



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 2128, RELATING TO THE PENAL CODE.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING

DATE: Tuesday, January 29, 2008 **TIME:** 8:50 AM

LOCATION: State Capitol Room 329
Deliver to: Committee Clerk, Room 326, 3 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General strongly supports this measure.

The purpose of this bill is to provide greater protections to victims of domestic violence who the court and police are attempting to keep safe through family court domestic abuse protective orders and police orders upon family or household members to leave premises.

This bill upgrades the misdemeanor offenses of terroristic threatening in the second degree and assault in the third degree to the class C felony offenses of terroristic threatening in the first degree and assault in the second degree, if the offenses are committed against victims covered by protective orders.

This bill makes clear that crimes against these protected victims are very serious. It is intended to provide a greater deterrent to violence against a particularly vulnerable class of victims in high risk situations. Often, going after a defendant via a criminal contempt or misdemeanor assault or terroristic threatening proceeding does not give the police and prosecutors the tools they need to intervene in a meaningful way. By upgrading the criminal offenses as provided in this bill, the police and

prosecutors may have the legal leverage to a break the vicious cycle of violence in some cases.

Victims of domestic violence often endure extended periods of mental abuse, intimidation, harassment, terrorization, and physical violence before they reach out for help. It can take a great deal of courage, strength, and desperation to seek the help of the police, the court system, and others. And often, even with intervention by police and judges, the abuse and violence do not end. When these victims cry for help, they should be able to get the protection that they are seeking and be safe from their abusers. Current laws do not provide adequate deterrent. This bill is intended to do that.

The Department respectfully requests the passage of this measure.

Testimony on behalf of the
Office of the Public Defender, State of Hawai'i
to the House Committees on
Human Services & Housing and Health

January 29, 2008

RE: H.B. 2128: Relating To the Penal Code.

Chairs Shimabukuro and Green and Members of the Committees:

H.B. 2128 proposes to new categories of offenses to the crimes of Assault in the Second Degree and Terroristic Threatening in the First Degree, both class "C" felonies, punishable by up to 5 years prison or 5 years imprisonment.

The Office of the Public Defender does not support this legislation. The new offense would punish intentionally or knowingly causing "bodily injury" to a person who the defendant has been restrained from contacting and to a person who is "being protected by a police officer who has ordered the person to leave the premises of that protected individual ... during the effective period of that order".

This is an attempt to make a felony out of what is currently a misdemeanor offense. "Bodily injury" is physical pain or impairment of physical condition. HRS § 707-700. If a complainant says "it hurt" or claims to have "felt pain", even without any corroborating proof of injury such as physical appearance of injury or medical evidence, it is enough to establish "bodily injury". That is why the intentional or knowing infliction of "bodily injury" is a misdemeanor.

The only time it currently becomes a felony offense is when it is accompanied by the presence of a dangerous instrument (e.g. a firearm, weapon, etc.) OR, it is inflicted on a correctional, educational, or emergency medical services worker. The latter categories represent three groups that the legislature has singled out for special treatment.

This bill seeks to add to the category of persons receiving this special treatment in both the assault statute as well as the terroristic threatening statute. We continue to be opposed to singling out specific groups of people for special treatment when doing so is at odds with the structure of our Penal Code. In general, that structure is based upon the gravity of an act combined with the harm it causes or threatens and the degree of intent that the actor possessed at the time. For example, intentionally slapping someone and causing pain is a misdemeanor while recklessly hitting someone and causing a broken bone is a felony. That structure is not followed by this proposed legislation.

Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 527-6516•



PETER B. CARLISLE
PROSECUTING ATTORNEY

DOUGLAS S. CHIN
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE MAILE SHIMABUKURO, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING
Twenty-fourth State Legislature
Regular Session of 2008
State of Hawai'i**

January 29, 2008

RE: H.B. 2128; RELATING TO THE PENAL CODE.

Good morning, Chair Shimabukuro and members of the House Committee on Human Services and Housing, the Department of the Prosecuting Attorney submits the following testimony in support of House Bill 2128.

The purpose of this bill is to provide an enhanced grade of offense for specified crimes committed against victims of domestic violence who are protected by an order issued pursuant to Hawaii Revised Statutes Chapter 586 or by a 24 hour period of separation and who are assaulted, or threatened by the person who is the subject of a restraining order or period of separation.

Domestic violence is a widespread and serious problem across the United States as well as Hawaii. It has been estimated that up to 3 million American women are physically abused by their husbands or boyfriends each year. And in an effort to protect these victims from further abuse, laws were passed such as the 24 hour period of separation and creation of restraining orders specifically designed to protect domestic violence victims. Domestic violence victims who have sought the shelter of these laws should be able to benefit from the added legal protection that these statutes were designed to provide. Victims who demonstrate the courage to come out from under the vicious cycle of domestic abuse must be assured that the criminal justice process affords an adequate deterrent for those whose persistent violent behavior ignores the dignity and integrity of a lawful order of a judge or law enforcement officer. Currently, a small, but significant minority of domestic violence perpetrators insist on continuing their threats, abuse, and intimidation despite receiving specific verbal and written warnings from lawful authority to cease and desist their violent conduct. A recent case involving such an offender creates an excellent example of why a greater deterrent is needed for habitual domestic violence offenders. This defendant, despite fifteen (15) arrests and nine (9) convictions for violating orders issued under Chapter 586 has never served more than thirty days in jail. Recalcitrant abusers like this individual need a stronger message that this type of behavior will not be tolerated. The victims of domestic violence in this state need to be reassured that our domestic violence laws are more than simply words on a piece of paper. A meaningful commitment to their protection is now required. Unfortunately for the victim of the perpetrator

described above she subsequently nearly lost her life and the life of her child before her abuser was ever charged with a felony. He is currently out on bail awaiting trial.

We can and should provide better protection for victims of domestic violence in Hawai'i. For this reason, we support an enhancement in the grade of offense when a defendant threatens or assaults a domestic violence victim under the protection of the period of separation provided under H.R.S. Section 709-906 or an order issued pursuant to H.R.S. Chapter 586, as contained in this bill.

We respectfully request your favorable consideration of H.B. 2128. Thank you for your time and consideration.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
MICHAEL D. TUCKER
DEPUTY CHIEFS

OUR REFERENCE: EY-NTK

January 29, 2008

The Honorable Maile S. L. Shimabukuro, Chair
and Members
Committee on Human Services and Housing
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Shimabukuro and Members:

Subject: House Bill No. 2128, Relating to the Penal Code

I am Richard C. Robinson, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 2128, Relating to the Penal Code.

Passage of this bill will assist victims of domestic violence by giving them greater protection from further physical attacks. This bill also increases the penalty for assaulting a victim who has been granted a court protective order or a 24-hour stay-away order issued by the police. Passage of this bill will also send a clear message that the legislature supports and stands by victims of domestic violence as they go through the difficult and frightening stages of breaking the domestic violence cycle.

The Honolulu Police Department urges you to support House Bill No. 2128, Relating to the Penal Code.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Robinson", written over a horizontal line.

RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:

A handwritten signature in black ink, appearing to read "Boisse P. Correa", written over a horizontal line.

for: BOISSE P. CORREA
Chief of Police



TO: Josh Green, Chair
John Mizuno, Vice Chair
Members of the Health Committee

Maile Shimabukuro, Chair
Karl Rhoads, Vice Chair
Members of the Human Services & Housing Committee

FR: Nanci Kreidman, M.A.

RE: HB 2128

Aloha, and thank you for scheduling HB 2128 for hearing. We are in support of this measure as it places focus and accountability on the perpetrator of intimate partner crimes. It is imperative that our community response include programs, safety planning, law enforcement intervention, healthcare and financial assistance to victims. It is also imperative for the community to effect a strategy for imposing sanctions, fines, incarceration, and accountability for abusers.

When a perpetrator has already made an appearance in court, or has been instructed by police to follow a course of action, the blatant disregard of such intervention must be considered a serious transgression. Those abusers who will behave with such disregard raise red flags that cannot be minimized or ignored. They are high risk for more potentially lethal crimes.

Thank you for inviting community testimony on this important issue.

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

Hearing date and time: January 29, 2008 at 8:50 a.m., Committees on Human Services and Housing and Health

RE: H.B. 2128 Relating to the Penal Code

TO: Chair Shimabukuro, Vice Chair Rhoads and members of the Committee on Human Services and Housing; Chair Green, Vice Chair Mizuno and members of the Committee on Health

FROM: Ana Maring, Hawaii State Coalition Against Domestic Violence

Aloha, my name is Ana Maring and I represent the Hawaii State Coalition Against Domestic Violence (HSCADV). HSCADV is a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV supports HB2128.

Research shows that victims intimate partner violence (IPV) often continue to be in danger from their batterer and are in fact likely to be at increased risk once they separate. Statistics show that approximately 75% of the women murdered by a partner or former partner had separated from their batterer or told their batterer they planned to leave. Many victims of IPV seek Temporary Restraining Orders (TRO)/Protective Orders (PO) as a tool to increase their safety. We believe that holding batterers accountable for their behavior is one of the major tools we have in stemming IPV.

Thank you for the opportunity to testify.