

**STATE OF HAWAI‘I**  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on Judiciary**

February 11, 2020

H.B. No. 1636: RELATING TO OFFENSES AGAINST VULNERABLE PERSONS

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Public Defender respectfully opposes H.B. No. 1636, 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 a crime involving the death or the infliction of serious or substantial bodily injury upon a pregnant woman or an attempt to commit those offenses, the person would be subject to an extended term of imprisonment. Mandatory minimum terms – meaning no possibility of probation - 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.

First, there is no definition of the term “pregnant” in the Hawai‘i Revised Statutes, or at least in the Hawai‘i Penal Code. 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 later 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 H.B. No. 1636.



**LATE**

Testimony on behalf of the  
Hawai'i State Commission on the Status of Women  
**Khara Jabola-Carolus, Executive Director**

Ke Kōmike Ho'okolokolo

In Opposition to HB1636

Wednesday, February 12, 2019, at 3:00 p.m. Room 325

Aloha e Luna Ho'omaluku/Chair Lee a Hope Luna Ho'omaluku/Vice Chair San Buenaventura,

The Hawai'i State Commission on the Status of Women writes in opposition to HB1636, which would add the acts of killing or inflicting serious or substantial bodily injury upon a pregnant woman in the course of committing or attempting to commit a felony, to the offenses for which a person is subject to an extended or mandatory minimum term of imprisonment.

Anti-women legislation can take many forms, including new laws to penalize injury to a pregnant woman. This measure opens the door to attacks on women's rights despite exempting abortion from punishment. According to the American Civil Liberties Union, "An exemption specifying 'legal abortions' is not adequate, because a narrow interpretation of what constitutes a 'legal' abortion could restrict the performance of abortions to physicians only, and put mid-level health care practitioners, or women who self-abort, in jeopardy of being prosecuted for murder."<sup>1</sup>

Despite the exemption, there is also the risk that anti-abortion prosecutors may try to discourage abortion providers from assisting women using the specter of this law as the basis to indict them if there are any deviations from abortion laws.<sup>2</sup>

Accordingly, the Commission requests that the Committee defer HB1636.

Sincerely,  
Khara Jabola-Carolus

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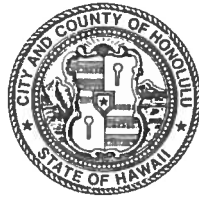
<sup>1</sup> American Civil Liberties Union, *Fetal Rights*, 2020 <https://www.aclu.org/other/whats-wrong-fetal-rights>.

<sup>2</sup> *Id.*

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

KIRK CALDWELL  
MAYOR



SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
CLYDE K. HO  
DEPUTY CHIEFS

OUR REFERENCE GB-KK

February 12, 2020

The Honorable Chris Lee, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 1636, Relating to Offenses Against Vulnerable Persons

I am Gail Beckley, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 1636, Relating to Offenses Against Vulnerable Persons.

Incidents that involve the vulnerable citizens in our community, like pregnant women, are among the serious incidents that law enforcement is faced with investigating. This bill adds the acts of killing or inflicting serious or substantial bodily injury upon a pregnant women in the course of committing or attempting to commit a felony, to the offenses for which a person is subject to an extended or mandatory minimum term of imprisonment. We believe this legislation will better protect the pregnant women in the state of Hawaii.

The HPD urges you to strongly support House Bill No. 1636, Relating to Offenses Against Vulnerable Person.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Susan Ballard in black ink.

Susan Ballard  
Chief of Police

Sincerely,

Handwritten signature of Gail Beckley in black ink.

Gail Beckley, Captain  
Criminal Investigation Division



# POLICE DEPARTMENT COUNTY OF MAUI



MICHAEL P. VICTORINO  
MAYOR

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

OUR REFERENCE  
YOUR REFERENCE

February 11, 2020

The Honorable Chris Lee, Chair  
The Honorable Joy A. San Buenaventura, Vice Chair  
and Members of the Committee on Judiciary

**LATE**

House of Representatives  
Hawaii State Capitol  
Honolulu, Hawaii 96813

**RE: House Bill No. 1636 – Relating To Offenses Against Vulnerable Persons**

Dear Chair Lee and Members of the Committee:

The Maui Police Department SUPPORTS the passage of H.B. No. 1636.

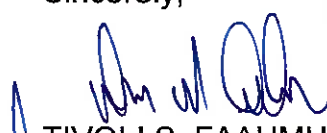
Inflicting serious or substantial bodily injury on a vulnerable pregnant woman not only places the pregnant female at risk, but also places the unborn human embryo or fetus in a position of becoming permanently disabled or disfigured.

According to the National Conference of State Legislatures website, there are at least 38 states that have fetal homicide laws and 29 states that have fetal homicide laws which apply to the earliest stages of pregnancy such as “conception”, “fertilization”, or “post-fertilization”. Hawaii currently does not have such a law. It is imperative that an enhanced or mandatory minimum term of imprisonment be enacted for causing harm to vulnerable pregnant women and unborn children and they should be protected under such law.

The Maui Police Department asks that you SUPPORT the passage of H.B. No. 1636.

Thank you for the opportunity to testify.

Sincerely,

  
TIVOLI S. FAAUMU  
Chief of Police

**HB-1636**

Submitted on: 2/11/2020 5:23:15 PM

Testimony for JUD on 2/12/2020 3:00:00 PM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Younghi Overly	aauw of hawaii	Oppose	No

Comments:

**HB-1636**

Submitted on: 2/12/2020 10:57:54 AM

Testimony for JUD on 2/12/2020 3:00:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mandy Fernandes	ACLU of Hawaii	Oppose	Yes

Comments:

**LATE**

**HB-1636**

Submitted on: 2/12/2020 3:41:23 PM

Testimony for JUD on 2/12/2020 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rainbow	Rainbow Family 808	Support	Yes

Comments:

Rainbow Family 808 Strongly Supports HB 1636 for justice for women when they are pregnant. Far too long, we have seen with the death or injury of pregnant women not given the justice and protection they need as human beings.

HB 1636 focuses on the justice needed by women.

Thank you for considering the women of the state of Hawaii.



**HB-1636**

Submitted on: 2/10/2020 2:55:39 PM

Testimony for JUD on 2/12/2020 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
	Individual	Oppose	No

Comments:

**HB-1636**

Submitted on: 2/10/2020 3:28:08 PM

Testimony for JUD on 2/12/2020 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Support	No

Comments:

**LATE**

**HB-1636**

Submitted on: 2/11/2020 4:40:50 PM

Testimony for JUD on 2/12/2020 3:00:00 PM

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

Comments: