

STAND. COM. REP. NO.

2258

Honolulu, Hawaii

FEB 13 2018

RE: S.B. No. 2343
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Public Safety, Intergovernmental, and
Military Affairs, to which was referred S.B. No. 2343 entitled:

"A BILL FOR AN ACT RELATING TO DOMESTIC VIOLENCE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Amend the offense of abuse of a family or household member to provide for felony, misdemeanor, and petty misdemeanor penalties;
- (2) Expand the family court's jurisdiction over certain enumerated offenses committed against family or household members;
- (3) Repeal the prohibition on deferred acceptance of guilty or no contest pleas in cases involving abuse of family or household members;
- (4) Require that no-contact and stay-away orders issued during the pendency of a criminal case or as a condition of probation be enforced regardless of whether the defendant signed a written acknowledgment of the order, provided that the defendant was informed on the record of the terms and conditions of the order in open court; and



- (5) Require that no-contact and stay-away orders issued during the pendency of trial cases involving abuse of family or household members or certain enumerated offenses be automatically converted after the defendant's conviction to a new protective order that shall remain in effect for a fixed reasonable period as the court deems appropriate, unless the victim or witness requests otherwise.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney, City and County of Honolulu; Office of the Prosecuting Attorney, County of Kaua'i; Honolulu Police Department; Maui Police Department; Department of the Prosecuting Attorney, County of Maui; Hawaii State Coalition Against Domestic Violence; Domestic Violence Action Center; ACLU People Power; and five individuals. Your Committee received testimony in opposition to this measure from the Office of the Public Defender and one individual. Your Committee received comments on this measure from the Judiciary and one individual.

Your Committee finds that domestic violence is a serious concern that threatens the health and safety of many of the State's citizens. In particular, those who are victims of domestic violence face the real threat of continued harm. Many victims of domestic violence seek protective orders to help shield themselves from further harm. However, inefficiencies and inadequate protections in the law enforcement and justice systems can lead to failed enforcement of protective orders or a lack of awareness by the victim of the expiration of such an order. It is essential that these inadequacies and others that fail to provide domestic abuse victims with proper protections, be addressed. It is equally important that the perpetrators of domestic violence are held to account for their misdeeds. Accordingly, this measure addresses deficiencies in the system by increasing the penalties for the perpetrators of domestic violence, expanding the role of the family court in adjudicating domestic violence cases, and providing additional safeguards relating to protective orders for domestic violence victims.

However, your Committee acknowledges the various concerns raised in testimony. In particular, your Committee finds that the courts need greater sentencing flexibility, including the ability



to use domestic violence intervention and parenting programs as alternative sentences. In addition, your Committee acknowledges the need to effectively convert no-contact and stay-away orders upon conviction. Further, while your Committee wants to ensure maximum protection for victims of domestic abuse, your Committee wants to ensure that defendants have adequate due process protections.

Your Committee has amended this measure by:

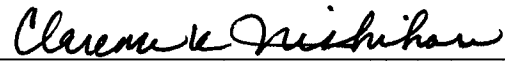
- (1) Clarifying that in a case involving abuse of a family or household member under section 709-906, Hawaii Revised Statutes (HRS), or involving harassment of a family or household member as defined in section 709-906, HRS, and charged pursuant to section 711-1106(1)(b) through (f), HRS, a no-contact or stay-away order previously imposed under section 706-624 or 804-7.1, HRS, on a defendant who is sentenced to a term of imprisonment shall be converted by the court upon the defendant's conviction in that case to a new protective order that shall remain in effect for a fixed reasonable period as the court deems appropriate;
- (2) Clarifying the family court's jurisdiction over cases involving harassment of a family or household member;
- (3) Allowing the family court to sentence a defendant in cases involving harassment of a family or household member, as defined in section 709-906, HRS, to complete a domestic violence intervention program or parenting classes;
- (4) Adding provisions to protect the due process of defendants by allowing defendants to show good cause for failure to comply with a no-contact or stay-away order;
- (5) Requiring offenders who commit abuse of a family or household member in the presence of a minor to complete a domestic violence intervention program and any available parenting class within a time frame specified by the court;



- (6) Inserting additional requirements for the court to satisfy when sentencing a person for abuse of a family or household member;
- (7) Specifying that a deferred acceptance of guilty plea or nolo contendere plea shall not apply to abuse of a family or household member in the first degree or third degree; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Public Safety, Intergovernmental, and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2343, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2343, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Public Safety,
Intergovernmental, and Military
Affairs,



CLARENCE K. NISHIHARA, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Public Safety, Intergovernmental, and Military Affairs
PSM

Bill / Resolution No.:* SB 2343	Committee Referral: PSM, JDC	Date: 2/6/18
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The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
NISHIHARA, Clarence K. (C)	✓			
WAKAI, Glenn (VC)	✓			
BAKER, Rosalyn H.	✓			
IHARA, Jr., Les	✓			
THIELEN, Laura H.	✓			
TOTAL	5	0	0	0

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature: 

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*Only one measure per Record of Votes