

ACT 183

H.B. NO. 1004

A Bill for an Act Relating to Duress.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 702-231, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 702-231 Duress. (1) It is a defense to a penal charge that the defendant engaged in the conduct or caused the result alleged because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided by this section is unavailable if the defendant recklessly placed himself in a situation in which it was probable that he would be subjected

to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish the requisite state of mind for the offense charged.

(3) It is not a defense that a person acted on the command of his or her spouse, unless he or she acted under such coercion as would establish a defense under this section.

(4) When the conduct of the defendant would otherwise be justifiable under section 702-302, this section does not preclude the defense of justification.

(5) In prosecutions for any offense described in this Code, the defense asserted under this section shall constitute an affirmative defense. The defendant shall have the burden of going forward with the evidence to prove the facts constituting such defense, unless such facts are supplied by the testimony of the prosecuting witness or circumstance in such testimony, and of proving such facts by a preponderance of the evidence pursuant to section 701-115.”

SECTION 2. New statutory material is underscored.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.