

Honolulu, Hawaii

JUN 29 2020

RE: H.B. No. 2610
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2610, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO DOMESTIC VIOLENCE,"

begs leave to report as follows:

The purpose and intent of this measure is to allow a narrow hearsay exception for statements made by a domestic violence victim to a government official within twenty-four hours of a domestic violence attack and prior to the defendant being arrested regardless of the availability of the declarant, as long as the statement bears sufficient indicia of reliability.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu, Domestic Violence Action Center, and two individuals. Your Committee received testimony in opposition to this measure from the Judiciary and Office of the Public Defender.

Your Committee finds that victims in domestic violence cases are often reluctant to testify in court and may ignore court subpoenas to appear for trial due to fear of the perpetrator, consequences threatened by the perpetrator if the victim testifies, or more generally to the complicated dynamic of abusive relationships.



Your Committee further finds that hearsay is an out-of-court testimonial statement offered to prove the truth of the matter asserted, and is inadmissible evidence at trial unless it meets a specific exclusion or exception. The general prohibition on the use of hearsay evidence stems from the confrontation clause of the federal and state constitutions, which grant the right of a defendant in a criminal trial to confront the defendant's accusers. Your Committee further finds that in *Davis v. Washington*, 547 U.S. 813 (2006), the United States Supreme Court explained that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency."

Your Committee further notes that Oregon has adopted rules of evidence that provide a limited hearsay exception for a statement made by a victim of domestic violence to a government official within twenty-four hours of a domestic violence attack, as long as the statement bears sufficient indicia of reliability, which is a determination made by the trial judge. Oregon's hearsay exception is premised on a policy approach that treats domestic violence cases as a form of "ongoing emergency". Statistics show that incidents of domestic violence tend to escalate over time and therefore the mere fact that a single domestic violence attack has ended does not necessarily mean that the emergency has ended, especially when the offender is not in the custody of law enforcement. The recognition of a domestic violence incident as being part of a larger "ongoing emergency" is what distinguishes, and makes admissible as non-testimonial in certain circumstances, what would otherwise be considered inadmissible hearsay.

This measure would help to effectively prosecute domestic violence cases and hold offenders accountable by amending the Hawaii rules of evidence to strike a balance between protecting the constitutional rights of defendants while promoting the safety of domestic violence victims and society at large.

Your Committee has amended this measure by:

- (1) Specifying that the hearsay statement must be non-testimonial and made during an ongoing emergency;



- (2) Specifying that the statement must be made within a period of time not more than twenty-four hours after the incident occurred; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2610, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2610, H.D. 2, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



