



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1343, S.D. 1, H.D. 1, RELATING TO THE PENAL CODE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 18, 2008 **TIME:** 3:45 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 Attorney General strongly supports this measure.

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

This bill amends the offenses of terroristic threatening in the first degree and assault in the second degree to include conduct committed against victims whom the courts and police are attempting to keep safe through the use of protective orders.

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

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

We respectfully urge Committee to pass this measure.

Testimony on behalf of the
Office of the Public Defender, State of Hawai'i
to the House Committee on Judiciary

March 18, 2008

RE: S.B. 1343: Relating To the Penal Code.

Representative Waters and Members of the Committee:

S.B. 1343, SD1, HD1 proposes to add new categories of offenses to the crimes of Assault in the Second Degree and Terroristic Threatening in the First Degree, both class "C" felonies, punishable by up to 5 years prison or 5 years imprisonment.

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

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

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

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

Thank you for the opportunity to comment on this bill.

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DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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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 Hawai'i**

March 18, 2008

RE: S.B. 1343, S.D. 1, H.D. 1; RELATING TO THE PENAL CODE.

Good morning, Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in support of S.B. 1343, S.D.1, H.D. 1.

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

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

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

We respectfully request your favorable consideration of S.B. 1343, S.D. 1, H.D. 1.
Thank you for your time and consideration.

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Harry Kim
Mayor



Lawrence K. Mahuna
Police Chief

Harry S. Kubojiri
Deputy Police Chief

County of Hawaii

POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawaii 96720-3998
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March 18, 2008

Representative Tommy Waters
Chairperson and Members
House Committee on Judiciary
415 South Beretania Street, Room 329
Honolulu, Hawaii 96813

Dear Representative Waters and Members:

Re: Senate Bill 1343, Relating to the Penal Code

The Hawai'i Police Department supports the passage of Senate Bill 1343, S.D. 1, Relating to the Penal Code, which amends the offenses of Assault in the Second Degree, and Terroristic Threatening in the First Degree to include conduct committed against victims who the courts and police are attempting to keep safe with protective orders.

As cited by the Department of the Attorney General, the purpose of this bill is to provide greater protections to victims of domestic violence who the police and the court are attempting to keep safe through domestic abuse protective orders as well as police orders upon family or household members to leave the premises.

This bill is also intended to provide a greater deterrent to violence against victims in high risk situations and makes it clear that crimes against victims of domestic violence are very serious. Oftentimes, victims of domestic violence live through long periods of physical and mental abuse before reaching out for help. This bill is intended to provide police and the prosecutors the leverage needed to possibly break the cycle of violence in some cases. Therefore, I urge this committee to support this legislation.

Thank you for allowing the Hawai'i Police Department to testify on Senate Bill 1343, S.D. 1.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence K. Mahuna", is written over a large, loopy oval scribble.

LAWRENCE K. MAHUNA
POLICE CHIEF

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POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
MICHAEL D. TUCKER
DEPUTY CHIEFS

OUR REFERENCE JC-NTK

March 18, 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: Senate Bill No. 1343, S.D. 1, H.D. 1, Relating to the Penal Code

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

The Honolulu Police Department supports Senate Bill No. 1343, S.D. 1, H.D. 1, Relating to the Penal Code.


Passage of this bill will provide increased protection for domestic violence victims by amending the offenses of assault in the second degree and terroristic threatening in the first degree. This targets perpetrators who are issued any court order or issued a 24-hour stay away order. It recognizes the victims as needing special consideration in circumstances involving threats and assaults. These two categories have proved to be some of the most dangerous to domestic violence victims.

This bill would provide real penalties against perpetrators who commit domestic violence-related cases.


The Honolulu Police Department supports Senate Bill No. 1343, S.D. 1, H.D. 1, Relating to the Penal Code.

Thank you for the opportunity to testify.

Sincerely,


RICHARD C. ROBINSON, Acting Major
Criminal Investigation Division

APPROVED:


for BOISSE P. CORREA
Chief of Police

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HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

Hearing date and time: March 18, 2008, 3:45pm. Room 325

RE: S.B. 1343 SD1 HD1 Relating to the Penal Code

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

FR: 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 SB 1343 SD1 HD1.

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

Thank you for the opportunity to testify.

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