

**HB-1138**

Submitted on: 2/8/2021 12:28:38 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jan-Marie Osorio	Individual	Support	No

Comments:

Abusive behaviors influences and impacts ALL minors, regardless of age. Penalties should not be lessened due to the (older) age of the minor present. The current penalty of lesser consequences when witnessed by an adolescent aged 14-18, sends the wrong message to youth. It minimizes and normalizes the abusive behavior. Consequences should be held standard when abuse is done in the presence of minors of all ages.

**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 & Hawaiian Affairs**

February 9, 2021

H.B. No. 1138: RELATING TO ABUSE

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender strongly opposes H.B. 1138.

This measure raises the age requirement for a misdemeanor level act of Abuse to a Class C felony offense. Currently, a misdemeanor act of Abuse that occurs in the presence of a minor who is less than fourteen years of age is elevated to a Class C felony. This measure raises the age designation to include any minor under the age of eighteen.

The legislature has recognized that an act of domestic violence which occurs in the presence of minor children causes harm to those children, and that appropriate legislation is necessary for the protection of these children. H.B. No. 1138 hopes to expand upon that protection. However, the justification contained in the preamble to the bill suggests that or those between the ages of 14 and 17, witnessing such an act and knowing that a lesser penalty applies “may normalize this type of behavior.” However, the mere act of arresting, charging and adjudicating a defendant in the criminal court sends a clear message that such behavior is not acceptable, and the level of penalty has no bearing on that message to those that witness it. Family court judges, especially those that specialize in domestic abuse cases are already well versed in the necessary sentencing requirements to address those convicted that would fall within the new parameters created by H.B. No. 1138.

Furthermore, H.B. 1138 does not take into account the increase in cases charged as Class felonies, and the burden this would place on the Circuit Court criminal bench which already is struggling with a tremendous backlog of cases due to the COVID-19 pandemic. These new cases will not be given any priority as they would in Family Court, and may result in dismissals due to court congestion, or require justified delays that leave all relevant parties without the closure a timely

adjudication secures. Namely, that the defendant is placed in appropriate treatment, and the family can begin to heal. This increased burden will also extend to the Department of Public Safety which will have to house a greater amount of pre-trial felons which cannot post bail. With greater pre-trial incarceration we will see an increased burden on families as bread winners are jailed resulting in loss of jobs, revenue, housing, health insurance and other basic needs. This will result in a chilling effect on the reporting of abuse, as some victims may have second thoughts about reporting their family member to the police knowing that the charge is a class C felony. These are very unique cases, and we believe the family courts should be allowed to exercise its discretion to treat each case individually, in the best interest of the family unit. Furthermore, this measure does take into account that some cases involve siblings fighting with each other, where one or both parties are under the age of eighteen. Minors should not be prosecuted and treated as a felony for a physical altercation with each other within the family unit.

We submit that this amendment puts teenaged siblings or family members at risk of criminal prosecution for a Class C felony offense and creates a felony offense net that has the potential to label more juveniles as felony offenders which can have long term negative consequences to said minor that reaches into adulthood.

Thank you for the opportunity to comment on this measure.

LATE

**HB-1138**

Submitted on: 2/8/2021 2:32:35 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shirley David	St. Michael the Archangel Parish	Support	No

Comments:

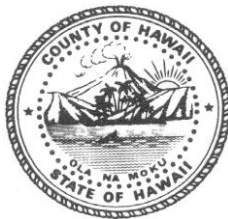
HB1138 changes the ability to charge a perpetrator with a felony for domestic violence that is witnessed by a minor 18 years or younger. Currently domestic violence witnessed by 15-18 year old is a misdemeanor.

Domestic violence is a serious problem and is on the increase with the stresses caused by the COVID-19 pandemic. Those who beat family members need to be out of the household and hopefully somewhere where they can get counseling. Witnessing domestic violence can cause long lasting issues including low self esteem, and PTSD for those who witness it. Older children especially suffer as they can think that they should have been able to stop the abuse or protect the parent who is being abused.

PLEASE VOTE YES on HB1138.

**KELDEN B.A. WALTJEN**  
PROSECUTING ATTORNEY

**STEPHEN L. FRYE**  
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**LATE**

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**OFFICE OF THE PROSECUTING ATTORNEY**

TESTIMONY IN SUPPORT OF  
HOUSE BILL 1138

A BILL FOR AN ACT CHANGING THE AGE FOR  
MINORS WHO ARE IN THE PRESENCE OF ABUSE  
OF FAMILY OR HOUSEHOLD MEMBER OFFENSE FROM  
LESS THAN FOURTEEN LESS THAN EIGHTEEN YEARS OF  
AGE

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark Nakashima, Chair  
Rep. Scott Matayoshi, Vice Chair

Tuesday, February 9, 2021, 2:00 p.m.  
Via Teleconference  
Conference Room 325

Honorable Chair Nakashima, Honorable Vice Chair Matayoshi, and Members of the Committee on Judiciary and Hawaiian Affairs, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 1138.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of House Bill No. 1138. Thank you for the opportunity to testify on this matter.

In 2016, Hawaii Revised Statute §709-906 (10) was added to include the following:

Where physical abuse occurs in the presence of a minor, as defined in section 706-606.4, and the minor is a family or household member less than fourteen years of age, abuse of a family or household member is a class C felony.

The language included in this statute only addressed minor children under the age of 14 years old. The legislature did acknowledge that "children who witness assault and domestic violence can suffer severe emotional development difficulties that are similar to children who are victims of direct physical and mental abuse." What is unclear is why minor children between the ages of 14 – 17 are not included in this statute. §571-2 defines a "child" or "minor" as a "person less than eighteen years of age", and it is in fact the only place in the Hawaii Revised Statutes that provides a definition of the word minor.

While a large majority of brain growth occurs before the age of 6, adolescence is the period of time where substantial growth and development occurs in the brain. The prefrontal

cortex or what most refer to the “decision-making” part of the brain responsible for consequential reasoning undergoes significant change and in fact isn’t fully developed until the early to late 20’s. Teens who grow up in homes with violence spend most of their time in “fight or flight” mode which can greatly impair the development of this part of the brain. This in turn can lead to an inability to pay attention, difficulty controlling emotions, poor impulse control, increased hostility, and increased interpersonal negativity. These effects can have life long consequences and can include things like depression, suicidal thoughts, drug use, teen pregnancy, and sadly a repetition of the domestic violence cycle.

It is clear that when the law was changed in 2016, the legislature recognized the seriousness of domestic violence and its effect on children. We are asking the legislature to change the wording so that not just some, but rather all of Hawaii’s children are protected by this law.

The Office of the Prosecuting Attorney, County of Hawai‘i supports the passage of House Bill 1138. Thank you for the opportunity to testify on this matter.

LATE \*Testimony submitted late may not be considered by the Committee for decision making purposes.

**HB-1138**

Submitted on: 2/9/2021 1:02:52 PM

Testimony for JHA on 2/9/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
nanci kreidman	domestic violence action center	Oppose	No

Comments:

aloha!

it is not safe or in support of youth to place them at risk by testifying or providing witness statements about abuse occurring in their house.

thank you

love, nanci kreidman