



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2067, H.D. 1, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 20, 2020 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Landon M.M. Murata, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill but has concerns.

The purpose of this bill is to establish a three-year pilot project to strengthen government responses to domestic violence and increase offender accountability by: (1) amending the offense of abuse of family or household members to provide for a lesser included petty misdemeanor offense; (2) allowing a deferred acceptance of guilty plea in cases involving misdemeanor abuse offenses and specifying that the deferral shall be set aside if the defendant fails to complete court ordered domestic violence intervention programs or parenting classes; and (3) requiring the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases.

The wording of subsection (6) being added to section 709-906, Hawaii Revised Statutes (HRS), in section 2, page 8, lines 3-7, does not create a lesser included petty misdemeanor abuse offense because the petty misdemeanor requires proof of a higher mental state (intentional or knowing) than the misdemeanor abuse (intentional, knowing, or reckless). Additionally, the wording does not seem to create a lesser included offense because there is no current authority to suggest that offensive touching is necessarily a subset of physical abuse given that the definition of physical abuse is bodily injury or pain. If it is the intent of the Legislature to create a petty misdemeanor

abuse without it being a lesser included offense of misdemeanor abuse then the words "lesser included" should be deleted from section 1, page 1, line 6.

If it is the intent of the Legislature that persons convicted of the petty misdemeanor abuse offense be sentenced pursuant to subsection (7), then the wording of section 2, page 8, line 9, should be changed to "subsections (5) and (6), it shall also require that the offender".

Section 853-4(a)(2)(B), section 3, page 13, lines 3 - 7, only applies to the misdemeanor abuse offense and not to the petty misdemeanor abuse offense set forth in subsection (6) being added to section 709-906. The exemption to subsection 853-4(a)(2)(B) in section 3, page 13, lines 8 - 10, need not reference the petty misdemeanor abuse, only the misdemeanor abuse. The Department recommends changing the exception to "provided that the prohibition in this paragraph shall not apply to misdemeanor offenses of abuse of family or household member."

If it is the intent of the Legislature to maintain the prohibition against deferrals in felony abuse of family or household member cases, then the Department recommends changing the wording of subsection 853-4(a)(13)(N), section 3, page 15, lines 17-19, to "(N) Any felony abuse of family or household member offense;".

Thank you for the opportunity to provide comments.



The Judiciary, State of Hawai'i

Testimony to the House Committee on Finance

Representative Sylvia Luke, Chair
Representative Ty J. K. Cullen, Vice Chair

Thursday, February 20, 2020 at 1:00 p.m.
State Capitol, Conference Room 308

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2067, H.D. 1, Relating to Domestic Violence.

Purpose: Amends the offense of abuse of family or household members to provide for a lesser included petty misdemeanor offense. Allows a deferred acceptance of guilty plea in cases involving misdemeanor and petty misdemeanor abuse offenses. Requires the judiciary to submit annual reports to the legislature on the number and outcome of abuse of family or household members cases. Sunsets pilot program 6/30/2023. Takes effect 12/31/2059. (HD1)

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.

Notwithstanding its strong support of the other provisions of the bill as listed above, the Judiciary does have some concern with the "reporting requirements" set forth in section four of the bill. It may be more efficient as well as prudent to either: (1) have an executive agency collect the information and provide the required information to the Legislature, or (2) require that this information be provided directly to the Legislature from law enforcement, the Department of the Prosecuting Attorney, and the Judiciary. It should be noted that the Judiciary has no objections to maintaining and keeping statistical information concerning the cases that are filed



House Bill No. 2067, H.D.1, Relating to Domestic Violence
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with the court as it already has the capability to do so. However, with regard to gathering information from other entities such as law enforcement and the Department of the Prosecuting Attorney, the Judiciary does not have the process and personnel to do so.

Thank you for the opportunity to provide testimony on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY

LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY



THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

February 20, 2020

RE: H.B. 2067, H.D. 1; RELATING TO DOMESTIC VIOLENCE.

Chair Luke, Vice-Chair Cullen and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of the intent of H.B. 2067, H.D. 1.

The Department strongly agrees that significant changes are needed to our Family Court system, in order to seek justice on behalf of Hawaii's 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. Last 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 (2018), S.B. 181 (2019); H.B. 1772 (2018), H.B. 509 (2019)].

We appreciate the effort H.B. 2067, H.D. 1 makes to address "non-physical" Harassment (§711-1106, Hawaii Revised Statutes (H.R.S.)) 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 H.R.S. 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.

While the Department is generally supportive of creating a petty misdemeanor offense for the charge of Abuse of a Family or Household Member (§709-906, H.R.S.), we would note that this change is unlikely to address the First Circuit's ongoing challenges with court congestion and case dismissals. However, such change may improve public awareness and bring to the forefront the dynamics of domestic violence. **In addition, to address the concerns raised by the Attorney General's Office, the Department would suggest amending pg. 1, line 6 by removing "lesser included" as the new petty misdemeanor offense would not be a lesser included offense but rather a stand alone petty misdemeanor offense.**

Lastly, the Department would like to caution and bring to the attention of the committee that in allowing a deferral of guilty, defendants who would otherwise be ineligible, wouldn't be precluded from owning a firearm following the deferral period. **The Department would also note that this committee should specifically clarify that a defendant is not eligible for a deferral of nolo contendere plea to comport with the contemplated amendments in the House standing committee report no. 156-20.**

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of H.B. 2067, H.D. 1. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

THE HONORABLE SYLVIA LUKE, CHAIR
THE HONORABLE TY J.K. CULLEN, VICE CHAIR
HOUSE COMMITTEE ON FINANCE
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

February 11, 2020

RE: H.B. 2067, H.D. 1; RELATING TO DOMESTIC VIOLENCE.

Chair Luke, Vice Chair Cullen, and members of the House Committee on Finance, the Office of the Prosecuting Attorney of the County of Kaua'i submits the following testimony in support of H.B. 2067, H.D. 1.

The purpose of H.B. 2067 is to provide for a lesser-included petty misdemeanor family abuse offense, to reduce court congestion by providing for the deferred acceptance of a guilty or no contest plea in cases prosecuted under H.R.S. Section 709-906, and to require data collection, reporting, and analysis in domestic violence cases.

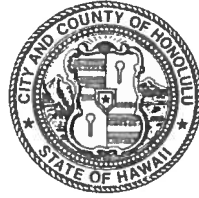
Our Office has advocated for years for necessary reforms to Hawai'i's domestic violence laws. These amendments will provide prosecutors, defense attorneys, and judges with the tools they need to move these cases effectively and efficiently through the judicial process and lead to better outcomes for victims who currently find themselves mired in lengthy and unwieldy prosecutions. This Bill will reduce continuances, decrease court congestion in the circuit courts, and provide for quicker case resolutions.

For these reasons, the Office of the Prosecuting Attorney supports the passage of H.B. 2067, H.D. 1. Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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

KIRK CALDWELL
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE
WO-KK

February 20, 2020

The Honorable Sylvia Luke, Chair
and Members
Committee on Finance
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 308
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

SUBJECT: House Bill No. 2067, H.D. 1, Relating to Domestic Violence

I am Walter Ozeki, Major of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 2067, H.D. 1, Relating to Domestic Violence.

The HPD has historically supported a review and reorganization of the Hawaii Revised Statutes (HRS), Section 709-906, Abuse of family or household members; penalty, to include the creation of a petty misdemeanor domestic violence offense to achieve consistency with the rest of the HRS. However, our concern is specific to the allowance of a deferred acceptance of guilt or no contest plea to a misdemeanor or petty misdemeanor domestic violence offense.

Over the years, a number of felony domestic violence laws were enacted to address what were considered the more serious domestic violence offenses. In practice, the downgrading of felony domestic violence offenses to misdemeanor or petty misdemeanor offenses already occurs in the vast majority of domestic violence cases, even when the violation might meet the letter of the law. To further allow for a deferred acceptance of guilt or no contest plea for misdemeanor or petty misdemeanor offenses,

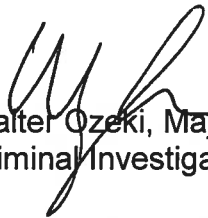
The Honorable Sylvia Luke, Chair
and Members
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which are the vast majority, would virtually eliminate any accountability for many of these offenders. This would further diminish the value of felony domestic violence laws and would remove any prohibitions attached to a domestic violence conviction; prohibitions which were enacted specifically to mitigate any further or more serious harm from occurring.

The HPD urges you to oppose House Bill No. 2067, H.D.1, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,


Walter Ozeki, Major
Criminal Investigation Division

APPROVED:



Susan Ballard
Susan Ballard
Chief of Police

HB-2067-HD-1

Submitted on: 2/19/2020 8:57:03 AM

Testimony for FIN on 2/20/2020 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
	Domestic Violence Action Center	Support	No

Comments:



February 19, 2020

Members of the House Committee on Finance:

Chair Rep. Sylvia Luke
Vice Chair Rep. Ty J.K. Cullen
Rep. Stacelynn K.M. Eli
Rep. Cedric Asuega Gates
Rep. Troy N. Hashimoto
Rep. Daniel Holt
Rep. Lisa Kitagawa
Rep. Bertrand Kobayashi
Rep. Scot Z. Matayoshi
Rep. Nadine K. Nakamura
Rep. Scott Y. Nishimoto
Rep. Chris Todd
Rep. Tina Wildberger
Rep. Kyle T. Yamashita
Rep. Bob McDermott

Re: HB2067 HD1 Relating to Domestic Violence.

Dear Chair Luke, Vice Chair Cullen and Members of the House Committee on Finance:

The Hawaii State Coalition Against Domestic Violence (HSCADV) engages communities and organizations to end domestic violence through education, advocacy, and action for social justice. HSCADV is a private, not-for-profit organization and is a statewide partnership of domestic violence programs and shelters.

On behalf of the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 23 member programs statewide, I respectfully submit this testimony in support of HB2067 HD1 which would amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties, allows a deferred acceptance of guilty or no contest plea in cases involving misdemeanor and petty misdemeanor abuse penalties and requires a pilot program.

We have heard from programs and survivors across the state that another level of intervention is needed for intimate partner violence. With a petty misdemeanor level of crime, it is the hope that we can get offenders into quality intervention programming early and prevent

further violence, which is what this bill seeks to accomplish. The shortened timeframe for this project will help us determine the efficacy and hopefully reduce harm to victims.

In prior testimony, we have expressed our concern that the mandatory completion of domestic violence intervention, should not be substituted for other course material: including anger management, substance abuse treatment, mental health treatment, or parenting classes. We are disappointed that the current draft of this bill continues to include the use of parenting classes. Parenting classes are not an evidenced-based intervention for domestic violence. Nor are they regulated by Hawaii statute for this circumstance.

We are also concerned with the language relating to the deferred acceptance of guilty plea included on page 12, lines 3-7 of this bill. We're concerned it sends the wrong message to offenders that their convictions can be easily eliminated by attending batterers intervention programs. Furthermore, Chapter 853 allows for expungement of records after one year of successful completion of court-imposed conditions. By allowing the offender to expunge their records after one year, the courts, agencies and survivors may not be able to access critical information about prior bad acts.

Thank you for the opportunity to testify on this important matter.

Sincerely,

Angelina Mercado
Executive Director, Hawaii State Coalition Against Domestic Violence

HB-2067-HD-1

Submitted on: 2/18/2020 1:44:28 PM

Testimony for FIN on 2/20/2020 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	aaup of hawaii	Support	No

Comments:

HB-2067-HD-1

Submitted on: 2/19/2020 1:39:46 PM

Testimony for FIN on 2/20/2020 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joe P. Moss	Individual	Support	No

Comments:

I support this bill. It provides flexibility in handling domestic abuse cases and meting out proper punishment based on the facts of the particular case