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**Testimony of the Office of the Public Defender,
State of Hawai'i to the House Committee on Human Services & Homelessness**

February 11, 2025

H.B. 383: RELATING TO ORDERS FOR PROTECTION.

Chair Marten, Vice Chair Olds, and Members of the Committee:

The Office of the Public Defender **strongly opposes H.B. 383.**

This measure increases the penalties for violations of an Order for Protection and removes the ability of the Courts to sort between offenses involving domestic abuse or non-domestic abuse. It increases the mandatory minimum from 48-hours to 30-days without regard to the level of seriousness that the violation may involve – a physical contact vs. a single text message. In addition, it removes the ability of the Court to suspend a jail sentenced for a first offense where a defendant remains alcohol and drug free, conviction free, or completes a court ordered assessments or interventions.

It is the position of the Office of the Public Defender that these modifications are problematic and unnecessary to improve the processing of these types of cases in our criminal justice system. We acknowledge that domestic violence is an ongoing issue in our communities. However, there are more effective ways to address safety concerns when working with families and domestic partners who obtain Orders for Protection. The Courts need to have the ability to craft sentences to penalize

different types of violations. The Courts always take into consideration the unique facts and circumstances of each violation, whether the violation involves acts of domestic abuse, together with the attendant circumstances, to determine an appropriate punishment.

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. The review may also take a look at the use of restraining orders and orders for protection as a weapon to use in a child custody or paternity battle or in a contentious divorce proceeding. We have seen instances where nefarious family members weaponize this process as a means to elder abuse, as a means to get a better advantage in a probate matter involving shared property with family members. We have also encountered couples who have "dueling" orders for protection – where both parties have obtained separate orders for protection against each other based on mutual accusations of domestic abuse.

Passage of this measure will prevent a judge from deciding the most appropriate 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.

Our office is supportive of more intensive supervision, access to mental health treatment and counseling, substance abuse intervention and treatment, and domestic violence intervention programming. We are deeply concerned that the harsh nature of these amendments can create the unintended circumstance of encouraging parties to obtain restraining orders to use as a means to emotionally and financially abuse partners. We have already seen instances where a true abuser obtains and uses an order for protection as a means to harm a true victim – there by using the criminal justice system to further abuse. We respect the work of domestic violence prevention agencies, and it is not unusual for a defendant to have a counselor or service provider affiliated with these agencies.

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.

In particular, we are deeply concerned about removing the incentive to avoid jail for first time offenders who take their obligations seriously by remaining alcohol and drug free, conviction free, and who take and complete all required counseling, programming, and classes. We need to encourage these positive behaviors and provide incentive for education and behavioral modification.

Thank you for the opportunity to comment on this measure.

HONOLULU POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE VL-BT

February 11, 2025

The Honorable Lisa Marten, Chair
and Members
Committee on Human Services and
Homelessness
House of Representatives
415 South Beretania Street, Room 329
Honolulu, Hawai'i 96813

Dear Chair Marten and Members:

SUBJECT: House Bill No. 383, Relating to Orders for Protection

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

The HPD supports House Bill No. 383, Relating to Orders for Protection.

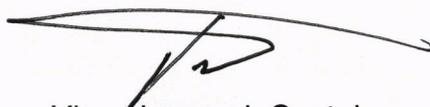
This bill plays a crucial role in safeguarding individuals who are experiencing threats or violence, whether it is domestic or non-domestic. It gives individuals peace of mind and support for vulnerable individuals. The HPD supports this bill to further protect victims of domestic abuse and to emphasize the seriousness of violating protective orders. The second or subsequent violations often indicate a pattern of disregard for court order and the victim's safety. There are numerous instances where an individual will violate a protective order repeatedly. This situation calls for stronger legal measures to prevent further harm.

The HPD urges you to support House Bill No. 383, Relating to Orders for Protection. Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Arthur J. Logan
Chief of Police


Vince Legaspi, Captain
Criminal Investigation Division

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 383

A BILL FOR AN ACT RELATING TO ORDERS FOR PROTECTION

COMMITTEE ON HUMAN SERVICES & HOMELESSNESS

Representative Lisa Marten, Chair
Representative Ikaika Olds, Vice Chair

Tuesday, February 11, 2025 at 9:45 a.m.
Via Videoconference and
State Capitol Conference Room 329
415 South Beretania Street

Honorable Chair Marten, Vice-Chair Olds, and Members of the Committee on Human Services & Homelessness. The County of Hawai‘i, Office of the Prosecuting Attorney submits the following testimony in support of House Bill No. 383.

House Bill No. 383 would apply clear mandatory minimum jail sentences for a first, second, and third violation of the same protective order issued under Section 586-11, HRS. The bill would also eliminate confusing and unnecessary language from Section 586-11.

This bill reflects the need for increased accountability for individuals who violate protective orders issued by the family courts of our state. The County of Hawai‘i, Office of the Prosecuting Attorney, supports this measure to increase accountability for violators.

Domestic violence protective orders are issued where the family court finds that a past act or acts of abuse may have occurred, that threats of abuse make it probable that acts of abuse may be imminent, or that extreme psychological abuse or malicious property damage is imminent. Such orders may require the subject to not contact the protected party, to not threaten, harm, or harass the protected party, to stay away from the protected party’s residence or place of employment, and other measures aimed at protecting victims from ongoing threats of abuse, coercive control, or property damage.

Violations of a domestic violence protective order can have the malicious effect of making victims feel powerless. This bill makes clear that there will be mandatory jail time for a violation, which increases for subsequent second and third violations. The certainty of jail time as a consequence for violations could have a deterrent effect on potential violators and help assure victims.

In addition this bill takes the commendable step of eliminating the language in Section 586-11 that distinguishes between violations “in the nature of domestic abuse” and those “in the nature of non domestic abuse.” In practice, any violation of a protective order that is assaultive in nature is already chargeable as an enhanced felony offense of Assault in the Second Degree. The Office of the Prosecuting Attorney, County of Hawai‘i, supports the intent of this bill to make the text of Section 586-11 clear and its penalties unambiguous.

The Office of the Prosecuting Attorney, County of Hawai‘i, further adds the following comments as to possible ways to strengthen and clarify this bill:

- H.B. 383 could be strengthened by clarifying that a conviction for the crime of Violation of a Temporary Restraining Order, under Section 586-4, Hawai‘i Revised Statutes, may serve as a first conviction for the enhanced mandatory jail sentences, where the temporary restraining order was issued under the same judicial case number as the order for protection. An ex-parte temporary restraining order is issued by a judge on an emergency basis for the same purposes and under the same chapter as an order for protection, and a violation of either type of order should serve as a basis for an enhanced charge.
- H.B. 383 could be strengthened by amending the measure to add an enhanced mandatory jail sentence that would be applicable to violators who do not yet have a prior conviction, but who can be alleged to have repeatedly violated a domestic violence protective order issued under the same judicial case number on multiple occasions. The current bill would not provide an enhanced mandatory jail sentence unless one or two final judgments of conviction have already been entered at the time of the new violation. It can take time for prosecutors to obtain a final judgment of conviction against an offender. Repeated violations of an order for protection are equally disruptive to victims’ lives when the violator has multiple cases or police reports at an earlier stage of the criminal process than conviction. Where it can be alleged that an individual has repeatedly violated a protective order on multiple occasions, the availability of an enhanced charge could help stop ongoing violations.

The County of Hawai‘i, Office of the Prosecuting Attorney remains committed to pursuing justice with integrity and commitment. For the foregoing reasons, the County of Hawai‘i, Office of the Prosecuting Attorney supports the passage of House Bill 383. Thank you for the opportunity to testify on this matter.

**DEPARTMENT OF THE PROSECUTING ATTORNEY
KA 'OIHANA O KA LOIO HO'OPI'I
CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE LISA MARTEN, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i**

February 10, 2025

RE: H.B. 383; RELATING TO ORDERS FOR PROTECTION.

Chair Marten, Vice Chair Olds, and members of the House Committee on Human Services and Homelessness, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in support of H.B. 383. This bill is part of our 2025 legislative package, and we thank the Committee for hearing it.

H.B. 383 conforms the mandatory minimum sentencing provisions for protective orders to those for temporary restraining orders.

In cases of domestic abuse, a person may petition the Family Court for a temporary restraining order (TRO).¹ A judge reviews the petition and initially determines whether to grant the TRO. If granted, the TRO is effective for up to 180 days.²

Approximately two weeks after issuing the TRO, the Family Court conducts a hearing on whether a protective order should be granted.³ Both parties must receive notice of the hearing and each has the right to appear with an attorney. Following this hearing, the Court decides whether to convert the TRO into a longer-term protective order.⁴

Under the current law, the first conviction for violating a TRO carries a mandatory minimum jail sentence of 48 hours.⁵ A second conviction, or any subsequent conviction, carries a mandatory minimum jail sentence of 30 days.⁶

¹ HRS § 586-4(a).

² HRS § 586-5(a).

³ HRS § 586-5(b).

⁴ HRS § 586-5.5(a), (b).

⁵ HRS § 586-4(e)(1).

⁶ HRS § 586-4(e)(3).

By contrast, a first conviction for violating a protective order carries no mandatory minimum jail sentence, unless the violation itself involved domestic abuse.⁷ In effect, violating a protective order receives a discounted sentence. This absurd result arises even though the order has been supported by two layers of judicial review.

H.B. 383 aligns the penalties for violating a temporary restraining order and a protective order. Both are court orders designed to prevent violence. Most women killed by intimate partners do not have active restraining orders. But some do. Violation of these orders is an early warning sign that the abuser cannot respect boundaries, even those the law requires.

H.B. 383 eliminates the distinction between violations in the nature of domestic abuse and violations in the nature of non-domestic abuse. In most cases, a violation in the nature of domestic abuse can already be independently charged as a separate crime. The current distinction creates needless confusion about the nature of the offense. It also implicitly minimizes violations that only appear trivial when isolated from the abusive context.

The chart on the next page illustrates a common scenario where repeated violations of court orders do not result in any meaningful penalty. Uniform sentencing would be a proportionate deterrent to violations of restraining and protective orders.

The Department strongly encourages this Committee to pass H.B. 383.

Thank you for the opportunity to testify.

⁷ Compare HRS § 586-11(a)(1)(A) (“For a first conviction for violation of the order for protection [t]hat is in the nature of non-domestic abuse, the person *may* be sentenced to a jail sentence of forty-eight hours and be fined no more than \$150[.]”) (emphasis added) with HRS § 586-11(a)(1)(B) (“For a first conviction for violation of the order for protection [t]hat is in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of no less than forty-eight hours and be fined no less than \$150 nor more than \$500[.]”).

January 1	Jane Doe seeks and receives a TRO against John Doe. Her petition describes prior acts of physical abuse and stalking during their marriage. The Family Court sets a hearing for January 15.
January 2	Officer Roe serves John with the TRO and notifies him of the hearing date.
January 5	John shows up to Jane's workplace with fresh flowers and a brochure from a funeral home. Jane calls the police. John is arrested at the workplace.
January 6	The prosecution charges John with Violation of a TRO as a first offense. John is released at arraignment and given a trial date of February 3. The court orders him to stay away from Jane.
January 10	John shows up to Jane's house at three in morning and knocks on the door. Jane calls the police. John is arrested at her home.
January 11	The prosecution charges John with Violation of a TRO as a first offense (because he has not yet been convicted of the prior violation). John's bail is increased at arraignment. He is given a trial date of February 10 with an intermediate status conference. He posts bail the same day.
January 13	John bails out.
January 15	The Family Court holds a hearing on the protective order. It issues a three-year protective order.
August 4	After several continuances, John is convicted for both Violation of a TRO cases. He receives credit for time served (the two days spent in jail between January 11 and January 13).
August 5	John shows up to Jane's workplace with dead flowers. Jane call the police.
August 6	The prosecution charges John with Violation of a Protective Order as a first offense. John bails out the same day.
April 15 (of the following year)	John is convicted for violating the protective order. Because the violation was not in the nature of domestic abuse, he receives no jail time. The Court orders him to stay away from Jane.
April 16	John shows up to Jane's house at three in the morning and knocks on the door.



February 11, 2025

Members of the House Committee on Human Services & Homelessness:

Chair Lisa Marten
Vice Chair Ikaika Olds
Rep. Terez Amato
Rep. Cory M. Chun
Rep. Sue L. Keohokapu-Lee Loy
Rep. Gregg Takayama
Rep. Jenna Takenouchi
Rep. David Alcos III
Rep. Diamond Garcia

Re: HB383 Relating to Orders of Protection

Dear Chair Marten, Vice Chair Olds, and Members of the House Committee on Human Services & Homelessness:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 25 member programs statewide, I respectfully submit testimony in support of HB383 and respectfully request the following amendments.

Adding language to Section 1(1), page 2, line 9:

“a conviction of a temporary restraining order under section 586-4(e), issued under the same judicial case number as the order for protection, will be treated as a second or subsequent violation of an order for protection”.

Rationale: If the respondent violates the ex-parte emergency Temporary Restraining Order, it demonstrates a pattern of disregard for the consequences of the violation and an escalation on behalf of the abusive partner. The consequences under the first violation of a protection order under section 586-11 do not adequately address the severity of the situation or safety concerns for the survivor (petitioner) nor provide time for additional safety planning and remedies such as relocation.

Additionally, research on the effectiveness of differential sentencing severity for domestic violence offenses concluded that show that shows that

“that prosecutors and courts have the means to significantly deter reabuse, especially in the majority of states that provide by statute enhanced sentences for repeat DV cases if these increased sanctions are not routinely plea bargained away”.¹

Reinserting the stricken language in Section 3, page 4, lines 13-16:

“The court may suspend any jail sentence under subparagraphs (1)(A) and (2)(C), upon condition that the defendant remain alcohol- and drug-free, conviction-free, or complete court-ordered assessments or intervention.”

Rationale: In cases where the survivor is the respondent due to primary aggressor misidentification, judges maintain the discretion to order appropriate services commensurate with the situation.

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

Sincerely,
Angelina Mercado, Executive Director

¹ “Impact of Differential Sentencing Severity for Domestic Violence Offenses and All Other Offenses Over Abusers’ Life Spans”, available at https://www.ojp.gov/pdffiles1/nij/grants/244757.pdf?utm_source=chatgpt.com.



February 10, 2025

TO: Members of the House Committee on Human Services & Homelessness:
Chair Lisa Marten
Vice Chair Ikaika Olds
Rep. Terez Amato
Rep. Cory M. Chun
Rep. Sue L. Keohokapu-Lee Loy
Rep. Gregg Takayama
Rep. Jenna Takenouchi
Rep. David Alcos III
Rep. Diamond Garcia

RE: HB383 Relating to Orders of Protection

From: Monique R. Ibarra, MSW, CEO

Testimony:
Tuesday, February 11, 2025, 9:15 a.m.
Conference Room 329 & Videoconference

Aloha Chair Marten, Vice Chair Olds, and Members of the House Committee on Human Services & Homelessness:

For over 30 years, DVAC has offered services to assist survivors of domestic violence as they navigate the legal and social service systems to establish freedom, safety, and self-sufficiency. We are the only agency in Hawaii for which 100% of the focus is helping survivors of domestic violence or those affected by it.

On behalf of the Domestic Violence Action Center, I support HB HB383 with the respectful request for modifications to the bill language for the following:

Adding language to Section 1(1), page 2, line 9:

“a conviction of a temporary restraining order under section 586-4(e), issued under the same judicial case number as the order for protection, will be treated as a second or subsequent violation of an order for protection”.

Rationale: If the respondent violates the ex-parte emergency Temporary Restraining Order, it demonstrates a pattern of disregard for the consequences of the violation and an escalation on behalf of the abusive partner. The consequences under the first violation of a protection order under section 586-11 do not adequately address the severity of the situation or safety concerns for



the survivor (petitioner) nor provide time for additional safety planning and remedies such as relocation.

Additionally, research on the effectiveness of differential sentencing severity for domestic violence offenses concluded that show that shows that “prosecutors and courts have the means to significantly deter re-abuse, especially in the majority of states that provide by statute enhanced sentences for repeat DV cases if these increased sanctions are not routinely plea bargained away”.¹

Reinserting the stricken language in Section 3, page 4, lines 13-16:

“The court may suspend any jail sentence under subparagraphs (1)(A) and (2)(C), upon condition that the defendant remain alcohol- and drug-free, conviction-free, or complete court-ordered assessments or intervention.”

Rationale: In cases where the survivor is the respondent due to primary aggressor misidentification, judges maintain the discretion to order appropriate services commensurate with the situation.

With appreciation for the opportunity to testify to this important matter.

Mahalo,
Monique R. Ibarra, MSW

¹ “Impact of Differential Sentencing Severity for Domestic Violence Offenses and All Other Offenses Over Abusers’ Life Spans”, available at https://www.ojp.gov/pdffiles1/nij/grants/244757.pdf?utm_source=chatgpt.com.

HB-383

Submitted on: 2/7/2025 10:23:42 PM

Testimony for HSH on 2/11/2025 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Deanna Espinas	Individual	Support	Written Testimony Only

Comments:

Please support HB383.

Aloha Chair Marten, Vice Chair Olds, and Members of the Committee,

I am submitting this testimony **as an individual citizen in support of HB 383**. This bill reinstates mandatory minimum jail sentences for successive violations of the same order for protection, removes the distinction between domestic and non-domestic violations of an order for protection, and eliminates the court's ability to suspend mandatory minimum sentences.

Domestic violence has escalated in recent years, and we have witnessed too many tragic losses due to repeated violations of protective orders. The current repercussions are simply not strong enough to deter offenders or protect victims effectively. HB 383 is a critical step forward in strengthening our laws to provide meaningful protection for those at risk, especially at a time when they need it most.

Thank you for the opportunity to submit this testimony.

Respectfully,

Kiran Polk