



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

Wednesday, February 8, 2017 at 9:10 a.m.

State Capitol, Conference Room 016

By

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Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1282, Relating to the Offense of Abuse
of Family or Household Members

Purpose: Establishes that the offense of abuse of family or household member is a petty misdemeanor with a jail sentence, etc.

Judiciary's Position:

The Judiciary understands the importance of this bill with its intent to provide a more timely route to disposition of these cases that will provide certainty to both complaining witnesses and defendants. While we take no position on this bill, we respectfully request an amendment to this bill to allow circuit family judges to have jurisdiction over all of the criminal offenses established by this bill, including petty misdemeanors.

The Judiciary respectfully proposes the following language (additional language underlined) to be inserted at page 15 (or wherever appropriate), line 3:

SECTION 4. Section 603-21.5, Hawaii Revised Statutes, is
amended to read as follows:



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§603-21.5 General. (a) The several circuit courts shall have jurisdiction, except as otherwise expressly provided by statute, of:

- (1) Criminal offenses cognizable under the laws of the State, committed within their respective circuits or transferred to them for trial by change of venue from some other circuit court;
- (2) Actions for penalties and forfeitures incurred under the laws of the State;
- (3) Civil actions and proceedings, in addition to those listed in sections 603-21.6, 603-21.7, and 603-21.8; and
- (4) Actions for impeachment of county officers who are subject to impeachment.

(b) The several circuit courts shall have concurrent jurisdiction with the family court over:

- (1) Any felony under section 571-14, violation of an order issued pursuant to chapter 586, or a violation of section 709-906 when multiple offenses are charged through complaint or indictment and at least one other offense is a criminal offense under subsection (a)(1);
- (2) Any felony under section 571-14 when multiple offenses are charged through complaint or indictment and at least one other offense is a violation of an order issued pursuant to chapter 586, a violation of section 709-906, or a misdemeanor under the jurisdiction of section 604-8;
- (3) Any offense under section 709-906;
- (4) Any violation of section 711-1106.4; and
- (5) Guardianships and related proceedings concerning incapacitated adults pursuant to article V of chapter 560.

Currently, the criminal division of the family court in the first circuit consists of two circuit family judges and one full-time equivalent of a district family judge. The cases heard by these three courtrooms are offenses and violations under sections 709-906 and 711-1106.4. The family court must continue to operate with these three courtrooms in order to effectively manage these cases. While the first offense under this bill is a petty misdemeanor (and, therefore, carries



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no right to a jury), the second (full misdemeanor) and third offenses (felony) do carry the right to a jury trial. The family court can be most effective if we are able to administer these cases seamlessly regardless of the level of the charge under the same statute.

We note that this bill is effective upon signing. This is another compelling reason supporting our proffered amendment to section 603-21.5. Without the ability to administer a division of three judges, the family court will have to rearrange judicial resources, including moving resources away from the other cases under our jurisdiction (including, child abuse and neglect, delinquency, divorce, paternities, and domestic violence restraining and protective orders). This will lead to under-resourcing those important cases and may lead to requiring additional family district judges.

Lastly, we note that an important part of the criminal process is rehabilitation and prevention of further violence. For these cases, the probation process plays an integral role in these defendants' rehabilitation. The family court administers a probation department dedicated to working with these offenders. The probation staff and the three existing courtrooms now have a long history of effectively working together. Accepting our proffered amendment will allow that effectiveness to continue.

We also wish to inform this Committee that the Judiciary will have to make use of §706-623(1)(d) ([Terms of probation] "Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause."). Currently, completion of a domestic violence intervention program generally takes more than 6 months. The court will therefore need to invoke §706-623(1)(d) and sentence petty misdemeanants to 1 year probation.

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