



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Transportation
The Honorable Joseph M. Souki, Chair
The Honorable Karen Leilani Awana, Vice Chair

Wednesday, February 11, 2009, 8:30 a.m.
State Capitol, Conference Room 309

by
Iris Murayama
Deputy Chief Court Administrator
District Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 129, Relating to Traffic Safety

Purpose: Disallows 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.

Judiciary's Position:

The Judiciary takes no position on the merits of House Bill No. 129, however, respectfully wishes to share two main concerns with regards to Sections 4, 5 and 6 of the bill. First, the bill as currently drafted conflicts with the purpose of having a process for decriminalized traffic offenses. Second, if the bill was to pass unamended, court operations would be impacted on the processing, database system, and fiscal levels.

Purpose of a Decriminalized Traffic Offense Process

The proposed draft of House Bill No. 129 conflicts with the purpose of the decriminalized traffic offense process as outlined in Chapter 291D of the HRS. Under the Hawaii Revised Statutes (HRS) Section 291D-1, the legislature found that by decriminalizing



certain traffic offenses the judicial process would be streamlined and become “a more expeditious system.”

As the bill is currently drafted, the court would need to make a determination whether the license of any driver who has committed five (5) or more infractions would be subject to a license revocation for a minimum of five (5) years and a maximum of ten (10) years. Under HRS Section 291D-6, a driver is given three options when he or she has been issued a traffic infraction – (1) pay the monetary assessment and additional fees without a hearing or written statement, (2) submit a written statement explaining the circumstances mitigating the infraction or (3) request a hearing to explain in person the mitigating circumstances of the infraction. Since an individual has three (3) options to “answer” for a traffic infraction, it is difficult for the court to determine how many traffic infractions have been committed without either a written statement or court appearance.

Additionally, under HRS 291D-8(a), a person could request a hearing for his or her traffic infraction. With the possibility of a driver’s license revocation for (5) five or more traffic infractions, an individual could be more inclined to request a hearing. Thus, the purpose for a decriminalized traffic offense process would slowly become mired in the judicial process.

Operational Impacts

The responsibility placed on the Judiciary by Section 6 of this measure will have tremendous impact on court staff and operating costs such as supplies, equipment, mailing expenses and other support costs. The Judiciary is concerned about giving proper notice to an individual who may have his or her license revoked. The Judiciary’s ability to mail proper notice to an individual is dependent on two factors – a law enforcement officer’s handwriting and an individual’s honesty in providing accurate information.

Under Section 5 of this bill, the Judiciary would be required to give additional information on the notice of traffic infraction regarding the driver’s license revocation. The Judiciary would need additional time to include the information on the citation and to print the citation.

The database system of the Judiciary would need to also be upgraded and additional programming would be needed in order to accurately reflect the number of traffic infractions a person has accumulated. Additional time would be required for upgrades and programming.

At the fiscal level, the Judiciary would need additional monetary resources for the additional notification to the person whose license is being revoked as required under Section 6 of House Bill No. 129.



House Bill No. 129, Relating to Traffic Safety
House Committee on Transportation
February 11, 2009
Page 3

The Judiciary respectfully asks that the effective date be moved to January 1, 2011 to accommodate the necessary changes to the notice of traffic infraction, database upgrades, programming and budget requests.

Thank you for the opportunity to testify on this measure.



**Office of the Public Defender
State of Hawaii
Timothy Ho, Chief Deputy Public Defender**



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

February 11, 2009, 8:30 a.m.

H.B. No. 129: RELATING TO TRAFFIC SAFETY

Chair Souki and Members of the Committee:

This measure would prohibit a court from granting a deferred acceptance of a guilty plea (DAG) or a deferred acceptance of a no contest plea (DANC) to an individual who pleads guilty or no contest to the misdemeanor offense of negligent homicide in the third degree, and imposes mandatory jail as a condition of the sentence. This measure also requires an individual who accumulates five or more traffic infractions to have his license revoked for five years. The Office of the Public Defender opposes H.B. 129.

The reason that a majority of defendants who are charged with negligent homicide in the third degree received a DAG or DANC were because a judge, after reviewing the facts of the case and considering the defendants' background, found that they were not likely to engage in a criminal course of conduct, and that the ends of justice and welfare of society did not require that they suffer the penalty imposed by law. These are the requirements set forth in §853-1, Hawaii Revised Statutes. In other words, judges have deemed a majority these defendants worthy of a DAG or DANC. This measure will remove any discretion from the court from deciding on a deferral on a case-by-case basis.

The state of mind required to prove the offense of negligent homicide in the third degree is simple negligence, which means any negligence, and does not require a gross deviation from the standard of care from that of a law-abiding person. Our office represented a person who was charged with negligent homicide in the third degree after he swerved to avoid hitting a dog, and lost control of his car, knocking over a backyard wall, which fell and killed an elderly woman who had been tending to her garden. The driver had not been speeding excessively and had no prior criminal or traffic record. Should a person like this, who is involved in an "accident" not be allowed to receive consideration for a deferral?

The difference between simple negligence and no negligence can be miniscule at times. A driver could have averted their eyes from the road for a split second, or be travelling only a few miles over the speed limit and found to be simply negligent. The very low standard of proof in these cases mean that in many cases, the drivers will be deserving of deferred prosecution. Drivers who cause the death of another person while driving negligently face ten years imprisonment and are not eligible for a DAG or DANC.

The five year license revocation for five or more traffic infractions is an overly severe punishment that will disproportionately affect people who drive for a living. It is not uncommon for individuals who drive for a living to have numerous traffic citations on their records. Taxi drivers, bus drivers and delivery persons would face the loss of their employment if this measure is allowed to pass as it is currently written. The result of this provision will be to create a larger class of unlicensed and uninsured drivers.

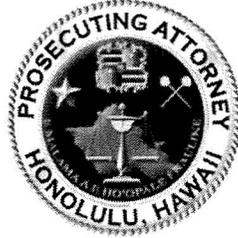
The Office of the Public Defender opposes H. B. 129. Thank you for the opportunity to be heard on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

PETER B. CARLISLE
PROSECUTING ATTORNEY

Douglas S. Chin
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE JOE SOUKI, CHAIR
HOUSE COMMITTEE ON TRANSPORTATION
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i**

February 11, 2009

RE: H.B. 129; RELATING TO TRAFFIC SAFETY.

Chair Souki and members of the House Committee on Transportation, the Department of the Prosecuting Attorney submits the following comments on H.B. 129.

The purpose of this bill is to prohibit a deferred acceptance of plea for persons pleading guilty or no contest to a charge of negligent homicide in the third degree. In addition, H.B. 129 also provides that the defendant sentenced to negligent homicide in the third degree be sentenced to an unspecified mandatory minimum term of imprisonment without possibility of probation or suspension of sentence. House Bill 129 also provides that if a person has been adjudicated to have committed five or more traffic infractions in separate incidents within the preceding five years, then the person's driver's license shall be revoked for a minimum of five years up to a maximum of ten years.

We support the portion of House Bill 129 that prohibits the granting of a deferral of plea for the offense of negligent homicide in the third degree, however we would suggest that this be done by adding Negligent Homicide in the third degree to the list of offenses in 853-4(13) which set forth offenses ineligible for a deferred plea rather than the amendment on page 2 lines 16 to 17 of House Bill 129.

We do have some concerns about the amendment on page 7 lines 15 to 18 which prohibits the granting of probation as a sentence for Negligent Homicide in the Third Degree and mandating a minimum term of imprisonment. We note that for the higher degrees of Negligent Homicide, i.e. Negligent Homicide in the First Degree and Negligent Homicide in the Second Degree, no mandatory term of imprisonment is required being class B and C felonies and requiring a higher degree of culpability. Furthermore, Negligent Homicide in the First and Second Degrees would remain probationable under this proposal while Negligent Homicide in the Third Degree would not. Given that Negligent Homicide in the Third Degree only requires simple negligence, the lowest degree of culpability, we would suggest that Negligent Homicide in the Third Degree remain probationable.

Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
KARI A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE TTN-LC

February 11, 2009

The Honorable Joseph M. Souki, Chair
and Members
Committee on Transportation
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Souki and Members:

Subject: House Bill No. 129, Relating to Traffic Safety

I am Major Thomas Nitta of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 129, relating to traffic safety which would disallow the use of Deferred Acceptance of Guilt (DAG) and Deferred Acceptance of No Contest (DANC) pleas in cases regarding negligent homicide in the third degree, provides for a mandatory minimum sentence, and subjects the defendant to license revocation if certain guidelines are met.

We do not object to the provision that disallows the use of DAG or DANC pleas. We are concerned with the provision of a mandatory minimum sentence. A quick review of negligent homicide cases in the third degree for the last 18 months revealed five cases where the driver responsible for the collision were described as persons between the ages of 71 and 87 years old. We do not believe it was the intention of the legislators to incarcerate these certain groups of individuals.

Thank you for the opportunity to testify.

Sincerely,

APPROVED:


THOMAS T. NITTA, Major
Traffic Division

for: 
BOISSE P. CORREA
Chief of Police



Hawaii Rifle Association

State Affiliate of the National Rifle Association
Founded in 1857

February 10, 2009

Testimony from Dr. Maxwell Cooper, Director, HRA
Before the House Committee on Transportation
Wednesday, February 11, 2009, 8:30 am, Rm 309
On HB129 IN STRONG OPPOSITION

Honorable Chair Souki, Vice Chair Awana, and Members,

We are not lawyers, so please forgive us if we are not interpreting correctly the complicated legal language in this bill.

Our understanding is that negligent homicide in the third degree as defined by this bill would be a misdemeanor crime of violence. Under federal and state firearms laws, an individual convicted of a misdemeanor crime of violence is permanently disallowed possession or control of firearms and ammunition. The only way to remedy that disability is a special Governor's pardon. Most pardons use language, "except for possession of firearms and ammunition."

We think an example of simple negligence resulting in vehicular homicide could be, for instance, falling asleep at the wheel sober, crossing the center line, and causing a death in a resultant head-on crash.

If so convicted under the terms this bill proposes, a person could never hold a job in the military; a security job requiring access to firearms; law enforcement; postal inspector; or employment in a gun shop, gun range, retail, wholesale or manufacturing business involving firearms or ammunition. He or she could never help their children learn safe gun handling or shooting. If a Scout leader, he could not touch a firearm when Scouts are earning a shooting merit badge. He or she would have no lawful possibility of competing in shooting sports, hunting with firearms, teaching firearms safe handling, coaching firearms competitors, or earning a shooting scholarship. His family and associates would by law have to secure their firearms so that he has no access. He cannot be handed a firearm to fire at a range or even handle an heirloom firearm, nor may he participate in historical re-enactments with a firearm. Any firearms and ammunition he possesses must be surrendered to the county PD or sold to a firearms dealer. He may not transfer them to a family member or friend.

This bill would impose a life sentence and a message to the defendant in these cases that because of one terrible mistake, they are not and never will be a good enough person to be entrusted with a gun.

Given these consequences, we much prefer that the court retain its discretion provided under the current statute to accept a DAG or DANC plea.

Section 4 of the bill is nearly as Draconian. Five to ten years of no driving privileges for one moving violation per year over 5 years is excessive. There is no provision for limited licensing for work purposes. The proponents are promoting unemployment and reduced tax receipts.

We see no salvageable value in this bill, and respectfully suggest it be deferred indefinitely.

Thank you for the opportunity to testify for HRA.

Max Cooper
Director
808 225-6944