

**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  
Health, Human Services & Homelessness**

March 23, 2021

S.B. No. 410 SD2: RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBER.

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Office of the Public Defender opposes S.B. 410 SD2.

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.<sup>1</sup> 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.<sup>2</sup> Only three foreign countries have a higher incarceration rate than Hawai‘i.<sup>3</sup> Thus, Hawai‘i locks up a higher percentage of its people than many wealthy democracies do.<sup>4</sup>

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.

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

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

<sup>3</sup> Id.

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

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE RYAN I. YAMANE, CHAIR**  
**HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, AND HOMELESSNESS**  
**Thirty-First State Legislature**  
**Regular Session of 2021**  
**State of Hawai`i**

March 23, 2021

**RE: S.B. 410, S.D. 2; RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBER.**

Chair Yamane, Vice Chair Tam, and members of the House Committee on Health, Human Services, and Homelessness, 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. 2 with suggested amendments. This bill is part of the Department's 2021 legislative package.

The purpose of S.B. 410, S.D. 2 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)**

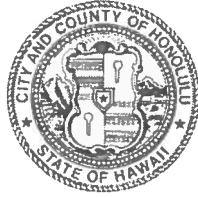
Given that C felony offenses have been added to H.R.S. §709-906 “piecemeal” over the years, the Department believes it was not intentional to leave felony-level AFHM off of the list, but rather an oversight, as the three Class C felony subsections were created long after the the Sentencing for Repeat 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. 2. Thank you for this opportunity to testify.

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OUR REFERENCE

RP-KK

March 23, 2021

The Honorable Ryan I. Yamane, Chair  
and Members  
Committee on Health, Human Services,  
and Homelessness  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 329  
Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

SUBJECT: Senate Bill No. 410, S.D. 2, Relating to Abuse of Family or Household Member

I am Randall Platt, Captain of District 4 of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 410, S.D. 2, Relating to Abuse of Family or Household Member.

Domestic violence is a serious and pervasive criminal and public health issue with devastating long-term consequences for society. The seriousness of this violent crime emphasizes the need for mandatory sentencing to hold repeat offenders accountable. Mandatory sentencing for repeat offenders will also provide additional safety and security for both the victims and our community.

The HPD urges you to support Senate Bill No. 410, S.D. 2, Relating to Abuse of Family or Household Member.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Susan Ballard in black ink.

Susan Ballard  
Chief of Police

Sincerely,

Handwritten signature of Randall Platt in black ink.

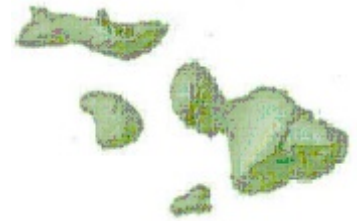
Randall Platt, Captain  
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TESTIMONY  
ON  
S.B. 410 SD2 - RELATING TO  
ABUSE OF A FAMILY OR HOUSEHOLD MEMBER

March 22, 2021

The Honorable Ryan I. Yamane  
Chair

The Honorable Adrian K. Tam  
Vice Chair

and Members of the Committee on Health, Human Services and Homelessness

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 410 SD2, Relating to Abuse of a Family or Household Member. Specifically, we would like to express our strong support for S.B. 410 SD2, which would add abuse of a family or household member to the list of felonies that qualify for repeat offender sentencing.

Currently, defendants who are convicted of strangling a family or household member, abusing a family or household member more than twice in a two-year period, or abusing a family or household member in the presence of a minor less than fourteen years of age are convicted of a class C felony and are eligible for a maximum five-year term of imprisonment.

However, in the case of defendants with multiple prior abuse convictions there is no mandatory minimum term of imprisonment. They are technically eligible to receive a sentence that is substantially lower than five years, and could even receive a probation term with no term of imprisonment whatsoever. Moreover, under current law an offender with multiple non-violent felony theft convictions is required by statute to serve a minimum term of imprisonment, whereas a defendant with multiple violent abuse convictions is not. In other words, a defendant who repeatedly steals TVs from stores is required by statute to receive a mandatory minimum term of imprisonment, but a defendant who repeatedly strangles their partner in front of their children is not.

This bill would help to protect the community by ensuring that offenders with a prior

record of serious felony offenses receive an appropriate sentence of imprisonment that takes into account their current and prior actions.

For these reasons, the Department of the Prosecuting Attorney, County of Maui strongly supports the passage of S.B. 410 SD2. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.