

Abstracts: why only ten years?

For the most part the traffic abstract now shows only ten years of moving traffic cases. HRS § 287-3 requires that TVB abstracts furnish “all alleged moving violations.”¹ The Judiciary weighed the value of converting information from the old case management system to the new. The Judiciary looked at how the information may be used to meet state sanctioning and federal reporting requirements. For state sanctioning purposes the Hawai‘i courts must report at least ten years of information about certain moving violations. *See e.g.* HRS § 291E-61.5² In addition, federal commercial drivers license regulations require that the State of Hawai‘i be able to report information about drivers from the time the federal law became effective in the mid 1990's. *See* 49 U.S.C. § 31301 *et seq.* Some of the reportable information must be kept for 55 years.

As a result of these concerns, when converting data from the old system to the new, the Judiciary converted and reports data from 1995. The prior practice of reporting only 3 years of data did not conform to HRS § 287-3 and has been discontinued. As time passes, data will be reported for longer periods.

1. [HRS] § 287-3 Furnishing of operating records.

(a) The traffic violations bureaus of the district courts, upon request, shall furnish any person a certified abstract of the bureaus' record, if any, of any person relating to all alleged moving violations and any convictions resulting therefrom, arising from the operation of a motor vehicle and any administrative license revocation pursuant to chapter 291E, part III and chapter 286, part XIV, as it was in effect on or before December 31, 2001. The traffic violations bureaus may collect a fee, not to exceed \$7, of which \$5 shall be deposited into the general fund and \$2 shall be deposited into the judiciary computer system special fund.

(b) Notwithstanding any provision to the contrary, all alleged moving violations as well as any convictions resulting therefrom or any administrative license suspension pursuant to chapter 291A shall not be included in a certified abstract of the bureaus' record.

2. [HRS] § 291E-61.5 Habitually operating a vehicle under the influence of an intoxicant.

(a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

- (1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and
- (2) The person operates or assumes actual physical control of a vehicle:
 - (A) 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;
 - (B) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
 - (C) With .08 or more grams of alcohol per two hundred ten liters of breath; or
 - (D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) For the purposes of this section:

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within ten years of the instant offense:

- (1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;
- (2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or
- (3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

