



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 SB1047 SD1 HD1
Monday, March 18, 2019, at 2:05 p.m. in Room 325

Dear Chair Lee, Vice Chairs Buenaventura, and Honorable Members,

The Hawai'i State Commission on the Status of Women supports SB1047, which would amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. SB1047 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

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515



DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY

FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY**

**Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i**

March 18, 2019

RE: S.B. 1047, S.D. 1, H.D. 1; RELATING TO DOMESTIC VIOLENCE.

Chair Lee, Vice Chair San Buenaventura, 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 supporting the intent of S.B. 1047, S.D. 1, 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), H.B. 1772 (2018)]. In addition, this year, the Department submitted a bill that would have exempted domestic violence cases from Rule 48 of the Hawaii Rules of Penal Procedure [S.B. 181 (2019), H.B. 509 (2019)].

We appreciate the effort S.B. 1047, S.D. 1, 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.

Lastly, the Department would like to caution and bring to the attention of the committee that in allowing a deferral of guilty 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 S.B. 1047, S.D. 1, H.D. 1. Thank you for the opportunity to testify on this matter.



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

March 16, 2019

S.B. No. 1047, SD1, HD1: RELATING TO DOMESTIC VIOLENCE

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

The Office of the Public Defender supports the basic intent of S.B. 1047, SD1, HD1. However, we have very strong concerns about some of the specific language in the bill.

First, 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 had the opportunity to learn, 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 a defendant will 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. A parent may be stuck between choosing to go to trial to defend themselves against a false allegation of Abuse on their child and stressing or traumatizing that child by having that child testify in court. We have seen many juries find parents Not Guilty in cases where they agreed the parent disciplined a child appropriately. 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 mandatory education 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 (7) and we strongly recommend that this section be amended. We are asking that the word “**shall**” on page 8, line 14 be amended to “**may**”. We are very troubled by this all or nothing approach to probation or deferral.

As worded, this section basically mandates the maximum sentence if you are unable to complete your classes on time or if you violate “any other term or condition of the defendant's probation or deferral imposed by the court” and removes from the court other sentencing alternatives if any violation of probation or deferral occurs. The mandatory maximum sentence for a misdemeanor offense is 1 year of jail. The mandatory maximum sentence for a petty misdemeanor offense is 30 days of jail. We are particularly concerned that a judge would be denied the option of a lesser and more

appropriate sentence for a misdemeanor and the offense itself – i.e. 2 months, 4 months, 6 months, 8 months or some other penalty. Mandating the maximum sentence is draconian and would unnecessarily inflate our jail population during a year when the Legislature is focusing on reducing the costs of over incarceration. The Courts have the ability to monitor progress and make decisions based on individual progress and should be allowed to retain that discretion even when a defendant is in probation or deferral.

We do not believe the language used on page 9, lines 4-9 addresses our concerns about the lack of judicial discretion regarding mandatory maximum sentencing requirements in this proposed bill. The language on page 9, lines 4-9 seems to require an “order to show cause” on why a class may not be timely completed or other violations. This is not the appropriate mechanism to be brought before the court to account for failed completion or failure to complete other requirements. The proper mechanism is a motion filed before the court – i.e. a motion for revocation of probation, a motion for modification of probation, etc. We do support a “good cause showing” for any violations, including the failure to complete classes on time. Violations can be a minimal as missing one single appointment because the bus was late or broke down. Violations can include failure to come to an appointment because a child is ill and needs to go to the doctor. Violations could include very serious issues happening in a household like eviction, the loss of a job, the death of a family member, and personal illness. Some defendants 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. But we submit that the language used in the bill is overly cumbersome.

As to the domestic violence intervention programs and parenting classes, we support these education programs, however, we do believe there is a need for the Adult Client Services (Adult Probation) to find additional providers for these programs. Classes need to be added to meet the need. We need additional providers not only on the Island of Oahu also on the Neighbor Islands. We are especially concerned about the availability of classes to meet the mandatory requirements of this bill for defendants on the Islands of Molokai and Lanai.

Page 4

For clarification, we support the creation of a petty misdemeanor offense. We support the deferral option for both the misdemeanor and the petty misdemeanor offenses. We ask that the deferral option be allowed for both a guilty plea and a no contest plea. We strongly oppose mandatory maximum re-sentencing for failure to complete classes on time which removes any discretion from the court to individualize penalties. We ask that this Committee replace the word “shall” with “may” in subsection (7). We support the inclusion of a “good cause” showing.

Thank you for the opportunity to comment on S.B. 1047, SD1, HD1.

JOHN M. TONAKI
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

APPEALS SECTION
TEL. No. 586-2080

DISTRICT COURT SECTION
TEL. No. 586-2100

FAMILY COURT SECTION
TEL. No. 586-2300

FELONY SECTION
TEL. No. 586-2200

FAX (808) 586-2222



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

JAMES S. TABE
CHIEF DEPUTY

HILO OFFICE
275 PONAHAHAWA STREET
HILO, HAWAII 96720
TEL. No. 974-4571
FAX No. 974-4574

KONA OFFICE
82-6127 MAMALAHOA HIGHWAY
P.O. BOX 1219
CAPTAIN COOK, HAWAII 96704
TEL. No. 323-7562
FAX No. 323-7565

KAUAI OFFICE
3060 EIWA STREET
LIHUE, HAWAII 96766
TEL. No. 274-3418
FAX NO. 274-3422

MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAII 96793
TEL. No. 984-5018
FAX NO. 984-5022

March 20, 2019

Representative Chris Lee
Representative Joy San Buenaventura
Hawaii State Capitol

Re: S.B. 1047, SD1, HD1: Relating to Domestic Violence

Aloha and thank you to Representative Lee's staff for meeting with me and representatives from the Honolulu Prosecutor's Office and the State Attorney General's Office this morning.

I have had a chance to speak with my office about our discussion and we respectfully submit the following additional comments:

1. We support the creation of a petty misdemeanor offense that tracks the current language of the misdemeanor offense of Abuse of Family or Household Member by removing "recklessly" from the misdemeanor offense and including "recklessly" as the state of mind for the petty misdemeanor offense.
2. As to 709-906(5)(b):
 - a. We understand that a "second offense" could be either a misdemeanor or a petty misdemeanor for purposes of being treated as a "repeat offender" under this section. We do not oppose this language as applied to a person being treated as a "repeat offender" if the prior offense was a petty misdemeanor. In other words, whether the prior was a misdemeanor or a petty misdemeanor – or whether the new offense is a misdemeanor or a petty misdemeanor – it would not prevent a person from qualifying as a "repeat offender" under this statute.
 - b. We are requesting that the term "**second offense**" be amended to "**second conviction**" as this would clarify that a conviction is required to be treated as a "repeat offender" under this subsection. We note that this would conform with the language used in HRS Section 708-803(2)(c) which applies to Habitual Property Crimes.

- c. We are also asking that this section include language that makes it clear that “**the convictions shall be for separate incidents on separate dates**” as used in HRS Section 708-803(2)(c) to make it clear that a person with a prior case that may have two or more counts relating to a single incident on a single date” will not be treated as a “repeat offender” under HRS Section 709-906(5)(b).
 - d. We are requesting an amendment to reflect different “minimum” jail sentences for a misdemeanor offense [30 days] and a petty misdemeanor offense [5 days]. HRS Section 706-624(2)(a) specifically states that a person placed on petty misdemeanor probation shall is restricted to a maximum of 5 days of imprisonment.
3. As to 709-906(7):
- a. We understand that a “third or any subsequent offense” could be either a misdemeanor or a petty misdemeanor for purposes of qualifying to be charged with a Class C felony offense under this section. Whether the prior offenses were misdemeanors or petty misdemeanors – or whether the new offense is a misdemeanor or a petty misdemeanor – it would not prevent a person from qualifying as a “repeat offender” under this statute. We do not oppose this.
 - b. However, we do ask that the term “**subsequent offense**” be amended to “**subsequent conviction**” to conform with the language used in HRS Section 708-803(2)(c) which applies to Habitual Property Crimes.
 - c. We are also asking that this section include language that makes it clear that “**the convictions shall be for separate incidents on separate dates**”, as used in HRS Section 708-803(2)(c,) to make it clear that a person with a prior case that may have two or more counts relating to a single incident on a single date” will not automatically qualify for a felony offense.

Thank you for the opportunity to submit additional comments.

Darcia Forester
Deputy Public Defender
Supervisor – Family Court Division
Office of the Public Defender

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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

LATE

KIRK CALDWELL
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE WO-KK

March 18, 2019

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: Senate Bill No. 1047, S.D. 1, H.D. 1, Relating to Domestic Violence

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

The HPD supports Senate Bill No. 1047, S.D. 1, H.D. 1, Relating to Domestic Violence.

The HPD recognizes that law enforcement's response to domestic violence is a continually changing and evolving process. As we better understand the dynamics of domestic violence, new and better methods for dealing with perpetrators are identified that may provide better alternatives than the ones that previously existed.

Because of the evolving nature of domestic violence laws, the way in which we address domestic violence offenses are not structured in a logical progressive manner. Consequently, the process in which we deal with domestic violence offenses are often confusing and inconsistent. Included in this are instances in which the level of force utilized by the perpetrator is not sufficient to meet the legal definition of Hawaii Revised Statutes (HRS), Section 709-906, Abuse of a Family or Household Member, but may be enough to constitute a lesser offense such as harassment. These cases (by all accounts a domestic violence incident) are not handled in the same manner as a Section 709-906 case would be.

The Honorable Chris Lee, Chair
and Members
March 18, 2019
Page 2

If passed, this law would fill a gap and create a lesser offense of abuse of a family or household member. It would also identify the lesser offense incident as a domestic violence incident and provide additional safeguards and tools that assist both perpetrators and victims in preventing future incidents.

This law would also provide the necessary relief to the overburdened judicial system by allowing (under specific conditions) a deferred acceptance of guilt plea.

The HPD supports Senate Bill No. 1047, S.D. 1, H.D. 1, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,



for Water Ozeki, Acting Major
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police

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**

March 18, 2019

RE: S.B. 1047 S.D. 1 H.D. 1: RELATING TO DOMESTIC VIOLENCE.

Chair Rhoads, Vice-Chair Wakai and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i is in strong support of S.B. 1047 S.D. 1 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.

SB-1047-HD-1

Submitted on: 3/17/2019 5:08:58 PM

Testimony for JUD on 3/18/2019 2:05:00 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 strongly supports the passage of SB 1047 SD1 HD1.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii



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

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

RE: S.B. 1047 SD1 HD1 Support

Please accept this testimony in support of SB 1047 SD1 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 S.B. 1047 SD1 HD1.

SB-1047-HD-1

Submitted on: 3/18/2019 12:38:14 AM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawaii Women's Coalition	Support	No

Comments:

The Hawaii Women's Coalition supports this measure and hopes to see data forthcoming as to its efficacy.

Mahalo, Ann S. Freed

Co-Chair, Hawaii Women's Coalition

SB-1047-HD-1

Submitted on: 3/16/2019 4:12:45 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

SB-1047-HD-1

Submitted on: 3/16/2019 6:22:15 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lea Minton	Individual	Support	No

Comments: