



**Office of the Public Defender
State of Hawaii
William Bento, Deputy Public Defender**



**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary**

February 26, 2013 2:05 p.m.

LATE

H.B. No. 587: RELATING TO THE PENAL CODE

Chair Rhoads and Members of the Committee:

This measure proposes to make significant changes to sections of HRS 709-906 dealing with Abuse of Family or Household Members. We oppose this measure for the following reasons:

1. This measure proposes to expand the definition of “family and household member” to include “partners in a romantic relationship”. This changes the original intent of this statute which was meant to encompass those that were significantly related to one another or had cohabitated to now include any romantic partners. This can mean to include those that are involved in the most intimate of relationships, as well as, those teenagers that are just “talking” as the current vernacular goes which can mean going steady in person or in cyber space. This begs the question, when does a romantic relationship actually begin, when one professes one’s love, when both profess their love, when each says they like each other and want to see where this goes? There is no need to change the special nature of family or household members to broaden the definition when there are ample statutes ie assault and harassment to deal with other classes of relationships with the same sentencing options available to any judge.
2. This measure proposes to allow a police officer the right to arrest an abuse suspect, regardless of one’s purpose, for returning to the scene of the abuse after a stay away order is issued by said officer. Currently, the law allows for an arrest only if the officer is trying to prevent a further episode of physical abuse or harm. This change is not needed as any victim can get a stay away order if desired at the first court date. Also, this change does not take into consideration any legitimate reason for returning to the scene including for retrieval of property, discussions on child custody or reconciliation.
3. This measure proposes to increase the minimum jail terms for first time offenders from 2 days to 4 days and from 30 days to 60 days for second time offenders. These increases serve no needed purpose. A presiding judge already has the authority to give a first or second time offender 1 year in jail if he/she believes it is necessary and proper. Increased minimum sentences will not serve as a deterrent to these offenses, because we are not dealing with premeditated offenses, but those born of relationships and the stresses that can result. These are offenses that are acute in

nature and not diligently planned out. What helps in prevention is better relationships and understanding of relationships. Perhaps this is something that could be addressed by the Department of Education in its curriculum. Furthermore, these increases in the minimum sentences will result in more defendants choosing a trial to resolve their case and will further clog the already overburdened two divisions of the family court that handle all of these cases.

4. This measure proposes to increase the time period from 2 years to 5 years between a second and third offense which changes the third offense to a class C felony from a misdemeanor. Thus, many more third offenses will be charged as class C felonies than would currently be charged as misdemeanors. In this same vein, this measure also proposes to add another special circumstance that changes a misdemeanor abuse case into a class C felony abuse—when the abuse occurs in the presence of any family or household member who is less than 10 years old, regardless of whether this is a first offense. Both measures would greatly increase the burden on the circuit court as many more cases that are in reality misdemeanor assaults would need to be heard in the circuit court. This will also result in a greater burden on our felony probation services, as well as, our prison resources. The hope again, is to deter such conduct, but in reality emotion is what carries away the parties in these cases and deterrence is not part of the calculation. What would serve best to deter recidivism in this area would be to make better available Domestic Violence Intervention programs, and insure that those that cannot afford such classes are able to participate without delay, and that those that require interpreters because of language difficulties are given such help, as well as, those that are in need of other help for physical or learning disabilities. If more resources are going to be spent in this area they should be used to solve the problem by way of treatment and prevention and not incarceration.

Thank you for the opportunity to provide input on this measure.

Justin F. Kollar
Prosecuting Attorney



Kevin K. Takata
First Deputy

Rebecca A. Vogt
Second Deputy

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

LATE

TESTIMONY IN SUPPORT OF
H.B. NO. 587
A BILL FOR AN ACT RELATING TO THE PENAL CODE

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Judiciary

Tuesday, February 26, 2013
2:05 p.m., Room 325

Honorable Chair Rhoads, Vice-Chair Har, and Members of the House Committee on Judiciary, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of House Bill No. 587.

The proposed measures in House Bill No. 587 amend Section 709-906, Hawai'i Revised Statutes to include: adding "partners in a romantic relationship" to the definition of "family or household member; increases the jail sentence from forty-eight hours to ninety-six hours for the first offense of AFHM; increases the jail sentence from thirty days to sixty days for a second offense that occurs within one year of the first conviction; increases the jail sentence for a third subsequent offense from two to five years; and assigns a class C felony for physical abuse that occurs in the presence of a family or household member less than ten years of age.

The California Penal Code 243(f)(10) defines a "dating relationship" as "frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations."


While we understand that there may be some debate as to what a "partner in a romantic relationship" is, we strongly believe that this category of victims is under served and that the law should reflect, and include the protection of those in a partnership as it relates to Section 709-906, H.R.S.

Furthermore, we also believe that by increasing the jail time for subsequent violations of AFHM, and by classifying physical abuse in the presence of a minor a class C felony, will add more weight to such a serious offense regarding the safety of a person and well

being of any minors that may witness the offense.

For these reasons, we strongly support House Bill No. 587. Thank you for the opportunity to testify on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar", written over a horizontal line.

Justin F. Kollar
Prosecuting Attorney
County of Kaua'i



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411



GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

February 25, 2013

LATE

The Honorable Karl Rhoads, Chair
And Members of the Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

RE: HB 587, RELATING TO PENAL CODE

Dear Chair Rhoads and Members of the Committee:

The Maui Police Department **opposes** the passage of House Bill No. 587.

The passage of this bill will amend the penal code to include partners in a romantic relationship as family or household member. The passage of this bill changes the penalties for committing the offense of Abuse, and makes an Abuse that occurs in the presence of a household member under the age of ten a Class C felony.

The Maui Police Department is committed to prevent domestic violence. As such, we are in favor of laws that are well defined and enforceable. This bill appears to be overly broad and not well defined. Adding partners in a romantic relationship as family or household members appear to encompass anyone involved in a dating relationship. This bill's reference to romantic relationships does not appear to define at what level of a relationship would constitute that partners would be subject to this offense. For example, two people meet and have a mutual affection for each other on the first date and kiss; thus under this proposed bill, they would appear to be in a "romantic relationship." This bill also does not define whether this romantic relationship ever ends. For the same example that was previously presented, what if the couple never goes on a second date, are they subject to the romantic relationship clause in this proposed bill?

As pointed out in the above short example, this addition and amendment to the law is not well defined and almost unenforceable, and it would inject government intervention into every aspect of any dating relationship with no defined end.

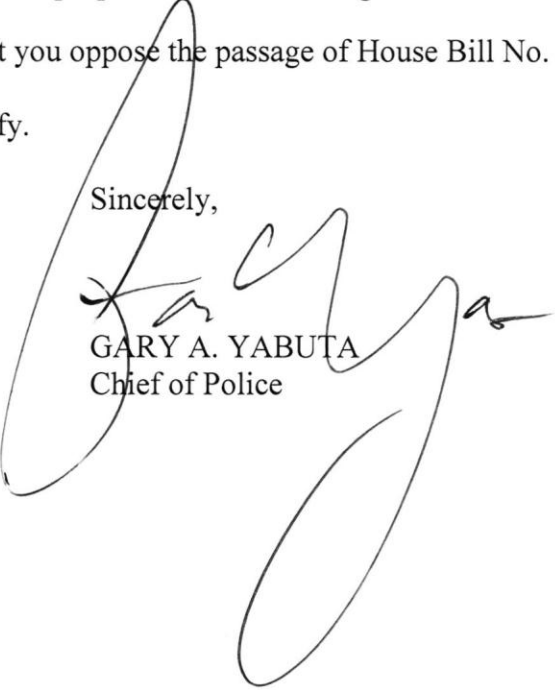
The Honorable Karl Rhoads, Chair
And Members of the Committee on Judiciary
February 25, 2013
Page 2

In regards to the Class C felony for Abuse that occurs in the presence of a household member under the age of ten, we understand the reason for this proposed change and we are in support of this but feel this change should only be passed if the "romantic relationship" section is clarified and defined, or this should be a separate proposed bill for a change in the law.

The Maui Police Department asks that you oppose the passage of House Bill No. 587.

Thank you for the opportunity to testify.

Sincerely,



GARY A. YABUTA
Chief of Police

LATE

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: Chair Karl Rhoads
Vice-Chair Sharon Har
HOUSE OF REPRESENTATIVES COMMITTEE ON JUDICIARY

From: Veronika Geronimo, Executive Director
Hawaii State Coalition Against Domestic Violence

Hearing Date and Time: February 26, 2:05p.m.

Place: Conference Room 325

RE: HB587 - COMMENTS

The Hawaii State Coalition Against Domestic Violence (HSCADV) wishes to offer comments on HB587, which amends penal code to include partners in a romantic relationship as family or household members, and changes penalties for abuse and makes abuse that occurs in the presence of household member under ten a Class C felony.

HSCADV and our members, which are domestic violence programs and shelters across the state, fully support the intent of this bill. HRS 709-906 is a valuable tool that keeps victims safe and holds those who do harm accountable. It allows law enforcement to keep the abuser away from the victim, and provides the victim essential and immediate time to find safety. This protection is available for current and former spouses or reciprocal beneficiaries, persons who are related, or have a child in common, or living with each other. Unfortunately, victims that fall outside this definition, such as those in a dating relationship, are not provided equal protections. Teens are disproportionately affected because they often do not live with their partners and they may not have children together. As a result, these victims are left with little protection from their abuser.

Foreseeably, the burden of proving dating or romantic relationships is challenging. Proving this element should present minimal burden on the victim so not to embarrass or discourage the victim from reporting the abuse.

Domestic violence advocates and survivors took great care to craft HRS 709-906 to minimize unintended consequences for the victim. Therefore, we respectfully request that the Committee proceed cautiously before amending the statute. Thank you for your consideration.

Hawaii State Coalition Against Domestic Violence

810 Richards Street, Suite 960
Honolulu, HI 96813
vgeronimo@hscadv.org | www.hscadv.org
Tel: 808-832-9316 ext. 104 | Fax: 808-841-6028



KAUAI
Chamber
of
Commerce

LATE

February 26, 2013

Honorable Representative Karl Rhoads, Chair,
House of Representatives, House Committee on Judiciary
Vice Chair Sharon E. Har & Members
Hawaii State Capitol – Room 325
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

RE: HB 587 Relating to the Penal Code

Aloha! My name is Randy Francisco, and I am President/CEO of the Kauai Chamber which comprises of 450+ businesses and 87%+ who are small businesses. I am writing this letter in **support of House Bill 587**.

The Kauai Chamber of Commerce concurs with Prosecuting Attorney Justin F. Kollar, County of Kauai and his office support of this important legislation. As an individual who Has lived on a street the past few years where there is domestic violence occurring throughout the day, evening, night, weekday and weekend, it is oftentimes myself and the neighborhood who become victims as well as a result of the various related domestic violence taking place, next door. Having children especially witness and have to live through an experience, I can truly attest is of even more compelling concern when a new cycle is bred into another generation. This must stop and this bill will help to address some of the concerns that translate from a family, into a neighborhood, and, to a work place.

To this end and to help bring an end to this, I humbly ask that your support this important legislation and become a champion for many of us who become the silent victims besides those who are actually living in violence, day in and day out and live a façade at school, work, church, anywhere.

Mahalo for your time and most of all, consideration to help those who are victimized.

Should I be of additional assistance, please do not hesitate to contact me at 245-7363.

Mahalo nui loa and Aloha,

Randall Francisco
President/CEO

HB587

Submitted on: 2/25/2013

Testimony for JUD on Feb 26, 2013 14:05PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Amanda Swanson | Individual | Support | No |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

HB587

Submitted on: 2/25/2013

Testimony for JUD on Feb 26, 2013 14:05PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Roderick Green | Individual | Support | No |

Comments: I am currently a Sergeant for the Kauai Police Department. Prior to joining KPD, I was Deputy for the Los Angeles County Sheriff's Department. In California, the domestic abuse laws are taken very seriously and are classified as a C Felony. When I found out how lenient the laws were in Hawaii, I found it to be a travesty. In my opinion, the only way domestic abuse will subside is if stiffer penalties are set in place against the perpetrators. This will also encourage victims to be more vocal about victimized without fear of repercussions. I sincerely hope that this measure passes!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov