



Office of the Public Defender State of Hawaii

LATE TESTIMONY



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

February 8, 9:10 a.m.

S.B. No. 1282: RELATING TO THE OFFENSE OF ABUSE OF FAMILY OR
HOUSEHOLD MEMBERS

Chair Keith-Agaran and Members of the Committee:

This measure proposes to reduce the first offense of abuse of family or household member from a misdemeanor to a petty misdemeanor, and allow the introduction of prior convictions in order to prove second or subsequent offenses.

We believe that this measure constitutes a veiled attempt to deny a defendant his or her constitutional right to a jury trial and allow the prosecution to introduce prejudicial evidence of past crimes at trial in order increase their chances of obtaining a conviction. In as much as we believe that this measure violates established case law and the Hawaii and United States Constitution, the Office of the Public Defender strongly opposes S.B. 1282.

The preamble section of S.B. 1282 alleges that despite a number of state laws that protect victims of domestic violence, the rates of domestic violence occurring in Hawaii have not decreased. Our numbers show that between fiscal year 2011-2012, the Office of the Public Defenders referrals from the Family Court of the First Circuit dropped by fifty percent, from a high of 1,826 family court domestic violence case to approximately 900 cases in the most recent fiscal years (FY 2014-15: 890, FY 2015-2016: 898).

This 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 minimum jail term of forty-eight hours and a referral to a domestic violence intervention program. A person convicted of committing a second offense within one year of a prior conviction is deemed a "repeat offender." A third offense is classified as a class C felony.

On its face, this measure would appear to reduce the penalties for the offense of abuse of family or household member, by reducing a first offense from a full misdemeanor to a petty misdemeanor, and by eliminating the mandatory minimum thirty-day jail sentence for a second conviction. Currently, judges have the discretion to sentence even a first-time offender to a maximum one-year jail term. In reality however, most first offenders receive a sentence that is at or near the minimum mandatory forty-eight-hour jail term. In the First Circuit, most defendants exercise their right to a jury trial guaranteed to them by Article I, Section 14 of the Constitution of the State of Hawaii, and the Sixth Amendment to the United States Constitution. In Hawaii, a defendant has a constitutional right to a jury trial for "serious crimes." An offense is presumptively petty if the maximum jail is thirty days or less. The only reason the proponents of this measure propose a reduction from a misdemeanor to a petty misdemeanor for a first offense is to deny the right to a jury trial. In the First Circuit, defendants who proceed to jury trial have high acquittal rate. Our attorneys' success rate at jury trial is eighty to ninety percent. One of our attorneys who recently finished a four-month rotation in the family court criminal division had a total of nine jury trials, eight of which resulted in jury acquittals. While there is a presumption that a person charged with a petty misdemeanor is not entitled to a jury trial, we believe that this presumption will be rebutted by the requirement of a mandatory jail sentence, progressive severity of punishment for repeat offenders, the length of probation and mandatory domestic violence intervention classes. If this measure passes, we intend to appeal the denial of a right to a jury trial, which will result in hundreds, perhaps thousands of cases being put on hold during the appellate process. We have no objection to the reduction of a first offense from a misdemeanor to a petty misdemeanor if this measure is amended to include a right to a jury trial for a first offense.

This measure also appears to be in conflict with §706-623(1)(d), H.R.S., which limits probation for petty misdemeanor offenses to six months, which goes contrary to this legislature's desire for extended periods of supervision for abuse of household member cases. Currently, a person convicted of misdemeanor abuse of a family or household member is placed on two years' probation, one year longer than any other misdemeanor offense. For a first offender, the length of probation will be reduced from two years to six months. In sentencing a first-time offender to probation, the court would be prohibited from imposing a jail sentence longer than five days. The denial of a jury trial then, would only accomplish an increase in convictions without a corresponding increase in public safety. There would be

insufficient time for rehabilitation on probation, and the court would only be able to impose a jail sentence of two to five days of jail.

Another troubling provision of S.B. 1282 is the proposal to allow the prosecution to introduce prior convictions as evidence in the prosecution of the instant offense. The prosecution, which has trouble obtaining convictions for abuse of family or household members, should change its screening procedures before asking for a change in the law. Rule 404(b) of the Hawaii Rules of Evidence prohibits the introduction of other crimes, wrongs or acts to prove the character of a person in order to show that he or she committed the acts charged. Proof of prior convictions are admissible if proof of such is an element of the offense. The defendant, however is permitted to stipulate to the prior conviction, rendering the introduction of evidence to prove the same, moot. In *State v. Murray*, 116 Haw. 3 (2007), the Hawaii Supreme Court held that where proof of a prior conviction is an element of the offense, the defendant can stipulate to the conviction and the court will then instruct the jury that the defendant has stipulated to this particular element of the offense and the element is to be considered proven beyond a reasonable doubt. The name or nature of the previous conviction cannot be disclosed to the jury. The Court was particularly concerned with the unfair prejudice to the defendant of the disclosure of a prior conviction, especially if the prior conviction is for the same crime the defendant is being tried. A fair trial involves proof of the existence of a crime beyond a reasonable doubt with the evidence at hand, and not a conviction based on what the defendant did in the past.

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

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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai'i

February 8, 2017

**RE: S.B. 1282; RELATING TO THE OFFENSE OF ABUSE OF FAMILY OR
HOUSEHOLD MEMBERS.**

Chair Keith-Agaran, Vice-Chair Rhoads, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following comments, supporting the intent of S.B. 1282.

The purpose of S.B. 1282 is to reduce the number of domestic violence incidents committed by first time offenders and repeat offenders, by implementing laws that ensure offenders are held accountable and receive proper treatment and assistance. To achieve these objectives, S.B. 1282 proposes three distinct changes. First, it sets out to re-classify a first offense of §709-906(1), H.R.S., Abuse of Family or Household Member (“AFHM”) from a misdemeanor to a petty misdemeanor offense. Second, it creates guidelines for repeat offenders. Third, it authorizes the use of prior convictions of §709-906, H.R.S. as evidence against a repeat offender.

In regards to the first amendment, establishing a first offense of AFHM as a petty misdemeanor removes the right to a jury trial for first time offenders, who comprise the bulk of the criminal caseload for Family Court at 1111 Alakea Street, Honolulu, HI 96813. Presently, the Judiciary dedicates three (3) courtrooms there to Family Court criminal matters, which includes AFHM cases. Two of the courtrooms handle jury trial cases, with the ability to hear a maximum of two (2) jury trials per week, depending on the number of witnesses testifying and the complexity of the case. Typically, these two (2) courtrooms could do a total of four (4) trials per week. The third courtroom handles the arraignment of custody cases, as well as any cases set for bench trial. By amending a first offense to a petty misdemeanor, theoretically, we could be able to address five (5) first offense AFHM (petty misdemeanor) cases each week—one per day—along with a possible four (4) jury trials, for a total of nine (9) cases.

The second proposal of S.B. 1282 would create guidelines to address repeat offenders. "Repeat offender" here is defined as an individual charged with a second or subsequent offense, which occurs within five (5) years of the first conviction. This bill establishes that a second offense within the last five years will be classified as a misdemeanor, while a third offense within the last five years is a class C felony. The Department suggests that subsection (6) be amended by dividing second and third offense language into separate subsections, to ensure there is no confusion for defendants, as to what number offense and what classification of offense they are being charged with.

Lastly, S.B. 1282 would authorize prosecution to use prior AFHM convictions as substantive evidence in a subsequent/repeat offender case of AFHM. The language proposed – "The prosecution shall be allowed to use the prior convictions as evidence in the prosecution of the instant offense." – is very important, based on a prior Supreme Court decision that may preclude us from using the prior AFHM conviction as evidence otherwise.

Thank for you the opportunity to testify on this matter.



TO: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Members of the Committee on Judiciary and Labor

From: Marci Lopes, Executive Director
Hawaii State Coalition Against Domestic Violence
Re: Testimony in Support, SB 1282 Relating to The Offense OF Abuse Of A Household Member

Thank you for this opportunity to testify in support of SB 1282 Relating to The Offense OF Abuse of a Household Member. The Hawaii State Coalition Against Domestic Violence (HSCADV) is a statewide partnership of 25 domestic violence programs and shelter providers across our Hawaiian Islands. We would like to thank you all for your ongoing efforts to work towards ensuring victims of domestic violence in Hawaii are safe.

It is with great care and consideration that the HSCADV supports this bill. Our current criminal justice system is flawed and is doing devastating and long lasting harm to many victims of domestic violence and their children across our State. Advocates across our state worked tirelessly to have the crime of domestic violence taken seriously, so it is with great sadness that we are willing to consider having the offense of Abuse Of A Household Member become a petty misdemeanor, but this is the best alternative we have at our disposal to try and fix a broken system, and to ensure that abusers are held accountable for the crimes they perpetrate.

Domestic violence is a dangerous and often lethal crime. Research strongly indicates that domestic violence is one of, if not the most predominant social issues in our State. According to the Bureau of Justice, one third of all murdered females are killed by their current or former intimate partners. A coordinated community response is the best tool we have to combat domestic violence as a society, and a coordinated community begins with adequate training, education, and a system that acts swiftly and holds abusers accountable.

A petty misdemeanor with a jail sentence of no less than forty-eight hours and no more than thirty days is more of a consequence than I have seen handed to many abusers who have severely medically injured victims. This change alone will give a form of immediate justice and the needed time for the victim to safety plan. Establishing increased penalties and consequences for a second offense that occurs within five years of the first conviction of the offense of abuse of a family or household member is a misdemeanor and the person shall be termed a "repeat offender".

Allowing the prosecution to use prior convictions for the offense of abuse of a family or household member as evidence in the instant offense committed by a repeat offender feels like a positive systemic response to make needed changes. I was a Program Director for a Batterer Intervention Program in Honolulu, and saw many abusers who were mandated to services after finally being held accountable after several abusive relationships. Many times by the time they were in our Program they were already in new relationships, having never received the

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Message that their behavior is not ok and it won't be tolerated by our criminal justice system. Court ordered domestic violence intervention programs are the best weapon we have to making lasting change and to addressing the abusive behavior patterns. Anger management is more suitable for family member violence, such as a child or immediate family member, but not for an intimate partner relationship where there has been power and control used to abuse their victim.

For HSCADV having the judiciary, in cooperation with the prosecutor of each county and police department of each county, to annually compile and report on statistics regarding arrests, charges, and convictions based on the offense of abuse of a family or household member would be valuable data and information we desperately need to continue to make ongoing systemic change, instead of waiting for our Domestic Violence Fatality Review Teams to review the systemic failures and make the same recommendations we have been making for several years now.

Allowing for prior convictions to be used as evidence in the instant offense committed by a repeat offender is an idea worth employing. We urge you to pass SB 1282 and allow us to advance our collective efforts to improve this active partnership in our community's system to address domestic violence.

Respectfully,



Marci Lopes
Executive Director

mlopes@hscadv.org

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From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc:
Subject: Submitted testimony for SB1282 on Feb 8, 2017 09:10AM
Date: Tuesday, February 7, 2017 7:21:10 PM

LATE TESTIMONY

SB1282

Submitted on: 2/7/2017

Testimony for JDL on Feb 8, 2017 09:10AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Crystal Kia Paul	Individual	Support	No

Comments: Aloha Committee Chair and Members, Thank you for allowing me to submit testimony today. As a victim and survivor of Domestic Violence, I recall the pain and trauma I sustained after what I would call an "episode." The shame associated with domestic violence is unbearable. Many times the victim gets blamed by their own family and most definitely from the abusers family. There are many empty promises made by the abuser until, the victim has no choice but to call police and seek help. I humbly ask that you have the victims speak with a domestic violence counselor and explain how the process works. Many times victims will be ok with the person gone for the night however it can cause the abuser to become more enraged and cause the victim more harm. The victim needs to know how and where to seek help, find a safe house for themselves and for their children. Setting the laws today are only one part in resolving domestic violence issues. Sincerely, Crystal Kia-Paul

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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Testimony (SB 1282; HB 1491)

Domestic violence has been an ongoing problem for decades, and like most social problems, we may never be able to solve all of them. However, I do believe in creating a safer space in everyone's home. No child, women, or men should ever have the fear of going home. With this bill, SB 1282; HB 1491, I believe it will help create a safer environment for everyone.

In 2011, it was recorded that 926 women were murdered by their intimate partner, and 264 of these women were murdered during an argument with their intimate partner. That is a total of 1,509 deaths of women. Domestic violence is the third leading problem for homelessness (Huffington Post). Here in Hawaii, we do not need more homeless on the streets, as we are currently suffering in placing everyone in a shelter, which we are limited here on Oahu.

Huffington Post also reported that 1 in 7 men are victims of domestic violence. In addition, a book called, "The Effects of Intimate Partner Violence on Children," that was published in 2003, has reported studies on children who witness domestic violence. This study concluded that children who experience violence between an intimate partner are more likely to be more aggressive, noncompliant, disruptive, destructive, and antisocial (2003, Geffner, Igleman, and Zelner). With this proven study, we are allowing children to be created into more violent people in this city, state, and world.

With this testimony, I would like to support this bill, by creating safer environments that will benefit every family member in their household. This bill will help lower the some of the

percentage rates for homelessness, and it will help lower the percentage rates for future domestic violence with children

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc:
Subject: *Submitted testimony for SB1282 on Feb 8, 2017 09:10AM*
Date: Tuesday, February 7, 2017 2:31:53 PM

SB1282

Submitted on: 2/7/2017

Testimony for JDL on Feb 8, 2017 09:10AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Support	No

Comments:

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