

Testimony of the
Office of the Public Defender, to
The House Committee on the Judiciary

February 19, 2008

Re: H.B. No. 3379, H. D. 1: Relating to Domestic Violence

Chairman Waters, and Members of the Committee:

The Office of the Public Defender has reviewed the above-entitled legislation, and while we are in general agreement with many of the changes, we still have very serious concerns regarding particular sections that are either in conflict with current law, or are incongruous with the purported intent of the bill.

I. Section 709-B (5)

Our greatest concern in H.B. 3379, H.D. 1, is § 709-B (5). This section is a completely new section to the current domestic violence statutes. It allows a police officer to order a person to leave the premises and issue a written warning, even where there is no evidence or belief by the officer that the "person in question" has inflicted any physical harm or abuse upon a household member. All that is required is a reasonable belief by the officer that based upon certain factors, there is an immediate risk that the person will inflict physical abuse or harm upon a family or household member.

We strongly suggest that this section be deleted, because it 1) it relies on conduct that is speculative in nature, 2) two of the three factors specified are crimes in and of themselves, 3) it could clearly open up the Honolulu Police Department to added civil liability unnecessarily, and 4) the section could potentially be misused by individuals going through divorce and other domestic legal proceedings.

Asking a police officer to find reasonable grounds that there is an immediate risk that a person will inflict physical abuse based on three enumerated factors and other unstated factors, is asking an officer to speculate about the future conduct of another person. This is an unrealistic way to prevent harm. Moreover, it may erode confidence in the justice system inasmuch someone who has been found by the officer to not have committed any crime, is nonetheless punished by being ordered to leave.

Second, the enumerated factors of property damage or threats are already independent crimes. Criminal Property Damage and Terrorist Threatening can be misdemeanors or felonies, depending on the circumstances, and therefore the "person in question" may be arrested and removed from the situation immediately.

Third, this section could open each police officer responding to a domestic disturbance to civil liability. An officer who fails to utilize the proposed section by not gathering all the information regarding the situation could be held liable if a person involved causes later harm.

Finally, this section also has great potential for misuse by those going through or contemplating domestic legal proceedings. In child custody battles, people are well aware that if the other spouse has been a subject of any kind of domestic disturbance or violence, it weakens their chances of obtaining custody.

II. Section 709-B (1)

Section 709-B (1) adds the language, "with the approval of a law enforcement officer". We are concerned that placing the discretion with the Police Officer to refuse transport appears incongruous with the intent of the statute to assist a complainant.

III. Section 709-B (4) (d) and (e)

The above-state section uses the phrase "abused person", which is a conclusion about the situation. The more appropriate and consistent phrase should be "family or household member."

IV. Section 709-C, (1) (b); 709-D (1) (b)

These two sections make multiple convictions of violating an order to leave a felony in the first instance where there are two or more prior violations and a misdemeanor in the second instance where there is one prior violation.

We are opposed to these two sections because both sections call for increased penalties and/or mandatory terms of imprisonment, where there may have been no physical harm inflicted by the person in question.

V. Sections 709-D (2) (b)

We oppose the provision in this section that denotes that a prior conviction that occurs within five years of the current conviction will subject a person to repeat offender status. We believe that five years is too long a time period.

VI. Section 709-E

This proposed section combines the current offense of Harassment and Abuse of a Household Member. The problem is that the conduct prohibited by what would become Abuse of a Family or Household Member 3^o is so broad that it would criminalize trivial conduct which occurs in everyday domestic disagreements. All that is required is a slap or shove in an offensive manner and the offender would face a minimum forty-eight hour jail term. No injury or physical abuse need result. The current offense of Harassment (HRS § 711-1106) adequately covers the conduct that is targeted in this section and a mandatory jail term for this conduct is unnecessary.

Thank you for the opportunity to submit testimony on this legislation.