The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 1, 2018, 2:00 pm
State Capitol, Conference Room 325

By
Catherine H. Remigio
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 2129, Relating to Domestic Violence.

Purpose: Amends the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties. Expands the family court's jurisdiction over certain enumerated offenses committed against family or household members. Repeals the prohibition on deferred acceptance of guilty or no contest pleas in cases involving abuse of family or household members. Requires that no-contact and stay-away orders issued during the pendency of a criminal case or as a condition of probation be enforced regardless of whether the defendant signed a written acknowledgment of the order, provided that the defendant was informed on the record of the terms and conditions of the order in open court. Requires that no-contact and stay-away orders issued during the pendency of trial cases involving abuse of family or household members or certain enumerated offenses be automatically converted after the defendant's conviction to a new protective order that shall remain in effect for a fixed reasonable period as the court deems appropriate, unless the victim or witness requests otherwise.

Judiciary's Position:

The Judiciary supports the intent of this bill and appreciates the Legislature’s efforts in this area. We respectfully offer the following comments.

Currently, there are two jury courtrooms assigned to the family court in the first circuit. Of the enumerated offenses listed, the Judiciary estimates there were 9242 criminal cases from

the 2016-2017 time period. With a *conservative* estimate of 1 in 10 of these pending cases that might involve a family/household member, nearly 1000 cases could be added to the caseload of these two courtrooms in addition to the HRS Chapters 709 and 586 cases already pending. This would require a sizeable infusion of additional resources to Family Court before this bill can be implemented.

This bill will also require increased funding for more domestic violence intervention programs and more parenting programs. Without additional funding (over and above the budget items in the Judiciary's proposed budget), Defendants will not be able to access required services in a timely manner. The Department of Public Safety will also require more funds to augment their domestic violence intervention and parenting programs for those offenders sentenced to imprisonment.

Thank you for the opportunity to testify on this measure. The Judiciary looks forward to working with the Legislature as this bill progresses.

Office of the Public Defender
State of Hawaii

Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary

February 1, 2018, 2:00 p.m.

LATE

H.B. No. 2129: RELATING TO DOMESTIC VIOLENCE

Chair Nishimoto and Members of the Committee:

This measure proposes sweeping changes to Chapter 709, Hawaii Revised Statutes. The creation of a petty misdemeanor offense of abuse of a family or household member, a felony offense of abuse involving a minor, immediate incarceration for failure to complete DVI counselling are some of the more notable proposals in this measure.

We believe that this measure constitutes a veiled attempt to deny a defendant his or her constitutional right to a jury trial and proposes changes that will severely impact the Judiciary's ability to administer its caseload, with an unintended consequence being dismissals of cases for unnecessary delay. In as much as we believe that this measure violates established case law and the Hawaii and United States Constitution, the Office of the Public Defender strongly opposes all but one of the provisions of H.B. 2129.

The following is section-by-section commentary on this measure:

Section 2. Post-conviction protective orders. We do not oppose the language proposing an automatic extension of the no-contact and/or stay away order. However, we have concerns about the length of the extension, for a "fixed reasonable period." There should be limit to the length of the extension. What constitutes a "fixed reasonable period?" Without specific limits, the time-period becomes vague, and subject to wide discrepancies in the length of no-contact and/or stay away orders. Furthermore, the court should determine on the record that the victim or witness in the case desires an extension of the no-contact order.

Section 3. Chapter 709, Family Court Jurisdiction. Section 3 would give exclusive jurisdiction to all enumerated cases committed against a family or household member. Family court would have exclusive jurisdiction over

these cases, even if no there were no attendant charges of abuse of a family or household member. Thirty-two (32) types offenses would be added the exclusive jurisdiction of the family court. This would place a tremendous hardship on the judiciary, as they would be ill-equipped to reallocate district and circuit court judges to sit as family court judges to hear these cases. We suppose that the purpose of this section is to have family court judges, who are experience in handling abuse of family or household member cases, and who have been trained in handling domestic violence cases. Our district and circuit court judges are already handling a multitude of cases which involve family or household members as victims and are experienced in the unique issues that are presented by these cases. For example, an estranged spouse may vandalize their spouse's automobile, and be charged with criminal property damage. These kinds of cases are common and are currently being handled by our judges without difficulty or controversy. Judges receive training regularly throughout the year. Handling domestic violence cases can and should be sufficient to address these concerns.

Section 6. Degrees and penalties (page 22). This portion of the bill would categorize abuse of a family or household member into first, second, and third-degree offenses. We strongly oppose this portion of SB 2343, as it would make it a felony to intentionally or knowingly cause bodily injury to a family or household member who is a minor and create a third-degree abuse offense for what is essentially criminal harassment.

A parent relying on a parental discipline defense which resulted in pain (however brief) would place the parent in jeopardy of a felony conviction, and up to five years in prison. This corrupts the ideas of the model penal code, in that it heightens the penalty specifically due to the status of the victim, and not because of the seriousness of the harm caused. Abuse of a spouse is still a misdemeanor offense and does not become a felony unless it involved choking, or repeated offenses. If there is a more severe injury, such as a broken bone or major laceration, the prosecution can charge the perpetrator with assault in the second degree, a class C felony.

Extension of time for enhanced sentencing involving repeat offenders (page 23). This section would extend the time for treatment as a repeat offender from one year to five years for a second offense, two years to ten years for a third offense and add a one-hundred-and-eighty-day minimum mandatory jail sentence for a third or subsequent offense. There is no evidence that an extension of the time period is justified or needed to protect the public, as there is no evidence of a large number of repeat offenders.

The court can sentence these repeat offenders to the maximum jail and prison terms, even if they fall out of the current time-period for treatment as a repeat offender. The court, through the prosecutor's office is always made well-aware of the existence of prior convictions of defendants that appear before them.

We propose that subsection (iii) on page 24 of this bill be moved from its current position inserted into section 709-906(5)(a), after page 23, line 2. It is a felony offense and should be classified as abuse of a family or household member in the first degree.

Abuse of a family or household member in the third degree. We strongly oppose the creation of a petty misdemeanor offense of abuse of a family or household member. Physical contact in this case, would not be required. A person involved in a family argument could be charged with abuse and be subject to the prohibition of possession of a firearm, and face the potential loss of employment, if that person is a law enforcement officer or military personnel. Furthermore, we believe this is an attempt to eliminate or deny the right of a defendant his or her constitutional right to a jury trial. The prosecution could choose to amend all cases that they believe would not play well in front of a jury to third degree abuse in an attempt to deny a defendant a forum before a jury.

In the First Circuit, most defendants exercise their right to a jury trial guaranteed to them by Article I, Section 14 of the Constitution of the State of Hawaii, and the Sixth Amendment to the United States Constitution. In Hawaii, a defendant has a constitutional right to a jury trial for "serious crimes." An offense is presumptively petty if the maximum jail is thirty days or less. The only reason the proponents of this measure propose a reduction from a misdemeanor to a petty misdemeanor for a first offense is to deny the right to a jury trial. In the First Circuit, defendants who proceed to jury trial have high acquittal rate. Our attorneys' success rate at jury trial is eighty to ninety percent. One of our attorneys who recently finished a four-month rotation in the family court criminal division had a total of nine jury trials, eight of which resulted in jury acquittals. While there is a presumption that a person charged with a petty misdemeanor is not entitled to a jury trial, we believe that this presumption will be rebutted by the requirement of a mandatory jail sentence, progressive severity of punishment for repeat offenders, the length of probation and mandatory domestic violence intervention classes. If this measure passes, we intend to appeal the denial

of a right to a jury trial, which will result in hundreds, perhaps thousands of cases being put on hold during the appellate process.

Immediate incarceration for failure to complete DVI or parenting classes (page 25). This provision does not consider common reasons for being unable to complete DVI and/or parenting classes. Probationers have been terminated from classes if they fail to attend a class due to illness or failure to receive permission from their employer. If the classes have been completed, but the probationer cannot pay for the cost of their classes in-full, they will not receive a certificate of completion. This proposal removes all discretion from the court, and we believe, violates the Due Process clause of the Constitution.

No contact order (page 28). While the court can order the defendant not to have any contact with any witness involved in his or her criminal case, we do not believe the court should have jurisdiction to order a witness to stay away from the defendant. In these types of cases, we must be careful to not punish victims, either by charging them with contempt of court, or issuing warrants for their arrest due to their non-appearance in court.

Deferred acceptance of guilty or no contest pleas (page 32). We believe that allowing courts to grant deferrals will have the greatest impact to reducing the backlog of cases on the domestic violence calendar. A clear majority of defendants that appear on the domestic violence calendar are first offenders. They are most remorseful in the beginning stages of the prosecution. If presented with an opportunity to take responsibility for their actions and at the same time be given a chance to clear their record, we believe many defendants will jump at this opportunity. While we achieve great results with cases that we take to jury trial, there is always an uncertainty of acquittal.

To our opponents who believe that this provision runs contrary to public safety, and that these kinds of defendants do not deserve an opportunity to defer their prosecution, we say that this provision does more for public safety than the situation that exists today. Right now, cases are being dismissed for violation of speedy trial, due to court congestion. Cases are being dismissed due to non-cooperative victims. Cases are being dismissed and recharged has harassment in the district court. Defendants are being acquitted by juries at a high rate. The afore-mentioned defendants are not receiving court supervision and domestic violence intervention classes. Defendants taking advantage of deferrals will reduce court congestion,

reducing the number of speedy trial (Rule 48) dismissals. These defendants will be required to attend DVI classes and be subject to court supervision. With less cases on the trial docket, prosecutors will be able to spend more time and resources on the more serious cases, resulting in a higher conviction rate. If the defendants fail to complete their court-ordered counseling, a conviction for abuse of household member would be entered, also increasing the conviction rate. If some of these defendants' cases are dismissed because of their deferral, wouldn't this be preferable to dismissals without court supervision and/or counseling?

This legislature has continuously recognized the fact that criminal offenses that occur within the family unit deserve special attention. A person convicted of misdemeanor abuse of family or household member faces a mandatory minimum jail term of forty-eight hours and a referral to a domestic violence intervention program. A person convicted of committing a second offense within one year of a prior conviction is deemed a "repeat offender." A third offense is classified as a class C felony. We believe that the current laws are sufficient for public safety, and the number one issue is court congestion. The only portion of this bill that addresses court congestion is the section permitting deferrals for abuse of household or family member.

Apart from the provision allowing for deferrals, the Office of the Public Defender strongly opposes this measure. Thank you for the opportunity to be heard on this matter.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018

LATE

ON THE FOLLOWING MEASURE:
H.B. NO. 2129, RELATING TO DOMESTIC VIOLENCE.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 1, 2018 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General supports the intent of this bill while noting the following concerns:

Section 2 of the bill (page 4, line 21 to page 5, line 10) proposes the automatic issuance of a protective order post-conviction. First, this proposition violates constitutional principles of Due Process insofar as the defendant would not be afforded the ability to challenge institution of the order. Second, the duration period is unconstitutionally vague as it fails to identify any parameters on time frame. Third, the presiding judge and representing parties may be disqualified from a subsequent proceeding should the defendant be charged with violating this order; thereby frustrating the judicial process. These same concerns also apply to section 5, on page 14, lines 9 to 21, amending section 706-624(2)(g)(ii), Hawaii Revised Statutes (HRS). Instead, perhaps the conviction could constitute prima facie grounds for the institution of a pending application for an order for protection before the family court. In that action, the victim would be alleviated from having to re-litigate the grounds for the order while the defendant would be afforded the opportunity to be heard on the issue.

Section 3 of the bill adds to chapter 709, HRS, a new section (page 5, lines 14 to 21, to page 8, lines 1 to 7) that proposes a list of enumerated offenses to fall within the family court's exclusive jurisdiction. The preamble cites statistics and supervision as the motivations behind this revision. A circuit or family court could appropriately accomplish

these responsibilities. The probation section in part II of section 706, HRS, could be revised to include requirements for domestic violence intervention and proof of compliance hearings. Moreover, each domestic violence case could be flagged by the department prosecuting the case for statistical reference purposes. Jurisdictional constraints unnecessarily complicate criminal prosecutions. Convictions have been vacated when they were obtained with the incorrect jurisdiction designation.

Section 6 of the bill proposes several amendments to HRS Section 709-906:

Page 22, line 10, to page 24, line 19, propose revisions to the penalty section for this offense. First, this bill seeks to enlarge the penalty for conduct committed against a minor from a misdemeanor to a class C felony. The legal definition for "physical abuse" essentially means "pain." See State v. Nomura, 79 Hawaii 413 (1996) and section 707-700, HRS. This means a parent who causes pain to his/her minor child may be lodged with a felony conviction. Second, the proposed petty misdemeanor offense essentially tracks the language for Harassment in section 711-1106(1)(a), HRS. By law, Harassment is not a lesser-included offense of Assault in the Third Degree. Likewise, this petty misdemeanor abuse charge would not be a lesser-included offense of misdemeanor abuse. Therefore, this would not be an available option for juries and judges to consider. Accordingly, this revision would not provide a practical option for charging or conviction purposes.

Page 25, lines 4 to 12, seek to impose mandatory incarceration for defendants who fail to complete their court-ordered domestic violence intervention and parenting classes. A defendant should be afforded reasonable due process before imposition of this consequence.

Page 28, lines 8 to 12, seek to create a mandatory no-contact order between the defendant and complaining witness. Such orders are not, and should not be, sought without the approval of the complaining witness. When requested, no contact orders are routinely sought by the prosecution pursuant to section 804-7.1, HRS. Also, this provision would be even more problematic in offenses involving minors.

Section 8 of the bill (page 32, lines 6 to 8) amends section 853-4, HRS, which governs deferred pleas. Section 853-4(13)(N), HRS, (page 34, line 13) would need to

be repealed to accomplish the intended purpose of allowing deferred pleas in these cases. The wording will need to be refined if the Legislature intends that deferred pleas should only be permissible in misdemeanor and petty misdemeanor offenses. Finally, if it is the Legislature's intent to permit only one such deferred plea, wording should be included to set that out explicitly.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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CHASID M. SAPOLU
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LATE

THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

February 1, 2018

RE: H.B. 2129; RELATING TO DOMESTIC VIOLENCE.

Chair Nishimoto, Vice-Chair San Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony, supporting the intent of H.B. 2129, with certain concerns and suggestions.

The Department strongly agrees that significant changes are needed to our Family Court system, in order to seek justice on behalf of Hawaii' victims of domestic violence, protect public safety, and decrease the number of case dismissals that are occurring in the First Circuit. To further this goal, the Department has previously submitted legislative bills that would increase the number of judges and courtrooms available for domestic violence jury trials [S.B. 2949 (2012); HB 2351 (2012)], and supported similar bills that were later introduced by the Judiciary; unfortunately, none of those bills resulted in more domestic violence jury trial courtrooms or judges. This year, the Department submitted a bill that would exclude trial delays attributed to "court congestion," from the limited time that the State is permitted to bring a case to trial [S.B. 2175; H.B. 1772].

In-line with our efforts to make the system more streamlined and effective at processing domestic violence cases, the purpose of H.B. 2129 is to:

- Section 2 & 5 – Automatically convert no-contact or stay away orders to orders for protection, upon conviction;
- Section 3 - Enumerate additional offenses to be included under Family Court's jurisdiction, if committed against a family or household member;
- Section 4 – Prohibit Family Court from waiving jurisdiction over the offense of Abuse of a family or household member, or the other enumerated additional offenses from Section 3;
- Section 5 & 7 – Require enforcement of no-contact and stay away orders, if defendant was informed of the terms of the order in open court;
- Section 6 – Expand the definition of "family or household member" to include current and former dating relationship; establish 3 different penalty-levels for Abuse of Family or

Household Member (1st/2nd/3rd degree) with various mandatory sentencing provisions, including domestic violence intervention and/or parenting classes; require maximum incarceration if offenders are non-compliant with mandatory classes or any other conditions of sentencing;

- Section 8 – Allow deferred pleas for the offense of abuse of family or household member.

Section 3 (pp. 5-8):
If the Legislature is inclined to include numerous other offenses under Family Court jurisdiction—when committed against a family or household member—it would seem to be more efficient, and involve less risk of missing any future offenses enacted, to simply state, "any offense contained under Chapter 707 or 708, except..." Thus, this would encompass certain offenses that are not currently enumerated on the list, such as Sections 707-713 and -714 (reckless endangering), while avoiding certain offenses that do not appear to be applicable, such as Section 708-814.5 (criminal trespass onto public parks and recreational grounds), or Section 708-816.5 (entry upon the premises of a shelter).

Section 4 (p. 9, lines 17-21):
The Department is concerned that providing exclusive jurisdiction to Family Court (over Abuse of a family or household member, and the offenses enumerated in Section 3)—with no option to waive jurisdiction—may lead to even more court congestion and case dismissals in Family Court (First Circuit), if the Judiciary is unable to reorganize its system to accommodate the new caseload.

Section 6
In general, the Department is supportive of dividing the offense of Abuse of a family or household member into 3 different penalty levels. While this is unlikely to address the First Circuit's ongoing challenges with court congestion and case dismissals, it may improve public awareness about the dynamics of domestic violence. Still, to be more consistent with the "domestic violence continuum," we suggest that the Committee expand the offense of Abuse of family or household member in the third degree (p. 24, lines 13-19), to reflect all types of "harassment" found in Section 711-1106, as domestic violence often begins with non-physical forms of degradation, intimidation and control.

(p. 19, lines 5-6; and p. 20, lines 1-2): Using the phrase, "presents an imminent danger of inflicting abuse" (or something similar)—in place of "created an imminent danger"—would be more appropriate, if the purpose is to identify the abuser rather than to identify the initial causation.

(p. 20, line 7): It would be appropriate to clarify that electronic communications are also prohibited, in addition to telephone and in-person communications.

(p. 22, line 19 – p. 23, line 2): It is unclear whether all affected minors must be under 14 years of age, or only the minors who are "in the presence of" bodily injury against a family or household member. If the latter, no change is needed; if the former, a comma should be added to page 23, line 1, after "presence of a minor". In addition, the creation of a class C felony for the abuse of a minor may require additional appropriations to the Department, to handle the increased felony caseload.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supporting the intent of H.B. 2129, with the noted concerns and suggestions. Thank you for the opportunity to testify on this matter.

HB-2129
Submitted on: 1/30/2018 3:42:02 PM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Maui Police Department	Oppose	No

Comments:

Appreciate the intent, as I understand it. However, I have concerns regarding issues attached to a petty misdemeanor conviction.

In addition, I disagree with moving this list of stated felonies into Family Court.

POLICE DEPARTMENT

CITY AND COUNTY OF HONOLULU

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WO-KK
OUR REFERENCE

February 1, 2018

The Honorable Scott Y. Nishimoto, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

SUBJECT: House Bill No. 2129, Relating to Domestic Violence

I am Walter Ozeki, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2129, Relating to Domestic Violence, with proposed amendments.

How we deal with problems of domestic violence is a continually evolving process and is in an area in which law enforcement must continue to strive to improve upon. It is the opinion of the HPD that House Bill No. 2129 provides the most comprehensive package of reforms, which address the areas of concerns, which were raised in our collaboration with domestic violence advocates and the legislature. However, we have some concerns with specific areas of the statute as follows:

Page 13, Sections 5 (2) (g) (i) seeks to enforce the no-contact or stay-away order regardless of whether defendant signed a written acknowledgement of the order or not. The order becomes enforceable as long as the defendant was present and informed of the terms and conditions of the order in open court.

The HPD believes that in order to establish probable cause to commence with an arrest stemming from a violation of a no-contact or stay-away order, a clear process needs to be established to ensure that law enforcement would be able to obtain a copy of the order. Further, it should be notated on the order that the terms and conditions of the order were given in open court and that the defendant was present.

In part (ii) of this same section, since a no-contact or stay-away order imposed under this statute may be dissolved at the victim's or witness's request, it cannot be assumed that

such an order will automatically be converted to a permanent written order. It is unclear how law enforcement will determine if the order is still valid, particularly in cases when the violation occurs after hours, on weekends, or holidays.

While we agree with the intent of Page 22, Section 6 (5) (a) (ii), the statute as written could potentially create felons out of parents who legitimately disciplines a minor or juvenile siblings who engage in a mutual affray.

Page 28, Section 7 (10) amends Section 804-7.1 HRS, Conditions of release on bail, recognizance, or supervised release, to add that law enforcement shall enforce the no-contact or stay-away order even if the defendant did not sign the order and was informed in open court of the terms and conditions of the order. It is unclear how law enforcement will determine that a defendant was informed on the record of the terms and condition of the order in open court, particularly in cases where the violation occurs after hours, on weekends, or holidays.

As enumerated in section 804-7.2, (c), a law enforcement officer can only enforce a violation of this order if the defendant had been released on a felony charge. All other violations would require the issuance of a court order pertaining to bail or a warrant to be issued, which would be applied for by the prosecutor's office.

The HPD supports House Bill No. 21296, Relating to Domestic Violence, but requests the consideration that the areas of concern be examined and addressed in any subsequent revisions of this bill.

Thank you for the opportunity to testify.

Sincerely,

Walter Ozeki, Captain
Criminal Investigation Division

APPROVED:

Susan Ballard
Chief of Police

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy

Rebecca Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

February 1, 2018

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Office of the Prosecuting Attorney, County of Kauaʻi STRONGLY SUPPORTS HB 2129, Relating to Domestic Violence. This measure makes various improvements to Hawaiʻi's domestic violence criminal statutes intended to give additional flexibility to prosecutors, courts, and defense lawyers in crafting appropriate dispositions to cases involving domestic violence.

Specifically, the bill amends the offense of abuse of family or household members to provide for felony, misdemeanor, and petty misdemeanor penalties, expands the family court's jurisdiction over certain enumerated offenses committed against family or household members, repeals the prohibition on deferred acceptance of guilty or no contest pleas in cases involving abuse of family or household members, requires that no-contact and stay-away orders issued during the pendency of a criminal case or as a condition of probation be enforced regardless of whether the defendant signed a written acknowledgment of the order, provided that the defendant was informed on the record of the terms and conditions of the order in open court, and requires that no-contact and stay-away orders issued during the pendency of trial cases involving abuse of family or household members or certain enumerated offenses be automatically converted after the defendant's conviction to a new protective order that shall remain in effect for a fixed reasonable period as the court deems appropriate, unless the victim or witness requests otherwise.

The provisions in this measure were arrived at after extensive outreach and consultation by the Women's Legislative Caucus and included the participation

of many stakeholders in the criminal justice and law enforcement community. This inclusive process resulted in a bill that is truly fair and makes a multitude of much-needed improvements to HRS Section 709-906. The amendments will result in streamlined prosecutions, decreased court congestion, increased access to protections for victims, and greater access to services for offenders who need treatment, rehabilitation, and yes, consequences.

Our Office is grateful for the work of the WLC in crafting this legislation and we are in enthusiastic support of the bill.

Accordingly, the Office of the Prosecuting Attorney, County of Kauaʻi, requests that this measure be PASSED.

Thank you very much for the opportunity to testify.

HB-2129
Submitted on: 1/31/2018 10:06:16 AM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Yuki Lei Sugimura	Maui County Council	Support	No

Comments:

HB-2129
Submitted on: 1/31/2018 11:04:25 AM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Support	No

Comments:

The Department of the Prosecuting Attorney, County of Maui SUPPORTS HB 2129, which will provide much needed amendments to domestic violence statutes to help address the continuing problem of domestic violence in our community. The Department requests that this measure be PASSED.

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

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
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February 1, 2018

RE: H.B. 2129; RELATING TO DOMESTIC VIOLENCE.

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The Department strongly agrees that significant changes are needed to our Family Court system, in order to seek justice on behalf of Hawaii' victims of domestic violence, protect public safety, and decrease the number of case dismissals that are occurring in the First Circuit. To further this goal, the Department has previously submitted legislative bills that would increase the number of judges and courtrooms available for domestic violence jury trials [S.B. 2949 (2012); HB 2351 (2012)], and supported similar bills that were later introduced by the Judiciary; unfortunately, none of those bills resulted in more domestic violence jury trial courtrooms or judges. This year, the Department submitted a bill that would exclude trial delays attributed to "court congestion," from the limited time that the State is permitted to bring a case to trial [S.B. 2175; H.B. 1772].

In-line with our efforts to make the system more streamlined and effective at processing domestic violence cases, the purpose of H.B. 2129 is to:

- Section 2 & 5 – Automatically convert no-contact or stay away orders to orders for protection, upon conviction;
- Section 3 - Enumerate additional offenses to be included under Family Court's jurisdiction, if committed against a family or household member;
- Section 4 – Prohibit Family Court from waiving jurisdiction over the offense of Abuse of a family or household member, or the other enumerated additional offenses from Section 3;
- Section 5 & 7 – Require enforcement of no-contact and stay away orders, if defendant was informed of the terms of the order in open court;
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Household Member (1st/2nd/3rd degree) with various mandatory sentencing provisions, including domestic violence intervention and/or parenting classes; require maximum incarceration if offenders are non-compliant with mandatory classes or any other conditions of sentencing;

- Section 8 – Allow deferred pleas for the offense of abuse of family or household member.

Section 3 (pp. 5-8):
If the Legislature is inclined to include numerous other offenses under Family Court jurisdiction—when committed against a family or household member—it would seem to be more efficient, and involve less risk of missing any future offenses enacted, to simply state, "any offense contained under Chapter 707 or 708, except..." Thus, this would encompass certain offenses that are not currently enumerated on the list, such as Sections 707-713 and -714 (reckless endangering), while avoiding certain offenses that do not appear to be applicable, such as Section 708-814.5 (criminal trespass onto public parks and recreational grounds), or Section 708-816.5 (entry upon the premises of a shelter).

Section 4 (p. 9, lines 17-21):
The Department is concerned that providing exclusive jurisdiction to Family Court (over Abuse of a family or household member, and the offenses enumerated in Section 3)—with no option to waive jurisdiction—may lead to even more court congestion and case dismissals in Family Court (First Circuit), if the Judiciary is unable to reorganize its system to accommodate the new caseload.

Section 6
In general, the Department is supportive of dividing the offense of Abuse of a family or household member into 3 different penalty levels. While this is unlikely to address the First Circuit's ongoing challenges with court congestion and case dismissals, it may improve public awareness about the dynamics of domestic violence. Still, to be more consistent with the "domestic violence continuum," we suggest that the Committee expand the offense of Abuse of family or household member in the third degree (p. 24, lines 13-19), to reflect all types of "harassment" found in Section 711-1106, as domestic violence often begins with non-physical forms of degradation, intimidation and control.

(p. 19, lines 5-6; and p. 20, lines 1-2): Using the phrase, "presents an imminent danger of inflicting abuse" (or something similar)—in place of "created an imminent danger"—would be more appropriate, if the purpose is to identify the abuser rather than to identify the initial causation.

(p. 20, line 7): It would be appropriate to clarify that electronic communications are also prohibited, in addition to telephone and in-person communications.

(p. 22, line 19 – p. 23, line 2): It is unclear whether all affected minors must be under 14 years of age, or only the minors who are "in the presence of" bodily injury against a family or household member. If the latter, no change is needed; if the former, a comma should be added to page 23, line 1, after "presence of a minor". In addition, the creation of a class C felony for the abuse of a minor may require additional appropriations to the Department, to handle the increased felony caseload.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of H.B. 2129, with the noted concerns and suggestions. Thank you for the opportunity to testify on this matter.

hscadv
HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE
1164 Bishop Street, Suite 1609, Honolulu, HI 96813

DATE: JANUARY 31, 2018

TO: STATE OF HAWAII
HOUSE COMMITTEE ON JUDICIARY
REP. SCOTT Y. NISHIMOTO, CHAIR
RE. JOY A. SAN BUENAVENTURA, VICE CHAIR
REP TOM BROWER
REP. GREGG TAKAYAMA
REP. CHRIS LEE
REP. BOB MCDERMOTT
REP. DEE MORIKAWA
REP. CYNTHIA THIELEN

FROM: STACEY MONIZ, EXECUTIVE DIRECTOR
HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

RE: TESTIMONY IN SUPPORT FOR HB2129
RELATING TO DOMESTIC VIOLENCE

Aloha:

On behalf of the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 22 member organizations across the state, I am submitting testimony in SUPPORT of HB2129 which amends the crime of Abuse of Family and Household Member to provide for felony, misdemeanor and petty misdemeanor classifications. It also expands the Family Court's jurisdiction to related offenses and requires automatic stay away orders during criminal proceedings.

HSCADV and our member organizations helped coordinate local meetings of major stakeholders in each of the four counties across the state where courts, law enforcement, prosecutors and other system members listened to the experiences of domestic violence survivors and advocates. These sessions were very powerful and created systems changes in each of the counties and helped shape the direction of this legislation. After hearing from survivors and advocates across the state, the goal was to minimize trauma impact on survivors as they go through the system, reduce unnecessary continuances and protect victims and the community.

We appreciate that we can hear the needs and voices of survivors in how this legislation was written and sincerely hope that this new legislation will help create safety and swift protections for victims of domestic violence as well as quick resolutions, convictions and accountability for perpetrators of domestic violence.

As stated above, HSCADV supports HB2129.

Thank you for your consideration of our testimony. If you would like to discuss this or have any questions, I can be reached at 808.832.9613x4 or via email at smoniz@hscadv.org.

HB-2129
Submitted on: 1/30/2018 3:28:02 PM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

TO: Chair Nishimoto
Vice Chair San Buenaventura
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Support HB 2129 Relating to Domestic Violence

Aloha. This is a very important Bill for victims/survivors of domestic violence. It is a last resort for survivors to seek assistance from outside their community. From strangers. From the criminal or civil justice system. When they do, it must work to protect them, hold perpetrators accountable and pave the way for remedy as they navigate a path to freedom and self-sufficiency.

It has been a long time since the system uniformly worked well for our island families or individuals. The current law was the best work, and an innovation when it was first devised and passed. It was a collaborative undertaking. Its enforcement has been uneven. It is our great hope that the Bill before you today represents an improvement and an opportunity for system reform that is desperately needed.

Too few perpetrators of relationship violence get arrested. But those that do often do not result in convictions in court. Sanctions are few. And plea bargains have historically delivered a lukewarm message that family and relationship violence is not tolerated or acceptable.

HB 2129 is a proposal that grew out of important work, life altering work, done by the Women's Legislative Caucus during Interim, in partnership with the Judiciary, Department of the Attorney General, police departments and prosecutors' offices in each county, domestic violence programs and the incomparable voices of survivors brave enough to tell their story.

The amendments to the statute create options for law enforcement and system intervention. Three degrees of the offense provides latitude for officers, courts, attorneys and judges to respond in a way that offers protection, and direction for personal responsibility. Interventions are not sought unless there is criminal justice involvement; abusers do not wake up the morning after an assault, look at their partners bruises and say, "my god, I need help." Unfortunately.

DOMESTIC VIOLENCE ACTION CENTER
ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198
LEGAL HELPLINE: (808) 531-3771
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WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG
EMAIL: DVAC@STOPTHEVIOLENCE.ORG

It is the community's job to put in place a system that is responsive, effective and appropriate. What is contained in HB 2129 creates the framework needed to hold offenders accountable, and offer protection.

We support the three degrees of offenses.

We support the imposition of a court ordered no contact order, and its conversion to a protective order. (The enforcement of these no contact orders/protective orders in this format will require cooperation with law enforcement so violations will be treated appropriately).

We support the standardization and inclusion of Proof of compliance hearings for defendants ordered to participate in sanctioned batterers intervention programs. This is a key part of oversight and accountability.

We support the inclusion of other crimes of violence against family members and partners. It should be made clear, though, that the Batterers Intervention programs are not designed to provide intervention for offenders of most serious crimes. More scrutiny needs to be given to appropriate treatment and intervention for serious crimes. Interventions are not sought unless there is criminal justice intervention.

Thank you for this opportunity to testify.

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LATE

HB-2129
Submitted on: 1/31/2018 10:40:46 PM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawaii Women's Coalition	Support	Yes

Comments:

Aloha Chair Nishimoto, Vice Chair San Buenaventura and members,

We stand in support of this measure that would add depth and teeth to laws that seek to protect victims of Domestic Violence. The status quo is not working as domestic violence is rife in our society and the justice system has been lagging behind.

Mahalo for the opportunity to testify,

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

Good Afternoon Chair Nishimoto, Vice Chair San Buenaventura & House Judiciary Committee Members,

Thank you for this opportunity to provide testimony to the matters raised in HB2129.

I am actually not sure how to respond because I am in need of further clarification to some of the recommendations presented, specifically with regards to the definition of "heard" under SECTION 3. Chapter 709, where it's being proposed that:

"…Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

§709- Offenses other than abuse of family or household members; family court jurisdiction. (1) Cases involving any of the following enumerated offenses shall be *heard* (italics added) by the family court…"

If the meaning of this section is for the subsequent enumerated offenses to be "heard" (as in to be *listened to* by the family court or to be defined as *informing* the family court) then I support what has been put forth

HOWEVER

if "heard" is going to be mean the actual transfer and processing of all such cases *from* the criminal court *to* the family court, then I vehemently oppose what has been put forth.

Domestic Violence is a crime NOT a personal problem or a character flaw; as such, crimes MUST be heard, conducted and processed in *criminal* court, not in family court!

As a matter of fact, if ***at any time*** during a family court matter or proceeding that reveals the commitment of any of the enumerated crimes (to include domestic violence or family abuse) the family court proceeding should be immediately suspended pending a referral to and an outcome from the criminal court.

I can get into GREAT DETAIL about crimes that have not only been committed but revealed during the pendency of family court cases, all which have been dismissed (as in completely ignored by the court and affiliated professionals) because (broadly) the commitment and/or revelation of such crimes has contradicted someone's sworn "professional assessment" or it muddies the path towards the end goal of "friendly" post-divorce co-parenting for "the best interests of the child".

AS IT IS there is no place for real crimes in family court cases. But one example:

In all my years of service, I have not seen one person ever arrested, charged or prosecuted in family court for perjury (whether that be a litigant or a professional) even with recorded and documented proof of it. Instead of zero tolerance to the letter of the law, broad judicial discretion waves away and excuses crimes like this and worse for the sake of "moving forward".

Instead of jail time when instances of child sexual abuse are revealed, I have seen the accused inexplicably be awarded sole custody of the victim and the accuser referred for psychological evaluation even WITH forensic evidence to substantiate the claim! Instead of being ordered to jail and being placed on the Sex Offender Registry as I imagine would happen in criminal court, child sex abusers identified in family court are ordered to Parenting Classes so they can learn to correct their "inappropriate behavior" because it's "in the child's best interests". It is in NO CHILD'S "best interests" to be placed anywhere near an adult, especially a once-trusted or loved family member, whose been abusive in any manner towards a child!

The ONLY response to any form of abuse is protection for the victim and prosecution for the perpetrator, nothing more and nothing less.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

HB-2129
Submitted on: 1/30/2018 3:14:04 PM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall		Support	No

Comments:

HB-2129
Submitted on: 1/30/2018 6:45:57 PM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
aimee sutherlin		Support	No

Comments:

As a Social Worker in the community who has worked for programs providing intervention for intimate partner violence survivors, offenders, and their children, I submit testimony in SUPPORT of HB2129 which amends the crime of Abuse of Family and Household Member to provide for felony, misdemeanor and petty misdemeanor classifications. It also expands the Family Court's jurisdiction to related offenses and requires automatic stay away orders during criminal proceedings.

Mahalo

Aimee Chung, MSW

HB-2129
Submitted on: 1/31/2018 8:18:38 AM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
George Pace	n/a	Oppose	No

Comments:

HB-2129
Submitted on: 1/31/2018 12:13:42 PM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Cadiente		Support	No

Comments:

HB-2129
Submitted on: 1/31/2018 2:48:09 PM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carmen Golay		Support	No

Comments:

I strongly support this bill which amends the abuse of family/household member statute.

LATE

HB-2129
Submitted on: 2/1/2018 2:03:36 PM
Testimony for JUD on 2/1/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments: