



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Monday, February 9, 2009 TIME: 8:15 AM

LOCATION: State Capitol Room 329

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

Chair Mizuno and Members of the Committee:

The Attorney General supports this bill with amendments.

The purpose of this bill is to 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 is similar to H.B. No. 1020, except that sections 4 and 5 of this bill do not include amendments that were made to sections 707-711 and 707-716, Hawaii Revised Statutes, in 2007 and 2008. If sections 4 and 5 of this bill are amended to reflect the current state of the law, then this bill will be the same as H.B. No. 1020, with only a few stylistic differences. For this reason, we recommend that the Committee amend H.B. No. 229 to conform with H.B. No. 1020.

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 with the recommended amendments.

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

February 9, 2009

RE: H.B. No. 229: Relating to the Penal Code.

Chair Mizuno and Members of the Committee:

H.B. No. 229 seeks to amend various provisions in Chapter 707 of the penal code with the stated purpose of providing harsher penalties for offenses against persons who are subjects of a restraining or protective order. We are opposed to this bill. We believe that, not only would the proposed amendments have no deterrent effect, but they conflict with current provisions in the Penal Code.

In Section 2, the bill seeks to amend Murder 1^o to include the situation where a person is killed by a defendant who the decedent had a restraining order on or who had been ordered to leave for a "cooling off" period under the Household Abuse law (§709-906). In Section 3, the bill seeks to lower the state of mind for Murder 2^o to "recklessly causing the death" of a person who is protected by a restraining order. In both of these cases, the bill seeks to create a "special class" of victim, those who are killed by a defendant against whom a restraining order has been brought or a defendant who has violated a "cooling off" period.

First of all, these changes will have no deterrent effect against those who are determined to kill an intimate partner. There is no evidence that increasing the penalty for murder from life in prison with the possibility of parole to life in prison without the possibility of parole will prevent the murder of a person who possesses a restraining order or who is being protected by a "cooling off period" from taking place. There is plethora of evidence that persons who kill in a domestic situation do not stop to consider the possible legal penalty for the crime. Rather, these are the crimes that are most often committed in the heat of anger, where there is certainly no rational thought given over to consequences.

Second, placing the aforementioned victim in a "special class" devalues the lives of victims who have not obtained restraining orders or sought police intervention. Is the life of a woman who is killed by her partner and who chose not to obtain a restraining order less important than the life of a woman who got the order? What about a victim who is killed at random in a home invasion robbery? This is the fundamental problem that the bill presents.

Third, the creation of a reckless form of Murder 2^o contradicts our current manslaughter statute and, in Section 4, the creation of a reckless form of Assault 2^o contradicts our Assault 3^o statute. Likewise, the creation of an additional form of Terroristic Threatening 1^o which occurs in violation of a restraining order or cooling off period contradicts our current Terroristic Threatening statute. Current penalties for these offenses are sufficient.

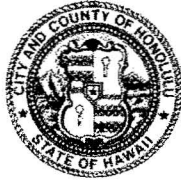
As mentioned previously, it is always problematic to single out specific categories of victims for special treatment because other categories of victims who see themselves as equally deserving of special treatment immediately call for the same laws.

Thank you for the opportunity to comment on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE RR-NTK

February 9, 2009

The Honorable John M. Mizuno, Chair
and Members
Committee on Human Services
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Mizuno and Members:

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

Thank you for the opportunity to testify.

Sincerely,

Handwritten signature of Richard C. Robinson in black ink.

RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:

for: Handwritten signature of Boisse P. Correa in black ink.
BOISSE P. CORREA
Chief of Police

CHARMAINE TAVARES
Mayor



BENJAMIN M. ACOB
Prosecuting Attorney

PETER A. HANANO
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
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February 6, 2009

HONORABLE JOHN M. MIZUNO, CHAIR
HONORABLE TOM BROWER, VICE CHAIR
COMMITTEE ON HUMAN SERVICES

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,
IN OPPOSITION OF H.B. NO. 229
RELATING TO THE PENAL CODE

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly supports H.B. 229 Relating to the Penal Code.

In September of 1999, Bridget Kawamoto was stabbed to death in her shower by her estranged husband, Brian Kawamoto. Just days before her murder, both the police and the court ordered the defendant not to have any contact with Mrs. Kawamoto. Sadly, however, the defendant ignored those orders. In addition to the murder in the second degree charge, the State charged the defendant with Abuse of a Family of Household Member in violation of Hawaii Revised Statutes Section ("HRS") 709-906(4), and one count of Violation of a Temporary Restraining Order in violation of HRS § 586-4. The defendant was later convicted of all charges.

Unfortunately, this tragic scenario is not uncommon. Within the past couple of years, there have been several similar instances in Hawaii, where domestic violence has claimed the lives of victims trying to escape the cycle of violence by seeking court or police protection.

The purpose of this bill is to provide greater protections to victims of domestic violence who the court is already attempting to keep safe through protective orders. Obviously, under the current laws, domestic abusers appear to be undeterred in abusing and sometimes murdering their victims.

Indeed, this bill sends a particularly strong message to would be domestic abusers and/or murderers that a violation of a police or court issued stay-away order will result in serious consequences.

In closing, our Department strongly supports this bill. The courts and law enforcement personnel desperately need this change in the law to successfully combat the often deadly consequences of domestic violence.

Thank you for the opportunity to testify.

(H.B. 229, Relating to the Penal Code)

hscadv.org **HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE**

Hearing date and time: February 9, 2009, 8:15am.

RE: H.B. 229 Relating to the Penal Code

TO: Chair Representative Mizuno, Vice Chair Representative Brower and members of the Committee on Human Services

FR: Carol Lee (clee@hscadv.org), Hawaii State Coalition Against Domestic Violence

Aloha, my name is Carol Lee. 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 HB229.

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 believe 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.

Thank you for the opportunity to testify.

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Sunday, February 08, 2009 12:40 PM
To: HUS testimony
Subject: HB229 to be heard Monday, February 9th at 8:15am by the House Committee on Human Services

TO: Representative John Mizuno, Chair
Representative Tom Brower, Vice Chair
Members of the Committee on Human Services

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

DATE: February 9, 2009

RE: Strong support for HB229

Good morning. Sorry I can't be there to testify in-person to the domestic violence-related measures being proposed today, but I'll be on a plane en-route back to Hawaii (otherwise I would be there for these very important proposals).

Amending the penal code to increase the penalties for offenders who would victimize someone whom the courts and police are trying to keep safe with a protective order is beneficial not only to those who would be immediately impacted by the changes in statute, but it would also send a stern warning to those who have not crossed such a line. ANY mechanism that would give an offender pause **before** committing a crime against another is a win-win all the way around so I sincerely hope that you'll be in agreement to support this amendment.

Thank you for your time and consideration.

Respectfully,

Dara Carlin, M.A.
Oahu VOICES Representative

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Windows Live™: Keep your life in sync. [See how it works.](#)