

LATE TESTIMONY

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
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Douglas S. Chin
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE MAILE SHIMABUKURO, CHAIR
THE HONORABLE KARL RHOADS, VICE CHAIR**

**HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING
Twenty-fourth State Legislature
Regular Session of 2008
State of Hawai'i**

March 11, 2008

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

Good morning, Chair Shimabukuro and members of the House Committee on Human Services and Housing, the Department of the Prosecuting Attorney submits the following testimony **in support of Senate Bill 1343, S.D. 1, with amendments.**

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.

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 do, however, recommends the following amendments to section 2 of the bill, regarding section 707-711(1), Hawaii Revised Statutes, to update the bill and conform it to the changes made by Act 79, Session Laws of Hawaii 2007:

- (1) *Line 10, on page 1, should read, "bodily injury to another;"*
- (2) *Lines 16 and 17, on page 1, should read, "injury to another with a dangerous instrument;"*
- (3) *Lines 7 and 8, on page 2, should read, "department of education or an employee of a charter school; a person who is a volunteer, as defined in section 90-1, in a . . ."*
- (4) *Line 13, on page 2, should read, "carrying out an educational function; [or]"*
- (5) *After line 13, on page 2, the existing subsection (f) should be inserted to read, "(f) The person intentionally or knowingly causes bodily injury to any emergency medical services personnel who is engaged in the performance of duty. For the purposes of this paragraph, "emergency medical services personnel" shall have the same meaning as in section 321-222[-]; or"*
- (6) *The proposed new subsection designated as subsection "(f)" on page 2, line 14, should be redesignated as subsection (g).*

The Department also recommends the following amendments to section 3 of the bill, regarding section 707-716(1), Hawaii Revised Statutes, to update the bill and conform it to the changes made by Act 79, Session Laws of Hawaii 2007:

- (1) *Line 17, on page 3, should read, "in section 707-711;"*
- (2) *After line 17, on page 3, the existing subsection (d) should be inserted to read, "(d) Against any emergency medical services personnel who is engaged in the performance of duty. For purposes of this paragraph, "emergency medical services personnel" shall have the same meaning as in section 321-222; [or]"*
- (3) *Line 18, on page 3, should read, "(e) With the use of a dangerous instrument[-]; or"*
- (4) *The proposed subsection (e) on page 3, line 19, should be redesignated as subsection (f).*

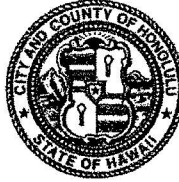
We respectfully request your favorable consideration of S.B. 1343, S.D. 1. Thank you for your time and consideration.

MAILE TESTIMONY

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE JC-NTK

March 11, 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: Senate Bill No. 1343, S.D. 1, Relating to the Penal Code

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 this bill and the Attorney General's amendments.

We believe this bill will provide increased protection for domestic violence victims. It targets perpetrators who are issued any court order or issued a 24-hour stay away order.

It recognizes them as needing special consideration in circumstances involving threats and assaults. These two categories have proved to be the most dangerous to victims and require our attention. Passage of 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, Relating to the Penal Code.

Thank you for the opportunity to testify.

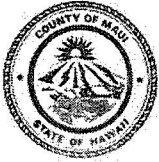
Sincerely,

CARLTON S. NISHIMURA, Major
Criminal Investigation Division

APPROVED:

BOISSE P. CORREA
Chief of Police

Serving and Protecting With Aloha



CHARMAINE TAVARES
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT COUNTY OF MAUI

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March 10, 2008



THOMAS M. PHILLIPS
CHIEF OF POLICE

GARY A. YABUTA
DEPUTY CHIEF OF POLICE

LATE TESTIMONY

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

Dear Chair Shimabukuro and Members of the Committee:

SUBJECT: Senate Bill No. 1343, SD1, Relating to Domestic Violence Protection

I am Thomas M. Phillips, Chief of Police of the Maui County Police Department and member of the Hawaii Law Enforcement Coalition. We are supporting Senate Bill No. 1343, SD1, Relating to Domestic Violence Protection.

The purpose of this bill is to amend 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.

This bill will increase the level of each offense, when committed against victims who have obtained certain types of protected orders by those who are the subject of the protective orders. Also, when the offense is committed against a person who is being protected by a police officer, ordering the defendant to leave the premises of that protected person during the effective period of that order, pursuant to Section 709-906 (4), HRS.

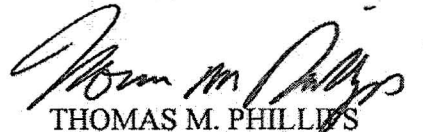
These increased penalties will deter abusers and provide law enforcement a better opportunity to protect the victims. Those protected will include spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons who have or have had a dating relationship.

The Honorable Maile S.L. Shimabukuro, Chair
And Members of the
Committee on Human Services and Housing
March 10, 2008
Page 2

The Maui County Police Department respectfully urges you to support the passage of Senate Bill No. 1343, SD1, Relating to Domestic Violence Protection.

Thank you for the opportunity to testify.

Sincerely,



THOMAS M. PHILLIPS
Chief of Police

LATE TESTIMONY

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

From: Dara Carlin, M.A. [mailto:breaking-the-silence@hotmail.com]
Sent: Monday, March 10, 2008 10:36 PM
To: HSHtestimony
Subject: SB1343 SD1 to be heard Tuesday, 03/11/08 at 8:30am by the HSH
Committee
Importance: High

TO: Representative Maile Shimabukuro, Chair
Representative Karl Rhoads, Vice Chair
Health & Human Services Committee Members

FROM: Dara Carlin, M.A.
Oahu VOICES
716 Umi Street, Suite 210
Honolulu, HI 96819

DATE: March 11, 2008

RE: Strong Support for SB1343 SD1, Relating To The Penal Code

The Formerly Battered Womens Caucus, VOICES, stands in strong support of SB1343 SD1 and hopes that you will do the same. It almost seems redundant that this specification be made to the existing penal code, but please know that it is desperately needed. Protective Orders must be taken seriously when issued and responded to just as seriously when violated; failure to do so could result in fatality for the victim who sought our protection - and then it becomes our failure.

Although the courts and police take Protective Orders seriously, it is not uncommon or unusual for the perpetrators of this crime to not take them seriously as evidenced by the multiple times that Protective Orders are violated. One day while seated in a District Court room, I was amazed by how the judge just had to keep on repeating himself - the case numbers and defendants' faces changed, but the charge of a protective order violation did not, nor did the judge's lecture to every new face before him. Violating a Protective Order is not just about violating the victim; it violates the courts, the police and the system designed to keep those identified safe from harm as well.

If the courts and police are trying to keep a victim of violence safe with a Protective Order, then they should have our full support in being able to do so.

Thank you for your time and consideration.

Respectfully,

Dara Carlin, M.A.
Oahu VOICES Representative