



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Monday, February 24, 2020 at 12:00 p.m.

State Capitol, Conference Room 016

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. 1, Relating to Domestic Violence.

Purpose: Amends the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. Allows a deferred acceptance of guilty or no contest plea in misdemeanor and petty misdemeanor abuse penalties. Requires the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases. Sunsets five years after enactment. (SD1)

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.

Notwithstanding its strong support of the other provisions of the bill as listed above, the Judiciary is concerned with the "reporting requirements" set forth in section four of the bill. It may be more efficient as well as prudent to either: (1) have an executive agency collect the information and provide the required information to the Legislature, or (2) require that this information be provided directly to the Legislature from law enforcement, the Department of the



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Senate Committee on Judiciary
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Prosecuting Attorney, and the Judiciary. It should be noted that the Judiciary has no objections to maintaining and keeping statistical information concerning the cases that are filed with the court as it already has the capability to do so. However, with regard to gathering information from other entities such as law enforcement and the Department of the Prosecuting Attorney, the Judiciary does not have the process and personnel to do so.

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



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

ON THE FOLLOWING MEASURE:

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

LATE

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Monday, February 24, 2020 **TIME:** 12:00 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Landon M.M. Murata,
Deputy Attorney General, at 586-1049)

Chair Rhoads 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 lesser included petty misdemeanor offense; (2) allowing a deferred acceptance of guilty plea in cases involving petty misdemeanor and 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 data collection and reporting to determine the effectiveness of the pilot project.

The wording of subsection (5)(b) being added to section 709-906, Hawaii Revised Statutes (HRS), in section 2, page 7, lines 17-21, and page 8, lines 1 and 2, does not create a lesser included petty misdemeanor abuse offense. Currently, the abuse of family or household member statute has several subsections ((7), (8), and (9)) that establish aggravating factors that, if present, turn a misdemeanor abuse offense into a felony abuse offense (e.g., choking, presence of a minor, etc.). It appears that the new wording is intended to create a mitigating factor that would turn a misdemeanor abuse offense into a petty misdemeanor abuse offense. There is nothing in the current

wording of section 2, page 7, lines 17-21, and page 8, lines 1 and 2, that would distinguish a petty misdemeanor abuse case from a misdemeanor abuse case. This list describing a petty misdemeanor covers virtually all of the most common methods of physically abusing someone and will likely result in all misdemeanor abuses being reduced to petty misdemeanor abuse. Additionally, the petty misdemeanor requires proof of a higher mental state (intentional or knowing) than the misdemeanor abuse (intentional, knowing, or reckless).

If it is the intent of the Legislature to create a petty misdemeanor abuse without it being a lesser included offense of misdemeanor abuse, then the Department recommends two changes be made to the bill. First, the petty misdemeanor should be removed from subsection (5) and be given its own subsection. Second, the words "lesser included" should be deleted from section 1, page 1, line 5.

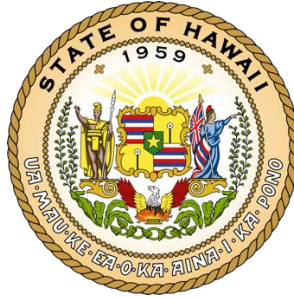
If it is the intent of the Legislature that persons convicted of the petty misdemeanor abuse offense be sentenced pursuant to subsection (6), then the wording of section 2, page 8, line 10, should be changed to "subsections (5) and (6), it shall also require that the offender".

Section 853-4(a)(2)(B), section 3, page 13, lines 10-12, does not apply to the petty misdemeanor abuse offense set forth in subsection (6) being added to section 709-906. The exemption to section 853-4(a)(2)(B) in section 3, page 13, lines 10-12, therefor should not reference the petty misdemeanor abuse, only the misdemeanor abuse. The Department recommends changing the exception to "provided that the prohibition in this paragraph shall not apply to misdemeanor offenses of abuse of family or household member."

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), section 3, page 15, lines 18-20, to "(N) Any felony abuse of family or household member offense;".

Thank you for the opportunity to provide comments.

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 Senate Committee on Judiciary

In Support of SB2638 SD1
February 24, 12:00 p.m. in Room 016

Dear Chair Rhoads, Vice Chairs Keohokalole, and Honorable Members,

The Hawai‘i State Commission on the Status of Women supports SB2638 SD1, which would amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. SB2638 SD1 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 SD1.

Sincerely,

Khara Jabola-Carolus

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i**

February 24, 2020

RE: S.B. 2638, S.D. 1; RELATING TO DOMESTIC VIOLENCE.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of the intent of S.B. 2638, S.D. 1 with comments.

The Department strongly agrees that significant changes are needed to our Family Court system, in order to seek justice on behalf of Hawaii's victims of domestic violence, protect public safety, and decrease the number of case dismissals that are occurring in the First Circuit. To further this goal, the Department has previously submitted legislative bills that would increase the number of judges and courtrooms available for domestic violence jury trials [S.B. 2949 (2012); HB 2351 (2012)], and supported similar bills that were later introduced by the Judiciary; unfortunately, none of those bills resulted in more domestic violence jury trial courtrooms or judges. Last year, the Department submitted a bill that would have excluded trial delays attributed to "court congestion," from the limited time that the State is permitted to bring a case to trial [S.B. 2175 (2018), S.B. 181 (2019); H.B. 1772 (2018), H.B. 509 (2019)].

We appreciate the effort S.B. 2638, S.D. 1 makes to address "non-physical" Harassment (§711-1106, Hawaii Revised Statutes (H.R.S.)) against a family or household member, as the "domestic violence continuum" often begins with various forms of non-physical degradation, intimidation and control. However, we note that many other types of behavior can also be part of this continuum (when committed against a family or household member), such as terroristic threatening, unlawful imprisonment, criminal property damage, theft, robbery, arson, and other offenses found in H.R.S. Chapters 707 and 708. If it is the Legislature's intent to acknowledge this type of behavior as part of the domestic violence continuum, these offenses should also be addressed.

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. **To address the concerns raised by the Attorney General's Office, the Department would suggest amending pg. 1, line 6 by removing "lesser included" as the new petty misdemeanor offense would not be a lesser included offense but rather a stand alone petty misdemeanor offense. In addition, the Department would concur with the concerns by the Attorney General's Office regarding pg 7-8, lines 17-21, 1-2. The Department 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.**

Lastly, the Department would like to caution and bring to the attention of the committee that in allowing a deferral of guilty or no contest plea, defendants who would otherwise be ineligible, wouldn't be precluded from owning a firearm following the deferral period.

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of S.B. 2638, S.D. 1 with comments. Thank you for the opportunity to testify on this matter.



To: Chair Rhoads
Vice Chair Keohokalole
Fr: Nanci Kreidman, MA,
CEO, Domestic Violence Action Center
Re: SB 2638 SD1; 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 SD1 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

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SB-2638-SD-1

Submitted on: 2/23/2020 7:31:51 AM

Testimony for JDC on 2/24/2020 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	Testifying for aauw of hawaii	Support	No

Comments:

LATE

SB-2638-SD-1

Submitted on: 2/23/2020 6:49:36 PM

Testimony for JDC on 2/24/2020 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Testifying for Dr. Eileen Gawrys, Member, Board of Directors, DVAC	Support	No

Comments:

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.

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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.

SB-2638-SD-1

Submitted on: 2/21/2020 3:44:56 PM

Testimony for JDC on 2/24/2020 12:00:00 PM

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

Comments:

SB-2638-SD-1

Submitted on: 2/21/2020 4:13:24 PM

Testimony for JDC on 2/24/2020 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Hawaii Women's Coalition	Support	No

Comments:

LATE

SB-2638-SD-1

Submitted on: 2/23/2020 5:30:50 PM

Testimony for JDC on 2/24/2020 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Doris Matsunaga	Testifying for Save Medicaid Hawaii	Support	No

Comments:

LATE

SB-2638-SD-1

Submitted on: 2/24/2020 11:24:24 AM

Testimony for JDC on 2/24/2020 12:00:00 PM

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

Comments:

In support of SB2638.

Aimee Chung, MSW, LSW
Domestic Violence Action Center, Board Member



LATE

February 24, 2020

Members of the House Committee on Judiciary:

Chair Sen. Karl Rhoads
Vice Chair Sen. Jarrett Keohokalole
Sen. Mike Gabbard
Sen. Kurt Favella
Sen. Donna Mercado Kim

Re: SB2638 Relating to Relating to Domestic Violence

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

The Hawaii 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 the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 23 member programs statewide, I respectfully submit this testimony in support of SB2638, with amendments, which would amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties, allows a deferred acceptance of guilty or no contest plea in cases involving misdemeanor and petty misdemeanor abuse penalties and requires a pilot program.

We have heard from programs and survivors across the state that another level of intervention is needed for intimate partner violence. With a petty misdemeanor level of crime, it is the hope that we can get offenders into quality intervention programming early and prevent further violence, which is what this bill seeks to accomplish. A shortened timeframe from five years to three years as included in the house companion to the bill (HB2067 HD1) for this project will help us determine the efficacy and hopefully reduce harm to victims.

HSCADV supports the mandatory completion of domestic violence intervention, which could NOT substituted for other course material to include anger management, substance abuse treatment, mental health treatment, or parenting classes, but could be used in conjunction. We believe these other courses can be useful in other contexts, but it does not address this specific offense and dynamics, therefore would not reduce recidivism or violence against an intimate partner.



The program which calls itself "domestic violence intervention" would need to be: evidence-based, curriculum-based, have an instruction manual, and be a minimum of 80 hours of group time. Additionally, programs would need to be highly structured and have protocols for victim safety, supervision of group leaders and high degree of accountability. Therefore, we recommend that on page 8 lines 11-12 instead of "any available domestic violence intervention programs..." it instead should read "evidence-based" or define in more detail "domestic violence intervention program" directly in statute.

We support the passing of this bill, with amendments.

Thank you for the opportunity to submit testimony on this important matter.

Sincerely,

Angelina Mercado
Executive Director, Hawaii State Coalition Against Domestic Violence