



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 491, H.D. 1, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Monday, February 11, 2019 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Lee and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill and recommends the following amendments for clarity and consistency.

The purpose of this bill is to: (1) amend the offense of abuse of family or household members to provide for a lesser included petty misdemeanor offense; (2) allow a deferred acceptance of guilty or no contest plea in cases involving misdemeanor and petty misdemeanor abuse offenses; and (3) require the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases.

The current wording of the bill does not accurately reflect the proper procedure for revoking the probation or setting aside the deferral of defendants who fail to complete the court-ordered domestic violence intervention programs or parenting classes. The following amendments are necessary to fulfill the intent of the legislature as stated in section 1, page 1, lines 4-8. Section 2, page 8, lines 14-21, and page 9, lines 1-6, should be deleted and replaced with the following wording:

The court may revoke defendant's probation or set aside defendant's deferred acceptance of guilty or no contest plea and enter an adjudication of guilt, if applicable, and resentence 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 defendant's sentence imposed pursuant to chapter 853;

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

The Department further recommends the following amendments to sections 2 and 3 of the bill to more clearly establish that a defendant can request and the courts may grant deferred acceptance of guilty or no contest pleas for the misdemeanor and petty misdemeanor offenses of abuse of family or household members under section 709-906:

(1) Section 2, page 11, lines 17-21, and page 12, lines 1-5 should be deleted.

(2) Section 3, page 13, lines 1-3 should be deleted and replaced with "provided that this paragraph shall not apply to misdemeanor and petty misdemeanor offenses of abuse of family or household members under section 709-906," and

(3) Section 3, page 15, lines 8-10 should be deleted and replaced with "Any felony abuse of family or household member offense under section 709-906;".

These amendments will clarify the standard defendant must meet in order to obtain a deferral and that a deferral is only available for misdemeanor and petty misdemeanor abuse of family or household member offenses. The current wording of the bill could be interpreted to establish a different standard for granting a deferral in abuse cases as opposed to all other cases. Further, the current wording in section 3, page 12, lines 2-5 suggests that a defendant could get a new deferral every five years, which appears to run contrary to the intent of the legislature as expressed in section 1 of the bill.

Thank you for the opportunity to testify.



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Monday, February 11, 2019, 2:00 p.m.
State Capitol, Conference Room 325

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

Bill No. and Title: House Bill No. 491, H.D.1, 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 cases involving 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 member cases.

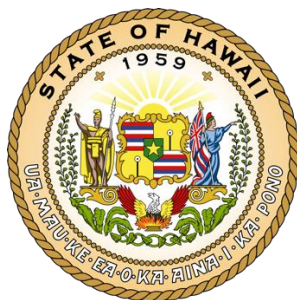
Judiciary's Position:

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.

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.



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 HB491 HD1
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 HB491 HD1, which would amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. HB491 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 carceral approach 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. 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 our 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.

Sincerely,

Khara Jabola-Carolus



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. 491 HD 1: RELATING TO CHILDREN

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

The Office of the Public Defender supports H.B. 491 HD 1.

We strongly support the inclusion of the option for a Deferred Acceptance of a Guilty Plea or a No Contest Plea under certain conditions. 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. We believe this bill will have a positive impact on the processing of domestic violence cases and will result in less court congestion and more opportunities for education and self-improvement on the Court's domestic violence calendars.

Thank you for the opportunity to comment on H.B. 491 HD 1.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt Like
Second 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, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

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

February 11, 2019

RE: H.B. 491 H.D. 1: RELATING TO DOMESTIC VIOLENCE.

Chair Lee, Vice-Chair San Buenaventura, and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i is in strong support of H.B. 491 H.D. 1 – Relating to Domestic Violence. The purpose of this Bill is to amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties, to allow a deferred acceptance of guilty or no contest plea in cases involving misdemeanor and petty misdemeanor abuse penalties, and to require the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases.

The provisions in this measure were arrived at after extensive outreach and consultation by the Women's Legislative Caucus and included the participation of many stakeholders in the criminal justice and law enforcement community. This inclusive process resulted in a bill that is truly fair and makes a multitude of much-needed improvements to HRS Section 709-906. The amendments will result in streamlined prosecutions, decreased court congestion, increased access to protections for victims, and greater access to services for offenders who need treatment, rehabilitation, and yes, consequences.

Our Office is grateful for the work of the WLC in crafting this legislation and we are in enthusiastic support of the bill.

In conclusion, we respectfully ask that your Committee PASS this Bill.

Thank you for this opportunity to testify on this bill.

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

LATE

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. 491, H.D. 1, 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, H.D. 1, 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 this bill provides some of the necessary reforms in addressing the areas of concern 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 Chris Lee, Chair
and Members
February 11, 2019
Page 2


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

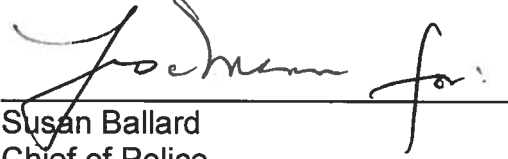
The HPD urges you to support House Bill No. 491, H.D. 1, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,


Mikel Kunishima, Captain
Criminal Investigation Division

APPROVED:


Susan Ballard
Chief of Police



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

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

RE: H.B. 491 HD 1 Support

Please accept this testimony in support of HB 491, HD1.

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, HD 1.

HB-491-HD-1

Submitted on: 2/8/2019 5:59:21 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 491.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

HB-491-HD-1

Submitted on: 2/10/2019 7:36:26 AM

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

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

Comments:

Feb 9, 2019

To House Committee on the Judiciary

Chair Chris Lee

Vice Chair Joy A. Sanbuenaventura

From: Hawaii State Coalition Against Domestic Violence

RE: Support for HB491 HD1

Dear Members of the Committee:

On behalf of the Hawaii State Coalition Against Domestic Violence and our 23 member programs statewide, I am submitting testimony in SUPPORT of HB491 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 the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases.

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 do.

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.

The HSCADV would like to support 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 with. 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.

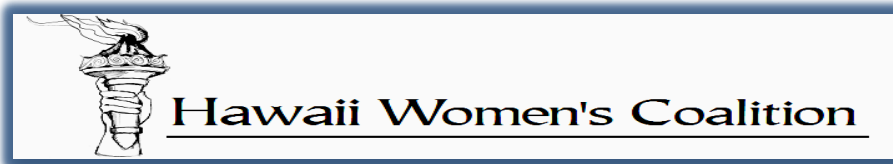
Additionally, we support the 5 year pilot framework for this statute change and the inclusion of data collection that will continue to inform how we do our work for years to come.

Thank you for the opportunity to testify on this matter. The HSCADV SUPPORTS HB 491 HD1.

Respectfully,

Carmen Golay

Member Service Manager



COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

DATE: Monday, February 11, 2019

TIME: 8:30 a.m.2:00pm

PLACE: Conference Room 325

Support the intent off HB491 relating to Domestic Violence,

Aloha Chair Lee, Vice Chair San Buenaventura 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-HD-1

Submitted on: 2/9/2019 6:57:24 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 HB491 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. HB491 HD1 would also require the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases.

Hawaii State Coalition Against Domestic Violence with 23 member programs 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.

AAUW of Hawaii sees value in this type of intervention program and thus supports HB491 HD1.



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 491– RELATING TO DOMESTIC VIOLENCE

We ask you to support HB 491 which seeks to strengthen state and county responses to domestic violence. We support this bill which seeks to improve systems which will hold offenders accountable and offers protection to survivors.

As a provider of domestic violence prevention and support services, we are extremely aware of the overwhelming number of crimes related to relationship violence and the underwhelming number of perpetrators of relationship violence who are arrested or receive services. The more we can do to improve our systems, the better we are able to address the issues of domestic violence, provide services to those who need it and protect survivors through the process. We want all individuals to have the potential to thrive beyond the trauma and navigate a path towards a safe and promising future.

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 491**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.

HB-491-HD-1

Submitted on: 2/8/2019 7:12:36 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:

HB-491-HD-1

Submitted on: 2/9/2019 1:55:18 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: