



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

Wednesday, June 24, 2020 at 3:05 p.m.

State Capitol, Conference Room 325

by

Christine E. Kuriyama

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2638, S.D.2, H.D.1, Relating to Domestic Violence.

Purpose: Establishes a petty misdemeanor offense of abuse of family or household members and penalties. Allows a deferred acceptance of guilty or no contest plea in misdemeanor and petty misdemeanor abuse offenses of abuse of family or household members. Requires the judiciary to submit annual reports to the legislature on the number and outcome of abuse of family or household members cases. Sunsets 6/30/2025. Effective 12/31/2059. (HD1)

Judiciary's Position:

The Judiciary offers this testimony in strong support of this bill that allows greater flexibility in the sentencing options in HRS Section 709-906 while still emphasizing accountability of the defendant, safety of the victims, and increasing protection for the children in families wracked by domestic violence. To implement these sentencing changes, we want to reassure the Legislature that the Judiciary will not require additional resources.

Thank you for the opportunity to provide testimony on this measure.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2638, S.D. 2, H.D. 1, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, June 24, 2020

TIME: 3:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Landon M.M. Murata,
Deputy Attorney General, at 586-1160)

Chair Lee and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill but has concerns.

The purpose of this bill is to establish a five-year pilot project to strengthen government responses to domestic violence and increase offender accountability by: (1) amending the offense of abuse of family or household members to provide for a petty misdemeanor offense; (2) allowing a deferred acceptance of guilty or no contest plea in cases involving petty misdemeanor or misdemeanor abuse offenses and specifying that the deferral shall be set aside if the defendant fails to complete court ordered domestic violence intervention programs or parenting classes; and (3) requiring the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases.

The wording of subsection (5)(b) being added to section 709-906, Hawaii Revised Statutes (HRS), in section 2, page 7, lines 11-17, does not create a stand-alone petty misdemeanor abuse offense and may make it difficult to prosecute misdemeanor abuse cases. By placing the petty misdemeanor in subsection (5), the penalty section of section 709-906, it forces the State to first prove the misdemeanor abuse offense, then prove that the misdemeanor was committed by striking, shoving, kicking, etc. Additionally, part of the list of conduct prohibited as a petty misdemeanor

on page 7, line 12, i.e. to “strike, shove, kick,” covers virtually all of the most common methods of physically abusing someone and could result in either all misdemeanor abuses being reduced to petty misdemeanor abuse or the State being forced to charge the more specific petty misdemeanor offense rather than the general misdemeanor offense. Finally, it is unclear what conduct the Legislature may be attempting to prohibit by the term “coercive control.” Absent a statutory definition courts will look at the plain or ordinary meaning of words. Merriam-Webster’s online dictionary defines “coercive” as “serving or intended to coerce.” “Coerce” is defined as (1) “to compel to an act or choice”; (2) “to achieve by force or threat”; or (3) “to restrain or dominate by force”. “Control” is defined as, among other things, the “power or authority to guide or manage.” These plain and ordinary meanings of the terms “coercive” and “control” do not provide any clarity as to what specific conduct is prohibited and the inclusion of the term “coercive control” could thus render the petty misdemeanor abuse unconstitutionally vague.

Accordingly, the Department recommends the petty misdemeanor abuse offense be added to section 709-906, HRS, as a new subsection (6), as follows:

(6) It shall be a petty misdemeanor for a person to intentionally or knowingly touch a family or household member in an offensive manner or subject a family or household member to offensive physical contact.

The remaining subsections should be renumbered accordingly.

Assuming the Committee elects to make the above changes to the bill and that it is the intent of the Legislature that persons convicted of the petty misdemeanor abuse offense be sentenced pursuant to the renumbered subsection (7), then reference to subsection (5) on page 8, line 4, should be amended to “subsections (5) and (6), it shall also require that the offender”.

Additionally, section 853-4(a)(2)(B), HRS, section 3, page 13, lines 6-8, will only apply to the misdemeanor abuse offense and not to the petty misdemeanor abuse offense being added to section 709-906. Thus, the provision in section 853-4(a)(2)(B), HRS, in section 3, page 13, lines 6-8, need not reference the petty misdemeanor abuse, only the misdemeanor abuse. The Department recommends changing the provision to

“except that the prohibition in this paragraph shall not apply to misdemeanor offenses of abuse of family or household member.”

Finally, if it is the intent of the Legislature to maintain the prohibition against deferrals in felony abuse of family or household member cases, then the Department recommends changing the wording of section 853-4(a)(13)(N), HRS, section 3, page 15, lines 13-15, to “(N) Any felony abuse of family or household member offense;”.

Thank you for the opportunity to provide comments.

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**

June 23, 2020

S.B. No. 2638, SD2, HD1: RELATING TO DOMESTIC VIOLENCE

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Public Defender would first like to take a moment to provide some updates and context on the current state of the domestic violence trials in the First Circuit during our State’s management of the COVID-19 pandemic. Jury trials have been suspended since late March 2020 and there is a growing COVID-19 backlog of cases. This backlog is a direct result of the courthouse closures and the suspension of jury trials for the past 4 months. All stakeholders involved in the management of the domestic violence cases have been participating in regular meetings and discussion on the status of the backlog. Discussions include options and strategies for the future of the domestic violence court calendars and how to process these cases as the courts begin to re-open. We are currently awaiting a decision on when jury trials may re-start in the court system. Because of budget restrictions and personnel restrictions, the domestic violence jury trials in the First Circuit are only being handled by one judge who is managing the full case loads in two separate courtrooms. Petty misdemeanor bench trials are restricted to morning settings and are being handled by Per Diem judges and not full-time judges. We submit that this is not the time for the creation of the proposed pilot program which could complicate the processing of domestic violence cases. We respectfully submit that any changes to the domestic violence laws should be postponed until the COVID-19 pandemic is under control and all stakeholders involved have had an opportunity to analyze the data and plan for the resolution of the cases currently on the calendar in light of the unexpected and unprecedented COVID-19 backlog.

As to our testimony on S.B. 2638, SD2, HD1, we submit the following:

The Office of the Public Defender ***strongly opposes*** S.B. 2638, SD2, HD1. We ***support*** H.B. 2067, HD1, Proposed SD1 (HSCR826-20).

We do ***support*** the creation of a pilot project, which will help collect accurate data and statistics that can help the courts process abuse of family or household member (“abuse”) cases more efficiently and effectively. We support a ***three***-year pilot program instead of a five-year program.

We ***strongly support*** the inclusion of the option for a Deferred Acceptance of a Guilty Plea or No Contest Plea for a defendant who meets the criteria. This provision will have a positive impact on the processing of domestic violence cases in the State of Hawai‘i. We have long held the position that most first offenders who are charged with abuse or domestic violence offenses are willing and able to participate in domestic violence education classes, and that they deserve the opportunity to

demonstrate that they have learned how to better manage stress, anger and cope with negative emotions that may result in violence. The majority of our clients successfully complete their classes and never return to the Family Court; they have learned, they have matured, and they have developed healthier coping skills that last a lifetime.

As to the creation of a petty misdemeanor offense, we do not see the need, as the current harassment statute in HRS Section 711-1106 is sufficient and is widely used in the Family Courts. The Office of the Prosecuting Attorney has the option of charging an individual with misdemeanor Abuse of a Family or Household Member and they also have the option of charging an individual with petty misdemeanor Harassment, among other offenses, based on the circumstances of each case.

We ***strongly oppose*** the inclusion of the language "...or otherwise exercise coercive control" [see page 7, line 13] in the definition of the proposed petty misdemeanor offense. "Coercive control" as defined in H.B. 2425, HD1 [see below to view definition] is simply too broad and criminalizes behavior that may occur in even the most healthy and stable relationships.

This proposed definition would make it a criminal offense to engage in a series of arguments with your household member about money and budgeting, a difficult subject for many families, and arguments about how money is spent.

This proposed definition would make it a criminal offense to engage in "name-calling" in the heat of the moment during a series of arguments or disagreements. This is completely subjective and may include something as innocuous as calling a household member "foolish" or "dumb" or even more coarse language.

This proposed definition would make it a criminal offense to throw any household item down in anger thus causing it to break, i.e. a television remote or a picture frame.

We are concerned that this measure is trying to dictate and regulate relationship behavior beyond what is needed to regulate actual abuse. We are deeply concerned that this proposed law would make it an arrestable offense to have a heated argument with a household member (between spouses, siblings, a parent and a child, etc.). It is our belief that this proposed definition will cause an explosion of cases in the Family Courts. Any argument between a household member could potentially subject people to arrest because the Honolulu Police Department would be unable to determine whether a crime has been committed. If the Honolulu Police Department and the Office of the Prosecuting Attorney maintain their mandatory arrest policy and their no drop policy, then the practical effect of this measure will ***increase*** the cases in the Family Courts and ***increase*** court congestion. It will create a need for additional courtrooms and judges to process these cases and trials. The lengthy definition would make trials longer and more arduous and complicated. This would create additional costs and expenses that the original intent of this measure had hoped to reduce. We submit that this would be counterproductive and over-criminalize arguments and disagreements in relationships and families.

In addition, as we have expressed in previous testimony, we have concerns about the language in Section 6 [page 8, line 14] that states the court "***shall revoke ... and resentence the defendant to***

the maximum term of incarceration” for failure to complete classes or for violating any other term or condition of probation for deferral. This language is unnecessary. The Family Courts already have the ability to look at a defendant’s performance on probation or deferral supervision. There is also an effective mechanism for the processing of revocation requests and resentencing for non-compliance. The Courts already have “proof of compliance hearings” to monitor progress and when violations occur, revocation motions are filed.

The proposed language in Section 6 is unnecessarily restrictive as it provides the Family Court with *only* two options -- probation or the maximum jail sentence. The Family Court should be able to review all the pertinent facts and circumstances to determine whether a defendant should suffer the maximum penalty or whether an alternative sentence is appropriate based on the defendant’s history and status. The Family Court should have discretion to determine appropriate penalties on an individual basis.

We are particularly concerned that Section 6(b) would also *mandate* the maximum term of imprisonment for a violation of *any* term of probation or deferral. Any violation could include being late for an appointment because the bus was delayed or missing an appointment due to illness. We submit that the language from page 8, line 14 through page 9, line 9 is unnecessary for the administration of justice. The filing of an “order to show cause” is not needed for a Family Court judge to monitor a defendant’s progress and the courts already hear requests for extensions to complete classes due to unforeseen circumstances. The correct method to discuss options for failure to comply is through the filing of a “motion for revocation” or a “motion for modification” and a hearing with the parties and the court. We do think there needs to be flexibility when dealing with minor violations and the all or nothing options are counterproductive. We respectfully request that the term *shall* be amended to *may*.

Thank you for the opportunity to comment on this measure.

A BILL FOR AN ACT

RELATING TO DOMESTIC ABUSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 431:10-217.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section, "domestic abuse" means:

- (1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members;
- (2) Sexual assault of one family or household member by another;
- (3) Stalking of one family or household member by another family or household member; [ø€]
- (4) Intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another household member[-]; or
- (5) Coercive control, as defined in section 586-1, between family or household members."

SECTION 2. Section 432:1-101.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section, "domestic abuse" means:

- (1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members;

(2) Sexual assault of one family or household member by another;

(3) Stalking of one family or household member by another family or household member; [ø€]

(4) Intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another household member[.]; or

(5) Coercive control, as defined in section 586-1, between family or household members."

SECTION 3. Section 432:2-103.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section, "domestic abuse" means:

(1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members;

(2) Sexual assault of one family or household member by another;

(3) Stalking of one family or household member by another family or household member; [ø€]

(4) Intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another household member[.]; or

(5) Coercive control, as defined in section 586-1, between family or household members."

SECTION 4. Section 432D-27, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section, "domestic abuse" means:

(1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members;

(2) Sexual assault of one family or household member by another;

(3) Stalking of one family or household member by another family or household member; [ø€]

(4) Intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another household member[.]; or

(5) Coercive control, as defined in section 586-1, between family or household members."

SECTION 5. Section 586-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"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 demeaning 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."

2. By amending the definition of "domestic abuse" to read:

"Domestic abuse" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse, coercive control, or malicious property damage between family or household members; or

(2) Any act which would constitute an offense under section 709-906, or under part V or VI of chapter 707 committed against a minor family or household member by an adult family or household member."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2050.

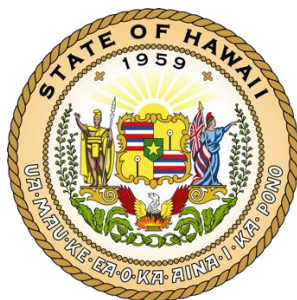
Report Title:

Domestic Abuse; Coercive Control; Insurance Policies; Protective Orders

Description:

Amends the definition of "domestic abuse" under Hawaii's insurance laws and laws relating to domestic abuse protective orders to include coercive control between family or household members. Defines "coercive control". Effective 7/1/2050. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



LATE

‘O kēia ‘ōlelo hō’ike no ke
Komikina Kūlana Olakino o Nā Wāhine

Testimony on behalf of the
Hawai‘i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the House Committee on Judiciary

In Support of SB2638 SD2 HD1
June 24, 2020

Dear Chair Lee, Vice Chairs San Buenaventura, and Honorable Members,

The Hawai‘i State Commission on the Status of Women supports SB2638 SD2 HD1, which would amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. SB2638 SD2 HD1 would also allow for a deferred acceptance of guilty or no contest plea in cases involving misdemeanor and petty misdemeanor abuse penalties. The measure would also require the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members case.

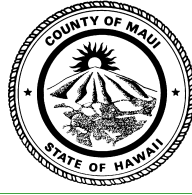
The Commission is cognizant that varied approaches to intervention are needed for intimate partner violence. Given the continued enormity of the problem, it is clear that a crime control to eradicating intimate partner violence has failed. A community-based approach is needed, as compared to an individualized response from the criminal justice system. The state should encourage intervention programming to prevent further violence and alleviate the court system. Research is clear that imprisonment does not decrease the rate of re-offense.

The dynamics of intimate partner violence are complex. The Commission supports the mandatory completion of a ‘domestic violence intervention’ that is 1) in compliance with the Hawai‘i Batterer Intervention Program Standards; and 2) in conjunction with, rather than supplanting, anger management, substance abuse and parenting coursework. A successful domestic violence prevention program would be evidence-based, curriculum-based, provide an

instruction manual with treatment standards, and include a minimum of 80-hours of group time. Accordingly, the Commissions supports SB2638 SD2 HD1.

Sincerely,

Khara Jabola-Carolus



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TESTIMONY
ON
S.B. 2638 - RELATING TO
DOMESTIC VIOLENCE

June 23, 2020

LATE

The Honorable Chris Lee
Chair
The Honorable Joy A. San Buenaventura
Vice Chair
and Members of the Committee on Judiciary

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 2638 SD2 HD1, Relating to Domestic Violence. We would like to express our opposition to S.B. 2638 SD2 HD1 in its current form, specifically regarding the provisions that would allow a deferred plea for both the misdemeanor and proposed petty misdemeanor forms of this offense.

We agree with the Honolulu Department of the Prosecuting Attorney, Honolulu Police Department and State of Hawai'i Judiciary that the creation of a petty misdemeanor penalty for HRS § 709-906 would serve the interests of justice. This would allow us to continue to hold defendants accountable for acts of domestic violence, while simultaneously allowing greater flexibility in sentencing options.

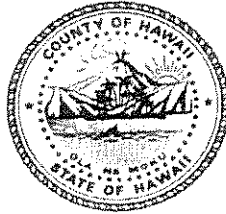
However, we share the prior concerns of the Honolulu Police Department and Honolulu Department of the Prosecuting Attorney regarding the proposed deferred plea language. We believe that allowing a defendant to defer their plea for any domestic violence conviction diminishes the deterrent value of the offense. We are also concerned that defendants who successfully complete the deferral period would be able to legally obtain a firearm due to the lack of a domestic violence conviction on their record. This greatly increases the danger of retaliation, including the possibility of lethal violence, against victims of domestic violence.

For these reasons, the Department of the Prosecuting Attorney, County of Maui opposes the passage of S.B. 2638 SD2 HD1 in its current form. 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.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO SENATE BILL 2638, S.D. 2

A BILL RELATING TO DOMESTIC VIOLENCE

COMMITTEE ON JUDICIARY
Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair

LATE

Wednesday, June 24, 2020, 3:05 p.m.
State Capitol, Conference Room 325

Honorable Chair Lee, Honorable Vice Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in **opposition** to Senate Bill No. 2638, S.D. 2.

S.B. 2638, S.D. 2 was built on the idea that if a defendant had the option of a deferral with domestic violence treatment, more likely than not a defendant would utilize the deferral and avoid numerous continuances commonly associated with family court cases. The data collected during this COVID-19 period paints the opposite picture. With the events surrounding COVID-19, the Department currently does not believe one purpose of this bill – to reduce congestion in the court system caused by a backlog of jury trial cases - will be achieved.

Our Department believes that in the current form, the cost – **defendants who would otherwise be ineligible to own a firearm, would be allowed to now own a firearm following the completion of the deferral period** – outweighs the benefit.

The Office of the Prosecuting Attorney of the County of Hawai'i **opposes** the passage of SB2638, S.D. 2. Thank you for the opportunity to provide testimony.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
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DEPUTY CHIEFS

OUR REFERENCE KH-KK

June 24, 2020

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

LATE

Dear Chair Lee and Members:

SUBJECT: Senate Bill No. 2638, S.D. 2, H.D. 1, Relating to Domestic Violence

I am Keith Horikawa, Major of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes Senate Bill No. 2638, S.D. 2, H.D. 1, Relating to Domestic Violence.

The HPD has historically supported a review and reorganization of the Hawaii Revised Statutes (HRS), Section 709-906, Abuse of family or household members; penalty, to include the creation of a petty misdemeanor domestic violence offense to achieve consistency with the rest of the HRS. However, our concern is specific to the allowance of a deferred acceptance of guilt or no contest plea to a misdemeanor or petty misdemeanor domestic violence offense.

Over the years, a number of felony domestic violence laws were enacted to address what were considered the more serious domestic violence offenses. In practice, the downgrading of felony domestic violence offenses to misdemeanor or petty misdemeanor offenses already occurs in the vast majority of domestic violence cases, even when the violation might meet the letter of the law. To further allow for a deferred acceptance of guilt or no contest plea for misdemeanor or petty misdemeanor offenses,

The Honorable Chris Lee, Chair
and Members
June 24, 2020
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which are the vast majority, would virtually eliminate any accountability for many of these offenders. This would further diminish the value of felony domestic violence laws and would remove any prohibitions attached to a domestic violence conviction; prohibitions which were enacted specifically to mitigate any further or more serious harm from occurring.

The HPD urges you to oppose Senate Bill No. 2638, S.D. 2, H.D. 1, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,



Keith Horikawa, Major
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

LATE

June 24, 2020

RE: S.B. 2638, S.D. 2; RELATING TO DOMESTIC VIOLENCE.

Chair Lee, Vice Chair San Buenaventura, members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in **opposition** to S.B. 2638, S.D. 2 with comments.

Over the years, the Department had previously supported the intent of various iterations of S.B. 2638, S.D. 2; however, with the events surrounding COVID 19, the Department currently does not believe the purpose of this bill – reducing congestion in the court system caused by a backlog of jury trial cases - will be achieved. Thus, the Department believes that in the current form, the cost – **defendants who would otherwise be ineligible to own a firearm, would be allowed to now own a firearm following the completion of the deferral period** – outweighs the benefit.

On April 17, 2020 by order of the court, most if not all courts across the State of Hawaii were closed with limited hearings for individuals in custody. Therefore, during this time the Department attempted to address the increasing backlog of criminal family court cases and resolve matters that have remained static due to courts being closed by extending plea offers. This process involved plea offers which included but were not limited to global pleas for defendants with multiple cases to amendments to deferral eligible offenses in which an offender may ask the court to grant a motion for deferred acceptance of guilty or no contest pleas. Between May 8, 2020 and June 8, 2020, the Department dealt with over two hundred cases. Of the two hundred plus cases during this time, approximately one hundred and eighty-eight (188) cases involved the Office of the Public Defenders (PD). Of those cases, about one hundred and thirty-six (136) offers were submitted to the PD's office for approval with over 50% of the offers involving amendments to deferral eligible offenses with the additional agreement for the defendant to participate in a domestic violence intervention program (DVI). Of the one hundred

and thirty six (136) offers sent, about one hundred and six (106) were rejected by the PDs (approximately 10 defendants accepted a plea offer with the remaining defendants either losing contact with the PDs or still considering the plea offer). S.B. 2638, S.D. 2 was built on the idea that if a defendant had the option of a deferral with domestic violence treatment, more likely than not, a defendant would utilize the deferral and avoid numerous continuances commonly associated with family court cases. Unfortunately, the data collected during this COVID-19 period paints the opposite picture. Therefore, the Department cannot in good conscious support S.B 2638, S.D. 2.

However, if this committee decides to move forward with S.B. 2638, S.D. 2, the Department would suggest the following amendments:

Page 7, Line 13 – the Department would suggest removing the term “coercive control”. The term “coercive control” is a legal term of art and is currently not defined in the Hawaii Revised Statutes which would create confusion without a proper definition.

Page 7, Line 11-17 – currently there is no court certified domestic violence intervention program that can be completed within a six (6) month period (allotted probationary period under 706-623, H.R.S.). Therefore the Department would suggest inserting the following language in Section 706-623(d), H.R.S. to ensure that defendants are not set up to fail under S.B. 2638, S.D. 2:

“(d) Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause; except upon a conviction under section 709-906, the court may sentence the defendant to a period of probation not exceeding one year”

Allowing the courts to impose a one (1) year probationary period for petty misdemeanor AFHM cases will ensure that a defendant has sufficient time to complete all the mandatory terms and conditions imposed by the courts under S.B. 2638, S.D. 2 and will ensure that defendants placed on probation will get the same amount of time as a defendant placed on deferral. This committee does not need to address the circumstance in which a defendant is granted a deferral because under Section 853-4(1), courts are already authorized to impose a one (1) year deferral period for petty misdemeanor offenses.

Page 7, Line 11-17 – the Department would concur with the concerns by the Attorney Generals and would suggest removing the petty misdemeanor offense from subsection (5) (penalty section) and create its own subsection to ensure misdemeanor AFHM offenses will not be reduced to a petty misdemeanor offense.

Page 7, Line 18 – currently S.B. 2638, S.D. 2 uses the phrase “upon conviction and sentencing”. However, when a defendant is granted a deferral, legally a conviction is not entered at that time and is set aside pending the completion of the defendant’s deferral period. Adding the language “or granting of a Deferred Acceptance of Guilty Plea or Deferred Acceptance of No Contest Plea” would ensure that defendants who are granted a deferral would be sufficiently covered by this section.

Page 8, Line 3 – refer to suggestion for Page 7, Line 18 for consistency.

Page 8, Line 11 – add the following language, “Resentence or sentence”

Page 10, Line 18 – replace “respondent” with “defendant”

Page 12, Line 8 – remove “status”

Page 12, Line 9-10 – remove “for any offense under this section within the previous five years.” and replace with it with “for any offense charged in Family Court under this section regardless of final plea”. This language is necessary to ensure that an individual who previously received a deferral on an amended Assault 3 charge, which was originally an AFHM case prior to the passage of SB 2638, S.D. 2, would not be viewed as a first time offender and receive another deferral for an AFHM case post SB 2638, S.D. 2.

Page 17, Line 3-15 – the Department is in agreement with other stakeholders that a three (3) year pilot project would be an appropriate amount of time to engage in the proposed pilot project to determine success or failure. Therefore, the Department would suggest amending this section to a three (3) year pilot project with appropriate data collection to be submitted to the Legislature each year.

Committee Report/Legislative Intent – the Department would strongly request that this committee add legislative intent to the committee report that indicates the following:

“The intent of this bill is to hold offenders accountable by offering them an opportunity to take responsibility early in the prosecution with the chance to keep their record clear of arrest or conviction while minimizing court delay thus reducing trauma to victims.”

This will help ensure that the stakeholders are aware of the intent and purpose of this pilot project and will help guide agencies in pertinent statistics to collect to illustrate the success or failure of the project.

The Department would also request that this committee strengthen our domestic violence statutes by adding the contents of SB 2182 (2020 Legislature), to strengthen our sentencing statutes applicable to Felony AFHM cases. SB 2182 adds Felony AFHM (Section 709-906 (7), (8) and (9), HRS) to the list of Sentencing for Repeat Offenders under Section 706-606.5 HRS., as it is currently one of the rare few charges that are violent Class C felonies that is not included on the Repeat Offender list.

While the Department is generally supportive of creating a petty misdemeanor offense for the charge of Abuse of a Family or Household Member (§709-906, H.R.S.), we would note that this change is unlikely to address the First Circuit’s ongoing challenges with court congestion and case dismissals. However, such change may improve public awareness and bring to the forefront the dynamics of domestic violence.

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu **opposes** the passage of S.B. 2638, S.D. 2 with comments. Thank you for the opportunity to testify on this matter.

SB-2638-HD-1

Submitted on: 6/22/2020 3:14:04 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	AAUW of Hawaii	Support	No

Comments:

SB-2638-HD-1

Submitted on: 6/22/2020 3:20:48 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

SB-2638-HD-1

Submitted on: 6/23/2020 7:35:27 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawaii Women's Coalition	Support	No

Comments:

Aloha Chair and members,

As we testified in previous sessions, we are in support of this measure which we hope will result in swifter justice and greater safety for victims of Domestic Violence (DV). With stay-at-home measures in place DV has escalated. This impacts all areas of our economic life, not the least of which is our front-line healthcare workers who represent 80% of the force.

Mahalo,

Ann S. Freed

Co-Chair Emeritus, Hawaii Women's Coalition



To: Chair Chris Lee
Vice Chair Joy San Buenaventura
Fr: Nanci Kreidman, MA,
CEO, Domestic Violence Action Center
Re: SB 2638 SD2 HD1 ; Support

Aloha. And thank you for placing this Bill on your agenda for consideration. We offer testimony to support this initiative which represents a potentially positive change that would impact many, many survivors and island families. The system has not been functioning as effectively as it might these last few years. This Bill creates an opportunity for a shift that is worth considering.

It is a last resort for survivors to seek assistance from outside their community. From strangers. From the criminal or civil justice system. When they do, it must work to protect them, hold perpetrators accountable and pave the way for remedy as they navigate a path to freedom and self-sufficiency.

The current law was the best work and an innovation when it was first devised and passed. It was a collaborative undertaking. Its enforcement has been uneven. It is our great hope that the Bill before you today represents an improvement and an opportunity for system reform that is desperately needed.



Too few perpetrators of relationship violence get arrested. But those that do often do not result in convictions in court. Sanctions are few. And plea bargains have historically delivered a lukewarm message that family and relationship violence is not tolerated or acceptable.

SB 2638 SD2 HD1 will advance safety, accountability and hope.

The amendments to the existing statute create options for law enforcement and system intervention. Three degrees of the offense provides latitude for officers, courts, attorneys and judges to respond in a way that offers protection, and direction for personal responsibility. Interventions are not sought unless there is criminal justice involvement; abusers do not wake up the morning after an assault, look at their partners bruises and say, “my god, I need help.” Unfortunately.

We support the standardization and inclusion of [Proof of Compliance](#) hearings for defendants ordered to participate in sanctioned batterer's intervention programs. This is a key part of oversight and accountability.

We suggest that Courts make orders for participation in intervention programs that meet the [Hawaii Batterer Intervention Program Standards](#). Not all programs are appropriate or responsive to the dynamics and potential lethality present by abusers. For example, online courses would not meet such standards.



We suggest that a deferred acceptance of guilt be included but we would like to see the [elimination of a no contest plea](#) for abuse of a family or household member in the first degree or third degree. Without any acceptance of responsibility by perpetrators, we cannot really expect change. We are making a lukewarm statement about how seriously we take this crime.

We would also like the Committee to consider that the language related to accepting a DAG if one has not been entered previously [be strengthened](#). Such a plea will not be accepted – **ever** - if there is one on the record. At one court hearing where I was present, a judge indicated that a second DAG was allowable (even though the language says it is not acceptable) because the first one was so many years ago; our perspective on that is there must be a long history of abuse, if an incident occurred many years ago and has occurred again; perhaps the perpetrator had not been caught?

A final thought about the data to be collected. It is a very important step for us to compile data about the crimes committed and the ways the cases are adjudicated and resolved. If the only cases captured are 709-906, what about all the crimes related to the family or partnership like property damage, stalking, sexual assault, trespassing, etc. We are unable to fully understand the scope of the problem without data that accurately reflects the incidence and prevalence of the problem. The only piece of data that would be needed to determine if the crime



involved family members of partners is their relationship to one another. A checkbox. If not, we miss all the other crimes.

Thank you. We shall look forward to favorable action and more discussion about this Bill.

DOMESTIC VIOLENCE ACTION CENTER

ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198

LEGAL HELPLINE: (808) 531-3771

TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200

WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG

EMAIL: DVAC@STOPTHEVIOLENCE.ORG

SB-2638-HD-1

Submitted on: 6/22/2020 4:11:56 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

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

Comments:

We strongly believe taking whatever actions are necessary to report and reduce any form of domestic violence. Please pass SB2638.

Mike Golojuch, Sr.

Secretary, Rainbow Family 808

SB-2638-HD-1

Submitted on: 6/22/2020 3:48:13 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Suzanne Young	Individual	Support	No

Comments:

I have been a volunteer member of the Board of Directors of Domestic Violence Action Center for the past 9 years, serving the last 2 years as President. Measures like the one you are considering are essential to assist survivors in their struggle to lead a safe and productive life.

Mahalo for taking up this measure and for your support in passing this Bill.

Sincerely,

Suzanne Young

SB-2638-HD-1

Submitted on: 6/22/2020 6:14:06 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shawn Benton	Individual	Support	No

Comments:

I am a current member of the Board of Directors for the Domestic Violence Action Center and am in support of SB 2638 SD2 HD1 Relating to Domestic Violence. I also encourage the Legislature to consider and implement the recommendations provided in Nanci Kreidman, MA's letter in support of this Bill. Specifically, (1) the standardization and inclusion of Proof of Compliance hearings for defendants ordered to participate in sanctioned batterer's intervention programs; (2) that the Courts prepare orders for participation in intervention programs that meet the Hawaii Batterer Intervention Program Standards; (3) eliminate the option of a "No Contest Plea"; and (4) that the language related to accepting a DAG if one has not been entered previously be strengthened for the reasons identified by Ms. Kreidman. Thank you for your consideration of the above and your support of SB 2638 SD2 HD1.

SB-2638-HD-1

Submitted on: 6/22/2020 3:41:36 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
aimee chung	Individual	Support	No

Comments:

SB-2638-HD-1

Submitted on: 6/22/2020 9:08:08 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Tumilowicz	Individual	Support	No

Comments:

I support this legislation which resets the bar to drive greater accountability for domestic violence crimes.

SB-2638-HD-1

Submitted on: 6/23/2020 3:12:06 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne Kauhi	Individual	Support	No

Comments:

LATE

SB-2638-HD-1

Submitted on: 6/23/2020 9:00:29 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
nanci kreidman	Individual	Support	No

Comments:

Aloha,

this is a Bill and a change that holds promise for securing accountability of abusers and paving the way for safety of survivors. We would like to see deferred acceptance of no contest removed from the Draft Bill.

thank you for your favorable action on this measure.

SB-2638-HD-1

Submitted on: 6/24/2020 6:30:11 AM

Testimony for JUD on 6/24/2020 3:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Support	No

Comments: