

JAN 23 2015

A BILL FOR AN ACT

RELATING TO CRIMES AGAINST PREGNANT WOMEN.

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

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

3 "§706-660.2 Sentence of imprisonment for offenses against
4 children, elder persons, ~~[or]~~ handicapped persons~~[-]~~, or
5 pregnant women. Notwithstanding section 706-669, a person who,
6 in the course of committing or attempting to commit a felony,
7 causes the death or inflicts serious or substantial bodily
8 injury upon a person who is:

9 (1) Sixty years of age or older;

10 (2) Blind, a paraplegic, or a quadriplegic; ~~[or]~~

11 (3) Eight years of age or younger; or

12 (4) Pregnant;

13 and such disability or condition is known or reasonably should
14 be known to the defendant, shall, if not subjected to an
15 extended term of imprisonment pursuant to section 706-662, be
16 sentenced to a mandatory minimum term of imprisonment without
17 possibility of parole as follows:



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

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

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

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

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

7 "§706-662 Criteria for extended terms of imprisonment. A
8 defendant who has been convicted of a felony may be subject to
9 an extended term of imprisonment under section 706-661 if it is
10 proven beyond a reasonable doubt that an extended term of
11 imprisonment is necessary for the protection of the public and
12 that the convicted defendant satisfies one or more of the
13 following criteria:

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

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

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



S.B. NO. 210

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

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

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

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

17 (b) The maximum terms of imprisonment authorized for
18 each of the defendant's crimes, if made to run
19 consecutively, would equal or exceed in length
20 the maximum of the extended term imposed or would



S.B. NO. 210

1 equal or exceed forty years if the extended term
2 imposed is for a class A felony;

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

6 (a) The defendant attempts or commits any of the
7 following crimes: murder, manslaughter, a sexual
8 offense that constitutes a felony under chapter
9 707, robbery, felonious assault, burglary, or
10 kidnapping; and

11 (b) The defendant, in the course of committing or
12 attempting to commit the crime, inflicts serious
13 or substantial bodily injury upon a person who
14 has the status of being:

15 (i) Sixty years of age or older;

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

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

18 (iv) Pregnant; and

19 the person's status is known or reasonably should
20 be known to the defendant; or

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



- 1 (a) The defendant is convicted of a crime under
2 chapter 707, 708, or 711; and
- 3 (b) The defendant intentionally selected a victim or,
4 in the case of a property crime, the property
5 that was the object of a crime, because of
6 hostility toward the actual or perceived race,
7 religion, disability, ethnicity, national origin,
8 gender identity or expression, or sexual
9 orientation of any person. For purposes of this
10 subsection, "gender identity or expression"
11 includes a person's actual or perceived gender,
12 as well as a person's gender identity, gender-
13 related self-image, gender-related appearance, or
14 gender-related expression, regardless of whether
15 that gender identity, gender-related self-image,
16 gender-related appearance, or gender-related
17 expression is different from that traditionally
18 associated with the person's sex at birth."

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



S.B. NO. 210

1 "§709-906 Abuse of family or household members; penalty.

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

8 For the purposes of this section, "family or household
9 member" means spouses or reciprocal beneficiaries, former
10 spouses or reciprocal beneficiaries, persons in a dating
11 relationship as defined under section 586-1, persons who have a
12 child in common, parents, children, persons related by
13 consanguinity, and persons jointly residing or formerly residing
14 in the same dwelling unit.

15 (2) Any police officer, with or without a warrant, may
16 arrest a person if the officer has reasonable grounds to believe
17 that the person is physically abusing, or has physically abused,
18 a family or household member and that the person arrested is
19 guilty thereof.



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

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

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

11 (b) The police officer lawfully shall order the person who
12 the police officer reasonably believes to have
13 inflicted the abuse to leave the premises for a period
14 of separation of forty-eight hours, during which time
15 the person shall not initiate any contact, either by
16 telephone or in person, with the family or household
17 member; provided that the person is allowed to enter
18 the premises with police escort to collect any
19 necessary personal effects;

20 (c) When the incident occurs after 12:00 p.m. on any
21 Friday, or on any Saturday, Sunday, or legal holiday,



1 the order to leave the premises and to initiate no
2 further contact shall commence immediately and be in
3 full force, but the forty-eight hour period shall be
4 enlarged and extended until 4:30 p.m. on the first day
5 following the weekend or legal holiday;

- 6 (d) All persons who are ordered to leave as stated above
7 shall be given a written warning citation stating the
8 date, time, and location of the warning and stating
9 the penalties for violating the warning. A copy of
10 the warning citation shall be retained by the police
11 officer and attached to a written report which shall
12 be submitted in all cases. A third copy of the
13 warning citation shall be given to the abused person;
- 14 (e) If the person so ordered refuses to comply with the
15 order to leave the premises or returns to the premises
16 before the expiration of the period of separation, or
17 if the person so ordered initiates any contact with
18 the abused person, the person shall be placed under
19 arrest for the purpose of preventing further physical
20 abuse or harm to the family or household member; and



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

5 (5) Abuse of a family or household member and refusal to
6 comply with the lawful order of a police officer under
7 subsection (4) are misdemeanors and the person shall be
8 sentenced as follows:

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

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

15 Upon conviction and sentencing of the defendant, the court shall
16 order that the defendant immediately be incarcerated to serve
17 the mandatory minimum sentence imposed; provided that the
18 defendant may be admitted to bail pending appeal pursuant to
19 chapter 804. The court may stay the imposition of the sentence
20 if special circumstances exist.



1 (6) Whenever a court sentences a person pursuant to
2 subsection (5), it also shall require that the offender undergo
3 any available domestic violence intervention programs ordered by
4 the court. However, the court may suspend any portion of a jail
5 sentence, except for the mandatory sentences under subsection
6 (5)(a) and (b), upon the condition that the defendant remain
7 arrest-free and conviction-free or complete court-ordered
8 intervention.

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

12 (8) Where the physical abuse consists of intentionally or
13 knowingly impeding the normal breathing or circulation of the
14 blood of the family or household member by applying pressure on
15 the throat or the neck, abuse of a family or household member is
16 a class C felony.

17 (9) Where physical abuse occurs in the presence of any
18 family or household member who is less than fourteen years of
19 age, abuse of a family or household member is a class C felony.



1 (10) Where the physical abuse is against a family or
2 household member who is pregnant, abuse of a family or household
3 member is a class C felony.

4 [~~(10)~~] (11) Any police officer who arrests a person
5 pursuant to this section shall not be subject to any civil or
6 criminal liability; provided that the police officer acts in
7 good faith, upon reasonable belief, and does not exercise
8 unreasonable force in effecting the arrest.

9 [~~(11)~~] (12) The family or household member who has been
10 physically abused or harmed by another person may petition the
11 family court, with the assistance of the prosecuting attorney of
12 the applicable county, for a penal summons or arrest warrant to
13 issue forthwith or may file a criminal complaint through the
14 prosecuting attorney of the applicable county.

15 [~~(12)~~] (13) The respondent shall be taken into custody and
16 brought before the family court at the first possible
17 opportunity. The court may dismiss the petition or hold the
18 respondent in custody, subject to bail. Where the petition is
19 not dismissed, a hearing shall be set.



1 [~~(13)~~] (14) This section shall not operate as a bar
2 against prosecution under any other section of this Code in lieu
3 of prosecution for abuse of a family or household member.

4 [~~(14)~~] (15) It shall be the duty of the prosecuting
5 attorney of the applicable county to assist any victim under
6 this section in the preparation of the penal summons or arrest
7 warrant.

8 [~~(15)~~] (16) This section shall not preclude the physically
9 abused or harmed family or household member from pursuing any
10 other remedy under law or in equity.

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



S.B. NO. 210

1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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

6 SECTION 6. This Act shall take effect upon its approval.
7

INTRODUCED BY:

~~SEN. DC. Anthony~~

M. H. R.

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S.B. NO. 210

Report Title:

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

Description:

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

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

