

HB1993



**Office of the Public Defender
State of Hawaii
Timothy Ho, Chief Deputy Public Defender**



**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary & Labor**

March 19, 2014, 10:00 a.m.

H.B. No. 1993: RELATING TO DOMESTIC VIOLENCE

Chair Hee and Members of the Committee:

This measure would make the commission of an abuse of family or household member in the presence of a family member under the age of fourteen a class C Felony.

The Office of the Public Defender opposes H.B. 2034.

The legislature has recognized the fact that criminal offenses that occur within the family unit deserve special attention. A person convicted of misdemeanor abuse of family or household member faces a mandatory jail term and a referral to a domestic violence intervention program. A third offense within two years is charged as a class C felony.

If the offense is committed in the presence of children, the court has the discretion to impose a lengthier jail term. Family Court judges are aware of the impact that domestic violence has on children, and take that fact into account in their disposition of the cases before them. A vast majority of these cases occur at home, where discussions about family matters normally take place. A large percentage of these cases involve children, are about children and take place in front of children. If this measure is enacted into law, and every eligible case is prosecuted as a class C felony, there will be court congestion at the circuit court division, where these cases will be tried, and more harm to the family unit as a result.

The circuit court, which has jurisdiction over felony cases, will not be equipped to handle the influx of cases that would be transferred over from the family court. These cases will not be given the priority that they are currently being given in the family court, where they are presided over by judges who specialize in family or household abuse cases.

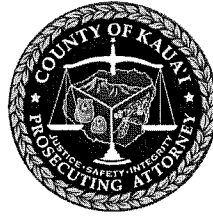
The increased penalty will mean more pretrial incarceration, with higher bail requirements. As a result of the pretrial incarceration, more people will lose jobs, which will result in a substantial financial hardship to most families. This will result in a chilling effect on the reporting of abuse, as some victims may have second thoughts about reporting their family member to the police knowing that the charge is a class C felony.

Many couples choose remain together as a family unit, even after an instance of domestic violence. We believe the courts should be allowed to exercise its discretion to treat each case individually, in the best interest of the family unit. We also believe that measure does not take into account that some cases involve siblings fighting with each other, where one or both parties are under the age of fourteen. Should a minor be prosecuted for a class C felony for fighting with a sibling under the age of fourteen?

The Office of the Public Defender strongly opposes this measure. Thank you for the opportunity to be heard on this matter.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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**TESTIMONY IN STRONG SUPPORT OF
H.B. NO. 1993 – RELATING TO DOMESTIC VIOLENCE**

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

Senate Committee on Judiciary and Labor
March 19, 2014
10:00 a.m., Room 016

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kauai, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS HB 1993 – RELATING TO DOMESTIC VIOLENCE**. This bill enhances the available sanctions for individuals who commit domestic abuse in the presence of a juvenile under the age of 14. Notably, the probation period for a convicted abuser would be extended from two years to five years. This extended period of supervision will help ensure that offenders follow through on their obligations with regard to counseling and treatment, and consequently ensure that children are not subjected to further exposure to incidents of domestic abuse.

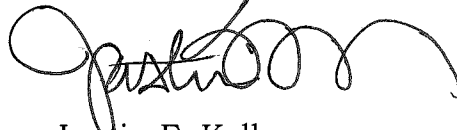
Research has shown that children who witness domestic violence can suffer severe emotional and developmental difficulties that are similar to those of children who are victims of direct abuse. Approximately 23 states, and Puerto Rico, currently have statutes addressing the issue of children who witness domestic violence in the home. Approximately 18 of those states have statutes that impose additional penalties on offenders who commit domestic abuse in the presence of a child. Hawaii law currently allows a sentencing judge to consider as an aggravating factor that the offense was committed in the presence of a child, but this factor does not change the fact that the probation period is still only two years, and it does not change the fact that misdemeanor probation is not as intensively or actively supervised as felony probation. The existence of this aggravating factor has also not resulted in any

change or decrease in the severity or frequency of domestic abuse cases involving children who are present.

Based on the foregoing, the County of Kauai, Office of the Prosecuting Attorney, STRONGLY SUPPORTS the passage of this bill. We ask that the Committee PASS HB 1993.

Thank you very much for the opportunity to provide testimony on this bill.

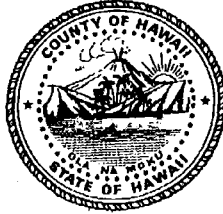
Respectfully,

A handwritten signature in black ink, appearing to read "Justin Kollar", with a large, stylized flourish extending to the right.

Justin F. Kollar
Prosecuting Attorney

MITCHELL D. ROTH
PROSECUTING ATTORNEY

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FIRST DEPUTY
PROSECUTING ATTORNEY



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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1993

A BILL FOR AN ACT RELATING TO DOMESTIC VIOLENCE

COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile S.L. Shimabukuro, Vice Chair

Wednesday, March 19, 2014, 10:00 AM
State Capitol, Conference Room 016


Honorable Chair Hee, Vice Chair Shimabukuro, and Members of the Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 1993.

The purpose of this measure is to make the commission of an act of physical abuse in the presence of a family or household member who is a minor under the age of fourteen a Class C Felony.

Research indicates that children exposed to domestic violence are more likely to experience difficulties in school and score lower on assessments of verbal, motor, and cognitive skills. Males exposed to domestic violence as children are more likely to engage in domestic violence as adults; similarly, females are more likely to be victims. Exposure to domestic violence is also one of the several adverse childhood experiences that have been shown to contribute to premature death, as well as contributing to the risk factors for many of the most common causes of death in the United States.

The Office of the Prosecuting Attorney of the County of Hawai'i supports the passage of House Bill No. 1993. Thank you for the opportunity to testify on this matter.

Respectfully,


Mitchell D. Roth
Prosecuting Attorney
County of Hawai'i

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: randy@kauaichamber.org
Subject: *Submitted testimony for HB1993 on Mar 19, 2014 10:00AM*
Date: Monday, March 17, 2014 12:31:40 PM

HB1993

Submitted on: 3/17/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Randall Francisco	Kauai Chamber of Commerce	Support	No

Comments:

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eliminating racism empowering women

ywca

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DATE: March 17, 2014

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

FROM: Renae Hamilton, Executive Director
YWCA of Kaua`i

RE: H.B. 1993
Relating to Domestic Violence

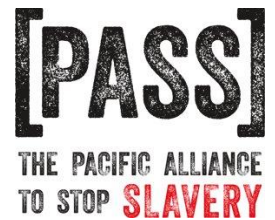
Good morning, Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor. My name is Renae Hamilton and I am the Executive Director for the YWCA of Kaua`i.

The YWCA of Kaua`i strongly supports H.B. 1993 relating to domestic violence in the presence of a minor under 14 years old. The YWCA is the sole provider on Kaua`i for providing essential services related to domestic violence; crisis intervention, victim advocacy and a Family Violence Shelter. We see firsthand on a daily basis the traumatic effects domestic violence has on children. This bill is a step in acknowledging the effects of domestic violence on minors and holding the violent offenders accountable for their behavior.

Children are often the silent victims in instances of domestic violence and family abuse; they are terrified by violence in the home as the abusive violence shatters their sense of safety and well-being. We now have the scientific evidence and reliable studies that clearly prove the negative impact witnessing domestic violence has on children's brain development as well as their emotional and psychological health. Batterers need to be held accountable for the impact of their crimes on all the victims of family abuse, including the children.

On behalf of the staff and Board of Directors, I urge you to support H.B. 1993 and help protect children who often cannot speak for themselves and who deserve our protection from the lifelong effects of domestic violence. Thank you for this opportunity to testify.





March 15, 2014

COMMITTEE ON JUDICIARY

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senator Mike Gabbard
Senator Brickwood Galuteria
Senator Les Ihara Jr.
Senator Malama Solomon
Senator Sam Slom

NOTICE OF HEARING

DATE: Wednesday, March 19, 2014
TIME: 10:00am
PLACE: Conference Room 016, State Capitol

**RE: TESTIMONY IN STRONG SUPPORT OF HB1993
RELATING TO DOMESTIC VIOLENCE**

Aloha, Committee on Judiciary:

The Pacific Alliance to Stop Slavery stands in strong support of this measure seeking to increase the penalty of the abuse of a household member if it occurs in the presence of a juvenile less than fourteen years of age. We strongly feel that domestic violence must be addressed severely as it is a significant problem in Hawaii. According to the Domestic Violence Action Center, there is one domestic violence related murder every month.

The penalties must fit the crimes and with domestic violence, we must both be proactive and swift in prosecuting violent offenders. Our lack of attention to this problem coupled with weak laws will only send messages to the public that domestic abuse is tolerated in Hawaii.

We must think about the environment within which our keiki grow up and ensure that their safety and protection against domestic violence is upheld along with their abused parents'. Please support and pass this legislation seeking to raise this offense to a Class C felony, when committed in front of a minor under fourteen years of age.

Sincerely,

Kathryn Xian
Executive Director

State of Hawaii

Social Worker VI

Testimony on HB 1993 – Relating To

Domestic Violence

The Honorable Chair Rhoads, Vice Chair Har,
and Members of the House Committee

I do not support HB 1993- Relating to Domestic
Violence.

Revised Addendum

HB1993

Child abuse is hard to prove and the punishment for making this commission of an act of physical abuse in the presence of a family or household member, who is under the age of fourteen, should not be classified as a class C

felony. One exception, if there was sexual abuse, which I think, should rise to the category of a class C felony. Defining child abuse is often hard for even the most experienced social worker. Child abuse can manifest itself in a superficial red mark or light bruising. Child abuse cases can be a grey area and should not mandate the abuser to a class C felony, on the same level as burglary of a vehicle, or unlawfully carrying a weapon, which are class C felonies.

The scope of this bill is too narrow. It doesn't mention child neglect, which can have far more serious ramifications than child abuse. It also goes against social work values, in regards to social justice. This bill assumes that child abuse cases are more severe than child neglect cases. Social workers make no such distinction. Both child abuse and child neglect cases can have voluntary and involuntary motives on the part of the abuser. This bill seems to have been written for only the most severe cases of child abuse. Child abuse cases represent only a small percentage of protective service investigations. Child abuse can manifest itself, as a slap of the face, leaving a mark. The intention of the abuser may have

been to discipline an incorrigible child. Because there is a mark on the child, this would be considered as child abuse. A far more serious act, of leaving a mark on the child's face, is child neglect, such as leaving a child in a car, with the windows shut. This can lead to death. This distinction is not even mentioned in this bill.

The majority of cases a protective service social worker are not child abuse cases, but child neglect. Failure to thrive, where a baby might die due to a continuous pattern of not feeding the baby; a small child left alone for hours or days, while the mother is out with her boyfriend; emotional neglect, where the parents show little attachment, can lead to lasting mental scars, are all child neglect cases. These can be far more serious acts, continued over a long period of time, than child abuse which may have occurred on a one time basis. Child abuse usually occurs when a parent either intentionally, or due to lack of self- control, strike out at a child. Child neglect, for example, can be when parents withhold medical treatment on religious grounds. The intention of the parents, in this example, is not intended to hurt the child. However, this example may have less

serious judicial penalties than cases of child abuse. I oppose this bill because there is no mention of child neglect, as well as it sends the wrong message to society. Thank you for allowing this testimony.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: cj77701@hotmail.com
Subject: *Submitted testimony for HB1993 on Mar 19, 2014 10:00AM*
Date: Friday, March 14, 2014 8:20:35 PM

HB1993

Submitted on: 3/14/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
chris johnson	Individual	Support	No

Comments:

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To: [JDLTestimony](#)
Cc: babyjean@hotmail.com
Subject: Submitted testimony for HB1993 on Mar 19, 2014 10:00AM
Date: Monday, March 17, 2014 11:14:20 PM

HB1993

Submitted on: 3/17/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Ronnie Perry	Individual	Oppose	No

Comments: I OPPOSE this bill because it does nothing to solve the root problem of domestic violence. It just creates more criminal offenses. Mahalo, Ronnie Perry

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Cc: breaking-the-silence@hotmail.com
Subject: *Submitted testimony for HB1993 on Mar 19, 2014 10:00AM*
Date: Tuesday, March 18, 2014 10:02:16 AM

HB1993

Submitted on: 3/18/2014

Testimony for JDL on Mar 19, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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