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**LATE TESTIMONY**

**TESTIMONY IN OPPOSITION TO  
SB 2314 – RELATING TO ABUSE OF FAMILY OR HOUSEHOLD MEMBERS**

**Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i**

**Senate Committee on Judiciary and Labor  
February 1, 2016, 9:30 a.m., Conference Room 016**

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, OPPOSES SB 2314 – Relating to Abuse of Family or Household Members.

The intent of SB 2314 is to ensure defendants who have been charged with the offense of abuse of family or household member (hereinafter referred to as AFHM) is ineligible for a deferred acceptance of guilty plea or nolo contendere plea regardless on whether the defendant pleads to a lesser included offense. Although the intent is well founded, the practical application has far reaching negative effects that would drastically affect not only the prosecution of such cases, but also the Judiciary in their ability to manage and control the extensive caseload that would be created. Presently, the Judiciary employs one courtroom at the Puuhonua Kaulike Judiciary Complex in Lihu'e, which among other things handles AFHM cases. This courtroom is responsible for processing more than 400 domestic violence cases each year.

Our Office fully supports protecting victims of domestic violence, however, opposes the methods proposed in SB 2314. Every AFHM case is unique, whether it be the parties involved, injuries sustained or surrounding facts and circumstances leading up to the offense. In that same respect, protection for each victim and their family is also unique. In most cases, ensuring that a defendant is punished for the charge of AFHM is the ideal outcome, however, the real issue faced is with ensuring victims of domestic violence follow through and assist in the prosecution. In a fair number of

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AFHM cases, not only do victims and defendants continue to live with each other during the pendency of their case but most times the couple also shares common children with one another. It is also very common that between the time of arrest and the case being set for trial, defendants and victims reconcile and subsequently do not wish to follow through with prosecution. In situations where there is a difficulty in locating a victim or the victim is reluctant to cooperate, an amendment assists in ensuring that the defendant is not only monitored by the courts for at least a year but that the defendant also receives at minimum domestic violence intervention treatment which is monumental to the rehabilitation process.

Section 1 of SB 2314 attempts to illustrate the idea that “defendants originally charged with this offense (AFHM) have the option of pleading to a lesser included offense”. To clarify, the defendant does not have the option neither does the court have the discretion of pleading to a lesser offense. That amendment is only at the discretion of the prosecutor after careful and close review of the facts and evidence of the case. Further, in situations where an amendment is proposed, and a defendant in fact moves for a deferral, the court will always have the discretion and final decision to grant or deny the motion for deferral. Additionally, our Office has concerns over the far reaching effect and unintended consequences that the language creates in SB 2314. One example would be a situation where a defendant was charged with AFHM, however, through our investigation, our Office determines that there is a lack of Family Court Jurisdiction based on the insufficient relationship between the victim and the defendant. Subsequently, we would be required to amend the offense purely for a jurisdictional issue. In that scenario, SB 2314 effectively precludes that defendant the opportunity of a deferral in a situation where that same defendant might otherwise be eligible for a deferral.

Accordingly, we OPPOSE SB 2314. We request that your Committee HOLD the Bill.

Thank you very much for the opportunity to provide testimony on this Bill.



## Hawaii Women's Coalition

### **Senate Committee on Judiciary and Labor**

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

**LATE TESTIMONY**

DATE: February 1, 2016

TIME: 9:30 a.m

PLACE: Conference Room 16

### **Strong Support of SB 2314**

Aloha, Chair Keith-Agaran, Vice Chair Shimabukuro, and members. The Coalition is in strong support of SB 2314 relating to the abuse of a household family member.

Currently, if charged with the misdemeanor crime of Abuse of a Family Household Member (709-906), one is not eligible to enter a plea of deferred acceptance of guilt (DAG) or deferred acceptance of nolo contendere (DANC). The disqualification for a deferred sentence is appropriate due to the nature of the offense i.e. family violence. It sends an accurate message to offenders, victims, and the community at large that offenders who engage in violence against family members will not be offered the opportunity to compromise and that abuse is an offense that one must take full responsibility for.

Unfortunately, it is all too common that abusers are afforded the opportunity to plead to a lesser offense such as assault, harassment, etc., which then allows for a deferred sentence. This action dilutes the intention of the Abuse of a Family Household Member statute to hold offenders accountable, keep record of the person's use of violence, and communicate a message of no tolerance to our community. One could speculate that this arrangement in fact fosters escalation of violence by perpetrators.

We support and encourage the prohibition of DAG and DANC pleas as a viable option for offenders of family violence as this process undermines the strong, and necessary message of AFHM statute 709-906 deterring citizens from committing the crime of family violence, and by holding offenders who do so accountable for their actions.

Again, The Coalition is in strong support of this bill. Please pass this important bill out of committee.

Mahalo for the opportunity to testify,

Ann S. Freed Co-Chair, Hawai'i Women's Coalition

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To: Hawaii State Senate Committee on Judiciary and Labor  
Hearing Date/Time: Monday, February 1, 2016, 9:30 a.m.  
Place: Hawaii State Capitol, Rm. 016  
Re: Testimony of YWCA O'ahu in support of S.B. 2314, Relating to the Offense of Abuse of a Family or Household Members

Good afternoon Chair Keith- Agaran, Vice Chair Shimabukuro, and members of the committee. On behalf of YWCA O'ahu we thank you for the opportunity to share our testimony in **strong support of SB 2314** relating to the offense of abuse of a family or household members.

Currently, if charged with the misdemeanor crime of Abuse of a Family Household Member (709-906), one is not eligible to enter a plea of deferred acceptance of guilt (DAG) or deferred acceptance of nolo contendere (DANC). The disqualification for a deferred sentence is appropriate and is due to the nature of the offense being specific to family violence. It sends an accurate message to offenders, victims, and the community at large that offenders who engage in violence against family members will not be offered the opportunity to compromise and that abuse is an offense that one must take full responsibility for.

Unfortunately, a number of abusers are afforded the opportunity to plead to a lesser offense such as assault, harassment, etc., which then allows for the deferred sentence to become available to the offender. This action dilutes the intention of the Abuse of a Family and Household Member statute to hold offenders accountable, keep record of the person's use of violence, and communicate a message of no tolerance to our community.

We support and encourage the prohibition of DAG and DANC pleas as a viable option for offenders of family violence as this process undermines the strong, and necessary message of AFHM statute 709-906 deterring citizens from committing the crime of family violence, and by holding offenders who do so accountable for their actions.

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

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 01, 2016 9:37 PM  
**To:** JDLTestimony  
**Cc:** [REDACTED]  
**Subject:** \*Submitted testimony for SB2314 on Feb 1, 2016 09:30AM\*

## **SB2314**

Submitted on: 2/1/2016

Testimony for JDL on Feb 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Campagna	Individual	Support	No

## Comments:

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