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## A BILL FOR AN ACT

RELATING TO OFFENSES AGAINST THE PERSON.

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

1           SECTION 1. Chapter 707, Hawaii Revised Statutes, is  
2 amended by adding two new sections to part II to be  
3 appropriately designated and to read as follows:

4           "§707-A Feticide. (1) A person commits the offense of  
5 feticide if:

6           (a) The person intentionally or knowingly causes the death  
7 of an unborn child by causing an injury to the mother  
8 of the unborn child; provided that the injury would be  
9 murder if it resulted in the death of the mother; or

10           (b) The person causes the death of an unborn child during  
11 the commission of a felony.

12           (2) Feticide is a felony for which the defendant shall be  
13 sentenced to imprisonment as provided in section 706-656.

14           (3) This section shall not apply to:

15           (a) Any person for conduct relating to an abortion when  
16 the consent of the pregnant woman, or person



1 authorized by law to act on her behalf, has been  
2 obtained or when consent is implied by law;

3 (b) Any person for any medical treatment of the pregnant  
4 woman or her unborn child; or

5 (c) Any woman with respect to her unborn child.

6 (4) As used in this section, "unborn child" means any  
7 individual of the human species from fertilization until birth.

8 §707-B Manslaughter of an unborn child. (1) A person  
9 commits the offense of manslaughter of an unborn child if:

10 (a) The person causes the death of an unborn child under  
11 circumstances that would otherwise be feticide; and

12 (b) The person was, at the time the person caused the  
13 death of the unborn child, under the influence of  
14 extreme mental or emotional disturbance for which  
15 there is a reasonable explanation. The reasonableness  
16 of the explanation shall be determined from the  
17 viewpoint of a reasonable person in the circumstances  
18 as the person believed them to be.

19 (2) Manslaughter of an unborn child is a class A felony  
20 for which the defendant shall be sentenced to imprisonment as  
21 provided in section 706-659.



- 1        (3) This section shall not apply to:
- 2        (a) Any person for conduct relating to an abortion when
- 3        the consent of the pregnant woman, or person
- 4        authorized by law to act on her behalf, has been
- 5        obtained or when consent is implied by law;
- 6        (b) Any person for any medical treatment of the pregnant
- 7        woman or her unborn child; or
- 8        (c) Any woman with respect to her unborn child.
- 9        (4) As used in this section, "unborn child" means any
- 10       individual of the human species from fertilization until birth."

11       SECTION 2. Section 351-32, Hawaii Revised Statutes, is  
 12 amended to read as follows:

13       "§351-32 Violent crimes. The crimes to which part III of  
 14 this chapter applies are the following and no other:

- 15       (1) Murder in the first degree (section 707-701);
- 16       (2) Murder in the second degree (section 707-701.5);
- 17       (3) Manslaughter (section 707-702);
- 18       (4) Negligent homicide in the first degree (section 707-
- 19       702.5);
- 20       (5) Negligent homicide in the second degree (section 707-
- 21       703);



- 1 (6) Negligent injury in the first degree (section 707-
- 2 705);
- 3 (7) Negligent injury in the second degree (section 707-
- 4 706);
- 5 (8) Assault in the first degree (section 707-710);
- 6 (9) Assault in the second degree (section 707-711);
- 7 (10) Assault in the third degree (section 707-712);
- 8 (11) Kidnapping (section 707-720);
- 9 (12) Sexual assault in the first degree (section 707-730);
- 10 (13) Sexual assault in the second degree (section 707-731);
- 11 (14) Sexual assault in the third degree (section 707-732);
- 12 (15) Sexual assault in the fourth degree (section 707-733);
- 13 (16) Abuse of family [+]or[+] household [~~member~~] members
- 14 (section 709-906); [~~and~~]
- 15 (17) Terrorism, as defined in title 18 United States Code
- 16 section 2331[+];
- 17 (18) Feticide (section 707-A); and
- 18 (19) Manslaughter of an unborn child (section 707-B)."

19 SECTION 3. Section 586-4, Hawaii Revised Statutes, is  
20 amended by amending subsection (e) to read as follows:



1           "(e) When a temporary restraining order is granted and the  
2 respondent or person to be restrained knows of the order, a  
3 knowing or intentional violation of the restraining order is a  
4 misdemeanor. A person convicted under this section shall  
5 undergo domestic violence intervention at any available domestic  
6 violence program as ordered by the court. The court  
7 additionally shall sentence a person convicted under this  
8 section as follows:

9           (1) Except as provided in paragraph (2), for a first  
10 conviction for a violation of the temporary  
11 restraining order, the person shall serve a mandatory  
12 minimum jail sentence of forty-eight hours and be  
13 fined not less than \$150 nor more than \$500; provided  
14 that the court shall not sentence a defendant to pay a  
15 fine unless the defendant is or will be able to pay  
16 the fine;

17           (2) For a first conviction for a violation of the  
18 temporary restraining order, if the person has a prior  
19 conviction for any of the following felonies:

20           (A) Section 707-701 relating to murder in the first  
21 degree;



- 1 (B) Section 707-701.5 relating to murder in the
- 2 second degree;
- 3 (C) Section 707-710 relating to assault in the first
- 4 degree;
- 5 (D) Section 707-711 relating to assault in the second
- 6 degree;
- 7 (E) Section 707-720 relating to kidnapping;
- 8 (F) Section 707-721 relating to unlawful imprisonment
- 9 in the first degree;
- 10 (G) Section 707-730 relating to sexual assault in the
- 11 first degree;
- 12 (H) Section 707-731 relating to sexual assault in the
- 13 second degree;
- 14 (I) Section 707-732 relating to sexual assault in the
- 15 third degree;
- 16 (J) Section 707-733.6 relating to continuous sexual
- 17 assault of a minor under the age of fourteen
- 18 years;
- 19 (K) Section 707-750 relating to promoting child abuse
- 20 in the first degree;



1 (L) Section 708-810 relating to burglary in the first  
2 degree;

3 (M) Section 708-811 relating to burglary in the  
4 second degree;

5 (N) Section 709-906 relating to abuse of family or  
6 household members; [~~or~~]

7 (O) Section 711-1106.4 relating to aggravated  
8 harassment by stalking;

9 (P) Section 707-A relating to feticide; or

10 (Q) Section 707-B relating to manslaughter of an  
11 unborn child;

12 and if any of these offenses has been committed  
13 against a family or household member as defined in  
14 section 586-1, the person shall serve a mandatory  
15 minimum term of imprisonment of fifteen days and be  
16 fined not less than \$150 nor more than \$600; provided  
17 that the court shall not sentence a defendant to pay a  
18 fine unless the defendant is or will be able to pay  
19 the fine; and

20 (3) For the second and any subsequent conviction for a  
21 violation of the temporary restraining order, the



1 person shall serve a mandatory minimum jail sentence  
2 of thirty days and be fined not less than \$250 nor  
3 more than \$1,000; provided that the court shall not  
4 sentence a defendant to pay a fine unless the  
5 defendant is or will be able to pay the fine.

6 Upon conviction and sentencing of the defendant, the court  
7 shall order that the defendant immediately be incarcerated to  
8 serve the mandatory minimum sentence imposed; provided that the  
9 defendant may be admitted to bail pending appeal pursuant to  
10 chapter 804. The court may stay the imposition of the sentence  
11 if special circumstances exist.

12 The court may suspend any jail sentence, except for the  
13 mandatory sentences under paragraphs (1), (2), and (3) upon  
14 condition that the defendant remain alcohol and drug-free,  
15 conviction-free, or complete court-ordered assessments or  
16 intervention. Nothing in this section shall be construed as  
17 limiting the discretion of the judge to impose additional  
18 sanctions authorized in sentencing for a misdemeanor."

19 SECTION 4. Section 706-606.5, Hawaii Revised Statutes, is  
20 amended by amending subsections (1) and (2) to read as follows:





1           "§706-606.5 Sentencing of repeat offenders. (1)  
2 Notwithstanding section 706-669 and any other law to the  
3 contrary, any person convicted of murder in the second degree,  
4 feticide, any class A felony, any class B felony, or any of the  
5 following class C felonies: section 134-7 relating to persons  
6 prohibited from owning, possessing, or controlling firearms or  
7 ammunition; section 134-8 relating to ownership, etc., of  
8 certain prohibited weapons; section 134-17 only as it relates to  
9 providing false information or evidence to obtain a [~~permit~~]  
10 license under section 134-9; section 188-23 relating to  
11 possession or use of explosives, electrofishing devices, and  
12 poisonous substances in state waters; section 386-98(d)(1)  
13 relating to fraud violations and penalties; section 431:2-  
14 403(b)(2) relating to insurance fraud; section 707-703 relating  
15 to negligent homicide in the second degree; section 707-711  
16 relating to assault in the second degree; section 707-713  
17 relating to reckless endangering in the first degree; section  
18 707-716 relating to terroristic threatening in the first degree;  
19 section 707-721 relating to unlawful imprisonment in the first  
20 degree; section 707-732 relating to sexual assault in the third  
21 degree; section 707-752 relating to promoting child abuse in the



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1 third degree; section 707-757 relating to electronic enticement  
2 of a child in the second degree; section 707-766 relating to  
3 extortion in the second degree; section 708-811 relating to  
4 burglary in the second degree; section 708-821 relating to  
5 criminal property damage in the second degree; section 708-831  
6 relating to theft in the second degree; section 708-835.5  
7 relating to theft of livestock; section 708-836 relating to  
8 unauthorized control of propelled vehicle; section 708-839.55  
9 relating to unauthorized possession of confidential personal  
10 information; section 708-839.8 relating to identity theft in the  
11 third degree; section 708-852 relating to forgery in the second  
12 degree; section 708-854 relating to criminal possession of a  
13 forgery device; section 708-875 relating to trademark  
14 counterfeiting; section 710-1071 relating to intimidating a  
15 witness; section 711-1103 relating to riot; section 712-1221  
16 relating to promoting gambling in the first degree; section 712-  
17 1224 relating to possession of gambling records in the first  
18 degree; section 712-1243 relating to promoting a dangerous drug  
19 in the third degree; section 712-1247 relating to promoting a  
20 detrimental drug in the first degree; section 846E-9 relating to  
21 failure to comply with covered offender registration



1 requirements, or who is convicted of attempting to commit murder  
2 in the second degree, feticide, any class A felony, any class B  
3 felony, or any of the class C felony offenses enumerated above  
4 and who has a prior conviction or prior convictions for the  
5 following felonies, including an attempt to commit the same:  
6 murder, murder in the first or second degree, feticide, a class  
7 A felony, a class B felony, any of the class C felony offenses  
8 enumerated above, or any felony conviction of another  
9 jurisdiction, shall be sentenced to a mandatory minimum period  
10 of imprisonment without possibility of parole during such period  
11 as follows:

- 12 (a) One prior felony conviction:
- 13 (i) Where the instant conviction is for murder in the  
14 second degree [~~or~~], attempted murder in the  
15 second degree [~~or~~], or feticide--ten years;
- 16 (ii) Where the instant conviction is for a class A  
17 felony--six years, eight months;
- 18 (iii) Where the instant conviction is for a class B  
19 felony--three years, four months; and



1 (iv) Where the instant conviction is for a class C  
2 felony offense enumerated above--one year, eight  
3 months;

4 (b) Two prior felony convictions:

5 (i) Where the instant conviction is for murder in the  
6 second degree [~~o~~], attempted murder in the  
7 second degree[—], or feticide--twenty years;

8 (ii) Where the instant conviction is for a class A  
9 felony--thirteen years, four months;

10 (iii) Where the instant conviction is for a class B  
11 felony--six years, eight months; and

12 (iv) Where the instant conviction is for a class C  
13 felony offense enumerated above--three years,  
14 four months;

15 (c) Three or more prior felony convictions:

16 (i) Where the instant conviction is for murder in the  
17 second degree [~~o~~], attempted murder in the  
18 second degree[—], or feticide--thirty years;

19 (ii) Where the instant conviction is for a class A  
20 felony--twenty years;



1 (iii) Where the instant conviction is for a class B  
2 felony--ten years; and

3 (iv) Where the instant conviction is for a class C  
4 felony offense enumerated above--five years.

5 (2) Except as in subsection (3), a person shall not be  
6 sentenced to a mandatory minimum period of imprisonment under  
7 this section unless the instant felony offense was committed  
8 during such period as follows:

9 (a) Within twenty years after a prior felony conviction  
10 where the prior felony conviction was for murder in  
11 the first degree or attempted murder in the first  
12 degree;

13 (b) Within twenty years after a prior felony conviction  
14 where the prior felony conviction was for murder in  
15 the second degree [e], attempted murder in the second  
16 degree [r], or feticide;

17 (c) Within twenty years after a prior felony conviction  
18 where the prior felony conviction was for a class A  
19 felony;

20 (d) Within ten years after a prior felony conviction where  
21 the prior felony conviction was for a class B felony;



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1 (e) Within five years after a prior felony conviction  
 2 where the prior felony conviction was for a class C  
 3 felony offense enumerated above;

4 (f) Within the maximum term of imprisonment possible after  
 5 a prior felony conviction of another jurisdiction."

6 SECTION 5. Section 706-656, Hawaii Revised Statutes, is  
 7 amended to read as follows:

8 "§706-656 Terms of imprisonment for first and second  
 9 degree murder [~~and~~], attempted first and second degree  
 10 murder[-], and feticide. (1) Persons eighteen years of age or  
 11 over at the time of the offense who are convicted of first  
 12 degree murder or first degree attempted murder shall be  
 13 sentenced to life imprisonment without the possibility of  
 14 parole.

15 As part of [~~such~~] the sentence the court shall order the  
 16 director of public safety and the Hawaii paroling authority to  
 17 prepare an application for the governor to commute the sentence  
 18 to life imprisonment with parole at the end of twenty years of  
 19 imprisonment; provided that persons who are repeat offenders  
 20 under section 706-606.5 shall serve at least the applicable  
 21 mandatory minimum term of imprisonment.



1           Persons under the age of eighteen years at the time of the  
2 offense who are convicted of first degree murder or first degree  
3 attempted murder shall be sentenced to life imprisonment with  
4 the possibility of parole.

5           (2) Except as provided in section 706-657, pertaining to  
6 enhanced sentence for second degree murder~~[7]~~ or feticide,  
7 persons convicted of second degree murder ~~[and]~~ attempted  
8 second degree murder, or feticide shall be sentenced to life  
9 imprisonment with possibility of parole. The minimum length of  
10 imprisonment shall be determined by the Hawaii paroling  
11 authority; provided that persons who are repeat offenders under  
12 section 706-606.5 shall serve at least the applicable mandatory  
13 minimum term of imprisonment.

14           If the court imposes a sentence of life imprisonment  
15 without possibility of parole pursuant to section 706-657, as  
16 part of that sentence, the court shall order the director of  
17 public safety and the Hawaii paroling authority to prepare an  
18 application for the governor to commute the sentence to life  
19 imprisonment with parole at the end of twenty years of  
20 imprisonment; provided that persons who are repeat offenders



1 under section 706-606.5 shall serve at least the applicable  
2 mandatory minimum term of imprisonment."

3 SECTION 6. Section 706-657, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§706-657 Enhanced sentence for second degree murder[-] or  
6 feticide. The court may sentence a person who was eighteen  
7 years of age or over at the time of the offense and who has been  
8 convicted of murder in the second degree or feticide to life  
9 imprisonment without the possibility of parole under section  
10 706-656 if the court finds that the murder or feticide was  
11 especially heinous, atrocious, or cruel, manifesting exceptional  
12 depravity or that the person was previously convicted of the  
13 offense of murder in the first degree [~~or~~], murder in the second  
14 degree, or feticide in this State or was previously convicted in  
15 another jurisdiction of an offense that would constitute murder  
16 in the first degree [~~or~~], murder in the second degree, or  
17 feticide in this State. As used in this section, the phrase  
18 "especially heinous, atrocious, or cruel, manifesting  
19 exceptional depravity" means a conscienceless or pitiless crime  
20 which is unnecessarily torturous to a victim and "previously  
21 convicted" means a sentence imposed at the same time or a





1 sentence previously imposed which has not been set aside,  
2 reversed, or vacated.

3 Hearings to determine the grounds for imposing an enhanced  
4 sentence for second degree murder or feticide may be initiated  
5 by the prosecutor or by the court on its own motion. The court  
6 shall not impose an enhanced term unless the ground therefor has  
7 been established at a hearing after the conviction of the  
8 defendant and on written notice to the defendant of the ground  
9 proposed. Subject to the provision of section 706-604, the  
10 defendant shall have the right to hear and controvert the  
11 evidence against the defendant and to offer evidence upon the  
12 issue.

13 The provisions pertaining to commutation in section 706-  
14 656(2), shall apply to persons sentenced pursuant to this  
15 section."

16 SECTION 7. Section 706-659, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§706-659 Sentence of imprisonment for class A felony.  
19 Notwithstanding part II; sections 706-605, 706-606, 706-606.5,  
20 706-660.1, 706-661, and 706-662; and any other law to the  
21 contrary, a person who has been convicted of a class A felony,



1 except class A felonies defined in chapter 712, part IV, [øx]  
2 section 707-702, or section 707-B, shall be sentenced to an  
3 indeterminate term of imprisonment of twenty years without the  
4 possibility of suspension of sentence or probation. The minimum  
5 length of imprisonment shall be determined by the Hawaii  
6 paroling authority in accordance with section 706-669. A person  
7 who has been convicted of a class A felony defined in chapter  
8 712, part IV, [øx] section 707-702, or section 707-B may be  
9 sentenced to an indeterminate term of imprisonment, except as  
10 provided for in section 706-660.1 relating to the use of  
11 firearms in certain felony offenses and section 706-606.5  
12 relating to repeat offenders. When ordering such a sentence,  
13 the court shall impose the maximum length of imprisonment which  
14 shall be twenty years. The minimum length of imprisonment shall  
15 be determined by the Hawaii paroling authority in accordance  
16 with section 706-669."

17 SECTION 8. Section 706-660.1, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§706-660.1 Sentence of imprisonment for use of a firearm,  
20 semiautomatic firearm, or automatic firearm in a felony. (1) A  
21 person convicted of a felony, where the person had a firearm in



1 the person's possession or threatened its use or used the  
2 firearm while engaged in the commission of the felony, whether  
3 the firearm was loaded or not, and whether operable or not, may  
4 in addition to the indeterminate term of imprisonment provided  
5 for the grade of offense be sentenced to a mandatory minimum  
6 term of imprisonment without possibility of parole or probation  
7 the length of which shall be as follows:

- 8 (a) For murder in the second degree, feticide, and  
9 attempted murder in the second degree--up to fifteen  
10 years;  
11 (b) For a class A felony--up to ten years;  
12 (c) For a class B felony--up to five years; and  
13 (d) For a class C felony--up to three years.

14 The sentence of imprisonment for a felony involving the use of a  
15 firearm as provided in this subsection shall not be subject to  
16 the procedure for determining minimum term of imprisonment  
17 prescribed under section 706-669; provided further that a person  
18 who is imprisoned in a correctional institution as provided in  
19 this subsection shall become subject to the parole procedure as  
20 prescribed in section 706-670 only upon the expiration of the



1 term of mandatory imprisonment fixed under paragraph (a), (b),  
2 (c), or (d).

3 (2) A person convicted of a second firearm felony offense  
4 as provided in subsection (1) where the person had a firearm in  
5 the person's possession or threatened its use or used the  
6 firearm while engaged in the commission of the felony, whether  
7 the firearm was loaded or not, and whether operable or not,  
8 shall in addition to the indeterminate term of imprisonment  
9 provided for the grade of offense be sentenced to a mandatory  
10 minimum term of imprisonment without possibility of parole or  
11 probation the length of which shall be as follows:

- 12 (a) For murder in the second degree, feticide, and  
13 attempted murder in the second degree--twenty years;  
14 (b) For a class A felony--thirteen years, four months;  
15 (c) For a class B felony--six years, eight months; and  
16 (d) For a class C felony--three years, four months.

17 The sentence of imprisonment for a second felony offense  
18 involving the use of a firearm as provided in this subsection  
19 shall not be subject to the procedure for determining a minimum  
20 term of imprisonment prescribed under section 706-669; provided  
21 further that a person who is imprisoned in a correctional



1 institution as provided in this subsection shall become subject  
2 to the parole procedure as prescribed in section 706-670 only  
3 upon expiration of the term of mandatory imprisonment fixed  
4 under paragraph (a), (b), (c), or (d).

5 (3) A person convicted of a felony, where the person had a  
6 semiautomatic firearm or automatic firearm in the person's  
7 possession or used or threatened its use while engaged in the  
8 commission of the felony, whether the semiautomatic firearm or  
9 automatic firearm was loaded or not, and whether operable or  
10 not, shall in addition to the indeterminate term of imprisonment  
11 provided for the grade of offense be sentenced to a mandatory  
12 minimum term of imprisonment without possibility of parole or  
13 probation the length of which shall be as follows:

- 14 (a) For murder in the second degree, feticide, and  
15 attempted murder in the second degree--twenty years;
- 16 (b) For a class A felony--fifteen years;
- 17 (c) For a class B felony--ten years; and
- 18 (d) For a class C felony--five years.

19 The sentence of imprisonment for a felony involving the use of a  
20 semiautomatic firearm or automatic firearm as provided in this  
21 subsection shall not be subject to the procedure for determining



1 a minimum term of imprisonment prescribed under section 706-669;  
 2 provided further that a person who is imprisoned in a  
 3 correctional institution as provided in this subsection shall  
 4 become subject to the parole procedure as prescribed in section  
 5 706-670 only upon expiration of the term of mandatory  
 6 imprisonment fixed under paragraph (a), (b), (c), or (d).

7 (4) In this section:

8 (a) "Firearm" has the same meaning defined in section 134-  
 9 1 except that it does not include "semiautomatic  
 10 firearm" or "automatic firearm."

11 (b) "Automatic firearm" has the same meaning defined in  
 12 section 134-1.

13 (c) "Semiautomatic firearm" means any firearm that uses  
 14 the energy of the explosive in a fixed cartridge to  
 15 extract a fired cartridge and chamber a fresh  
 16 cartridge with each single pull of the trigger."

17 SECTION 9. Section 706-660.2, Hawaii Revised Statutes, is  
 18 amended to read as follows:

19 "§706-660.2 Sentence of imprisonment for offenses against  
 20 children, elder persons, or handicapped persons.

21 Notwithstanding section 706-669, a person who, in the course of



1 committing or attempting to commit a felony, causes the death or  
2 inflicts serious or substantial bodily injury upon a person who  
3 is:

- 4 (1) Sixty years of age or older;
- 5 (2) Blind, a paraplegic, or a quadriplegic; or
- 6 (3) Eight years of age or younger;

7 and such disability is known or reasonably should be known to  
8 the defendant, shall, if not subjected to an extended term of  
9 imprisonment pursuant to section 706-662, be sentenced to a  
10 mandatory minimum term of imprisonment without possibility of  
11 parole as follows:

- 12 (1) For murder in the second degree[—] or feticide--  
13 fifteen years;
- 14 (2) For a class A felony--six years, eight months;
- 15 (3) For a class B felony--three years, four months;
- 16 (4) For a class C felony--one year, eight months."

17 SECTION 10. Section 706-661, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§706-661 Extended terms of imprisonment. The court may  
20 sentence a person who satisfies the criteria for any of the



1 categories set forth in section 706-662 to an extended term of  
2 imprisonment, which shall have a maximum length as follows:

- 3 (1) For murder in the second degree[~~—~~] or feticide--life  
4 without the possibility of parole;
- 5 (2) For a class A felony--indeterminate life term of  
6 imprisonment;
- 7 (3) For a class B felony--indeterminate twenty-year term  
8 of imprisonment; and
- 9 (4) For a class C felony--indeterminate ten-year term of  
10 imprisonment.

11 When ordering an extended term sentence, the court shall impose  
12 the maximum length of imprisonment. The minimum length of  
13 imprisonment for an extended term sentence under paragraphs (2),  
14 (3), and (4) shall be determined by the Hawaii paroling  
15 authority in accordance with section 706-669."

16 SECTION 11. Section 706-662, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§706-662 Criteria for extended terms of imprisonment. A  
19 defendant who has been convicted of a felony may be subject to  
20 an extended term of imprisonment under section 706-661 if it is  
21 proven beyond a reasonable doubt that an extended term of





1 imprisonment is necessary for the protection of the public and  
2 that the convicted defendant satisfies one or more of the  
3 following criteria:

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

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

9 (a) The circumstances of the crime show that the  
10 defendant has knowingly engaged in criminal  
11 activity as a major source of livelihood; or

12 (b) The defendant has substantial income or resources  
13 not explained to be derived from a source other  
14 than criminal activity;

15 (3) The defendant is a dangerous person in that the  
16 defendant has been subjected to a psychiatric or  
17 psychological evaluation that documents a significant  
18 history of dangerousness to others resulting in  
19 criminally violent conduct, and this history makes the  
20 defendant a serious danger to others. Nothing in this  
21 section precludes the introduction of victim-related



1 data to establish dangerousness in accord with the  
2 Hawaii rules of evidence;

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

4 (a) The defendant is being sentenced for two or more  
5 felonies or is already under sentence of  
6 imprisonment for any felony; or

7 (b) The maximum terms of imprisonment authorized for  
8 each of the defendant's crimes, if made to run  
9 consecutively, would equal or exceed in length  
10 the maximum of the extended term imposed or would  
11 equal or exceed forty years if the extended term  
12 imposed is for a class A felony;

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

16 (a) The defendant attempts or commits any of the  
17 following crimes: murder, manslaughter,  
18 feticide, manslaughter of an unborn child, a  
19 sexual offense that constitutes a felony under  
20 chapter 707, robbery, felonious assault,  
21 burglary, or kidnapping; and



- 1           (b) The defendant, in the course of committing or  
2           attempting to commit the crime, inflicts serious  
3           or substantial bodily injury upon a person who  
4           has the status of being:
- 5           (i) Sixty years of age or older;  
6           (ii) Blind, a paraplegic, or a quadriplegic; or  
7           (iii) Eight years of age or younger; and  
8           the person's status is known or reasonably should  
9           be known to the defendant; or
- 10          (6) The defendant is a hate crime offender in that:
- 11          (a) The defendant is convicted of a crime under  
12          chapter 707, 708, or 711; and
- 13          (b) The defendant intentionally selected a victim or,  
14          in the case of a property crime, the property  
15          that was the object of a crime, because of  
16          hostility toward the actual or perceived race,  
17          religion, disability, ethnicity, national origin,  
18          gender identity or expression, or sexual  
19          orientation of any person. For purposes of this  
20          subsection, "gender identity or expression"  
21          includes a person's actual or perceived gender,



1 as well as a person's gender identity, gender-  
2 related self-image, gender-related appearance, or  
3 gender-related expression, regardless of whether  
4 that gender identity, gender-related self-image,  
5 gender-related appearance, or gender-related  
6 expression is different from that traditionally  
7 associated with the person's sex at birth."

8 SECTION 12. Section 804-3, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) For purposes of this section, "serious crime" means  
11 murder or attempted murder in the first degree, murder or  
12 attempted murder in the second degree, feticide, or a class A or  
13 B felony, except forgery in the first degree and failing to  
14 render aid under section 291C-12, and "bail" includes release on  
15 one's own recognizance, supervised release, and conditional  
16 release."

17 SECTION 13. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 14. In codifying the new sections added by section  
20 1 of this Act, the revisor of statutes shall substitute



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1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 15. This Act does not affect rights and duties  
4 that matured, penalties that were incurred, and proceedings that  
5 were begun before its effective date.

6 SECTION 16. This Act shall take effect upon its approval.  
7

INTRODUCED BY: Wale Carroll

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# H.B. NO. 1234

**Report Title:**

Feticide; Manslaughter of an Unborn Child

**Description:**

Creates the offenses of feticide and manslaughter of an unborn child and establishes penalties.

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

