

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

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

February 24, 2022

S.B. No. 2027: RELATING TO MURDER

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 2687, which would amend the 1st degree murder statute. Specifically, the measure seeks to include the following protected persons:

- A person who is less than fourteen years old;
- A person who is pregnant with a viable fetus; or
- A person where the defendant’s actions were especially heinous, atrocious, or cruel, manifesting exceptional depravity.

**“Special Class” Victims**

Placing the aforementioned victims in a “special class” devalues the lives of victims who are fourteen years or older or women who are pregnant with a non-viable fetus. Is the life of a fourteen-year-old child less important than the life of a thirteen-year-old child? Is the life of a pregnant woman with a non-viable fetus (e.g., a person who is only twenty weeks pregnant) less important than the life of a pregnant woman with a viable fetus? To “prioritize” a thirteen-year old over a fifteen-year old or to hold a pregnant woman with a viable fetus over a pregnant woman with a non-viable fetus would seem arbitrary.

**Pregnant Women**

First, there is no definition of the term “pregnant” 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 also determine the point at which the fetus is viable. At twenty-eight weeks?<sup>1</sup> At twenty-four weeks? After

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<sup>1</sup> The U.S. Supreme Court stated in Roe v. Wade, 410 U.S. 113, 160, 93 S.Ct. 705, 730 (1973) that viability (i.e., the “interim point at which the fetus becomes . . . potentially able to live outside the mother’s womb, albeit with artificial aid”) “is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks.”

the first trimester? At conception? *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 or the viability of the fetus. The assumption, most often, is that 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 or the viability of the fetus? 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 or the viability status of the fetus?

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 confidential under state and federal privacy laws. Quite often, a woman's pregnancy and the viability of the fetus will not be apparent merely by the woman's appearance.

**“Especially heinous, atrocious, or cruel, manifesting exceptional depravity” already codified in HRS § 706-657**

Killing a person where the defendant's actions were especially heinous, atrocious, or cruel, manifesting exceptional depravity is adequately addressed in the enhanced sentencing statute for Murder in the 2nd Degree under HRS § 706-657.<sup>2</sup> Prosecutors may seek enhanced sentencing under HRS § 706-657 **under any type of murder**, without any limitation as to whether the victim is of a designated class. The enhanced sentence of life without the possibility of parole can be applied to any “conscienceless” or “pitiless” murder that was “unnecessarily torturous” to any victim of any class. Thus, **HRS § 706-657 already achieves what proponents of this bill seek**, which is to impose the ultimate sentence which can be handed down in this state, when horrific facts are present in a case.

Another problem with creating additional special class victims for the crime of Murder in the 1st Degree, is that it forces a life without parole sentence to be imposed in any and all cases involving that special class victim. All that remains to determine the sentence (life without parole) of such a murder case is whether or not the victim

was of a particular class. This is troubling. There is no death penalty in any of the laws found within the State of Hawai‘i. A life without the possibility of parole sentence is the closest Hawai‘i has to a capital offense. For any horrific murder, consideration of whether to impose an enhanced sentence should warrant a hearing that is separate and apart from the trial itself. Holding a separate hearing to determine whether the enhanced life without parole sentence is warranted in any case affords the prosecution and the defense a full and fair opportunity to present its case in support or against the enhanced sentence. The judge or trier of fact would also be able to weigh the aggravating circumstances against any mitigation that may be present in a case. HRS § 706-657 stands to ensure that this process is followed properly and will serve to safeguard against unjust results.

### **Deterrence**

If this trend of adding “special class victims” to Murder in the First Degree continues, each passing year could find support for the inclusion of yet another specific type of offense or protected class to be included in the statute. Creating the distinction between Murder in the 1st and 2nd Degrees was necessary to provide greater deterrence towards those contemplating committing murder against members of a particular class of persons who were more susceptible to being killed because of their position or role in society. Police officers, judges, prosecutors, and witnesses to a case all have in common being members of a special class of victims who by virtue of their special class, make them more susceptible to being victims to the crime of murder. The same cannot be said, however, for children under the age of 14 or pregnant women. Neither are more susceptible to the crime of murder by virtue of their age or status than persons not of the protected class. Thus, enlarging the special class of victims to include them under the Murder in the 1st Degree statute will do nothing to deter those from committing crimes against them.

Thank you for the opportunity to comment on this measure.

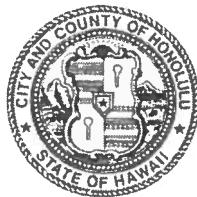
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<sup>2</sup> **§706-657 Enhanced sentence for second degree murder.** The court may sentence a person who was eighteen years of age or over at the time of the offense and who has been convicted of murder in the second degree to life imprisonment without the possibility of parole under section 706-656 if the court finds that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity or that the person was previously convicted of the offense of murder in the first degree or murder in the second degree in this State or was previously convicted in another jurisdiction of an offense that would constitute murder in the first degree or murder in the second degree in this State. As used in this section, the phrase “especially heinous, atrocious, or cruel, manifesting exceptional depravity” means a conscienceless or pitiless crime which is unnecessarily torturous to a victim and “previously convicted” means a sentence imposed at the same time or a sentence previously imposed which has not been set aside, reversed, or vacated.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI  
MAYOR



RADE K. VANIC  
INTERIM CHIEF

OUR REFERENCE **BN-KK**

February 24, 2022

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

**SUBJECT: Senate Bill No. 2027, Relating to Murder**

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

In Hawai'i, Murder in the First Degree (Section 707-701 of the Hawaii Revised Statutes [HRS]) encompasses narrowly defined offenses. Murder in the Second Degree (Section 707-702, HRS) covers all other forms of the offense. Those convicted of Murder in the Second Degree may be sentenced to life imprisonment without the possibility of parole if enhanced sentencing is applied under Section 706-657, HRS, upon the court's finding that "the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity." It is further defined as "a conscienceless or pitiless crime which is unnecessarily torturous to the victim."

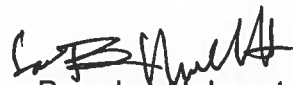
Though the HPD is supportive of the bill's intended purpose, there are concerns in regards to establishing the state of mind requirements to determine if the victim was less than 14 years of age or pregnant with a viable fetus. Further, the aforementioned laws and enhanced sentencing already exist to address the proposed revision regarding "especially heinous" murders.

The Honorable Karl Rhoads  
and Members  
February 24, 2022  
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The HPD supports the intent of Senate Bill No. 2027, Relating to Murder, and appreciates the committee's consideration of the aforementioned concerns.

Thank you for the opportunity to testify.

Sincerely,



Brandon Nakasato, Captain  
Criminal Investigation Division

APPROVED:



Rade K. Vanic  
Interim Chief of Police

**SB-2027**

Submitted on: 2/19/2022 9:20:08 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kanoë Franco	Individual	Support	Yes

Comments:

***Thank You Senators and Represenatives for giving me this oppurtunity to express why I SUPPORT SB2027. Because of the recent tradgy of Ariel Piliialoha Sellers Im here today to be her voice. JusticeForAriel. Mahalo***

**SB-2027**

Submitted on: 2/21/2022 11:53:44 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kassandra Teems	Individual	Support	Yes

Comments:

STRONG SUPPORT OF SB2027

PROTECT OUR KEIKI, PROTECT OUT PREGNANT MOTHERS!!!! PROTECT EVERYONE FROM THOSE WHO TORTURE TO KILL

Senate Committee on Judiciary

Chair: Senator Karl Rhoads

Vice Chair: Senator Jarrett Keohokalo

Members: Laura Acasio, Mike Gabbard, Donna Mercado Kim, Chris Lee, Kurt Fevella

RE: SB2027: Relating to Murder

My name is Nonohe Botelho. I am an Independent Consultant for Victims and Surviving Families of Homicide. I became a consultant after my son, Joel Botelho, was gunned down and murdered in front of my home in 2011. Since 2011 I have fought vigorously to change the First Degree Murder Law in the State of Hawaii. This is a call to Action on the part of your committee. NOT ONE MORE CHILD!

The purpose of SB2027 is to broaden the criteria, or elements under First Degree Murder, in the State of Hawaii. Amended Provisions include, children less than 14, especially heinous, atrocious, or cruel acts manifesting exceptional depravity and pregnant women with a viable fetus.

Currently, Hawaii is the only state in the nation that does not consider any of the following to be qualifiers for the States harshest penalty, life without the possibility of parole. These qualifiers include Premeditation, Felony-Murder, Disabled or Underage victims (i.e., children), Feticide (i.e., unborn children) or any other aggravated circumstances (i.e., execution, torture, dismemberment). First Degree murder in Hawaii is effectively limited to law enforcement, and in very limited circumstances, civilians that become involved with the court (i.e., witnesses). When compared to the rest of the United States, Hawaii's top-tier homicide law is severely limited and does not equally apply the law to all persons or human beings.

### **Murdered Children under the Law**

Regarding Children, Hawaii is one of 6 States that does not include children. Currently, 47 other states include children with some difference in the threshold of the age of the child. Some states use the language, *less than 14, or less than 12*, reflecting the age of consent per state. The age of consent in Hawaii is *less than 16*. In addition, Hawaii extended sentencing law (HRS 706-662), items 5b (i) states 6 years or older, while item 5b (iii) states 8 years or younger. This language is confusing and does not definitively define the age of the child. The language *in (i) 6 or older* would be a child above the age of 6. Paradoxically, the language in (iii) *8 years or younger*, caps the age at 8 years or younger, Item 5b (iii) ultimately nullifies item (i).

Senate Bill 2027 seeks to extend the age of child murder victim to include, item (j) a *child less than 14*. Adding *children less than 14* would automatically qualify children under First Degree Murder, with the penalty of life without parole. Although revisions to First Degree Murder would not likely prevent child murders, it would allow the perpetrators of such crimes to be charged under Hawaii's toughest law, First



Degree Murder. Subsequently, it would also allow equal justice and application of the law to our most defenseless and most vulnerable population, our children. Adding Children would consequently negate the need for the added step of enhanced sentencing.

*(Note: Child Murders charged under Second-Degree Murder include, (State vs. Peter Kema Sr. and Jaylin Kema), victim, Peter Boy Kema age 6, (State vs. James Lounsbury) victim Maile Gilbert, age 6, (State vs. Christopher Aki), victim Kehaulani Indreginal, age 11, (State vs. Kuuipo Nihipali), victim Mazen Nihipali-Moniz, age 6, (State v. Travis Rodrigues), victim Kytana Ancog, age, 18 months, (State vs. Isaac and Leihua Kalua), victim, Ariel Sellers, age 6. These cases were high-profile cases and do not reflect many others.)*

### **Heinousness: Life Without the Possibility of Parole**

In 1957, Samuel King abolished the Death Penalty under ACT 282, but *he did not negate the necessity for distinctive language* of the law. Although King abolished the death penalty he did not negate the penalty for murder, which was life without the possibility of parole. However, under Hawaii Revised Statutes (HRS 707-701), there is virtually no distinctive language to reflect the severity of First Degree Murder. Moreover, per a 2016 Commentary regarding HRS 707-701, states, *“In States like Hawaii, where the death penalty has been abolished, the above reason for the distinction is no longer applicable and the continuation of the distinction would be a carryover from the older death penalty legislation.”*

Other states that abolished the death penalty continue to use such language such as “premeditation”, “malice aforethought”, and “aggravated circumstances,” to reflect the severity of the crime. Hawaii is the only State that does NOT provide specific language such as “premeditation,” “malice aforethought,” “aggravated murder” and “aggravated circumstances,” to define Murder in the First Degree. Due to the severe limitations of the law, life without the possibility of parole is rarely granted. Currently, Hawaii Revised Statutes 707-701, First Degree Murder, does NOT provide equal application for all human beings and is essentially reserved for a select few. Murder cases that do not fit the qualifying criteria or elements under First Degree, no matter how heinous the crime, gets thrown into the catch all criteria under Second Degree Murder, eligible for enhanced sentencing, which is also rarely granted.

Senate Bill 2027 seeks to add “especially heinous, atrocious, or cruel acts manifesting exceptional depravity,” as a criterion for First Degree Murder with the penalty of life without parole.

*(Note: Heinous Cases Charged under Second-Degree Murder. (State vs. Corbit Ahn,2009), (State vs. Joshua Williams, 2010), (State vs. Makuola Collins, 2011), (State vs. Tobey Stagel,2011), (State vs. Steven Capobianco, 2014). These cases were high-profile murder cases in which extended sentencing was not granted.)*

### **Equal Application of the Law, United States Constitution, Amendment 14: Equal Protection Clause**

Historically, Hawaii has used the language “a person commits the offense of murder if the person knowingly and intentionally causes the death of *another person*.” Up until the late 1980’s HRS 707-701 qualified and recognized the importance of identifying that the murder resulted in the death of another

person. This is important because the previous murder law reflected the quality of life of every person as offered under the US Constitution. The Equal Protection Clause of the 14<sup>th</sup> Amendment prohibits states from denying any person within its jurisdiction equal protection and equal application of the law (U.S. Const. Amend.XIV).

Currently, Hawaii is one of 13 states under the United States Court of Appeals for the Ninth Circuit. Of these states, including Alaska, Arizona, Central, East, North and South California, Hawaii, Idaho, Montana, Nevada, Oregon, Eastern and Western Washington. Hawaii is the only State that does not include the language, “causes the death of another” or “causes the death of a human being.” Hawaii, along with, Eastern and Western Washington are the only three States that do not include children, less than 12 or less the 14 under First Degree Murder. Unlike Hawaii, Eastern and Western Washington includes “premeditation with the intent to cause the death of any person.” Hawaii law does not include “premeditation.” Hawaii and Oregon are the only two states that do not include unborn children. Eleven states under the Ninth Circuit currently include unborn children under First Degree Murder.

Senate Bill 2027 seeks to add pregnant women with a viable fetus as a criterion under First Degree Murder with the penalty of life without parole.

*(Notes: Cases involving unborn children: (State vs. Boaz Johnson), (State vs. Christopher Cruz), (State vs. Francisco K. Manuel), (State vs. Jessica Hinebaugh), (State vs. Steven Capobianco)*

Finally, as purposed under Senate Bill 2027 broadening the criteria, or elements under First Degree Murder, in the State of Hawaii, will assure that children less than 14, especially heinous, atrocious, or cruel acts manifesting exceptional depravity and pregnant women with a viable fetus, would be classified as a First Degree Murder with the penalty of life without parole. It will also assure that Under the Equal Protection Clause of the 14<sup>th</sup> Amendment, “the laws of the State must treat an individual in the same manner as others in similar conditions and circumstances.” The Equal Protection clause is not “necessarily intended to provide “equality” among individuals or classes but only “equal application” of the laws. The result, therefore, of the law is not relevant so long as there is no discrimination in its application. By denying states the ability to discriminate, the equal protection clause of the Constitution is crucial to the protection of civil rights. *(Civil Rights, /wex/Civil\_rights)*

I strongly SUPPORT SB2027. Please take ACTION and pass SB2027. Protect our Keiki, protect our Constitutional Rights, Protect our Community. NOT ONE MORE CHILD!

By: Nonohe Botelho, Independent Consultant/ Victim Advocate  
Contact Person for Parents of Murdered Children (POMC)

**SB-2027**

Submitted on: 2/22/2022 9:27:56 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
kimberlyn scott	Individual	Support	Yes

Comments:

February 22, 2022

Kimberlyn Scott

Victims Advocate in the state of Hawaii

Desdmoana@msn.com

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Hawaii State Legislature

Senate Judiciary Committee;

Chair Karl Rhoads

Vice Chair Jarrett Keohaokalole

Laura Acasio

Mike Gabbard

Donna Mercado Kim

Chris Lee

Kurt Fevella

Aloha Senate Judiciary Committee Members -

I write in strong support of SB 2027, a Bill to amend our current Murder I law to include children under 14 years of age, pregnant women with a viable fetus, and the “heinous, atrocious, cruel”, torturous murder of anyone in our state.

I cannot and will not claim to be unbiased on this topic. My daughter, Charli Scott, at five and a half months pregnant, was murdered here in Hawaii, on Maui. Her murderer was charged with Second Degree Murder + the Enhancement for “heinous, atrocious” homicides. I will describe for you what was done to her, bear with me please, I know it is difficult to read, but it is also difficult to live with, so I beg your pardon and your forbearance.

Charli was, in what order we will never know but imagine horribly:

1). Strangled. The markings on her murderers hands were ligature marks that occur often to the hands of perpetrators who strangle victims.

2). Her jaw was broken off her face, in two pieces. We found both pieces separated from both the area of the actual homicide, and the area where she was later dismembered.

3). Stabbed, repeatedly, in her abdomen, presumably to show displeasure at the pregnancy. This fact was used by both defense and judge to validate their summation of the amount of pain inflicted on my daughter. Her unborn son was never considered. It was presumed without any expert witness called to validate, that my daughter would have died quickly from the stab wounds. Experts claim the opposite. The position of the uterus and fetus cover the mothers pertinent organs, thereby slowing death to the mother considerably.

But the baby suffered. At five and a half months along Charli’s son, Joshua, would have felt every stab wound inflicted. But nevermind, he does not count in our state. Claim if you wish that it is because we defend the right to abortion but other states have managed that AND to protect wanted pregnancies. A thing that seems beyond the state of Hawaii’s understanding.

4). Finally, Charli was dismembered. Which is NOT a felony in our state and so was not even part of the charges against her murderer although in every other state it is a felony act worthy of charging. We of course assume that Charli was dead at this point and not just incapacitated by all the blood loss. We must rely upon the nature of the beast who murdered her to have been patient while she died out there bereft of those who love her in that dark jungle.

All this was not worth a Murder I in this state. Not worth confining the monster who committed these atrocities to a life without possibility of parole. We all know even this promise is only a cliché, but it affords families of the victims the opportunity to keep pressing for more time at least.

Our state does not have dozens of pregnant women being murdered so this may seem preemptive. But the fact is that our state along with others does not mention pregnancies discovered in autopsy. This is an acknowledged issue for statisticians who struggle to provide us fact via %'s, including the FBI. So we do not actually know the numbers yet. But since homicide is the second leading killer of pregnant women in the USA we should probably think ahead. As it is now, our state has a reputation for being where you go if you do murder your pregnant wife or girlfriend because we have no feticide whatsoever and we only charge Second Degree Murder for any crime not committed against a Judge, Police Officer, Prosecutor, or a witness in a case.

We are the “NO FAULT MURDER STATE”.

Does not matter what kind of murder you committed. If it was premeditated - doesn't matter. If it was torturous - doesn't matter. If it was against a child - doesn't matter. Elderly, handicapped, pregnant - doesn't matter here.

Now we have these “Enhancements” meant to bump up the penalty in cases that shock and horrify the public really, but technically it goes like this: if you murder a child under 8 years of age, or other specified more “vulnerable” members of society, or the murder you committed is “heinous, atrocious, cruel” the Enhancement is available.

But the Enhancements aren't working here.

“§706-606 Factors to be considered in imposing a sentence.

The court, in determining the particular sentence to be imposed, shall consider:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence imposed:

(a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;

- (b) To afford adequate deterrence to criminal conduct;
  - (c) To protect the public from further crimes of the defendant; and
  - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) The kinds of sentences available; and
- (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

If I understand the above correctly, the Enhancements were meant to fill in a gap that occurred when all descriptive verbiage was stripped from the murder laws in Hawaii, ie., premeditation, cruel and unusual, torture. These words are necessary in the penalty phase of any homicide trial. But they are avoided in our murder laws here in Hawaii. In other words the Enhancements were created because our state acknowledges the deficit in the wording of the murder laws here.

So, the Enhancements are intended to “afford adequate deterrence to criminal conduct” when a murder is "especially heinous, atrocious, or cruel, manifesting exceptional depravity" AND provide adequate notice to the person of “ordinary intelligence” that an enhanced sentence may be imposed if he or she intentionally or knowingly inflicts unnecessary torture on the murder victim and the victim in fact suffers unnecessary torture.

<https://law.justia.com/codes/hawaii/2015/title-37/chapter-706/section-706-657/>

Ok. So that means that just like we all know if you kill a police officer its EXTRA bad. Extra charges. Extra everything if you murder a police officer. Everyone knows that all over the USA. That is what the Enhancement was aiming for, a kind of fear barrier for criminals, so they'd know here in Hawaii that killing an eight year old child was EXTRA bad, and if you do it via torture? Well Extra Extra bad. Extra penalties. Right?

The case notes literally state that a person of “ordinary intelligence” should know that here in Hawaii.

But No One Knows that here in Hawaii.

Ive asked so many members of the Leg if they had heard of the Murder Enhancements and they hadnt. I am assuming members of the Legislature are above “ordinary intelligence”, yet they do not know. So are we citizens of the state of Hawaii supposed to assume the average criminal knows about these Enhancements and that the Enhancements promote a “do not do THAT” attitude amongst criminals here? I have been collecting video footage I would love to show you - just me asking people I dont know in malls, Dr offices, grocery stores, department stores, on the

street, at political events -

“Do you know what the Murder Enhancement is in Hawaii?”

Sadly, NO ONE has answered yes to this question. I usually follow up with the question,

“Do you know what the penalty is for killing a police officer?”

While they often do not know specifics, they know that it is an EXTRA on top of the actual crime.

Maybe I am going out on a limb here but I do not think so. I think no one knows about the murder Enhancements here, especially criminals.

That means that tiny bit of added protection that Enhancement was meant to provide, well it DOESN'T.

What can we do about this?

Well, since the state of Hawaii has decided along with 7 other states to remove descriptive language to murder, basically it meant that we had to protect CLASSES of people if we want to actually protect our communities.

So of course Murder I protects Judges, police, prosecutors and a few limited others who play roles in the Judicial system. That's a class of people that we all agreed were in dangerous situations and were therefore more vulnerable. So we protect them with the Murder I law so anyone who murders one of them pays a higher price for the crime which sends a message to everyone not to do that in theory.

I have no problem with this. I have a daughter who is a police officer. I want her extra protected for sure.

I had a pregnant daughter once too. She was vulnerable. Every pregnant woman is. They cannot run as fast or if they do, they risk their pregnancy. They cannot fight for the same reason. You see where I am going? Pregnant women are a vulnerable class of citizens. Hawaii has refused unlike every other state, to acknowledge the murder of a fetus in any way, so as the judge in my daughters case suggested, we make pregnant women a class that is protected. Great idea. Here we are.

Can we please sent the message to those who might want to murder their pregnant girlfriend or wife, that this is Extra if you do?

I would love to hear why, if not.

As to children being added to Murder I, I think the above argument stands for this situation as

well. And no, I do not think that we should keep the age at eight here in Hawaii. I cannot say with any surety that an eight and a half year old is less vulnerable than the eight year old for those six months in age difference. I spoke to Andrew Martin, the Head Prosecutor here on Maui on this topic and he said at the time that his offices thought there should be “continuity with the Enhancement” if we were going to add children to Murder I. Why on earth would we want “continuity” with an Enhancement that does not work??? Shall we come back again next year and re argue the age limit of 8? At 14 most kids know how to use a phone or have one. That affords them a small amount of external protection. Children younger than that often do NOT have access to their own cell phones. They are more physically able bodied and akamai at 14 than at 12 or 13. We could up a couple years gladly, but I refuse to accept a lesser age limit than 14 for protection under Murder I.

Here are some of the cases that the state of Hawaii FAILED our keiki in -  
(bear in mind please when you read below that the penalty for attempted murder is the same as actual murder in our state)

Peter Boy Kema, 6 - suffered violent attacks from infancy till his death at six. He had multiple fractures, was chained and forced to eat dog feces.

His little life was only worth a manslaughter conviction here in Hawaii.

Kahealani Indreginal, 11 - Kahealani was beaten several times with a pipe and abandoned to die.

Her life was worth a manslaughter conviction, 20 years, WITH the possibility of parole. The original charge was Murder 2 with the Enhancement.

Shaelynn Lehano-Stone, 9, - Shaelynn died of malnutrition in a home with three fridges that were locked so she could not access food. She weighed 45 pounds when she was found.

Her life was worth manslaughter charges which in the end equalled four years for each parent involved. The original charge was Murder II.

Kytana Ancog, 18 months - Kytana was repeatedly beaten over multiple days prior to her death. Allegedly shaken and squeezed to death and disposed of in an unknown location.

Our state believes believes the best we can do for her is Murder II. No enhancement because it is so hard to prove. So that is on average a 20 year sentence. With good behavior out is 10 or 12. Maybe less.



Ariel Sellers (Kalua), 6 - Ariel was imprisoned in a dog cage repeatedly to keep her from seeking food. Duct tape was used to cover her mouth and nose.

The charges are Murder II with the Enhancement. The case is pending but as the mother of another homicide victim, I know what the likelihood is of receiving the Enhancement in cases where the body cannot be found. Not good.

So what in the end will that little girl's life be worth in this, the state of Hawaii???

Bottom line, in spite of extreme physical and mental abuse, not one of the closed cases resulted in an Enhancement.

Question - Just how low is the bar for justice in Hawaii??? And How much more of the blood of Hawaii's keiki will be spilled before appropriate charges and penalties will be available and Used???

I have so much more information I could give you on this subject, and I hope that if you do not believe SB 2027 is right for Hawaii, rather than vote "no" to SB 2027, I hope you will ask for more information. I will make the time. I hope you will too.

Signed,

The Mother of Charli Scott

**SB-2027**

Submitted on: 2/22/2022 4:09:21 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Maria Tijerina	Individual	Support	Yes

Comments:

I am in support of this bill because it would strengthen our lacking justice system which has served little other purpose than making Hawaii a safe Haven for predators!



*The Judiciary, State of Hawai'i*

**Testimony to the Thirty-First State Legislature  
2022 Regular Session**

**Senate Committee on Judiciary**  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice-Chair

Thursday, February 24, 2022 at 9:30 a.m.  
Via Videoconference

**WRITTEN TESTIMONY ONLY**

by

Shirley M. Kawamura  
Deputy Chief Judge, Criminal Administrative Judge,  
Circuit Court of the First Circuit

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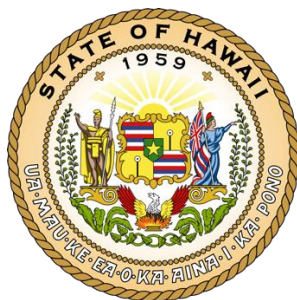
**Bill No. and Title:** Senate Bill No. 2027, Relating to Murder.

**Purpose:** Amends provisions relating to first degree murder. Adds a person commits the offense of first degree murder if the person knowingly or intentionally causes the death of another person that is less than fourteen years old or pregnant with a viable fetus. Adds a person commits the offense of first degree murder if the murder was especially heinous, atrocious, or cruel manifesting exceptional depravity.

**Judiciary's Position:**

The Judiciary takes no position on the proposed legislation. The Judiciary only provides comment, for the committee's consideration, that the Hawai'i Penal Code does not provide a definition of "viable fetus."

Thank you for the opportunity to testify on this measure.



‘O kēia ‘ōlelo hō’ike no ke  
**Komikina Kūlana Olakino o Nā Wāhine**

Testimony on behalf of the  
**Hawai‘i State Commission on the Status of Women**

In Opposition to S.B. 2027

Dear Chair Rhoads, Vice Keohokalole, and Honorable Members,

The Hawai‘i State Commission on the Status of Women submits comments on S.B. 2027, which would add a person commits the offense of first degree murder if the person knowingly or intentionally causes the death of another person that is less than fourteen years old or pregnant with a viable fetus.

The Commission has concerns that this bill borders on "fetal rights," sees the fetus as an additional victim, and may have a chilling effect on the right to abortion.

Accordingly, we respectfully request that this measure be deferred.

Sincerely,  
Khara Jabola-Carolus  
Executive Director

# JAMES HOCHBERG

## ATTORNEY AT LAW, LLC

February 23, 2022

### TESTIMONY STRONGLY SUPPORTING SB 2027

Senate Committee On Judiciary  
Chair: Senator Karl Rhoads  
Vice Chair: Senator Jarrett Keohokalole  
Hearing: SB 2027: Thursday, February 24, 2022 at 9:30 a.m.

Dear Chairman, Vice Chairman and Committee Members,

My name is Jim Hochberg and I am a civil rights attorney licensed and practicing law in Hawaii since 1984 (38 years). With respect to SB 2027, I support the purpose, intent and language of the bill and encourage your committee, the Senate and the legislature as a whole to pass it as written, without amendment.

Adding these terrifying criminal actions to the Class A felony list better protects the people of Hawaii from heinous crimes by attaching the harshest penalties to those convicted of committing these acts. As provided in HRS 706-656, imprisonment of those convicted of committing a Class A felony is life without the possibility of parole; but for those under the age of eighteen years at the time of the offense imprisonment is life with the possibility of parole.

For obvious reasons, SB 2027 identifies three categories of victims of dastardly life-ending crimes for Class A felony punishment. I agree with this bill and request that it be passed as written without amendment. If you have any questions please feel free to call me.

Sincerely,

JAMES HOCHBERG

JH

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Telephone: 808-256-7382  
Email: [Jim@JamesHochbergLaw.com](mailto:Jim@JamesHochbergLaw.com)



Submitted Online: February 22, 2022

**HEARING:** Thursday, February 24, 2022

**TO:** SENATE COMMITTEE ON JUDICIARY  
Sen. Karl Rhoads, Chair  
Sen. Jarrett Keohokalole, Vice Chair

**FROM:** Eva Andrade, President

**RE:** Strong Support for SB 2027 Relating to Murder

Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii. We strongly support this bill, that among other provisions, adds that a person commits the offense of first-degree murder if the person *knowingly or intentionally* causes the death of another person that is less than fourteen years old or pregnant with a viable fetus. Specifically carving out the actions of the perpetrator and the punishment for that act is where the line can be drawn in a responsible way.

We appreciate that there should be protection in the law for a woman who by her own choice is carrying a child (a viable fetus) and in the course of an intentional crime against her, that child is lost. In this bill, legislators are simply adding a punishment to a heinous crime “intentionally or knowingly” committed against a pregnant-women or a child that is 14 years old or younger.

According to the National Conference on State Legislatures, there are at least 38 states that have fetal homicide laws (including, notably, California) and at least 29 states have fetal homicide laws that apply to the earliest stages of pregnancy”<sup>i</sup> Please pass this bill as is. We truly believe that this bill, as written, is a common-sense and responsible approach.

Mahalo for the opportunity to testify in support.

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<sup>i</sup> <https://www.ncsl.org/research/health/fetal-homicide-state-laws.aspx> (accessed 02/19/22)

**SB-2027**

Submitted on: 2/19/2022 7:59:00 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Marilyn Yamamoto	Testifying for Hawaii Family Advocacy Team	Support	No

Comments:

Senator Rhoads,

I was shocked to learn that Hawaii is one of few states that does not recognize that minor children can be victims of Murder in the 1st degree!

**I stand in complete support of this bill.**

**LATE**

**SB-2027**

Submitted on: 2/23/2022 9:31:26 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Angelina Mercado	Testifying for Hawaii State Coalition Against Domestic Violence	Oppose	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) advances the safety and healing of victims, survivors and their families. We are the collective voice of a diverse network of organizations and individuals, working to eliminate all forms of domestic violence in Hawai'i by fostering partnership, increasing awareness of domestic violence, developing the capacity our member programs and community partners to address the needs of survivors and their families, and advocating for social justice and change.

On behalf of HSCADV and our 26 member programs statewide, we are **opposed** to this measure. This bill would result in the unintended consequence of conferring rights or personhood to a fetus as a victim of crime would undermine Hawaii's abortion laws. Intimate partner violence is also a sexual and reproductive health and rights issue. Rape and reproductive coercion are a form of abuse and violence. Access to abortion and reproductive health is paramount in the care of victims.

Further, the victim of the crime here is the pregnant woman and we should ensure that the penal code remains focused on the victim of the crime. By separating the two, as a state we would be saying that the woman is less important.

Thank you for the opportunity to testify on this important matter.

Sincerely,

Angelina Mercado

Executive Director



**SB-2027**

Submitted on: 2/18/2022 6:48:11 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
tristin manuel	Individual	Support	No

Comments:

**Aloha,**

**My name is Tristin Manuel, resident of Kailua, Oahu and a Native Hawaiian.**

***I strongly support this bill, there must be stronger penalties for those who victimize & prey on the most vulnerable!***

**Thank you,**

**Tristin Manuel**

**SB-2027**

Submitted on: 2/19/2022 11:57:22 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Julie Tinsman	Individual	Support	No

Comments:

I vehemently support this bill.

**SB-2027**

Submitted on: 2/19/2022 4:30:35 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Barbara Mattson	Individual	Support	No

Comments:

I STRONGLY SUPPORT SB2027

**SB-2027**

Submitted on: 2/19/2022 5:57:25 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in STRONG SUPPORT!

**SB-2027**

Submitted on: 2/19/2022 6:58:20 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Merlin Frias	Individual	Support	No

Comments:

I STRONGLY SUPPORT SB2027 RELATING TO MURDER

THANKS

**SB-2027**

Submitted on: 2/19/2022 7:02:46 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Junior Tuiega	Individual	Support	No

Comments:

My name is Junior and I support SB2027.

**SB-2027**

Submitted on: 2/19/2022 9:52:44 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Rose Richards	Individual	Support	No

Comments:

Hello,

My name is Rose Richards and I'm of native Hawaiian Decent and reside in Honolulu. I am strongly in support of Bill 2027. Hawaii needs to do more to show that children and pregnant women matter. They must be added to the Class of Victims who qualify for a 1st degree murder charge. Having friends who have lost their children to murder, it breaks my heart knowing that the person who killed them could possibly be up for parole and re-enter society! I personally know Kimberly Scott, her daughter Charley and unborn grandchild were viciously stabbed over 30 times and left for dead by a sick monster! This monster took 2 lives! A beautiful daughter and her precious baby. Its story's like these that need to be heard, and i understand theres no way to Stop a Crazy person from committing a heinous crime, but it is in our power to impliment laws that can make them be accountable!

Thank you for your time,

Rose

**SB-2027**

Submitted on: 2/20/2022 6:28:11 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Shirley Waiwaiole	Individual	Support	No

Comments:

Aloha Senators and Representative,

My name is Shirley Waiwaiole Thank you for giving me this oppurtunity to express my feelings



**SB-2027**

Submitted on: 2/20/2022 9:17:52 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kathleen E Buck	Individual	Support	No

Comments:

This was a brutal murder of 6 yr old, Ariel Sellers.

The murders knew what they were doing when they taped her nose and mouth shut.

They and anyone who uses this type of behavior towards a child, should be charged with 1st degree murder.

Unfortunately Ariel Sellers is one of thousands of children who have been murdered by their adopter under the watch of the child prevention services and the department of Human Services.

To prevent these murders, DHS must enforce the FFPSA (family first prevention and services act), which was set into law October 2021 and at the same time the ASFA (adoption safe family act) needs to be abolished.

**SB-2027**

Submitted on: 2/20/2022 9:55:45 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Noa Napoleon	Individual	Support	No

Comments:

Aloha Members of JDC Committee,

I am in full support of SB2027! Please pass this law so that perpetrators of this type of crime are properly held accountable and the victims receive appropriate justice.

Thank you,

Noa Napoleon

**SB-2027**

Submitted on: 2/22/2022 4:41:10 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
kristine kane	Individual	Support	No

Comments:

i am in full support of bill sb 2027. please help us update our laws in hawaii regarding this issue.  
mahalo, kristine kane

**SB-2027**

Submitted on: 2/22/2022 6:00:12 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Brian Ley	Individual	Support	No

Comments:

Aloha, I strongly support SB 2027. I find it a travesty that we have to have a bill for this. We need to get these people off the streets and in prison, so they can't harm anyone else. Especially since the vast majority of crime is committed by a very small percentage of people. I'm sickened every time I read that another murderer gets time served with probation. The soft on crime attitude here has led to loss of life and misery to so many our people. Please support and pass SB 2027

mahalo for your time Brian Ley

**SB-2027**

Submitted on: 2/22/2022 7:41:05 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Brandi Chanthathep	Individual	Support	No

Comments:

I am in full support of this measure because I feel that the system has failed too many children in our state. We must provide standards that will defend those that cannot defend themselves.

I am writing in strong support of SB 2027 because the first degree murder statute is too narrow for the types of murders occurring in Hawaii. It carries a sentence of life without parole, the harshest penalty available, for police officers and judges, or prison inmates.

Hawaii's first degree murder law is not like any other in the nation for that reason. If you look at the statutes attached, all of them include either premeditation, felony-murder, torture, and/or fet

The question naturally arises: why is Hawaii's harshest penalty, in practice, reserved for the most heinous crimes? The torturous murder of a child does not merit a first degree charge in Hawaii. Is that not

Some may say Hawaii doesn't need to change the first degree murder statute because it already covers murders with certain aggravating factors. But the scheme is somehow broken. It's used more as a plea-bargaining tool, and it seems that prosecutors don't know how to use it. Amending first degree murder to include torture victims, children, and pregnant women would be a just penalty.

I would like to quote what the judge said at the conclusion of my sister's murder trial;

"Let me state that first of all, that in Hawaii, and other states as well, not all states but Hawaii, first degree murder does not exist in this state.

## Alabama

(a) A person commits the crime of murder if he or she does any of the following:

- (1) With intent to cause the death of another person, he or she causes the death of that person.
- (2) Under circumstances manifesting extreme indifference to human life, he or she recklessly causes the death of another person.

November 2015

## Alabama

(a) A person commits the crime of murder if he or she does any of the following:

- (1) With intent to cause the death of another person, he or she causes the death of that person.
- (2) Under circumstances manifesting extreme indifference to human life, he or she recklessly causes the death of another person.

(3) He or she commits or attempts to commit arson in the first degree, burglary in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree, any other felony crime that he or she is committing or attempting to commit, or in immediate flight from the commission of any of these crimes, he or she causes the death of another person.

(4) He or she commits the crime of arson and a qualified governmental or volunteer firefighter is killed as a result of the arson.

(b) A person does not commit murder under subdivisions (a)(1) or (a)(2) of this section if the killing is committed in the heat of passion, and before there had been a reasonable time for the passion to cool, if legal provocation is on the defendant, but this does not shift the burden of proof. This section does not apply to manslaughter or other crime.

(c) Murder is a Class A felony; provided, that the punishment for murder or any offense under this title is death or life imprisonment without parole, which punishment shall be imposed if the defendant is found guilty of murder.





Therapeutic Abortion Act,  
Article 2

(commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code.

(2) The act was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not

(3) The act was solicited, aided, abetted, or consented to by the mother of the fetus.

(c) Subdivision (b) shall not be construed to prohibit the prosecution of any person under 188. Such malice may be express or implied. It is express when there is manifested a malice towards the life of a fellow creature. It is implied, when no considerable provocation appears, and it shows an abandoned and malignant heart.

When it is shown that the killing resulted from the intentional doing of an act with express malice, no other mental state need be shown to establish the mental state of malice aforethought within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice.

189. All murder which is perpetrated by means of a destructive device or explosive, a deadly weapon or ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated kill of, or attempt to perpetrate, arson, rape, kidnapping, robbery, burglary, mayhem, kidn

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall be punished by imprisonment in the state person guilty

of

murder in the second degree shall be punished by imprisonment in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties.

(c) Every person guilty of murder in the second degree shall be punished by imprisonment if the victim was a peace officer,

as defined in subdivision (a) of Section 830.1, subdivision (a), (b),

or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.5.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

for a term of life without the possibility of parole or confinement in the state prison for murder of the first or second degree is that time period in which a defendant has spent incarcerated for his or her offense prior to release on parole.

(b) A prior prison term for murder for purposes of this section includes either of the following:

(1) A prison term served in any state prison or federal penal institution, including confinement in any facility credited as service of prison time in the jurisdiction of confinement, as punishment for a crime that includes all of the elements of murder in the first or second degree as defined under California law.

(2) Incarceration at a facility operated by the Youth Authority for murder of the first or second degree, or to the custody, control, and discipline of the Director of Corrections.

(c) The fact of a prior prison term for murder in the first or second degree shall be admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty in court sitting without a jury.

(d) In case of a reasonable doubt as to whether the defendant served a prior prison term for murder in the first or second degree, the defendant is entitled to a finding that the allegation is not true.

(e) If the trier of fact finds that the defendant has served a prior prison term for murder, the same trier of fact, except as provided in subdivision (f).

(f) If the defendant was convicted by the court sitting without a jury, the trier of fact shall be the court. If the defendant was convicted by a jury, the trier of fact shall be the jury.

acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statute to be used in any other proceedings. Except for evidence in proof of the offense or the defendant to the punishment of life without the possibility of parole, no evidence may be introduced has been

given to the defendant within a reasonable period of time as determined by the court without such notice in rebuttal to evidence introduced by the defendant in mitigation.

In determining the penalty, the trier of fact shall take into account any of the following:

(1) The circumstances of the crime of which the defendant was convicted in the present case, including the length of the prison term for murder.

(2) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.

(3) The presence or absence of any prior felony conviction.

(4) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(5) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

(6) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his or her conduct.

(7) Whether or not the defendant acted under extreme duress or

the truth of all special circumstances charged as enumerated in Section 190.2 except for a special circumstance charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 in a proceeding of the offense of murder in the first or second degree.

(b) If the defendant is found guilty of first degree murder and one of the special circumstances of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the penalty to be imposed.

(c) If the defendant is found guilty of first degree murder and one or more special circumstances have been charged and found to be true, his sanity on any plea of not guilty by reason of insanity shall be determined as provided in Section 190.4. If he is found to be sane, there shall

thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4. 190.2. (a) The penalty for a defendant who is found guilty of first degree murder shall be death or life without the possibility of parole if one or more of the following special circumstances are found to be true:

190.4 to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first

or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction which would be punishable as first or second degree murder shall be deemed

officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was engaged in the performance of his or her official duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of the crime, or the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state, and the victim was intentionally killed in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentional and occurred while the victim was engaged in the performance of his or her official duties.

(13) The victim was an elected or appointed official or former official of the federal government, and the victim was intentionally killed in retaliation for the performance of his or her official duties.

(H) Arson in violation of subdivision (b) of Section 451. (I) Train wrecking in violation c  
(J) Mayhem in violation of Section 203.

(K) Rape by instrument in violation of Section 289.

(L) Carjacking, as defined in Section 215.

(M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in intent to kill, it is only required that there be proof of the elements of those felonies.

kidnapping or arson is

committed primarily or solely for the purpose of facilitating the murder.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(20) The victim was a juror in any court of record in the local, state, or federal system for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a vehicle or from a person or persons outside the vehicle with the intent to inflict death. For purposes of this section, a vehicle as defined in Section 415 of the Vehicle Code.

(22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.10, or a criminal street gang.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance, the actual killer, as to whom the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the

on stationary rails or on a track or rail suspended in the air, used for the transportation providing such transportation, who, while engaged in the course of the performance should have known that such victim was the operator or driver of a bus, taxicab, street vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or was a station agent or ticket collector in the performance of his or her duties.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer confinement in state prison for a term of life with parole if any of the circumstances enumerated in subdivision (a) of this section has been charged and specified under Section 190.4 to be true.

(c) Nothing in this section shall be construed to prohibit the charging or finding of any special circumstance pursuant to Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Colorado

(18-3-102)

1. A person commits the crime of murder in the first degree if: (a) After deliberation and with intent to kill, he causes the death of that person or of another person; (b) Acting either alone or with one or more persons, he or she commits or attempts to commit the crime of murder in the first degree as prohibited by section 18-3-402. sexual assault in the first or second degree as prohibited by section





shall be scored under this subsection. (3) When a person is injured during the perpetration of a felony by a person other than the person engaged in the perpetration of or the attempt to perpetrate the felony, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, and s. 775.084, Code. Victim injury points shall be scored under this subsection.

782.065 Murder; law enforcement officer.— Notwithstanding ss. 775.082, 775.083, and 775.084, a person who commits a murder is imprisoned without eligibility for release upon findings by the trier of fact that, beyond a reasonable doubt,

(1) The defendant committed murder in the first degree in violation of s. 782.04(1) and s. 782.04(2), (3), or (4); attempted murder in the first or second degree in violation of s. 782.051; and

(2) The victim of any offense described in subsection (1) was a law enforcement officer as defined in s. 943.10, engaged in the lawful performance of a legal duty.

## Georgia

A person commits murder in Georgia when he or she illegally kills another person under any of the following circumstances:

- The person acted intending to kill another.
- The person acted with depraved disregard for human life. For example, firing a gun into a house or vehicle the person knows to be occupied.
- The person kills another while committing a felony such as robbery. In this case, the killing need not be intentional.

## Hawaii

official duty, and was known or should have been known by the perpetrator of the murder.

(c) Any murder committed by a person under a sentence for murder of the first or second degree shall be murder of the first degree.

(d) Any murder committed in the perpetration of, or attempt to perpetrate, aggravated kidnapping or mayhem, or an act of terrorism, as defined in section 18-8102, Idaho Code, with a deadly weapon, is murder of the first degree.

(e) Any murder committed by a person incarcerated in a penal institution upon a person who is a visitor to the penal institution shall be murder of the first degree. (f) Any murder committed by a person who is a visitor to the penal institution shall be murder of the first degree.

(g) All other kinds of murder are of the second degree.

## Illinois

(720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

Sec. 9-1. First degree Murder - Death penalties - Exceptions - Separate Hearings - Procedure

(a) A person who kills an individual without lawful justification commits first degree murder if:

(1) he either intends to kill or do great bodily harm

to that individual or another, or knows that such acts will cause death to that individual;

(2) he knows that such acts create a strong

probability of death or great bodily harm to that individual or another; or

(3) he is attempting or committing a forcible felony other than second degree murder.

(b) Aggravating Factors. A defendant who at the time of the commission of the offense is guilty of first degree murder may be sentenced to death if:

under Section 5-2 of this Code, and the physical injuries inflicted by either the defendant caused the death of the murdered individual; and

(b) in performing the acts which caused the death

of the murdered individual or which resulted in physical injuries personally inflicted by

(ii) of subparagraph (a) of paragraph (6) of subsection (b) of this Section, the defendant's

acts created a strong probability of death or great bodily harm to the murdered individual;

(c) the other felony was an inherently violent

crime or the attempt to commit an inherently violent crime. In this subparagraph (c),

predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated

stalking, residential burglary, and home invasion; or

(7) the murdered individual was under 12 years of age

and the death resulted from exceptionally brutal or heinous behavior indicative of wanton

(8) the defendant committed the murder with intent to

prevent the murdered individual from testifying or participating in any criminal investigation

or prosecution, either against the defendant or another; or the defendant committed

an offense which gave material assistance to the State in any investigation or prosecution, either against

the defendant or another; or the defendant committed an offense which gave material assistance to the State in any investigation or prosecution" is intended to include those appearing in the proceedings as

investigators, witnesses, or jurors; or

(9) the defendant, while committing an offense

punishable under Sections 401, 401.1, 401.2, 405, 405.2, 407 or 407.1 or subsection (b) of this Section,

conspiracy or

solicitation to commit such offense. intentionally killed an individual or counseled. co

intentional discharge of a firearm by the defendant from a motor vehicle and the victim (16) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative (17) the murdered individual was a person with a disability and the defendant knew or should have known that the murdered individual's disability means a person who suffers from a permanent physical or mental impairment that renders the person incapable of adequately providing for his or her own health care person's activity as a community policing volunteer or to prevent any person from entering (19) the murdered individual was subject to an order of protection and the murder was committed by a person against whom the same order (20) the murdered individual was known by the defendant to be a teacher or other person employed in any school and the teacher or other person is in any part of a building used for school purposes; or (21) the murder was committed by the defendant in connection with or as a result of the offense of terrorism as defined in Section 29D-14

Indiana

A person who:

1) knowingly or intentionally kills another human being.

officer, public employee, or hostage while the person is imprisoned

in a correctional institution under the jurisdiction of the Iowa department of correction

5. The person kills a child while committing child endangerment under section 726.6, subsection 1, paragraph "b", or while committing assault under section 708.1 upon the child, and the death occurs under circumstances manifesting an extreme indifference to human life.

6. The person kills another person while participating in an act of terrorism as defined in section 708A.1.

Murder in the first degree is a class "A" felony.

For purposes of determining whether a person should register as a sex offender pursuant to section 692A.126.

## Kansas

21-5402. Murder in the first degree. (a) Murder in the first degree is the killing of a human being (2) in the commission of, attempt to commit, or flight from any inherently dangerous

## Kentucky

507.020 Murder. (1) A person is guilty of murder when: (a) With intent to cause the death of another person, the person kills or causes the death of another person, except that in any prosecution a person shall not be guilty under this subsection if he has a reasonable explanation or excuse, the reasonableness of which is to be determined by a jury

between the offender and the victim in response to threats of physical violence or harm.

(9) When the offender has specific intent to kill or to inflict great bodily harm upon a witness to a crime committed on a prior occasion and:

(a) The killing was committed for the purpose of preventing or influencing the victim's proceeding had been commenced; or

(b) The killing was committed for the purpose of exacting retribution for the victim's previous crime.

B.(1) For the purposes of Paragraph (A)(2) of this Section, the term "peace officer" means a marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioner of corrections, parole officer, probation officer, judge, attorney general, assistant attorney general, or an attorney's investigator.

(2) For the purposes of Paragraph (A)(9) of this Section, the term "member of the immediate family" means a spouse, stepparent, grandparent, stepchild, or grandchild.

(3) For the purposes of Paragraph (A)(9) of this Section, the term "witness" means an individual who, by reason of having relevant information, is subject to call or likely to be called as a witness to a crime committed.

C. Whoever commits the crime of first degree murder shall be punished by death or life imprisonment without parole in accordance with the determination of the jury.

Maine

§202. Felony murder

1. A person is guilty of felony murder if acting alone or with one or more other persons, while committing or attempting to commit, murder, robbery, burglary, kidnapping, arson, or

hay, or tobacco;

A murder is in the first degree if it is:

a deliberate, premeditated, and willful killing;

committed by lying in wait;

committed by poison; or

committed in the perpetration of or an attempt to perpetrate:

arson in the first degree;

burning a barn, stable, tobacco house, warehouse, or other

(iii)

(iv)

(v)

or a local correctional facility;

(vi) kidnapping under § 3-502 or § 3-503(a)(2) of this article; (vii) mayhem;

(viii) rape;

burglary in the first, second, or third degree; carjacking or armed carjacking;

escape in the first degree from a State correctional facility

(ix)

(x)

(xi)

(xii)

devices.

(b) (1) A person who commits a murder in the first degree is



a major controlled substance offense, robbery, carjacking, breaking and entering of a kidnapping, vulnerable adult abuse in the first or second degree under section 145n, imprisonment under section 349b.

(c) A murder of a peace officer or a corrections officer committed while the peace officer or corrections officer was performing his or her duty as a peace officer or corrections officer, knowing that the peace officer or corrections officer was performing his or her duty as a peace officer or corrections officer.

## Minnesota

### 609.185 MURDER IN THE FIRST DEGREE.

(a) Whoever does any of the following is guilty of murder in the first degree and shall

(1) causes the death of a human being with premeditation and with intent to effect the death of that person or another;

(2) causes the death of a human being while committing or attempting to commit a crime listed in section 609.02, subd. 1, or affecting the person or another;

(3) causes the death of a human being with intent to effect the death of the person or another while committing or attempting to commit kidnapping, arson in the first or second degree, a drive-by shooting, tampering with a vehicle, or a violation of section 152 involving the unlawful sale of a controlled substance;

(4) causes the death of a peace officer, prosecuting attorney, judge, or a guard employee of that person or another, while the person is engaged in the performance of official duties;

(5) causes the death of a minor while committing child abuse, when the perpetrator has no reasonable excuse for the act and the circumstances manifesting an extreme indifference to human life;

(6) causes the death of a human being while committing domestic abuse, when the perpetrator has no reasonable excuse for the act and the death occurs under circumstances manifesting an extreme indifference to human life.

(2) A person convicted of the offense of deliberate homicide shall be punished by death, by years of age at the time of the commission of the offense, by life imprisonment, or by 100 years, except as provided in 46-18-219 and 46-18-222.

## Nebraska

### Section 28-303

Murder in the first degree; penalty.

A person commits murder in the first degree if he or she kills another person (1) purp attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnappir administering poison or causing the same to be done; or if by willful and corrupt perj execution of any innocent person. The determination of whether murder in the first c sections 29-2519 to 29-2524

## Nevada

1. Murder of the first degree is murder which is:

(a) Perpetrated by means of poison, lying in wait or torture, or by any other kind of w attempted perpetration of sexual assault, kidnapping, arson, robbery, burglary, invasi of 14 years or child abuse;

(c) Committed to avoid or prevent the lawful arrest of any person by a peace officer o

(d) Committed on the property of a public or private school at an activity sponsored l

(3) It is committed when the actor, acting either alone or with one or more other persons, attempts to commit, or flight after committing or attempting to commit robbery, sequestration, or kidnapping, pursuant to section 2 of P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or one of the participants;

## New Mexico

A. Murder in the first degree is the killing of one human being by another without lawful authority:

- (1) by any kind of willful, deliberate and premeditated killing;
- (2) in the commission of or attempt to commit any felony; or
- (3) by any act greatly dangerous to the lives of others, indicating a depraved mind regardless of human life.

Whoever commits murder in the first degree is guilty of a capital felony.

## \*New York

§ 125.27 Murder in the first degree.

A person is guilty of murder in the first degree when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person; and

(a) Either:

- (i) the intended victim was a police officer as defined in subdivision

knew or reasonably should have known that the intended victim was such firefighter, emergency medical technician, ambulance driver, paramedic,

physician or registered nurse; or

(iii) the intended victim was an employee of a state correctional institution or was an employee of a local correctional facility as

defined in subdivision two of section forty of the correction law, who was at the time of the killing engaged in the course of performing his

official duties, and the defendant knew or reasonably should have known

that the intended victim was an employee of a state correctional institution or a local correctional facility; or

(iv) at the time of the commission of the killing, the defendant was confined in a state correctional institution or was otherwise in custody upon a sentence for the term of his natural life, or upon a sentence commuted to one of natural life, or upon a sentence for an indeterminate term the minimum of which was at least fifteen years and the maximum of which was natural life, or at the time of the commission of the killing, the defendant had escaped from such confinement or custody while serving such a sentence and had not yet been returned to such confinement or

in this subparagraph "immediate family member" means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild or grandchild; or

(vi) the defendant committed the killing or procured commission of the killing pursuant to an agreement with a person other than the intended victim to commit the same for the receipt, or in expectation of the

receipt, of anything of pecuniary value from a party to the agreement or

from a person other than the intended victim acting at the direction of

a party to such agreement; or

(vii) the victim was killed while the defendant was in the course of committing or attempting to commit and in furtherance of robbery,

burglary in the first degree or second degree, kidnapping in the first degree, arson in the first degree or second degree, rape in the first

degree, criminal sexual act in the first degree, sexual abuse in the first degree. aggravated sexual abuse in the first degree or

criminal transaction; or

(ix) prior to committing the killing, the defendant had been convicted of murder as defined in this section or section 125.25 of this article, or had been convicted in another jurisdiction of an offense which, if

committed in this state, would constitute a violation of either of such sections; or

(x) the defendant acted in an especially cruel and wanton manner pursuant to a course of conduct intended to inflict and inflicting torture upon the victim prior to the victim's death. As used in this

subparagraph, "torture" means the intentional and depraved infliction of

extreme physical pain; "depraved" means the defendant relished the infliction of extreme physical pain upon the victim evidencing debasement or perversion or that the defendant evidenced a sense of pleasure in the infliction of extreme physical pain; or

(xi) the defendant intentionally caused the death of two or more additional persons within the state in separate criminal transactions within a period of twenty-four months when committed in a similar

fashion or pursuant to a common scheme or plan; or

(xii) the intended victim was a judge as defined in subdivision

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1. A person is guilty of murder, a class AA felony, if the person:

- a. Intentionally or knowingly causes the death of another human being;
- b. Causes the death of another human being under circumstances manifesting extreme indifference to the human life of another person;
- c. Acting either alone or with one or more other persons, commits or attempts to commit a felony offense against a child under section 12.1-20-03, 12.1-27.2-02, 12.1-27.2-03, or 12.1-27.2-04, in furtherance of such crime or of immediate flight therefrom, the person or any other person

Ohio

2903.02 Murder.

(A) No person shall purposely cause the death of another or the unlawful termination of another's life.

(B) No person shall cause the death of another as a proximate result of the offender's commission of a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.

(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree under section 2903.03 or 2903.04 of the Revised Code.

(D) Whoever violates this section is guilty of murder, and shall be punished as provided in section 2903.01 of the Revised Code.

Oklahoma

A. A person commits murder in the first degree when that person unlawfully and with deliberate intention unlawfully to take away the life of a human being, which is manifestly unlawful, regardless of malice, when that person or any other person

from the commission or attempted commission of murder of another person shooti

ORS 164.325(Arson in the first degree);

(B)Criminal mischief in the first degree by means of an explosive as defined in ORS 16

(C)Burglary in the first degree as defined in

ORS 164.225(Burglary in the first degree);

(D)Escape in the first degree as defined in

ORS 162.165(Escape in the first degree);

(E)Kidnapping in the second degree as defined in ORS163.225 (Kidnapping in the secc

ORS163.235 (Kidnapping in the first degree);

(G)Robbery in the first degree as defined in

ORS 164.415(Robbery in the first degree);

(H)Any felony sexual offense in the first degree defined in this chapter;

(I)Compelling prostitution as defined in

ORS 167.017(Compelling prostitution); or

(J)Assault in the first degree, as defined in

ORS 163.185(Assault in the first degree), and the victim is under 14 years of age, or as

degree) (1) (a) or (b), and the victim is under 14 years of age; or

(c)By abuse when a person, recklessly under circumstances manifesting extreme indif

or a dependent person, as defined in ORS 163.205 (Criminal mistreatment in the first

(A)The person has previously engaged in a pattern or practice of assault or torture of

(B)The person causes the death by neglect or maltreatment. (2)An accusatory instrun

specific incidents of assault or torture



(1) If perpetrated without authority of law and with a premeditated design to effect the death of a child; or

(2) If committed by a person engaged in the perpetration of, or attempt to perpetrate, the unlawful discharging of a destructive device or explosive.

Homicide is also murder in the first degree if committed by a person who perpetrated the unlawful throwing, placing or discharging of a destructive device or explosive and whose conduct is the proximate cause of the death of another person, and whose prosecution of the crime.

## Texas

Sec. 19.02. MURDER. (a) In this section:

(1) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or injury of such a nature as to excite the mind incapable of cool reflection.

(2) "Sudden passion" means passion directly caused by and arising out of provocation of the victim at the time of the offense and is not solely the result of former provocation.

(b) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act

clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than manslaughter, and in the course of the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

10 years of age; or

(9) the person murders another person in retaliation for or on account of the service in the armed forces of the United States, a court of appeals, a district court, a criminal district court, a constitutional court, or a court of appeals.

(b) An offense under this section is a capital felony.

Utah

76-5-203. Murder.

(1) As used in this section, "predicate offense" means:

(a) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;

(b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years of age;

(c) kidnapping under Section 76-5-301;

(d) child kidnapping under Section 76-5-301.1;

(e) aggravated kidnapping under Section 76-5-302;

(f) rape of a child under Section 76-5-402.1;

(g) object rape of a child under Section 76-5-402.3;

(h) sodomy upon a child under Section 76-5-403.1;

(i) forcible sexual abuse under Section 76-5-404;

(j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-405;

(k) rape under Section 76-5-402;

(l) object rape under Section 76-5-402.3.

the actor is engaged in the commission, attempted commission, or immediate flight from the predicate offense;

a person other than a party as defined in Section 76-2-202 is killed in the course of the attempted commission of any predicate offense; and

the actor acted with the intent required as an element of the predicate offense;

the actor recklessly causes the death of a peace officer or military service member in

(i) (ii)

(iii)

an assault against a peace officer under Section 76-5-102.4; interference with a peace officer; or an assault against a peace officer;

an assault against a military service member in uniform under Section 76-5-102.4;

commits a homicide which would be aggravated murder, but the offense is reduced to murder; or the actor commits aggravated murder, but special mitigation is established under Section 76-5-102.4;

(k) rape under Section 76-5-402;

(l) object rape under Section 76-5-402.2;

(m) forcible sodomy under Section 76-5-403;

(n) aggravated sexual assault under Section 76-5-405;

(o) arson under Section 76-6-102;

(p) aggravated arson under Section 76-6-103;

(q) burglary under Section 76-6-202;

(r) aggravated burglary under Section 76-6-203;

(s) robbery under Section 76-6-301;

Murder in the first degree.

(1) A person is guilty of murder in the first degree when:

(a) With a premeditated intent to cause the death of another person, he or she cause

(b) Under circumstances manifesting an extreme indifference to human life, he or she causes the death of a person; or

(c) He or she commits or attempts to commit the crime of either (1) robbery in the first degree, (4) arson in the first or second degree, or (5) kidnapping in the first or second degree therefrom, he or she, or another participant, causes the death of a person other than

West Virginia

§61-2-1. First and second degree murder defined; allegations in indictment for homicide. Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate act, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from law enforcement as defined in article four, chapter sixty-a of this code, is murder of the first degree. All In an indictment for murder and manslaughter, it shall not be necessary to set forth the but it shall be sufficient in every such indictment to charge that the defendant did feel deceased

Wisconsin

940.01 First-degree intentional homicide.

(1) Offenses.

(a) Except as provided in sub (2) whoever causes the death of another human being

**SB-2027**

Submitted on: 2/22/2022 3:06:27 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Susan VanDyne	Individual	Support	No

Comments:

I am in full support of SB2027. Not one more child! Protect our children!

**SB-2027**

Submitted on: 2/22/2022 5:02:38 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Briana Crawford	Individual	Support	No

Comments:

I strongly support this bill.

**SB-2027**

Submitted on: 2/22/2022 10:47:29 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ihilani Buffett	Individual	Support	No

Comments:

Aloha, I am testifying today in support of SB 2027. It is all of our kuleana to protect our most vulnerable citizens, especially those who have no voice. This bill will add the necessary language to hold the monsters of such heinous acts accountable. For too long the State of Hawaii has overlooked the victims and victims families of murder. Hawaii is "soft" when it comes to holding criminals responsible for their choices. Murderers have no fear of punishment/accountability for their actions. I know this from personal experience, in 2020 my sister-in-law was murdered. By no choice of my own I have come to know that the criminal justice system of our Aloha State is just that- JUSTICE FOR THE CRIMINALS! You want to show the people of Hawaii that you care about the innocent, you want to restore peoples faith in the broken justice system? You want to protect our keiki? SB 2027 is a good place to start. Please consider the victims who are no longer here, and the families they leave behind. I thank you for considering my testimony. We are just asking that the punishment fit the crime- nothing more, nothing less.

**SB-2027**

Submitted on: 2/23/2022 4:35:21 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kaylene Sheldon	Individual	Support	No

Comments:

Aloha kākou:

My name is Kaylene Kauwila Sheldon and I am in support of SB2027. I am writing to you as a grandmother and as a kūpuna. There needs to be justice and consequences for the wrong doings that are aimed toward our nā keiki. We need to do more to protect the Nā Pua O Hawai'i! If you go down the list of all the injustice done to young children in Hawaii, it is a very long list. It's swept under the carpet, hidden and never addressed. Ariel Sellers, Peter Boy and Alexis Lehman-Cabanting...Let's try our best not to fail our precious mamō and have an honest conversation about Hawaii's failing system in preventing child abuse, neglect. Imagine how Alexis Lehman-Cabanting must feel having to relive her trauma while the people responsible are walking out free...Let's address this issue and make a responsible choice.

He Keiki kealoha he mea Kanu,

Kaylene Kauwila Sheldon



**SB-2027**

Submitted on: 2/23/2022 8:04:13 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Nichole Kadowaki	Individual	Support	No

Comments:

I support this in its entirety, murder of a child, pregnant women, and torture should all fall under first degree murder, with no option of bail, bargaining, or parole. And life needs to mean LIFE and not getting out of prison alive. I support that anyone who murders an innocent child should receive the most severe of punishments. If there is an accompanying parent or adult who is partaking or not protecting the child they should also receive the same severe punishment as the person who actually killed the child. For example baby Star Hobbs. The killer received life but has an option to parole and could be out in 15 years. The mother only received a few years but she took part in the abuse and knowingly allowed it to happen. This is NOT protecting our children and baby Star was failed by the system during her life and now after. Children are not able to protect or defend themselves, or speak up for themselves. As adults we are responsible for their well being. Killing a child is murder and these people should never be allowed back into society or get out of prison alive. If we allow this we are failing as a society to protect our innocent babies and children. Too often we read in the news an infant or toddler has been beaten and murdered by the parents or caretakers, and they only have to serve 15 years, if at all. Or a child was starved to death (on the Big Island for example). This is torture and murder and all adults involved should be imprisoned for life no exceptions.

**SB-2027**

Submitted on: 2/23/2022 8:55:16 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Bunnie Harrington	Individual	Support	No

Comments:

Aloha,

I am writing this testimony in support of SB 2027. I feel that this should be included in order to better protect Hawaii's most vulnerable citizens.

Mahalo for considering my testimony.

Best,

Bunnie Harrington

**LATE**

**SB-2027**

Submitted on: 2/23/2022 9:55:05 AM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kapua Medeiros	Individual	Support	No

Comments:

Aloha Committee Chairs and Committee members,

I SUPPORT SB2027 that takes measures to create solutions to prevent anymore of our keiki in Hawai'i from the tragedy that Ariel Sellers, named Isabella Kalua by her murderers, experienced.

Mahalo for your Support of SB2027.

Me ke aloha nui,

Kapua Medeiros

Waimanalo Resident

**LATE**

**SB-2027**

Submitted on: 2/23/2022 2:08:14 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Younghee Overly	Individual	Comments	No

Comments:

Dear Chair Rhoads, Vice Chair Keohokalole, and the members of the Judiciary committee,

I request an amendment to SB2027 to delete "a person who is pregnant with a viable fetus". Conferring rights or personhood to a fetus as a victim of crime would undermine Hawaii's abortion laws and could lead to very serious, unintended consequences. Mahalo for your consideration.

**LATE**

**SB-2027**

Submitted on: 2/23/2022 4:19:00 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Doris Segal Matsunaga	Testifying for Save Medicaid Hawaii	Oppose	No

Comments:

Save Medicaid Hawaii opposes this bill due to serious and perhaps unintended consequences. Conferring rights or personhood to a fetus as a victim of crime would undermine Hawaii's critically important abortion laws. The victim of the crime here is the pregnant woman and we should ensure that the penal code remains focused on the victim of the crime, by separating the two, we would be saying that the woman is less important.

Thank you for your consideration

**LATE**

**SB-2027**

Submitted on: 2/23/2022 8:41:47 PM

Testimony for JDC on 2/24/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lea Minton	Individual	Comments	No

Comments:

Dear Committee on Judiciary,

I am providing the following recommended amendments to SB2027.

(j) A person who is less than fourteen years old; **or**

~~(k) A person who is pregnant with a viable fetus; or~~

As a midwife, I appreciate that legislators are seeking to protect people AND it is a slippery slope of giving a fetus rights over a mother; murdering a mother in and of itself is not considered murder in the first degree. Further, we do not want this to be construed to restrict a person's right to choose a termination nor a healthcare providers ability to provide terminations in Hawai'i. Keeping the the line referring to a pregnant person opens up challenges to termination in our state, which may or may not be the intent of the drafters of SB2027. I recognize that heinous crimes have been committed against pregnant persons in Hawai'i, and with that said, if the prosecution wants to bring a charge of murder in the first degree, then they have the option to pursue it under:

(l) A person where the defendant's actions were especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this paragraph, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a crime of a conscienceless or pitiless nature which is unnecessarily torturous to a victim."

Thank you for the opportunity to provide comments for SB2027.

Respectfully,

Lea Minton, MSN, APRN, CNM, IBCLC