



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2638, S.D. 2, RELATING TO DOMESTIC VIOLENCE.

**LATE**

**BEFORE THE:**

HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS

**DATE:** Wednesday, March 11, 2020      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Landon M.M. Murata, Deputy Attorney General

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Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill but has concerns.

The purpose of this bill is to establish a five-year pilot project to strengthen government responses to domestic violence and increase offender accountability by: (1) amending the offense of abuse of family or household members to provide for a lesser included petty misdemeanor offense; (2) allowing a deferred acceptance of guilty plea in cases involving petty misdemeanor and misdemeanor abuse offenses and specifying that the deferral shall be set aside if the defendant fails to complete court ordered domestic violence intervention programs or parenting classes; and (3) requiring data collection and reporting to determine the effectiveness of the pilot project.

The wording of subsection (5)(b) being added to section 709-906, Hawaii Revised Statutes (HRS), in section 2, page 7, lines 17-21, and page 8, lines 1 and 2, does not create a lesser included petty misdemeanor abuse offense. Currently, the abuse of family or household member statute has several subsections ((7), (8), and (9)) that establish aggravating factors that, if present, turn a misdemeanor abuse offense into a felony abuse offense (e.g., choking, presence of a minor, etc.). It appears that the new wording is intended to create a mitigating factor that would turn a misdemeanor abuse offense into a petty misdemeanor abuse offense. There is nothing in the current

wording of section 2, page 7, lines 17-21, and page 8, lines 1 and 2, that would distinguish a petty misdemeanor abuse case from a misdemeanor abuse case. This list describing a petty misdemeanor covers virtually all of the most common methods of physically abusing someone and could result in either all misdemeanor abuses being reduced to petty misdemeanor abuse or the State being forced to charge the more specific petty misdemeanor offense rather than the general misdemeanor offense. Additionally, the petty misdemeanor requires proof of a higher mental state (intentional or knowing) than the misdemeanor abuse (intentional, knowing, or reckless).

If it is the intent of the Legislature to create a petty misdemeanor abuse without it being a lesser included offense of misdemeanor abuse, then the Department recommends three changes be made to the bill. First, the petty misdemeanor should be removed from subsection (5) and be given its own subsection. Second, the words "strike, shove, kick, or otherwise" should be deleted from the paragraph establishing the petty misdemeanor. Third, the words "lesser included" should be deleted from section 1, page 1, line 5.

If it is the intent of the Legislature that persons convicted of the petty misdemeanor abuse offense be sentenced pursuant to subsection (6), then the wording of section 2, page 8, line 10, should be changed to "subsections (5) and (6), it shall also require that the offender".

Section 853-4(a)(2)(B), HRS, section 3, page 13, lines 10-12, does not apply to the petty misdemeanor abuse offense set forth in subsection (6) being added to section 709-906. The exemption to section 853-4(a)(2)(B) in section 3, page 13, lines 10-12, therefor should not reference the petty misdemeanor abuse, only the misdemeanor abuse. The Department recommends changing the exception to "provided that the prohibition in this paragraph shall not apply to misdemeanor offenses of abuse of family or household member."

If it is the intent of the Legislature to maintain the prohibition against deferrals in felony abuse of family or household member cases, then the Department recommends changing the wording of section 853-4(a)(13)(N), section 3, page 15, lines 18-20, to "(N) Any felony abuse of family or household member offense;".

Thank you for the opportunity to provide comments.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU  
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**LATE**

KIRK CALDWELL  
MAYOR



SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
CLYDE K. HO  
DEPUTY CHIEFS

OUR REFERENCE WO-KK

March 11, 2020

The Honorable Joy A. San Buenaventura, Chair  
and Members  
Committee on Human Services  
and Homelessness  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 329  
Honolulu, Hawaii 96813

Dear Chair San Buenaventura and Members:

SUBJECT: Senate Bill No. 2638, S.D. 2, Relating to Domestic Violence

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

The HPD opposes Senate Bill No. 2638, S.D. 2, Relating to Domestic Violence.

The HPD has historically supported a review and reorganization of the Hawaii Revised Statutes (HRS), Section 709-906, Abuse of family or household members; penalty, to include the creation of a petty misdemeanor domestic violence offense to achieve consistency with the rest of the HRS. However, our concern is specific to the allowance of a deferred acceptance of guilt or no contest plea to a misdemeanor or petty misdemeanor domestic violence offense.

Over the years, a number of felony domestic violence laws were enacted to address what were considered the more serious domestic violence offenses. In practice, the downgrading of felony domestic violence offenses to misdemeanor or petty misdemeanor offenses already occurs in the vast majority of domestic violence cases, even when the violation might meet the letter of the law. To further allow for a deferred acceptance of guilt or no contest plea for misdemeanor or petty misdemeanor offenses,

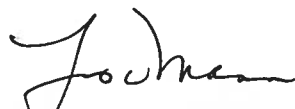
The Honorable Joy A. San Buenaventura, Chair  
and Members  
March 11, 2020  
Page 2

which are the vast majority, would virtually eliminate any accountability for many of these offenders. This would further diminish the value of felony domestic violence laws and would remove any prohibitions attached to a domestic violence conviction; prohibitions which were enacted specifically to mitigate any further or more serious harm from occurring.

The HPD urges you to oppose Senate Bill No. 2638, S.D. 2, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,

  
for: Walter Ozeki, Major  
Criminal Investigation Division

APPROVED:



Susan Ballard  
Chief of Police



*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Human Services & Housing**

Representative Joy A. San Buenaventura, Chair

Representative Nadine K. Nakamura, Vice Chair

Wednesday, March 11, 2020 at 10:00 a.m.

State Capitol, Conference Room 329

by

Christine E. Kuriyama

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

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**Bill No. and Title:** Senate Bill No. 2638, S.D. 2, Relating to Domestic Violence.

**Purpose:** Amends the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties. Allows a deferred acceptance of guilty or no contest plea in misdemeanor and petty misdemeanor abuse penalties. Requires the Judiciary to submit annual reports to the Legislature on the number and outcome of abuse of family or household members cases. Sunsets five years after enactment. (SD2)

**Judiciary's Position:**

The Judiciary offers this testimony in strong support of this bill that allows greater flexibility in the sentencing options in HRS Section 709-906 while still emphasizing accountability of the defendant, safety of the victims, and increasing protection for the children in families wracked by domestic violence. To implement these sentencing changes, we want to reassure the Legislature that the Judiciary will not require additional resources.

Further, the Judiciary appreciates the amended language noted in S.D. 2 which limits its duty to report on cases that are filed with the court.

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

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

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
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DWIGHT K. NADAMOTO  
ACTING PROSECUTING ATTORNEY

LYNN B.K. COSTALES  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE JOY A. SAN BUENAVENTURA, CHAIR**  
**HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS**  
**Thirtieth State Legislature**  
**Regular Session of 2020**  
**State of Hawai'i**

March 11, 2020

**RE: S.B. 2638, S.D. 2; RELATING TO DOMESTIC VIOLENCE.**

Chair San Buenaventura, Vice Chair Nakamura, and members of the House Committee on Human Services and Homelessness, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of the intent of S.B. 2638, S.D. 2 with comments.

The Department strongly agrees that significant changes are needed to our Family Court system, in order to seek justice on behalf of Hawaii's 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. Last year, the Department submitted a bill that would have excluded trial delays attributed to "court congestion," from the limited time that the State is permitted to bring a case to trial [S.B. 2175 (2018), S.B. 181 (2019); H.B. 1772 (2018), H.B. 509 (2019)].

We appreciate the effort S.B. 2638, S.D. 2 makes to address "non-physical" Harassment (§711-1106, Hawaii Revised Statutes (H.R.S.)) against a family or household member, as the "domestic violence continuum" often begins with various forms of non-physical degradation, intimidation and control. However, we note that many other types of behavior can also be part of this continuum (when committed against a family or household member), such as terroristic threatening, unlawful imprisonment, criminal property damage, theft, robbery, arson, and other offenses found in H.R.S. Chapters 707 and 708. If it is the Legislature's intent to acknowledge this type of behavior as part of the domestic violence continuum, these offenses should also be addressed.

While the Department is generally supportive of creating a petty misdemeanor offense for the charge of Abuse of a Family or Household Member (§709-906, H.R.S.), we would note that this change is unlikely to address the First Circuit's ongoing challenges with court congestion and case dismissals. However, such change may improve public awareness and bring to the forefront the dynamics of domestic violence. **To address the concerns raised by the Attorney General's Office, the Department would suggest amending pg. 1, line 6 by removing "lesser included" as the new petty misdemeanor offense would not be a lesser included offense but rather a stand alone petty misdemeanor offense. In addition, the Department would concur with the concerns by the Attorney General's Office regarding pg 7-8, lines 17-21, 1-2. The Department would suggest removing the petty misdemeanor offense from subsection (5) (penalty section) and create its own subsection to ensure misdemeanor AFHM offenses will not be reduced to a petty misdemeanor offense.**

Lastly, the Department would like to caution and bring to the attention of the committee that in allowing a deferral of guilty or no contest plea, defendants who would otherwise be ineligible, wouldn't be precluded from owning a firearm following the deferral period.

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of S.B. 2638, S.D. 2 with comments. Thank you for the opportunity to testify on this matter.



STATE OF HAWAI‘I  
OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on Human Services & Homelessness

March 10, 2020

S.B. No. 2638, SD2: RELATING TO DOMESTIC VIOLENCE

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

The Office of the Public Defender supports the intent of S.B. No. 2638, SD1 and the creation of a three-year pilot project, which will help collect accurate data and statistics that can help the courts process abuse of family or household member (“abuse”) cases more efficiently and effectively.

We strongly support the inclusion of the option for a Deferred Acceptance of a Guilty Plea or No Contest Plea for a defendant who meets the criteria. This provision will have a positive impact on the processing of domestic violence cases in the State of Hawai‘i. We have long held the position that most first offenders who are charged with abuse or domestic violence offenses are willing and able to participate in domestic violence education classes, and that they deserve the opportunity to demonstrate that they have learned how to better manage stress, anger and cope with negative emotions that may result in violence. The majority of our clients successfully complete their classes and never return to the Family Court; they have learned, they have matured, and they have developed healthier coping skills that last a lifetime.

In regard to the creation of a petty misdemeanor offense, we do not see the need, as the current harassment statute in HRS Section 711-1106 is sufficient.

We also have concerns about the language in Section 6 [page 8, line 14] that states the court “*shall revoke ... and resentence the defendant to the maximum term of incarceration*” for failure to complete classes or for violating any other term or condition of probation for deferral. This language is unnecessary. The Family Courts already have the ability to look at a defendant’s performance on probation or deferral supervision. There is also an effective mechanism for the processing of revocation requests and resentencing for non-compliance. The Courts already have “proof of compliance hearings” to monitor progress and when violations occur, revocation motions are filed. The proposed language in Section 6 is unnecessarily restrictive as it provides the Family Court with *only* two options -- probation or the maximum jail sentence. The Family Court should be able to review all the pertinent facts and circumstances to determine whether a defendant should suffer the maximum penalty or whether an alternative sentence is appropriate based on the defendant’s history and status. The Family Court should have discretion to determine appropriate penalties on an individual basis. We are particularly concerned that Section 6(b) would also *mandate* the maximum term of imprisonment for a violation of *any* term of probation or deferral. Any violation could include being late for an appointment because the bus was delayed or missing an appointment due to illness. We submit that the language from page 8, line 14 through page 9,

line 9 is unnecessary for the administration of justice. The filing of an “order to show cause” is not needed for a Family Court judge to monitor a defendant’s progress and the courts already hear requests for extensions to complete classes due to unforeseen circumstances. The correct method to discuss options for failure to comply is through a hearing on a motion for revocation. We do think there needs to be flexibility when dealing with minor violations and the all or nothing options are counterproductive.

Thank you for the opportunity to comment on this measure.



March 10, 2020

Members of the House Committee on Human Services and Homelessness:

Chair Rep. Joy A. San Buenaventura  
Vice Chair Rep. Nadine K. Nakamura  
Rep. Della Au Belatti  
Rep. Bertrand Kobayashi  
Rep. James Kunane Tokioka  
Rep. John M. Mizuno  
Rep. Calvin K.Y. Say  
Rep. Gene Ward

Re: SB2638 SD2 Relating to Relating to Domestic Violence

Dear Chair San Buenaventura, Vice Chair Nakamura and Members of the House Committee on Human Services and Homelessness:

The Hawaii State Coalition Against Domestic Violence (HSCADV) engages communities and organizations to end domestic violence through education, advocacy, and action for social justice. HSCADV is a private, not-for-profit organization and is a statewide partnership of domestic violence programs and shelters.

On behalf of the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 23 member programs statewide, I respectfully submit this testimony in support of SB2638 SD2, with amendments, which would amend the offense of abuse of family or household members to provide for misdemeanor and petty misdemeanor penalties, allows a deferred acceptance of guilty or no contest plea in cases involving misdemeanor and petty misdemeanor abuse penalties and requires a pilot program.

We have heard from programs and survivors across the state that another level of intervention is needed for intimate partner violence. With a petty misdemeanor level of crime, it is the hope that we can get offenders into quality intervention programming early and prevent further violence, which is what this bill seeks to accomplish. A shortened timeframe from five years to three years as included in the house companion to the bill (HB2067 HD1) for this project will help us determine the efficacy and hopefully reduce harm to victims.

HSCADV supports the mandatory completion of domestic violence intervention, which could NOT substituted for other course material to include anger management, substance abuse



treatment, mental health treatment, or parenting classes, but could be used in conjunction. We believe these other courses can be useful in other contexts, but it does not address this specific offense and dynamics, therefore would not reduce recidivism or violence against an intimate partner.

Therefore, **we recommend that on page 8 lines 10-11 instead of “any available domestic violence intervention programs...” it instead should read “evidence-based” or define in more detail “domestic violence intervention program” directly in statute.**

We are also concerned with the language relating to the deferred acceptance of guilty plea included on page 12, lines 6-10 of this bill. We’re concerned it sends the wrong message to offenders that their convictions can be easily eliminated by attending batterers intervention programs. Furthermore, Chapter 853 allows for expungement of records after one year of successful completion of court-imposed conditions. **By allowing the offender to expunge their records after one year, the courts, agencies and survivors may not be able to access critical information about prior bad acts which is important in risk assessments.**

Thank you for the opportunity to submit testimony on this important matter.

Sincerely,

Angelina Mercado  
Executive Director, Hawaii State Coalition Against Domestic Violence

**SB-2638-SD-2**

Submitted on: 3/10/2020 5:10:17 PM

Testimony for HSH on 3/11/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Younghi Overly	AAUW of Hawaii	Support	No

Comments:



To: Chair Joy A. San Buenaventura, Chair  
Vice Chair Nadine K. Nakamura, Vice Chair  
Fr: Nanci Kreidman, MA,  
CEO, Domestic Violence Action Center  
Re: SB 2638 SD2 ; Support

Aloha. And thank you for placing this Bill on your agenda for consideration. We offer testimony to support this initiative which represents a potentially positive change that would impact many, many survivors and island families. The system has not been functioning as effectively as it might these last few years. This Bill creates an opportunity for a shift that is worth considering.

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.

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.

SB 2638 SD2 will advance safety, accountability and hope.

The amendments to the existing 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.

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

We suggest that Courts make orders for participation in intervention programs that meet the Hawaii Batterer Intervention Program Standards. Not all programs are appropriate or responsive to the dynamics and potential lethality present by abusers. For example, online courses would not meet such standards.



We suggest that a deferred acceptance of guilt be included but we would like to see the elimination of a no contest plea for abuse of a family or household member in the first degree or third degree. Without any acceptance of responsibility by perpetrators, we cannot really expect change. We are making a lukewarm statement about how seriously we take this crime.

We would also like the Committee to consider that the language related to accepting a DAG if one has not been entered previously be strengthened. Such a plea will not be accepted – ever - if there is one on the record. At one court hearing where I was present, a judge indicated that a second DAG was allowable (even though the language says it is not acceptable) because the first one was so many years ago; our perspective on that is there must be a long history of abuse, if an incident occurred many years ago and has occurred again; perhaps the perpetrator had not been caught?

A final thought about the data to be collected. It is a very important step for us to compile data about the crimes committed and the ways the cases are adjudicated and resolved. If the only cases captured are 709-906, what about all the crimes related to the family or partnership like property damage, stalking, sexual assault, trespassing, etc. We are unable to fully understand the scope of the problem without data that accurately reflects the incidence and prevalence of the problem. The only piece of data that would be needed to determine if the crime





involved family members of partners is their relationship to one another. A checkbox. If not, we miss all the other crimes.

Thank you. We shall look forward to favorable action and more discussion about this Bill.

**DOMESTIC VIOLENCE ACTION CENTER**

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TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200

WEBSITE: [WWW.DOMESTICVIOLENCEACTIONCENTER.ORG](http://WWW.DOMESTICVIOLENCEACTIONCENTER.ORG)

EMAIL: [DVAC@STOPTHEVIOLENCE.ORG](mailto:DVAC@STOPTHEVIOLENCE.ORG)

**SB-2638-SD-2**

Submitted on: 3/10/2020 9:49:35 PM

Testimony for HSH on 3/11/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Joy A. San Buenaventura and Members of the Committee on Human Services and Homelessness,

I am writing in support of SB2638 SD2.

We need better data to understand the cycle of domestic abuse and how the current laws impact the outcomes for the survivors and perpetrators of domestic abuse. This information will help advocates and the legislature to change the law to lower the incidence of abuse of family or household members. We need to find better ways to protect the innocent.

Please support this bill.

Mahalo,

Caroline Kunitake

**SB-2638-SD-2**

Submitted on: 3/10/2020 6:43:40 PM

Testimony for HSH on 3/11/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Suzanne Young	Individual	Support	No

Comments:

I have served on the Board of Directors for Domestic Violence Action Center for over six years and am currently its President. I support this bill and the testimony provided by DVAC.

Mahalo,

Suzanne Young