



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Judiciary**

Representative Karl Rhoads, Chair

Representative Joy San Buenaventura, Vice Chair

Thursday, January 28, 2016 2:01 p.m.

State Capitol, Conference Room 325

**WRITTEN TESTIMONY ONLY**

by

Judge Rom Trader

First Circuit Court

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**Bill No. and Title:** House Bill No. 1517, Relating to Sentencing.

**Purpose:** Provides that the commission of certain offenses of assault in the presence of the victim's minor child is an aggravating factor in the sentencing of the defendant convicted of the offense.

**Judiciary's Position:**

The Judiciary takes no position on House Bill No. 1517 and respectfully offers the following comments regarding elements of this proposal that may result in sentencing disparities.

In proposed subsection (a), beginning at page 1, line 9, the aggravating factors to be considered would include only convictions of certain violent felonies (committing or attempting to commit Assault 1, Assault 2 & Sex Assault 1), yet a host of other violent felonies would be inexplicably excluded, i.e., murder, attempted murder, kidnapping, robbery and terroristic threatening.

In proposed subsection (b), beginning at page 1, line 14, the language, "in the actual physical presence of a minor child of the victim or with the defendant's knowledge that a minor child of the victim was present..." would apply as an aggravating factor only if the victim's child was present or the defendant had knowledge that the victim's child was present. As proposed, this appears not to apply if there was a minor child present *other than* a child or children of the victim. Beyond this, the language, "in the actual physical presence of a minor child" may be less



House Bill No. 1517, Relating to Sentencing  
House Committee on Judiciary  
Thursday, January 28, 2016 2:01 p.m.  
Page 2

than clear and difficult to interpret without a corresponding definition of “physical presence.” For example, the assaultive conduct may occur in one part of a residence while the child is fast asleep in a separate part of the residence and completely unaware of it. As proposed, this language potentially establishes an aggravating sentencing factor in situations where it arguably may not be appropriate.

Lastly, beginning at page 2, line 1, subsection (b) includes the additional element that the child of the victim “might hear or see the offense.” The term “might” similarly is less than clear and may be difficult to interpret without a corresponding definition. As proposed, it may invite speculation as to what constitutes circumstances in which the child “might hear or see the offense.” As a result, this has the potential to lead to disparate outcomes in sentencing.

Thank you for the opportunity to testify on House Bill No. 1517.

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**THE HONORABLE KARL RHOADS, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Eighth State Legislature**  
**Regular Session of 2016**  
**State of Hawai`i**

January 28, 2016

**RE: H.B. 1517; RELATING TO SENTENCING.**

Chair Rhoads, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony, supporting the intent of H.B. 1517 and proposing H.D. 1 attached for your consideration. While the current language of H.B. 1517 attempts to address a problem that is certainly known to our Department, we believe a slightly different approach would be more effective.

The purpose of H.B. 1517 is to create a new sentencing statute that would require a court to consider the aggravating factor of an offense occurring in the presence of a minor. This new sentencing statute would cover specifically three offenses; §707-710 (assault in the first degree), 707-711 (assault in the second degree), or 707-730 (sexual assault in the first degree), H.R.S. It would require the courts to take into consideration as an aggravating factor, the fact that a minor was present contemporaneously during one of the enumerated offenses.

Hawai`i's existing statute, §706-606.4 H.R.S., Sentencing in offenses involving abuse of family or household member committed in the presence of a minor, created similar requirements for a court to consider the aggravating factor of having a minor in the presence during an offense. This statute covers scenarios where one of the enumerated offenses is committed by a defendant who is a family or household member to either the minor present or the victim of the offense.

In lieu of creating a duplicate statute which may cause further confusion, the proposed H.D. 1 sets out to reformat §706-606.4 H.R.S. to include the intent of H.B. 1517 into the general framework of the existing statute. The definition section in §706-606.4 H.R.S currently includes the offenses covered under H.B. 1517, as well as several other sections. "Offense" means a violation of section 707-710 (assault in the first degree), 707-711 (assault in the second degree), 707-730 (sexual assault in the first degree), 707-731 (sexual assault in the second degree), 707-732 (sexual assault in the third degree), or 709-906 (abuse of family or household members). By

removing the requirement in subsection H.R.S. §706-606.4(b), that the defendant is or has been a family or household member, the proposed changes to §706-606.4 H.R.S would uphold the intent of the existing statute, while also meeting the need indicated by H.B. 1517.

In addition, the Department would recommend inputting the definition of “In the presence of a minor” within §709-906, H.R.S. In 2014, H.B. 1993 was introduced and passed , creating a class C felony for physical abuse that occurred in the presence of a minor. However, the definition for “In the presence of a minor” was not provided in §709-906 H.R.S. or anywhere in Chapter 709. So at present, courts are forced to reach for the definition set out in §706-606.4, H.R.S. which is a completely separate sentencing statute, to provide a definition.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of H.B. 1517, using the proposed H.D. 1. Thank you for the opportunity to testify on this matter.

**Report Title:**

RELATING TO SENTENCING

**Description:**

Provides that the commission of certain offenses of assault in the presence of the victim's minor child is an aggravating factor in the sentencing of the defendant convicted of the offense.

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# A BILL FOR AN ACT

RELATING TO SENTENCING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 706-606.4, Hawai'i Revised Statutes, is  
2 amended to read as follows:

3           "§706-606.4 Sentencing in enumerated offenses ~~involving~~  
4 ~~abuse of a family or household member~~ committed in the presence  
5 of a minor. (1) In addition to the factors considered under  
6 section 706-606, the court shall consider the following  
7 aggravating factors in determining the particular sentence to be  
8 imposed:

9           (a) The defendant has been convicted of committing or  
10 attempting to commit an offense ~~involving abuse of a family or~~  
11 ~~household member; and~~

12           ~~(b) The defendant is or has been a family or household~~  
13 ~~member of either a minor referred to in paragraph (c) or the~~  
14 ~~victim of the offense; and~~

15           (b)(c) The offense contemporaneously occurred in the  
16 presence of a minor

17           (2) As used in this section:

1       ~~"Family or household member" has the same meaning as~~  
2 ~~defined in section 709-906.~~

3        "In the presence of a minor" means in the actual physical  
4 presence of a child or knowing that a child is present and may  
5 hear or see the offense.

6        "Offense" means a violation of section 707-710 (assault in  
7 the first degree), 707-711 (assault in the second degree), 707-  
8 730 (sexual assault in the first degree), 707-731 (sexual  
9 assault in the second degree), 707-732 (sexual assault in the  
10 third degree), or 709-906 (abuse of family or household  
11 members).

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## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1517

A BILL FOR AN ACT RELATING TO SENTENCING

**LATE**

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Thursday, January 28, 2016, 2:01 p.m.  
State Capitol, Senate Conference Room 325

Honorable Chair Rhoads, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 1517.

This measure provides that the commission of certain offenses of assault in the presence of the victim's minor child is an aggravating factor in the sentencing of the defendant convicted of the offense.

We agree with the proposed changes (HD 1) submitted by the Department of the Prosecuting Attorney of the City and County of Honolulu, which state:

In lieu of creating a duplicate statute which may cause further confusion, the proposed H.D. 1 sets out to reformat §706-606.4 H.R.S. to include the intent of H.B. 1517 into the general framework of the existing statute. The definition section in §706-606.4 H.R.S currently includes the offenses covered under H.B. 1517, as well as several other sections. "Offense" means a violation of section 707-710 (assault in the first degree), 707-711 (assault in the second degree), 707-730 (sexual assault in the first degree), 707-731 (sexual assault in the second degree), 707-732 (sexual assault in the third degree), or 709-906 (abuse of family or household members). By removing the requirement in subsection H.R.S. §706-606.4(b), that the defendant is or has been a family or household member, the proposed changes to §706-606.4 H.R.S would uphold the intent of the existing statute, while also meeting the need indicated by H.B. 1517.

In addition, we agree with the recommendation of inputting the definition of "In the presence of a minor" within §709-906, H.R.S. In 2014, H.B. 1993 was introduced and passed, creating a class C felony for physical abuse that occurred in the presence of a minor. However, the definition for "In the presence of a minor" was not provided in §709-906 H.R.S. or anywhere in Chapter 709. So at present, courts are forced to reach for the definition set out in §706-606.4, H.R.S. which is a completely separate sentencing statute, to provide a definition.



The Office of the Prosecuting Attorney, County of Hawai‘i supports the passage of House Bill No. 1517, with the proposed changes. Thank you for the opportunity to testify on this matter.



**LATE**

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## COMMITTEE ON JUDICIARY

Thursday, January 28, 2016, 2:01 pm, Room 325  
HB 1517 RELATING TO SENTENCING

### TESTIMONY

Janet Mason, Co-Chair, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair San Buenaventura, and Committee Members:

**The League of Women Voters of Hawaii supports HB 1517 which specifies that the commission of certain assaults in the presence of the victim's minor child is an aggravating factor in sentencing a convicted defendant.**

It's widely recognized that there can be great psychological harm to a minor who witnesses an assault on his or her parent. This bill stops short of establishing mandatory minimum sentences for such an offense, while providing an important sentencing guideline, and for that reason we support it. Thank you for the opportunity to submit testimony.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 27, 2016 12:22 PM  
**To:** JUDtestimony  
**Cc:** breaking-the-silence@hotmail.com  
**Subject:** \*Submitted testimony for HB1517 on Jan 28, 2016 14:01PM\*

**HB1517**

Submitted on: 1/27/2016

Testimony for JUD on Jan 28, 2016 14:01PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	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.

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