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THE HONORABLE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai'i

February 9, 2012

RE: H.B. 1773; RELATING TO ACCUSED TO TRANSPORT WITNESS OR WITNESSES.

Chair Mizuno, Vice-Chair Jordan, and members of the House Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of House Bill 1773.

The purpose of H.B. 1773 is to add a new section to the Hawaii Revised Statutes, Chapter 571, which would expressly allow Hawaii's courts to order that a defendant transport a material witness(es) to court, in situations where the defendant resides with the witness(es), and the prosecution has made reasonably diligent--but unsuccessful--efforts to obtain the witness(es)' presence; or where the defendant has sole physical or legal custody of the witness(es).

In recent years, our office estimates that approximately ten (10) domestic violence cases per year have not proceeded to trial, simply because the court did not have express authority to order the defendant to transport a minor, elder, or incapacitated witness to court. The majority of these are child abuse cases, and approximately one-fourth are elder abuse cases. Although the Department has tried various measures to secure the presence of these witness via suboena, guardian ad litem, and other means, the process reaches a standstill in cases where the defendant is the sole guardian of the witness—meaning that the subpoena must be served via the defendant—or where the defendant and witness reside together.

Even if it is clear that a defendant has actual or effective control over a witness' ability to appear in court, the court has stated that it requires express statutory authority before it can order a defendant to transport a witness to court. There is currently no such provision in the Hawaii Revised Statutes.

Minors, elders and incapacitated persons represent some of the most vulnerable individuals in our community, and it is imperative that courts be empowered to hear these domestic violence cases in which minors, elders and incapacitated persons may have been victimized by their own relatives or caregivers.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports House Bill 1773. Thank you for the opportunity to testify on this matter.