



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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2006 Law Enforcement Coalition Legislative Package

HONOLULU - The Hawaii Law Enforcement Coalition -- Hawaii's four County Prosecutors, four Police Chiefs, the United States Attorney, and the Hawaii Attorney General -- has announced a legislative package of seven bills designed to strengthen the laws against sex offenders; protect the public; fight illegal drugs; reform laws regarding sentencing and testimony; protect viable fetuses; ban a dangerous weapon; and ensure that blank votes and overvotes are not counted in determining whether a constitutional amendment has been ratified.

The members of the Law Enforcement Coalition support a broad range of bills that protect the public safety, help law enforcement, and help to restore balance to the criminal justice system. Each of the seven bills included in the Coalition's legislative package has the unanimous support of every member of the Coalition.

The following bills comprise the 2006 Law Enforcement Coalition legislative package:

Sexual Assault Crimes

- Amends the state constitution to provide that the Legislature may define what behavior constitutes a continuing course of conduct in sexual assault crimes, and that the Legislature may define what constitutes the unanimity that is required for a conviction in sexual assault crimes.

In cases when an adult sexually assaults a child over the course of months or years, it is very difficult for the child to remember dates with particularity. Section 707-733.5, Hawaii Revised Statutes, was intended to address this situation and enable a jury to render a guilty verdict if the jury unanimously agrees that the child was sexually

assaulted at least three times, even if the jury is not unanimous regarding which three incidents form the basis of their verdict. However, in the case of State v. Rabago, 103 Haw. 263 (2003), the Hawaii Supreme Court held that section 707-733.5, Hawaii revised Statutes, is unconstitutional.

This amendment would reverse the effect of the Rabago decision and would allow the Legislature to enact new legislation that would accomplish the goal of enabling the prosecution of those who repeatedly sexually assault children that section 707-733.5, Hawaii Revised Statutes, was intended to accomplish.

An amendment similar to this amendment was proposed to the voters in 2004 and received "yes" votes that constituted 65.6 percent of the votes cast, but the amendment was invalidated by the Hawaii Supreme Court on the ground that the Legislature had not followed correct procedures in proposing the amendment to the voters.

As the majority of the electorate has already determined, this amendment is necessary to strengthen the ability to effectively prosecute those who repeatedly sexually assault children.

Electronic Surveillance

Hawaii's electronic surveillance law is outdated and unusable. This bill gives law enforcement the tools it needs to help fight sophisticated drug dealers (without incorporating any part of the USA Patriot Act.) These same tools are used by law enforcement throughout the United States.

A fair and effective electronic surveillance law is essential to law enforcement efforts to shut down the production and distribution of illegal drugs, especially methamphetamine. Hawaii's existing electronic surveillance law is hopelessly behind current technology, and is so restrictive that wiretaps are virtually never used by Hawaii law enforcement officers.

Many operations to investigate, capture, and prosecute high-level illegal drug dealers are joint operations with federal law enforcement agencies, and many warrants in these cases are issued by federal courts. But because Hawaii has different requirements for electronic surveillance warrants, evidence obtained through federal warrants may not be usable in our state courts. And state electronic surveillance warrants are virtually never used because current state law requires a pre-warrant hearing in court. Witnesses at such hearings may be placed in life-threatening danger if their identities are revealed to drug dealers. No other state or jurisdiction has such a hearing requirement.

Hawaii needs an electronic surveillance statute that gives law enforcement officers a usable tool to protect Hawaii residents against crime, especially drug crime; is up to date with current technology; and allows evidence obtained through federal electronic

surveillance orders to be used in state courts. This bill will accomplish all of these goals.

Sentencing Reform

- Provides for a mandatory sentence of 30 years to life for habitual violent felons
- Adds 15 serious class C felonies to the list of offenses subject to repeat offender sentencing
- Makes class A felony drug offenders and recidivist drug offenders ineligible for lenient sentencing under Act 161 (2002)
- Changes the beginning of the period of eligibility for repeat offender sentencing to include the later of the date of conviction or the date of release from prison, parole, or probation
- Adds 19 serious class B and class C felonies to the list of offenses for which a deferred acceptance of plea (DAG or DANC) is not permitted
- Enhances and clarifies certain sentencing provisions

This bill will help to protect the public from repeat violent felons whose repeated violent crimes show they pose an enormous danger to the public. It will help to ensure that drug offenders with prior felonies, and drug offenders who possess the large amounts of illegal drugs involved in class A felonies, are not excluded from mandatory sentencing laws. It will also update laws regarding repeat offenders and laws regarding deferred acceptance of plea to include offenses that have been created through recent legislation. In short, it will make Hawaii safer.

Testimony of Defendants in Criminal Cases

- Amends the state constitution to allow testifying defendants in criminal cases to be impeached with evidence of prior convictions for crimes involving dishonesty.

In federal court and in the courts of almost all other states, when a criminal defendant or any other witness testifies, the witness's prior convictions for crimes involving dishonesty can be used to impeach the witness -- that is, to help the jury decide if the witness is telling the truth. But in Hawaii, a state supreme court case prohibits the use of such prior convictions to impeach defendants in criminal cases, even though victims and other witnesses to crime can be impeached in this way. Hawaii is virtually unique, and as a result, the truth-finding function of trials suffers. This amendment would provide that, in a criminal case, the judge or jury can use evidence of prior convictions of crimes involving dishonesty to evaluate a testifying defendant's credibility, to the same extent as with any other testifying witness. It will help juries find the truth and render fairer verdicts.

Criminalizing Third Party Conduct Against a Viable Fetus

- Criminalizes the acts of a third party who, without the mother's consent, kills or injures a viable fetus.

This bill criminalizes third party conduct that results in the death, serious bodily injury, or substantial bodily injury to a viable fetus or to a live baby when the culpable conduct is directed against the viable fetus and where the third parties who may be held criminally liable do not include the mother of the fetus or licensed medical personnel conducting lawful medical procedures at the request of the mother or to save the mother's life. Currently, based upon a recent Hawaii Supreme Court decision, the Hawaii Penal Code's definition of "person" is a human being who is born and is alive and therefore does not include a viable fetus. Thus, there is no criminal liability for any prenatal criminal conduct directed against a viable fetus. This bill enables criminal prosecution for such acts by amending the definition of "person" to include a viable fetus and by separately defining viable fetus.

Browning Machine Gun Rifle and Ammunition Ban

- Prohibits the importation or transfer of ownership of the Browning Machine Gun (BMG) rifle and its ammunition.

The BMG rifle has great capacity for long distance and highly destructive firepower that, consequently, poses a serious threat to human beings, in particular police and military personnel. Such firepower could also potentially pose a terrorist threat because of the BMG rifle's capability to reach and destroy long-range targets such as public and private buildings, public utility sources, fuel and chemical storage facilities, and transportation vehicles and facilities. This bill will prevent BMG rifles and the ammunition used in these dangerous weapons from getting into the State.

"Yes" means "Yes," "No" means "No," "Blank" means "Blank"

- Prohibits the counting of blank votes and overvotes in determining whether a proposed constitutional amendment has been ratified

By removing the inclusion of blank votes and overvotes, this amendment will resolve the present anomaly of treating blank votes and overvotes as "no" votes in determining whether a proposed constitutional amendment has been ratified. The amendment will

ensure that the will of the electorate is followed, and that the decision of those voters who choose to take no position on a proposed constitutional question is respected.

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