

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 24, 2021

S.B. No. 829: RELATING TO ABUSE

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

The Office of the Public Defender strongly opposes S.B. 829.

This measure seeks to create a petty misdemeanor offense for subjecting a family or household member to “coercive control.” HRS § 586-1 defines “coercive control” as follows:

“Coercive control” means a pattern of threatening, humiliating, or intimidating actions, which may include assaults, or other abuse that is used to harm, punish or frighten an individual.

“Coercive control” includes a pattern of behavior that seeks to take away the individual’s liberty or freedom and strip away the individual’s sense of self, including bodily integrity and human rights, whereby the “coercive control” is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including:

- (1) Isolating the individual from friends and family;
- (2) Controlling how much money is accessible to the individual and how it is spent;
- (3) Monitoring the individual’s activities, communications, and movements;
- (4) Name-calling, degradation, and demanding the individual frequently;
- (5) Threatening to harm or kill the individual or a child or relative of the individual;
- (6) Threatening to publish information or make reports to the police or the authorities;
- (7) Damaging property or household goods, and
- (8) Forcing the individual to take part in criminal activity or child abuse.

We are troubled with the broad language of the definition as it may be applied to HRS § 709-906. Everyday or common behavior in marriages or relationship are at risk of being criminalized if they occur more than once, thus creating a “pattern” of

behavior. The following are just a few examples of conduct, which could be considered coercive control that would result in a criminal offense if it occurred more than a few occasions.

1. A couple arguing about money, budgets, debts or other monetary obligations, and the arguments become heated and unpleasant words are uttered
2. A partner in a relationship who becomes concerned that monies are being spent unwisely (e.g., gambling, illicit substances) chooses to step in and “control how much money is accessible”
3. A couple arguing over an act of infidelity expresses harsh and angry words and flings insults (name-calling) at each other in the course of an argument or verbal confrontation
4. A partner threatening to post an insult or some vague form of “information” on their Instagram or Facebook page
5. A partner in a dating relationship repeatedly pesters the other partner about where they are going or what they are doing

These are just a few examples of behavior that can happen in the course of a new relationship or a marriage of 30+ years. This measure will criminalize arguments or disagreements in relationships and marriages. Married couples or people in long term relationships experience disagreements and arguments, some of which may last days or weeks or months. Parties may say or do things that should not be labelled “abuse” and thus criminalized. This measure fails to narrow or clarify what should or should not be considered actual criminal activity.

We are also concerned that the phrase “pattern of behavior” is vague and ambiguous as applied to HRS § 709-906. What constitutes a “pattern of behavior” in this measure? How many incidents must occur and over what period of time would be considered a pattern of behavior? Are arguments involving name-calling that occur several times during a span of two-months considered a pattern of “abuse” and thus a criminal act? Is it “abuse” if the enumerated behavior occurs twice a year over the course of a five, ten or twenty year relationship? An unspecified number of incidents coupled with an unspecified time period will certainly lead to legal challenges.

Finally, we are concerned about misuse of this measure by the actual abusers who may easily twist and manipulate the definition of “coercive control” for their own use to further subjugate a partner. The phenomenon of weaponizing the abuse statutes by the perpetrator, sometimes called revenge abuse cases, to further perpetrate power and control on their partners is real. We have seen an increase in situations where the true abuser has had their partner arrested to demonstrate that they have the additional power and control of using law enforcement to perpetrate more subjugation.

Thank you for the opportunity to comment on this measure.

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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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 24, 2021

RE: S.B. 829; RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBERS.

Chair Rhoads, Vice Chair Keohokalole, members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony expressing concerns regarding S.B. 829.

The purpose of S.B. 829 is to add the act of “coercive control” to the manner in which an individual commits the petty misdemeanor offense of Abuse of Family or Household Member under section 709-906 (6), Hawaii Revised Statutes (H.R.S.).

During the 2020 Legislative Session, the Legislature passed Act 19 creating a five-year pilot project, aimed at strengthening the state and county responses to domestic violence. As part of this pilot project, many stakeholders spent a great deal of time crafting language that would address acts against a family or household member that did not cause bodily injury, similar to Harassment (§711-1106, Hawaii Revised Statutes). The result was the creation of a petty misdemeanor offense which went into effect on January 1, 2021. Due to the unforeseen effects that COVID-19 has had on our judiciary, the various agencies have not been able to see the positive or negative ramifications Act 19 has or will have on domestic violence in our courts. Because the petty misdemeanor created by Act 19 is a pilot project, the Department cautions against prematurely adding variables to a very complicated endeavor before any form of important data collection can be done. Additionally, the Department notes that the addition of “coercive control” into section 709-906, H.R.S. is not a new idea. During the passage of Act 19, the House Committee on Human Services and Homelessness made this identical amendment

which was met with opposition by stakeholders and was subsequently removed by the House Committee on Judiciary.

The Department also notes that the proposed definition for “coercive control” could create a *Modica*¹ issue. Under the definition “coercive control” subsection (5), “Threatening to harm or kill the individual or a child or relative of the individual” could be construed to encompass the same action that is defined in Terroristic Threatening in the 2nd Degree (H.R.S. §707-717). This definition could limit the Department to petty misdemeanor penalties which would otherwise be classified as misdemeanor offenses. This issue is not limited to only subsection (5), but could apply to numerous other offenses that are currently established in the H.R.S. Additionally, the Department is concerned that the language used to define “coercive control” is simply too broad and may criminalize unintended behavior. The broad nature of the definition is illustrated in subsection (2) which could potentially subject an individual to arrest and possible prosecution when they fail to provide money to a family or household member (eg. not providing lunch money to a child). The Department appreciates the intent of S.B. 829 in giving additional tools to ensure individuals are held accountable for various forms of domestic violence. However, without greater specificity ensuring the definition is not vague, ambiguous or too broad, the Department is concerned that this proposed offense will not be utilized to prosecute offenders as envisioned.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu expresses concerns with the passage of S.B. 829, and asks that the measure be deferred. Thank for you the opportunity to testify on this matter.

¹ *State v. Modica*, 567 P.2d 420, 58 Haw 249 (1977)



HAWAI'I STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

February 24, 2021

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Jarrett Keohokalole
Sen. Laura Acasio
Sen. Chris Lee
Sen. Mike Gabbard
Sen. Kurt Fevella
Sen. Donna Mercado Kim

Re: SB829 Relating to abuse of family or household members - Support

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary:

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 SB829. This bill adds coercive control, as defined in HRS §586-1, to the offense of abuse of family or household members as a petty misdemeanor, creating additional criminal justice recourse for victims and additional layer of accountability for domestic violence perpetrators.

The National Intimate Partner Violence and Sexual Violence Survey (NISVS) measurement for intimate partner violence includes psychological aggression (name calling insults and humiliation) and coercive control (behaviors that reflect monitoring, controlling or threatening) of a victim¹, behaviors that are included in Hawai'i's definition of coercive control. The most recent NISVS State Report found that 43.5% of women and 41.6% of men in Hawai'i have experience some form of psychological aggression in their lifetime.²

¹ Smith, S.G., Chen, J., Basile, K.C., Gilbert, L.K., Merrick, M.T., Patel, N., Walling, M., & Jain, A. (2017). The national intimate partner and sexual violence survey (NISVS): 2010-2012 state report. Atlanta: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Retrieved from <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

² Ibid.



HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

The domestic violence victims throughout Hawai'i who are abused without any physical proof often believe there will be no justice for them, nor accountability for their perpetrators because their abuse does not meet the current legal standard. The coercive control addition would apply to many victims and would encourage them to come forward and seek a legal safety net for themselves and their loved ones.

HSCADV supports the passage of this bill. Thank you for the opportunity to submit testimony on this important matter.

Sincerely,

Angelina Mercado

Executive Director, Hawai'i State Coalition Against Domestic Violence

SB-829

Submitted on: 2/19/2021 12:51:18 PM

Testimony for JDC on 2/24/2021 9:31:00 AM

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

Comments:

aloha,

domestic abuse takes many forms. power and control are at the root of abusive partnerships.

some tactics of abuse are less easy to notice and yet serve to immobilize victims.

sharpening our community's attention and response to coercive control is very important to effectively and appropriately addressing domestic violence.

thank you for supporting this Bill.

love, nanci kreidman

SB-829

Submitted on: 2/21/2021 7:12:52 AM

Testimony for JDC on 2/24/2021 9:31:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Testifying for Rainbow Family 808	Support	No

Comments:

We support the addition of coercive control between family or household members noted in SB829. Please pass. Thank you.

Mike Golojuch, Sr.

Secretary, Rainbow Family 808

Date: February 22, 2021

To: Senate Judiciary Committee
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice-Chair

From: Early Childhood Action Strategy
Re: Support for SB829, Relating to Coercive Force of a Family Member

Hawai'i's Early Childhood Action Strategy (ECAS) is a statewide, cross-sector collaborative designed to improve the system of care for Hawai'i's youngest children and their families. ECAS partners work to align priorities for children prenatal to age eight, streamline services, maximize resources and improve programs to support our youngest keiki.

ECAS strongly supports the passage of SB829. Research shows that exposure to sustained trauma within the first five years of life can have lasting effects on brain development and long-term health outcomes. Adverse Childhood Experiences (ACEs) and early trauma, such as chronic child abuse and neglect and intimate partner violence, often impede on healthy early brain development. Additionally, women exposed to intimate partner violence are at four-times the risk for antepartum hemorrhage, preterm delivery and low birth weight for baby, which all impact overall family health. According to UNICEF, sixty countries, states and territories have adopted legislation that fully prohibits using corporal punishment against children. Hawai'i's keiki are our up-and-coming teachers, doctors, business owners, employees and legislators. We want them to grow into adulthood, without the effects of trauma, so that our communities and economies thrive.

The impacts of exposure to early trauma can have long-term consequences. Risks include

- Behavioral, psychological, and physical health challenges
- Academic failure
- Alcohol and substance use
- Youth Delinquency
- Adult criminality

Abuse and neglect of family members are on the rise in Hawai'i, due to the stressors of the COVID19 pandemic and have ripple effects into our communities. Efforts to deter violence in the home are critical. Amending subsection (6) to read "It shall be a petty misdemeanor for a person to intentionally or knowingly strike, shove, kick or otherwise touch a family or household member in an offensive manner..." is an important step in decreasing family violence across the islands.

Mahalo for your consideration in supporting SB829.

SB-829

Submitted on: 2/22/2021 3:32:14 PM

Testimony for JDC on 2/24/2021 9:31:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghee Overly	Testifying for AAUW Of Hawaii	Support	No

Comments:

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of S.B. 829, which adds coercive control between family or household members to the offense of abuse of family or household members as a petty misdemeanor. The domestic abuse without any physical violence does not meet the current legal standard which means too often the perpetrators get away without any accountability, leaving the victims without any legal safety net.

Please pass this important measure and thank you for your consideration.

Younghee Overly, Public Policy Chair of AAUW of Hawaii

To: Senator Karl Rhoads, Chair
Senate Committee on Judiciary

Senator Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

From: Geisha Dela Pena

Subject: S.B. 829 Relating to Abuse of Family of Household Members – In Support

Hearing: Thursday February 24, 2021 at 9:31am
Video Conference, State Capitol

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Senate committee,

My name is Geisha Dela Pena. I'm currently a graduate student pursuing social work. I am testifying in support of S.B. 829 in relation to abuse of families or a household member.

My pursuit of higher education with the social work field and a focus on child and family has broaden and deepened my understanding of how family dynamics can perpetuate negative or positive cycles. My studies mainly being focused on child and family, I've learned that abuse comes in many forms. More than often abuse is hard to detect even more so for psychological or emotional abuse. It can also be said that psychological or emotional abuse can be used in the other forms of abuse. With that in mind, the fear of child and family workers rises with the varying levels of reports throughout this global pandemic.

I've seen in my own home and through relationships of friends how power and control need to be closely monitored. Having witnessed perpetrators use their power against their loved ones for years has created insecure attachments in myself when it comes to relationships whether it be intimate or friendships. With this pandemic, I've learned from many people including myself

that we are craving for some control in the unknown right now. So, I can imagine for some people, they may coerce control from those that are closest to them without even realizing it sometimes. Left unchecked can lead to issues like insecure attachments, anxiety, and a range of different things. That is not even including other issues that may arise if there is more than one type of abuse.

I believe having this addition in writing solidifies the knowledge that abuse can come in many forms if relationship dynamics aren't carefully looked at and spoken about. This addition coming from the Women's Legislative Caucus speaks volumes to what could be happening in the homes of many. For many women that means running the household but not necessarily holding the power and control that men automatically have within a patriarchal system. To conclude, I strongly support S.B. 829. Thank you for this opportunity to share my testimony.

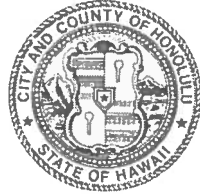
Geisha Dela Pena

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LATE

RICK BLANGIARDI
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE

RP-KK

February 24, 2021

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 829, Relating to Abuse of Family or Household Members

I am Randall Platt, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD appreciates the intent of Senate Bill No. 829, Relating to Abuse of Family or Household Members, but has the following concerns.

The HPD understands that domestic abuse takes many forms and that coercive control is part of the domestic violence cycle. It is indeed a control over the victims' lives that makes them feel powerless. The HPD is concerned that the definition of "coercive control" is somewhat subjective and including it in subsection (6) of the Hawaii Revised Statutes (HRS), Section 709-906, may make this subsection difficult to establish, document, and enforce.

Under HRS, Section 586-1, Definitions, subsection (1) lists "Isolating the individual from friends and family" as coercive control. This raises the question of what type of isolation and what level is sufficient for the offense. Similarly, subsection (2) lists "Controlling how much money is accessible to the individual and how it is spent" as coercive behavior. Again, this raises the question of what type of control of funds is necessary to meet the offense. With subsections (3) and (4), the line of what actions

The Honorable Karl Rhoads, Chair
and Members
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February 24, 2021

actually meet the "coercive control" definition is a little blurry. Subsections (6) through (8) would already be covered by existing HRS statutes.

The HPD appreciates the committee's consideration of our concerns regarding Senate Bill No. 829, Relating to Abuse of Family or Household Members.

Thank you for the opportunity to testify.

Sincerely,



Randall Platt, Captain
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police

LATE

SB-829

Submitted on: 2/23/2021 3:40:50 PM

Testimony for JDC on 2/24/2021 9:31:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Munoz	Testifying for Ho'ola Na Pua	Support	No

Comments:

Testimony in support of:

SB829

Submitted by:

Ho'Å• la NÄ• Pua

Chair Rhoads, Vice Chair Keohokalole, and Honorable Members,

Ho'Å• la NÄ• Pua is in support of adding "coercive control between family or household members" to the offense of abuse of family or household members as a petty misdemeanor. It is important to amend current legislations to incorporate our comprehensive understanding of domestic abuse.

Coercive control involves a pattern of threatening, humiliating, or intimidating actions, which may be intended to take away an individual's liberty or freedom and strip away the individual's sense of self. Example behaviors of coercive control are isolation from friends and family, deprivation of basic needs, degradation, controlling a victim's life and/or finances, and can include threats of violence to the individual or their relatives.

By amending our current laws to include psychological aggression, we can better protect victims in domestic violence situations.

Ho'Å• la NÄ• Pua supports the introduction of coercive control as an offense of abuse and urges legislators to approve of SB829.

Respectfully,

Ho'Å• la NÄ• Pua

LATE

SB-829

Submitted on: 2/24/2021 2:42:53 AM

Testimony for JDC on 2/24/2021 9:31:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and members,

Strong support for this measure that would protection and clarify the spectrum of abuse regarding victims of domestic violence.

Mahalo,

Ann S. Freed, Co-Chair Emeritus, Hawaii Women's Coalition

LATE

SB-829

Submitted on: 2/24/2021 9:17:17 AM
Testimony for JDC on 2/24/2021 9:31:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Darlene Ewan	Individual	Support	No

Comments:

Dear Chair Rhoads and the committees,

We respectfully submit testimony in support of SB829. This bill adds coercive control, as defined in HRS §586-1, to the offense of abuse of family or household members as a petty misdemeanor, creating additional criminal justice recourse for victims and additional layer of accountability for domestic violence perpetrators.

The National Intimate Partner Violence and Sexual Violence Survey (NISVS) measurement for intimate partner violence includes psychological aggression (name calling insults and humiliation) and coercive control (behaviors that reflect monitoring, controlling or threatening) of a victim, behaviors that are included in Hawai'i's definition of coercive control. The most recent NISVS State Report found that 43.5% of women and 41.6% of men in Hawai'i have experienced some form of psychological aggression in their lifetime.

The domestic violence victims throughout Hawai'i who are abused without any physical proof often believe there will be no justice for them, nor accountability for their perpetrators because their abuse does not meet the current legal standard. The coercive control addition would apply to many victims and would encourage them to come forward and seek a legal safety net for themselves and their loved ones.

Mahalo,

Darlene Ewan

Honolulu, Hawaii