

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 Public Safety,  
Intergovernmental, and Military Affairs**

February 16, 2021

S.B. No. 622: RELATING TO RESTRAINING ORDER VIOLATIONS

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

The Office of the Public Defender strongly opposes S.B. 622.

This measure would make any violation of an order for protection or a restraining order an offense that mandates a 30-day jail term and a fine of “not less than \$5,000.” We strongly oppose the draconian nature of this measure. There is a penalty structure built into HRS Section 586-11 and HRS Section 604-10.5. We oppose mandatory sentencing that makes even a first offense that does not involve any violence, (i.e. a text message) to require 30 days of incarceration *and* a fine of \$5,000.00.<sup>1</sup>

The courts have the ability to create sentences to penalize different types of violations, and they always take into consideration the unique facts and circumstances of each violation, together with the attendant circumstances, to determine an appropriate punishment. Therefore, we oppose any measure that takes individualized sentencing out of the hands of the trial judges who are in the best position to fashion an appropriate sentence in each case. A trial judge becomes intimately familiar with defendants who are found guilty of these types of offense(s) after a comprehensive review of that individual’s social, family and criminal history. This review, of course, includes the defendant’s criminal record or lack thereof. The review also includes 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 the most appropriate

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<sup>1</sup> For those individuals who are unable afford to pay a fine (and a substantial number of people cannot), the alternative is to perform community service work in lieu of any fine. At the unofficial conversion rate of \$15 per hour, a defendant ordered to pay \$5,000 will need to perform 333 hours of work.

sanction for the individual offender who is currently before them rather than to have their “hands tied” by mandatory sentencing. Mandatory sentencing will only cause more court congestion, as more cases will only be resolved by jury trials; mandatory sentencing will also contribute to jail overcrowding, as an individual who simply sends an unwelcomed text message during the emergency period will need to spend a minimum of thirty days in custody.

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 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.



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 622, RELATING TO RESTRAINING ORDER VIOLATIONS.

**BEFORE THE:**

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND  
MILITARY AFFAIRS

**DATE:** Tuesday, February 16, 2021      **TIME:** 1:20 p.m.

**LOCATION:** State Capitol, Via Videoconference

**TESTIFIER(S):**      **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Kory W. Young,  
Deputy Attorney General, at 586-1160)

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Chair Nishihara and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments.

The purpose of the bill is to increase the mandatory minimum penalties imposed on individuals convicted of violating an injunction, restraining order, or order for protection during the period of a stay-at-home order imposed by the State or the county in which the violation occurred. Under the bill, individuals convicted of violating an injunction, restraining order, or order for protection during such a period, would be sentenced to a minimum of thirty days in jail, and to pay a fine of not less than \$5,000.

Section 586-11, Hawaii Revised Statutes (HRS), provides that a person who knowingly or intentionally violates an order for protection granted pursuant to chapter 586 is guilty of a misdemeanor. Similarly, section 604-10.5, HRS, provides that a person who knowingly or intentionally violates a restraining order or injunction issued pursuant to that section is guilty of a misdemeanor.

Section 706-640(1)(d), HRS, provides that a person who has been convicted of a misdemeanor may be sentenced to pay a fine not exceeding \$2,000; however, pursuant to section 706-640(1)(g), HRS, higher maximum fines may be imposed, if they are specifically authorized by statute.

In order for the courts to sentence violators to fines of \$5,000 or more as required by the bill, specific wording should be added to the bill establishing the maximum fine authorized for violations of section 586-11(a)(4), HRS, and violations of section 604-10.5(i)(3), HRS, in an amount greater than \$5,000. The wording could be inserted on page 5, line 14, and on page 7, line 16, to read "fined not less than \$5,000 and not more than \$\_\_\_\_\_. A person who has been convicted of violating this subsection may be sentenced to pay a fine not exceeding \$8,000 (or whatever amount greater than \$5,000 and less than \$10,000 the legislature deems appropriate).

Although it does not appear that any Hawaii statutes or Hawaii courts have set an upper limit as to the fine that may be established for a misdemeanor offense, it would be advisable to set this amount below the \$10,000 threshold that is the standard maximum fine for a class "C" felony.

If it is the intent of the bill to preclude the courts from suspending in whole or in part the jail term or the fine imposed by the bill, wording should be added indicating that these conditions cannot be suspended. As written, the courts must "sentence" a violator in accordance with the provisions of the bill, but could then suspend in whole or in part the jail term and the fine.

Thank you for the opportunity to provide comments on the bill.



HAWAI'I STATE  
COALITION AGAINST  
DOMESTIC VIOLENCE

**LATE**

February 16, 2021

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

Chair Sen. Clarence K. Nishihara  
Vice Chair Sen. J. Kalani English  
Sen. Rosalyn H. Baker  
Sen. Kurt Fevella  
Sen. Gil Riviere

Re: SB 622 Relating to Restraining Order Violations

Dear Chair Nishihara, Vice Chair English, and Member of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) engages communities and organizations to end domestic violence through education, advocacy, and action for social justice. HSCADV is a private, not-for-profit organization and is a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 23 member programs statewide, I respectfully submit testimony in support of SB622. This bill would increase the penalties for the violation of a restraining order during a Stay-At-Home order, significantly increasing the safety of victims of domestic violence during periods of a public health crisis such as the Covid-19 pandemic – a period during which victims are experiencing extreme stress and trauma.

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

Sincerely,

Angelina Mercado  
Executive Director, Hawai'i State Coalition Against Domestic Violence

**SB-622**

Submitted on: 2/13/2021 4:54:41 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Philip T. Rapoza    | Individual          | Support                   | No                        |

Comments:

I support