



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2010**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 229, H.D. 1, RELATING TO THE PENAL CODE.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 23, 2010   **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Karamatsu and Members of the Committee:

The Attorney General strongly supports this bill.

This bill contains the text of H.B. No. 1020, which is one of only five bills in the 2010 legislative package of the Hawaii Law Enforcement Coalition. The Coalition is composed of the Chiefs of Police of all four counties, the Prosecuting Attorneys of all four counties, the Attorney General, and the United States Attorney for the District of Hawaii. Every bill in the Coalition's legislative package has the unanimous support of every Coalition member.

This bill will provide greater protection to victims of domestic violence whom the courts and police are attempting to keep safe through family court domestic abuse protective orders, and through police orders requiring family or household members to leave premises.

This bill upgrades manslaughter to murder in the second degree, if it is committed against a protected victim. It upgrades murder in the second degree to murder in the first degree, if it is committed against a protected victim. And it upgrades the misdemeanor offenses of terroristic threatening in the second degree and assault in the third degree to the class C felony offenses of terroristic threatening in the first degree and assault in the

second degree, if the offenses are committed against victims covered by protective orders.

This bill will help deter violence against a particularly vulnerable class of victims in high risk situations. Victims of domestic violence often endure extended periods of physical violence, mental abuse, intimidation, harassment, and terrorization before they reach out for help. It requires a great amount of courage or desperation to seek the assistance of police, the court system, and others.

But often, abuse and violence continue even after police or courts have intervened and issued protective orders. Current laws do not provide an adequate deterrent. The prospect of only a misdemeanor charge for criminal contempt, assault, or terroristic threatening is not enough to discourage many perpetrators of abuse from continuing to harm their victims. Upgrading certain criminal offenses, as provided in this bill, provides a meaningful deterrent that can help free victims from the cycle of violence.

We respectfully request passage of this measure.

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

February 23, 2010

RE: H.B. 229, H.D. 1: Relating To the Penal Code.

Representative Karamatsu and Members of the Committee:

H.B. 229, H.D. 1 proposes to add new categories of offenses to the crimes of Murder in the First Degree (punishable by a mandatory sentence of life in prison without the possibility of parole), Murder in the Second Degree (punishable by a mandatory sentence of life in prison with the possibility of parole) and Assault in the Second Degree and Terroristic Threatening in the First Degree, both class "C" felonies, punishable by 5 years probation or 5 years imprisonment.

The Office of the Public Defender does not support this legislation. The new offenses would punish intentionally or knowingly causing the death of (Murder 1), recklessly causing the death of (Murder 2), or causing bodily injury to (Assault 2) a person who the defendant has been restrained from contacting or 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".

In the case of Murder 1 and Murder 2, this is an attempt to give special treatment to a particular class of victims to the exclusion of all other classes of victims. Currently, our Murder 1 statute (HRS §707-701) provides a life without parole sentence for killing more than one person, killing a law enforcement officer, judge or prosecutor, a witness in a criminal case, a person in prison, or being a hired killer. Our Murder 2 statute (§707-701.5) mandates a life with the possibility of parole in all other cases. Both statutes require an intentional or knowing state of mind. Recklessly causing the death of another person comes under our Manslaughter statute (§707-702) and is punishable by a 20 year prison term.

Under the proposal in H.B. 229, H.D. 1, a person who had a restraining order or was in the presence of police ordering a defendant off the premises, would receive not only the special treatment previously accorded to a very specific class of victims, but would receive the uniquely special treatment of having reckless behavior punishable by a life sentence, unlike any other victim in our state.

The proposed change to the Assault 2 statute (§707-711) 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 (§ 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 under our Assault 2 statute 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, emergency medical services worker or a person employed at a state mental health facility. The latter categories represent four groups that the legislature has singled out for special treatment in the second degree statute.

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.

It is a mistake to think that legislation such as this will protect anyone from harm. One of the reasons that the death penalty was ended in so many states was the fact that it was demonstrated not to have the deterrent effect it was intended to. Likewise, applying our harshest sentences to conduct against a specific class of victims is not going to deter grievous conduct. The discussion then has to focus on why this particular category of victims should have the special treatment provided for in this bill to the exclusion of all other categories of victim. It is clear that passing legislation such as this will ensure a steady stream of victims asking for the same special treatment.

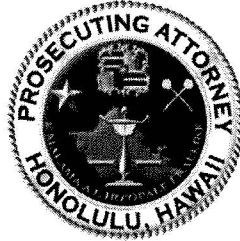
This legislation is ill advised and we oppose it. Thank you for the opportunity to comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
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FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE JON RIKI KARAMATSU, CHAIR  
THE HONORABLE KEN ITO, VICE CHAIR  
HOUSE COMMITTEE ON JUDICIARY**

**TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2010**

February 23, 2009

**RE: HOUSE BILL 229, H.D. 1; RELATING TO THE PENAL CODE**

Good afternoon, Chair Karamatsu and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in support of House Bill 229, H.D. 1, the "Protect Victims of Domestic Violence Act".

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, issued under H.R.S. Section 709-906 and who are killed, 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 sample 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 was subsequently convicted of a reduced charge due to the victim's desire to move to the mainland to escape the defendant's violence. 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, assaults, or murders 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 H.B. 229, H.D. 1. Thank you for your time and consideration.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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MAYOR

LOUIS M. KEALOHA  
CHIEF

DELBERT T. TATSUYAMA  
RANDAL K. MACADANGDANG  
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

February 23, 2010

The Honorable Jon Riki Karamatsu, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: House Bill No. 229, H.D. 1, Relating to the Penal Code

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

The Honolulu Police Department supports House Bill No. 229, H.D. 1, Relating to the Penal Code. Passage of this bill would provide more severe penalties for individuals who violate a protective order and commit a violent crime against a victim. Passage would provide greater protection and support to victims of domestic violence who have sought help from the courts and the police. It would also make it clear that our community will no longer tolerate offenders who disregard protective orders and continue to commit violent acts.

The Honolulu Police Department urges you to support House Bill No. 229, H.D. 1, Relating to the Penal Code.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Robinson".

RICHARD C. ROBINSON, Captain  
Criminal Investigation Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoa".

FOR  
LOUIS M. KEALOHA  
Chief of Police

**JAY T. KIMURA**  
PROSECUTING ATTORNEY

**CHARLENE Y. IBOSHI**  
FIRST DEPUTY  
PROSECUTING ATTORNEY



OFFICE OF THE PROSECUTING ATTORNEY

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**Testimony In Support of HB 229, HD1**  
**Relating to The Penal Code**

Hearing before House Judiciary Committee  
February 23, 2010  
2:00 p.m.  
House Conference Room 325

Submitted by Jay T. Kimura, Prosecuting Attorney

**TO: Chair Riki Karamatsu and Committee Members:**

**We support House Bill No. 229, HD1**

Victims of domestic violence often endure extended periods of physical and mental abuse, intimidation, harassment, and terrorization — and all too often, they are killed by their tormentors. Even with intervention by the police and the court system, the abuse and violence may not end. Current laws do not provide adequate protection or deterrence. This bill will help.

This bill amends the offenses of Murder in the First Degree, Murder in the Second Degree, Assault in the Second Degree, and Terroristic Threatening in the First Degree by raising the level of each offense when the offense is committed against victims who have obtained certain types of protective orders, by those who are the subjects of the protective orders. Thus, what was misdemeanor assault will become felony assault if committed by a person against whom the victim has obtained a certain type of protective order. Misdemeanor terroristic threatening will become felony terroristic threatening, manslaughter will become second degree murder, and second degree murder will become first degree murder.

These increased penalties will highlight the seriousness of these offenses, deter abusers and give law enforcement more opportunity to protect victims. I believe that this law will also enhance the ability of the Court to protect victims who have sought temporary restraining orders and orders of protection.

Thank you for considering our recommendation to adopt this bill.



William P. Kenoi  
Mayor



Harry S. Kubojiri  
Police Chief

Paul K. Ferreira  
Deputy Police Chief

February 22, 2010

## County of Hawai`i

POLICE DEPARTMENT  
349 Kapi`olani Street • Hilo, Hawaii 96720-3998  
(808) 935-3311 • Fax (808) 961-2389

The Honorable Jon Riki Karamatsu  
Chair and Members  
Committee on Judiciary  
State Capitol  
415 South Beretania Street, Conference Room 325  
Honolulu, Hawai'i 96813

**Re: HOUSE BILL 229, HD1, RELATING TO THE PENAL CODE**

Dear Chairman Karamatsu and Members:

The Hawai'i Police Department strongly supports the passage of House Bill No. 229, HD1. This passage of this bill will provide an enhanced grade of offense for specific crimes committed against victims of domestic violence who are protected by a court order or by a 24-hour warning citation.

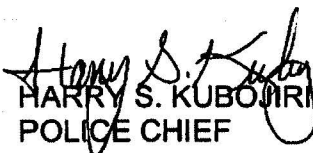
The intent of this bill is to protect victims of domestic violence whom the courts and police are trying to keep safe through family court protective orders, and through police orders requiring family or household members to leave premises.

The passage of this bill will help deter violence against a particularly vulnerable class of victims in high risk situations. Victims of domestic violence often endure extended periods of physical violence, mental abuse, intimidation, harassment, and terrorization before they reach out for help. It requires a great amount of courage or desperation to seek the assistance of police, the court system, and others.

In domestic violence cases, oftentimes abuse and violence continue even after protective orders have been issued and police or courts have intervened. This bill would strengthen current laws and will act as a significant deterrent to the cycle of violence.

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. No. 229, HD1.

Sincerely,

  
HARRY S. KUBOJIRI  
POLICE CHIEF



# HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

TO: Chair Karamatsu, Vice Chair Ito and members of the Judiciary Committee

FR: Jane Seymour, Hawaii State Coalition Against Domestic Violence

Hearing date and time: February 23, 2010 at 2pm.

RE: Support for H.B. 229 HD1; Relating to the Penal Code

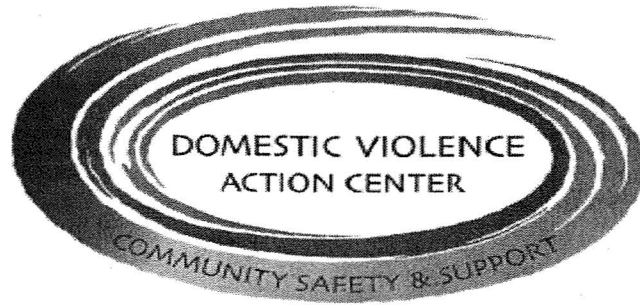
Aloha, my name is Jane Seymour. HSCADV is a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV supports HB 229 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. Having serious consequences to any further acts of violence not only carries greater consequences but sends a clear message to our society that violence will not be tolerated and that TRO's/PO's are an effective safety tool.

While there is no single answer for ending domestic violence we think that holding batterers accountable for their behavior is one of the major tools we have in stemming the violence experienced by so many women and children in our island homes.

We respectfully ask you to please pass HB 229 HD1. Thank you for the opportunity to testify.



Monday, February 22, 2010

TO: Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair  
Members of the Committee

FR: Nanci Kreidman, MA  
Chief Executive Officer

REF: HB 229, HD 1 (HSCR317)

Aloha:

Good morning. This testimony is submitted in support of Bill 229, H.D. 1, the "Protect Victims of Domestic Violence Act."

Abuser accountability by the community and the criminal justice system has been regarded as an important objective across the country for many years.

Increasing penalties for offenders who continue to victimize their partner or family member is an important deterrent. It delivers a strong message to offenders and has the potential of deterring violence by others. It is a very courageous act for a victim to seek the court's protection and the community's assistance. Reaching out for help means the victim has likely experienced abuse over a period of time, and which has escalated over that period of time. If the abuser continues to coerce, control or otherwise abuse their partner, a stronger message needs to be delivered.

Thank you for the opportunity to submit our perspectives.

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[dvac@stoptheviolence.org](mailto:dvac@stoptheviolence.org) [www.stoptheviolence.org](http://www.stoptheviolence.org)



## karamatsu1-Kenji

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**From:** Kealohalani Steinhilber [kea2264@yahoo.com]  
**Sent:** Tuesday, February 23, 2010 9:15 AM  
**To:** JUDtestimony  
**Subject:** Hb229

To whom it may concern:

I am writing you today as a former victim of domestic violence and a former resident of the State of Hawaii. You may wonder why I would care to write in if I no longer reside in this state however the reason I no longer here is because the laws were unable to protect. The defendant described in this bill is my exhusband. In total he has spent less than 8 months in jail for all the crimes committed against me. The last straw was when he tried to kill both me and our son more than 3 years ago. Since attempted murder is not covered where there is an active tro he was charged with criminal property damage first degree. This seemed insuffiecient based on the severity of the crime. I was forced to make the decision that in order to maintain safety for my children and myself we had to leave the state. We went to New York where the justice system protects victims and not defendants. I am greatly disappointed that since I have been gone nothing has changed here. I testified for a similar bill 3 years ago and that bill had failed. So, today I would like to respectfully ask that you create laws to protect victims, allow women like me to feel the freedom to come home, and to not let another woman be a victim of violence.

Sincerly,  
Kealohalani Steinhilber-Hawn

Sent from my iPod