

1 convicted. A defendant who has been discharged can apply to
2 have the negligent homicide charge expunged from the defendant's
3 record.

4 The purpose of this Act is to protect the public by
5 disallowing the use of deferred acceptance of guilty pleas and
6 deferred acceptance of nolo contendere pleas in cases involving
7 negligent homicide in the third degree, imposing a mandatory
8 minimum sentence of imprisonment of days, and ensuring that
9 persons who accumulate five or more moving violations within a
10 five-year period will have their licenses revoked for a minimum
11 of five years and a maximum of ten years.

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

14 "**§853-4 Chapter not applicable; when.** This chapter shall
15 not apply when:

16 (1) The offense charged involves the [~~intentional,~~
17 ~~knowing, reckless, or negligent~~] killing of another
18 person;

19 (2) The offense charged is:

20 (A) A felony that involves the intentional, knowing,
21 or reckless bodily injury, substantial bodily



1 injury, or serious bodily injury of another
2 person; or

3 (B) A misdemeanor or petty misdemeanor that carries a
4 mandatory minimum sentence and that involves the
5 intentional, knowing, or reckless bodily injury,
6 substantial bodily injury, or serious bodily
7 injury of another person;

8 (3) The offense charged involves a conspiracy or
9 solicitation to intentionally, knowingly, or
10 recklessly kill another person or to cause serious
11 bodily injury to another person;

12 (4) The offense charged is a class A felony;

13 (5) The offense charged is nonprobationable;

14 (6) The defendant has been convicted of any offense
15 defined as a felony by the Hawaii Penal Code or has
16 been convicted for any conduct that if perpetrated in
17 this State would be punishable as a felony;

18 (7) The defendant is found to be a law violator or
19 delinquent child for the commission of any offense
20 defined as a felony by the Hawaii Penal Code or for
21 any conduct that if perpetrated in this State would
22 constitute a felony;



- 1 (8) The defendant has a prior conviction for a felony
- 2 committed in any state, federal, or foreign
- 3 jurisdiction;
- 4 (9) A firearm was used in the commission of the offense
- 5 charged;
- 6 (10) The defendant is charged with the distribution of a
- 7 dangerous, harmful, or detrimental drug to a minor;
- 8 (11) The defendant has been charged with a felony offense
- 9 and has been previously granted deferred acceptance of
- 10 guilty plea status for a prior offense, regardless of
- 11 whether the period of deferral has already expired;
- 12 (12) The defendant has been charged with a misdemeanor
- 13 offense and has been previously granted deferred
- 14 acceptance of guilty plea status for a prior felony,
- 15 misdemeanor, or petty misdemeanor for which the period
- 16 of deferral has not yet expired;
- 17 (13) The offense charged is:
- 18 (A) Escape in the first degree;
- 19 (B) Escape in the second degree;
- 20 (C) Promoting prison contraband in the first degree;
- 21 (D) Promoting prison contraband in the second degree;
- 22 (E) Bail jumping in the first degree;



- 1 (F) Bail jumping in the second degree;
- 2 (G) Bribery;
- 3 (H) Bribery of a witness;
- 4 (I) Intimidating a witness;
- 5 (J) Bribery of or by a juror;
- 6 (K) Intimidating a juror;
- 7 (L) Jury tampering;
- 8 (M) Promoting prostitution in the first degree;
- 9 (N) Promoting prostitution in the second degree;
- 10 (O) Promoting prostitution in the third degree;
- 11 (P) Abuse of family or household members;
- 12 (Q) Sexual assault in the second degree;
- 13 (R) Sexual assault in the third degree;
- 14 (S) A violation of an order issued pursuant to
- 15 chapter 586;
- 16 (T) Promoting child abuse in the second degree;
- 17 (U) Promoting child abuse in the third degree;
- 18 (V) Electronic enticement of a child in the first
- 19 degree;
- 20 (W) Electronic enticement of a child in the second
- 21 degree; or
- 22 (X) An offense under part IV, chapter 291E;



- 1 (14) The defendant has been charged with:
- 2 (A) Knowingly or intentionally falsifying any report
- 3 required under chapter 11, subpart B of part XII,
- 4 with the intent to circumvent the law or deceive
- 5 the campaign spending commission; or
- 6 (B) Violating section 11-201 or 11-202; or
- 7 (15) The defendant holds a commercial driver's license and
- 8 has been charged with violating a traffic control law,
- 9 other than a parking law, in connection with the
- 10 operation of any type of motor vehicle.

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

12 SECTION 3. Section 707-704, Hawaii Revised Statutes, is

13 amended to read as follows:

14 **"§707-704 Negligent homicide in the third degree.** (1) A

15 person is guilty of the offense of negligent homicide in the

16 third degree if that person causes the death of another person

17 by the operation of a vehicle in a manner which is simple

18 negligence.

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

20 (a) A person acts with simple negligence with respect to

21 the person's conduct when the person should be aware

22 of a risk that the person engages in that conduct.



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

4 (c) A person acts with simple negligence with respect to a
5 result of the person's conduct when the person should
6 be aware of a risk that the person's conduct will
7 cause that result.

8 (d) A risk is within the meaning of this subsection if the
9 person's failure to perceive it, considering the
10 nature and purpose of the person's conduct and the
11 circumstances known to the person, involves a
12 deviation from the standard of care that a law-abiding
13 person would observe in the same situation.

14 (3) Negligent homicide in the third degree is a
15 misdemeanor. A person convicted of this offense shall be
16 sentenced to a definite term of imprisonment, pursuant to
17 section 706-663, of not less than days without possibility
18 of probation or suspension of sentence."

19 **PART II**

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



1 **"§286-124 Mandatory revocation of license by a court. (a)**

2 Any court of competent jurisdiction shall forthwith revoke the
3 license of any driver upon a conviction of the driver of
4 manslaughter resulting from the operation of a motor vehicle.

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

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

17 "(d) The notice of traffic infraction shall include the
18 following:

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

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



- 1 (3) A statement of the total amount to be paid for each
- 2 traffic infraction, which amount shall include any
- 3 fee, surcharge, or cost required by statute,
- 4 ordinance, or rule, and any monetary assessment,
- 5 established for the particular traffic infraction
- 6 pursuant to section 291D-9, to be paid by the driver
- 7 or registered owner of the vehicle, which shall be
- 8 uniform throughout the State;

- 9 (4) A statement of the options provided in section 291D-
- 10 6(b) for answering the notice and the procedures
- 11 necessary to exercise the options;

- 12 (5) A statement that the person to whom the notice is
- 13 issued must answer, choosing one of the options
- 14 specified in section 291D-6(b), within twenty-one days
- 15 of issuance of the notice;

- 16 (6) A statement that, if the person:
- 17 (A) Admits a traffic infraction;
- 18 (B) Admits the traffic infraction but seeks to
- 19 explain mitigating circumstances; or
- 20 (C) Fails to answer a notice of traffic infraction;
- 21 when the traffic infraction involves a violation of
- 22 statutes, ordinances, or rules relating to traffic



1 movement and control and the person has committed four
2 or more traffic infractions involving violations of
3 statutes, ordinances, or rules relating to traffic
4 movement and control, each arising out of separate
5 incidents occurring within the preceding five-year
6 period, the person's driver's license shall be revoked
7 for a minimum of five years and a maximum of ten
8 years;

9 [~~6~~] (7) A statement that failure to answer the notice of
10 traffic infraction within twenty-one days of issuance
11 shall result in the entry of judgment by default for
12 the State and may result in the assessment of a late
13 penalty, and, that if the person to whom the notice
14 was issued fails to pay the total amount specified in
15 the default judgment within an additional thirty days
16 or to otherwise take action to set aside the default,
17 notice shall be sent to the director of finance of the
18 appropriate county:

19 (A) That the person to whom the notice of infraction
20 not involving parking was issued shall not be
21 permitted to renew or obtain a driver's license;
22 or



1 (B) Where the notice was issued to a motor vehicle,
2 that the registered owner shall not be permitted
3 to register, renew the registration of, or
4 transfer title to the motor vehicle until the
5 traffic infraction is finally disposed of
6 pursuant to this chapter, except as provided in
7 section 291D-10(b);

8 [~~(7)~~] (8) A statement that, at a hearing requested to
9 contest the notice of traffic infraction conducted
10 pursuant to section 291D-8, no officer shall be
11 present unless the driver timely requests the court to
12 have the officer present, and that the standard of
13 proof to be applied by the court is whether a
14 preponderance of the evidence proves that the
15 specified traffic infraction was committed;

16 [~~(8)~~] (9) A statement that, at a hearing requested for the
17 purpose of explaining mitigating circumstances
18 surrounding the commission of the infraction or in
19 consideration of a written request for mitigation, the
20 person shall be considered to have committed the
21 traffic infraction~~(7)~~ and that there shall be no
22 appeal from the court's decision;



1 [~~9~~] (10) A space in which the signature of the person to
2 whom the notice was issued may be affixed; and
3 [~~10~~] (11) The date, time, and place at which the person to
4 whom the notice was issued must appear in court, if
5 the person is required by the notice to appear in
6 person at the hearing."

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

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

10 "(a) When an admitting answer is received, the court shall
11 enter judgment in favor of the State in the total amount
12 specified in the notice of traffic infraction. If the total
13 amount is not submitted with the answer, the court may take
14 action as provided in section 291D-10. If the court finds that
15 the driver has committed five or more traffic infractions
16 involving violations of statutes, ordinances, or rules relating
17 to traffic movement and control, each arising out of separate
18 incidents occurring within the preceding five-year period, the
19 court shall revoke the person's driver's license for a minimum
20 of five years and a maximum of ten years. The court shall mail
21 a notice of entry of judgment to the address provided by the
22 person when the notice of traffic infraction was issued, notify



1 the person of the revocation and its length, and notify the
2 person that the driver's license must be surrendered as required
3 by section 286-122(a)."

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

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

8 (1) In the case of a traffic infraction where the person
9 requests a hearing at which the person will appear in
10 person to explain mitigating circumstances, the court
11 shall notify the person in writing of the date, time,
12 and place of hearing to explain mitigating
13 circumstances. The notice of hearing shall be mailed
14 to the address stated in the answer, or if none is
15 given, to the address stated on the notice of traffic
16 infraction. The notification also shall advise the
17 person that, if the person fails to appear at the
18 hearing, the court shall enter judgment by default in
19 favor of the State, as of the date of the scheduled
20 hearing, that the total amount stated in the default
21 judgment must be paid within thirty days of entry of
22 default judgment, and, if it is not paid, that the



1 court shall take action as provided in section 291D-
2 10; and

3 (2) If a written explanation is included with an answer
4 admitting commission of the infraction, the court
5 shall enter judgment for the State and, after
6 reviewing the explanation, determine the total amount
7 of the monetary assessments, fees, surcharges, or
8 costs to be assessed, if any. The court shall then
9 notify the person of the total amount to be paid for
10 the infraction, if any. If the court finds that the
11 driver has committed five or more traffic infractions
12 involving violations of statutes, ordinances, or rules
13 relating to traffic movement and control arising out
14 of separate incidents occurring within the preceding
15 five-year period, the court shall revoke the person's
16 driver's license for a minimum of five years and a
17 maximum of ten years, as required by section 286-
18 124(b), notify the person of the revocation and its
19 length, and notify the person that the driver's
20 license must be surrendered as required by section
21 286-122(a). There shall be no appeal from the
22 judgment. If the court assesses an amount for



1 monetary assessments, fees, surcharges, or costs, the
 2 court shall also notify the person that the total
 3 amount shall be paid within thirty days of entry of
 4 judgment. The notice of entry of judgment also shall
 5 inform the person that if the total amount is not paid
 6 within thirty days, the court shall take action as
 7 provided in section 291D-10."

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

9 "(e) Whenever judgment by default in favor of the State is
 10 entered, the court shall mail a notice of entry of default
 11 judgment to the address provided by the person when the notice
 12 of traffic infraction was issued or, in the case of parking
 13 infractions, to the address stated in the answer, if any, or the
 14 address at which the vehicle is registered. If the court has
 15 revoked the person's driver's license as required by section
 16 286-124(b), the notice of entry of default judgment shall notify
 17 the person of the revocation and its length and that the
 18 driver's license must be surrendered as required by section
 19 286-122(a). The notice of entry of default judgment shall
 20 advise the person that the total amount specified in the default
 21 judgment shall be paid within thirty days of entry of default
 22 judgment and shall explain the procedure for setting aside a



1 default judgment. The notice of entry of default judgment shall
2 also inform the person that if the total amount is not paid
3 within thirty days, the court shall take action as provided in
4 section 291D-10. Judgment by default for the State entered
5 pursuant to this chapter may be set aside pending final
6 disposition of the traffic infraction upon written application
7 of the person and posting of an appearance bond equal to the
8 amount of the total amount specified in the default judgment and
9 any other assessment imposed pursuant to section 291D-9. The
10 application shall show good cause or excusable neglect for the
11 person's failure to take action necessary to prevent entry of
12 judgment by default. Upon receipt of the application and
13 required appearance bond, the court shall take action to remove
14 the restriction placed on the person's driver's license or the
15 motor vehicle's registration and title imposed pursuant to
16 section 291D-10. Thereafter, the court shall determine whether
17 good cause or excusable neglect exists for the person's failure
18 to take action necessary to prevent entry of judgment by
19 default. If so, the application to set aside default judgment
20 shall be granted, the default judgment shall be set aside, and
21 the notice of traffic infraction shall be disposed of pursuant
22 to this chapter. If not, the application to set aside default



1 judgment shall be denied, the appearance bond shall be forfeited
2 and applied to satisfy amounts due under the default judgment,
3 and the notice of traffic infraction shall be finally disposed.
4 In either case, the court shall determine the existence of good
5 cause or excusable neglect and notify the person of its decision
6 on the application in writing."

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

9 **"§291D-12 Powers of the district court judge sitting in**
10 **the traffic division.** A district court judge sitting in the
11 traffic division and hearing cases pursuant to this chapter
12 shall have all the powers of a district court judge under
13 chapter 604, including the following powers:

- 14 (1) To conduct traffic infraction hearings and to impose
15 monetary assessments;
- 16 (2) To permit deferral of monetary assessment or impose
17 community service in lieu thereof;
- 18 (3) To dismiss a notice of traffic infraction, with or
19 without prejudice, or to set aside a judgment for the
20 State;



- 1 (4) To order temporary driver's license suspension,
2 driver's license revocation, or driver's license
3 reinstatement;
- 4 (5) To order the director of finance not to issue or renew
5 the driver's license, or to register, renew the
6 registration of, or issue title to a motor vehicle, of
7 any person who has not paid a monetary assessment, has
8 not performed community service in lieu thereof, or
9 has not otherwise satisfied a judgment for the State
10 entered pursuant to this chapter;
- 11 (6) To approve the issuance or renewal of a driver's
12 license or instruction permit pursuant to section
13 286-109(c);
- 14 (7) To issue penal summonses and bench warrants and
15 initiate contempt of court proceedings in proceedings
16 conducted pursuant to section 291D-13;
- 17 (8) To issue penal summonses and bench warrants and
18 initiate failure to appear proceedings in proceedings
19 conducted pursuant to section 291D-5(d)(10); and
- 20 (9) To exercise other powers the court finds necessary and
21 appropriate to carry out the purposes of this
22 chapter."



PART III

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SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 10. This Act shall take effect on January 1, 2010.

INTRODUCED BY:



JAN 22 2009



Report Title:

Negligent Homicide; Criminal Procedure; License Revocation

Description:

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.

