
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 Aiwahi, 123 P.3d 1210 (2005). In Aiwahi, 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 Aiwahi 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.



S.B. NO. 2767

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

2

INTRODUCED BY: Rosalyn H Baker
By Request



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.

