



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

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 1047, S.D. 1, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS

DATE: Wednesday, March 13, 2019 **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 and recommends the following amendments for clarity and consistency.

As stated in section 1, the purpose of this bill is to establish a pilot project to strengthen response 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 current wording of the new subsection (6) being added to section 709-906, Hawaii Revised Statutes (HRS) in section 2, page 7, lines 19-21, is confusing and may pose a problem with respect to the definition of physical abuse. Although the term "physical abuse" is not defined in the statute, it has been defined by case law at least as far back as 1995 to mean "bodily injury." The term "bodily injury" is statutorily defined and means "physical pain, illness, or any impairment of physical condition." Currently, the abuse of family or household member statute has several subparagraphs 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 wording in section 2, page 7, lines 19-21, is intended to create a mitigating factor that would turn a misdemeanor abuse offense into a petty misdemeanor abuse offense, however, the current wording seems indistinguishable from what one would likely see in most any misdemeanor abuse case. As the Supreme Court has stated “[p]ersons of ordinary intelligence would have a reasonable opportunity to know that causing physical injury by punching someone in the face or shoving them so that they fall against a wall would constitute physical abuse.” State v. Kameenui, 69 Haw. 620, 622, 753 P.2d 1250, 1252 (1988).

There is nothing in the current wording of section 2, page 7, lines 19-21, that would distinguish it from what one would ordinarily see in a misdemeanor abuse case. The addition of the “offensive manner” and “offensive contact” wording should be sufficient to establish that the type of “striking, shoving, kicking” that the Legislature is designating as a petty misdemeanor is distinguishable as something less than the “bodily injury” required for the full misdemeanor. Thus, reverting to the wording from section 2, page 7, lines 15-19, in the original bill, S.B. 1047, is recommended. Additionally, the current wording of that same subsection (6) in section 2, page 8, lines 1-2, 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. Accordingly, the new subsection (6) in section 2, page 7, line 19-21, and page 8, lines 1-2, should be replaced with the following:

(6) Where a person intentionally or knowingly strikes, shoves, kicks, or otherwise touches a family or household member in an offensive manner or subjects the family or household member to offensive physical contact, abuse of family or household member is a petty misdemeanor and the person shall be sentenced as provided in chapter 706.

Section 1, page 1, lines 13-17, still 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.” This bill, however, was amended in Senate Draft No. 1 to delete the wording necessary to fulfill that intent. Should this Committee wish to pursue that intent as stated in section 1, page 1, lines 13-17, the following wording should be inserted in the redesignated subsection (7) of section 709-906 in section 2, page 8, immediately after line 12:

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 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. These amendments will clarify the standard a 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 the new subsection (18) being added to section 709-906 in section 2, page 11, lines 6-9, 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. The

Department recommends the following amendments to the bill, to alleviate any confusion:

(1) The new subsection (18) in section 2, page 11, lines 1-9, should be deleted.

(2) The proposed amendment to section 853-4(a)(2), HRS, in section 2, page 12, lines 4-6, should be amended to read: "provided that this paragraph shall not apply where a deferral is sought for a plea of guilty to misdemeanor offenses of abuse of family or household members under section 709-906," and

(3) Section 853-4(a)(13)(N) in section 3, page 14, line 11, should be amended to read: "~~[Abuse]~~ Any felony abuse of family or household member~~[:]~~ offense under section 709-906;".

Thank you for the opportunity to testify.



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, March 13, 2019, 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: Senate Bill No. 1047, S.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 the granting of a deferred acceptance of guilty plea in cases involving misdemeanor and petty misdemeanor abuse of a family or household member if certain conditions are met. Requires the judiciary to submit annual reports to the legislature on the number and outcome of abuse of family or household members cases. Repeals June 30, 2024. (SD1)

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.



Office of the Public Defender State of Hawaii



Testimony of the Office of the Public Defender, State of Hawaii to the House Committee on Human Services

March 11, 2019

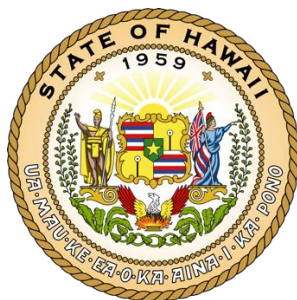
S.B. No. 1047, SD 1: RELATING TO DOMESTIC VIOLENCE

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

The Office of the Public Defender strongly supports S.B. 1047, SD 1.

We strongly support the inclusion of the option for a Deferred Acceptance of a Guilty Plea or a No Contest Plea as provided in this measure. 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. We firmly believe that intervention, together with a strong education program, is the key to reducing recidivism.

Thank you for the opportunity to comment on S.B. 1047, SD 1.



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 Human Services & Homelessness

In Support of SB1047 SD1
Wednesday, March 13, 2019, at 8:30 a.m. in Room 329

Dear Chair Buenaventura, Vice Chairs Nakamura, 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 JOY A. SAN BUENAVENTURA, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS**

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

March 13, 2019

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

Chair San Buenaventura, Vice-Chair Nakamura and members of the House Committee on Human Services and Homelessness, 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.

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 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.

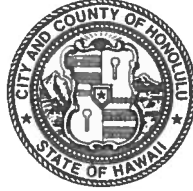
Lastly, the Department would like to caution and bring to the attention of the committee that in allowing a deferral of guilty or no contest plea, defendants who would otherwise be ineligible, wouldn't be precluded from owning a firearm following the deferral period.

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent S.B. 1047, S.D. 1. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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

KIRK CALDWELL
MAYOR



LATE

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE WO-KK

March 13, 2019

LATE

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

Dear Chair San Buenaventura and Members:

SUBJECT: Senate Bill No. 1047, S.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, 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 Joy A. San Buenaventura, Chair
and Members
March 13, 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, Relating to Domestic Violence.


Thank you for the opportunity to testify.

Sincerely,



Walter Ozeki, Acting Major
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police



TO: Chair Joy A. San Buenaventura
Vice Chair Nadine K. Nakamura
Members of the Committee

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

RE: S.B. 1047 SD1 Support

Please accept this testimony in support of SB 1047 SD1.

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.

SB-1047-SD-1

Submitted on: 3/8/2019 5:41:00 PM

Testimony for HSH on 3/13/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	AAUW of Hawaii	Support	No

Comments:

Dear Chair San Buenaventura, Vice-Chair Nakamura, and members of the committee,

Thank you for this opportunity to submit a testimony in support of SB1047 SD1, 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. SB1047 SD1 would also require the Judiciary to collect and report 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 SB1047 SD1.

SB-1047-SD-1

Submitted on: 3/8/2019 6:14:07 PM

Testimony for HSH on 3/13/2019 8:30:00 AM

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 SB 1047 SD1.

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 San Buenaventura, Vice Chair Nakamura, and Members of the House Committee on Human Services & Homelessness

FROM: Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)

DATE/LOCATION: March 13, 2019; 8:30 a.m., Conference Room 329

RE: TESTIMONY IN SUPPORT OF SB 1047 SD 1– RELATING TO DOMESTIC VIOLENCE

We ask you to support SB 1047 SD 1 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 evidence-based domestic violence intervention 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 effective 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, poverty prevention and community building programs.

Thank you for the opportunity to testify in **support of SB 1047 SD 1**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE
1164 Bishop Street, Suite 1609, Honolulu, HI 96813

March 12, 2019

To: House Committee on the Human Services & Homelessness

Chair Joy San Buenaventura

James Kunane Tokioka

Vice Chair Nadine Nakamura

Gene Ward

Della Au Bellati

Bertrand Kobayashi

Calvin Say

John Mizuno

From: Hawaii State Coalition Against Domestic Violence

RE: Support SB 1047 SD1

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 SB 1047SD1** 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)

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE
1164 Bishop Street, Suite 1609, Honolulu, HI 96813

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. **Therefore, we recommend that on page 8 lines 5-6 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 matter. The HSCADV SUPPORTS SB 1047 SD1.

Respectfully,

Carmen Golay, Member Services Manager

cgolay@hscadv.org

808-832-9316

SB-1047-SD-1

Submitted on: 3/12/2019 11:41:34 AM

Testimony for HSH on 3/13/2019 8:30:00 AM

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

Comments:



Aloha Chair San Buenaventura, Vice Chair Nakamura and members,

The Coalition supports this measure which will hopefully result in more offenders getting preventative help. This program, to alleviate the court system case loads, will only help domestic violence victims IF the restrictions on the offender are vigorously enforced.

We look forward to seeing data on the results should this bill become law.

Ann S. Freed

Co-Chair, Hawaii Women's Coalition

SB-1047-SD-1

Submitted on: 3/8/2019 4:08:46 PM

Testimony for HSH on 3/13/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments: