

JAN 19 2018

A BILL FOR AN ACT

RELATING TO CRIMES AGAINST PREGNANT WOMEN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 706-660.2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§706-660.2 Sentence of imprisonment for offenses against
4 children, elder persons, ~~[ex]~~ handicapped persons~~[-]~~, or
5 pregnant women. (1) Notwithstanding section 706-669, if not
6 subjected to an extended term of imprisonment pursuant to
7 section 706-662, a person shall be sentenced to a mandatory
8 minimum term of imprisonment without possibility of parole as
9 provided in subsection (2) if:

10 (a) The person, in the course of committing or attempting
11 to commit a felony, causes the death or inflicts
12 serious or substantial bodily injury upon another
13 person who ~~[is-]~~ has the status of being:

14 (i) Sixty years of age or older;

15 (ii) Blind, a paraplegic, or a quadriplegic; ~~[ex]~~

16 (iii) Eight years of age or younger; ~~[and]~~ or

17 (iv) Pregnant; and



(b) Such [~~disability~~] status is known or reasonably should be known to the defendant.

(2) The term of imprisonment for a person sentenced pursuant to subsection (1) shall be as follows:

(a) For murder in the second degree--fifteen years;

(b) For a class A felony--six years, eight months;

(c) For a class B felony--three years, four months;

(d) For a class C felony--one year, eight months."

SECTION 2. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

"§706-662 Criteria for extended terms of imprisonment. A defendant who has been convicted of a felony may be subject to an extended term of imprisonment under section 706-661 if it is proven beyond a reasonable doubt that an extended term of imprisonment is necessary for the protection of the public and that the convicted defendant satisfies one or more of the following criteria:

(1) The defendant is a persistent offender in that the defendant has previously been convicted of two or more felonies committed at different times when the defendant was eighteen years of age or older;



(2) The defendant is a professional criminal in that:

(a) The circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood; or

(b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity;

(3) The defendant is a dangerous person in that the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data to establish dangerousness in accord with the Hawaii rules of evidence;

(4) The defendant is a multiple offender in that:

(a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for any felony; or



1 (b) The maximum terms of imprisonment authorized for
2 each of the defendant's crimes, if made to run
3 consecutively, would equal or exceed in length
4 the maximum of the extended term imposed or would
5 equal or exceed forty years if the extended term
6 imposed is for a class A felony;

7 (5) The defendant is an offender against the elderly,
8 handicapped, ~~[or]~~ a minor eight years of age or
9 younger, or a pregnant woman in that:

10 (a) The defendant attempts or commits any of the
11 following crimes: murder, manslaughter, a sexual
12 offense that constitutes a felony under chapter
13 707, robbery, felonious assault, burglary, or
14 kidnapping; and

15 (b) The defendant, in the course of committing or
16 attempting to commit the crime, inflicts serious
17 or substantial bodily injury upon a person who
18 has the status of being:

19 (i) Sixty years of age or older;

20 (ii) Blind, a paraplegic, or a quadriplegic; ~~[or]~~

21 (iii) Eight years of age or younger; ~~[and]~~ or



1 (iv) Pregnant; and

2 the person's status is known or reasonably should
3 be known to the defendant; or

4 (6) The defendant is a hate crime offender in that:

5 (a) The defendant is convicted of a crime under
6 chapter 707, 708, or 711; and

7 (b) The defendant intentionally selected a victim or,
8 in the case of a property crime, the property
9 that was the object of a crime, because of
10 hostility toward the actual or perceived race,
11 religion, disability, ethnicity, national origin,
12 gender identity or expression, or sexual
13 orientation of any person. For purposes of this
14 subsection, "gender identity or expression"
15 includes a person's actual or perceived gender,
16 as well as a person's gender identity, gender-
17 related self-image, gender-related appearance, or
18 gender-related expression, regardless of whether
19 that gender identity, gender-related self-image,
20 gender-related appearance, or gender-related



1 expression is different from that traditionally
2 associated with the person's sex at birth."

3 SECTION 3. Section 709-906, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§709-906 Abuse of family or household members; penalty.**

6 (1) It shall be unlawful for any person, singly or in concert,
7 to physically abuse a family or household member or to refuse
8 compliance with the lawful order of a police officer under
9 subsection (4). The police, in investigating any complaint of
10 abuse of a family or household member, upon request, may
11 transport the abused person to a hospital or safe shelter.

12 For the purposes of this section:

13 "Business day" means any calendar day, except Saturday,
14 Sunday, or any state holiday.

15 "Family or household member":

16 (a) Means spouses or reciprocal beneficiaries, former
17 spouses or reciprocal beneficiaries, persons in a
18 dating relationship as defined under section 586-1,
19 persons who have a child in common, parents, children,
20 persons related by consanguinity, and persons jointly



1 residing or formerly residing in the same dwelling
2 unit; and

3 (b) Does not include those who are, or were, adult
4 roommates or cohabitants only by virtue of an economic
5 or contractual affiliation.

6 (2) Any police officer, with or without a warrant, may
7 arrest a person if the officer has reasonable grounds to believe
8 that the person is physically abusing, or has physically abused,
9 a family or household member and that the person arrested is
10 guilty thereof.

11 (3) A police officer who has reasonable grounds to believe
12 that the person is physically abusing, or has physically abused,
13 a family or household member shall prepare a written report.

14 (4) Any police officer, with or without a warrant, shall
15 take the following course of action, regardless of whether the
16 physical abuse or harm occurred in the officer's presence:

17 (a) The police officer shall make reasonable inquiry of
18 the family or household member upon whom the officer
19 believes physical abuse or harm has been inflicted and
20 other witnesses as there may be;



1 (b) If the person who the police officer reasonably
2 believes to have inflicted the abuse is eighteen years
3 of age or older, the police officer lawfully shall
4 order the person to leave the premises for a period of
5 separation, during which time the person shall not
6 initiate any contact, either by telephone or in
7 person, with the family or household member; provided
8 that the person is allowed to enter the premises with
9 police escort to collect any necessary personal
10 effects. The period of separation shall commence when
11 the order is issued and shall expire at 6:00 p.m. on
12 the second business day following the day the order
13 was issued; provided that the day the order is issued
14 shall not be included in the computation of the two
15 business days;

16 (c) If the person who the police officer reasonably
17 believes to have inflicted the abuse is under the age
18 of eighteen, the police officer may order the person
19 to leave the premises for a period of separation,
20 during which time the person shall not initiate any
21 contact with the family or household member by



1 telephone or in person; provided that the person is
2 allowed to enter the premises with police escort to
3 collect any necessary personal effects. The period of
4 separation shall commence when the order is issued and
5 shall expire at 6:00 p.m. on the second business day
6 following the day the order was issued; provided that
7 the day the order is issued shall not be included in
8 the computation of the two business days. The order
9 of separation may be amended at any time by a judge of
10 the family court. In determining whether to order a
11 person under the age of eighteen to leave the
12 premises, the police officer may consider the
13 following factors:

- 14 (i) Age of the person;
- 15 (ii) Relationship between the person and the family or
16 household member upon whom the police officer
17 reasonably believes the abuse has been inflicted;
18 and
- 19 (iii) Ability and willingness of the parent, guardian,
20 or other authorized adult to maintain custody and
21 control over the person;



(d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;

(e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and

(f) The police officer shall seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under



1 subsection (4) are misdemeanors and the person shall be
2 sentenced as follows:

3 (a) For the first offense the person shall serve a minimum
4 jail sentence of forty-eight hours; and

5 (b) For a second offense that occurs within one year of
6 the first conviction, the person shall be termed a
7 "repeat offender" and serve a minimum jail sentence of
8 thirty days.

9 Upon conviction and sentencing of the defendant, the court shall
10 order that the defendant immediately be incarcerated to serve
11 the mandatory minimum sentence imposed; provided that the
12 defendant may be admitted to bail pending appeal pursuant to
13 chapter 804. The court may stay the imposition of the sentence
14 if special circumstances exist.

15 (6) Whenever a court sentences a person pursuant to
16 subsection (5), it also shall require that the offender undergo
17 any available domestic violence intervention programs ordered by
18 the court. However, the court may suspend any portion of a jail
19 sentence, except for the mandatory sentences under subsection
20 (5) (a) and (b), upon the condition that the defendant remain



1 arrest-free and conviction-free or complete court-ordered
2 intervention.

3 (7) For a third or any subsequent offense that occurs
4 within two years of a second or subsequent conviction, the
5 offense shall be a class C felony.

6 (8) Where the physical abuse consists of intentionally or
7 knowingly impeding the normal breathing or circulation of the
8 blood of the family or household member by applying pressure on
9 the throat or the neck, abuse of a family or household member is
10 a class C felony.

11 (9) Where physical abuse occurs in the presence of a
12 minor, as defined in section 706-606.4, and the minor is a
13 family or household member less than fourteen years of age,
14 abuse of a family or household member is a class C felony.

15 (10) Where the physical abuse is against a family or
16 household member who is pregnant, abuse of a family or household
17 member is a class C felony.

18 ~~[(10)]~~ (11) Any police officer who arrests a person
19 pursuant to this section shall not be subject to any civil or
20 criminal liability; provided that the police officer acts in



1 good faith, upon reasonable belief, and does not exercise
2 unreasonable force in effecting the arrest.

3 ~~[(11)]~~ (12) The family or household member who has been
4 physically abused or harmed by another person may petition the
5 family court, with the assistance of the prosecuting attorney of
6 the applicable county, for a penal summons or arrest warrant to
7 issue forthwith or may file a criminal complaint through the
8 prosecuting attorney of the applicable county.

9 ~~[(12)]~~ (13) The respondent shall be taken into custody and
10 brought before the family court at the first possible
11 opportunity. The court may dismiss the petition or hold the
12 respondent in custody, subject to bail. Where the petition is
13 not dismissed, a hearing shall be set.

14 ~~[(13)]~~ (14) This section shall not operate as a bar
15 against prosecution under any other section of this Code in lieu
16 of prosecution for abuse of a family or household member.

17 ~~[(14)]~~ (15) It shall be the duty of the prosecuting
18 attorney of the applicable county to assist any victim under
19 this section in the preparation of the penal summons or arrest
20 warrant.



1 [~~(15)~~] (16) This section shall not preclude the physically
2 abused or harmed family or household member from pursuing any
3 other remedy under law or in equity.

4 [~~(16)~~] (17) When a person is ordered by the court to
5 undergo any domestic violence intervention, that person shall
6 provide adequate proof of compliance with the court's order.
7 The court shall order a subsequent hearing at which the person
8 is required to make an appearance, on a date certain, to
9 determine whether the person has completed the ordered domestic
10 violence intervention. The court may waive the subsequent
11 hearing and appearance where a court officer has established
12 that the person has completed the intervention ordered by the
13 court."

14 SECTION 4. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.

20
INTRODUCED BY:

DC Smith-Crowe
BY REQUEST OF ANOTHER
PARTY



S.B. NO. 2550

Report Title:

Offenses Against Pregnant Women; Sentencing; Extended Terms of Imprisonment; Abuse of Family or Household Member

Description:

Adds to the criteria for mandatory minimum imprisonment terms and extended terms of imprisonment offenses against pregnant women. Establishes that physical abuse against a family or household member who is pregnant is a class C felony.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

