
A BILL FOR AN ACT

RELATING TO TRAFFIC SAFETY

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. Of particular concern are cases involving
5 negligent homicide in the third degree, where a person operating
6 a vehicle causes the death of another person through simple
7 negligence.

8 The legislature finds that from 2003 to 2006, sixteen
9 defendants pleaded guilty or no contest to negligent homicide in
10 the third degree. Fourteen of those defendants, or eighty-seven
11 and one-half per cent, received no jail time as part of their
12 sentence. Of these fourteen defendants, all but three were
13 granted deferred acceptance of guilty pleas or deferred
14 acceptance of nolo contendere pleas. When a deferred acceptance
15 plea is granted, the negligent homicide charge is dismissed and
16 the defendant is discharged if the defendant is able to comply
17 with the terms of probation-like court supervision for a period
18 not to exceed a year. In these situations, the defendant is not



1 considered to have been convicted. A defendant who has been
2 discharged can apply to have the negligent homicide charge
3 expunged from the defendant's record one year after dismissal of
4 the charge.

5 The purpose of this Act is to protect the public by:

6 (1) Preventing the use of deferred acceptance of guilty
7 pleas and deferred acceptance of nolo contendere pleas
8 in cases involving defendants charged with negligent
9 homicide in the third degree;

10 (2) Imposing a mandatory minimum sentence of imprisonment
11 of days for defendants convicted of negligent
12 homicide in the third degree; and

13 (3) Ensuring that persons who commit five or more moving
14 violations within a five-year period will have their
15 driver's licenses revoked for a minimum of five years
16 and a maximum of ten years.

17 SECTION 2. Section 853-4, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§853-4 Chapter not applicable; when.** This chapter shall
20 not apply when:



1 (1) The offense charged involves the [~~intentional,~~
2 ~~knowing, reckless, or negligent~~] killing of another
3 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 first degree;
- 17 (N) Promoting prostitution in the second degree;
- 18 (O) Promoting prostitution in the third degree;
- 19 (P) Abuse of family or household members;
- 20 (Q) Sexual assault in the second degree;
- 21 (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; or
- 7 (W) Electronic enticement of a child in the second
- 8 degree;

9 (14) The defendant has been charged with:

- 10 (A) Knowingly or intentionally falsifying any report
- 11 required under chapter 11, part XIII with the
- 12 intent to circumvent the law or deceive the
- 13 campaign spending commission; or
- 14 (B) Violating section 11-352 or 11-353; or

15 (15) The defendant holds a commercial driver's license and
16 has been charged with violating a traffic control law,
17 other than a parking law, in connection with the
18 operation of any type of motor vehicle.

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

20 SECTION 3. Section 707-704, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§707-704. Negligent homicide in the third degree. (1) A
2 person is guilty of the offense of negligent homicide in the
3 third degree if that person causes the death of another person
4 by the operation of a vehicle in a manner which is simple
5 negligence.

6 (2) "Simple negligence" as used in this section:

7 (a) A person acts with simple negligence with respect to
8 the person's conduct when the person should be aware
9 of a risk that the person engages in that conduct.

10 (b) A person acts with simple negligence with respect to
11 attendant circumstances when the person should be
12 aware of a risk that those circumstances exist.

13 (c) A person acts with simple negligence with respect to a
14 result of the person's conduct when the person should
15 be aware of a risk that the person's conduct will
16 cause that result.

17 (d) A risk is within the meaning of this subsection if the
18 person's failure to perceive it, considering the
19 nature and purpose of the person's conduct and the
20 circumstances known to the person, involves a
21 deviation from the standard of care that a law-abiding
22 person would observe in the same situation.



1 (3) Negligent homicide in the third degree is a
2 misdemeanor. A person convicted of an offense under this
3 section shall be sentenced to a definite term of imprisonment,
4 pursuant to section 706-663, of not less than days without
5 possibility of probation or suspension of sentence."

6 PART II

7 SECTION 4. Section 286-124, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§286-124 Mandatory revocation of license by a court.** (a)

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

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



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

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

5 (1) A statement of the specific traffic infraction for
6 which the notice was issued;

7 (2) Except in the case of parking-related traffic
8 infractions, a brief statement of the facts;

9 (3) A statement of the total amount to be paid for each
10 traffic infraction, which amount shall include any
11 fee, surcharge, or cost required by statute,
12 ordinance, or rule, and any monetary assessment,
13 established for the particular traffic infraction
14 pursuant to section 291D-9, to be paid by the driver
15 or registered owner of the vehicle, which shall be
16 uniform throughout the State;

17 (4) A statement of the options provided in section 291D-
18 6(b) for answering the notice and the procedures
19 necessary to exercise the options;

20 (5) A statement that the person to whom the notice is
21 issued must answer, choosing one of the options



1 specified in section 291D-6(b), within twenty-one days
2 of issuance of the notice;

3 (6) A statement that, if the person:

4 (A) Admits a traffic infraction;

5 (B) Admits the traffic infraction but seeks to

6 explain mitigating circumstances; or

7 (C) Fails to answer a notice of traffic infraction;

8 when the traffic infraction involves a violation of

9 statutes, ordinances, or rules relating to traffic

10 movement and control and the person has committed four

11 or more traffic infractions involving violations of

12 statutes, ordinances, or rules relating to traffic

13 movement and control, each arising out of separate

14 incidents occurring within the preceding five-year

15 period, the person's driver's license shall be revoked

16 for a minimum of five years and a maximum of ten

17 years;

18 ~~[(6)]~~ (7) A statement that failure to answer the notice of

19 traffic infraction within twenty-one days of issuance

20 shall result in the entry of judgment by default for

21 the State and may result in the assessment of a late

22 penalty, and, that if the person to whom the notice



1 was issued fails to pay the total amount specified in
2 the default judgment within an additional thirty days
3 or to otherwise take action to set aside the default,
4 notice shall be sent to the director of finance of the
5 appropriate county:

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

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

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



1 preponderance of the evidence proves that the
2 specified traffic infraction was committed;

3 [~~8~~] (9) A statement that, at a hearing requested for the
4 purpose of explaining mitigating circumstances
5 surrounding the commission of the infraction or in
6 consideration of a written request for mitigation, the
7 person shall be considered to have committed the
8 traffic infraction~~+~~ and that there shall be no
9 appeal from the court's decision;

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

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

16 SECTION 6. Section 291D-7, Hawaii Revised Statutes, is
17 amended as follows:

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

19 "(a) When an admitting answer is received, the court shall
20 enter judgment in favor of the State in the total amount
21 specified in the notice of traffic infraction. If the total
22 amount is not submitted with the answer, the court may take



1 action as provided in section 291D-10. If the court finds that
2 the driver has committed five or more traffic infractions
3 involving violations of statutes, ordinances, or rules relating
4 to traffic movement and control, each arising out of separate
5 incidents occurring within the preceding five-year period, the
6 court shall revoke the person's driver's license for a minimum
7 of five years and a maximum of ten years. The court shall mail
8 a notice of entry of judgment to the address provided by the
9 person when the notice of traffic infraction was issued, notify
10 the person of the revocation and its length, and notify the
11 person that the driver's license must be surrendered as required
12 by section 286-122(a)."

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

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

17 (1) In the case of a traffic infraction where the person
18 requests a hearing at which the person will appear in
19 person to explain mitigating circumstances, the court
20 shall notify the person in writing of the date, time,
21 and place of hearing to explain mitigating
22 circumstances. The notice of hearing shall be mailed



1 to the address stated in the answer, or if none is
2 given, to the address stated on the notice of traffic
3 infraction. The notification also shall advise the
4 person that, if the person fails to appear at the
5 hearing, the court shall enter judgment by default in
6 favor of the State, as of the date of the scheduled
7 hearing, that the total amount stated in the default
8 judgment must be paid within thirty days of entry of
9 default judgment, and, if it is not paid, that the
10 court shall take action as provided in section 291D-
11 10; and

12 (2) If a written explanation is included with an answer
13 admitting commission of the infraction, the court
14 shall enter judgment for the State and, after
15 reviewing the explanation, determine the total amount
16 of the monetary assessments, fees, surcharges, or
17 costs to be assessed, if any. The court shall then
18 notify the person of the total amount to be paid for
19 the infraction, if any. If the court finds that the
20 driver has committed five or more traffic infractions
21 involving violations of statutes, ordinances, or rules
22 relating to traffic movement and control arising out

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

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

18 "(e) Whenever judgment by default in favor of the State is
19 entered, the court shall mail a notice of entry of default
20 judgment to the address provided by the person when the notice
21 of traffic infraction was issued or, in the case of parking
22 infractions, to the address stated in the answer, if any, or the



1 address at which the vehicle is registered. If the court has
2 revoked the person's driver's license as required by section
3 286-124(b), the notice of entry of default judgment shall notify
4 the person of the revocation and its length and that the
5 driver's license must be surrendered as required by section
6 286-122(a). The notice of entry of default judgment shall
7 advise the person that the total amount specified in the default
8 judgment shall be paid within thirty days of entry of default
9 judgment and shall explain the procedure for setting aside a
10 default judgment. The notice of entry of default judgment shall
11 also inform the person that if the total amount is not paid
12 within thirty days, the court shall take action as provided in
13 section 291D-10. Judgment by default for the State entered
14 pursuant to this chapter may be set aside pending final
15 disposition of the traffic infraction upon written application
16 of the person and posting of an appearance bond equal to the
17 amount of the total amount specified in the default judgment and
18 any other assessment imposed pursuant to section 291D-9. The
19 application shall show good cause or excusable neglect for the
20 person's failure to take action necessary to prevent entry of
21 judgment by default. Upon receipt of the application and
22 required appearance bond, the court shall take action to remove



1 the restriction placed on the person's driver's license or the
2 motor vehicle's registration and title imposed pursuant to
3 section 291D-10. Thereafter, the court shall determine whether
4 good cause or excusable neglect exists for the person's failure
5 to take action necessary to prevent entry of judgment by
6 default. If so, the application to set aside default judgment
7 shall be granted, the default judgment shall be set aside, and
8 the notice of traffic infraction shall be disposed of pursuant
9 to this chapter. If not, the application to set aside default
10 judgment shall be denied, the appearance bond shall be forfeited
11 and applied to satisfy amounts due under the default judgment,
12 and the notice of traffic infraction shall be finally disposed.
13 In either case, the court shall determine the existence of good
14 cause or excusable neglect and notify the person of its decision
15 on the application in writing."

16 SECTION 7. Section 291D-12, Hawaii Revised Statutes, is
17 amended to read as follows:

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



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



Report Title:

Negligent Homicide; Criminal Procedure; License Revocation

Description:

Prevents the use of DAG and DANC pleas in cases regarding negligent homicide in the third degree. Requires mandatory minimum sentence. Requires license revocation for a minimum of 5 years and a maximum of 10 years if driver is found to have committed 5 or more traffic infractions within the preceding 5-year period.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

