

Testimony on behalf of the
Office of the Public Defender, State of Hawai`i
to the House Committees on
Human Services & Housing and Health

January 29, 2008

RE: H.B. 2334: Relating To Crime.

Chairs Shimabukuro and Green and Members of the Committees:

H.B. 2334 proposes a significant change to a mandatory sentencing provision in the Hawaii Penal Code. For the reasons discussed herein, we do not support this measure.

Currently, § 706-660.2 provides for mandatory incarceration with a mandatory minimum term for felony offenses against a defined group of victims that includes elder persons (sixty or older), specified disabled persons (blind or paralyzed) and young children (eight or younger), where death, or serious or substantial injury, is caused or attempted.

The current statute refers to all three specified categories as a "disability". The reasoning behind this law was essentially to try to provide extra protection to designated members of a group who were perceived to be more vulnerable and less able to protect themselves.

H.B. 2334 seeks to add pregnant women to this group. While the proposed bill does delete the reference to "disability", the bill will still have the effect of treating pregnant women as if they were elderly, children or disabled.

There are a number of troubling aspects to this proposal. One is that the law requires that the status of the person (60 or older, blind, paralyzed, 8 or younger) be known, or reasonably should have been known, to the defendant. Adding the condition of pregnancy to this list raises the realistic possibility that a woman who is "showing", i.e. appears to be pregnant, would receive the perceived benefit of this law while someone who was not "showing", i.e. likely in the first trimester, would not.

The irony of that distinction is that, considering the risk of danger related to the pregnancy, there is often a greater risk in the early months of a pregnancy, including when the condition is not apparent to observers. There is also the possibility that thin women who are obviously pregnant, i.e. are thin everywhere except in their extended abdomen, would come under the provisions of the law, while obese women, who were not so obviously pregnant, might not. This illustrates the problem with creating a law whose application would be largely based on physical appearance.

There is also the public policy question of creating this special consideration for pregnant women. The Legislature will need to consider whether this sets a precedent for special consideration of pregnancy in other venues, such as labor law. Currently, pregnancy comes into play in such arenas only as a medical or health issue. In other words, healthy pregnant women able to perform their regular duties are not given special consideration. With the enactment of a law such as this, perhaps the argument will be made to change other laws as well.

Thank you for the opportunity to comment on this bill.

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HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING
THE HONORABLE JOSH GREEN, M.D., CHAIR
HOUSE COMMITTEE ON HEALTH
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

January 29, 2008

RE: H.B. 2334; RELATING TO CRIME.

Chair Shimabukuro and members of the House Committee on Human Services and Housing, Chair Green and members of the House Committee on Health, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of the intent of H.B. 2334.

The purpose of this bill is to impose mandatory minimum terms of imprisonment for persons who commit a felony against a pregnant woman and cause the pregnant woman serious or substantial bodily injury.

We support the intent of this bill, which is to close a loophole raised in *State v. Aiwohi*, 109 Haw. 115, 123 P.3d 1210 (2005) which held that an unborn child is not a person under the Hawaii Penal Code and therefore there is no criminal liability for offenses committed against an unborn child. This bill would close the loophole by requiring a mandatory minimum term of imprisonment for causing death, serious or substantial bodily injury to a pregnant woman during the course of committing a felony when the defendant knows or should know the victim is pregnant.

However, we do note that there are several different approaches to this problem, including extended term amendments and creation of new offenses involving assaults on pregnant women. We would suggest that these bills also be considered as they cover misdemeanor assaults against pregnant women and provide additional sentencing protections.

Thank you for this opportunity to testify.



A JOINT LEGISLATIVE EFFORT

E-Mail to: HSHtestimony@Capitol.hawaii.gov
Regarding: House Committee on HSH/HLT Hearing
Hearing on: January 29, 2007 @ 8:50 a.m.

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Date: January 28, 2008

To: House Committee on Human Services & Housing
Honorable Maile Shimabukuro, Chair
Honorable Karl Rhoads, Vice Chair

House Committee on Health
Honorable Josh Green, Chair
Honorable John Mizuno, Chair

From: Kelly M. Rosati, JD
Executive Director, Hawaii Family Forum
Lobbyist, Roman Catholic Church in the State of Hawaii

Re: Strong Support for HB 2334 Relating to Crime

Honorable Chair and members of the House Committee on Human Services & Housing and the House Committee on Health, I am Kelly Rosati, representing both the Hawaii Family Forum and the Roman Catholic Church in the State of Hawaii.

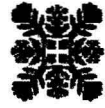
Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii. The Roman Catholic Church in Hawaii, under the leadership of Bishop Larry Silva, represents over 230,000 Catholics in Hawaii.

We strongly support HB 2334, which establishes mandatory minimum terms of imprisonment for those who cause the death or inflict serious bodily injury to a pregnant woman, as a small step in the direction of justice.

"A pregnant 34 year old Big Island woman was stabbed repeatedly in the abdomen in an attack that killed her unborn child. . ." began the June 13 article in the Honolulu Advertiser. As we all know by now, tragically, Cheryl Vesperas was brutally assaulted, her teenage son was killed trying to protect her, and her unborn child, nearly ready to be born, also died in the attack.

Under current Hawaii law, the alleged perpetrator may be held accountable for his conduct against Ms. Vesperas and against her teenage son Tyran, but will face no accountability for taking the life of that unborn child.

We believe the people of Hawaii see that as a great injustice. It must be remedied.



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HB 2334 is a very small step toward that remedy. We vastly prefer a bill to treat the unborn child as she deserves to be treated, as a separate human being with the same human and legal rights as all other people.

Approximately 36 states have fetal homicide laws and Congress has passed the Unborn Victims of Violence Acts to protect unborn children against federal crimes. A version of that federal law was debated in Hawaii several years ago and roundly denounced by abortion-rights supporters as a stepping stone to reducing abortion rights. During the ensuing conversation on the proposal in the House Judiciary committee, **abortion rights supporters actually suggested an approach that would allow enhanced penalties for those who harm pregnant women.**

I hope that recommendation years ago will lead to widespread consensus that we simply must take action this year – on this measure or one like it. Any suggestion that an enhanced penalty bill providing for pregnant women should be opposed because of a connection to abortion rights is an extreme position inconsistent with the common sense of the people of Hawaii.

It is an embarrassment to our great state that our law affords greater protection to animals than it does to unborn children. While HB 2334 doesn't go nearly as far as we'd like it to go, it is step in the right direction. We urge your strong support of HB 2334 or a similar measure to correct this injustice in Hawaii's current law.

Mahalo for your kind consideration.

Representative Tommy Waters
House Chair on Judiciary
State Capitol Room 442

Re: H.B. NO. 2334

Aloha,

My name is Ed K. Flores. I am the Executive Director of the Hawaii Family Law Clinic dba Ala Kuola, hereinafter Ala Kuola, a non-profit organization that assists victims of domestic abuse to obtain temporary restraining orders (TRO's) against their abusers. In 2007, Ala Kuola assisted approximately 17% of the total number of those individuals seeking TRO's on the island of Oahu. In completing Ala Kuola's intake application, approximately 15% of the individuals self-reported that they experienced abuse during their pregnancy.

I strongly support passage of H.B. No. 2334 that establishes mandatory minimum prison terms for certain offenses against pregnant women.

Thank you for the opportunity to provide you with this testimony.

Respectfully submitted,

Ed K. Flores