

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee
on Judiciary & Hawaiian Affairs**

February 8, 2022

H.B. No. 2422: RELATING TO SENTENCING

Chair Nakashima, Vice-Chair Matayoshi and Members of the Committee:

The Office of the Public Defender strongly opposes H.B. No. 2422.

Mandating domestic violence intervention classes, whether a defendant is on probation or not, would create two classes of defendants. Those that have the benefit of resources from the probation office – including support services, referral services, access to interpreter services, and access to basic help like a list of available programs, breakdown of costs and information on financial assistance to help defray costs, assistance with completing application forms, and other assistance. The other class of defendants are those who would have no support system in place to complete classes. Only a probationer can receive services and assistance from the Adult Client Services Branch (ACSB). We are troubled that this would create so many barriers and obstacles for the non-probationers that it would set up defendants for failure.

We are very concerned that a blind mandate fails to take into account the individual needs of a defendant or the family member who petitioned the court for a restraining order or an order for protection. We represent defendants with little to no resources who are houseless and disabled. Many defendants have very limited education who struggle with literacy and English proficiency. We also represent disabled clients who cannot physically attend mandated classes because they have suffered intervening medical issues that make it impossible for them to comply. It is simply not appropriate for every single defendant charged with violating an order for protection to be required to complete domestic violence classes without access to a support agency to provide guidance. It is necessary to point out that, unlike mandated driver’s education and substance abuse classes for a conviction of the offense of Operating a Vehicle Under the Influence of an Intoxicant, there is no

designated and established centralized agency in charge of providing and monitoring approved classes.

Thank you for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-First State Legislature
Regular Session of 2022
State of Hawai`i

February 8, 2022

RE: H.B. 2422; RELATING TO SENTENCING.

Chair Nakashima, Vice-Chair Matayoshi and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **support** of H.B. 2422.

The purpose of H.B. 2422 is to address the Supreme Court of Hawaii's decision in *State v. Agdinaoay*,¹ clarifying that a family court, sentencing an offender under sections 586-4, 586-11 or 709-906 of the Hawaii Revised Statutes ("HRS"), is allowed to order domestic violence intervention ("DVI") with incarceration, regardless of the offender's probationary status.

In *Agdinaoay*, the Supreme Court held that family courts cannot impose DVI as a "standalone" sentencing option under HRS §586-4(e), without also ordering the defendant to probation. Because courts also cannot impose both probation and a prison sentence greater than 180 days for misdemeanor offenses, the Supreme Court therefore vacated the nonconforming sentence in *Agdinaoay* as an illegal sentence. H.B. 2422 attempts to eliminate any confusion by explicitly codifying the Legislative intent, consistent with the dissenting opinion in *Agdinaoay*. Focusing on the plain language of HRS §586-4, the dissent points out that the statute uses the term "shall", when referencing the ordering of DVI by the court. The dissent also points out that nothing in the statute dictates that DVI can only be ordered when a defendant is sentenced to probation. Furthermore, the dissent in *Agdinaoay* cites multiple sections in HRS §586-4 that align with H.B.

¹ *State v. Agdinaoay*, 500 P.3d 408 (2021).

2422, establishing that DVI can be a “standalone” sentencing provision regardless of probationary status.²

The Department believes that DVI is an important part of addressing the root causes of domestic violence, as it includes both anger management and domestic violence treatment. H.B. 2422 clearly lays out the legislative intent, highlighting the importance of DVI, as well as the importance of ensuring that everyone (who is sentenced for an offense that mandates DVI) is actually ordered by the court to complete it.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** the passage of H.B. 2422. Thank you for the opportunity to testify on this matter.

² Other provisions regarding restraining orders similarly demonstrate the legislature’s intent to give judges the authority to impose DVI without a condition of probation. For example, HRS § 586-5 provides that after a hearing the family court can enter a protective order, and that,

The protective order may include all orders stated in the temporary restraining order and may provide relief, as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including . . . orders to either or both parties to participate in domestic violence intervention.

Similarly, HRS § 586-5.5, in relevant part, states:

The protective order may include all orders stated in the temporary restraining order and may provide for further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. . . . The extended protective order may include . . . order[s] to either or both parties to participate in domestic violence intervention services.



HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

February 8, 2022

Members of the House Committee on Judiciary and Hawaiian Affairs:

Chair Mark M. Nakashima
Vice Chair Scot Z. Matayoshi
Rep. Linda Ichiyama
Rep. Dale T. Kobayashi
Rep. Matthew S. LoPresti
Rep. Nicole E. Lowen
Rep. Angus L.K. McKelvey
Rep. Nadine K. Nakamura
Rep. Roy M. Takumi
Rep. Chris Todd
Rep. James Kunane Tokioka
Rep. Gene Ward

Re: HB2422 Relating to Sentencing

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary and Hawaiian Affairs:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) advances the safety and healing of victims, survivors and their families. We are the collective voice of a diverse network of organizations and individuals, working to eliminate all forms of domestic violence in Hawai'i by fostering partnership, increasing awareness of domestic violence, developing the capacity our member programs and community partners to address the needs of survivors and their families, and advocating for social justice and change. On behalf of HSCADV and our 25 member programs statewide, I respectfully submit testimony in support of HB2422.

This bill clarifies the supreme court of Hawai'i decision in State of Hawai'i v. Agdinnaoay that a family court may order domestic violence intervention, in addition to any other misdemeanor sentencing options.

Thank you for the opportunity to testify on this important matter.

Sincerely,

Angelina Mercado
Executive Director, HSCADV

HB-2422

Submitted on: 2/7/2022 3:49:06 PM

Testimony for JHA on 2/8/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in Support.