

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

February 7, 2011

H.B. NO. 1121: RELATING TO TERMS OF IMPRISONMENT

Chair Mizuno and Members of the Committee:

We oppose H.B. No. 1121 which seeks to expand the extended term sentencing law to specified offenses against a pregnant woman and also impose mandatory minimum terms of imprisonment for offenses against a pregnant woman. The bill provides that if a person, in the course of committing murder, manslaughter, felony sexual assault and other specified offenses or an attempt to commit those offenses, inflicts serious or substantial bodily injury upon a woman who is pregnant, the person would be subject to an extended term of imprisonment. Mandatory minimum terms are prescribed for felonies committed against a pregnant woman when the same types of injuries are caused. The woman's pregnancy must be known or reasonably should have been known to the defendant.

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 an extended term of imprisonment. 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.