

**Testimony of the Office of the Public Defender,  
State of Hawaii to the House Committee on Judiciary**

Hrg: Tuesday, Feb. 19, 2008, 3:30 pm

5 copies required

**H.B. NO. 2334: RELATING TO CRIME**

Chair Waters and Members of the Committee:

We oppose H.B. No. 2334 which seeks to expand the mandatory minimum sentencing law to certain offenses against a pregnant woman. The bill provides that if a person, in the course of committing or attempting to commit a felony, causes the death or inflicts serious or substantial bodily injury upon a woman who is pregnant, the person would be subject to a specified mandatory minimum term of imprisonment. The woman's pregnancy must be known or reasonably should have been known to the defendant.

Most importantly, there is no definition of the term "pregnant." Webster's dictionary defines the term as "**containing a developing embryo, fetus, or unborn offspring within the body.**" The legislature must determine the point at which the woman will be determined to be pregnant. At conception? After the first trimester? Hence, the controversial debate regarding when life begins must be undertaken with regard to this bill.

We have due process concerns with respect to when a defendant will be imputed with knowledge of a woman's pregnancy. The assumption is that, most often, a violent act against a pregnant woman will occur in the domestic setting. When will a defendant be assumed to have had reasonable knowledge of the woman's pregnancy? What if there is a history of fabrication between the partners about pregnancy? What if a recent discovery of pregnancy is hidden from the defendant? So many different scenarios can arise in a volatile domestic relationship which can cast doubt on the knowledge of a defendant.

Even more uncertainty can arise with respect to strangers involved in an altercation. When will a defendant be deemed to have reasonably known about the pregnancy status of a woman? If the woman is on the heavier side, will the authorities assume he had reasonable knowledge of her pregnancy?

Due to modern day fears of miscarriage and other factors affecting pregnancy, many women hesitate to disclose their pregnancy until very late in their term. Medical records currently are shrouded in confidentiality under state and federal privacy laws. Quite often, a woman's pregnancy will not be apparent merely by her appearance. Under these circumstances, a defendant should not be subject to a mandatory minimum term of imprisonment.

Moreover, medical privacy laws seek to assure that pregnancy and other medical conditions are kept confidential between a woman and her physician. This measure assures that, in every potentially criminal situation involving substantial injury to a woman, she will have to undergo medical tests for the determination of pregnancy – tests

which the woman may not want to undergo. In addition, during a prosecution under this measure, the woman's pregnancy will be made public. A woman may have many different reasons for wanting her pregnancy, at least in the early stages, to remain private.

Currently, under HRS § 706-606(1), the court must consider, in the imposition of sentence, "[t]he nature and circumstances of the offense and the history and characteristics of the defendant." Thus, the law now requires the court to take into account the fact that an offense was committed against a pregnant woman. No court takes such a circumstance likely. The present laws provide for adequate sentences when the courts are presented with such cases.

Thank you for the opportunity to comment on this bill.

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DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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AREA CODE 808 • 527-6494



PETER B. CARLISLE  
PROSECUTING ATTORNEY

DOUGLAS S. CHIN  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE TOMMY WATERS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY**

Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

February 19, 2008

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

Chair Waters and members of the House Committee on Judiciary, 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. Aiwahi*, 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 additional sentencing protections.

Thank you for this opportunity to testify.

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# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair

Rep. Blake Oshiro, Vice Chair

Tuesday, February 19, 2008

3:30 PM

Room 325

## OPPOSITION TO HB 2334 – CRIMES AGAINST PREGNANT WOMEN

Aloha Chair Waters, Vice Chair Oshiro and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai'i for a decade. I respectfully offer our testimony always being mindful that Hawai'i has more than 6,000 people behind bars with more than 2,000 individuals serving their sentences abroad, thousands of miles away from their homes and their loved ones.

HB 2334 establishes mandatory minimum prison terms for certain offenses against pregnant women.

Community Alliance on Prisons opposes this bill for several reasons:

- We oppose mandatory minimum sentencing, which removes judicial discretion. There is a move across the nation to dispense with mandatory sentencing as it is costly and ineffective. Our current statutes already provide long sentences for individuals who commit heinous crimes.
- We oppose raising the status of pregnant women over women, in general.
- We assert that proffering bills after a heinous crime has been committed, is NOT the way to create good, thoughtful public policy. Avi Soifer, Dean of the UH William S. Richardson School of Law, used a quote by Shalom Spiegel from the Articles on the Prophet Amos that is fitting in this instance: **"Justice cools the fierce glow of moral passion by making it pass through the filter of reflection."** That is what our Judiciary is all about. As humans, we don't generally make our best decisions in the throes of emotion.

Community Alliance on Prisons respectfully asks that you HOLD this measure.

Mahalo for this opportunity to testify.

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**A JOINT LEGISLATIVE EFFORT**

E-Mail to: [JUDtestimony@Capitol.hawaii.gov](mailto:JUDtestimony@Capitol.hawaii.gov)  
Regarding: House Committee on JUD Hearing  
Hearing on: February 19, 2008 @ 3:30 p.m. in room 325

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**Date:** February 14, 2008  
**To:** House Committee on Judiciary  
Honorable Tommy Waters, Chair  
Honorable Blake Oshiro, Vice 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 Judiciary, 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 210,000 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.



**PAGE TWO**

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 this very 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.

To: Representative Tommy Waters, Chair  
Representative Blake Oshiro, Vice-Chair  
Representative Cindy Evans  
Representative Josh Green  
Representative Ken Ito  
Representative Sylvia Luke  
Representative Angus McKelvey  
Representative Hermina Morita  
Representative Alex Sonson  
Representative Joseph Souki  
Representative Clift Tsuji  
Representative Ryan Yamane  
Representative Kyle Yamashita  
Representative Barbara Marumoto  
Representative Kymberly Pine  
Representative Cynthia Thielen

From: *Danielle De Long*, MSW Student, University of Hawaii, Manoa

Date: February 18, 2008

Subject: Support of HB 2334, Relating to Sentencing; Crimes Against Pregnant Women

I am a graduate student who is completing a masters of social work degree at the University of Hawaii Manoa campus. I strongly support HB 2334, Relating to Sentencing; Crimes Against Pregnant Women, which would establish mandatory prison terms for certain offences against pregnant women.

Anyone who commits a crime against a pregnant woman is actually committing a crime against two, the mother and her unborn child. During pregnancy, two bodies are sharing the same living space. If you hurt one, you hurt the other. When a woman is carrying a child, she is a vulnerable member of society, much like someone who is elderly or disabled. She is not able to do things with as much ease as before or after her pregnancy. For these reasons, a woman who is pregnant needs to be protected.

In June of 2007, when Big Island resident Tyrone Vesperas stabbed and killed his 14-year-old son and stabbed his pregnant wife in her stomach, the woman's unborn child did not survive the attack. That day Cheryl-Lyn Saniatan lost both of her children.

Hawai'i law does not allow authorities to charge Tyrone Vesperas with murder in connection with the unborn child even if he is to blame for the death of the fetus. If our society is not going to protect an unborn child, then we must protect its mother.

I urge the committee to pass HB 2334. Thank you for this opportunity to testify.

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## JUDtestimony

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**From:** Jeannine Johnson [REDACTED]  
**Sent:** Monday, February 18, 2008 1:24 PM  
**To:** JUDtestimony  
**Subject:** Testimony

COMMITTEE ON JUDICIARY  
Rep. Tommy Waters, Chair  
Rep. Blake K. Oshiro, Vice Chair

RE: HB 2334 – RELATING TO CRIME  
Hearing on Tuesday, February 19<sup>th</sup>, 2008, at 3:30 pm in Conf. Room 325

Dear Chair Waters, Vice Chair Oshiro and Honorable Committee Members:

I **strongly support** HB 2334 which establishes mandatory minimum prison terms for certain offenses against pregnant women.

Unfortunately, our highest Court has ruled that **no one** can be prosecuted for causing the death of a child by injuring a pregnant mother.

Your full support of HB 2334 is respectfully requested.

Mahalo,

*Jeannine*

Jeannine Johnson  
[REDACTED]

Honolulu, Hawai'i 96821  
[REDACTED]

Email: [REDACTED]  
"PUPUKAHI I HOLOMUA"  
(Unite in Order to Progress)

cc: Sen. Sam Slom (via email)  
Rep. Lyla Berg (via email)  
Rep. Barbara Marumoto (via email)

C00149

2/19/2008



Jeanne Y. Ohta  
Honolulu, HI 96821

February 19, 2008

To: Representative Tommy Waters, Chair  
Representative Blake Oshiro, Vice Chair

From: Jeanne Ohta

Re: HB 2334 Relating to Crime  
Hearing: Tuesday, February 19, 2008, 3:30 p.m., Room 325

Position: Strong Opposition

Good morning, I am testifying in strong opposition to HB 2334 Relating to Crime which would add being pregnant as a special status; which currently includes being sixty years of age or older, blind, paraplegic, quadriplegic, and eight years of age or younger. This bill provides for an extended term of imprisonment for a felony against victims being in one of the status groups.

While this bill is meant to address a crime that has been widely publicized, I believe that it ultimately does not provide any additional protection for pregnant women and could have unintended consequences. Extended sentences do not provide a deterrent effect against crime. Research on "three-strikes" sentences, enhanced sentences for firearms related crimes, and mandatory minimums for drug offenses have found no deterrent effects on the commission of crimes.<sup>1, 2, 3</sup>

Marc Mauer found that "increasing time does not contribute to general deterrence." Rather, if the criminal justice system has any deterrence, it is achieved primarily by the certainty of punishment, not the severity of the punishment. People think they can get away with it.<sup>4</sup>

Many abusers have found that the system did not punish them when they abused their partners. In "Domestic Violence: The Criminal Justice Response," Schlesinger and Buzawa found that abusers were likely to have light or no sanctions against them early in their abusive history. This leads them to conclude that little will happen to them if they continue their abusive behavior.

In fact, according to the State Judiciary's Annual Report, in 2006, 209 felony offenses against families and children were charged. Of these, 64 were completed resulting in only 24 incarcerations, 5 probations and 16 other sentences. This is hardly a track record of protecting women.

Before passing this proposal, I encourage legislators to find out:

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- If domestic violence protective orders filed has risen 62.8%, from 2,859 in 1997 to 4,654 in 2006, why have family court criminal actions decreased 26% from 4,337 in 1998 to 3,209 in 2006?
- Are abusers already being charged at the highest level possible?
- Are they being given the maximum sentences?
- How much of the sentences are they serving?
- How many domestic violence cases are being plead to lower offenses and to which courts?

I am opposed to solving this issue by imposing a special value on the lives of pregnant women as compared to all other women. This proposal will not help save lives.

I encourage legislators to find out why current systems and policies are not working to protect women from their batterers. Batterers seem to face small or light sanctions and then continue to batter their partners; often with escalating violence. Improving those systems will do more to protect women.

I urge you to hold this bill and not let public emotion and sentiment push this bill and its unintended consequences. Thank you for the opportunity to testify.

#### References:

<sup>1</sup>Legislative Analyst's Office, "A Primer: Three Strikes-The Impact After More Than a Decade," [www.lao.ca.gov/2005/3\\_Strikes/3\\_strikes\\_102005.htm](http://www.lao.ca.gov/2005/3_Strikes/3_strikes_102005.htm).

<sup>2</sup>The National Academy of Sciences, "Firearms and Violence: A Critical Review (2004)."

<sup>3</sup>Rep. John Conyers, "Drug Law and Policies: the Need for Reforms and Creative Solutions," in a speech to the National Bar Association, 2004.

<sup>4</sup>Mauer, Marc, Social Research, "The Hidden Problem of Time Served in Prison," Vol. 74:No.2, Summer 2007, pg. 702-704.

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**HOUSE OF REPRESENTATIVES  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008**

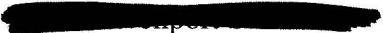
**COMMITTEE ON JUDICIARY**

Rep. Tommy Waters, Chair  
Rep. Blake K. Oshiro, Vice Chair

DATE: Tuesday, February 19<sup>th</sup>, 2008  
TIME: 3:30pm  
PLACE: Conference Room 325

**Testimony in Support of HB 2334 (HSCR 250-08)**  
**RELATING TO CRIME**

Carol White

  
Honolulu, HI 96822

This legislation is both pro-choice and pro-life.

It recognizes that pregnant women are vulnerable to violence, especially abuse by boyfriends or spouses.

It also recognizes that the pregnant woman is the bearer of human life, and therefore, merits special protections and enhancements.

HB 2334 is a step in the right direction.

Last year, when Tyrone Vesperas stabbed his pregnant wife in the abdomen, he intended to kill her unborn child. News stories from the mainland have reported the murders of pregnant women, many because they refused to get abortions.

This bill would be greatly improved by including the unborn child in this legislation. When an unborn child loses his or her life in a criminal attack, the parents and society mourn the death of a separate individual, rather than viewing it simply as an additional injury to the mother.

While the Unborn Victims of Violence Act was being considered in Congress, Sharon Rocha -- whose daughter Laci and unborn grandson Conner were murdered in California -- wrote that Conner and other innocent unborn victims like him really did exist. "...our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun."

Likewise, Cheryl-Lyn Vesperas no doubt mourned her unborn baby as she mourned her 14-year-old son who was killed by his father.

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Carol White  
Testimony on HB 22334  
p.2

Twenty-four (24) states already have laws that explicitly recognize unborn children as victims of criminal acts -- 11 of these throughout the period of their *in utero* development. Criminal defendants have attacked these laws with every conceivable constitutional argument, but all such legal challenges have failed.

Federal law forbids the execution of pregnant women, recognizing the right of an innocent unborn child to live. (*Title 18 U.S.C.A. § 3596*, enacted in 1994)

In 1976, the U.S. became a signatory to the International Covenant on Civil and Political Rights (CCPR), which 143 other nations have also joined. Article 6(5) states, "*Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*" The U.S. entered a partial reservation to Article 6(5), which reads, "The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (*other than a pregnant woman*) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age." [italics added for emphasis] **Thus, within the reservation itself, the U.S. bound itself not to permit the execution of any woman who carries an unborn child.**

It has often been quoted that the law is a great teacher.

This committee and the Hawaii legislature have a great opportunity to make the moral point that all human life is precious, especially innocent human life.

I urge this committee not only to pass this bill but to improve its language to enhance the penalties for killing the unborn child.

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