

MAR 10 2010

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE ATTORNEY GENERAL TO REVIEW THE LAWS REGARDING  
CIVIL AND CRIMINAL LIABILITY FOR PERSONS WHO USE DEADLY  
FORCE TO PROTECT OTHER PERSONS TO DETERMINE WHETHER  
ADDITIONAL LEGAL PROTECTIONS ARE PRUDENT.

1           WHEREAS, in January 2008, Janel Tupuola, a twenty-nine-  
2 year-old mother of five children all under thirteen years old,  
3 was attacked by her ex-boyfriend, who rammmed her car several  
4 times causing her to spin out, pulled her from the front seat,  
5 and violently clubbed her to death with the butt of his shotgun  
6 in front of several stunned witnesses; and  
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8           WHEREAS, there have been numerous other cases within this  
9 State and throughout the United States where bystanders have not  
10 interceded to assist the victims of violent crimes while the  
11 crimes are occurring; and  
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13           WHEREAS, there may be many reasons for failing to intercede  
14 in a dangerous situation to save the life of another person:  
15 the bystander effect, which posits that larger the number of  
16 people who witness a crime, the less likely any one person is to  
17 jump in and assist, because each bystander assumes someone else  
18 should step in; the fear of misreading the situation; the fact  
19 that people faced with emergencies do not think as carefully and  
20 logically as they normally would and that the bystander may not  
21 know what to do; fear for the bystander's own safety; and fear  
22 of criminal or civil liability if the bystander harms or kills  
23 the attacker; and  
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25           WHEREAS, while onlookers in the Janel Tupuola incident have  
26 stated that they did not intervene because they feared for their  
27 own safety, had the bystanders known that they had other means  
28 of subduing Janel's attacker available to them without worrying  
29 about legal repercussions, such as using a weapon that could  
30 have incapacitated or killed him, this may have prompted more  
31 bystanders to act, thus saving Janel Tupuola's life; and



1  
2 WHEREAS, the laws regarding criminal and civil liability  
3 for using force to protect another person leave open the  
4 possibility that a would-be Good Samaritan may be criminally  
5 prosecuted or civilly sued if successful in incapacitating or  
6 killing the attacker; and

7  
8 WHEREAS, under the Penal Code, there is a defense of  
9 "justification" to the deadly use of force under section 703-  
10 305, Hawaii Revised Statutes, only when "[u]nder the  
11 circumstances as the actor believes them to be, the person whom  
12 the actor seeks to protect would be justified in using such  
13 protective force", or "[t]he actor believes that the actor's  
14 intervention is necessary for the protection of the other  
15 person"; and

16  
17 WHEREAS, section 703-301, Hawaii Revised Statutes,  
18 specifically provides that "[t]he fact that conduct is  
19 justifiable under this chapter does not abolish or impair any  
20 remedy for such conduct which is available in any civil action",  
21 which means that a person using deadly force to protect another  
22 could still be sued by the attacker or the attacker's family for  
23 trying to save the life of the attacker's victim; and

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25 WHEREAS, although other factors may still stop a bystander  
26 from intervening to save another person who needs help, the  
27 Legislature believes that fears of legal consequences should be  
28 the last thing on a bystander's mind when faced with a life-and-  
29 death situation; and

30  
31 WHEREAS, the Legislature believes that the law regarding  
32 justification for the use of force and civil liability if a  
33 person attempts to assist another, even if that person uses  
34 deadly force, should be reviewed and considered in order to  
35 determine whether these laws should be amended to provide  
36 additional legal protection to would-be Good Samaritans who step  
37 in to save the lives of others who are in peril; now, therefore,  
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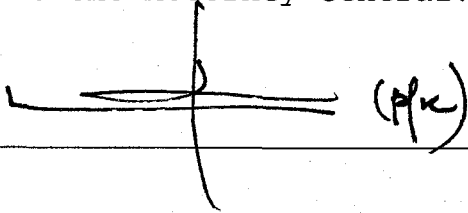
39 BE IT RESOLVED by the Senate of the Twenty-fifth  
40 Legislature of the State of Hawaii, Regular Session of 2010, the  
41 House of Representatives concurring, that the Attorney General  
42 is requested to:  
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- 1 (1) Review the laws regarding civil and criminal liability
- 2 pertaining to a person's use of force, including
- 3 deadly force, when the person is attempting to protect
- 4 other persons;
- 5
- 6 (2) Determine whether amendments to such laws in order to
- 7 provide additional protections for such persons is
- 8 prudent; and
- 9
- 10 (3) Submit to the Legislature a report no later than
- 11 twenty days prior to the convening of the 2011 Regular
- 12 Session of the Legislature regarding its findings and
- 13 recommendations, together with recommended proposed
- 14 legislation, if any; and
- 15

16 BE IT FURTHER RESOLVED that a certified copy of this  
17 Concurrent Resolution be transmitted to the Attorney General.

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OFFERED BY:  (AK)

