



# LATE Testimony

Committee: Committee on Human Services  
Hearing Date/Time: Monday, February 7, 2011, 9:35 a.m.  
Place: Conference Room 329  
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 1121,  
Relating to Terms of Imprisonment

Dear Chair Mizuno and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 1121, Relating to Terms of Imprisonment, which seeks enhanced sentences for crimes against pregnant women.

The ACLU of Hawaii is opposed to enhanced sentencing for someone who “should have known” that the victim was pregnant. This is an extraordinarily subjective standard, because when a defendant “should have known” that a woman was pregnant is not easily determined. This language is particularly troubling because of the time delay between the date of the crime and trial: for example, a woman who was three months pregnant at the time of the assault may be eight or nine months pregnant at the time of trial – leading jury members to believe that the defendant should have known of the pregnancy (even though, at the time of the crime, the defendant might have had no reason to know of that pregnancy).

The ACLU of Hawaii also believes that greater resources for survivors of domestic violence – including greater resources to legal services and domestic violence organizations (such as the Domestic Violence Action Center, the Legal Aid Society of Hawaii, and the Hawaii State Coalition Against Domestic Violence) – and more effective investigation, enforcement, and prosecution of violations of temporary restraining orders early in the cycle of abuse (including greater resources to police and prosecutors for this purpose) are more effective at deterring domestic violence than extended sentences.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck  
Senior Staff Attorney

American Civil Liberties Union of Hawaii  
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February 6, 2011

## **LATE Testimony**

### **Testimony in Support: HB 1121**

**To:** Chair John Mizuno, Vice Chair Jo Jordan, and Members of the House Committee on Human Services  
**From:** Katie Reardon, Director of Government Relations & Public Affairs, Planned Parenthood of Hawaii  
**Re:** Comments on HB 1121 Relating to Terms of Imprisonment.

Planned Parenthood of Hawaii (PPHI) wishes to offer comments on HB 1121 Relating to Terms of Imprisonment. This bill proposes to increase sentencing for crimes resulting in death or serious bodily injury to a pregnant woman. PPHI applauds the introducers' efforts to address violence against women. For many battered women in particular, pregnancy can be a time of escalated physical violence. The state of Hawaii can do much to assist all women who experience violence whether by an intimate partner or by someone else, whether by strengthening protection orders, creating employment protections for victims of domestic violence, or committing state resources to services for battered women including safe shelters.

We ask the Committee to use caution when considering this bill. Legislation that increases protections for crime victims during pregnancy often has other consequences. Both in Hawaii and across the United States we have seen similar legislation introduced under the guise of protections for pregnant women that include establishing unprecedented rights for a fetus as a legal person. Unfortunately, these measures sole purpose is often to diminish women's access safe and legal abortion. These laws often seek to subject women and their doctors to potential criminal liability. Not only do these efforts impose on the constitutional right to privacy established in *Roe v. Wade*, it endangers women's lives.

Accordingly, we suggest that the Committee seek a detailed legal review of this legislation and what, if any, impact it has on a woman's right to privacy as protected by the US and Hawaii State Constitutions. Again, we truly appreciate the introducers' intention to address violence against women. However, we think this issue is complex, and in the interest of the well being of all women, HB 1121 requires a closer review.

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(A Maui United Way Agency)

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**From:** Ann Freed [annfreed@hotmail.com]  
**Sent:** Sunday, February 06, 2011 11:57 PM  
**To:** HUSTestimony  
**Subject:** Comments on HB1121

# LATE Testimony

## COMMITTEE ON HUMAN SERVICES

Rep. John M. Mizuno, Chair

Rep. Jo Jordan, Vice Chair

Hearing on HB1121

Monday, February 07, 2011

9:35am

Conference Room 329

Aloha Chair Mizuno, Vice Chair Jordan and committee members

While I applaud the intent of this bill, The Women's Coalition and The Hawai'i Democratic Party Women's Caucus have had cause to oppose this kind of bill in the past. The current language does seem to avoid language that would bring into question the "personhood" of a fetus thereby laying the groundwork for denying women access to abortion. **However, we question the need for a law that considers violence against a pregnant woman as more worthy of punishment than a non-pregnant woman.**

Further, I believe that if the courts were vigorously pursuing those who commit domestic violence at their first offense, rather than pleading them out and sending them home, the perpetrators might not escalate to the point of harming a woman who is pregnant.

I agree with Planned Parenthood's assessment that "The state of Hawai'i can do much to assist all women who experience violence ... by strengthening protection orders, creating employment protections for victims of domestic violence, and/or committing state resources to services for battered women including safe shelters."

I would be more inclined to favor legislation that required a short stay in jail followed by mandatory counseling rather than enhanced sentences specifically aimed at pregnant women. All women have a right to safety and respect.

Mahalo nui loa,

Ann S. Freed  
Mililani, HI 96789

808-623-5676

February 7, 2011

To: Representative John Mizuno, Chair  
Representative Jo Jordan, Vice Chair and  
Members of the Committee on Human Services

Re: HB 1121 Relating to Terms of Imprisonment  
Hearing: February 7, 2011, 9:35 a.m., Room 329

Position: Strong Opposition

I am testifying today in strong opposition to HB 1121 Relating to Terms of Imprisonment which would add pregnant women to the list of victims that a violent offense is committed against for which an extended term of imprisonment may be given.

I believe that this proposal, while meant to provide additional protection for pregnant women, ultimately does not provide that protection and could have unintended consequences. Extended sentences do not provide a deterrent effect against crime.

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>1</sup>

Women in abusive relationships are very vulnerable when they are pregnant. 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.

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

- Are abusers already being charged at the highest level possible?
- Are abusers being sanctioned early in their abusive histories?
- 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 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 am opposed to solving this issue by imposing a special value on the lives of pregnant women as compared to all other 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.

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<sup>1</sup> Mauer, Marc, Social Research, “The Hidden Problem of Time Served in Prison,” Vol. 74:No.2, Summer 2007, pg. 702-704.

February 7, 2011

# LATE TESTIMONY

TESTIMONY IN SUPPORT for HB 1121

Good Morning Chair Mizuno, Vice Chair Jordan. My name is Erwin Gabrillo and I support **HB 1121, RELATING TO TERMS OF IMPRISONMENT**. This bill adds the acts of inflicting serious or substantial bodily injury upon a person who is pregnant in the course of committing or attempting to commit a felony to those actions for which an extended term of imprisonment may be given. Mandates imprisonment for such actions if not subject to extended term.

Thanks you

ERWIN GABRILLO