



*The Judiciary, State of Hawai‘i*

**Testimony to the Senate Committee on Judiciary**

Senator Brian T. Taniguchi, Chair  
Senator Karl Rhoads, Vice Chair

Tuesday, February 27, 2018 at 9:30 a.m.  
State Capitol, Conference Room 016

By  
Catherine H. Remigio  
Senior Judge, Deputy Chief Judge  
Family Court of the First Circuit

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**Bill No. and Title:** Senate Bill No. 2343, S.D.1, Relating to Domestic Violence.

**Purpose:** Amends the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties. Expands the family court's jurisdiction over cases involving harassment of a family or household member. Allows the granting of a deferred acceptance of guilty or no contest plea in cases involving misdemeanor abuse of a family or household member in the second degree. Requires that no-contact and stay-away orders issued in criminal cases involving abuse of a family or household member or non-physical forms of harassment of a family or household member be converted by the court 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; provided that a hearing on the issue is held and certain requirements are met. Takes effect on 1/1/2019. (SD1)

**Judiciary's Position:**

The Judiciary takes no position on this bill. We respectfully offer comments regarding the practical effects of Senate Draft 1.



Senate Bill No. 2343, S.D.1, Relating to Domestic Violence  
Senate Committee on Judiciary  
Tuesday, February 27, 2018 at 9:30 a.m..  
Page 2

1. The current SD1 requires the court to convert a no contact or stay-away order to a new protective order “upon the defendant’s conviction” ... “after hearing all the relevant evidence” and making appropriate findings (page 5, lines 1-13). The “hearing” created by SD1 may likely cause delays in both the specific case as well as the entire calendar. Notice must be given; the parties will need time to prepare; and the hearings will be in addition to all other pending cases and pending matters.

2. A hearing may not be necessary. The protective orders in this bill are meant to be treated like the current HRS Chapter 586 orders in order to adequately fulfill the legislative intent to provide safety and consistency to the complaining witnesses. A conviction, whether by a trial verdict or a plea of guilty or no contest, means that harm against the victim has been established beyond a reasonable doubt. HRS Chapter 586, being a civil matter, only requires that the allegations of harm are proven by a preponderance of the evidence. Additionally, once harm has been established, HRS Chapter 586 does not require a finding “that a new protective order is necessary to prevent domestic abuse or a recurrence of abuse or harassment.”

3. Therefore, we respectfully suggest the following amendments to SD1 that delete language on lines 7-12 .

At page 5, lines 1-15:

(f), a no-contact or stay-away order previously imposed under section 804-7.1 or 706-624 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, unless the victim or witness in the case requests otherwise; provided that the court [ , after hearing all the relevant evidence, finds that the defendant has failed to show cause why the previous order should not be converted to a new protective order and that a new protective order is necessary to prevent domestic abuse or a recurrence of abuse or harassment, as applicable; provided further that the court] shall comply with the requirements of section 709-906(6). A new protective order shall be documented, filed, and enforced in the same manner as a protective order issued under chapter 586."

4. Page 23 (lines 14-20) and page 24 (lines 1-7) require the court, at sentencing, to consider all prior judgments and orders regarding Defendant, from any court and in any circuit. This requirement will likely result in the court ordering a Presentence Investigation Report in order for probation to obtain this information. This requirement will result in a large increase in



Senate Bill No. 2343, S.D.1, Relating to Domestic Violence  
Senate Committee on Judiciary  
Tuesday, February 27, 2018 at 9:30 a.m..  
Page 3

probation work hours and in-court time, in a docket that already overtaxes probation and judicial resources. Delays in the reports and sentencing will be inevitable.

5. Besides the possibility of increased delays in the sentencing process, there are other concerns with this section. First, many of the prior judgments and orders to be gathered will be irrelevant (for example, civil cases such as landlord/tenant, bankruptcy, small claims). Second, at page 24, lines 3-4, the sentencing judge should not be confined by refraining “from imposing any condition or sentence that is inconsistent with any prior orders or judgments . . .” Indeed, the sentencing judge would have the most up-to-date knowledge of the case and may have reason to deviate from prior orders based on that knowledge. Third, at page 24, lines 6-7, the sentencing judge should not be limited based on other orders. Additionally, the sentencing judge may not have the jurisdiction and/or authority to “retain” or “enhance” orders issued outside of the instant criminal case.

Therefore, we respectfully suggest deleting the language at page 23, line 14, through page 24, line 7.

6. This bill will also require increased funding for more domestic violence intervention programs and more parenting programs. Without additional funding (over and above the budget items in the Judiciary’s proposed budget), Defendants will not be able to access required services in a timely manner. The Department of Public Safety may also require more funds to augment their domestic violence intervention and parenting programs for those offenders sentenced to imprisonment.

Thank you for the opportunity to testify on this measure.



TO: Chair Taniguchi  
Vice Chair Rhoads  
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Support SB 2343 SD 1 Relating to Domestic Violence

Aloha. This is a very important Bill for victims/survivors of domestic violence. It is a last resort for survivors to seek assistance from outside their community. From strangers. From the criminal or civil justice system. When they do, it must work to protect them, hold perpetrators accountable and pave the way for remedy as they navigate a path to freedom and self-sufficiency.

It has been a long time since the system uniformly worked well for our island families or individuals. The current law was the best work, and an innovation when it was first devised and passed. It was a collaborative undertaking. Its enforcement has been uneven. It is our great hope that the Bill before you today represents an improvement and an opportunity for system reform that is desperately needed.

Too few perpetrators of relationship violence get arrested. But those that do often do not result in convictions in court. Sanctions are few. And plea bargains have historically delivered a lukewarm message that family and relationship violence is not tolerated or acceptable.

SB 2343 SD1 is a proposal that grew out of important work, life altering work, done by the Women's Legislative Caucus during Interim, in partnership with the Judiciary, Department of the Attorney General, police departments and prosecutors' offices in each county, domestic violence programs and the incomparable voices of survivors brave enough to tell their story.

The amendments to the statute create options for law enforcement and system intervention. Three degrees of the offense provides latitude for officers, courts, attorneys and judges to respond in a way that offers protection, and direction for personal responsibility. Interventions are not sought unless there is criminal justice involvement; abusers do not wake up the morning after an assault, look at their partners bruises and say, "my god, I need help." Unfortunately.

**DOMESTIC VIOLENCE ACTION CENTER**

ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198

LEGAL HELPLINE: (808) 531-3771

TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200

WEBSITE: [WWW.DOMESTICVIOLENCEACTIONCENTER.ORG](http://WWW.DOMESTICVIOLENCEACTIONCENTER.ORG)

EMAIL: [DVAC@STOPTHEVIOLENCE.ORG](mailto:DVAC@STOPTHEVIOLENCE.ORG)



It is the community's job to put in place a system that is responsive, effective and appropriate. What is contained in SB 2343 SD1 creates the framework needed to hold offenders accountable, and offer protection.

We support the three degrees of offenses.

We support the imposition of a court ordered no contact order, and its conversion to a protective order. (The enforcement of these no contact orders/protective orders in this format will require cooperation with law enforcement so violations will be treated appropriately). The amendment to this section creating, post-conviction, a protective order to be in effect for a fixed reasonable period makes good sense and overcomes objections raised in previous hearings. If a no-contact order or stay away order is in effect, what good cause could there possibly be for failure to comply?

We support the standardization and inclusion of Proof of compliance hearings for defendants ordered to participate in sanctioned batterer's intervention programs. This is a key part of oversight and accountability.

We suggest that Courts make orders for participation in intervention programs that meet the Hawaii Batterer Intervention Program Standards. Not all programs are appropriate or responsive to the dynamics and potential lethality present by abusers. For example, online courses would not meet such standards.

We would like to underscore the importance of allowing/requiring that "all prior judgments and orders, whether the orders were issued by a criminal, family or civil court, prior to entering a final judgment, sentence or order.

Finally, we support the elimination of deferred acceptance of a guilty plea or nolo contender for abuse of a family or household member in the first degree or third degree.

It is critical for this statute to be amended to advance community wide efforts to keep island families and individuals safe from the harm of abuse.

Thank you for this opportunity to testify.

**SB-2343-SD-1**

Submitted on: 2/26/2018 7:45:03 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Testifying for Ho`omana Pono, LLC	Support	Yes

Comments:

In STRONG SUPPORT.

**SB-2343-SD-1**

Submitted on: 2/25/2018 4:24:45 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nichole Fian	Individual	Support	Yes

Comments:

Aloha,

As a Social Work student in the community, I am in support of this bill.

Mahalo Nui Loa,

Nichole Fian  
M.S.W. Candidate

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.police.org



KIRK CALDWELL  
MAYOR

SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
JONATHAN GREMS  
DEPUTY CHIEFS

OUR REFERENCE WO-KK

February 27, 2018

The Honorable Brian T. Taniguchi, Chair  
and Members  
Committee on Judiciary  
State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 016  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

SUBJECT: Senate Bill No. 2343, S.D. 1, Relating to Domestic Violence

I am Walter Ozeki, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2343, S.D. 1, Relating to Domestic Violence, as amended.

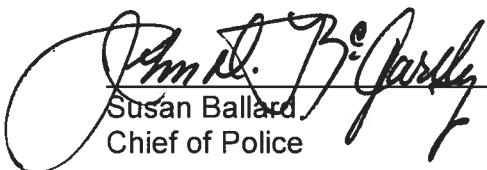
How we deal with problems of domestic violence is a continually evolving process and is in an area in which law enforcement must continue to strive to improve upon. It is the opinion of the HPD that Senate Bill No. 2343, S.D. 1, provides the most comprehensive package of reforms, which address the areas of concerns that were raised in our collaboration with domestic violence advocates and the Legislature.

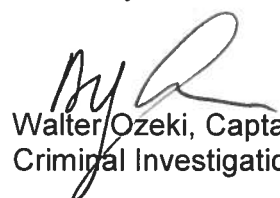
The HPD urges you to support Senate Bill No. 2343, S.D. 1, Relating to Domestic Violence.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Susan Ballard  
Chief of Police

  
Walter Ozeki, Captain  
Criminal Investigation Division



February 27, 2018

Good Morning Chair Taniguchi, Vice Chair Rhoads and Senate Judiciary Committee Members and thank you for the opportunity to provide testimony in STRONG OPPOSITION to SB2343.

While I and the survivors of violence and abuse I represent are grateful for the Womens Legislative Caucus' intention, concern and support in bringing an end to abuse in relationships and homes, **SB2343 is critically flawed in part** so I'm afraid I have no other choice but to express vehement opposition to SB2343 as a whole and urge you to do the same for the following issues and concerns:

Section 3 seeks to **Expand the family court's jurisdiction over harassment cases, which is currently limited to those involving persons in current dating relationships, by including cases involving persons in former dating relationships;**

**Domestic Violence is a CRIME, not a "personal problem"** that'll naturally go away with enough time, space and counseling.

ALL domestic violence cases - regardless of the offense, whose involved or whose attached/affected - should be rightfully heard in CRIMINAL COURT **not** in Family Court where application of the law does not get applied! My issue with this section is not expanding the definitional "width" of domestic violence but the family court's jurisdiction over *any* DV-related cases!

Section 4, **Requiring formal hearings to show that any court-ordered domestic violence intervention program or parenting classes were completed within a specified time frame and requiring the imposition of the maximum term of incarceration as a penalty for failure to timely comply; provided that a hearing on the issue is held and certain requirements are met; is misleading because unlike Section 1 that specifies CRIMINAL CASES this section implies (because of Section 3) FAMILY COURT CASES.** The family court system is broken as it is with an actual body count to back that statement up. Everyone agrees that "one child is too many" but until the system's problems are addressed, you're only going to see the body count rise.

Section 5, **Providing that the family court may try cases involving non-physical forms of harassment of a family or household member, even if a case does not include a charge of abuse of a family or household member, to appropriately reflect the broader spectrum of offenses committed in a domestic violence context and subject offenders to more thorough supervision; goes back to the original truth:**

**Domestic Violence is a CRIME, not a "personal problem"** that'll naturally go away with enough time, space and counseling. ALL domestic violence cases - regardless of the offense, whose

involved or whose attached/affected - should be rightfully heard in CRIMINAL COURT not in Family Court.

How can I make such a bold and harsh assertion? Look at our DV statutes and randomly audit the DV-based family court cases (re and mislabeled as "high conflict") that are congesting the (family) court system and see if **HRS 571-46(9)** has been applied to ANY and you'll see NO application of the life-saving statute that would clear out all the congestion!

In family court, "broad judicial discretion" is the law of the land and that's why there is no justice for any abuse-related cases there. In criminal court, the law is strictly adhered to and applied BUT because HRS 571-46(9) is "something for family court" so it doesn't get applied in criminal court either; part of the problem with criminal court is the delays in Due Process (but once you get in there, justice is forthcoming).

Section 6 is once again misleading because jury trial cases are discouraged as they are rare *in family court* where the preference is for mediation, settlements and stipulations, all of which, are contraindicated in DV-related situations. Again, the reason for backlog in family court is a completely different reason for backlog in criminal court but you don't need to take my word for it:

Rather than implementing faulty legislation hastily, why not take some time to do a thorough assessment first? Over 30 states have implemented **Court Watches**, ie: *The National Family Court Watch Project*

<http://nationalfamilycourtwatchproject.org/index.php>

that is dedicated to providing an impartial assessment of the effectiveness of family courts in dealing with custody, visitation, support and property issues.

Right now our nation is up in arms about "warnings that go unheeded" that subsequently lead to tragedies and the loss of life (the FL school shooting). Authorities were warned WAY ahead of time; I am warning you too - I urge you to exercise caution and explore such legislation CAREFULLY before signing off with good intentions.

Thank you, once again, for this opportunity to provide testimony in STRONG OPPOSITION to SB2343.

Respectfully,

*Dara Carlin, M.A.*

Domestic Violence Survivor Advocate



## Office of the Public Defender State of Hawaii



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

February 27, 2018, 9:30 a.m.

S.B. No. 2343, SD1: RELATING TO DOMESTIC VIOLENCE

Chair Taniguchi and Members of the Committee:

This measure proposes sweeping changes to Chapter 709, Hawaii Revised Statutes. The creation of a petty misdemeanor offense of abuse of a family or household member, a felony offense of abuse involving a minor, immediate incarceration for failure to complete DVI counselling are some of the more notable proposals in this measure.

We believe that this measure constitutes a veiled attempt to deny a defendant his or her constitutional right to a jury trial and proposes changes that will severely impact the Judiciary's ability to administer its caseload, with an unintended consequence being dismissals of cases for unnecessary delay. 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 all but one of the provisions of S.B. 2343, SD1.

The following is section-by-section commentary on this measure:

**Section 2. Post-conviction protective orders.** We do not oppose the language proposing an automatic extension of the no-contact and/or stay away order. However, we have concerns about the length of the extension, for a "fixed reasonable period." There should be limit to the length of the extension. What constitutes a "fixed reasonable period?" Without specific limits, the time-period becomes vague, and subject to wide discrepancies in the length of no-contact and/or stay away orders. Furthermore, the court should determine on the record that the victim or witness in the case desires an extension of the no-contact order.

**Section 6. Degrees and penalties.** This portion of the bill would categorize abuse of a family or household member into first, second, and third-degree

offenses. We strongly oppose this portion of SB 2343, as it would create a third-degree abuse offense for what is essentially criminal harassment.

**Extension of time for enhanced sentencing involving repeat offenders.**

This section would extend the time for treatment as a repeat offender from one year to five years for a second offense, two years to ten years for a third offense and add a one-hundred-and-eighty-day minimum mandatory jail sentence for a third or subsequent offense. There is no evidence that an extension of the time period is justified or needed to protect the public, as there is no evidence of a large number of repeat offenders. The court can sentence these repeat offenders to the maximum jail and prison terms, even if they fall out of the current time-period for treatment as a repeat offender. The court, through the prosecutor's office is always made well-aware of the existence of prior convictions of defendants that appear before them.

We propose that subsection (iii) on page 21 of this bill be moved from its current position inserted into section 709-906(5)(a). It is a felony offense and should be classified as abuse of a family or household member in the first degree.

**Abuse of a family or household member in the third degree.** We strongly oppose the creation of a petty misdemeanor offense of abuse of a family or household member. A person involved in a family argument could be charged with abuse and be subject to the prohibition of possession of a firearm, and face the potential loss of employment, if that person is a law enforcement officer or military personnel. Furthermore, we believe this is an attempt to eliminate or deny the right of a defendant his or her constitutional right to a jury trial. The prosecution could choose to amend all cases that they believe would not play well in front of a jury to third degree abuse in an attempt to deny a defendant a forum before a jury.

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.

**Immigration Consequences:** The probable, and potentially most harmful and unintended consequence of the creation of a third degree abuse charge is that a non-citizen who is convicted of this offense would be subject to deportation proceedings and removal from the United States. The unfairness of this immigration consequence is that a non-citizen who is convicted of a second degree abuse charge would not be deportable. It is the state of mind (intentionally or knowingly) which makes third degree abuse deportable. The requisite state of mind for second degree abuse is “intentionally, knowingly or recklessly.” A crime of domestic violence is a deportable offense. If the offense allows for conviction for reckless conduct, it is not deportable. This consequence alone would have a chilling effect on the reporting of domestic violence, as the family would be worried about losing their father, or mother through deportation proceedings.

**Immediate incarceration for failure to complete DVI or parenting classes.** This provision does not consider common reasons for being unable to complete DVI and/or parenting classes. Probationers have been terminated from classes if they fail to attend a class due to illness or failure to receive permission from their employer. If the classes have been completed, but the probationer cannot pay for the cost of their classes in-full, they will not receive a certificate of completion. This proposal removes all discretion from the court, and we believe, violates the Due Process clause of the Constitution.

**No contact order.** While the court can order the defendant not to have any contact with any witness involved in his or her criminal case, we do not believe the court should have jurisdiction to order a witness to stay away from the defendant. In these types of cases, we must be careful to not punish victims, either by charging them with contempt of court, or issuing warrants for their arrest due to their non-appearance in court.

**Deferred acceptance of guilty or no contest pleas.** We believe that allowing courts to grant deferrals will have the greatest impact to reducing the backlog of cases on the domestic violence calendar. A clear majority of defendants that appear on the domestic violence calendar are first offenders. They are most remorseful in the beginning stages of the prosecution. If presented with an opportunity to take responsibility for their actions and at the same time be given a chance to clear their record, we believe many defendants will jump at this opportunity. While we achieve great results with cases that we take to jury trial, there is always an uncertainty of acquittal. We are concerned, however, that SD1 takes a step backward by not allowing for deferrals on third degree abuse. There is no justification for allowing a deferral for the greater offense but not the lesser offense.

To our opponents who believe that this provision runs contrary to public safety, and that these kinds of defendants do not deserve an opportunity to defer their prosecution, we say that this provision does more for public safety than the situation that exists today. Right now, cases are being dismissed for violation of speedy trial, due to court congestion. Cases are being dismissed due to non-cooperative victims. Cases are being dismissed and recharged has harassment in the district court. Defendants are being acquitted by juries at a high rate. The afore-mentioned defendants are not receiving court supervision and domestic violence intervention classes. Defendants taking advantage of deferrals will reduce court congestion, reducing the number of speedy trial (Rule 48) dismissals. These defendants will be required to attend DVI classes and be subject to court supervision. With less cases on the trial docket, prosecutors will be able to spend more time and resources on the more serious cases, resulting in a higher conviction rate. If the defendants fail to complete their court-ordered counseling, a conviction for abuse of household member would be entered, also increasing the conviction rate. If some of these defendants' cases are dismissed because of their deferral, wouldn't this be preferable to dismissals without court supervision and/or counseling?

This legislature has continuously 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. We believe that

the current laws are sufficient for public safety, and the number one issue is court congestion. The only portion of this bill that addresses court congestion is the section permitting deferrals for abuse of household or family member.

Apart from the provision allowing for deferrals, the Office of the Public Defender strongly opposes this measure. Thank you for the opportunity to be heard on this matter.



**TO: Chair Taniguchi, Vice Chair Rhoads, and Members of the Senate Committee on Judiciary**

**FROM: Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)**

**DATE/LOCATION: February 27, 2018; 9:30 a.m., Conference Room 16**

**RE: TESTIMONY IN SUPPORT OF SB 2343– RELATING TO DOMESTIC VIOLENCE**

**We ask you to support SB 2343 which amends the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties and expands the family court's jurisdiction over cases involving harassment of a family or household member.** We support this bill which creates the framework needed to hold offenders accountable and offers protection to survivors.

As a provider of domestic violence prevention and support services, we are extremely aware of the overwhelming number of crimes related to relationship violence and the underwhelming number of perpetrators of relationship violence who are arrested. The more we can do to protect survivors from abuse encourages them to feel safe and confident enough to thrive beyond the trauma and navigate a path towards a safe and promising future.

We agree with the what this bill aims to accomplish:

- streamline prosecutions
- decrease court congestion
- minimize trauma impact and increase access to protections for survivors
- increase access to services for offenders

This bill seeks to minimize trauma impact on survivors as they go through the system, reduce unnecessary continuances and protect victims and the community. We understand that the provisions in this measure were arrived at after extensive outreach and consultation by the Women's Legislative Caucus and included the participation of many stakeholders in the criminal justice and law enforcement community as well as domestic violence agencies and survivors.



We appreciate the expertise of each individual and agency involved and the support that our community extends to survivors of domestic violence.

Founded in 1968, Parents And Children Together (PACT) is one of Hawaii's not-for-profit organizations providing a wide array of innovative and educational social services to families in need. Assisting more than 18,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 16 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, child and adolescent behavioral health programs, sex trafficking intervention, and community building programs.

Thank you for the opportunity to testify in **support of SB 2343**, please contact me at (808) 847-3285 or [rkusumoto@pacthawaii.org](mailto:rkusumoto@pacthawaii.org) if you have any questions.

**SB-2343-SD-1**

Submitted on: 2/26/2018 7:19:01 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Connie Valentine	Testifying for Mothers of Lost Children	Comments	No

Comments:

I belong to a national organization called the Mothers of Lost Children which consists of mothers whose children are forced to visit unsupervised or live with their identified perpetrators through failures in the family and juvenile courts. Our children have disclosed abuse, and have not been protected or believed.

The agencies designed to protect children have not helped, and in many cases have done harm. We have done everything we, as individuals, could do to protect them, yet have been unable to keep them safe.

Mothers of Lost Children seeks to educate and inform lawmakers of this national crisis so we were saddened to hear of Hawaii's proposed SB2343 legislation, in particular, Section 3 that seeks to expand family court's jurisdiction in abuse-related cases.

From all we've experienced, family court needs oversight as well as to be held accountable for THEIR ROLE in contributing to the ongoing abuse of survivors and their children.

I ask that you reconsider the wisdom of what you propose in Section 3 and remove it from SB2343. Thank you.

**SB-2343-SD-1**

Submitted on: 2/25/2018 2:09:55 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

**PRESENTATION OF THE  
OAHU COUNTY COMMITTEE ON LEGISLATIVE PRIORITIES  
DEMOCRATIC PARTY OF HAWAII'  
TO THE COMMITTEE ON JUDICIARY  
THE SENATE  
TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2018  
Tuesday, February 27, 2018  
9:30 a.m.**

Hawaii State Capitol, Conference Room 016

RE: Testimony in Support of Senate Bill **2343 SD1** RELATING TO DOMESTIC VIOLENCE

To the Honorable Brian T. Taniguchi, Chair; the Honorable Karl Rhoads, Vice-Chair, and Members of the Committee on Judiciary:

Good morning. My name is Melodie Aduja. I serve as Chair of the Oahu County ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on Senate Bill No. **2343 SD1** relating to Abuse of Family or Household Members; Penalties; Degrees of Offense; Protective Orders; Enforcement; Family Court; and Jurisdiction.

The OCC Legislative Priorities Committee is in favor of Senate Bill No. **2343 SD1** and supports its passage.

Senate Bill No. **2343 SD1** is in accord with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it (1) amends the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties; expands the family court's jurisdiction over cases involving harassment of a family or household member; (2) allows the granting of a deferred acceptance of guilty or no contest plea in cases involving misdemeanor abuse of a family or household member in the second degree; (3) requires that no-contact and stay-away orders issued in criminal cases involving abuse of a family or household member or non-physical forms of harassment of a family or household member be converted by the court 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; provided that a hearing on the issue is held and certain requirements are met; and (4) takes effect on 1/1/2019.

Specifically, the DPH Platform provides that "[w]e believe that all families should have an equal opportunity to build their assets and become self-sufficient; and we support a strong safety net of programs that will afford them the opportunity to do so. We must protect our children, our future, from violence and neglect and provide them with a safe and healthy environment in which to grow and thrive.. (Platform of the DPH, P. 4, Lines 184-187(2016)).

We support restorative justice that repairs the harm caused by criminal behaviors and reintegrates the offenders as contributing members of society. Likewise we support opportunities for those who have been incarcerated to effect a smooth transition back into the community and make available health, educational, and other assistance programs needed to allow them to become productive and respected members of the community. (Platform of the DPH, P. 5, Lines 273-277 (2016)).

Given that Senate Bill No. **2343 SD1** (1) amends the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties; expands the family court's jurisdiction over cases involving harassment of a family or household member; (2) allows the granting of a deferred acceptance of guilty or no contest plea in cases involving misdemeanor abuse of a family or household member in the second degree; (3) requires that no-contact and stay-away orders issued in criminal cases involving abuse of a family or household member or non-physical forms of harassment of a family or household member be converted by the court 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; provided that a hearing on the issue is held and certain requirements are met; and (4) takes effect on 1/1/2019, it is the position of the OCC Legislative Priorities Committee to support this measure.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: [legislativepriorities@gmail.com](mailto:legislativepriorities@gmail.com), Text/Tel.: (808) 258-8889

**SB-2343-SD-1**

Submitted on: 2/25/2018 5:00:15 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mo Hannah	Testifying for Battered Mothers Custody Conference	Comments	No

Comments:

As a Professor of Psychology since 1992, the Editor of Family and Interpersonal Violence Quarterly, a published author and as co-founder of the annual Battered Mothers Custody Conference in NY since 2004, I would just like to point out that while the intention of SB2343 seeks to assist domestic violence survivors and their children, that Section 3 will actually contribute to the ongoing harm of domestic violence survivors and their children. The testimony of all the survivors and children who attend the Battered Mothers Custody Conference would confirm as much so with all due respect, I would ask that you remove this particular section from this legislation since it contradicts what we know to be good outcomes in cases involving domestic violence. Thank you for your time and consideration.

**Justin F. Kollar**  
Prosecuting Attorney



**Rebecca Vogt Like**  
Second Deputy

**Jennifer S. Winn**  
First Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

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

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawai'i

February 27, 2018

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Prosecuting Attorney, County of Kaua'i **STRONGLY SUPPORTS** S.B. 2343 S.D. 1, Relating to Domestic Violence. This measure makes various improvements to Hawai'i's domestic violence criminal statutes intended to give additional flexibility to prosecutors, courts, and defense lawyers in crafting appropriate dispositions to cases involving domestic violence.

In drafting the proposed amendments, the WLC and stakeholders worked closely with the Legislative Research Bureau and carefully reviewed and considered the omnibus report concerning HRS 709-906 issued by the Bureau in 1999. This Bill is the careful and reasoned result of extensive consultation and legal vetting.

Specifically, the bill amends the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties, expands the family court's jurisdiction over certain enumerated offenses committed against family or household members, repeals the prohibition on deferred acceptance of guilty or no contest pleas in cases involving abuse of family or household members, requires 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 requires 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.

The provisions in this measure were arrived at after extensive outreach and consultation by the Women's Legislative Caucus and included the participation of many stakeholders in the criminal justice and law enforcement community. This inclusive process resulted in a bill that is truly fair and makes a multitude of much-needed improvements to HRS Section 709-906. The amendments will result in streamlined prosecutions, decreased court congestion, increased access to protections for victims, and greater access to services for offenders who need treatment, rehabilitation, and yes, consequences.

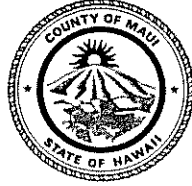
Our Office is grateful for the work of the WLC in crafting this legislation and we are in enthusiastic support of the bill.

Accordingly, the Office of the Prosecuting Attorney, County of Kaua'i, requests that this measure be PASSED.

Thank you very much for the opportunity to testify.



ALAN M. ARAKAWA  
Mayor



JOHN D. KIM  
Prosecuting Attorney  
ROBERT D. RIVERA  
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7630 • FAX (808) 270-7927

February 26, 2018

The Honorable Brian T. Taniguchi, Chair  
The Honorable Karl Rhoads, Vice Chair  
Members of the Senate Committee on Judiciary  
Twenty-Ninth Legislature  
Regular Session of 2018  
State of Hawai'i

Re: TESTIMONY ON S.B. NO. 2343 S.D. 1  
RELATING TO DOMESTIC VIOLENCE

Dear Chair Taniguchi, Vice Chair Rhoads, and Members of the  
Committee:

The Department of the Prosecuting Attorney, County of Maui  
STRONGLY SUPPORTS S.B. NO. 2343 S.D.1. Its provisions will  
improve the response of our criminal justice system to the  
problem of domestic violence in our community. Presently, the  
offense of abuse of family or household member covers a wide  
range of conduct. By establishing different degrees of the  
offense, the punishment is more proportionate to the severity of  
the physical abuse. As a result, a jury trial would be afforded  
in the more severe cases, which would help to relieve the courts  
of the number of jury trials on docket.

Accordingly, the Department of the Prosecuting Attorney,  
County of Maui requests that S.B. NO. 2343 S.D. 1 be PASSED.

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard K. Minatoya", is written over the typed name.

RICHARD K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor Appellate, Forfeiture,  
Administrative Services Division

**SB-2343-SD-1**

Submitted on: 2/26/2018 11:06:29 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Rocca	Individual	Support	No

Comments:

I strongly support this measure.

**SB-2343-SD-1**

Submitted on: 2/26/2018 10:53:55 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Esther McDaniel	Individual	Oppose	No

Comments:

I oppose this bill with concerns about caseload for Family Court, that it will overwhelm an already busy court calendar there (as a foster parent we can see how far apart our hearings are for our cases). I have other concerns about DV related assaults being handled only in Family Court. There must be more that we should be doing because we continue to see domestic violence as a common factor for children entering foster care.

thank you for the opportunity to share my comments.

Esther McDaniel

# hscadv



**HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE**  
1164 Bishop Street, Suite 1609, Honolulu, HI 96813

DATE: February 22, 2018  
TO: State of Hawaii  
Senate Committee on Judiciary  
Chair: Senator Brian Taniguchi  
Vice Chair: Karl Rhoads  
Senator Mike Gabbard  
Senator Donna Mercado Kim  
Senator Laura Thielen

FROM: Carmen Golay, Hawaii State Coalition Against Domestic Violence

RE: Testimony in SUPPORT **SB2343 SD1**  
RELATING TO DOMESTIC VIOLENCE

Aloha Committee Members:

On behalf of the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 22 member organizations across the state, I am submitting testimony in **SUPPORT of SB2343 SD1** which amends the crime of Abuse of Family and Household Member to provide for felony, misdemeanor and petty misdemeanor classifications. It also expands the Family Court's jurisdiction to related non-physical offenses and requires automatic stay away orders during criminal proceedings and post-conviction, we support these measures.

HSCADV and our member organizations helped coordinate local meetings of major stakeholders in each of the four counties across the state where courts, law enforcement, prosecutors and other system members listened to the experiences of domestic violence survivors and advocates. These sessions were very powerful and created systems changes in each of the counties and helped shape the direction of this legislation. After hearing from survivors and advocates across the state, the goal was to minimize trauma impact on survivors as they go through the system, reduce unnecessary continuances and protect victims and the community.

We appreciate that we can hear the needs and voices of survivors in how this legislation was written and we offer some comments on the amendments in SD1:

1. Page 3, Section 3 (first mention and subsequent language) "Any available" domestic violence intervention program could instead read "**program that meets current Hawaii Batterer Intervention program standards.**"

*Together we can do amazing things*



2. On the issue of three degrees of offenses and adding other harassment offenses to family court, we understand there may be concerns about court backlog and family court's ability to hear all these cases. We still support including the additional offenses so our court can have a full picture of the pattern of domestic violence. This may open the conversation for additional courtroom space, judges, etc. if that is what is needed to keep victims safer.
3. Section 6, page 13 "take into account all prior judgments and order...criminal, family or civil court prior to entering a final judgment, sentence or order." We fully support this and feel that having all that information available at sentencing will provide the court much needed context.
4. We especially support all aspects of orders of protection outlined in this bill. We believe converting orders of protection into new ones in criminal cases will increase victim safety and offender accountability.

As stated above, HSCADV supports SB 2343 SD1.

Thank you for your consideration of our testimony. If you would like to discuss this or have any questions, I can be reached at 808.832.9613 or via email at [cgolay@hscadv.org](mailto:cgolay@hscadv.org).

**SB-2343-SD-1**

Submitted on: 2/23/2018 5:01:47 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Circe Carr	Individual	Support	No

Comments:

**SB-2343-SD-1**

Submitted on: 2/23/2018 8:55:03 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kat Culina	Individual	Support	No

Comments:

**SB-2343-SD-1**

Submitted on: 2/24/2018 7:08:03 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joy Marshall	Individual	Support	No

Comments:



**SB-2343-SD-1**

Submitted on: 2/25/2018 5:06:36 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Doris Segal Matsunaga	Individual	Support	No

Comments:

**SB-2343-SD-1**

Submitted on: 2/25/2018 7:20:55 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Monk	Individual	Support	No

Comments:

**SB-2343-SD-1**

Submitted on: 2/26/2018 6:46:44 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eileen M Gawrys	Individual	Support	No

Comments:

The system needs to be adjusted to support and protect the victims of abuse and harassment rather than continually victimize them through an inefficient judicial process.

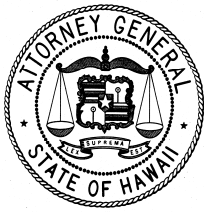
**SB-2343-SD-1**

Submitted on: 2/26/2018 8:38:25 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dr. Guy Yatsushiro	Individual	Oppose	No

Comments:



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2343, S.D. 1, RELATING TO DOMESTIC VIOLENCE.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 27, 2018                      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 16

**TESTIFIER(S):**     **WRITTEN TESTIMONY ONLY**  
(For more information, please contact Michelle M.L. Puu,  
Deputy Attorney General at 586-1160)

---

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General supports the intent of this bill while noting the following legal concerns:

Section 2 of the bill proposes the automatic issuance of a protective order post-conviction for certain offenses related to domestic violence. See section 2, pages 4 to 5, lines 17 to 15. First, the duration period is unconstitutionally vague as it fails to identify any parameters on time frame. Second, the presiding judge and representing parties may be disqualified from a subsequent proceeding should the defendant be charged with violating this order; thereby frustrating the judicial process. These same concerns also apply to section 5 of this bill, which seeks to revise section 706-624(2)(g), Hawaii Revised Statutes (HRS). See page 11, line 10, to page 12, line 10. Instead, perhaps the conviction could constitute prima facie grounds for the institution of a pending application for an order for protection before the family court. In that action, the victim would be spared from having to re-litigate the grounds for the order while the defendant would be afforded the opportunity to be heard on the issue.

Section 6 of the bill proposes several amendments to section 709-906, HRS:

The amendment to subsection 5(c) on page 22, lines 5-11, propose the addition of a third-degree abuse offense as a Petty Misdemeanor. This offense essentially tracks the language for Harassment in section 711-1106(1)(a), HRS. By law,

Harassment is not a lesser-included offense of Assault in the Third Degree. Likewise, this petty misdemeanor abuse charge would not be a lesser-included offense of misdemeanor abuse. Therefore, this would not be an available option for juries and judges to consider. Accordingly, this revision would not provide a practical option for charging or conviction purposes.

Section 8 on page 29, line 16 to page 34, line 10, of the bill seeks to amend section 853-4, HRS, which governs deferred pleas. The revision proposed by this S.D.1, has prohibited deferred pleas in cases of Abuse of a Family or Household Member in the Third Degree. See page 30, line 11 and page 33, lines 1-2. It is unclear whether these exclusions were intentional.

**SB-2343-SD-1**

Submitted on: 2/26/2018 12:34:27 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jina Rabago	Individual	Support	No

Comments:

**SB-2343-SD-1**

Submitted on: 2/26/2018 4:00:58 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Debra Zedalis	Individual	Oppose	No

Comments:

I appreciate the intent to protect DV victims; however, I am concerned that this bill transfers actions that should be in criminal court to family court (expands family court). Additionally, the bill is unclear while discussing criminal court and family court and then referring back to "court" (which one)? Intent is good (protect DV) but needs further work, I believe.



**SB-2343-SD-1**

Submitted on: 2/26/2018 4:13:52 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lucy Miller	Individual	Support	No

Comments:



TO: Chair Taniguchi  
Vice Chair Rhoads  
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Support SB 2343 SD 1 Relating to Domestic Violence

Aloha. This is a very important Bill for victims/survivors of domestic violence. It is a last resort for survivors to seek assistance from outside their community. From strangers. From the criminal or civil justice system. When they do, it must work to protect them, hold perpetrators accountable and pave the way for remedy as they navigate a path to freedom and self-sufficiency.

It has been a long time since the system uniformly worked well for our island families or individuals. The current law was the best work, and an innovation when it was first devised and passed. It was a collaborative undertaking. Its enforcement has been uneven. It is our great hope that the Bill before you today represents an improvement and an opportunity for system reform that is desperately needed.

Too few perpetrators of relationship violence get arrested. But those that do often do not result in convictions in court. Sanctions are few. And plea bargains have historically delivered a lukewarm message that family and relationship violence is not tolerated or acceptable.

SB 2343 SD1 is a proposal that grew out of important work, life altering work, done by the Women's Legislative Caucus during Interim, in partnership with the Judiciary, Department of the Attorney General, police departments and prosecutors' offices in each county, domestic violence programs and the incomparable voices of survivors brave enough to tell their story.

The amendments to the statute create options for law enforcement and system intervention. Three degrees of the offense provides latitude for officers, courts, attorneys and judges to respond in a way that offers protection, and direction for personal responsibility. Interventions are not sought unless there is criminal justice involvement; abusers do not wake up the morning after an assault, look at their partners bruises and say, "my god, I need help." Unfortunately.

**DOMESTIC VIOLENCE ACTION CENTER**

ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198

LEGAL HELPLINE: (808) 531-3771

TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200

WEBSITE: [WWW.DOMESTICVIOLENCEACTIONCENTER.ORG](http://WWW.DOMESTICVIOLENCEACTIONCENTER.ORG)

EMAIL: [DVAC@STOPTHEVIOLENCE.ORG](mailto:DVAC@STOPTHEVIOLENCE.ORG)



It is the community's job to put in place a system that is responsive, effective and appropriate. What is contained in SB 2343 SD1 creates the framework needed to hold offenders accountable, and offer protection.

We support the three degrees of offenses.

We support the imposition of a court ordered no contact order, and its conversion to a protective order. (The enforcement of these no contact orders/protective orders in this format will require cooperation with law enforcement so violations will be treated appropriately). The amendment to this section creating, post-conviction, a protective order to be in effect for a fixed reasonable period makes good sense and overcomes objections raised in previous hearings. If a no-contact order or stay away order is in effect, what good cause could there possibly be for failure to comply?

We support the standardization and inclusion of Proof of compliance hearings for defendants ordered to participate in sanctioned batterer's intervention programs. This is a key part of oversight and accountability.

We suggest that Courts make orders for participation in intervention programs that meet the Hawaii Batterer Intervention Program Standards. Not all programs are appropriate or responsive to the dynamics and potential lethality present by abusers. For example, online courses would not meet such standards.

We would like to underscore the importance of allowing/requiring that "all prior judgments and orders, whether the orders were issued by a criminal, family or civil court, prior to entering a final judgment, sentence or order.

Finally, we support the elimination of deferred acceptance of a guilty plea or nolo contender for abuse of a family or household member in the first degree or third degree.

It is critical for this statute to be amended to advance community wide efforts to keep island families and individuals safe from the harm of abuse.

Thank you for this opportunity to testify.

HAWAI'I  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA  
CYD HOFFELD  
JUDY KERN  
MARILYN LEE  
AMY MONK  
LISA ELLEN SMITH

Executive Director  
Khara Jabola-Carolus

Email:  
kjabola-carolus@dhs.hawaii.gov

Visit us at:  
humanservices.hawaii.gov/hscsw/

235 S. Beretania #407  
Honolulu, HI 96813  
Phone: 808-586-5758  
FAX: 808-586-5756

February 26, 2018

To: Chair Taniguchi  
Vice Chair Rhoads  
Members of the Senate Judiciary Committee

From: Khara Jabola-Carolus, Executive Director  
Hawai'i State Commission on the Status of Women

Re: Testimony in Support of S.B. 2343

On behalf of the Hawai'i State Commission on the Status of Women, I would like to thank the committee for hearing S.B. 2343 and for the opportunity to testify in support of S.B. 2343, which would create significant improvements to Hawai'i's Family Court system.

A broad coalition of community and government stakeholders including the Women's Legislative Caucus, law enforcement agencies, Domestic Violence Action Center and Hawaii State Coalition Against Domestic Violence, partnered during the interim to craft a response to inefficiencies within the court system and unnecessary revictimization of domestic violence victims. We support their call to amend our criminal domestic violence statutes to better ensure the protection of women and families through S.B. 2343.

Thank you for this opportunity to provide written testimony in support of this important measure.

Sincerely,

Khara Jabola-Carolus

**SB-2343-SD-1**

Submitted on: 2/26/2018 4:58:08 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joe P. Moss	Individual	Support	No

Comments:

Aloha, I am strongly in favor of SB2343. I believe it will help reduce domestic violence and give the Courts more tools to accomplish this goal.

**SB-2343-SD-1**

Submitted on: 2/26/2018 5:58:44 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan J. Wurtzburg	Testifying for American Association of University Women, Hawaii	Support	No

Comments:

AAUW-HI supports the bill, with the amendments suggested by the Hawaii State Coalition Against Domestic Violence.

Sincerely,

Susan J. Wurtzburg, Ph.D.

Policy Chair, AAUW-Hawaii

**SB-2343-SD-1**

Submitted on: 2/27/2018 7:50:53 AM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
May Lee	Individual	Oppose	No

Comments:

Abuse of family household member should be a criminal case heard in criminal court, not family court.

**SB-2343-SD-1**

Submitted on: 2/26/2018 8:53:00 PM

Testimony for JDC on 2/27/2018 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lea Minton	Individual	Support	No

Comments:

I am in strong support of SB2343 SD1 in order to expand our community efforts to keep families and individuals in Hawaii safe from the abuse of a household member. This is well thought through legislation and is a product of community organization collaboration that dove deep into the issue. It's purpose is to ensure that perpetrators of interpersonal violence are held accountable to their actions through enforcement and intervention while providing effective protection for the victims.

I urge you to pass this bill.



DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



CHASID M. SAPOLU  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE BRIAN T. TANIGUCHI, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2018**  
**State of Hawai`i**

February 27, 2018

**RE: S.B. 2343, S.D. 1; RELATING TO DOMESTIC VIOLENCE.**

Chair Taniguchi, Vice-Chair Rhoads and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony, supporting the intent of S.B. 2343, S.D. 1, with certain concerns and suggestions.

The Department strongly agrees that significant changes are needed to our Family Court system, in order to seek justice on behalf of Hawaii’ victims of domestic violence, protect public safety, and decrease the number of case dismissals that are occurring in the First Circuit. To further this goal, the Department has previously submitted legislative bills that would increase the number of judges and courtrooms available for domestic violence jury trials [S.B. 2949 (2012); HB 2351 (2012)], and supported similar bills that were later introduced by the Judiciary; unfortunately, none of those bills resulted in more domestic violence jury trial courtrooms or judges. This year, the Department submitted a bill that would exclude trial delays attributed to “court congestion,” from the limited time that the State is permitted to bring a case to trial [S.B. 2175; H.B. 1772].

In-line with our efforts to make the system more streamlined and effective at processing domestic violence cases, the purpose of S.B. 2343, S.D. 1, is to:

- Section 2 & 5 – “Automatically” convert no-contact or stay away orders to orders for protection, upon conviction;
- Section 3 – Create the new offense of “Harassment of a family or household member,” to mirror Section 711-1106(1)(b) through (f), Hawaii Revised Statutes (“HRS”);
- Section 4 – Include the new offense of “Harassment of a family or household member” under Family Court jurisdiction, leaving the current option to waive jurisdiction intact;
- Section 6 – Expand the definition of “family or household member” to include current and former dating relationships; clarify that defendants shall be prohibited from electronic communication with the victim, in addition to telephone or in-person, during the period of separation; establish 3 different penalty-levels for Abuse of Family or Household Member

(1<sup>st</sup>/2<sup>nd</sup>/3<sup>rd</sup> degree) with various mandatory sentencing provisions, including domestic violence intervention and/or parenting classes; require maximum incarceration if offenders are non-compliant with mandatory classes or any other conditions of sentencing;

- Section 7 – Requires that (pre-trial) no-contact and stay away orders be documented and enforced in the same manner as protective orders;
- Section 8 – Allow deferred plea for Abuse of family or household member in the second degree, if a defendant has no prior convictions or deferrals for any HRS §709-906 offense.

Our specific concerns and suggestions are as follows:

### Section 3 (pp. 5-8):

We appreciate the effort to address “non-physical” Harassment (in HRS§711-1106) against a family or household member, as the “domestic violence continuum” often begins with various forms of non-physical degradation, intimidation and control. However, we note that many other types of behavior can also be part of this continuum (when committed against a family or household member), such as terroristic threatening, unlawful imprisonment, criminal property damage, theft, robbery, arson, and other offenses found in HRS Chapters 707 and 708. If it is the Legislature’s intent to acknowledge this type of behavior as part of the domestic violence continuum, these offenses should also be addressed.

### Section 6

In general, the Department is supportive of dividing the offense of Abuse of a family or household member into 3 different degrees or penalty levels. While this is unlikely to address the First Circuit’s ongoing challenges with court congestion and case dismissals, it may improve public awareness about the dynamics of domestic violence. That said, we would also note:

- (p. 16, lines 16-17; and p. 17, lines 14-15): Using the phrase, “presents an imminent danger of inflicting abuse” (or something similar)—in place of “created an imminent danger”—may be more appropriate, if the purpose is to identify the abuser rather than to identify causation.
- (p. 17, lines 2-3; and lines 19-20): The clarification that electronic communications are prohibited during the period of separation is appreciated, but it may be more appropriate to cite to the definition of electronic communications under HRS §711-1111(2).
- (p. 20, line 17, through p. 21, line 13): If HRS §709-906(5)(b)(i) and (ii) are intended to be misdemeanors, while HRS §709-906(5)(b)(iii) is a class C felony, it may be clearer to note these classifications within subsections (i), (ii), and (iii) themselves, rather than noting the misdemeanor classification within HRS §709-906(5)(b).

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of S.B. 2343, S.D. 1, with the noted concerns and suggestions. Thank you for the opportunity to testify on this matter.