



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2638, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Friday, January 31, 2020

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 414

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

Chair Nishihara 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.



The Judiciary, State of Hawai‘i

**Testimony to the Senate Committee on Public Safety,
Intergovernmental and Military Affairs**

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Friday, January 31, 2020 at 1:15 pm
State Capitol, Conference Room 414

by

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

Bill No. and Title: Senate Bill No. 2638, 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.



Bill No. ---, Relating to ---
Committee ---
(date)
Page 2



Office of the Public Defender State of Hawai'i



Testimony of the Office of the Public Defender, State of Hawai'i to the Senate Committee on Public Safety, Intergovernmental, and Military Affairs

January 28, 2020

S.B. No. 2638: RELATING TO DOMESTIC VIOLENCE

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Office of the Public Defender supports S.B. No. 2638.

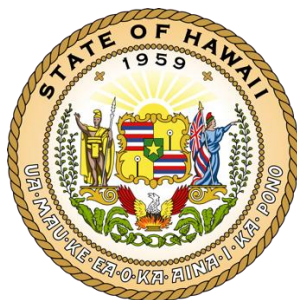
We support the creation of a five-year pilot project. This project will help collect accurate data and statistics that can help the courts process Abuse cases more efficiently and effectively.

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.



‘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 S.Committee on PSM

In Support of SB2638
Friday, January 31, 1:15 p.m. in Room 414

Dear Chair Nishihara, Vice Chairs Wakai, and Honorable Members,

The Hawai‘i State Commission on the Status of Women supports SB2638, 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

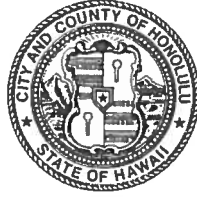
treatment standards, and include a minimum of 80-hours of group time. Accordingly, the Commissions supports SB2638

Sincerely,

Khara Jabola-Carolus

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 31, 2020

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 414
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: Senate Bill No. 2638, 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 Senate Bill No. 2638, Relating to Domestic Violence.

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

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

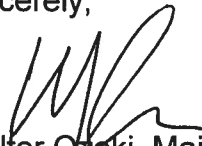
The Honorable Clarence K. Nishihara, Chair
and Members
January 31, 2020
Page 2

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 Senate Bill No. 2638, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,



Walter Ozeki, Major
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police



To: Chair Nishihara
Vice Chair Wakai
Fr: Nanci Kreidman, MA,
CEO, Domestic Violence Action Center
Re: SB 2638; 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.

SB 2638 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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SB-2638

Submitted on: 1/28/2020 8:00:13 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

SB-2638

Submitted on: 1/29/2020 4:11:07 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Testifying for aaaw of hawaii	Support	No

Comments:

SB-2638

Submitted on: 1/29/2020 7:08:11 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
aimee chung	Individual	Support	No

Comments:

Thank you in advance for supporting safety for victims of domestic violence.

Aimee Chung, MSW, LSW

Social Worker & Faculty

Domestic Violence Action Center, Board Memeber

SB-2638

Submitted on: 1/29/2020 8:22:31 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kara england	Individual	Support	No

Comments:

Thank your for your support!!

Kara England

SB-2638

Submitted on: 1/29/2020 9:17:48 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
MARSHA H BOLSON	Individual	Support	No

Comments:

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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ACTING PROSECUTING ATTORNEY

LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY



**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS
Thirtieth State Legislature
Regular Session of 2020
State of Hawai`i**

January 31, 2020

RE: S.B. 2638; RELATING TO DOMESTIC VIOLENCE.

Chair Nishihara, Vice Chair Wakai, and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition of S.B. 2638.

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 S.B. 2638 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 S.B. 2638.

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 S.B. 2638. Thank you for the opportunity to testify on this matter.

SB-2638

Submitted on: 1/30/2020 11:02:29 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Please support SB2638.

Mahalo,

Caroline Kunitake

LATE

SB-2638

Submitted on: 1/30/2020 11:19:05 PM
Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jill Araki	Individual	Oppose	Yes

Comments:

To: Chair Nishihara

Vice Chair Wakai

Members of the Committee on Public Safety, Intergovernmental, and Military Affairs

From: Jill Araki, LSW, ACSW, MSW

RE: SB 2638 RELATING TO DOMESTIC VIOLENCE

DATE: Friday, January 31, 2020

TIME: 1:15 p.m.

LOCATION: State Capitol, Conference Room 414

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

I offer testimony in opposition of SB2638 which creates an option to plead to a petty misdemeanor on an abuse charge. I am testifying as a private citizen and not on behalf of any agency.

I have been doing work in the field of domestic violence and trauma for the past 30 years. I have worked with and advocated for the survivors for over two decades and am now currently working with the batterers for the past five years. I have probably worked with thousands of survivors and hundreds of batterers over the past thirty years.

There are 2 reasons I oppose this bill:

1) This bill is setting batterers up for failure thereby creating unsafe families.

Domestic violence is not an anger problem. Rather it is a complex issue with many layers which include belief systems about violence and relationships as well as prior

trauma. Domestic violence batterers enter services with different combinations of multiple issues to include: violence to others, suicide, homelessness, substance use, and mental health (PTSD) to name a few.

Even if the time period for completing counseling is an indeterminate “specified time frame”, both DVI counseling programs contracted by the State Judiciary are six months or longer. With the referral and assessment process, Clients may not be placed in group with a full six months left. In addition, programs tailor counseling to individual clients’ needs and add groups if they need more time in the program. Also, batterer intervention programs help with complex social issues to assist clients in decreasing the stress in their lives and may put groups on hold while they work with the clients on these issues.

Hence, even if the courts set up proof of compliance hearings, will it help the court dockets if the hearings need frequent rescheduling depending on the treatment plan of each batterer in the program?

It is unrealistic for batterers to change their beliefs about their partner or violence in four to five months. Batterer intervention programs work with batterers’ resistance and accountability before batterers are willing to look at their belief systems or address some of their complex issues like prior trauma and substance use. This bill sets batterers up to fail and potentially leave the program with their violent belief systems intact thereby endangering their families still. If batterers leave the program with the same beliefs, then the court docket will remain full.

2) This bill is promoting the wrong message to both batterers and victims about the violence.

Advocates in the domestic violence field have worked diligently to educate the public and service providers on the seriousness of this issue. Imagine telling a batterer or the survivor that the violence amounts to a “petty” crime. Telling a batterer that the violence is a “petty misdemeanor” amounts to helping the batterer minimize the violence. When providing services in the field, I remember being asked by a survivor who lost her baby due to the beating why it was only a misdemeanor as opposed to a felony. What should we tell the survivor or the offender when the crime gets classified as a “petty misdemeanor?”

What criteria will determine whether a hit by one defendant rises to a full misdemeanor as opposed to a hit by another defendant? Rather than grading levels of violence, we need to be giving a clear message that violence is an unacceptable choice by the batterer. Our solution needs to be client-centered, not institution-centered to clear the court dockets and the solution should not contribute to the problem.

Here are some solutions to help hold batterers accountable from someone who has been a line worker for years: 1) amend the law to give Batterer Intervention Programs discretion to determine what type of treatment a client needs (there is currently no discretion by law and offenders are getting inappropriate treatment); 2) allow Batterer

Intervention Programs access to government records (police reports, victim statements, restraining orders, pre-sentence investigations) to hold batterers accountable since programs do not have access to any of this information currently; 3) create issue-focused discussions with line workers to find realistic workable solutions; 4) provide more resources for the judiciary and law enforcement; 5) study effective diversion programs and implement; 6) provide resources for batterers to work on other issues besides their violence that affect their use of violence (prior trauma, substance use); and 7) work on screening for substance use or mental health for sentencing purposes as actively using alcohol or drugs or severe mental health can interfere with domestic violence intervention services (ie do pre-sentence investigations for misdemeanors).

Thank you for the opportunity to comment on this proposed legislation.

LATE

SB-2638

Submitted on: 1/31/2020 10:26:28 AM
Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Isaacson	Individual	Oppose	No

Comments:

The bill should be amended so that individuals do not have firearms taken from them without due process, which is a violation of a basic constitutional right.