



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

ON THE FOLLOWING MEASURE:

H.B. NO. 3379, H.D. 1, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 19, 2008 **TIME:** 3:30 PM

LOCATION: State Capitol Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

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

Chair Waters and Members of the Committee:

The Department of the Attorney General supports this measure.

The purpose of this bill is to repeal the existing offense of abuse of family or household members and recodify the law by separating and clarifying its procedural and substantive provisions. It establishes three degrees of abuse of family or household member, including a new offense that prohibits physical harassment. The bill also makes conforming amendments.

Section 709-906, Hawaii Revised Statutes, the current statute on abuse of family or household members, provides for both felony and misdemeanor abuse offenses. But there are some cases initiated and investigated as abuse offenses that have insufficient facts to support an abuse charge. While the case may clearly be a domestic violence incident, prosecutors currently do not have much choice but to prosecute the case as a general harassment offense under section 711-1106, a petty misdemeanor offense. There are also cases that do have sufficient facts to support an abuse charge, but are pled down to harassment when prosecutors encounter evidentiary problems, such as when victims or other crucial witnesses refuse to testify or become unavailable. It is important and appropriate to treat these harassment type cases as domestic violence cases. They are incidents of domestic violence and should be recognized and treated

accordingly. This bill addresses this issue by creating a petty misdemeanor offense of abuse of family or household member in the third degree.

Currently, defendants in cases that result in harassment convictions are not necessarily ordered to participate in domestic abuse intervention programs. And harassment convictions are not considered in the abuse sentencing scheme and therefore do not support any sentencing enhancements. Furthermore, someone looking at a defendant's prior criminal history may not recognize a harassment conviction for what it really is, an incident of domestic violence, and may make decisions based on that misperception. This bill addresses these issues by creating the new third degree abuse offense.

We respectfully request the passage of this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY**

Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

February 19, 2008

RE: H.B. 3379, H.D. 1; RELATING TO DOMESTIC VIOLENCE.

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 3379, H.D. 1.

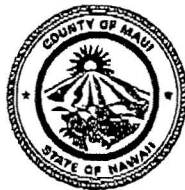
The purpose of this bill is to: 1) separate domestic abuse procedural provisions from the provisions which set forth criminal offenses; 2) separate out the felony and misdemeanor offenses in separate sections; 3) clarify that the police officer may order a person to leave the premises without actual abuse having occurred, as long as the officer has reasonable grounds to believe there is an immediate risk that the person will inflict physical abuse or harm on a family or household member; and 4) creating a third degree of the offense of Abuse of a Family or Household Member which punishable by a minimum term of imprisonment of two days imprisonment and requires attendance in a domestic violence intervention program; this new offense is comparable to the offense of Harassment in Hawaii Revised Statutes section 711-1106.

We support the passage of this bill. It has been estimated that approximately one in every three women has been a victim of physical abuse by a partner. Often the violence against these women escalates in time and can sometimes lead to serious injuries or death. The two recent domestic violence deaths of Janel Tupuola and Jenny Hartsock are reminders of the necessity for effective and strong responses and intervention in domestic violence situations. For this reason, we support the passage of H.B. 3379, H.D. 1 as it would clarify and improve the application of domestic violence offenses.

Thank you for this opportunity to testify.

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CHARMAINE TAVARES
Mayor



BENJAMIN M. ACOB
Prosecuting Attorney

PETER A. HANANO
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793+
PHONE (808) 270-7777 • FAX (808) 270-7625

February 15, 2008

THE HONORABLE TOMMY WATERS, CHAIR
THE HONORABLE BLAKE K. OSHIRO VICE-CHAIR
COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,
IN SUPPORT OF HOUSE BILL NO. 3379 HD1
RELATING TO DOMESTIC VIOLENCE

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly supports H.B. 3379 HD1 Relating to Domestic Violence.

This bill creates a petty misdemeanor level offense of domestic abuse so that appropriate cases may be so treated and it requires offenders at this level to go through a Domestic Violence Intervention program.

The current statute on Abuse of Family or Household Member, Section 709-906, Hawaii Revised Statutes, sets two levels of abuse, felony and misdemeanor. There are many instances of abuse when the facts require amendment to harassment, a petty misdemeanor. Some true misdemeanor level abuse cases are also pled down to harassment when the prosecution encounters problems with proving the case including when victims refuse to testify, witness unavailability, etc. For these cases, it is appropriate to treat them for what they are -- abuse cases. This bill addresses this issue by providing a new petty misdemeanor level of Abuse of Family or Household Member in the Third Degree. Currently, offenders in cases amended down to a Harassment are not necessarily ordered to participate in Domestic Abuse Intervention programs nor does a Harassment conviction count for sentencing enhancements should the abuser re-offend. This bill requires petty misdemeanor level offenders to participate in a

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Domestic Violence Intervention program.

This bill provides greater protection to victims of domestic violence by requiring offenders to go through a Domestic Violence Intervention program whether the level of offense is by nature a petty misdemeanor level offense or a true misdemeanor level offense amended to a petty misdemeanor level offense by plea agreement. It is imperative that intervention be required to prevent abuse from escalating.

This bill will also result in the processing of many more cases in the courts as many more cases will be tried by a judge rather than tried by a jury.

Accordingly, for the reasons discussed above, our Department strongly supports H.B. 3379. Thank you for the opportunity to testify.

(H.B. 3379 HD1, Relating to Domestic Violence.)

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 JC-NTK

February 19, 2008

The Honorable Tommy Waters, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

Subject: House Bill No. 3379, H.D. 1, Relating to Domestic Violence

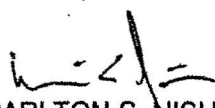
I am Carlton S. Nishimura, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 3379, H.D. 1, Relating to Domestic Violence.

Domestic violence is a serious issue in Hawaii. We believe this bill shows that the legislature understands and is willing to provide deterrents to curb it.

Thank you for the opportunity to testify.

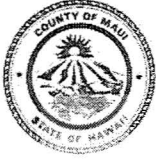
Sincerely,


CARLTON S. NISHIMURA, Major
Criminal Investigation Division

APPROVED:

for 
BOISSE P. CORREA
Chief of Police

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CHARMAINE TAVARES
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411

February 15, 2008



THOMAS M. PHILLIPS
CHIEF OF POLICE

GARY A. YABUTA
DEPUTY CHIEF OF POLICE

The Honorable Tommy Waters, Chair
And Members of the
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

SUBJECT: House Bill No. 3379, HD1, Relating to Domestic Violence

I am Thomas M. Phillips, Chief of Police of the Maui County Police Department and member of the Hawaii Law Enforcement Coalition. We support House Bill no. 3379, Relating to Domestic Violence.

The purpose of this bill is to amend the existing offense of abuse of family or household members by creating a petty misdemeanor level offense of domestic abuse, requiring offenders at this level to go through a Domestic Violence Intervention program.

The current statute on Abuse of Family or Household Member set two levels of abuse, felony and misdemeanor. Many instances of abuse are amended by the prosecution to harassment due to its facts and circumstances of the case. This bill provides the additional classification of Abuse of Family or Household Member in the third degree, a petty misdemeanor, requiring offenders to participate in Domestic violence Intervention programs.

This bill will provide greater protection to victims of domestic violence and aid the police in investigating and classifying cases of domestic violence which are on the statutory fringe of harassment. Allowing the police to properly classify these cases for what they really are, domestic abuse cases. This bill will also aid provide intervention to offenders of domestic abuse at the beginning stages of domestic violence and will hopefully prevent it from escalating.

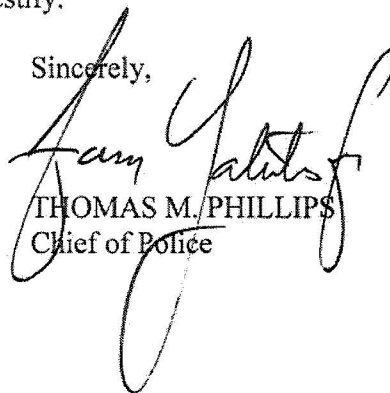
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The Honorable Tommy Waters, Chair
And Members of the
Committee on Judiciary
February 15, 2008
Page 2

The Maui County Police Department supports House Bill no. 3379, Related to
Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,



THOMAS M. PHILLIPS
Chief of Police

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Domestic Violence Action Center

Formerly the *Domestic Violence Clearinghouse and Legal Hotline*

PO Box 3198 • Honolulu, Hawaii 96801 • Ph:808/534-0040 • Fax:808/531-7228

TO: Chair Tommy Waters
Vice Chair Blake Oshiro
Members of the Committee

FR: Nanci Kreidman, M.A.
Executive Director

RE: H.B. 3379, HD 1

Aloha. We are in general support of this Bill and submit testimony to contribute to this community discussion. The Abuse of Family and Household Member statute has been a signature community strategy in our efforts to address family violence. There are features contained in the law that placed us ahead of the curve across the country, when it was enacted.

Over the last twenty years we have learned so much about family violence. We have built a system, with many parts, involving many professionals and multiple agencies. We have employed policies, practices and procedures believed to support our shared goals. There always exist opportunities to tweak our system, facilitate our convictions, educate ourselves and grow from what we have learned.

We have come to hold a very strong reliance on the criminal justice system to end family violence and hold abusers accountable; this "solution" may not be the best for all victims or every family. This is so for a variety of reasons. But the fact remains that the system, our system, does not, still does not provide safety or accountability. Education, training, technology, coordination and resources continue to be insufficient at all levels. This leaves us struggling to get ahead, keep pace, or protect the next generations from suffering.

The bill before you today does attempt to address some of the problems that have arisen these last 15 years. I offer the following, which does not provide any solutions, but must be considered as we continue to be faced with, challenged by, distressed from the ways we are failing to adequately keep victims safe or abusers responsible for the violence they commit against beloved family members.

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There are gaping holes, and startling weaknesses in our system. Significant players in the field lack adequate training. Recruit police training has been shortened and recall training is not a priority. Our staff and our clients continue to experience difficulty in certain districts. Enforcement of court orders, by law enforcement is uneven and unpredictable. Violations of restraining orders is one example. Abusers who continue to harass and stalk their former partners are not pursued with vigor and cases are not regularly made; we have a stalking law and it is rarely used. Victims are terrorized daily, I have a woman who calls me personally, and three weeks ago, she called me five times that week describing different incidents. When she went to court, which was the following week, her abuser got a continuance, because he said he needed to get his cell phone records and didn't have them (hadn't requested them yet) that morning for the scheduled trial date.

For those abusers who make it to court the sanctions imposed are not sending the strong message intended by the passage of the original 709-906, or the significant opportunity present by a judge which is well understood by well informed courts. Abusers who do not comply with court orders or conditions of probation are given multiple chances. One chance could mean death or serious suffering. Batterers intervention programs are not successful in a vacuum; they are part of the criminal justice system we have them placed within-and thus all the parts must work effectively.

The importance of managing the court calendar does lead to plea bargains and yet continuances are common. The inconvenience this creates for victims cannot be overstated. Her abuser either does not receive the strong message needed, or the victim remains at risk while court cases drag on. Deferred acceptance of guilt pleas are dangerous for victims and ineffective in the pursuit of justice and safety. Deferred acceptance of no contest pleas create similar problems.

We need a holistic community response to domestic violence. I realize that we have achieved many improvements by changing one thing at a time. It would seem crucial at this time, to take a broad look at our system and institute some strong system advocacy, good and comprehensive training, and accountability by the system-otherwise the efforts are empty. And we lose women, children lose mommies and we waste precious dollars that could be better invested.

Deterrence can only be achieved when personal change, political will, and professional wisdom are balanced and intentional. Hope springs eternal, and peace will be within reach for our island families if we keep working hard to put all the pieces into place and tinker with them while we fit them together.

Thank you for inviting our input in this important discussion.

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HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

Hearing date and time: February 19, 2008 at 3:30p.m., Committee on Judiciary

RE: H.B.3379 HD1 Relating to Domestic Violence

TO: Chair Waters, Vice Chair Oshiro and members of the Committee on Judiciary

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 intent of the bill to strengthen laws against domestic violence abusers.

Most victims of intimate partner violence say that by the time police were contacted there have been many incidents of intimate partner violence. Due to the complex nature of abuse our system must find ways to hold batterers accountable and address the underlying belief systems that support the use of violence.

HRS 709-906, Abuse of Family or Household Members, was passed to respond to the fact that domestic violence is not a "private family matter" but a crime. Frequently Prosecutors state they feel the elements of the case are not strong enough to charge the violence as a misdemeanor or that the victim is reluctant to testify and the case would be difficult to prove. As a result the cases are reclassified or plead down to "Harassment", a petty misdemeanor, and sent to District Court. Judges are not required to order Domestic Violence Intervention for "Harassment" cases. While sending batterers to Domestic Violence Intervention programs is no guarantee that the batterer will stop being abusive it does send a message that the batterer must be accountable for his behavior and that they must address the underlying issues of power and control.

Battering is a repeat crime and we must treat the offenders as repeat such. By including a petty misdemeanor in 709-906 repeat acts of domestic violence within specified periods of time and are subject to the rising charges. By charging these cases as Abuse of a Household or Family Member instead of Harassment batterers will be addressed more appropriately throughout our law enforcement system.

Thank you for the opportunity to testify.

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JUDtestimony

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Monday, February 18, 2008 3:46 PM
To: JUDtestimony
Subject: HB3379 HD1 to be heard 02/19 at 3:30pm in Room 325

TO: Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice-Chair
Judiciary Committee Members

FROM: Dara Carlin, M.A.
HSCADV VOICES: The Formerly Battered Womens Caucus
716 Umi Street, Suite 210
Honolulu, HI 96819
(808) 832-9316 X106

DATE: February 19, 2008

RE: Strong Support for HB3379 HD1

Statewide VOICES stands in solidarity with the Law Enforcement Coalition, whose members include prosecuting attorneys, the Attorney General, the US Attorney and the State of Hawaii police departments, in support of HB3379 HD1. This bill would create a petty misdemeanor level offense of domestic abuse so that domestic violence incidents may be properly addressed and would require offenders at this level to go through a Domestic Violence (DV) Intervention program.

Currently, cases that have been amended down to Harassment are not necessarily ordered to participate in DV Intervention programs, nor does a Harassment conviction count for sentencing enhancements should the abuser re-offend. HB3379 would require offenders to participate in DV Intervention programs (whether the level of offense is a petty misdemeanor or a true misdemeanor amended to a petty misdemeanor by plea agreement) so offenders who were previously EXcluded from services would now be INcluded which will translate to enhanced safety for domestic violence victims. DV Intervention programs are intended to decrease acts of violence by the offender and it is imperative that intervention occur at the first sign of DV to avoid its escalation and prevent the unnecessary loss of victims' lives.

Sergeant John Guard (a North Carolina police officer who leads his county's successful DV Prevention Unit and provides DV training nationally) noticed that in DV homicide cases, there was typically a string of misdemeanor offenses or behavior by the perpetrators that escalated over time before the murder occurred. Sergeant Guard recommends early identification, public awareness and education in combination with monitoring and strict accountability for even the smallest offenses by DV perpetrators in order to avert the tragedy of a DV homicide.

Special attention should be paid to HB3379 HD1 because it was created and proposed by the Law Enforcement Coalition whose members work on the front-line of domestic violence every day. This is not a bill that was formulated from best intentions or idealism but from late nights, crime scenes and countless hours of thought in how to make wrong into right.

Thank you for this opportunity to provide testimony on this matter.

Respectfully, Dara Carlin, M.A.

P.S. I am going to try my best to be present for this hearing but may be tied up in court with a client, so my apologies in case I am unavailable.

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<http://biggestloser.msn.com/>

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JUDtestimony

From: guy yatsushiro [REDACTED]
Sent: Monday, February 18, 2008 5:09 PM
To: JUDtestimony
Subject: Support for HB3379 HD1: Judiciary Committee - February 19, 2008 at 3:30pm

Representative Waters, Representative Oshiro and Members of the House Judiciary Committee,

I am in support of HB3379 HD1 that will create a "Domestic Violence in the 3rd Degree" offense and would like to encourage your support for this measure as well.

Whenever there's a problem in any organization, the people who work in the organization will usually have some ideas about how to correct the problem and that's what I like about this bill - it's coming from the professionals who are working with the problem of domestic violence day in and day out. The Kailua woman who was killed in the middle of the street was a wake-up call to all of us: domestic violence is a bigger problem than we thought and it's not just a private family matter any longer.

The criminals who perpetuate this problem need to be treated seriously and held accountable the FIRST time they hurt someone - then maybe they'll take domestic violence seriously and that'll make them think twice before victimizing someone weaker again. We need to support the professionals who have to work with these criminals because they're the ones who can stop these guys - that Good Samaritan who tried to help the Kailua woman showed everybody how unprepared we really are to deal with this problem so if the professionals are stepping up to the plate with a solution, I say let's do it.

Please vote in support of HB3379 HD1 and thank you for hearing my testimony.

Guy Yatsushiro, M.D.
[REDACTED]

Honolulu, HI 96826
[REDACTED]

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<http://www.yahoo.com/r/hs>

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