

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

February 23, 2021

S.B. No. 410 SD1: RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBER.

Chair Rhoads, Vice Chair Keoholalole, and Members of the Committee:

The Office of the Public Defender opposes S.B. 410 SD1.

This bill would take individualized sentencing out of the hands of the trial judges who many would argue are in the best position to fashion an appropriate sentence in each case. A trial judge becomes intimately familiar with a defendant facing a felony offense(s) after a comprehensive review of that individual’s social and criminal history. This review may include details about past trauma, the need for mental health treatment, and the socio-economic impacts on an individual facing that judge for sentencing. Passage of this measure will prevent a judge from deciding what is most appropriate for the individual offender who is currently before them rather than to have their “hands tied” by HRS § 706-606.5.

Similar criticisms previously were directed at the Federal Sentencing Guidelines until the U.S. Supreme Court struck them down as unconstitutional in the manner in which they were being applied. Many federal judges complained about the “cookie cutter” approach to justice which the guidelines took by relegating sentencing to a variety of mathematical formulas designed to take into account the various aggravating factors and mitigating factors which accompany individual offenders. Because of our repeat offender law, it is not uncommon locally for judges to inform defendants who appear before them that, if it were in the discretion of that judge and not set out by law under HRS §706-606.5, the sentence would be different.

Alternative sentencing programs such as Hawai‘i’s Opportunity for Probation with Enforcement (“HOPE”), the Hawai‘i Drug Court, Veteran’s Treatment Court, and Mental Health Court, have proved that alternatives to imprisonment can have success even with the most risky offenders.

Finally, repeat offender laws will only continue to exacerbate the Hawai‘i prison overcrowding problem. Our jails and prisons are filled above not only design capacity but also operational capacity. A significant portion of the State’s prison population are incarcerated in a contracted private, for-profit prison in Arizona; they are exiled thousands of miles away from their families, friends, and crucial support networks. According to a recent studies by the Prison Policy Initiative, in 2018, Hawai‘i had an incarceration rate of 487 per 100,000 people.¹ Although Hawai‘i ranked 37th among the 50 states, if every state was an independent nation, Hawai‘i would have the 43rd highest incarceration rate in the world.² Only three foreign countries have a higher incarceration rate than Hawai‘i.³ Thus, Hawai‘i locks up a higher percentage of its people than many wealthy democracies do.⁴

With the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai‘i is to increase penalties and remove judicial discretion from individualized sentencing. This is especially important when dealing with the complicated dynamic of family or household members, managing trauma, mental illness, and rehabilitation. Many defendants are themselves victims of violence and trauma and in need of a range of serious treatment options. The courts currently have the ability to incarcerate defendants who do not or cannot demonstrate an ability to reform. Thus, the courts should retain the ability to acknowledge and support defendants who are in treatment and who have a strong support system to prevent new offenses.

Thank you for the opportunity to comment on this measure.

¹ Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

² Prison Policy Initiative, “States of Incarceration: The Global Context.” See <https://www.prisonpolicy.org/global/2018.html>

³ Id.

⁴ Prison Policy Initiative, “Hawaii profile.” See <https://www.prisonpolicy.org/profiles/HI.html>

SB-410-SD-1

Submitted on: 2/18/2021 4:54:33 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
nanci kreidman	Testifying for domestic violence action center	Support	No

Comments:

aloha,

thank you for adding Abuse of Family and Household member to the repeat offender sentencing statute.

love, nanci kreidman

SB-410-SD-1

Submitted on: 2/20/2021 11:40:41 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Individual	Support	No

Comments:

I support SB410. Please pass this bill.

Mike Golojuch, Sr.

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

February 23, 2021

RE: S.B. 410, S.D. 1; RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBER.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in strong support of S.B. 410, S.D. 1 with suggested amendments. This bill is part of the Department's 2021 legislative package.

The purpose of S.B. 410, S.D. 1 is to strengthen and update the sentencing statutes applicable to the offense of Abuse of a Family or Household Member. Section 706-606.5, Hawaii Revised Statutes (“H.R.S.”), Sentencing for Repeat Offender, first enacted in 1976, provides specialized sentencing provisions for repeat felony offenses, and has been amended a number of times to include various Class C felonies. Although this list covers a range of very serious crimes, one violent Class C felony which is not on this list, is felony-level Abuse of a Family or Household Member (“AFHM”), under H.R.S. §709-906 (8), (9) and (10).

Currently, the offense of AFHM has 3 subsections categorized as Class C felonies:

- **H.R.S. §709-906 (8)** For a third or any subsequent conviction, that occurs within two years of a second or subsequent conviction, the offense shall be a class C felony.
(Enacted by Act 19, Session Laws 1999; amended by Act 5, Session Laws 2002)
- **H.R.S. §709-906 (9)** Where the physical abuse consists of intentionally or knowingly causing bodily injury by impeding the normal breathing or circulation of the blood by:
 - o Applying pressure on the throat or neck with any part of the body or a ligature,
 - o Blocking the nose and mouth; or
 - o Applying pressure to the chest,

Abuse of a family or household member is a class C felony; provided that infliction of visible bodily injury shall not be required to establish an offense under this subsection. **(Enacted by Act 230, Session Laws 2006)**

- **H.R.S. §709-906 (10)** Where physical abuse occurs in the presence of a minor, as defined in section 706-606.4, and the minor is a family or household member less than fourteen years of age, abuse of a family or household member is a class C felony **(Enacted by Act 117, Session Laws 2014)**

Given that C felony offenses have been added to H.R.S. §709-906 “piecemeal” over the years, the Department believes it was not intentional to leave felony-level AFHM off of the list, but rather an oversight, as the three Class C felony subsections were created long after the the Sentencing for Repeat Offenders statute was enacted (in 1976), and also long after the AFHM statute was enacted (in 1973); until 1999, AFHM was only classified as a misdemeanor offense. The Department believes that these heightened penalties for felony-level AFHM will more accurately reflect the seriousness of these types of offenses in today’s society, by placing them on the same level as all other violent Class C felonies.

The Department appreciates the thoughtful amendments made by the Senate Committee on Human Services, and further requests that this Committee insert H.R.S. §709-906(10), which relates to physical abuse that occurs in the presence of a minor.

For these reasons, the Department of the Prosecuting Attorney strongly supports the passage of S.B. 410, S.D. 1. Thank you for this opportunity to testify.