



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Finance

The Honorable Marcus R. Oshiro, Chair

The Honorable Marilyn B. Lee, Vice Chair

Friday, February 27, 2009, 4:00 p.m.

State Capitol, Conference Room 308

by

Walter M. Ozawa

Deputy Administrative Director of the Courts

Bill No. and Title: House Bill No. 1293, H.D. 1, Relating to Law Enforcement

Purpose: House Draft 1 creates a Domestic Violence special fund to provide grants to organizations that provide domestic violence services. The fund is to be administered by the Administrative Director of the Courts, who may contract with a nonprofit organization. The fund administrator shall accept applications for grants from organizations that provide domestic abuse services, including housing, counseling, and legal assistance. "Domestic abuse" means any means of physical, emotional or mental abuse, including sexual assault, inflicted upon any person that is a family member, co-habitant, friend or acquaintance.

Judiciary's Position:

The Judiciary strongly opposes Section 1 of this bill which shifts funding currently collected by filing fee surcharges collected for the Parent Education Special Fund (Family Court's Kids First program), Indigent Legal Assistance Fund, and Computer System Special Fund.

By law, the parent education surcharge is to be used solely for expenditures related to providing education statewide for parents in matrimonial or parentage actions, who are separating, and for their children. Also, the law relating to the surcharge for indigent legal services provides that the monies collected by these surcharges are distributed on a pro rata basis to organizations which provide civil legal services to indigent persons.



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This bill will take monies away from the larger population of court users who have specific needs (children of families undergoing divorce, unfortunately, a growing situation, as well as indigent parties needing assistance to access this state's laws via the judicial system). Of this larger population, a sub-group has domestic abuse issues. If these monies are diverted, then both the general population as well as the sub-group (the very group targeted by this bill) will lose current services.

There are similar concerns with respect to the law relating to the surcharge for indigent legal services. The law provides that the monies collected by these surcharges are distributed on a pro rata basis to organizations¹ which provide civil legal services to indigent persons. Although a percentage of the population assisted by these programs have domestic abuse issues, this bill will take monies away from the larger population, whose other purposes will still need funding.

These organizations are highly sensitive to the needs of the sub-group of their clients with domestic violence issues and the organizations design their programs accordingly. Again, taking this money away will hurt both the larger community as well as the sub-group.

Further, the Judiciary has major concerns about the effect this measure would have on the Judiciary Information Management System (JIMS). As presently written, the bill appears to repeal parts of HRS 601-3.7 by directing all of the fees collected for the Computer System Special Fund under HRS Sections 607-4 and 607-5 into the new Domestic Violence Special Fund. This action would significantly impair the JIMS project as approximately 86 percent of its funding collected through the Computer System Special Fund is provided by the fees collected under HRS Sections 607-4 and 607-5.

Therefore, the Judiciary strongly recommends that any diversion of funds currently collected pursuant to HRS Sections 607-4 (b)(7), (8), (9), and (10), 607-5 (c)(32), 607-5.6 and 607-5.7 not be diverted to a domestic violence special fund. Reference to those sections should be deleted from this bill.

With respect to the rest of Section 1 of this bill, the Judiciary respectfully raises the following concerns.

¹ This is the surcharge that is imposed on civil filings in the district, family, circuit, and appellate courts and deposited into the Indigent Legal Assistance Fund (ILAF). ILAF monies are distributed on a pro rata basis to eligible civil legal service providers (criteria is included in HRS Section 607-5.7). Organizations receiving their pro rata share for FY 2009 include the Domestic Violence Action Center, Hawaii Disability Rights Center, Legal Aid Society of Hawaii, Native Hawaiian Legal Corporation, Na Loio, University of Hawaii Elder Law Program, and Volunteer Legal Services of Hawaii.



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First, the definition of domestic abuse is very broad. In this bill, domestic abuse, is defined as any means of physical, emotional or mental abuse, including sexual assault, inflicted upon any person that is a family member, co-habitant,² friend or acquaintance. This definition differs from the existing statutory definition of domestic abuse under HRS Chapter 586 relating to domestic abuse protective orders under Family Court jurisdiction. Family Court jurisdiction is limited to civil domestic abuse occurring between family or household members. This bill also includes incidents between "friends and acquaintances."

Second, if the intent of this bill is to fund domestic abuse services which assist civil litigants, there may be a constitutional concern with the title of this bill which is "law enforcement." A bill that doesn't meet the single subject requirement is subject to attack on constitutional grounds.

Third, this bill includes monies collected pursuant to HRS Section 607-8. The primary purpose of this law is to establish the fee rates for process servers. The Judiciary does not receive collections based on Section 607-8.

Lastly, administration of these monies will require significant administrative resources, resources that are currently not available, notwithstanding the language regarding the use of a non-profit organization. Both program as well as fiscal oversight would be necessary regardless of the use of a non-profit organization. Therefore, the Judiciary respectfully requests that the following language be added to this bill:

"The Judiciary will be able to use up to 8% of the fund for administrative costs, including but not limited to use for fiscal and program record keeping, evaluation, and oversight."

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

² Typographical error in the bill's definition of "domestic violence." The word, "co-habitat," should be "co-habitant." (p.5, line 3).

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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TESTIMONY ON HOUSE BILL 1293 HD1
RELATING TO LAW ENFORCEMENT

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Friday, February 27, 2009; 4:00 PM
State Capitol, Conference Room 308

Good afternoon Representative Oshiro, Representative Lee and Members of the House Committee on Finance. Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify before you today. The Commission supports the provisions in House Bill 1293 HD1 appropriating funds for a grant-in-aid to the county victim witness assistance programs.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay unreimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available.

The county victim witness assistance programs play an important role in mitigating the emotional and financial suffering experienced by victims through their referrals to the Commission and other social service agencies. The county victim witness assistance programs also support and guide victims through the criminal justice process, helping to ensure that offenders can be successfully prosecuted. Many victims and surviving family

members, particularly victims and survivors of violent crimes like murder and sexual assault, would not be able to make it through the criminal justice process without the support and guidance of a victim witness counselor. Victim witness counselors notify crime victims of hearing dates and major developments in their case, accompany victims and survivors to court where necessary, help victims and survivors with victim impact statements to enable them to exercise their right to be heard at sentencing, in addition to informing them about the social services and financial assistance available to them as crime victims.

The county victim assistance programs need sufficient funding for staff in order to provide these important services. The Commission urges you to support the appropriation of a grant-in-aid to the Prosecuting Attorney's office of each county for the victim witness assistance programs. Thank your providing the Commission with the opportunity to testify in support of House Bill 1293 HD1.

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 1293, H.D. 1

February 27, 2009

RELATING TO LAW ENFORCEMENT

House Bill No. 1293, H.D. 1, amends Chapter 607, Hawaii Revised Statutes, by adding a new section to establish the domestic violence special fund that will be funded by district, circuit, and appellate court fees. The fund will be used to provide grants to organizations that provide domestic violence services. The bill also appropriates general funds to provide grants to the counties for their career criminal prosecution units and victim witness assistance programs.

We are opposed to Section 1 of this bill that establishes the domestic violence special fund. As a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Sections 37-52.3 and 37-53.4 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In addition, we are opposed to the diversion of the revenues from court fees from the general fund to the new special fund. Considering the critical budget shortfall facing the State, it would not be fiscally prudent to implement measures that reduce general fund revenues at this time.

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**THE HONORABLE MARCUS R. OSHIRO, CHAIR
THE HONORABLE MARILYN B. LEE, VICE CHAIR
HOUSE COMMITTEE ON FINANCE**

**TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009**

February 27, 2009

RE: HOUSE BILL 1293, H.D. 1, RELATING TO LAW ENFORCEMENT

Good afternoon, Chair Oshiro and Vice Chair Lee, and members of the House Committee on Finance. The Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in **support of H.B. 1293, H.D. 1**, which proposes to provide grants-in-aid to the four respective counties to fund the Career criminal Prosecution and Victim Witness Assistance Programs.

The Career Criminal Prosecution and Victim Witness Assistance Programs operate in a similar fashion to the way that anti-virus software functions in your computer. They quietly work in the background promoting public safety, only emerging into the public eye when a notorious case or criminal attracts media attention. The most important value of these programs is not the spectacular headlines garnered when a well-known criminal is prosecuted, nor the profile of a sympathetic crime victim who is featured on the six o'clock news. Their critical importance is their reliable role in prosecuting the typical chronic offender or helping the average person who falls prey to the daily crimes on our streets and in our homes. It is the consistent and effective efforts of these two programs in combating crime and promoting public safety that makes them the worthwhile investment that they represent.

Unfortunately, the funding invested by the state in these critical programs has dramatically declined (by 37% for VWAP and 57% for CCP) since 1995. H.B 1293, H.D. 1 is an attempt to restore the funding and the promising potential that they represent. The City and County of Honolulu is requesting restoration of appropriations for its Career Criminal Prosecution Program (\$719,979) and Victim Witness Assistance Program (\$435,553) to the FY 2008 levels. Currently the proposed appropriations for these programs in ATG 100 are \$376,450 (CCP) and \$227,786

(VW), which amounts to 69% and 55% reductions respectively from our 1995 funding levels. We believe that the FY 2008 figures represent the survival level of funding required to operate these programs. We consider this to be a modest request considering both the increasing costs and demands for each of these programs since 1995. In considering this request please examine the more detailed program descriptions provided below.

VICTIM WITNESS ASSISTANCE

Since 1983, the Legislature has provided support for the Victim Witness Assistance Program. In 1986, the Legislature enacted Statute Section 28-111 (a copy of which we have attached) thus establishing the Victim Witness Assistance Program on a statewide basis. This statute establishes the Program in the Department of Attorney General, with the purpose of providing information, assistance, and support services to the victims and witnesses of crimes committed in Hawaii. The Attorney General is mandated to allocate and award funds to the Counties whose Victim Witness Assistance programs are in substantial compliance with policies and criteria established by the Attorney General in cooperation with the County Prosecutors.

The Honolulu Victim Witness Kokua Services, with the support of the Legislature, and even greater funding from the City and County of Honolulu, has developed into one of the finest services of its kind in the country. We serve a broad spectrum of crime victims including victims of felonies, misdemeanors, and juvenile crime. In addition we have initiated significant outreach services to victims of domestic violence, including many victims in cases that are not prosecuted. In recent years we have also extended our services to survivors of victims who have been involved in homicide/suicide and negligent homicide cases, despite the fact these cases will not proceed through the criminal justice system. We have established extensive referral networks with sexual assault, domestic violence, and immigrant services programs as well as Mothers Against Drunk Driving (MADD) Victim Services Program.

Victims are usually the key witnesses in a case. Without their testimony, criminals cannot be held responsible for their actions and remain free to hurt others in the community. Victims need assistance to face testifying in court and they require help in recovering from the trauma criminal victimization. The Victim/Witness Kokua Services provides this support.

The mission of the Prosecuting Attorney is to seek justice. Justice must be equally available to both victims and defendants. Legislators had this in mind when they created Chapter 801D of the Hawaii Revised Statutes [H.R.S.], Rights of Victims and Witnesses in Criminal Proceedings. Those very rights established by law are significantly diminished when our funding base erodes as it has in recent years. Crime victims' right to information, which is the very cornerstone of H.R.S. Chapter 801D, has already been severely jeopardized by the current staffing vacancies (4) that have been the consequence of the continual budget cuts. Additional funding reductions, as proposed in the Governor's budget, will force staff reductions that will place at least two important projects at risk. The much anticipated Automated Victim Information System, scheduled to be activated by the end of this month, and the Crime Victim Restitution Initiative, a cooperative effort with the Crime Victim Compensation Commission, both requiring extensive participation by our staff, will be extremely difficult to implement with any further budget cuts.

We note that the City & County of Honolulu now pays far more proportionately (\$1,179,459) for its Victim/Witness Assistance program than state law requires. H.R.S. 28-111, which created the State Victim/Witness Assistance Program, requires counties to match 25 percent of the program funding. Honolulu now provides the program almost fourteen times the matching requirement. By paying for the largest percentage of the program costs, Honolulu has already clearly proved its commitment to helping victims. While the County has been able to fill the gaps created by State funding reductions in the past, it is no longer able to do so. For example, two County-funded Domestic Violence positions created after previous State budget cuts have remained frozen and unfilled for over six years.

We have also been able to relieve the state from underwriting other victim assistance costs. For example, we were successful in getting the City and County to fully cover the cost of medical-legal examinations provided by the Sex Abuse Treatment Center. Funding currently amounts to \$400,000. Our Office provides another \$336,000 annually in federal Victims of Crime Act funds to contract for additional services for victims who are immigrants or have limited English proficiency, victims of sexual assault, and survivors of victims of homicide and negligent homicide. Assuming administrative responsibility for these federal funds is both costly and time consuming. The federal VOCA program does not permit use of these funds for anything than direct services to crime victims. The City and County of Honolulu has had to assume virtually the entire administrative costs for administering these services in recent years, as State funding has precipitously fallen.

There is ample evidence to show that Honolulu already pays its fair share for victims' services. We ask that you restore the funding needed to demonstrate the Legislature's commitment to adequately providing the state's equitable share for this essential program.

CAREER CRIMINAL PROSECUTION UNIT

Pursuant to legislation passed in 1979, and codified as Hawaii Revised Statutes Sections 845-1 and 845-2 (see attachment to our testimony), a Career Criminal Prosecution Program was established to prosecute certain repeat felony offenders. Since the program's creation in 1979, the Legislature has recognized the importance of the work mandated under the Career Criminal Prosecution Program and has funded the program every year. Continued funding of our Career Criminal Prosecution Unit is especially important because it targets hardcore defendants, repeat offenders with felony convictions who continue a life of crime. These repeat offenders cause a disproportionate share of crime. Money spent on the Career Criminal Unit is an efficient use of resources, especially when citizens are demanding swift and effective justice from a system plagued by heavy caseloads and long court delays.

Our Career Criminal Unit prosecutes these types of defendants aggressively. The attorneys in this Unit specialize in using the sentencing laws to maximize sentences and handle the cases from the early stages of prosecution through trial and sentencing. While not all of the defendants prosecuted by this branch are household names, they are responsible for a significant amount of the crime committed in Honolulu. Most of them are prosecuted on multiple counts and typically have victimized many people during their criminal careers. The robberies, burglaries, assaults, and drug and firearms offenses that they commit keep our communities in fear behind locked

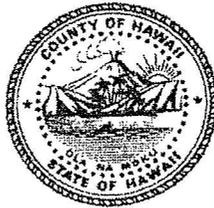
doors. Their criminal activities represent a relentless attack on the quality of life in Hawaii. Career criminals' repeated crimes cause millions of dollars of losses each year in physical injuries, medical costs, and property loss. The crimes they commit raise our insurance rates, keep us from enjoying the beauty and resources of our state, and keep us in fear for our families' safety.

This specialized attention ensures that repeat offender cases are handled consistently, which hopefully results in appropriate sentences and a safer community. The effectiveness of the unit has given the prosecution significant leverage in cases, often encouraging the accused to plead guilty to the crime before the case gets to trial.

For the reasons cited above we urge your full support for H.B 1293, H.D. 1. Thank you for your time and consideration

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**Testimony In Support of HB 1293, HD1
Relating to Law Enforcement**

Hearing before House Committee on Finance
February 27, 2009

Submitted by Jay T. Kimura, Prosecuting Attorney

TO: Chair Marcus R. Oshiro and Committee Members:

We support House Bill 1293, HD1

Thank you for this opportunity to testify on HB 1293, HD 1, which would establish a new Domestic Violence Special Fund, as well as provide unspecified general funds to the offices of the four county prosecuting attorneys for their Career Criminal Programs (CCP) and their Victim/Witness Assistance Programs (V/W).

As the elected Prosecuting Attorney for the County of Hawaii, I have first hand knowledge of the value of CCP and V/W. These programs are critically important to our communities, and become even more valuable during an economic downturn, such as we are experiencing now. The Legislature in its wisdom had the foresight to understand the extraordinary impact these programs can have, and that is why they are statutorily mandated—CCP in Chapter 845, HRS; and V/W in HRS 28-111. Nevertheless, funding for CCP and V/W is in jeopardy.

These two programs have been operating statewide for over thirty years, with State general funds going to the Department of the Attorney General (ATG 100) and on to the four counties. For at least the past 15 years, as you can see from the attached chart, while our caseload has increased 58%, the funding for the programs has dropped by 50%, resulting in the need for some creative juggling on the part of the counties to assure that the services continue to be provided. This year, because of the financial crisis we all face, the counties have been warned to expect cutbacks that are even more dramatic—40% off our current low funding was threatened earlier in the year; now the number may be even worse.

The counties are struggling financially to meet the needs of our communities, and we will do the best we can with the resources available, but double-digit cuts may put the very existence of the programs in jeopardy. And please understand that there is no clear alternate source of funds; the counties, even if these were not state mandated programs, are in no fiscal condition to pick up the slack.

Testimony In Support of HB 1293, HD1

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The Legislature has correctly judged that victims and witnesses, facing a complicated and sometimes uncaring bureaucracy, deserve to be treated with dignity, respect, courtesy, and sensitivity. The Legislature also has correctly judged that there needs to be a strong response to repeat career offenders. The next biennium, when we can almost guarantee that crime rates will be rising and there will be an upswing in criminal activities, is obviously not the time when we should be reducing these two vital services. As an example, in the first six months ending December 31, 2008, our Victim/Witness program served 3,555 individuals.

In an ideal world, we would be looking for funding that would restore CCP and V/W funding to 1994 levels, adjusted upward to cover the higher caseload. That, we all know, is not possible, and therefore the counties have agreed to ask that the Legislature give enough in general funds to at least get us back to the level you established for FY 2008. For Hawaii County, that would mean \$530,929 for the Career Criminal Program, and \$181,839 for the Victim Witness Program.

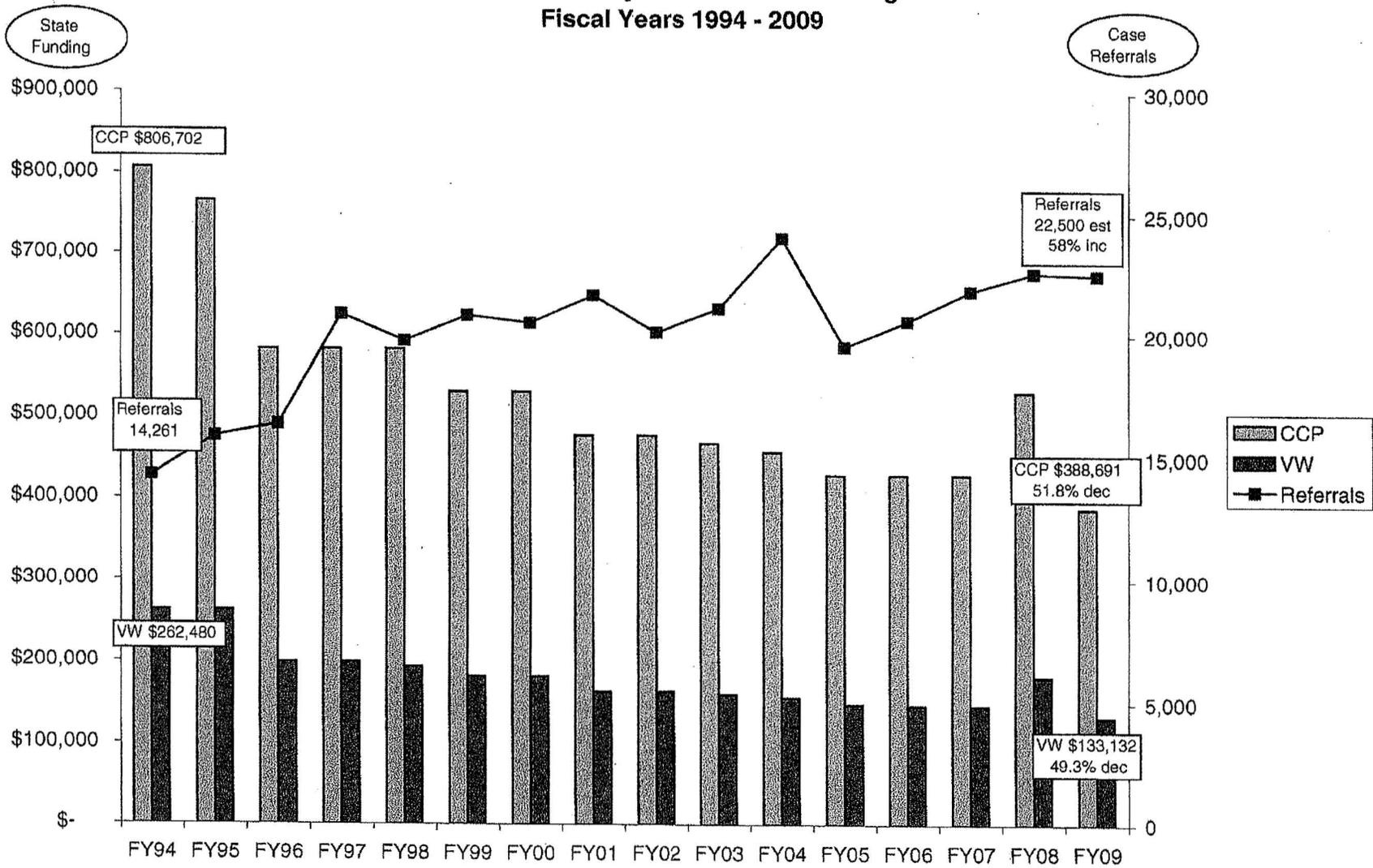
The House Judiciary Committee has offered an innovative approach to funding domestic violence through a Special Fund, using District Court filing fees (607-4), Circuit Court filing fees (607-5), matrimonial action surcharges (607-5.6), filing fee surcharges (607-5.7), appellate filing fees (607-6), and sheriffs' fees (607-8). As a county prosecutor, I welcome more programs dealing with domestic violence, but I need to make clear that this Special Fund would not solve the funding problems faced by my office. For one thing, it is not clear that the Counties would qualify for grants under the program; if government offices are intended to be beneficiaries of this fund, we would hope that would be spelled out. Second, placing the fund with the administrative director of the courts would be problematic, in that there would be a real or perceived conflict of interest if the Judiciary were funding the offices of the prosecutors.

Having a dedicated source of funding for V/W, and for CCP for that matter, is certainly something that we would appreciate. However, the concept put forth in Section 1 of this bill would need considerable work before it could be considered viable.

As you know, currently there are no special funds set up to cover the costs of enforcing the State's traffic and criminal offenses, and all fines collected become State General Funds. If a special fund is to be set up to assist law enforcement, it probably should be administered by the Department of the Attorney General.

Thank you for your consideration of this measure. I do not envy your task, trying to balance all the financial demands that are being made on you, and appreciate whatever assistance you can provide for the most vulnerable members of our communities.

Hawaii County CCP and VW Funding Fiscal Years 1994 - 2009



TESTIMONY IN OPPOSITION OF
HB1293 HD1 - RELATING TO DISTRICT COURT

February 27, 2009 at 4:00 p.m.

The Legal Aid Society of Hawaii hereby provides testimony to the House Committee on Finance on HB1293 – Relating to Law Enforcement, in opposition of this bill’s attempt to create a domestic violence fund by taking a portion of the fees, charges and surcharges currently charged by the court.

This bill would draw on current court fees, charges and surcharges to create a special fund for domestic violence providers. While we believe that services must be provided to domestic violence victims, raiding the current court fees to provide for these services is not the way to do so. One of the fees targeted in the creation of this fund is the Indigent Legal Assistance Fund. To take funding from this would be hurting current legal service providers who are already unable to meet the demand for services.

In November 2007, the Access to Justice Hui released “Achieving Access to Justice for Hawai‘i’s People,” a two-part report that included The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai‘i by 2010 and The 2007 Assessment of Civil Legal needs and Barriers of Low- and Moderate-Income People in Hawai‘i. The Assessment found that one out of every five low- and moderate-income residents in Hawai‘i seeking legal services is unable to receive the assistance that they need and that one in three who seek assistance from legal service providers cannot be helped.

We realize that the state is facing difficult times with reduced state revenues; however taking from one set of core services and giving to another is not the solution.

Thank you for this opportunity to testify.

Sincerely,

Nalani Fujimori
Interim Executive Director
527-8014



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director
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Frank Haas

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Roland Lagareta

Willow Morton

R. Carolyn Wilcox

DATE: 02/27/2009

TO: The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
Committee on Finance

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: HB1293 HD1
Relating to Law Enforcement

Good afternoon Representatives Oshiro and Lee, and members of the House Committee on Finance. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawaii Pacific Health.

Dear Friends and Colleagues:

The SATC supports the provisions in this bill to provide grants-in-aid to the four counties for the Victim Witness Assistance and Career Criminal Programs. These critically important programs have consistently supported victims, combated crime and promoted public safety.

The SATC has partnered with the Honolulu Victim Witness Assistance Program (VWAP) for many years to ensure that sexual assault victims receive the help they need when interfacing with the criminal justice system. The VWAP provides the vital services of educating and counseling victims on the legal system and their rights as victims, and keeping victims informed on various court proceedings and the status of their case. Also, the SATC relies on the staff of the VWAP to accompany and support our clients in court. Without these crucial services, victims are handicapped in their ability to face the rigors of judicial proceedings.

We are concerned that funding by the state for these programs has dramatically declined since 1995, and has now reached the critical point of impacting services and jeopardizing current initiatives that are sorely need statewide. Those of us at SATC have experienced first hand how their services have made a difference in the shattered lives of many adults and children traumatized by sexual violence. We urge you to pass the provisions in this bill to restore funding at the FY08 levels to the Victim Witness Assistance and Career Criminal Programs.

Thanks you for the opportunity to testify.

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: Committee on Judiciary Representative Karamatsu, Chair and Representative Ito, Vice Chair

FROM: Carol Lee (clee@hscadv.org), Hawaii State Coalition Against Domestic Violence

Re: House Bill 1293 Relating to Law Enforcement

Aloha, my name is Carol Lee. The Hawaii State Coalition Against Domestic Violence (HSCADV). HSCADV is a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV opposes the current version of HB1293.

Becoming involved with the court system can be frightening and confusing. This is particularly true for victims of domestic violence. Not only has a violent crime been perpetrated against them - but the violence was perpetrated by someone who was supposed to love and respect them. Attending court can be intimidating, frustrating and feel like everyone is speaking a foreign language. Additionally victim often must face their batterer in court. This can be terrifying and confusing.

Victim Witness Kokua Services (VWKS) provides advocates to work with victims through this process. They remain in contact with the victim, attend court hearings, providing them information for their safety and explaining what is happening at each step in the legal process. No other service is able to do this in the same way by working hand in hand with prosecutors and other court officials.

Victim Witness Kokua has sustained many cuts to their budget and without funding would not be able to sustain an appropriate level of services for victims. Without funding for this much needed program more victims will be lost to the system and placed in further danger. HSCADV supports VWKS request for a grant in aid.

The amended version of HB1293 proposes using fines and placing them in a domestic violence fund. This is problematic as it would leave significant gaps in funding for current court services. Victim Witness Kokua is an important program that deserves funding without taking away from other court services.

Thank you for your consideration.

**THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009**

**COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair**

Hearing Date: Friday, February 27, 2009
Time: 4:00 p.m.
Place: Conference Room 308
State Capitol

By: Tracey Wiltgen, Executive Director
The Mediation Center of the Pacific, Inc.

Bill No. and Title: HB 1293, HD1, RELATING TO LAW ENFORCEMENT

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR AND THE HONORABLE
MARILYN B. LEE, VICE CHAIR AND MEMBERS OF THE COMMITTEE

My name is Tracey Wiltgen, Executive Director of The Mediation Center of the Pacific (the Mediation Center). I am writing on behalf of the Mediation Center to oppose HB 1293. While the Mediation Center supports all efforts to prevent domestic violence and assist victims of domestic violence, the Mediation Center opposes HB 1293 because it attempts to redirect funds that are already designated for legal service providers who assist the low income population with their basic civil legal needs, including issues relating to domestic violence.

The Mediation Center wholeheartedly supports the need for funding Victim-Witness and domestic violence programs. However, the creation of a domestic violence fund through this bill would adversely impact the allocation of current court fees for Judiciary programs and programs supported by the Indigent Legal Assistance Fund. Legal service providers are already unable to meet the growing demand for legal services. In fact, pending HB625 proposes an increase in filing fee surcharges to provide more financial support to the providers and ultimately assist more of Hawaii's growing low income population in accessing justice.

The Mediation Center objects to HB 1293 because it essentially removes a critical source of funds designated for many years to support the work of low income legal service providers in providing access to justice for Hawaii's vulnerable populations.

Sincerely,

Tracey S. Wiltgen

Tracey S. Wiltgen
Executive Director

TO: Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice-Chair
Finance Committee

FROM: Dyan M. Medeiros, Chair
Family Law Section, Hawai'i State Bar Association
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE: February 27, 2009 at 4:00 p.m.

RE: Testimony in Opposition to HB1293 HD1

Good afternoon Representative Oshiro, Representative Lee, and members of the Committee. My name is Dyan Medeiros. I am an attorney specializing in Family Law and the current Chair of the Family Law Section of the Hawaii State Bar Association. I am here today in my capacity as the Chair of the Family Law Section¹ and as an individual to testify against HB1293 HD1 especially insofar as it requires the deposit of the funds collected under HRS §607-5.6 and HRS §607-5.7 into a special fund for domestic violence.

In general, HB1293 HD1 proposes taking the surcharge collected for Kids First (HRS §607-5.6), the surcharge collected for indigent legal services (HRS §607-5.7), fees paid at district court costs (HRS §607.4), fees paid at circuit court (HRS §607-5), fees paid for appeals (HRS §607-6), and fees paid to serving officer's (HRS §607-8) and depositing them into the domestic violence special fund which would then be used "solely to provide grants to organizations that provide domestic violence services". This bill appears to be taking money from and for certain Judiciary services and earmarking it for one specific purpose. There simply is no logical, legal, or constitutional basis for

¹ This testimony reflects the position of Family Law Section only and does not necessarily represent the views of the Hawai'i State Bar Association as a whole.

this bill. Perhaps the clearest example of this can be seen in HB1293 HD1's application to monies collected under HRS §607-5.6, the surcharge imposed for Kids First.

HRS §607-5.6(a) imposes a surcharge of \$50.00 on people with minor children who file a "matrimonial action" (such as divorce or separation) or a paternity action. HRS §607-5.6(d) establishes a special fund for this surcharge. HRS §607-5.6(e) states that this the special fund "shall be used solely for expenditures related to providing education on all islands for separating parents ... and their minor children". This surcharge and special fund is used to pay for the "Kids First" program on all islands. ("Kids First" is an educational program which parents and their children (between the ages of 6 and 18) are required to attend at the beginning of their divorce and/or paternity cases. It is a two-hour program staffed 90% by volunteers.)

HB1293 HD1 would require that the \$50.00 Kids First surcharge be deposited into a special fund and used "solely to provide grants to organizations that provide domestic violence services". I don't understand the legal basis for HB1293 HD1 legally usurping the provisions of HRS §607-5.6 and appropriating the Kids First surcharge for its own purposes.

Importantly, since Kids First doesn't provide domestic violence services, it wouldn't qualify to receive any of the funds from the domestic violence special fund. This would likely result in the end of the Kids First program.

Moreover, taking the Kids First surcharge and using it for another purpose would have the effect of discriminating against people with children. The "Kids First surcharge" is only imposed in cases where one or both of the parties have a minor child. By taking this surcharge and depositing it into the domestic violence special fund, you are requiring people with children and only people with children to contribute to a special fund which is unrelated to their needs. Why would people with children be required to contribute more to such a special fund than people without children? This is discrimination in its purest form.

The main purpose of the Kids First program is to educate parents about the effect of custody and visitation disputes on their children. Kids First reminds parents that despite their anger or hurt feelings, they will always be their children's parents. For their children's sake, they need to separate their feelings of anger and hurt and focus on their children. Parents are also taught the developmental needs of their children. This helps parents agree on what arrangements are best for their children. Parents also have a chance to read letters written by other children (not their own) whose parents are divorcing and see pictures drawn by other children (not their own) expressing their hurt, anger, or frustration. This helps parents realize that even if their children seem "fine", they are dealing with emotional issues too. Since many of these parents don't have attorneys, Kids First is probably the only time they are given concrete information about children, timesharing schedules, and co-parenting.

Kids First also teaches the children that the divorce (or custody dispute) isn't their fault. The children first watch a video about a divorcing family with their parents and siblings. The children are then divided into small groups according to age and work with volunteers. The children are given a chance to share their feelings with other children. For some children, this is their only opportunity to interact with and talk to other children going through the same difficulties. They see that others are also scared and worried. They are assured that it is okay to feel that way. They are encouraged to talk about their feelings. It may also be the first time a child is given a forum to express his or her grief, fear, or anxiety, and to see that it is okay.

Kids First provides an invaluable service to Hawai'i's families. It is vitally important that this program continue. While domestic violence is also an extremely important issue in Hawai'i, a special fund for domestic violence shouldn't be created at the expense of a long-running program which has proven its success in helping Hawai'i's families. To do so would be a disservice to Hawai'i's families.

Thank you for the opportunity to testify in opposition to HB1293 HD1.

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February 26, 2009

TESTIMONY FROM: Robert J. LeClair, Executive Director, Hawaii Justice Foundation

TO: Committee on Finance, House of Representatives

HEARING DATE/TIME: Friday, February 27, 2009, 4:00 p.m. Conf. Room 308

MEASURE NUMBER: TESTIMONY AGAINST
HB 1293, HD1, RELATING TO LAW ENFORCEMENT

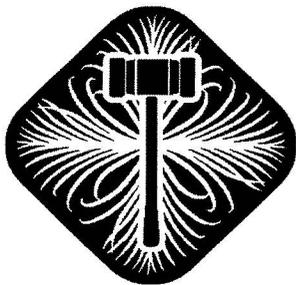
SUBMITTED BY WEB: <http://www.capitol.hawaii.gov/emailtestimony/>

The Hawaii Justice Foundation (HJF) requests the Committee on Finance strike the language proposed in HB 1293 that proposes the creation of a “Domestic Violence Special Fund.” HJF takes no position on other issues contained in HB1293 HD1. The proposed language creating the Domestic Violence Special Fund is a copy of existing law in HRS Section 607-5.7, which created the “Indigent Legal Assistance Fund” (“ILAF”) that has been operating successfully for more than 13 years.

HJF fully supports the purposes and quality performance of the Domestic Violence Action Center, and HJF for years has funded grants to the Domestic Violence Action Center. That group is already a current recipient under the ILAF Program.

HJF’s objection to the Domestic Violence Special Fund outlined in HB1293 HD1 is that this proposal essentially cannibalizes the existing ILAF process under HRS Section 607-5.7 which is administered jointly between the Judiciary and HJF. All of the current recipients of ILAF have endorsed pending HB625, which proposes an increase in filing fee surcharges. HB1293 defeats the purposes of ILAF by unduly favoring one type of legal needs over all the other serious legal needs. The Domestic Violence Action Center has expressed to me its opposition to HB1293. It would be a serious error to utilize the existing ILAF process to fund this new operation, at the expense of the other legal service providers participating in the ILAF Program.

Should the Legislature find that the projects outlined in HB1293 are worthy of funding, the method used should not jeopardize the effective, ongoing ILAF Program in which the Domestic Violence Action Center already participates.



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To: House Committee on Finance
From: Moya Gray, Executive Director
RE: Testimony IN OPPOSITION to H.B. 1293 HD1 Relating To Law Enforcement

Hearing: February 27, 2008, 4:00 PM

Chair Oshiro, Vice Chair Lee and members of the Committee, thank you for this opportunity to testify in opposition to H.B. 1293, HD1, relating to law enforcement.

I am Moya Gray, Executive Director of Volunteer Legal Services Hawaii. I also serve as a Commissioner on The Access to Justice Commission and as a member of the Consortium of Hawaii Legal Service Providers.

The Commission's predecessor, the Access to Justice Hui, found in its groundbreaking 2007 report, that only 1 in 5 low and moderate income residents of Hawaii have their serious legal needs met because the legal services providers lack adequate funding and attorneys.

This bill proposes that funds from, among others, H.R.S. Section 607.5 be used to help fund domestic violence programs.

H.R.S. Section 607.5 currently funds the Indigent Legal Assistance Fund which is dedicated for the provision of legal services to low-income people.

This bill would adversely impact the allocation of current court fees for Judiciary programs and programs supported by the Indigent Legal Assistance Fund. Legal service providers are already unable to meet the demand for legal services, and raiding the Indigent Legal Assistance Fund would further decrease our ability to provide these services.

VLSH opposes raiding funds that have been dedicated to the provision of legal services to the poor. Should this proposal become law thousands of Hawaii residents will have no access to justice. While the intent to fund Victim-Witness programs is admirable, to do so at the expense of another vulnerable group is wrong.

We realize that the state is facing difficult times with reduced state revenues; however taking from one set of core services and giving to another is not the solution. This bill will harm more people than it intends to help. For that reason, Volunteer Legal Services Hawaii opposes this bill and we respectfully ask that you hold this bill.

Thank you for the opportunity to testify on this measure.



TO: Chair Marcus Oshiro
Vice Chair Marilyn B. Lee
Members of the Committee

FR: Nanci Kreidman, M.A.
Chief Executive Officer

RE: H.B. 1293

Please accept this testimony in opposition to H.B. 1293. We have a number of concerns with sections, requirements, and assumptions contained in the Bill.

There exists at the present time, and is, in fact, on today's agenda, a bill related to the Indigent Legal Assistance Fund that all of our community's legal service programs rely on for funding support. H.B. 1293 appears to collect those same fees for a different purpose. Using the dollars for domestic violence programs instead would contradict all the efforts, collaboration, and collective best thinking that has been done since this original bill was passed. Access to legal services is also an essential need in our community and cannot be overlooked or dismissed in favor of supporting domestic violence programs.

The requirement that programs not charge fees for program services or assistance is troubling, as it suggests that all victims of domestic violence are low income and cannot afford to pay for the services they receive. In addition, programs across the state have been largely challenged to raise enough private or public dollars to support their services and some costs to clients are necessary. Further, for batterers programs in particular, fees for their enrollment is seen as a measure of increasing accountability and taking responsibility for their personal crimes.

It is not clear after reading this draft, what kinds of domestic violence services it is intended that the fees collected would cover. The availability of funds sometimes encourages people to call their work domestic violence services, when they may not really be domestic violence services.

The formula proposed for distribution of dollars is similar to the formula used with the Indigent Legal Assistance Fund. This has been the subject of much discussion and may not be a good mechanism to replicate.



Further, the definition of domestic violence contained in this bill appears to be a new definition and would conflict with definitions already contained in existing law.

Finally, the creation of a special fund from which all grants would originate for the support of domestic violence programs is problematic as the funds raised may be insufficient to support these essential programs in our communities. We remain of the position that government must continue to see the importance of their role in addressing domestic violence through funding support. The commitment to family, safe communities, children and the hope for peace in our island families cannot be abandoned as someone else's responsibility.

Funding support is needed to maintain programs in the Prosecutor's office and we support that section of this draft providing appropriation to Victim Witness Kokua Services.

Thank you for giving consideration to these concerns.

Hawaii Immigrant Justice Center

(Formerly known as Na Loio)

Serving Hawaii's Immigrant Families and Children

February 26, 2009

TO : Committee on Finance, House of Representatives

TESTIMONY FROM: Robin H. Kobayashi, Executive Director
Hawaii Immigrant Justice Center f/k/a Na Loio

MEASURE NUMBER: TESTIMONY **OPPOSING HB 1293**

The Hawai'i Immigrant Justice Center ("the Justice Center") f/k/a Na Loio **opposes** HB 1293 because it will impair funding for all legal service providers. While the Justice Center commends the Legislature for finding ways to deal effectively with the issue of domestic violence in our State, this bill will actually harm the overall safety net for indigent and needy individuals who should have access to justice. For these reasons, the Justice Center cannot support this legislation.

The Justice Center provides domestic violence services and would likely benefit from the funds outlined in this legislation. However, the fees that HB 1293 proposes to collect also drains the same fees that the Indigent Legal Assistance Fund ("ILAF") uses to distribute among the varied legal service providers in our State. The monies collected for ILAF is crucial to supporting legal services for a varied and widespread constituency of impoverished and needy clients whom the legal service providers help, including domestic violence victims – the disabled, elderly, human trafficking victims, Native Hawaiians, impoverished families, *and* domestic violence victims.

The Victim Witness Kokua Services has provided excellent work and support of our domestic violence clients. We support that segment of this bill that appropriates monies to the Prosecutor's Office for funding of Victim Witness Kokua Services. We cannot, however, support the remainder of this bill.

Domestic violence is an insidious problem in Hawai'i that requires thoughtful and considered solutions. While the intent behind HB 1293 is honorable, the effects would erode funding, and thereby services, for other equally important causes. In these difficult economic times, decreased funding could have detrimental effects on our legal service providers. For these reasons, the Justice Center cannot support, in fact strongly opposes, HB 1293.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 27, 2009 6:16 AM
To: FINTestimony
Cc: ddunn@honolulu.gov
Subject: Testimony for HB1293 on 2/27/2009 4:00:00 PM

Attachments: HRS Chapter 845 Career Criminal Prosecution Program.doc



HRS Chapter 845
Career Crimina...

Testimony for FIN 2/27/2009 4:00:00 PM HB1293

Conference room: 308
Testifier position: support
Testifier will be present: Yes
Submitted by: Dennis M. Dunn
Organization: Department of the Prosecuting Attorney, City and County of Honolulu
Address: 1060 Richards Street, 9th Floor Honolulu, HI 96813
Phone: 768-7485
E-mail: ddunn@honolulu.gov
Submitted on: 2/27/2009

Comments:

[\$845-1] Findings and purpose. The legislature finds that a substantial and disproportionate amount of serious crime is committed against the people by a relatively small number of multiple and repeat felony offenders, commonly known as career criminals. In enacting this chapter, the legislature intends to support increased efforts by prosecuting attorneys' offices to prosecute career criminals through organizational and operational techniques that have been proven effective in selected counties in other states. [L 1979, c 104, pt of §1]

[\$845-2] Career criminal prosecution program. (a) There shall be established a career criminal prosecution program, whose purpose shall be the investigation and prosecution of those persons identified as habitual or career criminals.

(b) The office of the attorney general shall administer the program, and develop a plan of financial and technical assistance for prosecuting attorneys' offices. The attorney general shall direct the program and may allocate and award funds to counties in which career criminal prosecution units are established in substantial compliance with the policies and criteria established by the attorney general. The establishment of these policies and criteria shall not be subject to chapter 91, but the criteria shall be based on the general definition in section 845-3. [L 1979, c 104, pt of §1]

§845-3 Persons subject to career criminal prosecution efforts. (a) An individual shall be the subject of career criminal prosecution efforts if the individual falls into categories 1, 2, or 3 in subsection (b) and may be the subject of career criminal prosecution efforts if the individual falls into any other category of subsection (b).

(b) Subject to the restrictions in subsection (a), career criminal prosecution applies to an individual who:

- (1) Has had two or more felony convictions within the last five years.
- (2) Has had one or more felony and two or more misdemeanor convictions and/or arrests within the last three years. Misdemeanors will be limited to prostitution, theft II and place to keep firearm.
- (3) Is convicted and/or arrested for the offense of "felon in possession of a firearm" within the last five years.
- (4) Is on parole.
- (5) Is on probation.

- (6) Is on bond awaiting an appeal.
- (7) Is on bond awaiting trial.
- (8) Is known or suspected to be an associate of organized crime.
- (9) Is known or suspected of recurring or ongoing criminal activity.
- (10) Has no adult record but who has an extensive juvenile record.
- (11) Is a juvenile with an extensive record who has been waived to the circuit court for trial. [L 1979, c 104, pt of §1; am L 1980, c 166, §1; gen ch 1985]