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# A BILL FOR AN ACT

RELATING TO OFFENSES AGAINST THE PERSON.

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

1           SECTION 1. The purpose of this Act is to address several  
2 issues raised in the Hawaii supreme court's holding in State v.  
3 Aiwohi, 123 P.3d 1210 (2005). In Aiwohi, the issue before the  
4 court was whether a mother can be charged with manslaughter for  
5 recklessly causing the death of her newborn baby by the prenatal  
6 ingestion of crystal methamphetamine. Since Hawaii's  
7 manslaughter law requires that a defendant's conduct recklessly  
8 cause the death of "another person," the key issue before the  
9 court was the definition of "person." The court determined that  
10 "person," as used in the Hawaii Penal Code, means a human being  
11 who is born and is alive and thus does not include a fetus.  
12 Because the mother's culpable conduct, i.e. the use of crystal  
13 methamphetamine, occurred prior to her baby's birth, she could  
14 not be held criminally liable under Hawaii's manslaughter  
15 statute since her conduct was not directed at a "person." Thus,  
16 under the Aiwohi decision, there cannot be any criminal  
17 liability for any prenatal conduct directed against a fetus.



1           However, the State has a compelling and legitimate interest  
2 in protecting fetal life from the point of viability. "This is  
3 so because the fetus then presumably has the capability of  
4 meaningful life outside the mother's womb. State regulation  
5 protective of fetal life after viability thus has both logical  
6 and biological justifications." Roe v. Wade, 410 U.S. 113, 163,  
7 93 S. Ct. 705, 732, 35 L. Ed. 2d 147, 183 (1973). Balancing the  
8 State's interest in protecting the potentiality of human life  
9 and the mother's right to reproductive autonomy, this Act  
10 defines "viable fetus" and criminalizes third party conduct  
11 against a viable fetus.

12           Specifically, this Act includes a viable fetus in the  
13 definition of "person" for purposes of the offenses of murder,  
14 manslaughter, assault, negligent homicide, and negligent injury  
15 and criminalizes third party conduct that causes the death of,  
16 or serious or substantial bodily injury to, a viable fetus. It  
17 also holds a third party culpable for causing the death of, or  
18 substantial or serious bodily injury to, a live baby when the  
19 conduct causing the death or injury occurred prior to birth but  
20 after the fetus became viable. The mother of the fetus and  
21 licensed medical personnel conducting lawful medical procedures



1 requested by the mother or necessary to save her life are not  
2 third parties who may be held criminally liable under this Act.

3 It is not the purpose of this Act to impair a woman's right  
4 to choose whether or not to continue her pregnancy. Rather, the  
5 purpose of this Act is to criminalize the acts of a third party  
6 who, without the mother's consent, kills or injures her viable  
7 fetus.

8 SECTION 2. Chapter 707-700, Hawaii Revised Statutes, is  
9 amended as follows:

10 1. By adding a definition of "viable fetus" to be  
11 appropriately inserted and to read:

12 "Viable fetus" means a fetus that, at the time of the  
13 actor's conduct toward the fetus, has a reasonable likelihood of  
14 sustained survival outside the womb with or without the aid of  
15 standard medical measures; however the live birth or the actual  
16 survival of the fetus shall not be required for the fetus to be  
17 deemed viable."

18 2. By amending the definition of "person" to read:

19 "Person" means a human being who has been born and is  
20 alive[-]; provided that for the purposes of sections 707-  
21 701(1)(a), 707-701.5, 707-702(1)(a), 707-702.5, 707-703, 707-  
22 704(1), 707-705, 707-706, 707-710, 707-711(1)(a) and (b),



1 "person" shall also include a viable fetus whose death, serious  
2 bodily injury, or substantial bodily injury is caused other than  
3 by:

- 4       (1) The mother of the fetus; or  
5       (2) Licensed medical personnel conducting a lawful medical  
6           procedure requested by the mother or necessary to save  
7           her life."

8       SECTION 3. Chapter 707, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11       "§707-       Viable fetus; prima facie evidence. It shall be  
12 prima facie evidence that a fetus is capable of sustained  
13 survival outside the womb with or without the aid of standard  
14 medical measures when the fetus has reached a gestational age of  
15 twenty-four weeks or greater."

16       SECTION 4. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun, before its effective date.

19       SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



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

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INTRODUCED BY:

*Calvin K. By*  
*By Request*

JAN 25 2006



HB 2988

**Report Title:**

Crimes; Viable Fetus

**Description:**

Amends the definition of "person" for purposes of offenses of murder, manslaughter, and negligent injury to provide protection for a viable fetus. Defines "viable fetus." Adds provision that gestational age of 24 weeks or greater is prima facie evidence that fetus is viable.

