

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

March 28, 2008

Re: H.B. No. 3379, H. D. 2: Relating to Domestic Violence

Senator Taniguchi and Members of the Committee:

The Office of the Public Defender has reviewed the above-entitled legislation, and while we were in general agreement with some of the changes proposed in earlier versions of the bill, we do not support the bill in its current form.

In Section 3, the bill proposes to add a definition of “physical abuse” to Chapter 709:

“Physical abuse means striking, shoving, or kicking a person in an offensive manner, or subjecting a person to offensive physical contact with the intent to harass, annoy, or alarm”.

This definition mirrors a section in our current Harassment statute, § 711-1106(1)(a):

“A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person: strikes, shoves, kicks or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact.”

We believe that the proposed definition of “physical abuse” creates problems with actual prosecution of these cases. The 2nd degree offense would punish as a misdemeanor any person who:

“Intentionally, knowingly, or recklessly physically abuses a family or household member”.

The 3rd degree offense would punish as a petty misdemeanor any person who:

“Intentionally subjects a family or household member to physical abuse with the intent to harass, annoy, or alarm.”

We are at a loss to understand the difference between physically abusing someone versus subjecting someone to physical abuse.

The newly named subsection “Special Procedures for abuse of family or household members” basically repeats procedures currently found in §709-906, with one notable exception. This bill adds the language, “with the approval of a police officer” to the provision for

transportation of an “abused person” to a hospital or safe shelter by the police. We are concerned that placing statutory discretion with the police officer to refuse transport appears incongruous with the intent of the statute to assist a complainant.

We also note that it is not necessary to designate the procedures in this section as “special”; it is sufficient to note the procedures without putting a qualitative label on them which may then give rise to demands for other classes of victims for the same “special” designation for offenses related to their victimization.

We also note the inappropriateness in the above-referenced section’s use of the phrase “abused person”, which is a conclusion about the situation. The more appropriate and consistent phrase should be “family or household member.”

We object to the newly created § 709-C which would make a felony offense out of a petty misdemeanor if two prior petty misdemeanors were committed within two years. It is completely out of whack with our penal code to create a felony offense for what is, by definition, a third petty misdemeanor. This is particularly unfair when a defendant would have had no right to a jury trial for the two previous petty misdemeanor cases. We note that the Hawaii Supreme Court has determined that there is no right to a jury trial for a petty misdemeanor offense.

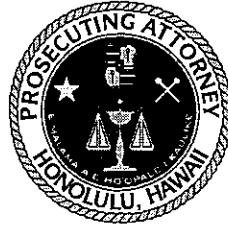
We oppose the inclusion of the 3rd degree offense in the list of violent offenses in §351-32 because it essentially includes harassment as a crime of violence.

In summary, H.B. 3379, H.D. 2 creates more problems than it solves. We do not support its passage.

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

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 BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

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

March 28, 2008

RE: H.B. 3379, H.D. 2; RELATING TO DOMESTIC VIOLENCE.

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to House Bill 3379, H.D. 2 as written.

The purpose of this bill as originally introduced was to: 1) separate domestic abuse procedural provisions from the provisions which set forth criminal offenses; 2) separate out the felony and misdemeanor offenses in distinct 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 which 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. However as amended, this bill deletes all mandatory sentences that may currently be imposed for abuse of a family or household member (AFHM) and provides a statutory definition of physical abuse and redrafts some of the proposed AFHM offenses.

We oppose the bill in its current draft for several reasons. First, the bill deletes both the: 1) mandatory minimum forty-eight hours of imprisonment for the first offense of AFHM; and 2) the mandatory minimum of thirty days imprisonment for any offense of AFHM that occurs within five years of a previous conviction of AFHM. These mandatory minimums have been a feature of the sentence for the misdemeanor offense for many years and have been effective in deterring incidents of domestic violence and underscoring the serious nature of domestic violence.

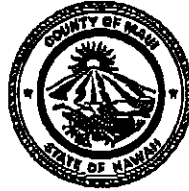
Secondly, we note that the bill also creates a statutory definition of “physical abuse.” It is defined as “striking, shoving, or kicking a person in an offensive manner, or subjecting a person to offensive physical contact with the intent to harass, annoy or alarm.” Under the current AFHM statutes, the term “physical abuse” is used but is not statutorily defined. However, the Hawaii Supreme Court in State v. Kameenui, 69 Haw. 620 (1988) has already held that the undefined term “physical abuse” does not render the AFHM statute unconstitutionally vague. We therefore do not believe that further definition of the term is necessary. Furthermore, we believe the proposed statutory definition may actually generate more confusion. The proposed statutory definition appears to be taken from the language of the offense of Harassment (Hawaii Revised Statutes section 711-1106) which states that a person commits the offense if the person “with intent to harass, annoy or alarm any other person, that person. . .strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact.” It is clear in the Harassment offense that the striking, shoving or kicking and the offensive touching have to be done with the intent to harass, annoy or alarm. However as modified in H.B. 3379, H.D. 2 with the intent language at the end of the phrase, it is unclear whether the intent to annoy, harass or alarm applies only to the offensive physical contact or whether it also applies to striking, shoving or kicking. We also observe that under the proposed definition, it will actually become more difficult to prove the offense of AFHM as a specific intent to annoy, harass or alarm may now have to be proved beyond a reasonable doubt.

Finally, we also note that under H.D. 2 of H.B. 3379, the misdemeanor offense of AFHM in the second degree can be committed by intentionally, knowingly or recklessly physically abusing a family or household member, yet the petty misdemeanor offense of AFHM in the third degree can be committed only by intentionally subjecting a family or household member to physical abuse. It appears to be counterintuitive that the lesser degree of the offense requires a more culpable state of mind than the more serious grade of the offense.

For these reasons, we oppose House Bill 3379, H.D. 2 as presently written.

Thank you for this opportunity to testify.

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

March 27, 2008

THE HONORABLE BRIAN T. TANIGUCHI, CHAIR
THE HONORABLE CLAYTON HEE, VICE-CHAIR
COMMITTEE ON JUDICIARY AND LABOR

THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,
IN OPPOSITION TO HOUSE BILL NO. 3379 H.D.2
RELATING TO DOMESTIC VIOLENCE

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui opposes H.B. 3379 H.D.2 in its current version. This Department and the Department of the Prosecuting Attorney, County of Kauai spearheaded the drafting of the original bill and had first and foremost abuse victims' protection and safety in mind. Needless to say, we are very disappointed with the current version of the bill as amended by the House Judiciary Committee because the current version takes no account of victims' protection and safety by deleting the mandatory sentencing provisions. Those mandatory sentencing provisions were basically taken from the current statute as it exists today. H.B. 3379 H.D.2, if passed, provides even less protection and safety than the current law. Passing H.B. 3379 H.D.2 in its current version is basically equivalent to doing away with the current abuse statute because its sentencing scheme is already provided by the existing assault statutes.

For this reason, it is with deep regret to oppose the very bill that we assisted in drafting because it has been amended in a form that compromises the protection and safety of abuse victims.

By letter dated February 5, 2008 and faxed to your office I, as one of two major players in drafting the original bill, asked your Committee to not schedule a hearing for this bill for the reasons I stated above. By scheduling it despite the request, it appears that your Committee is as interested in protecting victims of abuse as we are. If so, we ask that your Committee bring back the form the bill was in before it was amended by the House Judiciary Committee and nothing less. If your conference committee comes up with a version lacking the mandatory sentencing provisions, we ask that you hold the bill in Committee.

Thank you for the opportunity to testify.

(H.B. 3379, H.D. 2, Relating to Domestic Violence).

March 27, 2008

The Honorable Brian T. Taniguchi, Chair
And Members of the
Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

SUBJECT: House Bill No. 3379, HD2, Related 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 are opposed to House Bill no. 3379, HD 2, as written, in its current version. This bill was initiated by the County of Kauai and County of Maui Department of the Prosecuting Attorney, with the protection and safety of abuse victims of the foremost priority.

The current version of this bill submitted by the House Judiciary Committee has deleted the mandatory sentencing provisions initially proposed and replaced it with basically the current statutory sentencing which exists today and, if passed, will provide even less protection and safety for victims of abuse of what exists today.

The Maui County Police Department joins the County of Maui Department of the Prosecuting Attorney in respectfully opposing House Bill No. 3379, HD2, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,

THOMAS M. PHILLIPS
Chief of Police



Domestic Violence Action Center

TO: Chair Brian Taniguchi
Vice Chair Clayton Hee
Members of the Committee on Judiciary and Labor

FR: Nanci Kreidman, M.A.
Executive Director

RE: H.B. 3379, HD2

Aloha. We submit this testimony in opposition to HB 3379, HD2. Our testimony earlier in the session was an expression of ambivalence because one bill is not sufficient to improve the system in all the ways that are necessary to provide safety and accountability.

In Hawaii, we were once on the cutting edge of legislative reform and community advocacy with our laws and programs. There remain ways we must strengthen our system as it is currently functioning, because the victims who seek assistance and protection are not receiving what they need. Neither are the offenders. This Bill does not help us advance the interests of safe families.

Without articulating the many and varied ideas we have for system improvement, may I suggest that the bill proposed today eliminates the framework put in place many years ago - designed to act as a deterrence and an opportunity. Reducing the crime to a petty misdemeanor and eliminating the mandatory jail provision do not send the strong message that perpetrators need to hear.

The criminal justice system alone cannot fix the problem of domestic violence, for sure. But weakening the current laws certainly will not help. Advocacy, resources, cooperative working relationships, training and public awareness of the problem are all still what we need.

Your understanding of the challenges we face on the ground serving victims running for their lives, who are terrified of threats that have been made against them, while facing barriers that must be overcome on their journey as well as the lack of understanding by family, employers, church and friends will be demonstrated by your action to hold HB 3379, HD2.

Thank you



Hearing date and time: March 28, 2008, 9:30a.m., Committee on Judiciary and Labor

RE: H.B.3379 HD2 Relating to Domestic Violence

TO: Chair Taniguchi, Vice Chair Hee 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 strongly opposes the current version of HB3379 HD2.

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. The original draft of HB3379 was intended to provide Prosecutors the tools to better hold batterers accountable under HRS709-906 rather than having cases reclassified or plead down to "Harassment", a petty misdemeanor, and sent to District Court. At some point in the process the original mandatory sentencing for misdemeanor offenses have disappeared from the bill. **Repealing the mandatory sentences is a step backward in our efforts to protect victims of domestic violence and does not send a message that the batterer must be accountable for their behavior.**

Many people would like to portray domestic violence as a simple slap or shove but these are actions are part of a bigger picture that includes threats, terrorizing, degradation and control. If our criminal justice system does not address domestic violence appropriately and consistently it gives batterers the message that they can do anything they want with little or no consequence. Our laws must reflect the seriousness of the violence perpetrated.

We ask that this bill be deferred. Thank you for the opportunity to testify.

testimony

From: JUDtestimony
Sent: Thursday, March 27, 2008 12:37 PM
To: testimony
Subject: HB3379 HD2 to be heard Friday, 03/28 at 9:30am in Room 016 by the Senate Judiciary Committee

This was inadvertently sent to us. Please call me if you have any questions. Thank you.

Sincerely,

Amy M. Luke
OM and Comm. Clerk
Rep. Tommy Waters
Waimanalo, Lanikai
House Judiciary Chair
(808) 586-9450
luke@capitol.hawaii.gov

-----Original Message-----

From: Dara Carlin, M.A. [mailto:breaking-the-silence@hotmail.com]
Sent: Thursday, March 27, 2008 11:58 AM
To: JUDtestimony
Subject: HB3379 HD2 to be heard Friday, 03/28 at 9:30am in Room 016 by the Senate Judiciary Committee

> TO: Senator Brian Taniguchi, Chair
> Senator Clayton Hee, Vice-Chair
> Judiciary Committee Members
>

> FROM: Dara Carlin, M.A.
> Oahu VOICES
> 716 Umi Street, Unit 210
> Honolulu, HI 96819
> (808) 832-9316 X106
>

> DATE: Friday - March 28, 2008
>

> RE: Strong opposition to HB3379 HD2
>
>

> Statewide VOICES would like to ask that you vote in opposition of this measure as it inadvertently will cause more problems and increase potential lethality for victims of domestic violence whose abusers are charged in crimes against them. As this bill has gone through the hearing process the mandatory sentencing piece, that holds batterers accountable for their behavior, was somehow taken out which will only make matters worse. The initial intent of this bill was a good one, but as it stands now, it will only do more harm than help.
>

> Thank you for this opportunity to provide testimony.
>
>

> Respectfully,
>

> Dara Carlin, M.A.
> Oahu VOICES Representative

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testimony

From: Chungs, Molokal [SHOP2@hawaiiantel.net]

Sent: Thursday, March 27, 2008 9:46 AM

To: testimony

Subject: HB 3379, HD2 Relating to Domestic Violence, Committee of Judicial and labor, Hearing on Friday March 28, 2008 at 9:30 AM

Dear Members of the Judicial and Labor Committee

I am very much AGAINST HB 3379, HD 2 because it would remove a second ammendment right guarenteed by the US Constitution for a relatively minor offense.

Please vote against this bill.

Mahalo, Melvin O.S.Chung

P.O. Box 1008 Kaunakakai, Molokai, HI 96748 808 553-5888

testimony

From: Leon Hallacher [leonh@hawaii.edu]
Sent: Thursday, March 27, 2008 10:35 AM
To: testimony
Subject: COMMITTEE ON JUDICIARY AND LABOR - Hearing HB 3379

COMMITTEE ON JUDICIARY AND LABOR
Hearing for HB 3379 - RELATING TO DOMESTIC VIOLENCE
DATE: Friday, March 28, 2008
TIME: 9:30 a.m.
PLACE:
Conference Room 016
State Capitol
415 South Beretania Street

Dear Senator Taniguchi, Chair; Senator Hee, Vice Chair; Committee Members:

I write to request that you kill/table HB 3379 – Relating To Domestic Violence. While it attempts to define levels of domestic abuse to distinguish misdemeanor versus felony abuse, it makes no distinction regarding penalties where firearm/ammunition ownership is concerned. A person convicted of misdemeanor abuse (a shove, spitting, throwing a nonlethal object?) would be subjected to the same penalty as somebody convicted of felony abuse (beating or striking resulting in bodily injury). Both would be prohibited, *for life*, from ever legally owning a firearm or ammunition. In felony cases this is an appropriate penalty, but it is completely inappropriate for a misdemeanor crime. For a gun owner with just a few firearms, the monetary value of confiscated property would run into the thousands of dollars – a “cruel and unusual” level of punishment for a misdemeanor crime.

I also don't much like the provision that exempts law enforcement from the statutes created by HB 3379. Police officers, above all, need to be squeaky clean in regard to domestic abuse. For them to be able to abuse a family member and continue to have access to “deadly force” is a large step toward a police state.

Sincerely,

Leon E. Hallacher
1281 Honua Street
Hilo, HI 96720
808-959-5987

TESTIMONY ON HOUSE BILL 3379: RELATING TO DOMESTIC VIOLENCE, IN STRONG OPPOSITION.

March 25, 2008

Joshua Hoblitt
2754 Kuilei St., Apt 2103
Honolulu, HI 96826
808-937-2217
testimony@hoblitt.com

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

DATE: Friday, March 28, 2008
TIME: 9:30 a.m.
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

Aloha Honorable Chair, Vice-Chair, and Members,

I wish to voice my **strong opposition** to HB3379 in it's present form. There is near universal agreement about the severity of the domestic violence problem here in Hawaii and I applaud the good intentions of this bill. However, there is a critical and almost certainly accidental defect in this legislation. It would establish a petty misdemeanor with a special meaning and severe penalty under current US Federal law. Any misdemeanor domestic violence conviction means the forfeiture of the right to keep and bear arms for **life**. I feel that this is excessive punishment for a class of infractions that include spanking a child or threatening to hit a spouse over the head with a frying pan. The Federal Code I am referring to was put into place by an Act titled "Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence". The teeth of this Act is under **18 U.S.C. § 922(g)**, which states:

It shall be unlawful for any person-

...

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

...

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

It also provides a specific definition of the type of crime that the ban would apply to under **18 U.S.C. § 921(a)(33)(a)**:

Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that—

(i) is a misdemeanor under Federal, State, or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

Just this last Monday (March 24, 2008), the Supreme Court Of The Untied States agreed to hear *US v. Hayes*. At issue in this case is the exact meaning of **18 U.S.C. § 922(g)(9)** and to what sort of offenses should it apply. I urge the committee to either strike the Abuse of a family or house hold member in the third degree from this bill or to at least deffer hearing it until the Supreme Court has issued a ruling in *US v. Hayes*.

Sincerely,

Joshua Hoblitt

testimony

From: brian@hcc.hawaii.edu
Sent: Thursday, March 27, 2008 8:11 AM
To: testimony
Subject: HB3379, HD2

COMMITTEE ON JUDICIARY AND LABOR, Friday, March 28, 2008, 9:30 a.m., Conference Room 016, State Capitol, 415 South Beretania Street, Senator Brian T. Taniguchi, Chair, Senator Clayton Hee, Vice Chair

HB3379, HD2 - OPPOSE AS WRITTEN

No one would dispute that a violent individual should not have access to firearms or other weapons upon conviction of abuse of family or household members, but to extend the loss of a basic Constitutional right to a petty misdemeanor judgment made without a jury trial is not justified. The Section 134 ban should be removed from the third degree portion of the bill to bring it in line with the existing harassment statute. A jury should be involved when the issue is the curtailment of basic rights.

Brian Isaacson
Kailua, HI

Michael Leineweber

From: Michael Leineweber
Sent: Wednesday, March 26, 2008 11:49 AM
To: 'sentaniguchi@capitol.hawaii.gov'; 'senhee@capitol.hawaii.gov';
'sengabbard@capitol.hawaii.gov'; 'sennishihara@capitol.hawaii.gov';
'senslom@capitol.hawaii.gov'
Subject: HB3379 Relating to Domestic Violence

By facsimile to Senate Sergeant -At -Arms 586-6659

For submittal to the Committee on Judiciary and Labor

Hearing at 0930 Friday 28 March 2008, State Capitol Conference Room 016

Subject: HB3379 Relating to Domestic Violence, IN STRONG OPPOSITION

Dear Chair Taniguchi, Vice Chair Hee, and Committee Members Gabbard, Ishihara, and Slom:

Section 1 of HB 3379 states the obvious that "domestic violence continues to be a major concern in our communities".

My strong opposition to this particular bill is that it proposes draconian and unrelated penalties, including authorizing a police officer to "seize all firearms and ammunition that the police officer has probable cause to believe were used or threatened to be used in the commission of an offense under this section."

Further, the draconian penalties proposed for persons accused of domestic abuse are not applied to :

1. State and county law enforcement officers
2. Members of the armed forces
3. Regularly enrolled members of any organization duly authorized to purchase or receive the weapons from the United States
4. Persons employed by the State
5. Aliens employed by the State
6. Police officers on official assignment in Hawaii from any state

This is a kind of two tiered crime and punishment system, tier one being for ordinary citizens subject to the law, and tier two being for agents of the state exempt from the law. In a democracy it is inexcusable to create a system of laws that apply unequally to all citizens. In former times we called this apartheid, or slavery, or Communism as promulgated by Karl Marx. Or as George Orwell wrote in his novella "Animal Farm", the pigs who controlled the government ruled that "All animals are equal, but some animals are more equal than others." Please do not pass a similar law for the citizens of Hawaii.

Mahalo a nui loa for your consideration.

Dr. Michael James Leineweber, AIA
2366 Liloa Rise
Honolulu, Hawaii 96822
Mobile 808-222-9429

testimony

From: RGLIVINGHI@aol.com
Sent: Thursday, March 27, 2008 5:19 AM
To: testimony
Subject: TESTIMONY ON HB3379 HD2 IN STRONG OPPOSITION

Testimony on HB3379 HD2, IN STRONG OPPOSITION

Senate Committee on Judiciary and Labor
Friday, March 28, 2008
9:30 a.m.
Conference Room 016
please provide needed copies

Honorable Brian Taniguchi, Chair; Clayton Hee, Vice Chair; members,

Please do not pass this bill. There is a big difference between a swat or two on the rear end of a child and physically abusing them. But this bill does not see that. How is a parent suppose to discipline their child, time outs do not work for all kids. And you can not even threaten punishment.

What if you accidentally bump your spouse or girl friend and she happens to be upset with you at the time and wants to make a big deal out of it. Or if a neighbor reports something they do not understand. You could be in serious trouble. If the same thing happens when you are on good terms with each you both laugh about it.

This bill could create some very serious problems for innocent people.

Please, please hold this bill in committee and do not pass it, it is not a good bill the way it is written. It is way too vague.

Thank you for listening,

Ronald Livingston
7021 Kamilo St
Honolulu, HI 96825

Create a Home Theater Like the Pros. [Watch the video on AOL Home.](#)

To: Senate Sergeant - At - Arms 586-6659

27 March 2008

Page 1 of 1 page

To: Senators Brian T. Taniguchi, Chair and Clayton Hee, Vice-Chair, Senate Committee on Judiciary and Labor

Testimony from: Jack F. Pechous
Phone No. 621-7250

Regarding House Bill 3379 HD2 - Relating to Domestic Violence

Hearing date: Friday, March 28, 2008 at 9:30 A.M., Room 016 (35 (?) copies of testimony required)

I strongly oppose the passage of House Bill 3379 HD2 for the following reasons:

This bill as written deprives the accused of their rights without adequate provision for rebuttal. The bill is written to give all rights to the accuser. The police officer is given full authority to exercise restrictions against the accused without a warrant or any immediate judicial overview. The repeated use of the word "reasonable" such as in "reasonable cause", "reasonable grounds", etc. allows too much latitude to the attending officer. Also, subsequent judicial overview is vaguely stated as occurring "at the first possible opportunity". This is open-ended.

Under the bill, the right of a person to own firearms could be taken away for life on a third degree family abuse conviction, a petty misdemeanor, which could be as little as shoving or spanking a family or household member.

For these reasons I strongly oppose House Bill 3379 HD2

Thank you for allowing me to present testimony on this bill. This right is the strength of our country.


Jack F. Pechous

testimony

From: Arthur Sprague [sprague@hawaii.rr.com]
Sent: Thursday, March 27, 2008 11:00 AM
To: testimony
Subject: HB 3379, HD2

Hearing Friday, March 28, 2008, JDL.

This bill is unnecessary and loaded with unintended (I hope) consequences. Such minor altercations as a brother giving his brother a shove should not possibly lead to a criminal conviction, especially one denying the right to own firearms or ammunition for life.

Arthur Y. Sprague M. D.
2874 Komaia Place
Honolulu, HI 96822

WALTER J. WANG, M.D.

March 27, 2008

The Committee on Judiciary and Labor
The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair
Fax: 800-586-6659

RE: HB3379, HD2

Dear Sirs,

I am writing this letter in testimony against HB3379, HD2. I am not able to be present for the hearing due to my need to run my medical practice on the Big Island.

I am a residency trained, board-certified Family Practice physician who specializes in treatment of both the individual and the family. I have cared for numerous children, adults, and families in both in Kailua, Oahu, and now, here in Kailua-Kona on the Big Island.

I have grown up here in Hawaii and, for the past 17 years, have spent my entire professional career caring for the people of this state. I am also a husband and the father of six wonderful children. I therefore feel that I not only have a vested interest in the outcome of this hearing on HB3379 as a resident of this state, physician, father, and, some day, grandfather, but that I am also qualified to address this issue, having seen many patients and families affected by both good and aberrant parenting.

One of the issues in HB3379 that is of great concern to me is the creation of a classification of "third degree family abuse", which could be interpreted to mean shoving or spanking a family or household member. My concern is primarily related to the fact that this bill could make spanking a child a crime. I believe that this would be a wrong thing to do and would lead to unintended negative outcomes.

As a practicing family physician, I have seen cases of child abuse. This is a terrible crime that victimizes one of society's most helpless members. I believe that our society has a vested interest in protecting the weak and helpless. However, I also believe that laws, regulations, and agencies already exist to work toward these noble ends.

Unfortunately, this is not a perfect world and, as a result, these safeguards against abuse to children will also be imperfect. However, this fact, in conjunction with a desire to protect children, should not lead to decisions that would ultimately be more harmful for the majority of children and families who are not, in any way, in an abusive situation. I believe that any action to outlaw spanking as a disciplinary tool in the training of children would lead to harm for the majority of families and children, who are not in abusive situations, and would be an infringement on the range of parental rights.

- 2 -

March 27, 2008

During my career as a physician, I have seen spanking used as punishment, retaliation, and venting of a parent's frustration, which are all wrong uses of spanking. However, I have also seen the proper use of corporal discipline (e.g. spanking) as a tool in training a child about consequences in the context of a loving family that really cares about the child; where the proper behavior, respect, and positive attitude are fostered. In fact, some of the most unruly children that I have seen are from settings where there are no or inconsistent consequences for their bad behavior and some of the best behaved and happy children are from families where loving and consistent discipline, including corporal discipline, is implemented.

Corporal disciplining as a tool in child training is future oriented, in that it is meant to help the child to make better decisions in the future so as to avoid negative consequences, and its goal is for the good and the betterment of the child. This is in contradistinction to punishment which is more about getting back at someone for something that they did in the past.

Please do not make the logically fallacious mistake of condemning a practice or principle due to the abuse of that practice or principle. For example, if a person is physically abused and battered by police while being restrained and arrested, should we then conclude that we should not allow police to restrain or arrest people? Certainly not! We all know that there are reasonable and acceptable ways to go about this process, even though at times, it may require a lot of physical force.

Hopefully, forceful restraint and arrest of people is not necessary too often, just as, hopefully, corporal discipline won't have to be resorted to very frequently. However, just as restraint and arrest of law breakers is an essential part of our criminal justice system, I believe, corporal discipline can be in the training of children.

Just because physical abuse exists in some families, it does not follow that all physical forms of discipline (including spanking) are abusive. Indeed, as I have stated above and have seen in my practice, properly administered physical discipline in the proper context, can be the most loving and beneficial thing for the child.

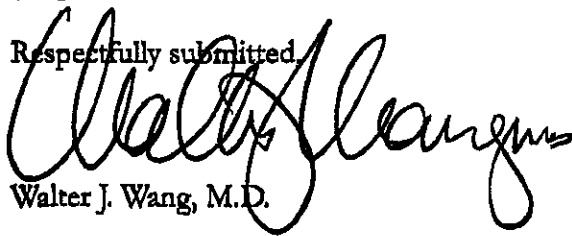
I believe that this perspective that I have tried to lay out is not commonly presented because it is not simplistic and requires more than just one factor or component, such as what HB3379 would lead to, i.e. looking at the physical act alone in isolation from its larger context. This perspective also requires an understanding of the family, that it is at its core, based on love for one another in a setting where the best is desired for each member, as well as for the family unit as a whole - where we can feel proud of each member of the family as well as for the family name.

I believe that HB3379, by allowing the possibility of criminalizing spanking, will take away a valuable tool, that when used properly in the context of loving families, allows us to have pride in the individual members of families and pride in our families as a whole. Isn't that what we desire in Hawaii - strong, responsible, happy individuals and families that make up our state's Ohana!

March 27, 2008

Please do not allow a simplistic and flawed approach to the problem of family violence to get passed into law. **Please vote AGAINST HB3379, HD2.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Walter J. Wang, M.D.', written in a cursive style.

Walter J. Wang, M.D.

testimony

From: Patrick Watanabe [watanabep002@hawaii.rr.com]
Sent: Wednesday, March 26, 2008 5:52 PM
To: testimony
Subject: Testimony on HB3379 HD2

Please deliver testimony to Committee on Judiciary and Labor for hearing scheduled on Friday, March 28, 9:30 am, conference room 016.

Dear Chairman Taniguchi and Committee Members,

Please defer action on HB3379 HD2 - relating to Domestic Violence. I believe the bill goes way overboard by including Abuse of Family Member 3rd degree as a violent crime and on the same list as murder and sexual assault. I'm afraid this bill would be making criminals out of non-criminals. I'm assuming striking and shoving means spanking, grabbing or pushing. This bill has pretty scary consequences for a petty misdemeanor offense.

Thank you for the opportunity to express my views.

Aloha,
Patrik Watanabe
Hilo, Hawaii

March 27, 2008

To: Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Subject: HB 3379, HD2

Hearing Date: Friday, March 28, 2008, 9:30 am, Conference Room 016

Testimony from: Michael A. Wee

Gentlemen: I strongly OPPOSE this bill. As proposed, it only adds more confusion and more burden on the investigating police officer to determine what "category" the abuse falls into. I believe we are attempting to split hairs here; there is no way to determine when a "push" becomes a "shove". All forms of physical contact in anger should be considered serious. Any obviously violent and life threatening behavior would fall into the definition of "attempted murder".

The other reason I strongly OPPOSE this bill is in section 709B, #4f. It states "The police officer SHALL seize all firearms and ammunition..." This is a change from "The police officer MAY seize all firearms and ammunition..." I believe that the police officer's discretion is a major factor here; the situation and circumstances of the abuse should determine appropriate and necessary actions. I object to the automatic confiscation of firearms. Why not seize all the steak knives, baseball bats, and rocks at the scene also?

Thank you for your consideration.

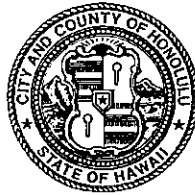
Michael A. Wee
1374 Kaminaka Dr.
Honolulu, HI 96816
732-0104, 223-4895

LATE

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
MICHAEL D. TUCKER
DEPUTY CHIEFS

OUR REFERENCE
JC-NTK

March 28, 2008

The Honorable Brian T. Taniguchi, Chair
and Members
Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: House Bill No. 3379, H.D. 2, 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 opposes House Bill No. 3379, H.D. 2, Relating to Domestic Violence.

In its current version, the amendments made by the Judiciary Committee delete the mandatory sentencing requirements and provide less protection than the existing law.

Due to these circumstances, we recommend not changing the existing Abuse of a Family or Household Member statute, section 709-906 of the Hawaii Revised Statutes.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carlton S. Nishimura".

CARLTON S. NISHIMURA, Major
Criminal Investigation Division

APPROVED:

A handwritten signature in black ink, appearing to read "Boisse P. Correa".

BOISSE P. CORREA
Chief of Police

for



Hawaii Rifle Association

State Affiliate of the National Rifle Association
Founded in 1857

March 27, 2008

Testimony **IN OPPOSITION** with suggested amendments to
HB3379, HD2 before the Senate Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Honorable Chair, Vice Chair, Members,

Although Hawaii Rifle Association supports the intent of this bill, we cannot accept the language. We have supported the domestic violence statutes. We believe that people who injure or abuse household members shouldn't have guns.

The issue of a petty misdemeanor for 3rd degree family violence within this bill has come before the Legislature on several occasions. We first encountered it in 1994 when Rey Graulty was Chair of this committee. He introduced us to the term "Draconian" and held the bill. We have repeatedly asked the proponents to come up with language that relieves the disability for possession of firearms and ammunition for conviction of a petty misdemeanor, but HB3379 still offers no solution to:

HRS 134-7(a) No person who...is a person prohibited from possessing firearms or ammunition under federal law shall own, possess, or control any firearm or ammunition therefore.

HRS 134 -7(b) No person who...is under indictment for...or has been convicted...of having committed...any crime of violence...shall possess or control any firearms or ammunition....

US CODE: TITLE 18, PART I, CHAPTER 44 § 922. (d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person...(9) has been convicted in any court of a misdemeanor crime of domestic violence. ("Lautenberg amendment" 1996)

BATFE does not differentiate between misdemeanor and petty misdemeanor.

Therefore, **HB3379 language would disable a person from firearms possession for life if indicted for or convicted, without benefit of a jury trial, of as little as spanking or shoving a household member.** The only relief from this disability is a special Governor's pardon. Most pardons include the language, "except for possession of firearms and ammunition."

We find the new language introduced in this rewrite of Section 709-106 is more difficult to amend. Under the new language in Part II-A the definition for "Physical abuse" "means striking, shoving, or kicking a person in an offensive manner, or subjecting a person to offensive physical contact with the intent to harass, annoy, or alarm." Then, in 709-C, 709-D and 709-E, that definition is applied across the board to definitions of 1st, 2nd, and 3rd degree offenses.

Since there are no qualifying definitions in addition under 3rd degree abuse of a family or household member, the very broad definition of physical abuse stands alone as a petty misdemeanor. We therefore prefer the existing statute language, "physical abuse or harm", without reference to "contact", "harassment", "annoyance" or "alarm" for all 3 degrees of physical abuse.

We prefer the existing statute, but whether the committee adopt the language of this bill or maintain existing statute, we offer additional language for an amendment.

We suggest a 3rd (or 4th) degree of domestic abuse, encompassing striking, shoving or kicking a person in an offensive manner or subjecting a person to offensive physical contact with the intent to harass, annoy, or alarm, with conviction punishable as a **violation**, with up to 30 days in jail and requiring domestic violence intervention.

We note that under the proposed language, section 709-B(4)(f) states the officer "shall" remove firearms, whereas the corresponding language in existing statute (709-906(4)(f)) states the police "may" remove. There are times when the officer cannot remove the firearms, e.g. if they are not volunteered or if they are secured unavailable and the person with access is unavailable. This statute should not authorize a warrantless search and seizure. There are times when the officer will not want to remove firearms and ammunition, for instance when they are in the possession of the person(s) alleging abuse, and thereby their best means of defending against a lethal attack. The existing language should be maintained.

We note that in existing statute 134-11 that law enforcement officers must be convicted on an offense involving abuse of a family or household member to forfeit their capacity to possess firearms and ammunition. We ask the Committee to establish uniformity in statute by requiring loss of firearms rights for law enforcement persons under indictment as in 134-7(b).

We further note that harassment and harassment by stalking is a class C felony under SB2456, SD2, which has passed House Judiciary 3/25/08 with amendments, and should it become statute, it seems unlikely that defendants in family abuse cases would plead harassment.

We urge the Committee to amend this bill to eliminate criminalizing trivial conduct with loss of firearms rights.

Thank you for the opportunity to testify on behalf of HRA.

Dr. Max Cooper
Legislative Co-Chair, HRA
225-6944

March 28, 2008

To: The Senate Committee on Judiciary and Labor
Subject: HD 3379 (HD2)

Honorable Senators:

The bill, HD 3379, is aimed at preventing domestic (family) abuse and violence, and it is to be commended. The problem is that, with regard to children, the language of the bill could be misinterpreted to criminalize corporal punishment or spanking administered by concerned parents. There are many of us who consider spanking as not only useful but a required tool in the training and discipline of our own young children.

Please allow me to define three terms that have to do with the training of children:

1. Discipline (as used in military discipline) = a general term which means to instruct, instill, drill, and includes chastisement (chastening) and punishment
2. Chastisement or Chastening = the infliction of pain or the use of controlled force to correct or restrain wrong behavior. The use of this is limited and may be withdrawn when the child has learned the proper behavior.
3. Punishment (as in judicial penalty) = the payment made by the offender for a specific wrong done

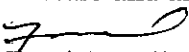
Our society uses these tools in the enforcement of civil order and justice. We, as loving parents, want our children to be raised up knowing what is true, good, right, proper, and avoid what is wrong. We must be able to continue to use these tools. Who knows our kids better than we parents who live with them for the most of 24 hours every day?

These time tested tools are advocated by that ancient yet current book-the Holy Bible. Here are a few of what it says on this subject:

- Proverbs 22:6--Train up a child in the way he should go, and when he is old he will not depart from it.
- Proverbs 22:15--Foolishness is bound up in the heart of a child; the rod of correction will drive it far from him.
- Proverbs 23:13-14--Do not withhold correction from a child, for if you beat him with a rod, he will not die. You shall beat him with a rod, and deliver his soul from hell.
- Proverbs 19:18--Chasten your child while there is hope, and do not set your heart on his destruction.
- Hebrews 12:6-8--*For whom the Lord loves He chastens, and scourges every son whom He receives.* If you endure chastening, God deals with you as with you as with sons; for what son is there whom a father does not chasten? But if you are without chastening, of which all have become partakers, then you are illegitimate and not sons.

Please defer Bill HB 3379, and make provision for the use of corporal punishment administered by loving parents. This tool has been used for centuries and must not be abandoned now.

Mahalo and aloha,


Frank Ramil

LATE

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FAX'ed to: 586-6501

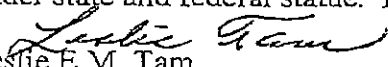
March 27, 2008

TESTIMONY ON HB 3379 on Domestic Violence, in Strong Opposition to
Before the Judiciary and Land Committee, Honorable Senator Brian T. Taniguchi, Chair

Sgt-At-Arms please provide 35 copies

Honorable Chair, Co Chair, and Members,

I am in **strong opposition to HB 3379** for its unjust provisions to take away firearms ownership and ammunition for life from anyone convicted of any family abuse crime under state and federal statute. Please defer this bill.


Leslie E.M. Tam
Secretary, Puuloa Rifle and Pistol Club
1411 Saint Louis Drive
Honolulu, HI 96816
Email: lcslietam@aol.com
Phone: 737-5427 hm; or 429-5427 cell