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## A BILL FOR AN ACT

RELATING TO EXTENDED TERMS OF IMPRISONMENT.

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

1       SECTION 1. The legislature recognizes that, on the evening  
2 of April 24, 2016, nineteen-year-old Kaulana Matthew Auwae  
3 Werner was struck and killed by a motor vehicle. The driver of  
4 the motor vehicle allegedly fled the scene of the accident and  
5 was found a half-mile away, reportedly attempting to tow her  
6 vehicle with the help of an acquaintance. The driver was  
7 subsequently charged with the offenses of accidents involving  
8 death or serious bodily injury and negligent homicide in the  
9 first degree under sections 291C-12 and 707-702.5, Hawaii  
10 Revised Statutes. Both of these offenses are class B felonies.  
11       The legislature finds that if the driver is convicted of  
12 either offense, the maximum sentence that may be imposed is ten  
13 years imprisonment; and if the driver is convicted of both  
14 offenses, it is theoretically possible that the maximum sentence  
15 of ten years imprisonment for each offense could be doubled to  
16 twenty years under the extended sentencing provision for  
17 multiple offenders pursuant to section 706-662(4)(a), Hawaii



1 Revised Statutes, and that the sentence in each offense could be  
2 ordered to run consecutively under section 706-668.5, Hawaii  
3 Revised Statutes, for a total of forty years imprisonment.

4       The legislature asserts that when an offender is convicted  
5 of a crime that results in the death, disability, or  
6 serious disfigurement of a victim, and the facts of the case  
7 demonstrate the offender's wilful and wanton disregard of the  
8 need to exercise reasonable care, courts should have the  
9 discretion to impose an extended term of imprisonment. The  
10 legislature believes that enhanced sentencing in these cases is  
11 warranted based on the offender's gross negligence and the need  
12 to protect the safety and welfare of the general public.

13       Accordingly, the purpose of this Act, which shall be known  
14 as "Kaulana's Law", is to grant courts the authority to  
15 sentence, to an extended term of imprisonment, an offender who  
16 is convicted of a felony that results in the death, disability,  
17 or serious disfigurement of one or more persons based on the  
18 offender's wilful and wanton disregard of the need to exercise  
19 reasonable care.



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

3       **"§706-662 Criteria for extended terms of imprisonment.** A  
4 defendant who has been convicted of a felony may be subject to  
5 an extended term of imprisonment under section 706-661 if it is  
6 proven beyond a reasonable doubt that an extended term of  
7 imprisonment is necessary for the protection of the public and  
8 that the convicted defendant satisfies one or more of the  
9 following criteria:

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

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

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

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



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

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

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

14           (b) The maximum terms of imprisonment authorized for  
15           each of the defendant's crimes, if made to run  
16           consecutively, would equal or exceed in length  
17           the maximum of the extended term imposed or would  
18           equal or exceed forty years if the extended term  
19           imposed is for a class A felony;



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(5) The defendant is an offender against the elderly,  
handicapped, or a minor eight years of age or younger  
in that:

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

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

(i) Sixty years of age or older;

(ii) Blind, a paraplegic, or a quadriplegic; or

(iii) Eight years of age or younger; and

the person's status is known or reasonably should  
be known to the defendant; [e#]

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

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



(b) The defendant intentionally selected a victim or, in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person. For purposes of this subsection, "gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth[-]; or

(7) The defendant is convicted of any felony under chapter 707 that results in:

(a) The death of another person;

(b) Injury to another person that constitutes, in whole or in part, a permanent and significant



1                   loss of use of a part or function of the person's  
2                   body; or  
3           (c)   Injury to another person that constitutes a  
4                   permanent and serious disfigurement that subjects  
5                   the person to mental or emotional suffering; and  
6                   the defendant, in the course of committing or  
7                   attempting to commit the offense, demonstrates a  
8                   wilful and wanton disregard of the need to exercise  
9                   reasonable care, which was likely to cause foreseeable  
10                  grave injury or harm to one or more persons, property,  
11                  or both."

12           SECTION 3. This Act does not affect rights and duties that  
13 matured, penalties that were incurred, and proceedings that were  
14 begun before its effective date.

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

17           SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

San Wit Ch. K. Carr  
A. Lopez Byron



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JAN 24 2018





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**Report Title:**

Enhanced Sentencing; Murder; Manslaughter; Negligent Homicide;  
Gross Negligence

**Description:**

Establishes a gross negligence standard for the imposition of an extended term of imprisonment for a defendant convicted of a felony that resulted in the death, disability, or serious disfigurement of another person because of the defendant's wilful and wanton disregard of the need to exercise reasonable care.

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