
A BILL FOR AN ACT

RELATING TO UNLAWFUL KILLINGS.

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

1 SECTION 1. The purpose of this Act is to provide for the
2 prosecution of a person who causes the death of an infant who is
3 born alive but subsequently dies as a result of an injury that
4 the actor unlawfully caused to a pregnant person or fetus prior
5 to the birth of the infant. It is not the purpose of this Act
6 to criminalize the actions of a person who lawfully and
7 intentionally terminates a pregnancy or provides related health
8 care services.

9 SECTION 2. Section 707-701, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§707-701 Murder in the first degree.** (1) A person
12 commits the offense of murder in the first degree if the person
13 intentionally or knowingly causes the death of:

14 (a) More than one person in the same or separate incident;

15 (b) A law enforcement officer, judge, or prosecutor

16 arising out of the performance of official duties;



1 (c) A person known by the defendant to be a witness in a
2 criminal prosecution and the killing is related to the
3 person's status as a witness;

4 (d) A person by a hired killer, in which event both the
5 person hired and the person responsible for hiring the
6 killer shall be punished under this section;

7 (e) A person while the defendant was imprisoned;

8 (f) A person from whom the defendant has been restrained,
9 by order of any court, including an ex parte order,
10 from contacting, threatening, or physically abusing
11 pursuant to chapter 586;

12 (g) A person who is being protected by a police officer
13 ordering the defendant to leave the premises of that
14 protected person pursuant to section 709-906(4),
15 during the effective period of that order; or

16 (h) A person known by the defendant to be a witness in a
17 family court proceeding and the killing is related to
18 the person's status as a witness.

19 (2) Murder in the first degree is a felony for which the
20 defendant shall be sentenced to imprisonment as provided in
21 section 706-656.



1 (3) As used in subsection (1)(a), "person" includes an
2 infant who is born alive and who subsequently dies as a result
3 of an injury that the actor unlawfully caused to a pregnant
4 person or fetus prior to the birth of the infant; provided that
5 this subsection shall not apply if the injury was the result of
6 an act:

7 (a) To lawfully terminate a pregnancy pursuant to section
8 453-16;

9 (b) Committed by a licensed physician or surgeon, or by a
10 licensed osteopathic physician and surgeon, in a case
11 where:

12 (i) To a medical certainty, childbirth would have
13 resulted in the death of the infant; or

14 (ii) Although not medically certain, childbirth would
15 more likely than not have resulted in the death
16 of the pregnant person; or

17 (c) That was solicited, aided, or consented to by the
18 pregnant person.

19 (4) Nothing in subsection (3) shall be construed to
20 prohibit the prosecution of a person under any other provision
21 of law."



SECTION 3. Section 701-701.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]~~§707-701.5~~[+]~~ **Murder in the second degree.** (1)

Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person~~[-]~~, including an infant who is born alive and subsequently dies as a result of an injury that the actor unlawfully caused to a pregnant person or fetus prior to the birth of the infant.

(2) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656.

(3) This section shall not apply if an injury to a pregnant person or fetus prior to the birth of the infant was the result of an act:

(a) To lawfully terminate a pregnancy pursuant to section 453-16;

(b) Committed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon, in a case where:



- 1 (i) To a medical certainty, childbirth would have
2 resulted in the death of the infant; or
3 (ii) Although not medically certain, childbirth would
4 more likely than not have resulted in the death
5 of the pregnant person; or
6 (c) That was solicited, aided, or consented to by the
7 pregnant person.
8 (4) Nothing in subsection (3) shall be construed to
9 prohibit the prosecution of a person under any other provision
10 of law."

11 SECTION 4. Section 707-702, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§707-702 Manslaughter.** (1) A person commits the offense
14 of manslaughter if:

- 15 (a) The person recklessly causes the death of another
16 person[+], including an infant who is born alive and
17 subsequently dies as a result of an injury that the
18 actor unlawfully caused to a pregnant person or fetus
19 prior to the birth of the infant; or
20 (b) The person intentionally causes another person to
21 commit suicide.



1 (2) In a prosecution for murder or attempted murder in the
2 first and second degrees it is an affirmative defense, which
3 reduces the offense to manslaughter or attempted manslaughter,
4 that the defendant was, at the time the defendant caused the
5 death of the other person, under the influence of extreme mental
6 or emotional disturbance for which there is a reasonable
7 explanation. The reasonableness of the explanation shall be
8 determined from the viewpoint of a reasonable person in the
9 circumstances as the defendant believed them to be.

10 (3) Manslaughter is a class A felony.

11 (4) This section shall not apply if an injury to a
12 pregnant person or fetus prior to the birth of the infant was
13 the result of an act:

14 (a) To lawfully terminate a pregnancy pursuant to section
15 453-16;

16 (b) Committed by a licensed physician or surgeon, or by a
17 licensed osteopathic physician and surgeon, in a case
18 where:

19 (i) To a medical certainty, childbirth would have
20 resulted in the death of the infant; or



1 (ii) Although not medically certain, childbirth would
2 more likely than not have resulted in the death
3 of the pregnant person; or

4 (c) That was solicited, aided, or consented to by the
5 pregnant person.

6 (5) Nothing in subsection (4) shall be construed to
7 prohibit the prosecution of a person under any other provision
8 of law."

9 SECTION 5. Nothing in this Act shall be construed to
10 attach penal liability to the conduct of any health care
11 professional engaged in the lawful discharge of their duties,
12 including the lawful and intentional termination of a pregnancy
13 or provision of related health care services.

14 SECTION 6. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 7. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.



H.B. NO. 1778

1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY:



BY REQUEST

JAN 22 2016



H.B. NO. 1778

Report Title:

Unlawful Killings; Infants; Injury to Pregnant Person or Fetus

Description:

Provides that a person who unlawfully causes injury to a pregnant person or fetus that results in the death of an infant who was born alive may be charged with an unlawful killing.

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