



## TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1020, RELATING TO THE PENAL CODE.

**BEFORE THE:**

HOUSE COMMITTEE ON HUMAN SERVICES

**DATE:** Monday, February 9, 2009 **TIME:** 8:15 AM

**LOCATION:** State Capitol Room 329

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Lance M. Goto, Deputy Attorney General

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Chair Mizuno and Members of the Committee:

The Attorney General strongly supports this bill.

The purpose of this bill is to provide greater protection to victims of domestic violence whom the courts and police are attempting to keep safe through family court domestic abuse protective orders, and through police orders requiring family or household members to leave premises.

This bill upgrades manslaughter to murder in the second degree, if it is committed against a protected victim. It upgrades murder in the second degree to murder in the first degree, if it is committed against a protected victim. And it upgrades the misdemeanor offenses of terroristic threatening in the second degree and assault in the third degree to the class C felony offenses of terroristic threatening in the first degree and assault in the second degree, if the offenses are committed against victims covered by protective orders.

This bill will help deter violence against a particularly vulnerable class of victims in high risk situations. Victims of domestic violence often endure extended periods of physical violence, mental abuse, intimidation, harassment, and terrorization before they reach out for help. It requires a great amount of

courage or desperation to seek the assistance of police, the court system, and others.

But often, abuse and violence continue even after police or courts have intervened and issued protective orders. Current laws do not provide an adequate deterrent. The prospect of only a misdemeanor charge for criminal contempt, assault, or terroristic threatening is not enough to discourage many perpetrators of abuse from continuing to harm their victims. Upgrading certain criminal offenses, as provided in this bill, provides a meaningful deterrent that can help free victims from the cycle of violence.

We respectfully request passage of this measure.

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

February 9, 2009

RE: H.B. No. 1020: Relating to the Penal Code.

Chair Mizuno and Members of the Committee:

H.B. No. 1020 seeks to amend various provisions in Chapter 707 of the penal code with the stated purpose of providing harsher penalties for offenses against persons who are subjects of a restraining or protective order. We are opposed to this bill. We believe that, not only would the proposed amendments have no deterrent effect, but they conflict with current provisions in the Penal Code.

In Section 2, the bill seeks to amend Murder 1<sup>o</sup> to include the situation where a person is killed by a defendant who the decedent had a restraining order on or who had been ordered to leave for a "cooling off" period under the Household Abuse law (§709-906). In Section 3, the bill seeks to lower the state of mind for Murder 2<sup>o</sup> to "recklessly causing the death" of a person who is protected by a restraining order. In both of these cases, the bill seeks to create a "special class" of victim, those who are killed by a defendant against whom a restraining order has been brought or a defendant who has violated a "cooling off" period.

First of all, these changes will have no deterrent effect against those who are determined to kill an intimate partner. There is no evidence that increasing the penalty for murder from life in prison with the possibility of parole to life in prison without the possibility of parole will prevent the murder of a person who possesses a restraining order or who is being protected by a "cooling off period" from taking place. There is plethora of evidence that persons who kill in a domestic situation do not stop to consider the possible legal penalty for the crime. Rather, these are the crimes that are most often committed in the heat of anger, where there is certainly no rational thought given over to consequences.

Second, placing the aforementioned victim in a "special class" devalues the lives of victims who have not obtained restraining orders or sought police intervention. Is the life of a woman who is killed by her partner and who chose not to obtain a restraining order less important than the life of a woman who got the order? What about a victim who is killed at random in a home invasion robbery? This is the fundamental problem that the bill presents.

Third, the creation of a reckless form of Murder 2<sup>o</sup> contradicts our current manslaughter statute and, in Section 4, the creation of a reckless form of Assault 2<sup>o</sup> contradicts our Assault 3<sup>o</sup> statute. Likewise, the creation of an additional form of Terroristic Threatening 1<sup>o</sup> which occurs in violation of a restraining order or cooling off period contradicts our current Terroristic Threatening statute. Current penalties for these offenses are sufficient.

As mentioned previously, it is always problematic to single out specific categories of victims for special treatment because other categories of victims who see themselves as equally deserving of special treatment immediately call for the same laws.

Thank you for the opportunity to comment on this bill.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE RR-NTK

February 9, 2009

The Honorable John M. Mizuno, Chair  
and Members  
Committee on Human Services  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Mizuno and Members:

Subject: House Bill No. 1020, Relating to the Penal Code

I am Richard C. Robinson, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 1020, Relating to the Penal Code. Passage of this bill would provide more severe penalties for individuals who violate a protective order and commit a violent crime against a victim. Passage would provide greater protection and support to victims of domestic violence who have sought help from the courts and the police. It would also make it clear that our community will no longer tolerate offenders who disregard protective orders and continue to commit violent acts.

The Honolulu Police Department urges you to support House Bill No. 1020, Relating to the Penal Code.

Thank you for the opportunity to testify.

Sincerely,

  
RICHARD C. ROBINSON, Captain  
Criminal Investigation Division

APPROVED:

for:   
BOISSE P. CORREA  
Chief of Police

*Serving and Protecting With Aloha*

CHARMAINE TAVARES  
Mayor



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Prosecuting Attorney  
PETER A. HANANO  
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February 6, 2009

HONORABLE JOHN M. MIZUNO, CHAIR  
HONORABLE TOM BROWER, VICE CHAIR  
COMMITTEE ON HUMAN SERVICES

HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009  
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,  
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,  
IN OPPOSITION OF H.B. NO. 1020  
RELATING TO THE PENAL CODE

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly supports H.B. 1020 Relating to the Penal Code.

In September of 1999, Bridget Kawamoto was stabbed to death in her shower by her estranged husband, Brian Kawamoto. Just days before her murder, both the police and the court ordered the defendant not to have any contact with Mrs. Kawamoto. Sadly, however, the defendant ignored those orders. In addition to the murder in the second degree charge, the State charged the defendant with Abuse of a Family of Household Member in violation of Hawaii Revised Statutes Section ("HRS") 709-906(4), and one count of Violation of a Temporary Restraining Order in violation of HRS § 586-4. The defendant was later convicted of all charges.

Unfortunately, this tragic scenario is not uncommon. Within the past couple of years, there have been several similar instances in Hawaii, where domestic violence has claimed the lives of victims trying to escape the cycle of violence by seeking court or police protection.

The purpose of this bill is to provide greater protections to victims of domestic violence who the court is already attempting to keep safe through protective orders. Obviously, under the current laws, domestic abusers appear to be undeterred in abusing and sometimes murdering their victims.

Indeed, this bill sends a particularly strong message to would be domestic abusers and/or murderers that a violation of a police or court issued stay-away order will result in serious consequences.

In closing, our Department strongly supports this bill. The courts and law enforcement personnel desperately need this change in the law to successfully combat the often deadly consequences of domestic violence.

Thank you for the opportunity to testify.

(H.B. 1020, Relating to the Penal Code)