

S.B. NO. 2732

JAN 25 2012

A BILL FOR AN ACT

RELATING TO HOMICIDE.

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

1 SECTION 1. Section 286-124, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§286-124 Mandatory revocation of license by a court. (a)
4 Any court of competent jurisdiction shall forthwith revoke the
5 license of any driver for a period of up to ten years upon a
6 conviction of the driver of manslaughter resulting from the
7 operation of a motor vehicle.

8 (b) Any court of competent jurisdiction shall forthwith
9 revoke the license of any driver for a period of up to five
10 years upon a conviction of the driver of negligent homicide in
11 the first degree or negligent homicide in the second degree."

12 SECTION 2. Section 706-624, Hawaii Revised Statutes, is
13 amended by amending subsection (2) to read as follows:

14 "(2) Discretionary conditions. The court may provide, as
15 further conditions of a sentence of probation, to the extent
16 that the conditions are reasonably related to the factors set
17 forth in section 706-606 and to the extent that the conditions
18 involve only deprivations of liberty or property as are

S.B. NO. 2732

1 reasonably necessary for the purposes indicated in section
2 706-606(2), that the defendant:

- 3 (a) Serve a term of imprisonment not exceeding two years
4 in class A felony cases under section 707-702 or part
5 IV of chapter 712, eighteen months in class B felony
6 cases, one year in class C felony cases, six months in
7 misdemeanor cases, and five days in petty misdemeanor
8 cases; provided that notwithstanding any other
9 provision of law, any order of imprisonment under this
10 subsection that provides for prison work release shall
11 require the defendant to pay thirty per cent of the
12 defendant's gross pay earned during the prison work
13 release period to satisfy any restitution order. The
14 payment shall be handled by the adult probation
15 division and shall be paid to the victim on a monthly
16 basis;
- 17 (b) Perform a specified number of hours of services to the
18 community as described in section 706-605(1)(d);
- 19 (c) Support the defendant's dependents and meet other
20 family responsibilities;
- 21 (d) Pay a fine imposed pursuant to section 706-605(1)(b);

S.B. NO. 2732

- 1 (e) Work conscientiously at suitable employment or pursue
2 conscientiously a course of study or vocational
3 training that will equip the defendant for suitable
4 employment;
- 5 (f) Refrain from engaging in a specified occupation,
6 business, or profession bearing a reasonably direct
7 relationship to the conduct constituting the crime or
8 engage in the specified occupation, business, or
9 profession only to a stated degree or under stated
10 circumstances;
- 11 (g) Refrain from frequenting specified kinds of places or
12 from associating unnecessarily with specified persons,
13 including [~~but not limited to~~] the victim of the
14 crime, any witnesses, regardless of whether they
15 actually testified in the prosecution, law enforcement
16 officers, co-defendants, or other individuals with
17 whom contact may adversely affect the rehabilitation
18 or reformation of the person convicted;
- 19 (h) Refrain from use of alcohol or any use of narcotic
20 drugs or controlled substances without a prescription;
- 21 (i) Refrain from possessing a firearm, ammunition,
22 destructive device, or other dangerous weapon;

S.B. NO. 2732

- 1 (j) Undergo available medical or mental health treatment,
2 including treatment for substance abuse dependency,
3 and remain in a specified facility if required for
4 that purpose;
- 5 (k) Reside in a specified place or area or refrain from
6 residing in a specified place or area;
- 7 (l) Submit to periodic urinalysis or other similar testing
8 procedure;
- 9 (m) Refrain from entering specified geographical areas
10 without the court's permission;
- 11 (n) Refrain from leaving the person's dwelling place
12 except to go to and from the person's place of
13 employment, the office of the person's physician or
14 dentist, the probation office, or any other location
15 as may be approved by the person's probation officer
16 pursuant to court order. As used in this paragraph,
17 "dwelling place" includes the person's yard or, in the
18 case of condominiums, the common elements;
- 19 (o) Comply with a specified curfew;
- 20 (p) Submit to monitoring by an electronic monitoring
21 device; or

1 (q) Satisfy other reasonable conditions as the court may
2 impose."

3 SECTION 3. Section 706-659, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§706-659 Sentence of imprisonment for class A felony.**
6 Notwithstanding part II; sections 706-605, 706-606, 706-606.5,
7 706-660.1, 706-661, and 706-662; and any other law to the
8 contrary, a person who has been convicted of a class A felony,
9 except class A felonies defined in section 707-702 or chapter
10 712, part IV, shall be sentenced to an indeterminate term of
11 imprisonment of twenty years without the possibility of
12 suspension of sentence or probation. The minimum length of
13 imprisonment shall be determined by the Hawaii paroling authority
14 in accordance with section 706-669. A person who has been
15 convicted of a class A felony defined in section 707-702 or
16 chapter 712, part IV, may be sentenced to an indeterminate term
17 of imprisonment, except as provided for in section 706-660.1
18 relating to the use of firearms in certain felony offenses and
19 section 706-606.5 relating to repeat offenders. When ordering
20 such a sentence, the court shall impose the maximum length of
21 imprisonment which shall be twenty years. The minimum length of
22 imprisonment shall be determined by the Hawaii paroling authority
23 in accordance with section 706-669."

S.B. NO. 2732

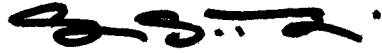
1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

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

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

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INTRODUCED BY: 

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BY REQUEST

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S.B. NO. 2732

Report Title:

Homicide

Description:

Amends the driver's license revocation provisions to allow license revocation for a period of time up to the maximum term of probation allowable when a driver is convicted of manslaughter resulting from the operation of a vehicle, or negligent homicide in the first or second degrees; allows for up to two years of imprisonment when a convicted defendant is sentenced to probation for manslaughter; and clarifies that probation is an applicable sentence for manslaughter.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO HOMICIDE.

PURPOSE: This bill has two purposes related to the sentencing of those convicted of certain homicide offenses. The first purpose is to provide for license revocation periods that are appropriate and justified for those who have been convicted of serious traffic-related fatalities. The second purpose is to clarify that a court may sentence a defendant convicted of manslaughter to two years of imprisonment as a condition of probation.

MEANS: Amend sections 286-124, 706-624(2), and 706-659, Hawaii Revised Statutes.

JUSTIFICATION: License Revocation Periods. Section 286-124, Hawaii Revised Statutes, currently requires the court to revoke the license of any driver convicted of a manslaughter offense resulting from the operation of a motor vehicle, but it does not specify any time period for the mandatory revocation. While section 286-125, Hawaii Revised Statutes, gives the court the discretion to revoke the license of any driver convicted of a felony offense involving the use of a motor vehicle, it does not specify a time period for the revocation.

This bill amends the driver's license revocation provisions to require a license revocation for a period of: (1) up to ten years for persons convicted of manslaughter, for recklessly causing a person's death while driving a vehicle; and (2) up to five years for persons convicted of either negligent homicide in the first degree, a class B felony, or negligent homicide in the second degree, a class C felony. These

provisions, while setting maximum possible terms for the mandatory license revocations, leave the court with discretion to determine the specific period of revocation that should be imposed to protect the public from these dangerous drivers.

Probation Sentencing for Manslaughter.

The law is not clear about the imposition of a term of imprisonment as a condition of probation, for a person convicted of manslaughter. Section 706-624(2)(a), Hawaii Revised Statutes, establishes what a court may impose as conditions of probation, but it does not provide for any term of imprisonment for manslaughter. This bill corrects this oversight by amending section 706-624(2)(a) to allow a court to sentence a defendant convicted of manslaughter to a term of up to two years of imprisonment as a condition of probation.

To further clarify the probation sentencing issue for manslaughter, this bill also amends section 706-659, Hawaii Revised Statutes. Section 706-659 currently provides that persons convicted of class A felony offenses, except for class A felony drug offenses under chapter 712, Hawaii Revised Statutes, must be sentenced to indeterminate terms of imprisonment of twenty years. It does not currently provide an exception for the class A felony manslaughter offense, thereby indicating that a person convicted of manslaughter must be sentenced to an indeterminate prison term and not probation. This provision is not consistent with section 706-620(2), Hawaii Revised Statutes, which does allow for a sentence of probation for the class A felony offense of manslaughter. This bill amends section 706-659 to conform to section 706-620(2).

Impact on the public: This bill will provide notice to the public of the maximum

terms of license revocation for those who
commit vehicular homicide offenses.

Impact on the department and other agencies:

The bill will make it clear to the courts
and all criminal justice agencies what the
legal consequences are for vehicular
homicide offenses and manslaughter.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County police, county prosecutors,
Judiciary, Office of the Public Defender.

EFFECTIVE DATE: Upon approval.