



Office of the Public Defender State of Hawaii



Testimony of the Office of the Public Defender, State of Hawaii to the House Committee on Human Services & Homelessness

January 28, 2019

H.B. No. 491: RELATING TO DOMESTIC VIOLENCE

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

The Office of the Public Defender supports H.B. 491. We strongly support the inclusion of the option for a Deferred Acceptance of a Guilty Plea under certain conditions. We believe this provision will have a positive impact on the processing of domestic violence cases in the State of Hawaii. We have long held the position that most first offenders who are charged with abuse or domestic violence offenses are willing and able to participate in domestic violence education classes and that they deserve the opportunity to demonstrate that they have learned how to better manage stress, anger and how to cope with negative emotions that may result in violence. Many of our clients successfully complete their classes and never return to the Family Court because they have learned, they have matured, and they have developed healthier coping skills that last a lifetime.

However, we are concerned that the deferral option is made available only to defendants who plead Guilty. We would ask that the deferral option also be available for those who plead No Contest. The dynamics of Family Court cases often focus not just on what may or may not have happened on a particular date but also on the long-term stability or instability of a relationship or family. Many defendants grew up in households where violence was a regular part of life and never learned how to be in a relationship without violence. Education is important to help defendants understand and learn about healthy coping skills and communication. We believe that by allowing a deferral for a No Contest plea, defendants can

avail themselves of the Domestic Violence Interventions classes, gain some knowledge and perspective, and move forward with a healthier outlook on stress management. There are times when a defendant does not fully understand the seriousness of his or her actions until after they have completed the education programs – including parenting classes. If a defendant insists on pleading No Contest, to opt out of having a trial, and is inclined to resolve a case by pleading No Contest and willing to attend the classes – then we believe the deferral option should also be available for this defendant. We have seen cases where defendants choose not to pursue a valid legal defense because they don't want their family member to be forced to testify. This often occurs in cases involving parents and children (either minor children or adult children). In these cases, we believe the No Contest option is appropriate – especially when a defendant is willing to take the classes and abide by any rules or conditions set by the Court as a condition of a deferral. If the goals are to reduce the trial backlog together with education classes to prevent future violence, then also allowing a deferral for a No Contest plea would accomplish those goals.

We also have very serious concerns about subsection (b) of section (6) [see page 9, lines 4-6] and recommend that this section be amended. We submit that this catch-all provision is overbroad. It can be interpreted to read that if you fail to comply with one single condition on deferral (apart from completing the classes) – miss one single appointment or miss one payment – then you “**shall**” get the maximum sentence and have your deferral set aside. We believe this section is unnecessary to accomplish the goals set out in the body of the legislation and removes any kind of discretion from the Court. We ask that it be removed from the legislation or that similar language in subsection (a) be included to allow for a “**good cause**” showing by the defendant for minor technical violations of a term of deferral. Failure to miss one appointment because the bus was late or broke down or because a child is ill and needs to go to the doctor should not be considered a legitimate reason to get the maximum sentence. The lack of discretion or the lack of a “**good cause**” showing is very troubling and will result in unrealistic expectations. Many defendants are barely able to pay rent, keep food on the table for their families, and may need additional time or flexibility in meeting every single one of their obligations - especially when they are making a good faith effort to comply.

We are also concerned about the language in Section 6 [see page 8, line 11] that says a defendant “**shall**”... “**complete within a specified time frame**” an education program is too restrictive. There are currently two contracted providers of Domestic Violence Intervention Classes through the court system. These classes are between 26-29 sessions and cost approximately \$350. A participant must complete all classes; however, a maximum of 4 absences are allowed and make up classes are available. Unfortunately, participants who are seriously ill, or who are homeless and struggling with daily living, or who have transportation issues relating to their reliance on public transportation may struggle to keep up with their schedule. A participant who misses 4 classes because of illness or other extenuating circumstances is required to start the classes from the beginning – a new 26-29 week session at additional cost. We respectfully suggest the language should be amended to “**begin classes at the earliest possible time**” and allow the judge to monitor the completion date to ensure the classes are completed in a timely manner. It is our understanding that the Legislature is aware that changes and adjustments may need to be made in appropriate and available classes for petty misdemeanor offenses versus misdemeanor offenses through the Judiciary.

We also have very serious concerns about the language “**The court shall amend the defendant’s sentence to the maximum term of incarceration**” used in section (6) [see page 8, lines 14-15]. This removes any kind of discretion from the court to review individual progress, to review any showing of ‘good cause’ concerning the failure to complete classes, and it doesn’t provide for intermediate sanctions or incentives to help and promote the completion of the classes in a timely manner. The courts should have the opportunity to review mitigating circumstances and make decisions accordingly. We respectfully suggest that the word “**shall**” be replaced with “**may**”. We do agree that the “good cause” exception provided in section (6) [see page 9, line 1-3] is necessary and will give the courts the opportunity to manage the requirements of probation or deferral when it comes to completion of classes and programs.

Thank you for the opportunity to comment on H.B. 491.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Human Services and Homelessness

Representative Joy A. San Buenaventura, Chair
Representative Nadine K. Nakamura, Vice Chair

Wednesday, January 30, 2019, 8:30 a.m.
State Capitol, Conference Room 329

By
Christine E. Kuriyama
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 491, Relating to Domestic Violence.

Purpose: Amends the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. Allows the granting of a deferred acceptance of guilty plea in cases involving misdemeanor and petty misdemeanor abuse of a family or household member if certain conditions are met. Requires the judiciary to submit annual reports to the legislature on the number and outcome of abuse of family or household member cases

Judiciary's Position:

The Judiciary offers this testimony in strong support of this bill that allows greater flexibility in the sentencing options in HRS Section 709-906 while still emphasizing accountability of the defendant, safety of the victims, and increasing protection for the children in families wracked by domestic violence.

There may be an area of confusion in the bill as written regarding the availability of deferred acceptance of guilty pleas. It is clear that the bill will not allow deferred acceptance of nolo contendere pleas (page 8 of the bill, lines 1-2) in furtherance of the Legislature's policy to promote accountability of the defendants. However, subsequent provisions do not distinguish between guilty pleas and nolo contendere pleas. Therefore, the Judiciary respectfully suggests the following amendments to the bill's language.



House Bill No. 491, Relating to Domestic Violence
House Committee on Human Services and Homelessness
Wednesday, January 31, 2019 at 8:30 a.m.
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At page 11, from line 16, the bill should read (note that the new language is bolded in caps and underlined for clarity):

(17) Notwithstanding any provision of law to the contrary, the court may accept a deferred **GUILTY** plea pursuant to chapter 853 for misdemeanor or petty misdemeanor offenses of abuse of a family or household member when the defendant . . .

At page 13, from line 1, the bill should read (note that the new language is bolded in caps and underlined for clarity, deleted language is bolded and lined out in brackets):

provided that the prohibition in this paragraph shall not apply to offenses **ELIGIBLE FOR GUILTY PLEAS PROFERRED PURSUANT TO** [~~described in~~] section 709-906(17);

The Judiciary also wishes to reassure the Legislature that, if passed, this bill will not require additional judicial resources to implement.

The Judiciary reiterates its strong support of this attempt to provide more timely process to defendants without sacrificing community safety.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE: **MK-KK**

January 30, 2019

The Honorable Joy A. San Buenaventura, Chair
and Members
Committee on Human Services & Homelessness
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Joy A. San Buenaventura and Members:

SUBJECT: House Bill No. 491, 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 House Bill No. 491, Relating to Domestic Violence.

The HPD recognizes that law enforcement response to domestic violence is a continually changing and evolving process. In working with survivors and our domestic violence partners we are able to obtain a better understanding of the dynamics of domestic violence and the cycle of violence.

It is the opinion of the HPD that House Bill No. 491 provides some of the necessary reforms in addressing area of concerns for supporting the survivors, and methods for dealing with perpetrators and holding them accountable.

Amending the offense of Abuse of Family or Household Member to add the petty misdemeanor offense while addressing the penalties for both misdemeanor and petty misdemeanor abuse cases by allowing qualified perpetrators to receive a deferred acceptance of guilty plea, will fill a gap that previously existed and hopefully assist in reducing the congestion in the family court system.

The Honorable Joy A. San Buenaventura, Chair
and Members

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As part of those conditions for the deferred acceptance of guilty plea, it would require the perpetrator to complete court-ordered domestic violence intervention programs or parenting classes within the time frame set-up by the court. This intervention for the perpetrator will hold them accountable for their actions, while supporting the survivor, and will give them the best chance to break the cycle of violence.

Requiring data collection and reporting to determine the effectiveness of the pilot project by the HPD, prosecutors, and the judiciary on the number of arrest, charges, and convictions relating to domestic violence, will be key in showing that by supporting the survivors, holding the perpetrators accountable, along with collaborations with the HPD, prosecutors, judiciary, and along with the support from the legislature, we can all make a difference and affect lives of those affected by domestic violence.

The HPD urges you to support House Bill No. 491, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,


Mikel Kunishima, Captain
Criminal Investigation Division

APPROVED:


Susan Ballard
Chief of Police



TO: Chair Joy San Buenaventura
Vice Chair Nadine Nakamura
Members of the Committee

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

RE: H.B. 491 Support

Please accept this testimony in support of HB 491.

The criminal justice system is not functioning effectively and not serving families suffering the harm of abuse who seek remedy, protection and justice.

Thank you for working with your colleagues to make the necessary improvements with favorable action on H.B. 491.

HB-491

Submitted on: 1/29/2019 9:23:28 AM

Testimony for HSH on 1/30/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carmen Golay	Hawaii State Coalition Against Domestic Violence	Support	Yes

Comments:

Dear Members of the Committee:

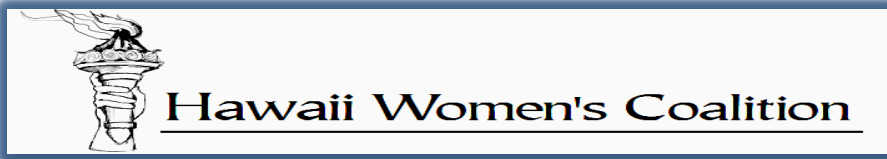
Thank you for the opportunity to testify on this important matter. The Hawaii State Coalition Against Domestic Violence supports this bill. We have heard from survivors of intimate partner violence all over this state that another level of intervention is wanted and needed to keep them safe. Too often abusers are not being held accountable and the addition of a lower level offense was seen as a solution to a backlogged court system and to help get offenders into intervention classes.

While we do support the intent, we are also concerned that because this approach (the creation of a petty misdemeanor) is fairly novel that there is not a body of evidence from other states that shows an increase in domestic violence apprehensions. There may be unanticipated consequences, including the reduction of arrests for more serious crimes in favor of using this remedy. Also, the bill does not address a definition of "batterer intervention", "domestic violence intervention", or "parenting classes"; it unfortunately is impacted by the lack of existing definitions currently in statute.

On data collection, while we support any data we can gather on domestic violence, we are not sure if the data reporting goes far enough. We would like to see more comprehensive data, to address the concern stated above, that crimes that could be charged at a higher level would now being charged at this lower level.

Finally, we are concerned about adequate resources to support offender treatment programs. If the bill accomplishes what it says, then numbers will increase to domestic violence intervention classes.

Thank you again for the opportunity to testify, the Hawaii State Coalition Against Domestic Violence supports HB 491.



COMMITTEE ON HUMAN SERVICES & HOMELESSNESS
Rep. Joy A. San Buenaventura, Chair
Rep. Nadine K. Nakamura, Vice Chair

LATE

DATE: Wednesday, January 30, 2019
TIME: 8:30 a.m.
PLACE: Conference Room 329

Support the intent off HB491 relating to Domestic Violence,

Aloha Chair San Buenaventura, Vice Chair Nakamura and members,

The Hawaii Women's Coalition supported a version of this bill last year. However it was not included in our bill package this year.

That being said, The Domestic Violence service/advocate organizations do support this version of the bill with the following provisos:

Our Island Communities have expressed some frustration with the current state of services/enforcement concerning Domestic Violence. Far too often, victims remain at risk because, despite abusive behavior, offenders are not removed from the home and held accountable for their actions. So at the round table listening sessions, held across the state last year, another level of intervention was suggested as the solution. This bill addresses those concerns.

Our member organizations are concerned, however, that because this approach (the creation of a petty misdemeanor) is fairly novel and that there is not a body of evidence (from other states or local pilots) that shows an increase in DV apprehensions, there may be unanticipated consequences, including the reduction of arrests for more serious crimes in favor of using this remedy.

Further, the bill does not address a definition of batterer intervention (domestic violence intervention) or parenting classes probably due to the lack of existing definitions currently in statute.

In addition, our member organizations are not sure if the data reporting goes far enough. We would like to see more comprehensive data to address the concern that more serious crimes would now being charged at this lower level.

We are also concerned about adequate resources to support offender treatment programs. If the bill accomplishes its intentions, then numbers in domestic violence intervention classes will increase.

Having said all this, we still support this bill and are hopeful for a better future in our state for Victims of Domestic Violence.

Mahalo for the opportunity to testify,

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

HB-491

Submitted on: 1/28/2019 1:29:01 PM

Testimony for HSH on 1/30/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
aimee chung	Individual	Support	No

Comments:

Please accept this testimony in support of HB 491.

The criminal justice system is not functioning effectively and not serving families suffering the harm of abuse who seek remedy, protection and justice.

Thank you for working with your colleagues to make the necessary improvements with favorable action on H.B. 491.

Mahalo,

Aimee Chung, MSW, LSW

HB-491

Submitted on: 1/29/2019 11:47:59 AM

Testimony for HSH on 1/30/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Support	No

Comments:

For the stated reasons in the proposal.