

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary and Labor**

February 5, 2015

**S.B. NO. 210: RELATING TO OFFENSES AGAINST VULNERABLE
PERSONS**

Chair Keith-Agaran and Members of the Committee:

We oppose S.B. No. 210 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. The bill also seeks to raise the penalty for Abuse of Family or Household Member to a Class C felony when the alleged abuse is against a pregnant woman.

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.

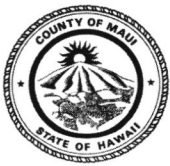
Also, there are due process concerns with respect to when a defendant will be imputed with knowledge of a woman's pregnancy. The assumption is that, most often, a violent act against a pregnant woman will occur in the domestic setting. When will a defendant be assumed to have had reasonable knowledge 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 do not 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.



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411



TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

February 3, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair
And Members of the Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

**Re: S.B. No. 210, RELATING TO
CRIMES AGAINST PREGNANT WOMEN**

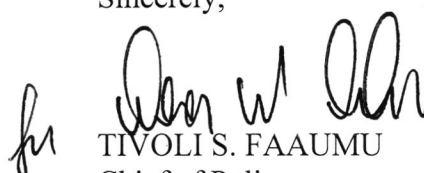
This proposed bill adds to the criteria for mandatory minimum imprisonment terms and extended terms of imprisonment offenses against pregnant women. This proposed bill further establishes that physical abuse against a family or household member who is pregnant is a class C felony.

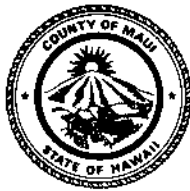
We support the stance of the Maui County Department of the Prosecuting Attorney on this bill to protect pregnant women. We also believe that there is a need to protect pregnant women when they are most vulnerable. The additional protections that this piece of legislation will provide will send a clear message that violence against women or anyone in a civilized society will not be tolerated.

The Maui Police Department asks your committee to **strongly support** S.B. No 210.

Thank you for the opportunity to testify.

Sincerely,


TIVOLI S. FAAUMU
Chief of Police



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
SB 210 - RELATING TO CRIMES AGAINST PREGNANT WOMEN

February 5, 2015

The Honorable Gilbert S. C. Keith-Agaran
Chair
The Honorable Maile S. L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** SB 210 - Relating to Crimes against Pregnant Women. The bill will add to the criteria for mandatory minimum imprisonment terms and extended terms of imprisonment offenses against pregnant women, and establish that physical abuse against a family or household member who is pregnant is a Class C felony.

This bill seeks to protect women when they are most vulnerable: while they are pregnant. The Centers for Disease Control found that:

- There are as many as 324,000 reported cases of domestic violence involving pregnant women each year nationwide, affecting every age group, religion, ethnic/racial group, socioeconomic level, educational background and sexual orientation;
- Abuse often begins or escalates during a pregnancy;

- Any abuse during a pregnancy puts both the woman and her unborn child at risk, because a pregnant woman is in a uniquely vulnerable position both physically and emotionally; and
- In addition to immediate injury, an abused pregnant woman faces an increased risk for hemorrhaging, uterine rupture, pre-term birth, complications during labor or miscarriage.

In addition to abuse cases, pregnant women are also victims of violent crimes, including felony assaults, sexual assaults and homicides. We have seen several cases in Hawaii in recent years where pregnant women were victims of violent crimes, including homicides in Hawaii and Maui Counties. This bill will enable mandatory minimum terms and extended terms of imprisonment if a pregnant woman is a victim.

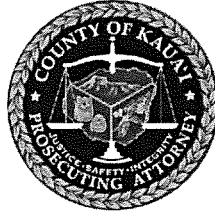
Some women's groups may claim that they are concerned that this bill may be used against the pregnant woman for harm to her fetus through drug use or other activities. This bill does not seek to create causes of action against pregnant women for harming themselves. Unlike in some other states, this bill does not provide a status for the fetus, which will preserve Hawaii's pro-choice laws. Furthermore, it is not a crime to harm oneself (although it may get you civilly committed), so the sentencing provisions of this bill could not be used against the pregnant woman.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** the passage of this bill. We ask that the committee **PASS SB 210**.

Thank you very much for the opportunity to provide testimony on this bill.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN SUPPORT OF
SB210 – RELATING TO CRIMES AGAINST PREGNANT WOMEN**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committee on Judiciary and Labor
February 5, 2015, 9:00 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, SUPPORTS SB210 – Relating to Crimes Against Pregnant Women. The Bill enhances the penalties for committing the offense of Abuse of a Family or Household Member when the victim of the offense is a pregnant woman.

In supporting this measure, our Office adopts the reasoning cited in the testimony submitted by the Department of the Prosecuting Attorney, County of Maui.

Accordingly, we are in SUPPORT of SB210. We request that your Committee PASS the Bill.

Respectfully,

Justin F. Kollar
Prosecuting Attorney



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Thursday, February 5, 2015, 9:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in **Opposition to S.B. 210**,
Relating to Crimes Against Pregnant Women

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in **opposition** to S.B. 210, Relating to Offenses Against Vulnerable Persons, which seeks enhanced sentences for crimes against pregnant women.

The ACLU of Hawaii is opposed to enhanced sentencing for crimes against persons whose pregnancy status “should be known.” This is an extraordinarily subjective standard because it is not easily determined when a defendant should “reasonably” have known about a pregnancy. 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.

Thank you for this opportunity to testify.

Daniel M. Gluck
Legal Director
ACLU of Hawaii

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 50 years.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: randy@kauaichamber.org
Subject: *Submitted testimony for SB210 on Feb 5, 2015 09:00AM*
Date: Wednesday, February 04, 2015 3:07:20 PM

SB210

Submitted on: 2/4/2015

Testimony for JDL on Feb 5, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Randall Francisco	Kauai Chamber of Commerce	Support	No

Comments:

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The Public Policy Voice for the Roman Catholic Church in the State of Hawaii

HEARING: Senate Committee on JDL, Thursday, February 5, 2015 @ 9:00 a.m. room #016.

SUBMITTED: February 2, 2015

TO: Senate Committee on Judiciary & Labor
Sen. Gilbert Keith-Agaran, Chair
Sen. Maile Shimabukuro, Vice Chair

FROM: Walter Yoshimitsu, Executive Director

RE: Support for SB 210, Crimes Against Pregnant Women

Honorable Chairs and members of the Senate Committee on Judiciary and Labor, I am Walter Yoshimitsu, **representing the Hawaii Catholic Conference**. The Hawaii Catholic Conference is the public policy voice for the Roman Catholic Church in the State of Hawaii, which under the leadership of Bishop Larry Silva, represents Roman Catholics in the State of Hawaii. The Church holds that all human life, both before and after birth, has inherent dignity, and that all laws passed have the duty to respect the dignity of both mother and child.

SB 210 simply adds “pregnant women” to Section 706-660.2 (HRS) which already provides a sentence of imprisonment for offenses against children, elder persons and handicapped persons. We strongly support this addition to Hawaii’s statutes and applaud the legislature for allowing this bill to be heard.

Recent statistics show that Americans, overwhelmingly, endorse the concept that a pregnant woman's assailant should be held legally responsible for any consequent harm to a fetus in addition to any harm inflicted upon the pregnant mother. When it comes to legal protection, pregnant women are certainly among those who should receive our priority and support.

In 1999, the American Bishops submitted testimony in support of the Unborn Victims of Violence Act. In their testimony, they stated that passage would present “an opportunity to protect the unborn child in a way that clearly serves the freedom and well-being of his or her mother, by protecting both parties from violent assault and murder. To oppose such much needed legislation simply because it acknowledges a truth about unborn life that almost everyone already knows anyway, would be a terrible injustice.” SB 210 is a positive step in the right direction.

Mahalo for the opportunity to testify.

HAWAII FAMILY ADVOCATES

A 501(C)(4) community associate of Hawaii Family Forum

DIRECTORS

Phil Burress

President

Shawn Luiz, Esq.

Vice President

Sandra Young, Esq.

Secretary

Alex Meimer

Treasurer

Mary Lou Brogan

Board Member

James "Duke" Aiona, Jr.

Interim Executive Director

DATE: February 3, 2015
TO: Senate Committee on Judiciary & Labor
Hearing on February 5, 2015 @ 9:00 a.m. #016
Senator Gilbert Keith-Agaran, Chair
Senator Maile Shimabuku, Vice-Chair
RE: **Support for SB 210 Relating to Pregnant Women**

Dear Chair, Vice Chair and Committee Members,

My name is James "Duke" Aiona, Jr., and I have been an attorney in Honolulu since 1981. Currently I am also the president of Hawaii Family Advocates, a 501(c)(4) independent expenditure, non-candidate committee. Along with our community associate Hawaii Family Forum, we support this bill that adds "pregnant women" to Section 706-660.2 of Hawaii Revised Statutes which already protects children, elder persons and handicapped people. We do want to be clear from the beginning however, that we see the child as a victim as well.

Experts in the area of domestic violence consistently report on the high rate of violence against women. Some reports indicate that as many as 30 percent of women experience physical or sexual violence at some point in their lives. Sadly, the majority of those who abuse them are people with whom they have a personal relationship. Too often we neglect pregnant women in that conversation and we are truly grateful that this committee has allowed a hearing on this very important issue.

According to the National Conference of State Legislatures, at least **38** states have fetal homicide laws. Hawaii should be added to that list. Although SB 210 focuses only on the harm done to a pregnant woman and not on the rights of the unborn child, we believe this bill is a positive step in the right direction.

And we are not alone. National statistics are showing that most people strongly support legal protection of pregnant women against physical abuse. We hope that you pass this bill out of committee.

Mahalo for the opportunity to testify in support of this measure.



ONLINE TESTIMONY SUBMITTAL
Senate JDL Hearing on February 5, 2015 @ 9:00 a.m.
Conference Room #016

DATE: February 2, 2015

TO: Senate Committee on Judiciary & Labor
Honorable Gilbert Keith-Agaran, Chair
Honorable Maile Shimabukuro, Vice Chair

FROM: Eva Andrade., Executive Director

RE: Support for SB 210, Relating to Pregnant Women

Honorable Chairs and members of the Senate Committee on Judiciary & Labor, Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii. We support this bill that adds “pregnant women” to Section 706-660.2 of Hawaii Revised Statutes which already protects children, elder persons and handicapped people. We do want to be clear from the beginning however, that we see the child as a victim as well.

Experts in the area of domestic violence consistently report on the high rate of violence against women. Some reports indicate that as many as 30 percent of women experience physical or sexual violence at some point in their lives. Sadly, the majority of those who abuse them are people with whom they have a personal relationship. Too often we neglect pregnant women in that conversation and we are truly grateful that this committee has allowed a hearing on this very important issue.

According to the National Conference of State Legislatures, at least **38** states have fetal homicide laws. The states include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin.ⁱ

Although SB 210 focuses only on the harm done to a pregnant woman and not on the rights of her unborn child, we believe this bill is a very positive step in the right direction. And we are not alone. National statistics are showing that most people strongly support legal protection of pregnant women against physical abuse. We hope that you pass this bill out of committee.

Mahalo for the opportunity to testify.

ⁱ <http://www.ncsl.org/research/health/fetal-homicide-state-laws.aspx> (02/02/15)

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To: [JDLTestimony](#)
Cc: [REDACTED]
Subject: *Submitted testimony for SB210 on Feb 5, 2015 09:00AM*
Date: Wednesday, February 04, 2015 2:17:28 AM

SB210

Submitted on: 2/4/2015

Testimony for JDL on Feb 5, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Hairgrove	Individual	Support	No

Comments:

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Subject: Submitted testimony for SB210 on Feb 5, 2015 09:00AM
Date: Tuesday, February 03, 2015 1:38:17 PM

SB210

Submitted on: 2/3/2015

Testimony for JDL on Feb 5, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Karen DiCostanzo	Individual	Support	No

Comments: Mahalo for hearing SB 210 relating to crimes against pregnant women. I wish to express my support for this measure. Pregnancy-related violence is a serious public health issue, and a growing body of evidence suggests that violence during pregnancy has numerous, seriously detrimental consequences for both the mother and the unborn child. Research further suggests that women are at increased risk of domestic abuse while pregnant. I commend the Hawaii State Senate for acting on behalf of those in need of legal protection, and I urge you to support this potentially life-saving measure.

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Subject: *Submitted testimony for SB210 on Feb 5, 2015 09:00AM*
Date: Monday, February 02, 2015 1:00:59 PM

SB210

Submitted on: 2/2/2015

Testimony for JDL on Feb 5, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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