
A BILL FOR AN ACT

RELATING TO HOMICIDE.

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

1 SECTION 1. The legislature finds that there is ambiguity
2 between the crime of manslaughter established in section
3 707-702, Hawaii Revised Statutes, and the crime of negligent
4 homicide in the first degree, established in section 707-702.5,
5 Hawaii Revised Statutes. Both statutes may be applicable where
6 a person's irresponsible behavior results in the unintended
7 death of another person, except that negligent homicide in the
8 first degree specifically applies to certain cases that involve
9 the offender's operation of a vehicle.

10 The legislature recognizes that in recent years, there have
11 been numerous instances in which a person's operation of a
12 vehicle has led to the deaths of innocent bystanders. In one
13 incident in Kakaako, a commercial driver operating a loaded
14 trolley collided into and dragged a pedestrian more than one
15 hundred feet. When authorities stopped the driver, they found
16 an open bottle of liquor and noticed that the driver smelled of
17 alcohol. In Nanakuli, a speeding motorist collided into a



1 pedestrian in a crosswalk, and the collision's impact threw the
2 pedestrian a distance of more than two hundred feet. The driver
3 continued to drive and stopped three-quarters of a mile from the
4 point of impact, and only because the vehicle became inoperable.
5 At the time the police confronted the driver, the driver was in
6 the process of attaching her car to a friend's car with a tow
7 cable. On the North Shore of Oahu, another motorist failed to
8 stop the motorist's vehicle after striking a pedestrian. After
9 an extended search, the driver was found miles away in a vacant
10 parking lot. The left door of the driver's vehicle was open,
11 and the driver was on the ground, unconscious from excessive
12 alcohol consumption.

13 The legislature notes that in all of the foregoing cases,
14 the offending drivers who committed these egregious acts had
15 blood alcohol levels over the .08 threshold. Further, the
16 prosecutors decided to charge the offenders with negligent
17 homicide in the first degree, a class B felony that carries a
18 maximum prison sentence of ten years, instead of manslaughter, a
19 class A felony that carries a maximum prison sentence of twenty
20 years. These prosecutorial decisions caused outrage in the



1 victims' communities, especially among the victims' family
2 members, who viewed these inadequate prosecutions as
3 miscarriages of justice.

4 The legislature also finds that Nevada law addresses
5 certain cases of homicide and substantial bodily injury that
6 result from collisions caused by intoxicated drivers, and
7 includes several provisions to advance the cause of justice in
8 those cases. First, under section 484C.430, Nevada Revised
9 Statutes, a prosecutor is prohibited from dismissing a charge
10 under that statute in exchange for a defendant's agreement to a
11 change of plea on a lesser charge, or for any other reason,
12 unless the charge is not supported by probable cause or cannot
13 be proven at trial. Second, the Nevada statute establishes that
14 if a defendant claims that the defendant's intoxication was
15 caused by the defendant's consumption of alcohol which occurred
16 after the defendant stopped operation of the vehicle, the
17 defense is an affirmative defense, which the defendant bears the
18 burden of proving.

19 The purpose of this Act is to facilitate the prosecution of
20 unintended vehicular homicides by:



- 1 (1) Changing the name of the offense of negligent homicide
2 to vehicular homicide;
- 3 (2) Recategorizing the penalty categories for each of the
4 three degrees of the offense to the next highest level
5 of severity;
- 6 (3) Establishing that a person who has been convicted of
7 vehicular homicide in the first degree shall be
8 sentenced without the possibility of suspension of
9 sentence or probation;
- 10 (4) Prohibiting any prosecuting attorney from dismissing a
11 charge of vehicular homicide in the first degree in
12 exchange for a defendant's agreement to a change of
13 plea on a lesser charge, or for any other reason,
14 unless the charge is not supported by probable cause
15 or cannot be proven at trial; and
- 16 (5) For any prosecution of vehicular homicide in the first
17 degree that alleges that the defendant operated the
18 vehicle while having a concentration of alcohol of .08
19 per cent or more in the defendant's blood or breath,
20 establishing as an affirmative defense that the



1 concentration was the result of the defendant's
2 consumption of alcohol after the defendant stopped
3 operation of the vehicle.

4 SECTION 2. Section 327L-18, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Nothing in this chapter shall be construed to
7 authorize a health care provider, health care facility, or any
8 other person to end a patient's life by lethal injection, mercy
9 killing, or active euthanasia. Actions taken in accordance with
10 this chapter shall not, for any purpose, constitute suicide,
11 assisted suicide, mercy killing, murder, manslaughter,
12 ~~[negligent]~~ any other form of homicide, or any other criminal
13 conduct under the law."

14 SECTION 3. Section 706-606.5, Hawaii Revised Statutes, is
15 amended by amending subsection (1) to read as follows:

16 "(1) Notwithstanding section 706-669 and any other law to
17 the contrary, any person convicted of murder in the second
18 degree, any class A felony, any class B felony, or any of the
19 following class C felonies:



- 1 (a) Section 134-7 relating to persons prohibited from
2 owning, possessing, or controlling firearms or
3 ammunition;
- 4 (b) Section 134-8 relating to ownership, etc., of certain
5 prohibited weapons;
- 6 (c) Section 134-17 only as it relates to providing false
7 information or evidence to obtain a permit under
8 section 134-9;
- 9 (d) Section 188-23 relating to possession or use of
10 explosives, electrofishing devices, and poisonous
11 substances in state waters;
- 12 (e) Section 386-98(d)(1) relating to fraud violations and
13 penalties;
- 14 (f) Section 431:2-403(b)(2) relating to insurance fraud;
- 15 (g) Section [~~707-703~~] 707-704 relating to [~~negligent~~]
16 vehicular homicide in the [~~second~~] third degree;
- 17 (h) Section 707-711 relating to assault in the second
18 degree;
- 19 (i) Section 707-713 relating to reckless endangering in
20 the first degree;



- 1 (j) Section 707-716 relating to terroristic threatening in
2 the first degree;
- 3 (k) Section 707-721 relating to unlawful imprisonment in
4 the first degree;
- 5 (l) Section 707-732 relating to sexual assault in the
6 third degree;
- 7 (m) Section 707-752 relating to promoting child abuse in
8 the third degree;
- 9 (n) Section 707-757 relating to electronic enticement of a
10 child in the second degree;
- 11 (o) Section 707-766 relating to extortion in the second
12 degree;
- 13 (p) Section 708-811 relating to burglary in the second
14 degree;
- 15 (q) Section 708-821 relating to criminal property damage
16 in the second degree;
- 17 (r) Section 708-831 relating to theft in the second
18 degree;
- 19 (s) Section 708-835.5 relating to theft of livestock;



- 1 (t) Section 708-836 relating to unauthorized control of
2 propelled vehicle;
- 3 (u) Section 708-839.55 relating to unauthorized possession
4 of confidential personal information;
- 5 (v) Section 708-839.8 relating to identity theft in the
6 third degree;
- 7 (w) Section 708-852 relating to forgery in the second
8 degree;
- 9 (x) Section 708-854 relating to criminal possession of a
10 forgery device;
- 11 (y) Section 708-875 relating to trademark counterfeiting;
- 12 (z) Section 710-1071 relating to intimidating a witness;
- 13 (aa) Section 711-1103 relating to riot;
- 14 (bb) Section 712-1221 relating to promoting gambling in the
15 first degree;
- 16 (cc) Section 712-1224 relating to possession of gambling
17 records in the first degree;
- 18 (dd) Section 712-1247 relating to promoting a detrimental
19 drug in the first degree; or



(ee) Section 846E-9 relating to failure to comply with covered offender registration requirements, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole as provided in subsection (2)."

SECTION 4. Section 707-702.5, Hawaii Revised Statutes, is amended to read as follows:

"§707-702.5 ~~[Negligent]~~ Vehicular homicide in the first degree. (1) A person commits the offense of ~~[negligent]~~ vehicular homicide in the first degree if that person causes the death of:



1 (a) Another person by the operation of a vehicle in a
2 negligent manner while under the influence of drugs or
3 alcohol; or

4 (b) A vulnerable user by the operation of a vehicle in a
5 negligent manner.

6 (2) For the purposes of subsection (1)(a), a person is
7 under the influence of drugs or alcohol if the person has a
8 concentration of alcohol of .08 per cent or more in blood or
9 breath, or if the person inhales, ingests, applies, or otherwise
10 uses any drug, chemical, poison, organic solvent, or any
11 compound or combination thereof to a degree that renders the
12 person incapable of safely operating, driving, or exercising
13 actual physical control over a vehicle.

14 (3) A prosecuting attorney shall not dismiss a charge for
15 a violation of this section in exchange for a defendant's
16 agreement to a change of plea on a lesser charge, or for any
17 other reason, unless the charge is not supported by probable
18 cause or cannot be proven at trial.

19 (4) In any prosecution under subsection (1)(a), it is an
20 affirmative defense that a concentration of alcohol of .08 per



1 cent or more in the defendant's blood or breath was the result
2 of the defendant's consumption of alcohol after the defendant
3 stopped operation of the vehicle; provided that:

4 (a) A defendant who intends to offer this defense at trial
5 or at any hearing shall file with the court and serve
6 on the prosecuting attorney a written notice of that
7 intent;

8 (b) The written notice described in paragraph (a) shall be
9 filed and served no less than fourteen days before the
10 corresponding trial or hearing, unless the court
11 establishes another deadline;

12 (c) This defense shall not be available to the defendant
13 if the defendant is also charged with violating
14 section 291C-12 or 291C-12.5 in the same incident
15 under which the defendant was charged under this
16 section;

17 (d) This defense shall not be available to the defendant
18 if the defendant refused to submit to testing for a
19 measurable amount of alcohol as described in section



1 291E-65 for the same incident under which the
2 defendant was charged under this section; and

3 (e) Notwithstanding any other provision of this section,
4 this section shall not be construed to restrict a
5 defendant's constitutional right to due process,
6 including the right to challenge the accuracy or
7 applicability of any test result offered by the
8 prosecuting attorney.

9 ~~[(+2) Negligent]~~ (5) Vehicular homicide in the first
10 degree is a class [B] A felony. A person who has been convicted
11 of this offense shall be sentenced without the possibility of
12 suspension of sentence or probation."

13 SECTION 5. Section 707-703, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§707-703** ~~[Negligent]~~ Vehicular homicide in the second
16 **degree.** (1) A person commits the offense of ~~[negligent]~~
17 vehicular homicide in the second degree if that person causes
18 the death of:

19 (a) Another person by the operation of a vehicle in a
20 negligent manner; or



(b) A vulnerable user by the operation of a vehicle in a manner that constitutes simple negligence as defined in section 707-704(2).

(2) [~~Negligent~~] Vehicular homicide in the second degree is a class [C] B felony."

SECTION 6. Section 707-704, Hawaii Revised Statutes, is amended to read as follows:

"~~§707-704~~ [~~Negligent~~] Vehicular homicide in the third degree. (1) A person is guilty of the offense of [~~negligent~~] vehicular homicide in the third degree if that person causes the death of another person by the operation of a vehicle in a manner which is simple negligence.

(2) [~~"Simple negligence" as used in this section;~~] Simple negligence occurs as follows:

(a) 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[~~-~~];

(b) A person acts with simple negligence with respect to attendant circumstances when the person should be aware of a risk that those circumstances exist[~~-~~]; or



(c) 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[—

~~(d)~~ A];

provided that a risk is within the [~~meaning~~] scope of this subsection if the person's failure to perceive it, considering the nature and purpose 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.

(3) [~~Negligent~~] Vehicular homicide in the third degree is a [~~misdemeanor.~~] class C felony."

SECTION 7. Sections 286-124, 286-240, 286-245, 286C-1, 291C-27, and 351-32, Hawaii Revised Statutes, are amended by substituting the term "vehicular homicide", or similar term, wherever the term "negligent homicide", or similar term, appears, as the context requires.



1 SECTION 8. 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 9. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect upon its approval.

7

INTRODUCED BY:



JAN 21 2022



H.B. NO. 1867

Report Title:

Vehicular Homicide; Negligent Homicide; Penal Code

Description:

Changes the name of the offense of negligent homicide to vehicular homicide. Recategorizes the penalty categories for each of the 3 degrees of the offense to the next highest level of severity. Establishes that a person who has been convicted of vehicular homicide in the first degree shall be sentenced without the possibility of suspension of sentence or probation. Prohibits any prosecutor from dismissing a charge of vehicular homicide in the first degree in exchange for a defendant's agreement to a change of plea on a lesser charge, or for any other reason, unless the charge is not supported by probable cause or cannot be proven at trial. For any prosecution of vehicular homicide in the first degree that alleges that the defendant operated the vehicle while having a concentration of alcohol of .08% or more in the defendant's blood or breath, establishes as an affirmative defense that the concentration was the result of the defendant's consumption of alcohol after the defendant stopped operation of the vehicle.

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

