

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

February 19, 2013

H.B. NO. 510 RELATING TO DEFERRED ACCEPTANCE PLEAS.

Representative Rhoads and Members of the Committee:

H.B. 510 would expand the list of offenses for which a deferred plea would not be possible pursuant to HRS Section 853-4. We are concerned with the proposed exclusion of first-time misdemeanor negligent homicide offenders convicted under HRS Section 707-704.

It is important to note that a person convicted of the misdemeanor offense of Negligent Homicide in the Third Degree is not alleged to have been under the influence of alcohol or drugs. The person is also not alleged to have acted intentionally, knowingly, recklessly or negligently as defined in our state of mind definitions found at HRS Section 702-206.

Rather, the allegation is that the person caused the death of another person by the operation of a vehicle “in a manner which is simple negligence”. “Simple negligence” is defined in Section 707-704 as follows:

- 1) A person acts with simple negligence with respect to the person’s conduct when the person should be aware of a risk that the person engages in that conduct.
- 2) A person acts with simple negligence with respect to attendant circumstances when the person should be aware of a risk that those circumstances exist.
- 3) A person acts with simple negligence with respect to a result of the person’s conduct when the person should be aware of a risk that the person’s conduct will cause that result.
- 4) A risk is withink the meaning of this subsection if the person’s failure to perceive it, considering the nature and purposes of the person’s conduct and the circumstances known to the person, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.

An example of a situation where this charge might arise would be someone backing out of their driveway who looked left, then right, then started to back up without looking left again, striking a pedestrian or motorcyle they had not seen the first time who had come up behind their car. This could happen when folks back out of their own driveways or in parking lots where visibility is an issue. Under this proposed legislation, if the pedestrian or cyclist died as a result of being struck, even if the cause of death was falling to the ground and hitting their head on concrete, a person charged with the third-degree misdemeanor offense would not be eligible for a deferral.

We don't believe that a first-time offender under this section should be denied the possibility of a deferred plea. Unlike many other states, Hawaii does not allow for expungement of a criminal conviction. In light of that, the possibility of a deferral becomes even more significant. We believe that the court should have discretion to decide those cases where a deferral would be appropriate.

We propose amending this bill by adding a subsection (W) to read "a second or subsequent conviction for Negligent homicide in the third degree". We are unaware of significant problems in the granting of a deferred plea in these cases, but believe that this suggested change would effectively address any issues in this regard.

Thank you for the opportunity to comment on this bill.

HB510

Submitted on: 2/16/2013

Testimony for JUD on Feb 19, 2013 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson	Individual	Support	No

Comments: This is a no-brainer. Please pass this bill.