



## *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

Wednesday, March 21, 2018 2:15 PM  
State Capitol, Conference Room 325

By  
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**Bill No. and Title:** Senate Bill No. 2343, S. D. 2, 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 cases involving harassment of a family or household member. Allows the granting of a deferred acceptance of guilty or no contest plea in cases involving misdemeanor abuse of a family or household member in the second degree. Requires that no-contact and stay-away orders issued in criminal cases involving abuse of a family or household member or non-physical forms of harassment of a family or household member be converted by the court 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; provided that a hearing on the issue is held and certain requirements are met. Takes effect on 1/1/2050. (SD2).

### **Judiciary's Position:**

The Judiciary takes no position on this bill. We respectfully offer comments regarding the practical effects of Senate Draft 2.

1. The current Senate Draft 2 requires the court to convert a no contact or stay-away order to a new protective order “upon the defendant’s conviction” ... “after hearing all the relevant evidence” and making appropriate findings (page 5, lines 3-13). The “hearing” created by Senate Draft 2 may likely cause delays in both the specific case as well as the entire calendar. Notice must be given; the



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parties will need time to prepare; and the hearings will be in addition to all other pending cases and pending matters.

2. A hearing may not be necessary. The protective orders in this bill are meant to be treated like the current HRS Chapter 586 orders in order to adequately fulfill the legislative intent to provide safety and consistency to the complaining witnesses. A conviction, whether by a trial verdict or a plea of guilty or no contest, means that harm against the victim has been established beyond a reasonable doubt. HRS Chapter 586, being a civil matter, only requires that the allegations of harm are proven by a preponderance of the evidence. Additionally, once harm has been established, HRS Chapter 586 does not require a finding "that a new protective order is necessary to prevent domestic abuse or a recurrence of abuse or harassment."

3. Therefore, we respectfully suggest the following amendments to Senate Draft 2 that delete language on lines 7-12.

At page 5, lines 1-15:

(f), a no-contact or stay-away order previously imposed under section 804-7.1 or 706-624 on a defendant who is sentenced to a term of imprisonment shall be converted by the court upon the defendant's conviction in that case 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 in the case requests otherwise; provided that the court [after hearing all the relevant evidence, finds that the defendant has failed to show cause why the previous order should not be converted to a new protective order and that a new protective order is necessary to prevent domestic abuse or a recurrence of abuse or harassment, as applicable; provided further that the court] shall comply with the requirements of section 709-906(6). A new protective order shall be documented, filed, and enforced in the same manner as a protective order issued under chapter 586."

4. Page 23 (lines 14-20) and page 24 (lines 1-7) require the court, at sentencing, to consider all prior judgments and orders regarding Defendant, from any court and in any circuit. This requirement will likely result in the court ordering a Presentence Investigation Report in order for probation to obtain this information. This requirement will result in a large increase in probation work hours and in-court time, in a docket that already overtaxes probation and judicial resources. Delays in the reports and sentencing will be inevitable.

5. Besides the possibility of increased delays in the sentencing process, there are other concerns with this section. First, many of the prior judgments and orders to be gathered will be irrelevant (for example, civil cases such as landlord/tenant, bankruptcy, small claims). Second, at page 24, lines 3-4,



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the sentencing judge should not be confined by refraining “from imposing any condition or sentence that is inconsistent with any prior orders or judgments . . .” Indeed, the sentencing judge would have the most up-to-date knowledge of the case and may have reason to deviate from prior orders based on that knowledge. Third, at page 24, lines 6-7, the sentencing judge should not be limited based on other orders. Additionally, the sentencing judge may not have the jurisdiction and/or authority to “retain” or “enhance” orders issued outside of the instant criminal case.

Therefore, we respectfully suggest deleting the language at page 23, line 14, through page 24, line 7.

6. 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 may 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.