



Office of the Public Defender State of Hawai‘i



Testimony of the Office of the Public Defender, State of Hawai‘i to the House Committee on Human Services and Homelessness

January 26, 2020

H.B. No. 2067: RELATING TO DOMESTIC VIOLENCE

Chair San Buenaventura, Vice Chairs Nakamura, and Members of the Committees:

The Office of the Public Defender supports H.B. No. 2067.

We support the creation of a five-year pilot project. This project will help collect accurate data and statistics that can help the courts process Abuse cases more efficiently and effectively.

We strongly support the inclusion of the option for a Deferred Acceptance of a Guilty or No Contest Plea for a defendant who meets the criteria. This provision will have a positive impact on the processing of domestic violence cases in the State of Hawai‘i. 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.

We do have concerns about the language in Section 6 [page 8, line 11] that says a defendant “*shall*” ... “*complete within a specified time frame*” any available domestic violence intervention program. On Oahu, there are currently two contracted providers of Domestic Violence Intervention classes through the court system. These classes are between 26 to 29 sessions and cost approximately \$350. A participant must complete all classes to earn a certificate of completion; however,

a maximum of 4 absences are allowed and make up classes may be 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 (or the lack of 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 to 29 week session at additional cost. With the creation of a petty misdemeanor offense, the length of the current programs may not be appropriate. Participants should be able to complete their classes within the standard 6 months of probation for petty misdemeanor offenses. Ideally, a participant will begin and complete their classes as scheduled. We do not want the required classes to be set up as a means to guarantee failure and the loss of a deferral because it is simply not possible to complete the classes within the required probationary time frame. This may be particularly difficult for our Neighbor Island clients who may have fewer and more restricted opportunities to take and complete these classes -- especially on the Islands of Molokai and Lanai. It is our understanding that the Legislature is aware that changes and adjustments may need to be made for appropriate and available classes as to the petty misdemeanor offense through the Judiciary.

Thank you for the opportunity to comment on this measure.

HB-2067

Submitted on: 1/27/2020 11:17:55 AM

Testimony for HSH on 1/29/2020 8:30:00 AM

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

Comments:



To: Chair San Buenaventura
Vice Chair Nakamura
Fr: Nanci Kreidman, MA,
CEO, Domestic Violence Action Center
Re: HB 2067; Support

Aloha. And thank you for placing this Bill on your agenda for consideration. We offer testimony to support this initiative which represents a potentially positive change that would impact many, many survivors and island families. The system has not been functioning as effectively as it might these last few years. This Bill creates an opportunity for a shift that is worth considering.

It is a last resort for survivors to seek assistance from outside their community. From strangers. From the criminal or civil justice system. When they do, it must work to protect them, hold perpetrators accountable and pave the way for remedy as they navigate a path to freedom and self-sufficiency.

The current law was the best work and an innovation when it was first devised and passed. It was a collaborative undertaking. Its enforcement has been uneven. It is our great hope that the Bill before you today represents an improvement and an opportunity for system reform that is desperately needed.



Too few perpetrators of relationship violence get arrested. But those that do often do not result in convictions in court. Sanctions are few. And plea bargains have historically delivered a lukewarm message that family and relationship violence is not tolerated or acceptable.

HB 2067 will advance safety, accountability and hope.

The amendments to the existing statute create options for law enforcement and system intervention. Three degrees of the offense provides latitude for officers, courts, attorneys and judges to respond in a way that offers protection, and direction for personal responsibility. Interventions are not sought unless there is criminal justice involvement; abusers do not wake up the morning after an assault, look at their partners bruises and say, “my god, I need help.” Unfortunately.

We support the standardization and inclusion of Proof of Compliance hearings for defendants ordered to participate in sanctioned batterer's intervention programs. This is a key part of oversight and accountability.

We suggest that Courts make orders for participation in intervention programs that meet the Hawaii Batterer Intervention Program Standards. Not all programs are appropriate or responsive to the dynamics and potential lethality present by abusers. For example, online courses would not meet such standards.



We suggest that a deferred acceptance of guilt be included but we would like to see the elimination of a no contest plea for abuse of a family or household member in the first degree or third degree. Without any acceptance of responsibility by perpetrators, we cannot really expect change. We are making a lukewarm statement about how seriously we take this crime.

We would also like the Committee to consider that the language related to accepting a DAG if one has not been entered previously be strengthened. Such a plea will not be accepted – ever - if there is one on the record. At one court hearing where I was present, a judge indicated that a second DAG was allowable (even though the language says it is not acceptable) because the first one was so many years ago; our perspective on that is there must be a long history of abuse, if an incident occurred many years ago and has occurred again; perhaps the perpetrator had not been caught?

A final thought about the data to be collected. It is a very important step for us to compile data about the crimes committed and the ways the cases are adjudicated and resolved. If the only cases captured are 709-906, what about all the crimes related to the family or partnership like property damage, stalking, sexual assault, trespassing, etc. We are unable to fully understand the scope of the problem without data that accurately reflects the incidence and prevalence of the problem. The only piece of data that would be needed to determine if the crime



involved family members of partners is their relationship to one another. A checkbox. If not, we miss all the other crimes.

Thank you. We shall look forward to favorable action and more discussion about this Bill.

DOMESTIC VIOLENCE ACTION CENTER

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The Judiciary, State of Hawai'i

Testimony to the House Committee on Human Services & Homelessness

Representative Joy A. San Buenaventura, Chair

Representative Nadine K. Nakamura, Vice Chair

Wednesday, January 29, 2020 at 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. 2067, Relating to Domestic Violence.

Purpose: Amends 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 misdemeanor and petty misdemeanor abuse penalties. Requires the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members' cases. Sunsets five years after enactment.

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.

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 effort to provide more timely process to defendants without sacrificing community safety.

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

HB-2067

Submitted on: 1/28/2020 6:00:41 AM

Testimony for HSH on 1/29/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Honda	Individual	Support	No

Comments:



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS

DATE: Wednesday, January 29, 2020 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

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

Chair San Buenaventura 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 five-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 (5)(b) being added to section 709-906, Hawaii Revised Statutes (HRS) in section 2, page 7, lines 17-21, does not create a lesser included petty misdemeanor abuse offense and could result in precluding convictions for misdemeanor abuse offenses. Currently, the abuse of family or household member statute has several subsections ((7), (8), and (9)) that establish aggravating factors that, if present, turn a misdemeanor abuse offense into a felony abuse offense (e.g., choking, presence of a minor, etc.). It appears that the new wording is intended to create a

mitigating factor that would turn a misdemeanor abuse offense into a petty misdemeanor abuse offense.

There is nothing in the current wording of section 2, page 7, lines 19-21, that would distinguish a petty misdemeanor abuse case from a misdemeanor abuse case. This list describing a petty misdemeanor covers virtually all of the most common methods of physically abusing someone and will likely result in all misdemeanor abuses being reduced to petty misdemeanor abuse.

In addition, if the purpose of adding the new subsection (5)(b) to section 709-906, HRS, is to create not just a new petty misdemeanor abuse offense but a lesser included, petty misdemeanor abuse offense, section 2, page 7, line 18 poses a problem. The current wording of that line establishes a mental state of intentional or knowing for the new petty misdemeanor abuse offense. Given that the mental state for the misdemeanor abuse offense is intentional, knowing, or reckless, the current wording gives the petty misdemeanor abuse offense a higher mental state thus preventing it from being a lesser included offense.

The wording on page 8, lines 1-2, of the bill is not complete as to the appropriate sentencing provisions and unclear as to the application of the prohibition on deferred acceptance of nolo contendere pleas. Section 706-640, HRS, relates to authorized fines, and section 706-663, HRS, relates to imprisonment. There are a host of other provisions that apply to sentencing under parts II, III, and IV of chapter 706. A general reference to chapter 706 in the bill is recommended because it would encompass all of the appropriate sentencing provisions.

The bill, on page 1, lines 14-16, and page 2, lines 1-2, indicates an intent to “specify that the deferred acceptance shall be set aside if the defendant fails to complete a court-ordered domestic violence intervention program or parenting classes within the time frame specified by the court.” Should this Committee wish to fulfill this intent, the following wording should be inserted and designated subsection (7) of section 709-906, on page 8 of the bill, immediately after the words “ordered by the court.” in line 14:

The court shall revoke the defendant's probation or set aside the defendant's deferred acceptance of guilty plea and enter an adjudication of guilt, if applicable, and resentence the defendant to the maximum term of incarceration if:

(a) The defendant fails to complete, within the specified time frame, any domestic violence intervention program or parenting classes ordered by the court; or

(b) The defendant violates any other term or condition of the defendant's probation or deferral imposed by the court;

provided that, after a hearing on an order to show cause, the court finds that the defendant has failed to show good cause why the defendant has not timely completed the domestic violence intervention program or parenting classes, if applicable, or why the defendant violated any other term or condition of the defendant's sentence.

The remainder of line 14 through page 9, line 6, should be deleted.

Thank you for the opportunity to provide comments.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY



LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

LATE

THE HONORABLE JOY A. SAN BUENAVENTURA, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

January 29, 2020

RE: H.B. 2067; RELATING TO DOMESTIC VIOLENCE.

Chair San Buenaventura, Vice Chair Nakamura, 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 the intent of H.B. 2067.

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 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, after speaking with various stakeholders, the Department would suggest that if such a pilot project were created, a term of three years would be a sufficient amount of time to observe the positive or negative results from the implementation of H.B. 2067.

Lastly, the Department would like to caution and bring to the attention of the committee that in allowing a deferral of guilty or no contest plea, defendants who would otherwise be ineligible, wouldn't be precluded from owning a firearm following the deferral period.

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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
CLYDE K. HO
DEPUTY CHIEFS

OUR REFERENCE WO-KK

January 29, 2020

The Honorable Joy A. San Buenaventura, Chair
and Members
Committee on Human Services
and Homelessness
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 329
Honolulu, Hawaii 96813

LATE

Dear Chair San Buenaventura and Members:

SUBJECT: House Bill No. 2067, 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, 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, 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 Joy A. San Buenaventura, Chair
and Members
January 29, 2020
Page 2

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, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,

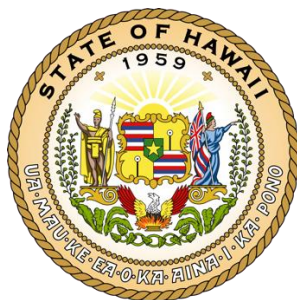


Walter Ozeki, Major
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police



LATE

‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

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 HSH

In Support of HB2067
Monday, January 29, 8:30 a.m. in Room 325

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

The Hawai‘i State Commission on the Status of Women supports HB2067, which would amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. HB2067 would also allow for a deferred acceptance of guilty or no contest plea in cases involving misdemeanor and petty misdemeanor abuse penalties. The measure would also require the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members case.

The Commission is cognizant that varied approaches to intervention are needed for intimate partner violence. Given the continued enormity of the problem, it is clear that a crime control to eradicating intimate partner violence has failed. A community-based approach is needed, as compared to an individualized response from the criminal justice system. The state should encourage intervention programming to prevent further violence and alleviate the court system. Research is clear that imprisonment does not decrease the rate of re-offense.

The dynamics of intimate partner violence are complex. The Commission supports the mandatory completion of a ‘domestic violence intervention’ that is in conjunction with, rather than supplanting, anger management, substance abuse and parenting coursework. The Commission further supports previous community partners’ call for a 5-year pilot framework and data collection to guide policy and prevention efforts. A successful domestic violence prevention program would be evidence-based, curriculum-based, provide an instruction manual with

treatment standards, and include a minimum of 80-hours of group time. Accordingly, the Commissions supports HB2067.

Sincerely,

Khara Jabola-Carolus



LATE

January 28, 2020

Members of the House Committee on Human Services and Homelessness

Chair Rep. Joy A. San Buenaventura
Vice Chair Rep. Nadine K. Nakamura
Rep. Della Au Belatti
Rep. Bertrand Kobayashi
Rep. James Kunane Tokioka
Rep. John M. Mizuno
Rep. Calvin K.Y. Say
Rep. Gene Ward

LATE

Re: HB2067 Relating to Domestic Violence.

Dear Chair San Buenaventura, Vice Nakamura and Members of the House Committee on human Services and Homelessness:

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 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 five year 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.

Although we do not dispute that people who engage in serious domestic violence offenses should be brought to justice and imprisoned for their crime, research has shown that it does not decrease the rate of re-offense. In a study conducted in 2016, 1,600 pairs of offenders who were alike in many ways (socio-economic background, race, prior history and level of violence) were studied. The study found no difference at all in the rate of reoffending between the offender who got a suspended sentence, (threat of imprisonment) and those who went to prison. (Timms 2016).

In comparison, studies show that intervention programming with specific content, such as those that encourage a strong therapist client relationship and group cohesion, and use some form of motivational interviewing techniques and regular attendance show promising results for reducing rates of recidivism for intimate partner violence. In a study conducted in Washington; programs with a mixed modality and diverse intervention showed a 33% reduction in the rate of recidivism versus other controlled means. Likewise, studies conducted in Massachusetts in 2016 showed a decrease in recidivism after domestic violence intervention programming. Simply put, the threat of prison does not seem to impact offender behavior but structured, evidence -based programming does.

HSCADV supports the mandatory completion of domestic violence intervention, which could NOT substituted for other course material to include anger management, substance abuse treatment, mental health treatment, or parenting classes, but could be used in conjunction. We believe these other courses can be useful in other contexts, but it does not address this specific offense and dynamics, therefore would not reduce recidivism or violence against an intimate partner.

The program which calls itself "domestic violence intervention" would need to be: evidence-based, curriculum-based, have an instruction manual, and be a minimum of 80 hours of group time. Additionally, programs would need to be highly structured and have protocols for victim safety, supervision of group leaders and high degree of accountability. Therefore, we recommend that on page 8 lines 11-12 instead of "any available domestic violence intervention programs..." it instead should read "evidence-based" or define in more detail "domestic violence intervention program" directly in statute.

Additionally, we strongly support the 5-year pilot framework for this statute change and the inclusion of data collection that will continue to inform how we do our work for years to come.

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

Sincerely,

Angelina Mercado

Executive Director, Hawaii State Coalition Against Domestic Violence