

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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

January 31, 2017

RE: S.B. 426; RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBERS.

Chair Keith-Agaran, Vice-Chair Rhoads, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in **support** of Senate Bill 426.

The purpose of S.B. 426 is to address a number cases in which a defendant intentionally or knowingly impedes a victim's normal breathing in accordance with section 709-906(8), H.R.S.

According to the National Center for Prosecution of Child Abuse, at least 35 other states currently have adopted statutes to protect victim's of strangulation or suffocation. Through Act 230, Session 2006, Hawaii amended section 709-906 to include "strangulation" – impeding normal breathing or circulation of blood – by applying pressure to the neck or throat as a class C felony. However, it is not uncommon for our Department to encounter cases in which a defendant impedes a victim's normal breathing by way of covering the mouth or nose of the victim – suffocation – rather than impeding the circulation of the blood - strangulation. Therefore, SB 426 would ensure that victims of domestic violence would not just be protected from strangulation, but from suffocation as well.

For all of the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu supports S.B. 426. Thank for you the opportunity to testify on this matter.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 426

A BILL FOR AN ACT RELATING RESTITUTION FOR
VICTIMS OF CRIME

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gilbert S.C. Keith-Agaran, Chair

Sen. Karl Rhoads, Vice Chair

Tuesday, January 31, 2017, 9:00 AM
State Capitol, Conference Room 016

Honorable Chair Keith-Agaran, Honorable Vice Chair Rhoads, and Members of the Committee Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 426.

This measure provides that blocking a family or household member's nose or mouth to intentionally or knowingly impede normal breathing or circulation is a class C felony.

Our office has prosecuted numerous cases where the crime victim's breath was impeded or stopped by a defendant placing their hands over the victim's mouth and nose. In some cases, pillows were used to apply pressure over the victim's face to a point the victim could not breathe. In cases such as these, there may be no visible injury or the injury may not be sufficient to photograph.

An abuser can apply pressure to the neck of a victim, then change tactics by placing hands over the victim's nose and mouth instead. This will not only muffle screams, but cut off breath. Eliminating this loop hole by adding the mouth and nose to the statute would deter abusers and give prosecutors a powerful new tool in prosecuting defendants who commit this type of crime.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 426. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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TESTIMONY IN SUPPORT
SB 426 - RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBERS

January 31, 2017

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Karl Rhoads
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

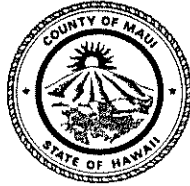
The Office of the Prosecuting Attorney, County of Kaua'i strongly supports SB 426. This measure provides that blocking a family or household member's nose or mouth to intentionally or knowingly impede normal breathing or circulation is a class C felony.

Currently, "strangulation" - impeding normal breathing or circulation of blood - by applying pressure to the neck or throat, is a class C felony. However, we have cases in which the same result occurs in a family abuse case, that is, impairment of breathing, but it is not a class C felony because rather than applying pressure to the neck or throat of the victim, the defendant covered the mouth or nose of the victim, thereby "suffocating" the victim rather than "strangling" the victim. This bill will close that loophole.

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

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

TESTIMONY (REVISED)
ON
SB 426 - RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBERS

January 31, 2017

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Karl Rhoads
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly supports SB 426. This measure provides that blocking a family or household member's nose or mouth to intentionally or knowingly impede normal breathing or circulation is a class C felony

Currently, "strangulation" - impeding normal breathing or circulation of blood - by applying pressure to the neck or throat, is a class C felony. However, we have cases in which the same result occurs in a family abuse case, that is, impairment of breathing, but it is not a class C felony because rather than applying pressure to the neck or throat of the victim, the defendant covered the mouth or nose of the victim, thereby "suffocating" the victim rather than "strangling" the victim. This bill will close that loophole.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED.

Thank you very much for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

CARY OKIMOTO
JERRY INOUE
DEPUTY CHIEFS

OUR REFERENCE

WO-NTK

January 31, 2017

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: Senate Bill No. 426, Relating to Abuse of Family or Household Members

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. 426, Relating to Abuse of Family or Household Members, with the suggested amendment.

Obstructing the nose or mouth is not considered the same mechanics of impeding breathing as in strangulation. This could be remedied by modifying the description to include both nose and mouth.

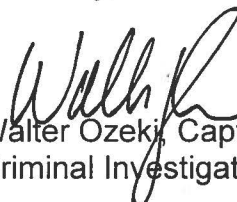
The HPD urges you to support Senate Bill No. 426, Relating to Abuse of Family or Household Members, with the proposed amendment.

Thank you for the opportunity to testify.

APPROVED:


Cary Okimoto
Acting Chief of Police

Sincerely,


Walter Ozeki, Captain
Criminal Investigation Division



**Office of the Public Defender
State of Hawaii
Timothy Ho, Chief Deputy Public Defender**



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

January 31, 2016, 9:00 a.m.

S.B. No. 426: RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBERS

Chair Keith-Agaran and Members of the Committee:

This measure would make the covering of another person's nose or mouth while physically abusing a family or household member a class C felony. **The Office of the Public Defender opposes S.B. 426.**

S.B. 426 seeks to amend §709-906(8), HRS, which states in pertinent part as follows:

(8) Where the physical abuse consists of intentionally or knowingly impeding the normal breathing or circulation of the blood of the family or household member by applying pressure on the throat or the neck, abuse of a family or household member is a class C felony.

Essentially, subsection 8 elevates household abuse from a misdemeanor to a class C felony when the State can prove that the defendant choked his or her family or household member. This bill would add the act of covering the nose or mouth of a family or household member which impedes the normal breathing or circulation of the blood of a family or household member a class C felony.

Yelling, shouting and screaming generally accompany familial arguments. On some occasions, both parties are yelling and hitting each other. We are concerned that a participant who is trying to calm the situation down by covering the mouth of a family or household member could be charged with a felony offense. All that is required under this measure is that the mouth be covered, and normal breathing be impeded. Every time someone's mouth is covered, normal breathing is impeded, but not prohibited. Even if only the mouth is covered, allowing the other person to breathe through their nose, a person could be charged with felony abuse. In order to be consistent with subsection 8 as it is currently written, the State should be required to prove that the defendant covered both the mouth **and** the nose simultaneously, which impeded the normal breathing of a family or household member.

We oppose this measure, and thank you for the opportunity to present testimony to this committee.



25 Years

TO: Chair Keith-Agaran
Vice Chair Rhoads
Members of the Committee on Judiciary and Labor

FR: Nanci Kreidman, M.A.
Chief Executive Officer

RE: SB 426

Aloha! Thank you for considering the need to clarify the violent offense of interfering with breathing – in the abuse of family and household member statute.

This is not an uncommon act of violence, as told to us by many survivors. If accountability can be improved and sanctions sought to deter abusers from employing life threatening acts, we will have made important progress.

We are in support of this measure.

Thank you for allowing us to participate in this community discussion.

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dvac@stoptheviolence.org | www.domesticviolenceactioncenter |
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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB426 on Jan 31, 2017 09:00AM*
Date: Saturday, January 28, 2017 12:04:48 PM

SB426

Submitted on: 1/28/2017

Testimony for JDL on Jan 31, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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