

# HB1003,HD2

Measure  
Title:

RELATING TO THE PENAL CODE.

Report  
Title:

Penal Code; Domestic Violence Victim Protection

Description:

To provide greater protections to victims of domestic violence who the court is already attempting to keep safe through protective orders. Effective July 1, 2011. (HB1003 HD2)

Companion:

SB1230

Package:

Gov

Current  
Referral:

HMS, JDL

Introducer(s):

SAY (BR)



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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ON THE FOLLOWING MEASURE:

H.B. NO. 1003, H.D. 2, RELATING TO THE PENAL CODE.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, March 17, 2011 TIME: 1:45 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, 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.

Family is the bedrock of our community, but it is also where some of the worst violence is occurring. 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 is one of only two bills in the 2011 legislative package of the Hawaii Law Enforcement Coalition. The Coalition is composed of the Chiefs of Police of all four counties, the Prosecuting Attorneys of all four counties, the Attorney General, and the United States Attorney for the District of Hawaii. Every bill in the Coalition's legislative package has the unanimous support of every Coalition member.

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 for victims to seek the assistance of police, the court

system, and others. But often, the abuse and violence continue even after the police or courts have intervened and issued protective orders.

Current laws do not provide adequate deterrence. 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. The potential for increased sentences can also allow the courts to impose appropriate punishments and provide for the safety and security of victims and others in the community when offenders are undeterred and continue with their violent course of conduct.

This bill amends section 707-701.5, Hawaii Revised Statutes to upgrade manslaughter to murder in the second degree, if it is committed against a protected victim. It amends section 707-701, Hawaii Revised Statutes, to upgrade murder in the second degree to murder in the first degree, if it is committed against a protected victim. And it amends sections 707-711 and 707-716, Hawaii Revised Statutes, to upgrade 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.

We respectfully request passage of this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR  
HOUSE COMMITTEE HUMAN SERVICES  
Twenty-sixth State Legislature  
Regular Session of 2011  
State of Hawai'i

March 17, 2011

**RE: H.B. 1003, H.D. 2; RELATING TO THE PENAL CODE**

Good morning, Chair Chun Oakland, Vice Chair Ihara, and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney submits the following testimony in support of **H.B. 1003, H.D. 2**, 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.

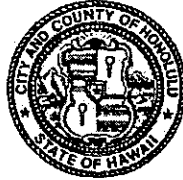
Domestic violence is a widespread and serious problem across the United States as well as Hawaii. It has been estimated that up to 3 million American women are physically abused by their husbands or boyfriends each year. And in an effort to protect these victims from further abuse, laws were passed such 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 H.B. 1003, H.D. 2. Thank you for your time and consideration.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE BN-NTK

March 17, 2011

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: House Bill No. 1003, H.D. 2, Relating to the Penal Code

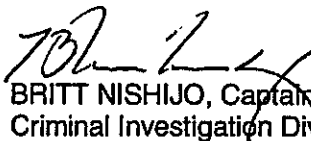
I am Britt Nishijo, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 1003, H.D. 2, Relating to the Penal Code. This bill, the "Protect Victims of Domestic Violence Act," amends the offenses of Murder in the First and Second Degree, Assault in the Second Degree, and Terroristic Threatening in the First Degree, to include the conduct committed against victims who the courts and police are attempting to keep safe with protective orders. The intent is to provide greater protection for domestic violence victims and deter such violence.

The Honolulu Police Department urges you to support House Bill No. 1003, H.D. 2, Relating to the Penal Code.

Thank you for the opportunity to testify.

Sincerely,

  
BRITT NISHIJO, Captain  
Criminal Investigation Division

APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police

for

*Serving and Protecting With Aloha*



## HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: The Honorable Suzanne Chun Oakland, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
SENATE COMMITTEE ON HUMAN SERVICES

From: Veronika Geronimo  
Hawaii State Coalition Against Domestic Violence

RE: HB1003

Hearing Date: 1/17/2011, 1:45p.m., Room 016

The Hawai'i State Coalition Against Domestic Violence (HSCADV) is a statewide coalition of domestic violence programs and shelters. HSCADV and its member agencies advocate for policies and services to end domestic violence in Hawai'i. Our primary focus is on the empowerment, safety, and protection of domestic violence survivors and their children, and the accountability of batterers. On behalf of our member agencies, we thank you for the opportunity to testify in support of HB1003.

Protective Orders (PO) are a valuable tool which victims of domestic violence can use to help protect them from abuse, but seeking this protection could also be very dangerous for domestic violence survivors. Batterers often see the survivor as being directly responsible for excluding them from their home or prohibit contact with their children. Unfortunately, current laws are inadequate in providing the legal protection and deterrence to keep batterers from seeking retaliation or continuing to threaten, assault and intimidate victims.

HB1003 would provide greater protections to victims of domestic violence who the court is already attempting to keep safe through protective orders. This measure is greatly needed to address the vulnerabilities in the system and help ensure the safety of domestic violence survivors.

Thank you for your consideration.

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

March 17, 2011

RE: H.B. No. 1003 HD2: Relating to the Penal Code.

Chair Chun Oakland and Members of the Committee:

H.B. No. 1003 HD2 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° 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° 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 much 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° contradicts our current manslaughter statute and, in Section 4, the creation of a reckless form of Assault 2° contradicts our Assault 3° statute. Likewise, the creation of an additional form of Terroristic Threatening 1° 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.

**TESTIMONY OF THE HAWAII POLICE DEPARTMENT**

**HOUSE BILL 1003, HD2**

**RELATING TO THE PENAL CODE**

**BEFORE THE COMMITTEE ON HUMAN SERVICES**

**DATE :** Thursday, March 17, 2011

**TIME :** 1:45 P.M.

**PLACE :** Conference Room 016  
State Capitol

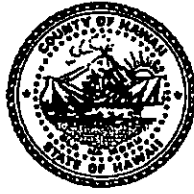
**PERSON TESTIFYING:**

Police Chief Harry S. Kubojiri  
Hawaii Police Department  
County of Hawaii

(Written Testimony Only)

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William P. Kenoi  
Mayor



Harry S. Kubojiri  
Police Chief

Paul K. Ferreira  
Deputy Police Chief

March 14, 2011

## County of Hawai`i

### POLICE DEPARTMENT

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Senator Suzanne Chun Oakland  
Chair and Members  
Committee on Human Services  
State Capitol  
415 South Beretania Street, Conference Room 016  
Honolulu, Hawai`i 96813

### Re: HOUSE BILL 1003, HD2, RELATING TO THE PENAL CODE

Dear Senator Chun Oakland and Members:

The Hawai`i Police Department strongly supports the passage of House Bill No. 1003, HD2. This passage of this bill will provide an enhanced grade of offense for specific crimes committed against victims of domestic violence who are protected by a court order or a 24-hour warning citation.

The intent of this bill is to protect victims of domestic violence whom the courts and police are trying to keep safe through family court protective orders, and through police orders requiring family or household members to leave the premises.

The passage of 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.

In domestic violence cases, oftentimes abuse and violence continue even after protective orders have been issued and police or courts have intervened. This bill would strengthen current laws and will act as a significant deterrent to the cycle of violence.

For these reasons, we urge this committee to support this legislation. Thank you for allowing the Hawai`i Police Department to testify on H.B. 1003, HD2.

Sincerely,

  
HARRY S. KUBOJIRI  
POLICE CHIEF