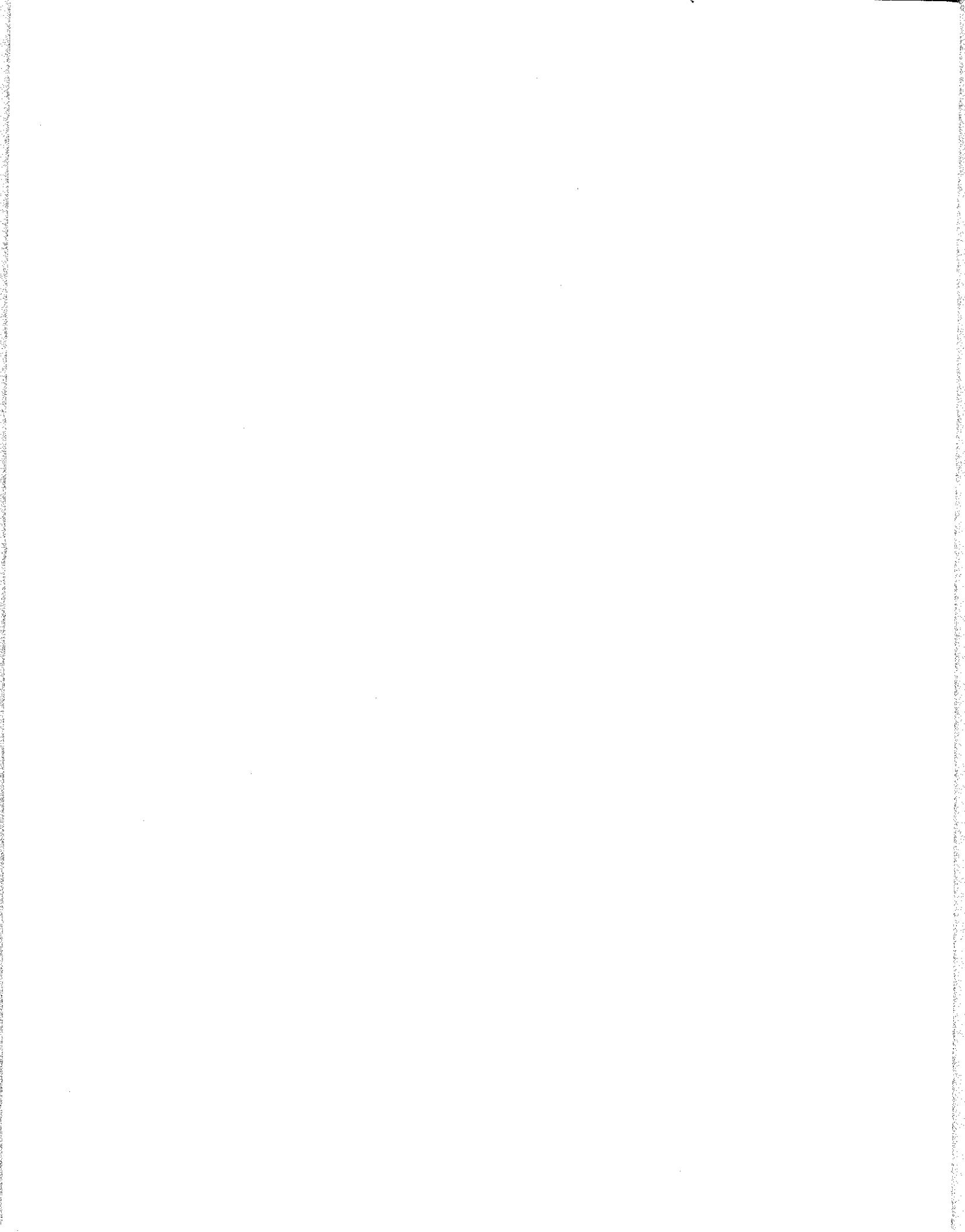


## **SECTION C. TRAFFIC & CRIMINAL COURT**

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# TRAFFIC STATUTES & CRIMINAL STATUTES

## HRS HAWAII REVISED STATUTES

- § 281 Intoxicating Liquor
- § 286 Highway Safety
- § 287 Motor Vehicle Safety Responsibility Act
- § 290 Abandoned Vehicles
- § 291 Traffic Violations
- § 291C Statewide Traffic Code
- § 291D Adjudication of Traffic Infractions
- § 291E Use of Intoxicants While Operating A Vehicle
- § 626 Hawaii Rules of Evidence
- § 701-12 Hawaii Penal Code (misdemeanors are here)
- § 801-53 Procedural & Supplementary Provisions

## REVISED ORDINANCES OF HONOLULU (R.O.)

Web Site: [www.co.honolulu.hi.us/ref/roh](http://www.co.honolulu.hi.us/ref/roh)

Chapter 12, Taxicabs and Pedicabs

Chapter 15, Traffic Code

Chapter 29, Streets, Sidewalks, Malls and other Public Places  
- 29.4 Litter Control

Chapter 40, Prohibited activities in the city

- 40.1 Intoxicating liquors in Certain Public Places

Chapter 41, Regulated Activities within the city  
- 41-31 Noise Control (Boom box)

**Airport Violations**

Title 19, Administrative Rules, e.g. 19-15.1-8 (parking)

## IMPORTANT RULES

- HCTR Hawaii Civil Traffic Rules
- HRPP Hawaii Rules of Penal Procedure

## ELEMENTS CLASS

For our class on elements, each student will be asked to analyze the traffic statutes for the traffic offenses listed below.

You will be assigned to write out for one offense, the:

1. The elements of the offense.
2. The charge that the prosecutor should read to the defendant to comply with Hawaii Rules of Penal Procedure, Rule 5(b)(1).
3. The questions that the prosecutor should ask the police officer (and also write out the answers which should be given by the officer) to get a conviction in Honolulu District Court.

Do not use predicate question given to you by a prior prosecution clinic student or a prosecutor. Try to figure this out by yourself.

The charges we will use for this class are:

1. STOP SIGN.
2. RED LIGHT.
3. UNSAFE LANE CHANGE.

Analyze the statutes for all three offense. However, you only need to write out questions for the offense which was assigned to you. I will not be collecting your written questions, but I do want you to write them out.

## ELEMENTS

### WHAT ELEMENTS OF CRIMES DO YOU FIND IN THE FOLLOWING STATUTES?

The following sections of HRS may help you.

- § 701-114 Proof beyond a reasonable doubt.
- § 702-204 State of mind required.
- § 702-205 Elements of an offense.

#### § 291E-61 Driving under the influence of an intoxicant.

(a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or
- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

#### § 711-1106 Harassment.

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

- (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
  - (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;
  - (c) Repeatedly makes telephone calls, facsimile, or electronic mail transmissions without purpose of legitimate communication;
  - (d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;
  - (e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or
  - (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.
- (2) Harassment is a petty misdemeanor

## **TRAFFIC STATUTES**

### **§ 291C-31(b) Obedience to and required traffic-control devices.**

No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, the section shall be effective even though no signs are erected or in place.

### **§ 291C-32 Traffic-control signal legend.**

\* \* \*

#### **(3) Steady red indication:**

(A) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown, except as provided in the next succeeding paragraphs.

(B) The driver of a vehicle which is stopped in obedience to a steady red indication may make a right turn but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at said intersection, except that counties by ordinance may prohibit any such right turn against a steady red indication, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.

(C) The driver of a vehicle on a one-way street which intersects another one-way street on which traffic moves to the left shall stop in obedience to a steady red indication but may then make a left turn into said one-way street, but shall yield right-of-way to pedestrians, proceeding as directed by the signal at said intersection except that counties by ordinance may prohibit any such left turn as above described which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.

(D) Unless otherwise directed by a pedestrian-control signal as provided in section 291C-33, pedestrians facing a steady red signal alone shall not enter the roadway.

(b) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

### **§ 291C-63. Vehicle entering stop or yield intersection.**

(a) Preferential right of way at an intersection may be indicated by stop signs or yield signs.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the driver shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on the other highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

(c) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway. After slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection; provided that if such a driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed *prima facie* evidence of the driver's failure to yield right of way.

### **§ 291C-81 Required position and method of turning at intersections.**

The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Left turns. The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

- C5 -

(3) The director of transportation and the counties in their respective jurisdictions may cause official traffic-control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such devices are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

**§ 291C-84 Turning movements and required signals.**

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 291C-81, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning; provided that for a bicycle or moped, such signal shall be given continuously during not less than the last one hundred feet traveled by the bicycle or moped before turning, and shall be given when the bicycle or moped is stopped waiting to turn; and further provided that a signal by hand and arm need not be given continuously by the driver of a bicycle or moped if the hand is needed in the braking, control, or operation of the bicycle or moped.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) The signals provided for in section 291C-85(b) shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle, or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

**§ 291C-85. Signals by hand and arm or signal lamps.**

(a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

**§ 291C-86. Method of giving hand-and-arm signals.**

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

- (1) Left turn -- hand and arm extended horizontally.
- (2) Right turn -- hand and arm extended upward.
- (3) Stop or decrease speed -- hand and arm extended downward.

**§ 291C-101 Basic rule.**

No person shall drive a vehicle at a speed greater than is reasonable and prudent and having regard to the actual and potential hazards and conditions then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic, or by reason of weather or highway conditions.

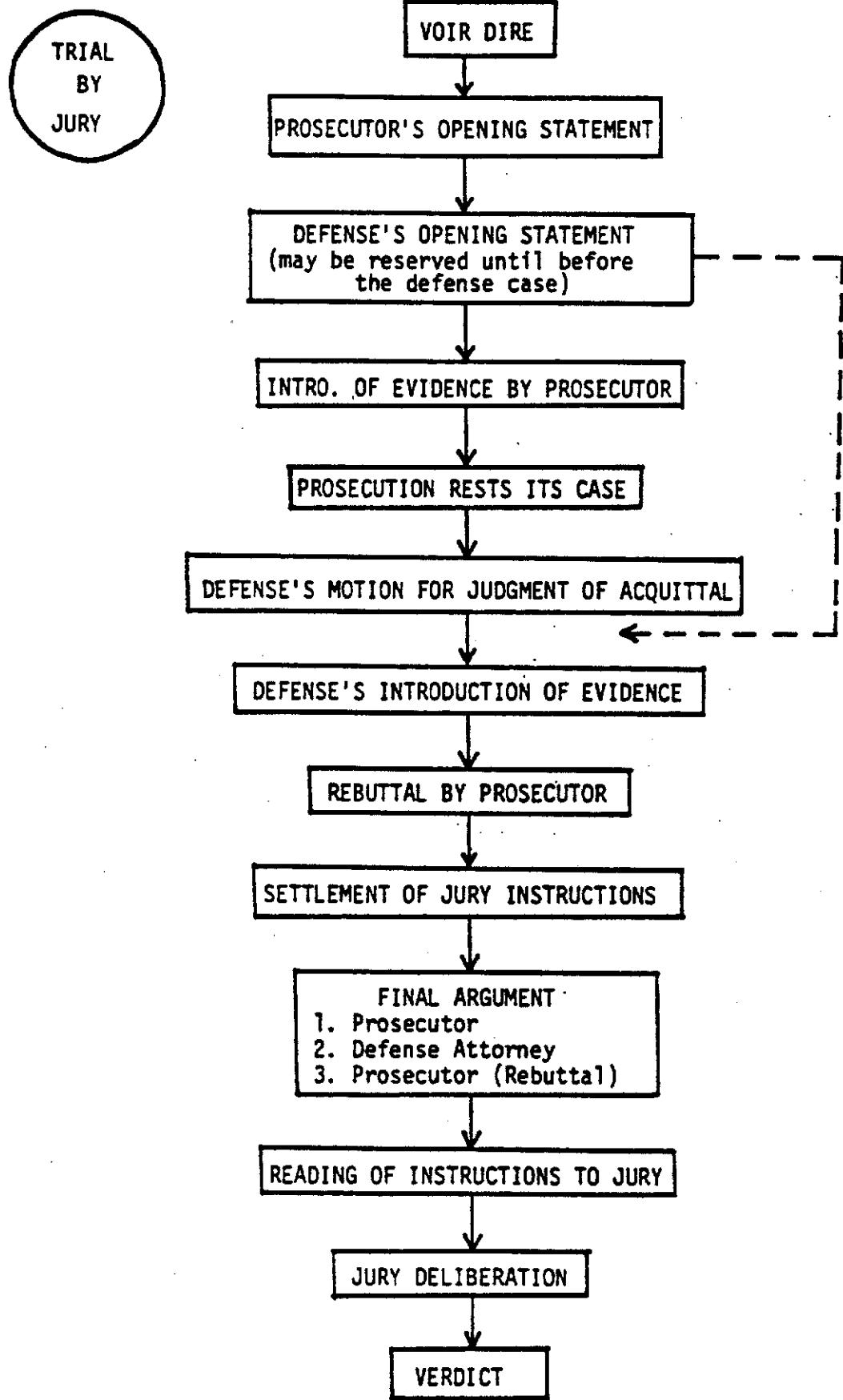
**§ 291C-102 Noncompliance with speed limit prohibited.**

(a) A person violates this section if the person drives:

- (1) A motor vehicle at a speed greater than the maximum speed limit other than provided in section 291C-105; or
- (2) A motor vehicle at a speed less than the minimum speed limit,

where the maximum or minimum speed limit is established by county ordinance or by official signs placed by the director of transportation on highways under the director's jurisdiction.

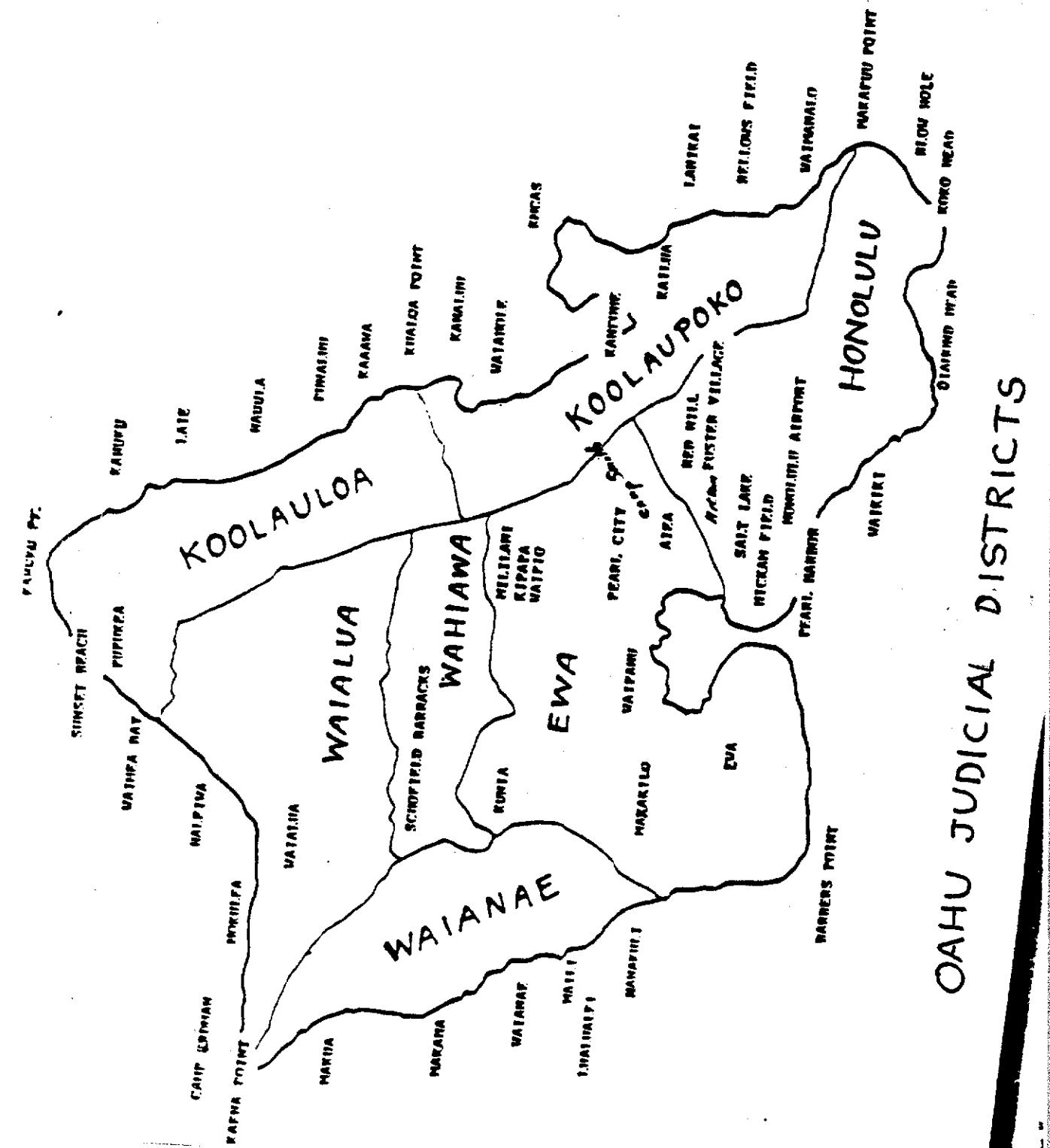
(b) If the maximum speed limit is exceeded by more than ten miles per hour, a surcharge of \$10 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.



HAWAII RULES of PENAL PROCEDURE (HRPP)  
Important Rules

- Rule 5 PROCEEDINGS BEFORE THE DISTRICT COURT  
(b) (1) ARRAIGNMENT  
At the arraignment, the complaint or oral charge shall be read to the defendant, and he shall plead to it  
(b) (2) PLEA  
Pleas shall be in accordance with Rule 11.  
(b) (5) SENTENCE  
To be imposed without unreasonable delay.
- Rule 7 INDICTMENT, COMPLAINT AND ORAL CHARGE  
Non-felonies may be prosecuted by an indictment, a complaint, or an oral charge.
- Rule 8 JOINDER OR OFFENSES AND DEFENDANTS
- Rule 9 OBTAINING APPEARANCE OF DEFENDANT  
SUMMONS - a document requesting the defendant to appear in court [its like an invitation to a party].  
WARRANT - a document that requests the police to arrest the defendant and bring him to court.
- Rule 11 PLEAS  
(a) ALTERNATIVES - guilty, not guilty, or nolo contendere (no contest: same legal result as a plea of guilty, but it is not an admission of the defendant that can be used in other court actions such as a civil suit for damages.)  
(b) Nolo contendere can only be entered with the consent of the judge.  
Although Rule 11 requires that the plea be voluntary, understandingly made, and have a factual basis (called accuracy) none of those protections are applied in traffic and misdemeanor cases.  
DAG PLEAS (Deferred Acceptance of Guilty Plea) is not mentioned in the Penal Rules, but is provided for by statute, HRS § 853-1.
- Rule 12 PRETRIAL MOTIONS
- Rule 13 CONSOLIDATION
- Rule 16 DISCOVERY  
(d) DISCRETIONARY DISCLOSURE  
Discovery rules are mandatory for felonies. Discovery is discretionary, however, in misdemeanors and is not required for violations.

- Rule 29 MOTION FOR JUDGMENT OF ACQUITTAL (MJOA)  
Judge should grant the motion if the evidence is insufficient to sustain a conviction. THe judge must rule on a MJOA brought by the defendant at the time the prosecutor rests, but the judge may reserve a decision on a MJOA brought a the close of the defense's case.
- Rule 43 PRESENCE OF THE DEFENDANT  
(c) For misdemeanors and traffic cases, the defendant need not appear at the arraignment or a plea of not guilty, if there is written consent of the defendant or an oral representation from the lawyer. If the defendant is present when his trial starts, the trial can continue without him if he voluntarily does not return.
- Rule 45 (computing) TIME
- Rule 47 MOTIONS  
A motion must be in writing unless the court permits it to be made orally. Motions must state their grounds and requested relief; they may be supported by an affidavit.
- Rule 48 DISMISSAL  
Except for traffic cases, cases shall be dismissed unless trial commences within 6 months of the arrest. Several types of delays, including continuances, are considered to be excludable time.



# A Practical Guide in

## Part I

### ARRAIGNMENT AND PLEA

Arraignment and plea (AP) is a court procedure by which you are formally charged by the State, represented by the deputy prosecuting attorney (DPA) with the offense or traffic infraction you allegedly committed. It consists of orally reading the complaint which, in traffic cases, is the citation issued to you. Note that a citation is not issued to you if you are arrested and booked in the police station.

The Hawaii Rules of Penal Procedure (H.R.P.P.), which are still presently applied in traffic court, mandate that arraignment be done in open court. Stating the substance of the charge to the defendant is enough to satisfy the rule.

After the charge is read to you by the DPA, you are then asked to enter your plea. There are three possible pleas to choose from: (1) "guilty" (or "no contest" if you were involved in an accident), (2) "not guilty," or (3) "guilty with explanation." If you plead "guilty with explanation" to the charge, you may explain to the judge why you committed the offense or violation charged against you. It does not make sense to plead "guilty" and then tell the judge you do not think you are guilty of the offense charged against you. If you feel you are not guilty of the charge, the proper method is to plead "not guilty" and explain your case to the trial judge, unless, of course, the charge against you is so patently groundless or defective that it calls for immediate dismissal. For instance, if you were cited for speeding and your citation does not show how fast you were going when you were clocked nor does it show the speed limit in the area of clock, your case should be dismissed immediately by the AP court to avoid further waste of time and money. This situation sometimes occurs when one is arrested for driving under the influence of intoxicating liquor (DUI) after being stopped for speeding; because the police officer concentrates on the DUI arrest, he sometimes forgets to make a complete report on the speeding case.

It must be borne in mind that arraignment is not a trial and you are not allowed to argue your case at this time. Argument is done in the

In Honolulu

BY VICENTE F. AQUINO  
1989

trial court which is currently held on the 8th floor (10th floor in DUI cases) of the Honolulu district court building.

Arraignment and plea (AP) is the first stage in a traffic case proceedings. While the rule permits you only to enter a plea of "guilty" or "no contest," "not guilty," or "guilty with explanation" at this stage of the proceedings, as mentioned earlier, there are exceptions to this rule. Having some knowledge of what goes on at the AP may save you time and money as your case might not go beyond this stage if you know how to handle it correctly. Thus, we will devote some time discussing this area.

After receiving your citation, you must appear in court for arraignment and plea on the date and place shown on your citation (although, occasionally, police officers make mistakes in writing down the correct courtroom). If your citation does not show the date of your court appearance (which usually occurs in equipment violation cases, such as driving without wearing seat belts), it is an indication that you may simply mail in your payment, if you agree to it, or call to set up your court date in a situation where you have to go to court. The place to call is the Traffic Violations Bureau (TVB) and the telephone number is on your citation. The current practice requires court appearance in cases where you were involved in an auto accident and have a bad record, or have had moving violation(s) within the preceding three months.

You may also call to arrange a court date if you decide to contest the citation(s) without court dates. It is not uncommon for a police officer to issue two or more citations - some without court dates. This situation results in confusion because the citations without court dates do not appear on the court calendar. Thus, they are severed from those cases with court dates which may necessitate your reappearance in court. You can avoid this inconvenience by one of two ways: (1) immediately calling the TVB and asking that the undated citations be set for AP on the same date the other citations are set up, or (2) going to the 2nd floor, window 17, of the district court building to arrange for your court date, if it is your first court date. Otherwise you should go to the third floor, traffic section, of the same building and tell them your problem. Window 17, 2nd floor (cashier section, TVB), has access to the record of all citations issued by the Honolulu Police Department (HPD), thus

it is the best place to check the status of your case(s) not on the calendar. They can also tell you if the HPD failed to submit your citation to the TVB, which sometimes happens. Once confirmed that you ought to be on the calendar that day, they will probably send you to window 7, same floor (court disposition section), so they can put your case on a special ("add-on") calendar to accommodate you on that day. However, you can only take advantage of this special service if your case should have been "calendared" on that day but was not, due to an oversight. Once your case is placed on a "add-on" calendar, you must appear in court for its disposition.

At present, arraignments are held on the 4th floor of the Honolulu district court building. In the morning, Courtroom 4A handles all arraignments of persons whose last names begin with A to L. In the afternoon, it is the only one open for traffic arraignments. Persons whose last names begin with M to Z are arraigned in Courtroom 4B.

All people in custody are arraigned in Courtroom 4B in the morning. Presently, Courtroom 4A is open morning and afternoon and every second and fourth Monday of the month at 6:00 o'clock in the evening to accommodate those who cannot make it during daytime.

Courtroom 4B is also open every Saturday morning from 8:30 a.m. to handle traffic and criminal arraignments, including juvenile traffic arrangements to accommodate working parents who must appear with defendants under 18 years old.

Only the names on the court calendars are called by the arraigning deputy prosecutor. You should always check with the bailiff ahead of time to assure yourself that your case is on the calendar. There are times when people come to court on a wrong date, or when they are not on the calendar. Likewise, there may be occasion when you appear in court for one case and expect to dispose all your other cases at the same time, but those other cases are not on the calendar for that day. Again, this usually happens when you have two or more traffic cases and the officer writes down your court date on only one citation. This situation results in a split of court dates. To avoid this problem, go to the 2nd floor of the district court building, before your court date, and ask the clerks to set all your undated citations for arraignment and plea on the same date as your other citations.

**After all your cases have been set for AP on the same date (and time),** the deputy prosecutor should arraign you with all your cases when you are called to be arraigned. If your cases have been put on separate calendars which usually happens after you have requested consolidation of all your cases, a bench warrant should not be ordered for your arrest if you left the courtroom after your first arraignment. If you pled not guilty to your other cases, the judge should either continue your remaining cases and give you another date, usually the same as your trial date, or simply set them for trial on the same date. The court or the prosecuting attorney's office should notify you of your new court date.

People arrested or cited in areas within the jurisdiction of Ewa (Pearl City), Waianae, Wahiawa, Waialua or Kaneohe district are arraigned in their respective districts; if they are in custody, however, they are brought to Honolulu district court for arraignment and plea. There are no jail facilities (or holding cells) in those areas. Waialua district court is now closed and all cases belonging to that division have been transferred to the Wahiawa district court.

The traffic arraignment courts and the Traffic Violations Bureau (TVB) are always busy (open from 7:45 AM to 9:00 PM Monday through Friday), and a long wait should always be anticipated; therefore, it is extremely important for you to understand and follow the proper procedures. You should arrive in court about 15 minutes early to assure yourself a seat and to hear the instructions normally given before the court convenes. Failure to follow instructions may cause you considerable delay as they usually put you at the end of the calendar (or roll) if you fail to respond when your name is called. Getting there early will allow you enough time to check with the bailiff whether you are in the right courtroom.

If you are in urgent need to be out of the courtroom early, do not hesitate to approach the deputy prosecutor (DPA) and explain your problem so that you may be called out-of-turn. The DPA customarily calls the calendar and if your request is reasonable, he may call your case ahead of the others. As a matter of courtesy, it is a common practice by the DPA to first call cases (1) represented by private attorneys and the deputy public defenders, (2) people in urgent need to be called immediately, or (3) those with infants in the courtroom to

**minimize inconvenience to them and prevent unreasonable noise.** There are always some people who abuse this privilege.

#### **BEFORE ENTERING A PLEA**

Before entering your plea at the arraignment, read the rules regarding your case (Part II) to see if you have a chance of winning - in the event you go to trial. If you are absolutely convinced you do not have a defense, you might as well plead guilty to the charge against you and save everyone's time. A "no contest" plea, which has the effect of a guilty plea in traffic court, is permitted if you were involved in an automobile accident so that your civil case arising from the accident is not adversely affected by your plea in the event you are subsequently sued civilly. Generally, the traffic court is not interested in the civil matter; although most judges may order you to pay restitution to the victim of the accident, especially when you did not have no-fault insurance to cover the damages.

Conversely, if you have a good defense, you should contest your citation by simply pleading "not guilty" to the charge at your arraignment. You will be given a date to return to court for trial. There is a clerk outside Courtroom 4A who assigns your trial date, which is normally about four months after your arraignment.

Generally, intent to violate traffic laws is not required to convict you of an offense which constitutes only a violation.  
Make sure you understand the charge(s) against you before you enter your plea. Do not hesitate to ask for an interpreter, if you need one.

#### **PENAL SUMMONS**

If you fail to appear in the arraignment and plea (AP) court on your first court date, the judge will automatically order issuance of a penal summons on you which currently costs an additional \$15.00. Failure to appear at the place and/or time the summons specifies is a violation independent of the disposition of the charge for which you were originally arrested - although this rule has never been enforced by the court. Instead, the court imposes the cost of issuing the penal summons, even if your sentence is suspended. The Honolulu City and

County ordinance makes it a misdemeanor to ignore a penal summons.

Presently, the practice is to add a \$20.00 fee to the fine for the issuance of the penal summons, although the law allows an assessment of up to \$25.00. However, if you go to the penal summons section (2nd floor, Window 1, Honolulu district court building) to reinstate your case after you originally failed to appear in court, you will only be charged a \$15.00 fee. Thus, the fee is \$15.00 if you pay over-the-counter; \$20.00 if you go to court; and none if you did not receive the summons, although it was issued. It is not unusual to see an original \$5 parking citation become \$37.50 (\$10 + \$20 + \$7.50), if you ignore your citation.

When a penal summons is issued on you, you are notified of another court date. You can save the cost of the issuance of penal summons if you immediately go to the 2nd floor, Window 1, Penal Summons Section, district court building, and ask them to recall the penal summons, and reschedule your case, before it is served. But you must go there yourself, and expect to wait because the line is usually long. You will be asked to sign a reinstatement form which gives you your next court date. If you fail again to appear in court on the date assigned to you on the reinstatement form, a bench warrant will be issued to whoever signed the reinstatement form just as a bench warrant is ordered for your arrest if you received a penal summons and ignored it.

If the court has already adjourned when you arrived, which usually happens if you appear in the wrong courtroom, you may still avert the issuance of the penal summons or bench warrant by immediately going to the 3rd floor of the Honolulu district court building.

Ask the clerk assigned to your courtroom to continue your case and give you another date for arraignment and plea instead of issuing a penal summons or bench warrant, unless the bench warrant was ordered by the judge "absolutely no recall." The clerk is not supposed to do this without court order but they do because continuing a case is easier than issuing a penal summons or bench warrant (for which you are charged a fee).

Note, however, that as a matter of policy only the penal summons issued by the court or the penal summons section of the district court may be recalled by that section. A penal summons issued by the prosecuting office will not be recalled by the penal summons section of the district court.

The penal summons section is open until 9:00 PM on Mondays for people who cannot come during regular working hours.

#### BENCH WARRANT

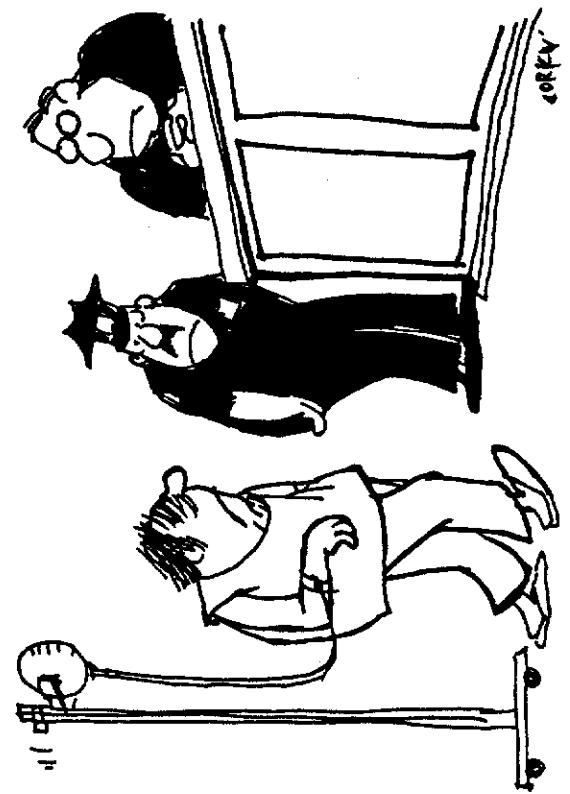
As mentioned earlier, if you fail or refuse to comply with a penal summons, or if you fail to appear in court on the date you previously requested through motion for continuance, a bench warrant will be ordered for your arrest; any bail you have posted will be forfeited, and, as a general rule, will not be reinstated because it goes to the state general fund. However, some judges set aside a bail forfeiture on good grounds. Thus, you should not hesitate to ask the judge to set aside his bail forfeiture order on your next court date.

Generally, a bench warrant is ordered because you knew you had to be in court on a certain date but ignored it. You may avoid this situation by sending someone to court to ask for another date if you cannot make it that day or, as mentioned earlier, by going to the 3rd floor of the district court building to seek their assistance to file a motion for continuance of your case(s). That motion needs to be approved by a judge who is usually around on the third floor. Naturally, not all request for continuance, either by you, personally, or by someone in your stead, are granted by the court. Only meritorious continuances, such as those based on sickness or being out-of-town, are granted by the court. There have been cases where the court has ordered the issuance of bench warrants even though the defendants have sent their friends or parents to court asking for continuance - where there had been prior continuances - and the court felt the request was a mere dilatory tactic.

As a matter of practice, a bench warrant is issued in one of three ways: (1) as a plain "bench warrant," (2) a "no recall" bench warrant, or (3) an "absolutely no recall" bench warrant. A "no recall" or "absolutely no recall" bench warrant is usually ordered if you have a prior bench warrant record. If the bench warrant is a plain bench warrant, you may go to the 2nd floor, bench warrant section, of the district court building and ask them to recall it without posting a bail, assuming it has not gone out yet. If the bench warrant is only "no recall," you may still go to the bench warrant section and ask them to recall it but you must post a bail. On the other hand, if the bench warrant is "absolutely no recall," then the order can only be recalled by the same judge that ordered it even though it has not been actually issued. You may prevent its enforcement by going to the 3rd floor, traffic section, Honolulu district court building, and asking them to help you find the judge who ordered it. You should see the judge who ordered the bench warrant and convince him to recall his bench warrant. A simple note by the judge addressed to the 3rd floor clerk is sufficient to recall his bench warrant.

## CONTINUANCE

As mentioned earlier, if you are sick on your arraignment day, you may prevent the issuance of a penal summons or a bench warrant on you by sending someone to court at your arraignment to request a continuance for you. A request for continuance by telephone is not acceptable. Under current practice, a request for continuance, unless already done three or more times, is usually granted by the court, especially if you wish to consult with an attorney, even though you may not have the constitutional right to counsel in minor traffic infractions. District court judges are generally lenient on this matter unless your aim is merely dilatory. As a rule, you may file a motion to continue your court date (based on reasonable grounds) by going to the third floor of the Honolulu district court building, traffic section, before your court date; ask them to help you fill out the form. However, as a matter of policy, you cannot ask for continuance of your court date for less than five (5) working days. Likewise, you cannot continue your case once a penal summons is issued on you.



If you were late in court and a bench warrant for your arrest has already been ordered by the judge, you may still avoid being arrested if you immediately go to 2nd floor, Window 7, Court Disposition Section, TVB, Honolulu district court building, and request that the order be recalled, provided it has not actually been issued. You may also go to the third floor, traffic section, and ask for the same help. Unless it is an "absolutely no recall" bench warrant, they may be able to ask a judge to recall it for you. However, if your request is untimely and the bench warrant has already gone out, your only chance to prevent being arrested (sometimes in the presence of your family members or co-workers) is to immediately surrender yourself in the sheriff's office located on the 2nd floor of the Honolulu district court building during business hours, or on the first floor after business hours. Once you are arrested on the basis of a bench warrant you must either (1) post a bail in cash or (2) call someone to put up the bail for you. You should be allowed to make a telephone call for this purpose. The amount of your bail depends on your existing record and on the charge(s) against you. Most likely, you will be charged with an additional offense of criminal contempt of court. (See Part II of this book for the offense of Criminal Contempt of Court).

## **NO-FAULT INSURANCE and DRIVING WITHOUT DRIVER'S LICENSE (DWOL)**

As you know, when a police officer stops you he normally asks for your driver's license, no-fault insurance card and automobile registration. This procedure should not be construed as harassment but mere compliance with the mandate of the law.

If you were cited as a driver or registered owner of a motor vehicle without (1) current no-fault insurance, (2) registration, (3) current safety inspection, (4) reconstruction permit, (5) motor vehicle tax, or (6) driving without a valid driver's license, oftentimes you can save yourself the trouble of going back and forth to AP if you appear in court prepared with documentary proofs (no-fault insurance policy or card, registration, safety inspection, reconstruction permit, tax payment, or valid driver's license).

Once you show proof of a valid driver's license or no-fault insurance to AP court, you are entitled to immediate dismissal of your case (under Sec. 286-116(a), H.R.S. but not under Sec. 431:10C-117(a)(2), H.R.S. See more discussion on No-Fault Insurance in Part II). If you lost your driver's license or no-fault insurance card, get a copy of your driver's license from the Division of Motor Vehicle (DMV) or an affidavit from your insurance company stating that you had no-fault insurance coverage on the date you were cited before you come to court. Note that proof that you had no-fault insurance on the date you were cited may not, necessarily, be enough. For instance, if your no-fault insurance was issued on the date of your citation but your citation was issued at 2:00 o'clock a.m. of that same day, your no-fault insurance is not good because you could not have obtained it prior to your citation, unless you can prove you were covered at that time. However, it is not unusual for the deputy prosecutor to overlook the time of your citation because of the number of cases in the AP courts.

Remember, safety inspection or reconstruction permit violations, will not, as some police officers would have you believed, be dismissed by the court by simply obtaining a safety inspection or reconstruction permit within 7 days from the date of your citation. However, it would certainly help you if you have it with you when you are sentenced.

If you pled guilty to driving without a driver's license or no-fault insurance, or any other charge(s) that required documentation, and subsequently find out that you had the valid document at the time you were cited, you should immediately go to the 3rd floor of the Honolulu district court building, traffic section, and ask them to help you file a motion to withdraw your guilty plea. The court clerk will set this motion for a hearing and you will be given another chance to appear in court and show the judge the proof of your driver's license or no-fault insurance. If your motion is filed on time (normally within 10 days from the date of your conviction, although this rule is sometimes ignored by judges) and if you provide proof of the valid document, the court will probably grant your motion by allowing you to withdraw your guilty plea and dismiss your case.

If you drove a motor vehicle owned by another person and were cited for driving without no-fault insurance, chances are you were one of those who did not check first with the owner whether the car was covered by no-fault insurance. This type of situation happens all the time, and the unsuspecting driver almost always get convicted of the offense which entails a fine of at least \$100 for the first offense plus a hike in insurance premium. (Note: The 1989 Legislature had increased the fine to at least \$1,000.) You can prevent this situation by checking with the car owner whether or not the auto is covered by a no-fault insurance before you even start the engine. There have been instances when drivers (usually auto mechanics or prospective car buyers), are cited for driving without no-fault insurance while just testing the car on the road. Bear in mind, that a police officer can stop you at just about any time, for any traffic infraction such as expired safety inspection sticker or defective taillight. Thus, if you plan to drive someone else's vehicle, first ask the owner whether he has no-fault insurance covering that automobile. If the owner assures you the vehicle is covered by current no-fault insurance, and you rely on his assurance, you should not be guilty of driving without no-fault insurance - even though it turns out that the vehicle was not covered by no-fault insurance.

If you failed to ask the owner of the vehicle you were driving whether it was covered by no-fault insurance (which happens all the time), and you discovered later that it was not insured, you could still save yourself from being convicted if you owned a car covered by no-fault insurance covering such driving. Any operator of a motor vehicle

owned by another person is not considered in violation of the no-fault statute if he owns insurance covering such driving. In this case, bring proof of your no-fault insurance to your arraignment and the court will probably dismiss your case. The best proofs to bring are your no-fault identification card and insurance policy, although an affidavit signed by your insurance company indicating the dates of coverage has been acceptable to the court. In practice, a valid insurance identification card alone suffices. Ask your insurance agent to give you an affidavit and he should know what to do. The insurance company has its own form of affidavit.

If you were cited for driving without no-fault insurance while driving your employer's motor vehicle, during the normal scope of your employment at the time you were stopped by the police officer, you can also avoid being fined at your arraignment and plea if you do any of the following:

1. Bring in and show the judge your employer's no-fault insurance card and policy covering the motor vehicle you were driving at the time you were stopped by the police officer.
2. If your employer did not have the required no-fault insurance, bring in and show the judge proof of your own valid no-fault insurance which covered such driving;
3. If you and your employer did not have no-fault insurance, bring your employer to AP court and explain to the judge that at the time you were stopped by the police officer you were driving your employer's motor vehicle during the normal scope of your employment. Since AP court does not usually permit any testimony from any witness, some judges may ask you to simply plead not guilty and bring your witness to the trial. However, there are judges who will hear your story and promptly dismiss the case against you even at AP level pursuant to the provision of the statute; or
4. In the event you are no longer employed by your employer and he refuses to give you his proof of no-fault insurance or otherwise declines to go to court with you, you should plead

not guilty to the charge of driving without no-fault insurance and ask that a subpoena be issued to your employer so that he is forced to go to court. You may accomplish this by going to the 3rd floor of the Honolulu district court building, traffic section, and ask one of the clerks there to help you issue the necessary subpoena.

The law is particular about the type of your insurance coverage. Sec. 294-8(a)(1), now Sec. 431:10C-104, Hawaii Revised Statutes (H.R.S.), effective July 1, 1988, mandates that all motor vehicles being operated upon any public street, road, or highway in the State of Hawaii must be insured under a no-fault policy. Thus, an out-of-state insurance policy does not, necessarily, qualify although many judges hold it as in compliance because of the stiff penalty it carries.

Bear in mind that the insurance required by your bank to protect its own interest (which is normally equal to your loan, in the event your car is totally wrecked) is not a no-fault insurance. It only protects your lender to the extent of your car loan.

If you were operating a motorcycle or motor scooter which was not covered by a liability insurance, make sure the charge against you is "operating motorcycle or motor scooter without liability insurance" and not "operating a motor vehicle without a no-fault insurance." There are substantial differences between these two charges even though they both involve insurance. For instance, in no-fault insurance cases, the mandatory minimum fine for the first conviction is \$100.00, for the second conviction \$400.00 and/or incarceration of not more than 30 days, and/or suspension of driver's license and confiscation of license plates. (See Part II for more discussion on no-fault insurance.) While the minimum fine for the first conviction in liability insurance cases is also \$100.00, the minimum fine for subsequent convictions remains the same, and you do not have to post financial responsibility. However, in addition to the fine (effective July 1, 1988), the court may sentence you to a maximum of thirty days imprisonment or one year driver's license suspension, or both, if you are found guilty of operating motorcycle or motor scooter without liability insurance (even on first conviction).

Effective June 16, 1989, the penalties for driving without no-fault insurance are as follows:

**Fine:**

First conviction - \$1,000.00. Subsequent conviction-minimum  
\$3,000.00; maximum \$5,000.00.

In addition:

1. The driver's license of the driver and the registered owner shall be suspended for 6 months.

OR

2. They shall be required to maintain proof of financial responsibility, and

3. Keep a nonrefundable no-fault insurance policy in force for 6 months.

If it is a subsequent conviction, the driver's licenses of the driver and the registered owner shall be suspended for one year, plus the following penalties:

1. Imprisonment - maximum 30 days, or
2. Suspension or revocation of the registration plates, or
3. Impoundment and sale of the vehicle, or
4. Any combination of such penalties.

If you were cited for driving with an expired driver's license (not extended by your home state) and you are a member of the United States armed forces, show the judge your military identification and he will probably dismiss your case, although this rule applies only to those formerly licensed by the State of Hawaii.

If you were cited for driving without a Hawaii state driver's license but you had a valid out-of-state driver's license, show the judge that out-of-state driver's license and your case will be dismissed (unless you are under 18 years old), although the law requires that you have your

An "affidavit" issued by insurance company indicating no-fault coverage.

TO: DISTRICT COURT OF THE FIRST CIRCUIT		DIVISION
MAKE OF VEHICLE		
CITATION NO.		
DIVISION		
(Insurance Co.)		
(Address)		
CERTIFIES AND STATES THAT _____, REGISTERED OWNER		
AND/OR OPERATOR OF VEHICLE LICENSE PLATE NO. _____, SERIAL NO. _____		
WAS COVERED BY NO FAULT INSURANCE AT THE TIME OF VIOLATION.		
EFFECTIVE DATE OF INSURANCE _____, EXPIRATION DATE _____		
(Signature of authorized person - Agency stamp) (Date)		

out-of-state driver's license in your possession at the time of the citation. If you lost the out-of-state driver's license, ask the court to continue your case to give you a chance to obtain a copy of it; the court will probably give you 30 days to do so.

### BAIL FORFEITURE

If you have any questions regarding waiver of court appearance, bail forfeiture, or prior guilty pleas, you should go to the Traffic Violations Bureau (TVB) shown on your summons or citation within 7 days from date of its issuance. Any person not involved in an automobile accident, and who has had a clear record for a period of 6 months prior to the violation, may qualify for a "bail forfeiture only" procedure. This means that if you plan to pay your fine without waiting for your court date, you are allowed to post bail in an amount computed in accordance with the schedule adopted and promulgated by the court. The bail you posted is then forfeited without the necessity of appearing in court. Similarly, in certain cases, you are allowed to go to TVB and present your proof of no-fault insurance or registration and your case is then dismissed as if you had gone to court. Surprisingly, not too many people take advantage of the convenience of this procedure and the benefits of having no conviction on their records. All accident cases require court appearance under the current court policy.

If you plan to plead guilty but cannot appear in court on your court date, you may send someone to appear for you but he cannot enter a guilty plea for you because that guilty plea may be questioned later, although some judges allow it. The way to get around this problem (and many judges allow it) is to ask your representative to request that the judge allow him to post a cash bail in the amount of the fine (to be determined by the judge) plus whatever additional costs your case entails. Your representative should then ask that the posted bail be forfeited. Almost all judges in the traffic court allow this procedure if the request is reasonable and your absence is justifiable (meaning, you are not doing it to avoid additional sentences, such as attending the driver education classes) and your record is not bad. This procedure operates in the same manner as the bail forfeiture.

A request for "bail forfeiture only" (meaning, no further action after the bail forfeiture), like a request for continuance, is a matter within the

judge's discretion and may not be granted if you have had prior conviction within a period of 3 months, or were involved in an automobile accident and with prior record - no matter how old it is. If your representative's request for "bail forfeiture only" is denied, the judge could ignore his presence in court and either order the issuance of a penal summons or bench warrant for your arrest depending upon circumstances. The court may also order a continuance of your case until you can come to court. In any case, your representative will be given a slip showing the disposition of your case.

The current practice, based on the so-called "Aloha Spirit" statute, is to grant a "bail forfeiture" only if you are a non-resident of Hawaii and do not have a prior record, which is usually the case. In this situation, you may simply send a note to TVB requesting that the bail you previously posted be forfeited. You need not appear in court on your arraignment and plea date. You should address your mail to Traffic Violations Bureau, 1111 Alakea Street, Honolulu, Hawaii 96813. Some people mail their payments to Honolulu Police Department and are surprised to learn that their citations remain outstanding. If you want to pay your fine without going to court and your situation permits such payment, you may determine the exact amount of your fine by calling the TVB. If you mail in your payment or pay your citation "over-the-counter" (2nd floor, window 17, Honolulu district court building), you need not appear in court because your case will be considered a "traffic waiver." This is the same place you go to show your proof of no-fault insurance or other documents (whenever applicable) to avoid going to court on your court date; in this case the court will treat your case as "ABC" or "Action By Court," which means the court has already taken action on your case. The practice of taking action "over-the-counter" may change, however, as court administration changes.

### GUILTY PLEA

Normally, as soon as you plead guilty to the charge against you, the court will find you guilty of the charge and sentence you immediately, unless it feels there is need for further investigation of your background in which case it will order the driver improvement advisor (DIA), who is usually present in the AP courtroom, to prepare a presentence report on you before imposing the sentence. This procedure generally works

to your benefit because the DIA usually arrives at a fair and reasonable recommendation after conducting a thorough investigation of your background. And the court usually follows the recommendation of the DIA. Ordering a presentence report likewise prevents the judge from spending too much time in perusing your record at the arraignment court. The only problem with this procedure is that you are asked to report to the DIA's office for an interview and then to return to court on another date for sentencing.

As mentioned earlier, conviction affects not only subsequent sentences but also the insurance premiums and, in some cases, residency status of an alien. Thus, you should avoid pleading guilty simply because you want to save time. The impact of a traffic conviction can, in the long run, be more onerous than a mere loss of time. Unless you are absolutely convinced you are guilty of the offense or violation you should not plead guilty at the arraignment and plead court. Bear in mind that the state has the burden of proving you are guilty of the offense or violation charged against you and the standard of proof is "beyond reasonable doubt" even in violation cases. Note however that TVB has now refused to issue clearances (a prerequisite to auto registration) to people with outstanding citations unless sufficient bail is posted. This policy actually compels some people to plead guilty to their citations.

entails a higher attorney fee.

If the judge failed to inform you of your rights, where applicable, your guilty plea and jail sentence should be overturned under the "plain error" rule. You may then file a motion to withdraw your guilty plea and vacate the sentence imposed on you by going to the 3rd floor of the Honolulu district court building, traffic section, where you fill out a motion form.

If you intend to plead guilty to a contempt of court charge you should try to enter a "deferred acceptance of guilty plea" (DAGPlea) instead, assuming you are qualified. That way you will not have a conviction on your record if you complied with the conditions imposed by the court (normally, a contribution to the state general fund plus arrest/conviction free within a certain period of time, usually six months).

If you have two or more outstanding identical cases and you intend to plead guilty to all of them, it is probably better for you to schedule them all in one day so that you can have the benefit of the Ahakulo ruling (meaning, all cases will be considered as first offenses for the purpose of considering whether you are a repeat offender).



Cartoon

If you are charged with a jailable offense such as driving while your driver's license was suspended because of a prior DUI conviction (which carries a mandatory minimum sentence of three-day incarceration) or a misdemeanor such as driving without driver's license, the court will inform you of your rights to counsel and jury trial and the possible sentence(s) it may impose. Since 1988, judges have been required by law to inform defendant that in certain cases his guilty plea may cause him deportation if he is an alien. Likewise, the court must determine that you knowingly and voluntarily waive those rights before you enter your guilty plea.

DUI is considered a serious offense and thus the court, before accepting your guilty plea, normally informs you of your rights to counsel and jury trial, although, as a practical matter, trial by jury

## SENTENCING

Depending on the type of your case, the sentence may vary from a fine, suspension of driver's license, performance of community service, attending the driver training program, incarceration, or simply suspended sentence within a certain period of time, in which case you do not have to do anything or pay any fine unless you violate the condition imposed by the judge. Incarceration is usually imposed only on repeat offenders, especially on major cases such as DUI, DWOL and no-fault insurance cases. That is why it is very important to protect your record. A guilty plea results in a conviction which automatically becomes part of your record. The only way you can erase your record is by a process called "expungement" of record following a deferred acceptance of guilty plea, which is done by filing a petition with the Hawaii Criminal Justice Data Center, state attorney general's office.

After a conviction, the court must impose a sentence in order to have a final disposition of the case. The court cannot just order to set aside a previously imposed sentence or take "no further action" when there is no prior sentence on a case, which sometimes happens when the court deems it is no longer feasible to enforce the prior sentence, because said order is not a sentence at all. If the court wishes to revoke the previous sentence then it should order the suspension of the existing sentence or, if there is no prior sentence, take "no action" on the case, which is tantamount to dismissing it. Nor can the court order you to go to the driver improvement advisor without imposing any other sentence because referral to DIA, alone, is not a sentence at all. If the court wishes to refer you to DIA only (to attend classes), it should impose a sentence and suspend it on the condition that you attend those classes.

The judges are usually given certain amount of discretion in imposing a sentence although there are certain rules they normally follow. For instance, in speeding cases, the typical fine is double the speed over the speed limit plus \$10. Example: If you pled guilty to going 40 miles-per-hour in a 30 m.p.h. zone, the fine is usually, although not necessarily, \$30 plus \$5 fee for the driver education training fund which is mandatorily added pursuant to Sec. 286-G-3, H.R.S. (except in cases related to prohibited stopping, standing, parking, registration, or pedestrian). In some cases, when penal summmons has been served on you, the court must assess a fee for serving it.

The fine imposed by the court depends upon the type of citation, record or abstract, and the judge. If you plan to plead guilty in the AP court, you should try to observe how the judge imposes sentences. While judges usually follow certain guidelines in sentencing matters, they do not impose identical sentences on the same type of cases. If you think your judge is tough in sentencing, you might consider asking for continuance of your case, or plead not guilty.

If you cannot pay the fine after pleading guilty to the charge, ask the judge to give you reasonable time to pay it or convert it to community service, which may be a more realistic thing to do if you are unemployed, provided the fine is not mandatory as in no-fault insurance cases. The court usually extends payment of fines up to a maximum period of six months and a minimum payment of \$25 per month. (Note: The new policy is to pay at least half of the fine within 30 days.) Keep in mind, however, that a knowing failure to pay the fine within the time given by the court or in the absence of good faith effort to pay fines may constitute criminal contempt of court.

The Honolulu district court is in the process of updating its records concerning all outstanding delinquent fines. It has been asking defendants to come to court and make arrangements for the payment of their delinquent accounts or convert them to performance of community service, or face contempt charges. By requesting the court to extend your payment deadline or converting your fine to community service, you avoid the risk of being charged with contempt of court.

Most judges usually impose only the minimum POINTS provided by the statute. Your driver's license will most likely be suspended from one to six months as soon as you accumulate 12 points, although the court may, on a showing of good cause, suspend the license suspension sentence. The points that accrued from 12 to 24 months preceding the last violation are already counted at 1/2 their established value, and those resulting from violations (note: not convictions) more than 24 months prior to the last violation are no longer counted. Thus, all your points are eliminated after two years. Query: Is this fair to people with lesser number of points?

If you have accumulated 6 points within a 12-month period, the judge may order you to attend defensive driving school.

Observe that the point system established by law is different from the point system used by the insurance companies in rating insurance premiums. Check your insurance company regarding its point system. The point system in Hawaii is mandated by law and, unlike in some other states, must be imposed even though you volunteer to attend the driver education training school.

Pursuant to Act 120, SLH/84, an assessment of \$5 is levied on conviction or bail forfeiture for any offense involving a violation of a statute or county ordinance relating to vehicles or their drivers or owners, except (1) offenses relating to stopping, standing, or parking; (2) offenses relating to registration; and (3) offenses by pedestrians. The assessment is levied whether or not the sentence or imposition of the sentence is suspended. Thus, in addition to the fine, the court also assesses \$5 for the driver education training fund plus a fee (currently \$7.50) for any check returned unpaid by your bank.

#### MOTION TO WITHDRAW GUILTY PLEA

If you plead guilty to driving without no-fault insurance and you discovered later that you or the registered owner of the motor vehicle had proof of no-fault insurance at the time of the citation, you should immediately go to the 3rd floor of the Honolulu district court building, traffic section, and request any of the clerks there to help you file a motion to withdraw your prior guilty plea. She will, most likely, prepare the motion for you and set its hearing on another date at which time you should bring your proof and show it to the judge. If the judge is satisfied with its validity, he will permit you to withdraw your prior guilty plea and dismiss your case. This motion should be done within 10 days from the date of your conviction but most judges ignore this rule to correct manifest injustice, especially in no-fault insurance cases because of their stiff penalty, and dismiss cases even though six months have already lapsed since the conviction(s).

The current practice in the district court is that if you went to trial and were found guilty of a traffic infraction, your motion for reconsideration or new trial must be heard by the same judge. On the other hand, if you simply pled guilty to it, your subsequent motion for reconsideration of sentence or withdrawal of guilty plea may be heard by any judge.

#### STATUTE OF LIMITATION

The law provides that a prosecution for a misdemeanor or a parking violation must be commenced within two years after it is committed. A prosecution for a petty misdemeanor or a violation other than a parking violation must be commenced within one year after it is committed. A prosecution is commenced either when an indictment is found or an information filed, or when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay. However, the period of limitation does not run:

1. During any time when the accused is continuously absent from the State or has no reasonably ascertainable place of abode or work within the State; but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; or
2. During any time when a prosecution against the accused for the same conduct is pending in this State.

While, normally, the AP court does not entertain motion to dismiss a case, it is worth trying to raise the affirmative defense of statute of limitation, assuming it is applicable to your case. Most traffic court judges entertain this defense at AP and some judges even dismiss cases *sua sponte* (on its own motion) based on statute of limitation, in the interest of justice and judicial economy, although as an affirmative defense, AP court should not take cognizance of this defense unless it is raised by the defendant. Thus, you should raise the defense of statute of limitation even in the AP court whenever it is applicable to your case. Do not expect the deputy prosecutor to raise it for you unless the situation is so absurd and unrealistic that the only sensible thing to do is to dismiss your case. For example: If your citation is at least five years old, it is most likely that the officer who issued it will not remember anything about it, unless something clearly unusual occurred at the time your were cited. Thus, if your parking citation is two years old or your citation for a violation other than parking is already one year old, you should ask the AP court to dismiss your case based on statute of limitation and, unless your situation falls within the exceptions, your case will probably be dismissed - depending on the



## Part II TRIAL

All district court trials are bench trials (no jury). Thus, you will only see the following people in the courtroom: (1) the judge, (2) the deputy prosecutor representing the State of Hawaii, (3) the court reporter (stenographer) transcribing the proceedings, (4) the bailiff maintaining order in the courtroom, (5) the other defendants in the courtroom, (6) occasionally, some lawyers (including the deputy public defender representing indigent defendants charged with jailable offenses, and, in some cases, (7) a court-appointed interpreter. Witnesses, such as police officers, are kept outside the courtroom until they are called to testify so that they cannot hear what is being said by the witness who is testifying on the witness stand. By and large, trial judges ensure that the constitutional rights of the defendants, not represented by counsel, are well protected at the trial.

As mentioned earlier, traffic cases are currently tried on the 8th floor of the district court building, except DUI cases which are tried on the 10th floor (5th floor if tried by jury). To locate the right courtroom, you should look at the court "calendar" or list of names posted on each courtroom door. When you find your name on the "calendar," you should check-in with the bailiff assigned to that courtroom so that he can check you present. It is important for the bailiff to know that you are present to prevent issuance of a bench warrant for your arrest in the event you are not inside the courtroom when your name is called. This usually happens when you leave the courtroom to make a telephone call or visit the restroom while court proceedings are going on. Defendants not checked-in are presumed absent and are called before those who are present and ready to go to trial. This process is called "clearing of the calendar" and is done by the deputy prosecutor about fifteen minutes after the court convenes. It is during this "clearing of the calendar" that the judge orders the issuance of bench warrants to those who are not in the courtroom.

At the trial, you may still change your plea from your original not guilty plea to guilty plea. If you decide to do this, you should inform the deputy prosecutor of your decision to plead guilty as soon as you arrive in your courtroom. The deputy prosecutor will then call your case ahead of the others so you can leave within a few minutes.

While AP court follows a short and an informal procedure (due to the number of cases in it), trial court normally follows a more formal procedure, especially when the defendant is represented by an attorney.

Because a trial takes longer than arraignment (about 20 minutes per case), only an average of 15 cases are scheduled per session.

The trial begins with the formal reading of the charge(s) against you even though you may have already been arraigned in the AP court (unless the citation is contested by mail). Because this arraignment is more formal, any error committed by the deputy prosecutor may cause him dismissal of your case. You are entitled to be fully and accurately informed of the charge(s) against you so that you can properly defend yourself from that charge. Any deviation from this rule should be brought to the attention of the judge. For instance, most judges will probably dismiss your case if the deputy prosecutor charged you with "Crossing Solid Yellow Line" and your citation shows "Crossing Solid White Line," because you were prepared to defend yourself against a different charge when you came to court. The court should not allow amendment to the charge against you after you have entered your plea to it.

Bear in mind that a wrong citation may have a devastating effect - not only on your sentence - but also on your insurance premiums. For instance, I recall an attorney who came to court and asked the judge to correct his abstract because it showed the wrong statute he previously pled guilty to (resulting in the increase of his insurance premium from \$750 to \$3,500 a year, even though he had no other conviction on his record); he pled guilty to the charge of "Driving With An Expired Driver's License" but his abstract showed a conviction for "Driving Without A Driver's License."

After pleading not guilty to a formal charge, the State of Hawaii, represented by the deputy prosecuting attorney (DPA), will call its witness, usually the police officer who cited you, to testify on the witness stand. This is called direct examination by the DPA. After the officer tells his version of how and why he cited you, you are given the opportunity to cross-examine him. Do not hesitate to ask him questions relating to his testimony. This is not (yet) the time to tell your version of what happened. At this point you are only allowed to cross-examine the state's witness. Neither are you allowed to argue with the witness, which usually occurs when you get excited during the confrontation.

After the officer testifies, and the State rests its case (meaning, it no longer has evidence to present), it is your turn to testify and explain your version of the case. Remember, you do not have to testify if you think the State's case is weak and/or insufficient to sustain a conviction. You may ask the court to dismiss the case and it may or may not dismiss it depending on the weakness or strength of the State's case. Naturally, this is not easy for you to determine; thus, the rule allows the court (on its own motion) to dismiss the case if the evidence is insufficient to sustain a conviction. Your motion to dismiss will be considered in the light most favorable to the State; if denied, you should take the witness stand and tell the judge your side of the case.

In addition to your own testimony, you may also present other evidence by calling other witness(es), presenting photographs, or any other documentary evidence. Additional evidence usually, although not necessarily, supports your case and helps you when the judge begins weighing all the evidence. Since the law requires proof beyond a reasonable doubt to sustain a conviction, you need to create reasonable doubt in the mind of the judge who is the "trier of fact." Your credibility and the quality of your evidence count a lot. For example, a judge unhesitatingly dismissed a speeding case in Kanohe district court because (as he revealed later) the officer who testified in court lied to him on a previous occasion and had been "marked" as unworthy of belief.

as separate and distinct from a crime.

Note also that all traffic cases in the Honolulu Traffic Code, including parking, have been characterized as misdemeanor which actually benefits you procedurally because of the high standard of proof required for a conviction.

There are some defenses that usually apply to all types of traffic infractions. They are as follows:

1. **Improper venue.** This applies when the offense or violation occurs in one district, such as Wahiawa district, and you are tried in another district or division such as Honolulu. You have the right to be tried in the correct district or division and the state has the burden of proving that you are being tried in the correct venue. If you want to be tried in a wrong venue you may waive your right.

At the AP, you may waive improper venue only if you specifically waive it and plead guilty to the charge; otherwise, the court will transfer your case to the proper district court division. The reason for the exception is that the witnesses, who normally belong to the correct district, are not needed if you plead guilty to the charge. But if you plan to contest the charge against you, the state will subpoena the witness(es) who are in the proper district.

In Hawaii, the rule is that the State must prove its case beyond a reasonable doubt even in traffic cases although there have been plans to change this rule. The state supreme court has not adopted separate traffic court rules; thus, the procedures governing crimes have been applied in traffic court pursuant to Rule 54(a), Hawaii Rules of Penal Procedures (H.R.P.P.) which specifically mandates the application of criminal procedures to all penal proceedings in all courts of the State of Hawaii. Query: Should the same rules apply to traffic cases that are considered merely violations? It must be noted that while the rule expressly mandates the application of criminal procedures to all penal proceedings a violation is not a crime and has been expressly categorized

There may be situations where the proper venue is difficult to prove, i.e., when it cannot be determined whether the land area you allegedly committed the offense or violation belongs to one judicial district or the other. In that situation you should insist that the state prove the proper venue, although the court may exercise its discretion by taking judicial notice of the proper venue, meaning, there is no need to prove it if it is clear that the violation occurred within its division.

Effective April 22, 1989, all traffic cases that occurred within the Mililani area belong to Wahiawa district court division (not Ewa).

2. **Statute of limitation.** There are two basic reasons why many traffic court judges dismiss cases based on statute of limitation. First, most police officers cannot remember incidents that occurred two or more years prior to the trial date. In fact, some police officers cannot

even recall a six-month-old citation - even though they are shown their citations to refresh their memory. Second, and perhaps the most significant one, is the mandate of the law. Under Sec. 701-108(2). H.R.S.

(c) A prosecution for a misdemeanor or a parking violation . must be commenced within two years after it is committed;

(d) A prosecution for a petty misdemeanor or a violation other than parking violation must be commenced within one year after it is committed.

A prosecution is considered commenced when an arrest warrant or other process is issued. In *Thompson v. Arkansas*, 570 SW 2nd 262, 265 (1978), the Arkansas supreme court held that a traffic ticket is a process and prosecution commences upon the issuance of the citation. It has been argued that the citation itself ("the original is filed in court entitled "complaint and summons") is a complaint and the issuance of a penal summons is considered a process for purposes of the above provision; however, some traffic court judges apply the two-year statute of limitations, without any exception, based on judicial economy because most police officers cannot recall their citations. Thus, it would be ridiculous to subpoena them and pay for their court appearances.

The statute of limitation does not run while the accused is out of state, or has no reasonably ascertainable place of abode or work within the State, but it should never extend beyond three years. Therefore, if you have multiple outstanding parking citations which are of "ancient vintage," I suggest you raise the affirmative defense of statute of limitation even in the AP court.

3. **Erroneous (or lack of proper) identification by the State's witness.** In any criminal or traffic trial, you must be correctly identified by the state's witness, usually a police officer, as the person who committed the offense or violation. If none of the state's witnesses identify you, your case must be dismissed. This usually occurs when your case is old enough that the officer either forgets how you looked when you were given the citation, or he cannot remember the incident itself. However, some judges permit the DPA to establish

proper identification by asking the officer whether he followed the standard procedure of asking for your driver's license which shows your photograph and name on it. Moreover, even if the officer forgets the incident, he may be asked to refresh his memory by showing him the police report or citation; there have been situations, however, where the officers could not recall their citations and the court had to dismiss the case.

While the so-called "gallery ID" is discretionary on the part of the judge, there are many judges who permit this type of identification; thus there is no harm in bringing some friends with you and asking the DPA to have the officer identify you (or point you out) from the people sitting in the gallery. Of course, this method of identification will not work in your favor if you are the only one left in the courtroom when your case is called.

4. **Improper or incorrect charge against you.** As mentioned earlier, the trial begins when the State formally charges you with the alleged offense or violation. The charge should include the proper venue and be accompanied by the correct citation of the statute or ordinance you allegedly violated, otherwise your case should be dismissed as violative of your due process right.

A copy of a citation filed with the TVB and the Prosecuting Attorney's office. Note that it is entitled, "Complaint and Summons."

A Parking Citation

**CITATION - NOTICE TO APPEAR**

DIST	Blk#	CRIMINAL	TRAFFIC	CRIMINAL
IN THE DISTRICT COURT OF THE FIRST CIRCUIT CITY AND COUNTY OF HONOLULU STATE OF HAWAII, at				
Defendant's Ltr No.				
Def. Name	1954			
Address	123-4567			
City	Honolulu			
State	Hawaii			
Zip	96813			
Permit #	Tag#	Sex	Date of Birth	Age
(Inclusive (Parent or Guardian's name)				
Place of Employment or School				
Phone				
I, the undersigned, do hereby certify that I am the responsible person for the above named vehicle.				
Street Number	Block Number	Sign	Color	Model
Ex. of days of about this	10	10	10	10
I also operate a Motor Vehicle Lic. plate No. _____				
Name of Vehicle	Type	Color	Model	Year
I declare under oath that the undersigned has informed me of the nature of the offense for which I am charged and that I understand the consequences of my appearance in court.				
Attorney	Witness	Report No.	Signature	
Date of trial: You are advised that the undersigned officer will file a written complaint on or before the date given and in the court indicated below.				
Judge No. _____				
Complainant _____				

**A Citation Issued  
to you by the  
police officer.  
Note that it is  
entitled, "Citation - Notice  
to Appear."**

**sample**

-C27-

**IMPORTANT - READ CAREFULLY ~**

**TRAFFIC CITATIONS**

Chances are to number of court appearances, bad fortune and prior phone or radio may be experienced by presenting the citation to the traffic violator. Because of the court's location on the reverse side within seven (7) days from date of its issuance. A person may qualify for a bad fortune under the prescribed bad fortune schedule provided he has had a clear record for a period of three (3) months preceding the violation. If bad fortune is experienced phone PAV IN U.S. DOLLARS. A SERVICE CHARGE OF \$1.50 WILL BE ASSESSED ON DISHONORED ITEMS (CHECKS, CREDIT CARDS, ETC.) PER SEC. 40-315 HRS.

CHARGE TO ME:

ACCT NO. \_\_\_\_\_

NAME \_\_\_\_\_

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## SELECTED HAWAII STATUTES

- § 604-8 Criminal, misdemeanors, generally.
- § 701-107 Grades and classes of offenses.
- § 701-108 Time limitations.
- § 701-114 Proof beyond a reasonable doubt.
- § 701-115 Defenses.
- § 701-117 Prima facie evidence.
- § 702-204 State of mind required.
- § 702-205 Elements of an offense.
- § 702-206 Definitions of states of mind.
- § 702-207 Specified state of mind applies to all elements.
- § 702-222 Liability for conduct of another; complicity.
- § 702-230 Intoxication.
- § 702-236 De minimis infractions.
- § 703-301 Justification a defense; civil remedies unaffected.
- § 703-302 Choice of evils.
- § 703-304 Use of force in self-protection.
- § 706-601 Pre-sentence diagnosis and report.
- § 706-602 Pre-sentence diagnosis, notice to victims, and report.
- § 706-603 Pre-sentence mental and medical examination.
- § 706-604 Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report to department.
- § 706-605 Authorized disposition of convicted defendants.
- § 706-606 Factors to be considered in imposing a sentence.
- § 706-621 Factors to be considered in imposing a term of probation.
- § 706-623 Terms of probation.
- § 706-640 Authorized fines.
- § 706-642 Time and method of payment.
- § 706-663 Sentence of imprisonment for misdemeanor and petty misdemeanor.
- § 710-1077 Criminal contempt of court. [failure to appear]
- § 802-1 Right to representation by public defender or other appointed counsel.
- § 803-3 Arrest; By person present.
- § 803-5 By police officer without warrant.
- § 804-1 Bail defined.
- § 806-56 Nolle prosequi.
- § 853-1 Deferred acceptance of guilty plea or nolo contendere plea; discharge and dismissal, expungement of records.
- § 853-2 Plea of guilty or nolo contendere; procedure.
- § 853-3 Violation of terms and conditions during deferment; result.
- § 853-4 Chapter not applicable; when.

**§ 604-8 Criminal, misdemeanors, generally.**

District courts shall have jurisdiction of, and their criminal jurisdiction is limited to, criminal offenses punishable by fine, or by imprisonment not exceeding one year whether with or without fine. They shall not have jurisdiction over any offense for which the accused cannot be held to answer unless on a presentment or indictment of a grand jury.

In any case cognizable by a district court as aforesaid in which the accused has the right to a trial by jury in the first instance, the district court, upon demand by the accused, for such trial by jury, shall not exercise jurisdiction over such case except violations under section 291-4, but shall examine and discharge or commit for trial the accused as provided by law, but if in any such case the accused does not demand a trial by jury on the date of arraignment or within ten days thereafter, the district court may exercise jurisdiction over the same, subject to the right of appeal as provided by law. Trial by jury for violations under section 291-4 may be heard in the district court.

**§ 701-107 Grades and classes of offenses.**

(3) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined in a statute other than this Code which provides for a term of imprisonment the maximum of which is one year.

(4) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined by a statute other than this Code which provides that persons convicted thereof may be sentenced to imprisonment for a term of which the maximum is less than one year.

(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction or if it is defined by a statute other than this Code which provides that the offense shall not constitute a crime. A violation does not constitute a crime, and conviction of a violation shall not give rise to any civil disability based on conviction of a criminal offense.

**§ 701-108 Time limitations.**

\* \* \* \*

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

\* \* \* \*

(c) A prosecution for a misdemeanor or a parking violation must be commenced within two years after it is committed;

(d) A prosecution for a petty misdemeanor or a violation other than a parking violation must be commenced within one year after it is committed.

\* \* \* \*

**§ 701-114 Proof beyond a reasonable doubt.**

(1) Except as otherwise provided in section 701-115, no person may be convicted of an offense unless the following are proved beyond a reasonable doubt:

(a) Each element of the offense;

(b) The state of mind required to establish each element of the offense;

(c) Facts establishing jurisdiction;  
(d) Facts establishing venue; and  
(e) Facts establishing that the offense was committed within the time period specified in section 701-108.

(2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.

**§ 701-115 Defenses.**

(1) A defense is a fact or set of facts which negatives penal liability.

(2) No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented. If such evidence is presented, then:

(a) If the defense is not an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, raises a reasonable doubt as to the defendant's guilt; or

(b) If the defense is an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in light of any contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts which negative penal liability.

(3) A defense is an affirmative defense if:

(a) It is specifically so designated by the Code or another statute; or

(b) If the Code or another statute plainly requires the defendant to prove the defense by a preponderance of the evidence.

**§ 701-117 Prima facie evidence.**

Prima facie evidence of a fact is evidence which, if accepted in its entirety by the trier of fact, is sufficient to prove the fact. Prima facie evidence provisions in this Code are governed by section 626-1, rule 306.

**§ 702-204 State of mind required.**

Except as provided in section 702-212, a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly, or negligently, as the law specifies, with respect to each element of the offense. When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.

**§ 702-205 Elements of an offense.**

The elements of an offense are such (1) conduct, (2) attendant circumstances, and (3) results of conduct, as:

(a) Are specified by the definition of the offense, and

(b) Negative a defense (other than a defense based on the statute of limitations, lack of venue, or lack of jurisdiction).

**§ 702-206 Definitions of states of mind.**

(1) "Intentionally."

(a) A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.

(b) A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes or hopes that they exist.

(c) A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

(2) "Knowingly."

(a) A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.

(b) A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.

(c) A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

(3) "Recklessly."

(a) A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that the person's conduct is of the specified nature.

(b) A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.

(c) A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.

(d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law abiding person would observe in the same situation.

(4) "Negligently."

(a) A person acts negligently with respect to his conduct when he should be aware of a substantial and unjustifiable risk taken that the person's conduct is of the specified nature.

(b) A person acts negligently with respect to attendant circumstances when he should be aware of a substantial and unjustifiable risk that such circumstances exist.

(c) A person acts negligently with respect to a result of his conduct when he should be aware of a substantial and unjustifiable risk that his conduct will cause such a result.

(d) A risk is substantial and unjustifiable within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a law abiding person would observe in the same situation.

#### **§ 702-207 Specified state of mind applies to all elements.**

When the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears.

#### **§ 702-222 Liability for conduct of another; complicity.**

A person is an accomplice of another person in the commission of an offense if:

(1) With the intention of promoting or facilitating the commission of the offense, he:

- (a) Solicits the other person to commit it; or
  - (b) Aids or agrees or attempts to aid the other person in planning or committing it; or
  - (c) Having a legal duty to prevent the commission of the offense, fails to make reasonable effort so to do; or
- (2) His conduct is expressly declared by law to establish his complicity.

**§ 702-230 Intoxication.**

(1) Self-induced intoxication is prohibited as a defense to any offense, except as specifically provided in this section.

(2) Evidence of the nonself-induced or pathological intoxication of the defendant shall be admissible to prove or negative the conduct alleged or the state of mind sufficient to establish an element of the offense. Evidence of self-induced intoxication of the defendant is admissible to prove or negative conduct or to prove state of mind sufficient to establish an element of an offense. Evidence of self-induced intoxication of the defendant is not admissible to negative the state of mind sufficient to establish an element of the offense.

(3) Intoxication does not, in itself, constitute a physical or mental disease, disorder, or defect within the meaning of section 704-400.

(4) Intoxication which (a) is not self-induced or (b) is pathological is a defense if by reason of such intoxication the defendant at the time of the defendant's conduct lacks substantial capacity either to appreciate its wrongfulness or to conform the defendant's conduct to the requirements of law.

(5) In this section:

(a) "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;

(b) "Self-induced intoxication" means intoxication caused by substances which the defendant knowingly introduces into the defendant's body, the tendency of which to cause intoxication the defendant knows or ought to know, unless the defendant introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of a penal offense;

(c) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know the defendant is susceptible and which results from a physical abnormality of the defendant.

**§ 702-236 De minimis infractions.**

(1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

(a) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the offense; or

(b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(c) Presents such other extenuations that it cannot reasonably be regarded as envisaged

by the legislature in forbidding the offense.

(2) The court shall not dismiss a prosecution under subsection (1)(c) of this section without filing a written statement of its reasons.

**§ 703-301 Justification a defense; civil remedies unaffected.**

(1) In any prosecution for an offense, justification, as defined in sections 703-302 through 703-309, is a defense.

(2) The fact that conduct is justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

**§ 703-302 Choice of evils.**

(1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to the actor or to another is justifiable provided that:

(a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and

(b) Neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for the actor's conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(3) In a prosecution for escape under section 710-1020 or 710-1021, the defense available under this section is limited to an affirmative defense consisting of the following elements:

(a) The actor receives a threat, express or implied, of death, substantial bodily injury, or forcible sexual attack;

(b) Complaint to the proper prison authorities is either impossible under the circumstances or there exists a history of futile complaints;

(c) Under the circumstances there is no time or opportunity to resort to the courts;

(d) No force or violence is used against prison personnel or other innocent persons; and

(e) The actor promptly reports to the proper authorities when the actor has attained a position of safety from the immediate threat.

**§ 703-304 Use of force in self-protection.**

(1) Subject to the provisions of this section and of section 703-308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

(2) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect himself against death, serious bodily injury, kidnapping, rape, or forcible sodomy.

(3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he

believes them to be when the force is used without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.

(4) The use of force is not justifiable under this section:

(a) To resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful; or

(b) To resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(i) The actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest; or

(ii) The actor believes that such force is necessary to protect himself against death or serious bodily injury.

(5) The use of deadly force is not justifiable under this section if:

(a) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or

(b) The actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:

(i) The actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and

(ii) A public officer justified in using force in the performance of his duties, or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape, is not obliged to desist from efforts to perform his duty, effect the arrest, or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.

(6) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

#### **§ 706-601 Pre-sentence diagnosis and report.**

(1) The court shall order a pre-sentence correctional diagnosis of the defendant and accord due consideration to a written report of the diagnosis before imposing sentence where:

(a) The defendant has been convicted of a felony; or

(b) The defendant is less than twenty-two years of age and has been convicted of a crime.

(2) The court may order a pre-sentence diagnosis in any other case.

(3) With the consent of the court, the requirement of a pre-sentence diagnosis may be waived by agreement of both the defendant and the prosecuting attorney.

#### **§ 706-602 Pre-sentence diagnosis, notice to victims, and report.**

(1) The pre-sentence diagnosis and report shall be made by personnel assigned to the court, intake service center or other agency designated by the court and shall include:

- (a) An analysis of the circumstances attending the commission of the crime;
  - (b) The defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status and capacity to make restitution or to make reparation to the victim or victims of the defendant's crimes for loss or damage caused thereby, education, occupation, and personal habits;
  - (c) Information made available by the victim or other source concerning the effect that the crime committed by the defendant has had upon said victim, including but not limited to, any physical or psychological harm or financial loss suffered;
  - (d) Information concerning defendant's compliance or noncompliance with any order issued under section 806-11; and
  - (e) Any other matters that the reporting person or agency deems relevant or the court directs to be included.
- (2) The court personnel, service center, or agency shall give notice of the Criminal Injuries Compensation Act, the application for compensation procedure, and the possibility of restitution by the defendant to all victims of the convicted defendant's criminal acts.

**§ 706-603 Pre-sentence mental and medical examination.**

(a) Before imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to mental and other medical observation and examination for a period not exceeding sixty days or a longer period, not to exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. In addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists, physicians, or licensed psychologists to make the examination. The three examiners shall be appointed from a list of certified sanity examiners as determined by the state department of health. The report of the examination shall be submitted to the court. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

(b) After entry of a plea of guilty or no contest or return of a verdict of guilty, the court shall order a defendant who has been convicted of an offense, including attempts, under section 707-701, 707-701.5, 707-730, 707-731, 707-732, 707-733, 707-741, or 707-750 to provide a sample of saliva and two samples of blood for the purpose of secretor status, blood type, and DNA analysis. Blood shall be withdrawn only by a person authorized to withdraw blood under section 286-152. The arresting agency shall arrange for the sample to be collected and analyzed. The results shall be recorded, preserved, and disseminated in a manner established by the Hawaii criminal justice data center in a manner consistent with the requirements of chapter 846.

(c) For the purposes of this section, the defendant may be remanded to any available clinic or hospital, intake service center, community correctional center, or state or county health department facility.

**§ 706-604 Opportunity to be heard with respect to sentence; notice of pre- sentence report; opportunity to controvert or supplement; transmission of report to department.**

(1) Before imposing sentence, the court shall afford a fair opportunity to the defendant to be heard on the issue of the defendant's disposition.

...

**§ 706-605 Authorized disposition of convicted defendants.**

(1) Except as provided in parts II and IV of this chapter and subsection (2) of this section and subject to the applicable provisions of this Code, the court may sentence a convicted defendant to one or more of the following dispositions:

- (a) To be placed on probation as authorized by part II of this chapter;
- (b) To pay a fine as authorized by part III and section 706-624 of this chapter;
- (c) To be imprisoned for a term as authorized by part IV of this chapter;

(d) To make restitution in an amount the defendant can afford to pay; provided that the court may order any restitution to be paid to the criminal injuries compensation commission in the event that the victim has been given an award for compensation under chapter 351 and, if the court orders, in addition to restitution, payment of fine in accordance with paragraph (b), the payment of restitution shall have priority over the payment of the fine; or

(e) To perform services for the community under the supervision of a governmental agency or benevolent or charitable organization or other community service group or appropriate supervisor, provided that the convicted person who performs such services shall not be deemed to be an employee of the governmental agency or assigned work site for any purpose. All persons sentenced to perform community service shall be screened and assessed for appropriate placement by a governmental agency coordinating public service work placement as a condition of sentence.

(2) The court shall not sentence a defendant to probation and imprisonment except as authorized by part II of this chapter.

(3) In addition to any disposition authorized in subsection (1) of this section, the court may sentence a person convicted of a misdemeanor or petty misdemeanor to a suspended sentence.

(4) The court may sentence a person who has been convicted of a violation to any disposition authorized in subsection (1) of this section except imprisonment.

(5) The court shall sentence a corporation or unincorporated association which has been convicted of an offense in accordance with section 706-608.

(6) This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

**§ 706-606 Factors to be considered in imposing a sentence.**

The court, in determining the particular sentence to be imposed, shall consider:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence imposed:

(a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;

(b) To afford adequate deterrence to criminal conduct;

(c) To protect the public from further crimes of the defendant; and

(d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) The kinds of sentences available; and

(4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

**§ 706-621 Factors to be considered in imposing a term of probation.** [Effective until June 30, 2001.]

The court, in determining whether to impose a term of probation, shall consider:

- (1) The factors set forth in section 706-606 to the extent that they are applicable;
- (2) The following factors, to be accorded weight in favor of withholding a sentence of imprisonment:
  - (a) The defendant's criminal conduct neither caused nor threatened serious harm;
  - (b) The defendant acted under a strong provocation;
  - (c) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
  - (d) The victim of the defendant's criminal conduct induced or facilitated its commission;
  - (e) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;
  - (f) The defendant's criminal conduct was the result of circumstances unlikely to recur;
  - (g) The character and attitudes of the defendant indicate that the defendant is unlikely to commit another crime;
  - (h) The defendant is particularly likely to respond affirmatively to a program of restitution or a probationary program or both;
  - (i) The imprisonment of the defendant would entail excessive hardship to the defendant or the defendant's dependents; and
  - (j) The expedited sentencing program set forth in section 706-606.3, if the defendant has qualified for that sentencing program.

**§ 706-623 Terms of probation.** [Effective until June 30, 2001.]

(1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

- (a) Ten years upon conviction of a class A felony;
- (b) Five years upon a conviction of a class B or class C felony;
- (c) One year upon conviction of a misdemeanor; or
- (d) Six months upon conviction of a petty misdemeanor.

...

**§ 706-640 Authorized fines.**

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

\* \* \* \*

- (4) \$2,000, when the conviction is of a misdemeanor;
- (5) \$1,000, when the conviction is of a petty misdemeanor or a violation;

\* \* \* \*

**§ 706-642 Time and method of payment.**

(1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith by cash, check, or by a credit card approved by the court.

(2) When a defendant sentenced to pay a fine is also sentenced to probation, the court may make the payment of the fine a condition of probation.

(3) When a defendant sentenced to pay a fine is also ordered to make restitution or reparation to the victim or victims, or to the person or party who has incurred loss or damage because of the defendant's crime, the payment of restitution or reparation shall have priority over the payment of the fine. No fine shall be collected until the restitution or reparation order has been satisfied.

**§ 706-663 Sentence of imprisonment for misdemeanor and petty misdemeanor.**

After consideration of the factors set forth in sections 706-606 and 706-621, the court may sentence a person who has been convicted of a misdemeanor or a petty misdemeanor to imprisonment for a definite term to be fixed by the court and not to exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.

**§ 710-1077 Criminal contempt of court. [Note: failure to appear]**

...

(g) The person knowingly disobeys or resists the process, injunction, or other mandate of a court;

...

(2) Except as provided in subsections (3) and (7), criminal contempt of court is a misdemeanor.

(3) The court may treat the commission of an offense under subsection (1) as a petty misdemeanor, in which case:

(a) If the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and

(b) If the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.

**§ 802-1 Right to representation by public defender or other appointed counsel.**

Any indigent person who is (1) arrested for, charged with or convicted of an offense or offenses punishable by confinement in jail or prison .... shall be entitled to be represented by a public defender....

**§ 803-3 Arrest; By person present.**

Anyone in the act of committing a crime, may be arrested by any person present, without a warrant.

**§ 803-5 By police officer without warrant.**

(a) A police officer or other officer of justice, may, without warrant, arrest and detain for examination any person when the officer has probable cause to believe that such person has committed any offense, whether in the officer's presence or otherwise.

(b) For purposes of this section, a police officer has probable cause to make an arrest when the facts and circumstances within the officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that a crime has been or is being committed.

**§ 804-1 Bail defined.**

Bail, or the giving of bail, is the signing of the recognizance by the defendant and the defendant's surety or sureties, conditioned for the appearance of the defendant at the session of a court of competent jurisdiction to be named in the condition, and to abide by the judgment of the court.

**§ 806-56 Nolle prosequi.**

No nolle prosequi shall be entered in a criminal case in a court of record except by consent of the court upon written motion of the prosecuting attorney stating the reasons therefor. The court may deny the motion if it deems the reasons insufficient and if, upon further investigation, it decides that the prosecution should continue, it may, if in its opinion the interests of justice require it, appoint a special prosecutor to conduct the case and allow the special prosecutor a fee. Section 802-5(b) relative to fees allowed counsel assigned by the court for a defendant is made applicable to fees of special prosecutors appointed hereunder.

**§ 853-1 Deferred acceptance of guilty plea or nolo contendere plea; discharge and dismissal, expungement of records.**

(a) Upon proper motion as provided by this chapter:

(1) When a defendant voluntarily pleads guilty or nolo contendere, prior to commencement of trial, to a felony, misdemeanor, or petty misdemeanor;

(2) It appears to the court that the defendant is not likely again to engage in a criminal course of conduct; and

(3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, without accepting the plea of nolo contendere or entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceedings.

(b) The proceedings may be deferred upon any of the conditions specified by section 706-624. The court may defer the proceedings for such period of time as the court shall direct but in no case to exceed the maximum sentence allowable unless the defendant has entered a plea

of guilty or nolo contendere to a petty misdemeanor, in which case the court may defer the proceedings for a period not to exceed one year. The defendant may be subject to bail or recognizance at the court's discretion during the period during which the proceedings are deferred.

(c) Upon the defendant's completion of the period designated by the court and in compliance with the terms and conditions established, the court shall discharge the defendant and dismiss the charge against the defendant.

(d) Discharge of the defendant and dismissal of the charge against the defendant under this section shall be without adjudication of guilt, shall eliminate any civil admission of guilt, and is not a conviction.

(e) Upon discharge of the defendant and dismissal of the charge against the defendant under this section, the defendant may apply for expungement not less than one year following discharge, pursuant to section 831-3.2.

**§ 853-2 Plea of guilty or nolo contendere; procedure.**

Upon motion made before sentence by the defendant, the prosecutor, or on its own motion, the court will either proceed in accordance with section 853-1, or deny the motion and accept the defendant's plea of guilty or nolo contendere, or allow the defendant to withdraw the defendant's plea of guilty or nolo contendere only for good cause.

**§ 853-3 Violation of terms and conditions during deferment; result.**

Upon violation of a term or condition set by the court for a deferred acceptance of guilty plea or deferred acceptance of nolo contendere plea, the court may enter an adjudication of guilt and proceed as otherwise provided.

**§ 853-4 Chapter not applicable; when.**

This chapter shall not apply when:

\* \* \* \*

(12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;