

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

Prepared for the House Committee on Judiciary

In Support of HB489
Monday, February 11, 2019, at 2:00 p.m. in Room 325

Dear Chair Lee, Vice Chairs San Buenaventura, and Honorable Members,

The Hawai'i State Commission on the Status of Women supports HB489, relating to domestic violence. This measure, if passed, would amend the offense of strangulation of a family or household member to include blocking the nose or mouth of the person or applying excessive pressure to the chest. HB489 would also clarify that infliction of visible injury is not required to establish the offense.

Strangulation is one of the most deadly forms of violence used by men against their partners. Ninety percent of strangulation murders in the United States are domestic violence related.¹ Non-fatal strangulation is also an indicator of future attempted homicide—it is often precursor for death. National data suggests that strangulation is on the rise. In 2018, the Hawai'i County Prosecutor reported a record fifty (50) cases of domestic strangulation. HB489 is necessary to address the severity of non-fatal strangulation.

Only fifty percent of strangulation victims have visible injuries and of those, only one-third can be photographed. The law should evolve to allow criminal justice personnel to better enforce the current strangulation statute and to decrease strangulation. Accordingly, the Commission requests that the Committee pass HB489.

Sincerely,

Khara Jabola-Carolus

¹ Verdi, N. *Releasing the Stranglehold on Domestic Violence Victims*, 18 RWULR 255, 263, Summer 2013.



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

February 9, 2019

H.B. No. 489: RELATING TO DOMESTIC VIOLENCE

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

The Office of the Public Defender opposes H.B. 489.

We understand the intent of this bill; however, we are concerned about the application of the bill. In particular, we are concerned with proposed subsection (8)(b) which states:

“Blocking the nose and mouth of the family or household member”

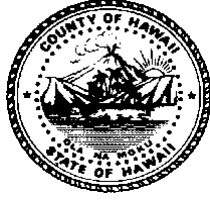
We submit that this language is too broad and would have the unintended consequences of including parents who may cover the nose and mouth of a screaming child to quiet that child with no intent to restrict normal breathing. Parents often make split second decisions to quiet a child in many contexts where a child may be misbehaving or having a temper tantrum. That parent may briefly place a hand on the nose and mouth of the child in an effort to quiet the child or calm the child. We are very concerned that the inclusion of this broad language and the fact that this subsection would qualify a person to be charged with a Class C felony would result in innocent actions being treated as criminal actions.

We are also concerned that any family members or household members [including roommates, siblings or adult parents and adult children], who are involved in a loud verbal argument, and who may simply place a hand on the nose and mouth, no matter how briefly, to quiet or shush the other person in the heat of the verbal argument, may be charged with a felony offense, especially taken together with the language that “infliction of visible injury”

would not be required.” Verbal arguments that do not involve physical violence, where one party in the argument is trying to calm down or get the other party to reduce the volume, and who may place a hand on the nose and mouth of the other person, no matter how briefly, could face a felony charge. The intent to quiet another person is quite different from the intent to impede normal breathing. We are concerned that the broad language of this bill could and would be misconstrued and innocent actions would be treated as a form of “strangulation”.

Thank you for the opportunity to comment on H.B. 489.

County of Hawai'i
Council District 4 -
Lower Puna



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ASHLEY L. KIERKIEWICZ

HAWAII COUNTY COUNCIL – DISTRICT 4

Chair: Committee on Planning, and Committee on Government Relations & Economic Development
25 Aupuni Street • Hilo, Hawai'i 96720

February 10, 2019

House Committee on Judiciary

Rep. Chris Lee, Chair

Rep. Joy San Buenaventura, Vice-Chair

**RE: Support for HB489
relating to Domestic Violence**

Aloha, Representatives:

Domestic violence and murder are inextricably linked. A series of reports by *The Washington Post* in December 2018 underscored an important connection: strangulation in domestic abuse situations increases in the chances that the next violent encounter will result in a homicide. What's more is, men who strangle their partners are also more likely to kill a police officer who tries to stop him (Casey Gwinn, *Family & Intimate Partner Violence Quarterly*, Winter 2015).

Please support HB489, which expands the definition of strangulation.

Mahalo nui loa,

Ashley Lehualani Kierkiewicz
Hawai'i County Council, District 4

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



DWIGHT K. NADAMOTO
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i**

February 11, 2019

RE: H.B. 489; RELATING TO DOMESTIC VIOLENCE.

Chair Lee, 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 in support of H.B. 489 with suggested amendments.

The purpose of H.B. 489 is to strengthen the current statutes as it applies to Abuse of Family or Household Members under §709-906(8), Hawaii Revised Statutes ("H.R.S."). With this in mind, the Department respectfully suggests the following amendments:

Pg. 1, ln. 10:

Under sub-section (c), this bill proposes the addition of "Applying **excessive** pressure to the chest,". Currently, §709-906, H.R.S. does not define what type of actions would amount to "excessive pressure", thus leaving the courts with no clear understanding of when subsection (c) has been violated. The Department would suggest that "excessive pressure" either be defined under the definition section in §709-906(1), H.R.S. or that the committee include in the committee notes clarifying what the Legislature intends as it relates to situations involving "excessive pressure".

Pg. 1, ln 11-13:

The Department appreciates the intent behind the addition of ln. 11-13, "provided that infliction of visible injury shall not be required to establish offense under this subsection." However, the addition of this phrase may lead to unintended consequences as it relates to other section of §709-906, H.R.S. By adding this phrase to only subsection (8) of §709-906, H.R.S., this creates the unintended inference that in other violations of §709-906, H.R.S. there needs to be visible injury before our office should charge or a jury or judge could convict. The Department suggest that this phrase in ln. 11-13 is added to each section of §709-906, H.R.S. or

to remove the phrase altogether to ensure there is no negative inference drawn from its absence in any other sections.

Pg. 1, ln. 6-7:

The Department would suggest removing “with any part of the body or ligature;” from subsection (a). Currently, our office routinely charges §709-906(8), H.R.S. under the original language that applies to an individual who applies pressure on the throat or the neck. This offense has been charged without the addition of “with any part of the body or ligature.” Thus, to avoid further confusion, the Department would suggest removing this phrase.

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 489 with the suggested amendments. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE **MK-KK**

February 11, 2019

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 489, Relating to Domestic Violence

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

The HPD supports with concerns House Bill No. 489, Relating to Domestic Violence.

The HPD recognizes that law enforcement's response to domestic violence is a continually changing and evolving process. In working with the survivors, domestic violence advocates, prosecutors, the judiciary, and the legislature; we have a better understanding of the dynamics of domestic violence and the cycle of violence.


The HPD supports House Bill No. 489, which amends the offense of strangulation of a family or household member to include blocking of the nose or mouth of the person or applying excessive pressure to the chest.

In addition, the HPD has concerns regarding the language on page 1, line 12 and 13, "provided that infliction of visible injury shall not be required to establish offense under this subsection." This statement should be removed because visible injuries are not an element under the abuse of family or household section.

The Honorable Chris Lee, Chair
and Members
February 11, 2019
Page 2

We appreciate the committee's consideration of these comments and concerns,
and thank you for the opportunity to testify.

Sincerely,


Mikel Kunishima, Captain
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police



To: Representative Chris Lee
House Judiciary Committee Chair

From: Zonta Club of Hilo
Legislative Advocacy Committee

February 11, 2019

RE: Zonta Club of Hilo Strong SUPPORT of HB489 Relating to Domestic Violence

Aloha Representative Lee,

Zonta International is a leading global organization of professionals empowering women worldwide through service and advocacy. Zonta International envisions a world in which women's rights are recognized as human rights and every woman is able to achieve her full potential. In such a world, women have access to all resources and are represented in decision making positions on an equal basis with men. In such a world, no woman lives in fear of violence.

The most pervasive and least recognized human rights violation worldwide, gender-based violence affects women and girls of every race, class, culture, ethnicity, age and country. Zonta International strives to promote and protect the human rights of all women and girls and reduce the incidences of violence against them. It is for this reason that we support HB489 relating to domestic violence.

Act 230 of 2006 amended HRS §709-906 to include strangulation. However, the intentional act of impeding the normal breathing or circulation of the blood of a person in an Intimate Partner Violence (IPV) incident is limited to the act of applying pressure on the throat or the neck. IPV can include strangulation and suffocation with the use of an object such as a rope or cord, pressure applied with another part of the body such as an arm or leg, or by restricting breathing by covering the mouth and nose or by extreme pressure to the chest.

From the Strangulation Training Institute, a program of Alliance for HOPE International, "Victims may lose consciousness by any one or all of the following methods: blocking of the carotid arteries in the neck (depriving the brain of oxygen), blocking of the jugular veins (preventing deoxygenated blood from exiting the brain), and closing off the airway, making breathing impossible.

“Very little pressure on both the carotid arteries and/or veins for ten seconds is necessary to cause unconsciousness. However, if the pressure is immediately released, consciousness will be regained within ten seconds. To completely close off the trachea (windpipe), three times as much pressure (33 lbs.) is required. Brain death will occur in 4 to 5 minutes, if strangulation persists.”

Also see: PathologyOutlines.com, Inc. Forensics. Asphyxia. 2012. Available at:<http://www.pathologyoutlines.com/topic/forensicasphyxia.html>.

Strangulation and suffocation represent an escalation in the type of violence a perpetrator of IPV is willing to commit. IPV incidents where non-fatal impeding the normal breathing or circulation of the blood of a person occurs represents an escalation in IPV violence. IPV victims who experience this type of violence are 6.7 times more likely to become a victim of attempted homicide and 7.5 times more likely to be the victim of a homicide (Journal of Emergency Medicine, 2008).

Two studies, one in Idaho and one in California found an apparent link between officer involved shootings and a history of attempted IPV strangulation by the perpetrators.

Strangulation and Suffocation present serious health risk. Yet, strangulation often leaves no external physical evidence. In a study of 300 strangulation cases, 50% of the victims did not have visible injuries and in 35% of the cases with physical injury it was not possible to photograph the injuries (Journal of Emergency Medicine, 2001).

The Zonta Club of Hilo would like to thank you for considering **HB489** and encourage you to pass this legislation in your committee.

Mahalo,
Heater Kimball
Zonta Club of Hilo Legislative Advocacy Committee



TO: Chair Chris Lee,
Vice Chair Joy A. San Buenaventura,
Members of the Committee

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

RE: H.B. 489 Support with comment

Please accept this testimony in support of HB 489.

Strangulation is a very serious and obviously life threatening act of abuse. The last crime a victim of domestic violence homicide experiences in the vast majority of instances is strangulation. Our criminal justice system must elevate its thinking, approach and response to this common act of violence by perpetrators of partner abuse. This Bill is a good step forward.

May we respectfully suggest the deletion of the word "excessive" as that may present difficulty in a criminal case. Who decides what is excessive? How is excessive proven? What evidence is needed to demonstrate excessive?

Thank you for working with your colleagues to act favorably on this Bill.

Thank you for working with your colleagues to make the necessary improvements with favorable action on H.B. 489.

DOMESTIC VIOLENCE ACTION CENTER
ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198
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HB-489

Submitted on: 2/8/2019 5:44:11 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 489.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii



TO: Chair Lee, 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: February 11, 2019; 2:00 p.m., Conference Room 325

RE: TESTIMONY IN SUPPORT OF HB 489– RELATING TO DOMESTIC VIOLENCE

We ask you to support HB 489 which amends the offense of strangulation of a family or household member to include blocking the nose or mouth of the person or applying excessive pressure to the chest. Clarifies that infliction of visible injury is not required to establish the offense. We support this bill which will add clarifying language and offer additional support for cases of domestic abuse.

Sadly, domestic abuse comes in many forms. As a provider of domestic violence prevention and support services, we thank the legislature for offering clarifying language that further supports victims of domestic abuse.

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 15,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 18 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, childhood sexual abuse supportive group services, child and adolescent behavioral health programs, sex trafficking intervention, and community building programs.

Thank you for the opportunity to testify in **support of HB 489**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.

HB-489

Submitted on: 2/9/2019 7:35:17 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	AAUW of Hawaii	Support	No

Comments:

Dear Chair Lee, Vice Chair San Buenaventura, and members of Judiciary Committee,

Thank you for this opportunity to submit a testimony in support of HB489 which would strengthen the language of strangulation to include suffocation and to eliminate the lack of physical evidence as a defense in domestic violence cases.

Non-fatal strangulation is a real risk factor for homicide of women (1) and there often are no visible injuries with strangulation, 62% in a study by City of San Diego (2).

Hawaii County Prosecutor's Office and Police Department support HB489 because strangulation is on the rise in domestic violence cases in Big Island (3). Please pass this bill and help prosecutors and police prevent homicide by intimate partners.

(1) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2573025/>

(2) http://www.ncdsv.org/images/strangulation_article.pdf

(3) <https://www.hawaiitribune-herald.com/2019/01/06/hawaii-news/strangulation-a-serious-concern-on-big-island/>

HB-489

Submitted on: 2/10/2019 1:59:32 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

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

Comments:

HB-489

Submitted on: 2/8/2019 7:09:51 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Support	Yes

Comments:

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

Friday, February 8, 2019

Support for HB489, Relating to Domestic Violence

My name is Kylie Teramoto, and I am a graduate student at the University of Hawaii in the social work program. I am in the child and family concentration and have had the opportunity to intern in the social work field for the past two years, working directly with children and families. I strongly support HB489 which would amend the offense of strangulation of a family or household member to include the blocking of the nose or the mouth or applying excessive pressure to the chest.

Acts of abuse take many different forms including physical, sexual, verbal, psychological, and financial abuse. When we talk about physical abuse, we often associate this type of abuse with the presence of physical markings or bruising. Discounting instances of physical abuse without visible injury is detrimental to those that experience abuse or violence. It sends the message that physical abuse is not physical abuse unless there is physical proof on the body to show for it.

Amending the offense of strangulation to include the blocking of the nose and mouth as well as applying excessive pressure to the chest will expand the definition of physical abuse to include acts of abuse that are not only seen on the surface. This is the step in the right direction towards acknowledging and confirming that abuse isn't always visible.

Thank you for the opportunity to show my support for HB489.

Respectfully Submitted,

Kylie Teramoto

HB-489

Submitted on: 2/10/2019 10:49:20 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lauri Ann Guardian	Individual	Support	Yes

Comments:

February 10, 2019

Aloha,

My name is Lauri Ann Guardian and I am a Masters of Social Work student at the University of Hawai'i at Mānoa.

As a future social worker, it is my job to advocate for clients and make sure their voices are being heard. This bill will give victims of domestic violence a better chance of getting the social justice they deserve. Visible injuries are not the only thing domestic violence victims suffer from. They suffer from post-traumatic stress disorder with reoccurring nightmares, constant flash backs, severe anxiety, as well as the mental and emotional abuse from being beaten or talked down to. Blocking the nose and mouth of a person or applying excessive pressure to the chest should be considered an offense of strangulation as it not only can physically harm an individual, but also mentally and emotionally affect them. A lack of visible injury does not rule out the fact that someone is being abused. Many domestic violence victims suffer in silence because they fear retaliation, feel shame for remaining in an abusive relationship, or their afraid no one will believe them. If a domestic violence victim reached out for help only to be told his/her lack of visible injuries won't suffice, we are making it harder for them to break the cycle of abuse and embark on the road to recovery. That is why I strongly support H.B. No. 489.

Thank you for the opportunity to show my support.

Sincerely,
Lauri Ann Guardian

HB-489

Submitted on: 2/9/2019 1:54:36 PM

Testimony for JUD on 2/11/2019 2:00:00 PM

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

Comments: