

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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING

DATE: Thursday, February 7, 2008 **TIME:** 9:15 AM

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

TESTIFIER(S): WRITTEN TESTIMONY ONLY.
(For more information, please call Lance M. Goto,
Deputy Attorney General, at 586-1160.)

Chair Shimabukuro 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 many cases initiated and investigated as abuse offenses that have insufficient facts to support an abuse charge. In those instances, prosecutors must amend the offense to harassment, 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 problems with proving the case, including when victims or other crucial witnesses refuse to testify or become unavailable. It is important and appropriate to treat these harassment type cases as abuse 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 are amended to harassment 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. 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

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PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
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THE HONORABLE MAILE SHIMABUKURO, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

February 7, 2008

RE: H.B. 3379; RELATING TO DOMESTIC VIOLENCE.

Chair Shimabukuro and members of the House Committee on Human Services and Housing, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 3379.

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 as it would clarify and improve the application of domestic violence offenses.

Thank you for this opportunity to testify.

Testimony in Support of HB3379
Relating to Domestic Violence

Submitted by Jay T. Kimura, Prosecuting Attorney, County of Hawaii
Committee on Human Services & Housing
February 7, 2008 9:15 a.m.
House Conference Room 329

I am in support of HB3379 which creates a new category for domestic violence that will capture current reduction in cases involving domestic violence.

CHARMAINE TAVARES
Mayor



BENJAMIN M. ACOB
Prosecuting Attorney

PETER A. HANANO
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
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February 5, 2008

THE HONORABLE MAILE S.L. SHIMABUKURO, CHAIR
THE HONORABLE KARL RHOADS, VICE-CHAIR
COMMITTEE ON HUMAN SERVICES AND HOUSING

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
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 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 plead 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, 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 Domestic Violence Intervention programs.

This bill will provide 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. Domestic Violence Intervention programs are intended to decrease acts of violence by the offender. It is imperative that intervention is required at the initial onset of domestic violence, to nip it in the bud so to speak, and prevent it 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.

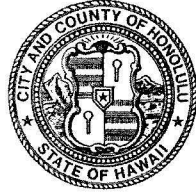
Accordingly, for the reasons discussed above, our Department strongly supports H.B. 3379. Thank you for the opportunity to testify.

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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MICHAEL D. TUCKER
DEPUTY CHIEFS

OUR REFERENCE JC-NTK

February 7, 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. 3379, Relating to Domestic Violence

I am Janet Crotteau, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 3379, Relating to Domestic Violence, with amendments.

Passage of this bill would create three degrees for the offense of Abuse of Family or Household Member. By codifying the law into degrees of penalties, you add emphasis to specific areas of concern. For instance, first degree abuse is based on having two prior convictions for abuse or refusing to leave or physically choking a family or household member, which then elevates the current crime to the offense of a felony. All other situations fall into the realm of abuse in the second degree, a misdemeanor. Abuse in the third degree incorporates the elements of harassment into the realm of domestic violence so that convictions for this offense can be used as a prior conviction for the abuse section. In many abusive relationships, the perpetrator has learned not to touch the victim and so avoids arrest. This section would address that problem.

We recommend an amendment to section 709-B, Special procedures for abuse of family or household members complaints. This amendment would limit the number of transports provided by law enforcement officers. Page 2, line 17, should be amended to

The Honorable Maile S. L. Shimabukuro, Chair
and Members
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read, (1) Upon request and with the approval of a law enforcement officer, . . . We need to have the ability to decline these requests. Other arrangements can be made to transport a victim. For instance, if a victim is injured, an ambulance can be called to transport the victim to the hospital. If the victim wants to go to a shelter, the shelter has procedures in place to assist the victim with transportation.

Because the patrol districts have many other requests for its personnel, these transportation requests may severely create staffing shortages, creating a dangerous situation for those officers left at their posts.

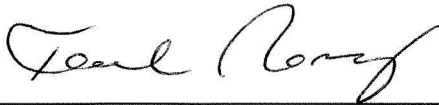
We believe these delineations of the abuse statute are very worthwhile and will further strengthen the existing abuse of family or household member statute.

Thank you for the opportunity to testify.

Sincerely,


JANET CROTTEAU, Captain
Criminal Investigation Division

APPROVED:



for
BOISSE P. CORREA
Chief of Police



POLICE DEPARTMENT COUNTY OF MAUI



CHARMAINE TAVARES
MAYOR

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THOMAS M. PHILLIPS
CHIEF OF POLICE

GARY A. YABUTA
DEPUTY CHIEF OF POLICE

OUR REFERENCE
YOUR REFERENCE

February 6, 2008

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

Dear Chair Shinabukuro and Members of the Committee:

SUBJECT: House Bill No. 3379, 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 H.B. 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 sets 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. This will allow the police to properly classify these cases for what they really are, as domestic abuse cases. This bill will also provide intervention to offenders of domestic abuse at the beginning stages of domestic violence and will hopefully prevent it from escalating.

The Maui County Police Department supports H.B. No. 3379, Relating to Domestic Violence.

The Honorable Maile S.L. Shimabukuro, Chair
And Members of the
Committee on Human Services and Housing
February 6, 2008
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Thank you for the opportunity to testify.

Sincerely,


THOMAS M. PHILLIPS
Chief of Police

Harry Kim
Mayor



Lawrence K. Mahuna
Police Chief

Harry S. Kubojiri
Deputy Police Chief

County of Hawaii

POLICE DEPARTMENT

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February 6, 2008

The Honorable Maile S. L. Shimabukuro, Chair
And Members
Committee on Human Services & Housing
The House of Representatives
State Capitol
415 Beretania Street, Room 329
Honolulu, Hawai'i 96813

Re: House Bill No. 3379, Relating to Domestic Violence

Dear Representative Shimabukuro and Members:

The Hawai'i Police Department supports the passage of House Bill No. 3379, relating to Domestic Violence, that repeals the existing offense of abuse of a family or household members and separately recodifies its procedural and substantive provisions. Furthermore, passage would establish three degrees of the offense of abuse of a family or household member and clarifies the three degrees with conforming amendments.

Domestic violence continues to be a growing problem and a major concern in our communities. The current statute on Abuse of a Family or Household Member sets two levels of abuse, felony and misdemeanor. Currently, there are many instances of abuse cases where the facts require an amendment of the charge to Harassment, a petty misdemeanor, that does not require the defendant to participate in Domestic Abuse Intervention programs, nor does the conviction count for sentencing enhancements if the abuser reoffends.

By providing a petty misdemeanor level of abuse of a family or household member in the third degree, these cases will be treated as abuse cases and defendants will now be required to participate in the domestic abuse intervention programs and will be subjected to sentencing enhancements on subsequent convictions within a five year period.

For these reasons, we urge this committee to support this legislation. Thank you for allowing the Hawai'i Police Department to testify on H.B. 3379.

Sincerely,

LAWRENCE K. MAHUNA
POLICE CHIEF

"Hawai'i County is an Equal Opportunity Provider and Employer"

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

Hearing date and time: February 7, 2008 at 9:15 a.m., Committee on Human Services and Housing

RE: H.B.3379 Relating to Domestic Violence

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

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 intervention occurred in their abusive relationship there had been many incidents of 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 law is designed to address the repeat offenders with rising levels of sentencing. Unfortunately Prosecutors often feel they do not have enough evidence and/or the victim is reluctant to testify for a broad range of reasons and they cannot therefore move forward with the case under 709-906. As a result these cases are reclassified or plead down to "Harassment" and sent to District Court. Judges are not required to order Domestic Violence Intervention for "Harassment" cases. By adding a new petty misdemeanor to 709-906 these cases can be addressed within the Family Court system by Judges who receive domestic violence training.

The law calls for mandatory sentencing – including Domestic Violence Intervention. Additionally, by including a petty misdemeanor in 709-906 they too are seen as repeat offenders if they commit additional acts of domestic violence within specified periods of time and are subject to the rising charges.

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.

Thank you for the opportunity to testify.



the formerly battered women's caucus of hawai'i

To: Representative Maile Shimabukuro, Chair
Representative Karl Rhoads, Vice-Chair
Human Services & Housing Committee Members

Date: February 7, 2008

Re: STRONG SUPPORT FOR HB3379

VOICES whole-heartedly supports HB3379 which is the result of a collaborative effort put forth by the Law Enforcement Coalition, whose members include prosecuting attorneys, the Attorney General, the US Attorney and the State of Hawaii police departments. This bill creates a petty misdemeanor level offense of domestic abuse so that appropriate cases may be so treated and requires offenders at this level to go through a Domestic Violence (DV) Intervention program.

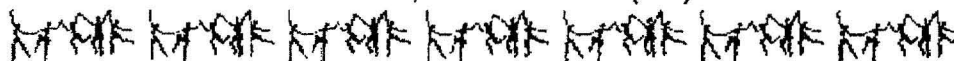
HB3379 provides a new petty misdemeanor level of Abuse of Family or Household Member in the Third Degree. Currently, cases that have been amended down to Harassment are not necessarily ordered to participate in DV Intervention programs, nor does a Harassment conviction count for sentencing enhancements should the abuser re-offend. This bill would require petty misdemeanor level offenders to participate in DV Intervention programs which will translate into greater protection of domestic violence victims. By requiring offenders to go through a DV Intervention program, regardless of whether the level of offense is a petty misdemeanor or a true misdemeanor amended to a petty misdemeanor by plea agreement, offenders who were previously excluded from services would now be included. DV Intervention programs are intended to decrease acts of violence by the offender and it is **imperative** that intervention be required at the first sign of domestic violence to avoid its escalation into a prolonged and widening systemic problem as well as to prevent the unnecessary loss of victims' lives.

Sergeant John Guard (a NC police officer who heads his county's successful Domestic Violence Prevention Unit and provides domestic violence training at national conferences) 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 killing took place. Sergeant Guard recommends early identification, public awareness and education in combination with monitoring and strict accountability for even the smallest of offenses by DV perpetrators in order to avert the tragedy of a domestic violence homicide. HB3379 would be a welcomed addition to DV prevention efforts.

Thank you for your time and consideration.

Dara Carlin, M.A.
Dara Carlin, M.A.

hawai'i state coalition against domestic violence
716 umi street suite 210 ~honolulu, hawaii~96819~ (808) 832-9316 ext 106



Guy Yatsushiro, M.D.

1914 South King Street, Suite #201 Honolulu, Hawaii 96826 (808) 946-7159

To: Representative Maile Shimabukuro, Chair
Representative Karl Rhoads, Vice Chair
Members of the Committee on Human Services & Housing

From: Guy Yatsushiro, M.D.

Date: February 7, 2008

Subject: Strong Support for HB3379

HB3799 is a bill that not only makes sense, but it's being proposed by the people who know more about domestic violence than the rest of us because they have to face it everyday. This bill is being proposed by experts on the subject so it would behoove us to not only listen to them, but to implement their initiatives as well. It'd be really nice to see a reduction in these senseless murders that leave so many children without their mothers.

Thank you for this opportunity to provide testimony.



Guy Yatsushiro, M.D.