291E;
- 10 (14) The defendant has been charged with:
 - 11 (A) Knowingly or intentionally falsifying any report
 - 12 required under chapter 11, subpart B of part XII,
 - 13 with the intent to circumvent the law or deceive
 - 14 the campaign spending commission; or
 - 15 (B) Violating section 11-201 or 11-202; or
- 16 (15) The defendant holds a commercial driver's license and
- 17 has been charged with violating a traffic control law,
- 18 other than a parking law, in connection with the
- 19 operation of any type of motor vehicle.

20 The court may adopt by rule other criteria in this area."

PART III

SECTION 6. Section 286-124, Hawaii Revised Statutes, is amended to read as follows:

"§286-124 **Mandatory revocation of license by a court.** (a)

Any court of competent jurisdiction shall forthwith revoke the license of any driver upon a conviction of the driver of manslaughter resulting from the operation of a motor vehicle.

(b) Any court of competent jurisdiction shall forthwith revoke, for a minimum of seven years and a maximum of ten years, the license of any driver if the court finds that the driver has committed four or more traffic infractions involving violations of statutes, ordinances, or rules relating to traffic movement and control, each arising out of separate incidents occurring within the preceding seven-year period. For the purposes of this subsection, multiple traffic infractions arising from the same course of conduct shall be considered a single traffic infraction."

SECTION 7. Section 291D-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The notice of traffic infraction shall include the following:

- 1 (1) A statement of the specific traffic infraction for
- 2 which the notice was issued;
- 3 (2) Except in the case of parking-related traffic
- 4 infractions, a brief statement of the facts;
- 5 (3) A statement of the total amount to be paid for each
- 6 traffic infraction, which amount shall include any
- 7 fee, surcharge, or cost required by statute,
- 8 ordinance, or rule, and any monetary assessment,
- 9 established for the particular traffic infraction
- 10 pursuant to section 291D-9, to be paid by the driver
- 11 or registered owner of the vehicle, which shall be
- 12 uniform throughout the State;
- 13 (4) A statement of the options provided in section 291D-
- 14 6(b) for answering the notice and the procedures
- 15 necessary to exercise the options;
- 16 (5) A statement that the person to whom the notice is
- 17 issued must answer, choosing one of the options
- 18 specified in section 291D-6(b), within twenty-one days
- 19 of issuance of the notice;
- 20 (6) A statement that, if the person:
- 21 (A) Admits a traffic infraction;



1 (B) Admits the traffic infraction but seeks to
2 explain mitigating circumstances; or

3 (C) Fails to answer a notice of traffic infraction;
4 when the traffic infraction involves a violation of
5 statutes, ordinances, or rules relating to traffic
6 movement and control and the person has committed four
7 or more traffic infractions involving violations of
8 statutes, ordinances, or rules relating to traffic
9 movement and control, each arising out of separate
10 incidents occurring within the preceding seven-year
11 period, the person's driver's license shall be revoked
12 for a minimum of five years and a maximum of ten
13 years;

14 ~~(6)~~ (7) A statement that failure to answer the notice of
15 traffic infraction within twenty-one days of issuance
16 shall result in the entry of judgment by default for
17 the State and may result in the assessment of a late
18 penalty, and, that if the person to whom the notice
19 was issued fails to pay the total amount specified in
20 the default judgment within an additional thirty days
21 or to otherwise take action to set aside the default,



1 notice shall be sent to the director of finance of the
2 appropriate county:

3 (A) That the person to whom the notice of infraction
4 not involving parking was issued shall not be
5 permitted to renew or obtain a driver's license;
6 or

7 (B) Where the notice was issued to a motor vehicle,
8 that the registered owner shall not be permitted
9 to register, renew the registration of, or
10 transfer title to the motor vehicle until the
11 traffic infraction is finally disposed of
12 pursuant to this chapter, except as provided in
13 section 291D-10(b);

14 [~~7~~] (8) A statement that, at a hearing requested to
15 contest the notice of traffic infraction conducted
16 pursuant to section 291D-8, no officer shall be
17 present unless the driver timely requests the court to
18 have the officer present, and that the standard of
19 proof to be applied by the court is whether a
20 preponderance of the evidence proves that the
21 specified traffic infraction was committed;



1 ~~[(+8)]~~ (9) A statement that, at a hearing requested for the
 2 purpose of explaining mitigating circumstances
 3 surrounding the commission of the infraction or in
 4 consideration of a written request for mitigation, the
 5 person shall be considered to have committed the
 6 traffic infraction;

7 ~~[(+9)]~~ (10) A space in which the signature of the person to
 8 whom the notice was issued may be affixed; and

9 ~~[(+10)]~~ (11) The date, time, and place at which the person to
 10 whom the notice was issued must appear in court, if
 11 the person is required by the notice to appear in
 12 person at the hearing."

13 SECTION 8. Section 291D-7, Hawaii Revised Statutes, is
 14 amended as follows:

15 1. By amending subsection (a) to read:

16 "(a) When an admitting answer is received, the court shall
 17 enter judgment in favor of the State in the total amount
 18 specified in the notice of traffic infraction. If the total
 19 amount is not submitted with the answer, the court may take
 20 action as provided in section 291D-10. If the court finds that
 21 the driver has committed four or more traffic infractions
 22 involving violations of statutes, ordinances, or rules relating



1 to traffic movement and control, each arising out of separate
2 incidents occurring within the preceding seven-year period, the
3 court shall revoke the person's driver's license for a minimum
4 of seven years and a maximum of ten years. The court shall mail
5 a notice of entry of judgment to the address provided by the
6 person when the notice of traffic infraction was issued, notify
7 the person of the revocation and its length, and notify the
8 person that the driver's license must be surrendered as required
9 by section 286-122(a)."

10 2. By amending subsection (c) to read:

11 "(c) When an answer admitting commission of the traffic
12 infraction but seeking to explain mitigating circumstances is
13 received, the court shall proceed as follows:

14 (1) In the case of a traffic infraction where the person
15 requests a hearing at which the person will appear in
16 person to explain mitigating circumstances, the court
17 shall notify the person in writing of the date, time,
18 and place of hearing to explain mitigating
19 circumstances. The notice of hearing shall be mailed
20 to the address stated in the answer, or if none is
21 given, to the address stated on the notice of traffic
22 infraction. The notification also shall advise the



1 person that, if the person fails to appear at the
2 hearing, the court shall enter judgment by default in
3 favor of the State, as of the date of the scheduled
4 hearing, that the total amount stated in the default
5 judgment must be paid within thirty days of entry of
6 default judgment, and, if it is not paid, that the
7 court shall take action as provided in section 291D-
8 10; and

- 9 (2) If a written explanation is included with an answer
10 admitting commission of the infraction, the court
11 shall enter judgment for the State and, after
12 reviewing the explanation, determine the total amount
13 of the monetary assessments, fees, surcharges, or
14 costs to be assessed, if any. The court shall then
15 notify the person of the total amount to be paid for
16 the infraction, if any. If the court finds that the
17 driver has committed four or more traffic infractions
18 involving violations of statutes, ordinances, or rules
19 relating to traffic movement and control arising out
20 of separate incidents occurring within the preceding
21 seven-year period, the court shall revoke the person's
22 driver's license for a minimum of seven years and a



1 maximum of ten years, as required by section 286-
2 124(b), notify the person of the revocation and its
3 length, and notify the person that the driver's
4 license must be surrendered as required by section
5 286-122(a). There shall be no appeal from the
6 judgment. If the court assesses an amount for
7 monetary assessments, fees, surcharges, or costs, the
8 court shall also notify the person that the total
9 amount shall be paid within thirty days of entry of
10 judgment. The notice of entry of judgment also shall
11 inform the person that if the total amount is not paid
12 within thirty days, the court shall take action as
13 provided in section 291D-10."

14 3. By amending subsection (e) to read:

15 "(e) Whenever judgment by default in favor of the State is
16 entered, the court shall mail a notice of entry of default
17 judgment to the address provided by the person when the notice
18 of traffic infraction was issued or, in the case of parking
19 infractions, to the address stated in the answer, if any, or the
20 address at which the vehicle is registered. If the court has
21 revoked the person's driver's license as required by section
22 286-124(b), the notice of entry of default judgment shall notify



1 the person of the revocation and its length and that the
2 driver's license must be surrendered as required by section
3 286-122(a). The notice of entry of default judgment shall
4 advise the person that the total amount specified in the default
5 judgment shall be paid within thirty days of entry of default
6 judgment and shall explain the procedure for setting aside a
7 default judgment. The notice of entry of default judgment shall
8 also inform the person that if the total amount is not paid
9 within thirty days, the court shall take action as provided in
10 section 291D-10. Judgment by default for the State entered
11 pursuant to this chapter may be set aside pending final
12 disposition of the traffic infraction upon written application
13 of the person and posting of an appearance bond equal to the
14 amount of the total amount specified in the default judgment and
15 any other assessment imposed pursuant to section 291D-9. The
16 application shall show good cause or excusable neglect for the
17 person's failure to take action necessary to prevent entry of
18 judgment by default. Upon receipt of the application and
19 required appearance bond, the court shall take action to remove
20 the restriction placed on the person's driver's license or the
21 motor vehicle's registration and title imposed pursuant to
22 section 291D-10. Thereafter, the court shall determine whether



1 good cause or excusable neglect exists for the person's failure
2 to take action necessary to prevent entry of judgment by
3 default. If so, the application to set aside default judgment
4 shall be granted, the default judgment shall be set aside, and
5 the notice of traffic infraction shall be disposed of pursuant
6 to this chapter. If not, the application to set aside default
7 judgment shall be denied, the appearance bond shall be forfeited
8 and applied to satisfy amounts due under the default judgment,
9 and the notice of traffic infraction shall be finally disposed.
10 In either case, the court shall determine the existence of good
11 cause or excusable neglect and notify the person of its decision
12 on the application in writing."

13 SECTION 9. Section 291D-12, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§291D-12 Powers of the district court judge sitting in
16 the traffic division. A district court judge sitting in the
17 traffic division and hearing cases pursuant to this chapter
18 shall have all the powers of a district court judge under
19 chapter 604, including the following powers:

- 20 (1) To conduct traffic infraction hearings and to impose
21 monetary assessments;



- 1 (2) To permit deferral of monetary assessment or impose
2 community service in lieu thereof;
- 3 (3) To dismiss a notice of traffic infraction, with or
4 without prejudice, or to set aside a judgment for the
5 State;
- 6 (4) To order temporary driver's license suspension,
7 driver's license revocation, or driver's license
8 reinstatement;
- 9 (5) To order the director of finance not to issue or renew
10 the driver's license, or to register, renew the
11 registration of, or issue title to a motor vehicle, of
12 any person who has not paid a monetary assessment, has
13 not performed community service in lieu thereof, or
14 has not otherwise satisfied a judgment for the State
15 entered pursuant to this chapter;
- 16 (6) To approve the issuance or renewal of a driver's
17 license or instruction permit pursuant to section
18 286-109(c);
- 19 (7) To issue penal summonses and bench warrants and
20 initiate contempt of court proceedings in proceedings
21 conducted pursuant to section 291D-13;



1 (8) To issue penal summonses and bench warrants and
2 initiate failure to appear proceedings in proceedings
3 conducted pursuant to section 291D-5(d)(10); and

4 (9) To exercise other powers the court finds necessary and
5 appropriate to carry out the purposes of this
6 chapter."

7 PART IV

8 SECTION 10. This Act does not affect rights and duties
9 that matured, penalties that were incurred, and proceedings that
10 were begun before its effective date.

11 SECTION 11. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 12. This Act shall take effect on January 1, 2011.
14

INTRODUCED BY:



Report Title:

Negligent Homicide; Criminal Procedure; License Revocation

Description:

Disallows the use of DAG and DANC pleas in cases regarding negligent homicide. Requires mandatory minimum sentences for all negligent homicide convictions. Requires license revocation for a minimum of 7 years and a maximum of 10 years if driver is found to have committed 4 or more traffic infractions within the preceding 7-year period.

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