



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, March 21, 2018 2:15 PM
State Capitol, Conference Room 325

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

Bill No. and Title: Senate Bill No. 2343, S. D. 2, 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 1/1/2050. (SD2).

Judiciary's Position:

The Judiciary takes no position on this bill. We respectfully offer comments regarding the practical effects of Senate Draft 2.

1. The current Senate Draft 2 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 3-13). The “hearing” created by Senate Draft 2 may likely cause delays in both the specific case as well as the entire calendar. Notice must be given; the



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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 Senate Draft 2 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 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,



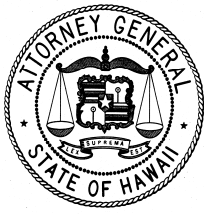
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the sentencing judge should not be confined by refraining “from imposing any condition or sentence that is inconsistent with any prior orders or judgments . . .” Indeed, the sentencing judge would have the most up-to-date knowledge of the case and 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.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2343, S.D. 2, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 21, 2018 **TIME:** 2:15 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Nishimoto 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. 2, 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.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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March 20, 2018

To: Rep. Nishimoto, Chair
Rep. San Buenaventura, Vice Chair
Honorable Members of the H. Committee on Judiciary

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

Re: Testimony in Support, SB2343, SD2

On behalf of the Commission on the Status of Women, mahalo for this opportunity to testify in support of SB 2343, SD2, which presents a suite of improvements to our domestic violence criminal statutes. The measure, if passed, would amend the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties. SB2343 also extends the family court's jurisdiction over cases involving harassment of a family or household member.

Domestic violence is the largest single cause of violence in the United States, and domestic violence programs in Hawai'i serve an average of 505 victims per day. The volume of cases necessitates a comprehensive overhaul in order to streamline prosecution and decrease court congestion. Importantly, SB2343 takes into account recommendations that community stakeholders and the Women's Legislative Caucus have been making for 20 years on how to better serve victims and minimize revictimization as they go through the criminal justice system. Therefore, the Commission supports SB2343 and requests that the Committee pass this important measure.

Mahalo,

Khara Jabola-Carolus



Office of the Public Defender State of Hawaii



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

March 21, 2018, 2:15 p.m.

S.B. No. 2343, SD2: RELATING TO DOMESTIC VIOLENCE

Chair Nishimoto 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, SD2.

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. Post-conviction protective orders may also negatively impact the court's calendar, as a hearing on the merits will be required, and court will have to make a finding that the defendant failed to show cause why the previous order should not be converted to a new protective order.

Section 3 & 4. Harassment of a Family or Household Member. This would add more cases to an already congested family court calendar. The judiciary assigns one (1) district family court judge to hear jury-waived matters. Due to a shortage of full-time district family court judges, this courtroom is staffed by per-diem judges. Adding cases to the family court calendar without adding judges, court staff, prosecutors, public defenders and probation officers will result in inadequate service provided to victims and perpetrators of family violence.

Section 5. No Contact Order Condition of Probation. Section 5 would add a stay away or no contact order to the conditions of probation. It would require the court to convert the stay away or no contact order which was imposed during the pretrial and post-trial phase of the case to new protective order prior to the expiration of the court's supervision of the defendant. This provision may prove to extremely difficult to implement. Defendant's and witnesses who move during the probation supervision may be hard to find and could possibly be residing in another state. This section also will increase the burden on the family court calendar, as hearings to order a new protective order would have to be scheduled.

Section 6. Degrees and penalties. 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. While many non-citizens, legal and undocumented do not report abuse that occurs in the home due to mistrust of law enforcement. Those that do try to work with the justice system will have a greater reason not to cooperate with the police and prosecutors. How many victims do you think would choose to go into hiding and not cooperate with law enforcement after they find out that their husband, wife, son or daughter will be subject to automatic deportation for what is essentially a strike, shove, push or kick? Rather than being ordered to attend domestic violence intervention and/or parenting classes, these defendants may not face any prosecution, placing spouses and children at risk of physical harm.

To address the immigration consequence of an abuse of family or household member conviction, we propose replacing abuse of family or household member with an amendment to HRS §711-1106 by inserting a new subsection which is attached to this testimony.

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.

The requirement that the court consider all prior judgments and orders by the civil, criminal and family court prior to sentencing a defendant on an abuse of family or household member offense, is overburdensome for the judiciary, and will require a pre-sentence investigation report to be conducted in all family court domestic violence cases.

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.

Section 8. 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 SD2 takes a giant 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. We propose an amendment to Section 8 of this measure in an attachment to this testimony.

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, it would only occur after completion of court-ordered counseling and supervision. 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 portion of this bill that will have the greatest impact

on the reduction of 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.

§711-1106 Harassment. (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

- (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
- (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;
- (c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;
- (d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;
- (e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or
- (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

(2) A person convicted of committing the offense of harassment in subsection (1)(a) above, against a family or household member as defined in section 709-906, shall be subject to the following additional sentencing conditions:

(a) The requirements of section 709-906(6) with respect to completion of any available domestic violence intervention program or parenting classes and penalties for failure to complete the program or classes; and

(b) The requirements of section 709-906(13) with respect to a proof of compliance hearing.

(23) Harassment is a petty misdemeanor. [L 1972, c 9, pt of §1; am L 1973, c 136, §9(b); am L 1992, c 292, §4; am L 1996, c 245, §2; am L 2009, c 90, §1]

§571-14 Jurisdiction; adults. (a) Except as provided in sections 603-21.5 and 604-8, the court shall have exclusive original jurisdiction:

(1) To try any offense committed against a child by the child's parent or guardian or by any other person having the child's legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, 711-1106 or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2);

(2) To try any adult charged with:

- (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
- (B) An offense, other than a felony, against the person of a family or household member as defined in section 709-906 ~~the defendant's husband or wife~~;
- (C) Any violation of an order issued pursuant to chapter 586; or
- (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged;

(3) In all proceedings under chapter 580, and in all proceedings under chapter 584;

(4) In proceedings under chapter 575, the Uniform Desertion and Nonsupport Act, and under chapter 576B, the Uniform Interstate Family Support Act;

(5) For commitment of an adult alleged to be mentally defective or mentally ill;

(6) In all proceedings for support between parent and child or between husband and wife;

(7) In all proceedings for pre-trial detention or waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-13 or 571-22;

(8) In all proceedings under chapter 586, Domestic Abuse Protective Orders; and

(9) For the protection of vulnerable adults under chapter 346, part X.

In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.

(b) The court shall have concurrent jurisdiction with the district court over violations of sections 707-712, 707-717, 707-722, 708-822, 708-823, 710-1010.5, 711-1106, and 711-1106.5 when multiple offenses are charged through complaint or indictment and at least one offense is a violation of an order issued pursuant to chapter 586 or a violation of section 709-906.

(c) The court shall have concurrent jurisdiction with the circuit court over violations of section 711-1106.4.

[(d)] The court shall have concurrent jurisdiction with the circuit court in all proceedings to appoint a guardian of an adult. [L 1965, c 232, pt of §1; Supp, §333-11; am L 1967, c 56, §2; HRS §571-14; am L 1973, c 211, §1(1); am L 1976, c 85, §6; am L 1980, c 232, §27; am L 1982, c 238, §2; am L 1983, c 79, §1; am L 1984, c 50, §1; am L 1986, c 285, §1; am L 1988, c 154, §3; am L 1989, c 61, §1 and c 381, §3; am L 1992, c 86, §1; am L 1996, c 89, §17; am L 1997, c 295, §2; am L 1998, c 64, §1 and c 190, §4; am L 2002, c 9, §1; am L 2004, c 18, §1 and c 161, §30; am L 2008, c 154, §26]

§853-4 Chapter not applicable; when. (a) This chapter shall not apply when:

(1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;

(2) The offense charged is:

- (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
- (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;

provided that the prohibition in this paragraph shall not apply to the misdemeanor offense of abuse of a family or household member in the second degree pursuant to section 709-906(5)(b), and the petty misdemeanor offense of abuse of a family or household member in the third degree pursuant to section 709-906(5)(c) when the defendant has no prior conviction, or has not been previously granted deferred acceptance of guilty plea or nolo contendere plea status, for any offense under section 709-906;

(3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;

(4) The offense charged is a class A felony;

(5) The offense charged is nonprobationable;

(6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;

(7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;

(8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;

(9) A firearm was used in the commission of the offense charged;

(10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;

(11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior offense, regardless of whether the period of deferral has already expired;

(12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;

(13) The offense charged is:

- (A) Escape in the first degree;
- (B) Escape in the second degree;
- (C) Promoting prison contraband in the first degree;
- (D) Promoting prison contraband in the second degree;
- (E) Bail jumping in the first degree;
- (F) Bail jumping in the second degree;
- (G) Bribery;
- (H) Bribery of or by a witness;
- (I) Intimidating a witness;
- (J) Bribery of or by a juror;
- (K) Intimidating a juror;
- (L) Jury tampering;
- (M) Promoting prostitution;
- (N) Abuse of family or household member in the first degree ~~or third degree~~;
- (O) Sexual assault in the second degree;
- (P) Sexual assault in the third degree;
- (Q) A violation of an order issued pursuant to chapter 586;
- (R) Promoting child abuse in the second degree;
- (S) Promoting child abuse in the third degree;
- (T) Electronic enticement of a child in the first degree;
- (U) Electronic enticement of a child in the second degree;

- (V) Prostitution pursuant to section 712-1200(1) (b);
- (W) Street solicitation of prostitution under section 712-1207(1) (b);
- (X) Solicitation of prostitution near schools or public parks under section 712-1209;
- (Y) Habitual solicitation of prostitution under section 712-1209.5; or
- (Z) Solicitation of a minor for prostitution under section 712-1209.1;

Justin F. Kollar
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Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
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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

March 21, 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. 2, 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

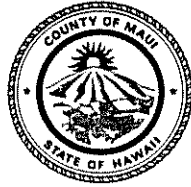
of family or household members or certain enumerated offenses be automatically converted after the defendant's conviction to a new protective order that shall remain in effect for a fixed reasonable period as the court deems appropriate, unless the victim or witness requests otherwise.

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.



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD K. MINATOYA
Deputy Prosecuting Attorney
Supervisor - Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
SB 2343, SD 2 - RELATING TO DOMESTIC VIOLENCE

March 21, 2018
2:15 p.m.

The Honorable Scott Y. Nishimoto
Chair
The Honorable Joy A. San Buenaventura
Vice Chair
and Members
House Committee on Judiciary

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

The Department of the Prosecuting Attorney, County of Maui **STRONGLY SUPPORTS** SB 2343, SD 2. Among other things, this measure: 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; and 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.

This measure will help address the issue of court congestion, and the ability to more adequately classify and address different levels of abuse. By establishing different degrees of the offense, the punishment will be more proportionate to the severity of the physical abuse. As a result, jury trial would be afforded in the more severe cases, which would help to relieve the courts of the number of pending jury trials.

Accordingly, the Department requests that this measure be **PASSED**. Thank you very much for the opportunity to provide this testimony.

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

March 21, 2018

RE: S.B. 2343, S.D. 2; RELATING TO DOMESTIC VIOLENCE.

Chair Nishimoto, Vice-Chair San Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony, supporting the intent of S.B. 2343, S.D. 2, 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 have excluded 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. 2, 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

(1st/2nd/3rd 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. 2, with the noted concerns and suggestions. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

WO-KK

OUR REFERENCE

March 21, 2018

The Honorable Scott Y. Nishimoto, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

SUBJECT: Senate Bill No. 2343, S.D. 2, 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. 2, 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. 2, 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.

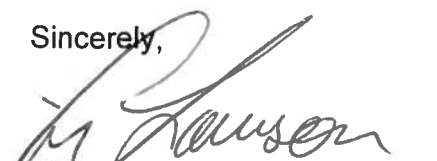
The HPD urges you to support Senate Bill No. 2343, S.D. 2, Relating to Domestic Violence.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Susan Ballard
Chief of Police


Walter Ozeki, Captain
Criminal Investigation Division

SB-2343-SD-2

Submitted on: 3/19/2018 5:47:06 PM

Testimony for JUD on 3/21/2018 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:



TO: Chair Nishimoto
Vice Chair San Buenaventura
Members of the Judiciary Committee

FR: Nanci Kreidman, M.A

Re: Support SB 2343 SD 2 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

EMAIL: 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 SD2 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-2

Submitted on: 3/19/2018 2:46:30 PM

Testimony for JUD on 3/21/2018 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:



TO: Chair Nishimoto, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary

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

DATE/LOCATION: March 21, 2018; 2:15 p.m., Conference Room 325

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 if you have any questions.

LATE

SB-2343-SD-2

Submitted on: 3/20/2018 4:26:19 PM

Testimony for JUD on 3/21/2018 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carmen Golay	Individual	Support	No

Comments:

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 SD 2 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 offenses and requires automatic stay away orders during criminal proceedings.

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 sincerely hope that this new legislation will help create safety and swift protections for victims of domestic violence as well as quick resolutions, convictions and accountability for perpetrators of domestic violence. We also recognize and honor the work that was put into making the language of this bill better and more reflective of the needs of the community by all the stakeholders.

As stated above, HSCADV supports SB 2343 SD 2.

LATE

SB-2343-SD-2

Submitted on: 3/20/2018 4:44:33 PM

Testimony for JUD on 3/21/2018 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lea Minton	Individual	Support	No

Comments:

LATE

SB-2343-SD-2

Submitted on: 3/20/2018 5:29:40 PM

Testimony for JUD on 3/21/2018 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Stacey Moniz	Individual	Support	No

Comments:

Aloha Senators,

Thank you for your continued work to helping end domestic violence in Hawaii and to make meaningful changes to the current law. I am in SUPPORT of the second draft of SB2343 and urge you to support allowing for these modifications. It is time to change the way the criminal system handles cases of domestic violence across the state. These changes to the statute are an important first step in a more efficient process towards justice.

During my time with the state DV coalition I got to travel across the state with the Women's Legislative Caucus and other state leaders and hear from survivors and advocates and professionals working in the field. This months long process led to the changes being introduced in SB2343 and marks an important point in time for survivors. Please honor their courage for coming out to speak about their experiences and support the changes to HRS 709-906.

Thank you so much for your hard work and for considering my testimony.

Peace be the journey,
Stacey



COMMITTEE ON JUDICIARY

Rep. Scott Y. Nishimoto, Chair

Rep. Joy A. San Buenaventura, Vice Chair

DATE: Wednesday, March 21, 2018

TIME: 2:15 p.m.

PLACE: Conference Room 325

Aloha Chair Nishimoto, Vice Chair San Buenaventura and members,

STRONG SUPPORT FOR SB2343 that amends the offense of abuse of family or household members to better address the epidemic of family violence which is primarily directed against women

This bill is the result of the hard work of stakeholders that included law enforcement, members of the Women's Legislative Caucus, as well as community nonprofit providers of services to victims.

It provides much needed retooling of a system that has not been particularly responsive to the needs of victims. It will better hold batterers accountable and provide better tracking by the courts, thereby creating a better picture of the scope of the problem.

Most importantly, by expanding the Family Court's jurisdiction to related non-physical offenses and requiring automatic stay away orders during criminal proceedings and post-conviction, **this proposed law would create greater safety for victims of this epidemic of violence against women ingrained in our national and international culture.**

Mahalo for the opportunity to testify,

Ann S. Freed Co-Chair, Hawai'i Women's Coalition

Contact: anssfreed@gmail.com Phone: 808-623-5676

LATE

SB-2343-SD-2

Submitted on: 3/21/2018 4:11:51 AM

Testimony for JUD on 3/21/2018 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments: