



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 838, RELATING TO THE PENAL CODE.

**BEFORE THE:**

SENATE COMMITTEE ON HUMAN SERVICES

**DATE:** Thursday, February 12, 2009 **TIME:** 1:45 PM

**LOCATION:** State Capitol, Room 016

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

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Chair Chun Oakland 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.

CHARMAINE TAVARES  
Mayor



BENJAMIN M. ACOB  
Prosecuting Attorney

PETER A. HANANO  
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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February 9, 2009

HONORABLE SUZANNE CHUN OAKLAND, CHAIR  
HONORABLE LES IHARA, JR., VICE CHAIR  
COMMITTEE ON HUMAN SERVICES

THE SENATE  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009  
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,  
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,  
IN SUPPORT OF S.B. NO. 838  
RELATING TO THE PENAL CODE

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly supports S.B. 838, 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 protection 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.

(S.B. 838, Relating to the Penal Code)



CHARMAINE TAVARES  
MAYOR

OUR REFERENCE

YOUR REFERENCE

**POLICE DEPARTMENT**  
COUNTY OF MAUI

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THOMAS M. PHILLIPS  
CHIEF OF POLICE

GARY A. YABUTA  
DEPUTY CHIEF OF POLICE

February 9, 2009

The Honorable Suzanne Chun Oakland, Chair  
and Members of the Committee on Human Services  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Chun Oakland and Members of the Committee:

**SUBJECT: Senate Bill No. 838, Related to the Penal Code**

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

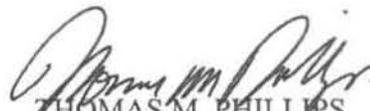
This bill upgrades manslaughter to murder in the second degree, and murder in the second degree to murder in the first degree, if committed against a protected victim. The misdemeanor offenses of terroristic threatening and assault will also be upgraded to a Class C felony offense, if committed upon a victim covered by protective orders.

This legislation will provide a greater deterrent to domestic violence offenders and strengthen the protections provided to victims of domestic violence through protective orders.

The Maui Police Department strongly supports passage of Senate Bill No. 838.

Thank you for the opportunity to testify.

Sincerely,

  
THOMAS M. PHILLIPS  
Chief of Police

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN  
MAYOR



BOISSE P. CORREA  
CHIEF

PAUL D. PUTZULU  
KARL A. GODSEY  
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

February 12, 2009

The Honorable Suzanne Chun Oakland, Chair  
and Members  
Committee on Human Services  
The Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Chun Oakland and Members:

Subject: Senate Bill No. 838, 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 Senate Bill No. 838, 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 Senate Bill No. 838, Relating to the Penal Code.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Robinson", is written over a horizontal line.

RICHARD C. ROBINSON, Captain  
Criminal Investigation Division

APPROVED:

for: A handwritten signature in black ink, appearing to read "Boisse P. Correa", is written over a horizontal line.  
BOISSE P. CORREA  
Chief of Police

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**THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR  
THE HONORABLE LES IHARA, JR., VICE CHAIR  
SENATE COMMITTEE ON HUMAN SERVICES**

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

February 12, 2009

**RE: SENATE BILL 838; RELATING TO THE PENAL CODE**

Good morning, Chair Chun-Oakland and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney submits the following testimony in support of Senate Bill 838, the "Protect Victims of Domestic Violence Act".

The purpose of this bill is to provide an enhanced grade of offense for specified crimes committed against victims of domestic violence who are protected by an order issued pursuant to *Hawaii Revised Statutes Chapter 586* or by a 24 hour period of separation and who are killed, assaulted, or threatened by the person who is the subject of a restraining order or period of separation.

Domestic violence is a widespread and serious problem across the United States as well as Hawaii. It has been estimated that up to 3 million American women are physically abused by their husbands or boyfriends each year. And in an effort to protect these victims from further abuse, laws were passed such as the 24 hour period of separation and creation of restraining orders specifically designed to protect domestic violence victims. Domestic violence victims who have sought the shelter of these laws should be able to benefit from the added legal protection that these statutes were designed to provide. Victims who demonstrate the courage to come out from under the vicious cycle of domestic abuse must be assured that the criminal justice process affords an adequate deterrent for those whose persistent violent behavior ignores the dignity and integrity of a lawful order of a judge or law enforcement officer. Currently, a small, but significant minority of domestic violence perpetrators insist on continuing their threats, abuse, and intimidation despite receiving specific verbal and written warnings from lawful authority to cease and desist their violent conduct. A sample case involving such an

offender creates an excellent example of why a greater deterrent is needed for habitual domestic violence offenders. This defendant, despite fifteen (15) arrests and nine (9) convictions for violating orders issued under *Chapter 586* has never served more than thirty days in jail. Recalcitrant abusers like this individual need a stronger message that this type of behavior will not be tolerated. The victims of domestic violence in this state need to be reassured that our domestic violence laws are more than simply words on a piece of paper. A meaningful commitment to their protection is now required. Unfortunately for the victim of the perpetrator described above she subsequently nearly lost her life and the life of her child before her abuser was ever charged with a felony. He was subsequently convicted of a reduced charge due to the victim's desire to move to the mainland to escape the defendant's violence. We can and should provide better protection for victims of domestic violence in Hawai'i. For this reason, we support an enhancement in the grade of offense when a defendant threatens, assaults, or murders a domestic violence victim under the protection of the period of separation provided under *H.R.S. Section 709-906* or an order issued pursuant to *H.R.S. Chapter 586*, as contained in this bill.

We respectfully request your favorable consideration of S.B. 838. Thank you for your time and consideration.

# HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

Hearing date and time: February 12, 2009, 1:45p.m.

RE: H.B. 229 Relating to the Penal Code

TO: Chair Senator Chun-Oakland, Vice Chair Senator Ihara and members of the Committee on Human Services

FR: Carol Lee ([clee@hscadv.org](mailto:clee@hscadv.org)), Hawaii State Coalition Against Domestic Violence

Aloha, my name is Carol Lee. 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 supports SB838 Relating to the Penal Code.

Research shows that victims intimate partner violence (IPV) often continue to be in danger from their batterer and are in fact likely to be at increased risk once they separate. Statistics show that approximately 75% of the women murdered by a partner or former partner had separated from their batterer or told their batterer they planned to leave. Many victims of IPV seek Temporary Restraining Orders (TRO)/Protective Orders (PO) as a tool to increase their safety. Last year was a particularly devastating year for domestic violence victims. There were more domestic violence homicides and suicides than in any recent year. We believe that holding batterers accountable for their behavior is one of the major tools we have in stemming IPV.

Thank you for the opportunity to testify.

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

February 12, 2009

RE: S.B. No. 838: Relating to the Penal Code.

Chair Chun Oakland and Members of the Committee:

S.B. No. 838 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.