



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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2007 Law Enforcement Coalition Legislative Package

HONOLULU - The Hawaii Law Enforcement Coalition -- Hawaii's four County Prosecutors, four Police Chiefs, the United States Attorney, and the Hawaii Attorney General -- has announced a legislative package of four bills and one resolution designed to protect victims of domestic violence; help law enforcement target copper thieves; help level the playing field during criminal trials; and take steps toward trying to solve the problems caused by law enforcement officers leaving Hawaii to work elsewhere.

The members of the Law Enforcement Coalition support a broad range of bills that protect the public safety, help law enforcement, and help to restore balance to the criminal justice system. Each of the four bills and the resolution included in the Coalition's legislative package has the unanimous support of each member of the Coalition.

The following bills comprise the 2006 Law Enforcement Coalition legislative package:

Protect Victims of Domestic Violence Act

- Raises the seriousness of violent offenses committed by those subject to certain types of protective orders.

Domestic violence is a terrible problem in Hawaii and throughout our nation. Victims of domestic violence often endure extended periods of mental abuse, intimidation, harassment, terrorization, and physical violence. And they are all too often killed by their tormentors. Unfortunately, even with intervention by the police and the court system, the abuse and violence do not end.

Current laws simply do not provide adequate protection nor do they provide adequate deterrence. This bill will help.

If enacted into law, this bill will be known as the "Protect Victims of Domestic Violence Act of 2007," and amends the offenses of Murder in the First Degree, Murder in the Second Degree, Assault in the Second Degree, and Terroristic Threatening in the First Degree, by raising the level of each offense when the offense is committed against victims who have obtained certain types of protective orders, by those who are the subjects of the protective orders. Thus, what was misdemeanor assault will become felony assault, if committed by a person whom the victim has obtained a certain type of protective order against. Misdemeanor terroristic threatening will become felony terroristic threatening, manslaughter will become second degree murder, and second degree murder will become first degree murder. These increased penalties will give law enforcement more opportunity to protect victims and will hopefully deter abusers. Those protected will include spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons who have or have had a dating relationship.

Copper Theft

- Creates the offense of "theft of copper" and adds special requirements for the purchase of copper by scrap dealers so as to hold scrap dealers accountable for violations of mandated reporting requirements, in order to curb the recent rise in costly copper thefts.

Recent thefts of copper have plagued the State and are damaging taxpayers, public utility companies, private companies, and private individuals.

Since May 2006, copper thieves have caused over \$300,000 in damage to state freeways along central and west Oahu, ripping out wiring from about 100 light fixtures and leaving freeways without lights in several primary areas.

In November 2006, copper thieves damaged six restrooms and the electrical system that powers the park's sewage pumping system at the Sand Island State Recreational Area. The thieves ripped out 300 feet of copper wire from an underground line that runs from the transformer to the sewage pumping station, causing extensive damage to the transformer system, which will require costly repairs or replacement. The Department of Land and Natural Resources was forced to close the park because the sewage pumping system was inoperable and restrooms could not be used.

Hawaiian Electric Company has had approximately 20 copper theft incidents this year at various sites, and at least six of them have resulted in power failures.

This bill will crack down on copper theft by creating the new criminal offense of "theft of copper"—a felony—and by strengthening the requirements for scrap dealers when they

purchase copper, to ensure that they do not facilitate the sale of stolen copper. If the scrap dealers cannot buy stolen copper, the copper thieves will have little incentive to steal it. Thefts of one pound of copper or more will be a felony, and any scrap dealers purchasing copper will need to see either a receipt or a notarized statement from the seller, will need to keep detailed records of their purchase, and will need to photograph any copper purchased.

Testimony of Defendants in Criminal Cases

- Amends the state constitution to allow testifying defendants in criminal cases to be impeached with evidence of prior convictions for crimes involving dishonesty.

In federal court and in the courts of almost all other states, when a criminal defendant or any other witness testifies, the witness's prior convictions for crimes involving dishonesty can be used to impeach the witness -- that is, to help the jury decide if the witness is telling the truth. But in Hawaii, a state supreme court case prohibits the use of such prior convictions to impeach defendants in criminal cases, even though victims and other witnesses to crime can be impeached in this way. Thus, in a rape case tried today in Hawaii state court, if both the victim and the testifying defendant have been convicted of perjury in the past, the jury will learn that the *victim* has a conviction but will not learn that the *defendant* has one.

Hawaii is virtually unique in this respect, and as a result, the truth-finding function of trials suffers. This amendment would provide that, in a criminal case, the judge or jury can use evidence of prior convictions of crimes involving dishonesty to evaluate a testifying defendant's credibility, to the same extent as with any other testifying witness. It will help juries find the truth and render fairer verdicts. It will help convict the guilty.

In 2006, this constitutional amendment passed the State Senate—we hope this year it will pass both houses of the Legislature.

Appellate Review of Erroneous Jury Instructions

- Bars a court from reversing a criminal conviction based on a jury instruction unless the defendant objected to the instruction or the instruction likely changed the result of the case.

In federal court and virtually every other state (perhaps in every other state), unless a criminal case defendant objects to a jury instruction, that defendant cannot seek a reversal of the conviction on the ground that the instruction was wrong, unless the instruction was so wrong that the defendant was essentially denied a fair trial.

According to a 2006 Hawaii Supreme Court decision, however, it no longer matters whether a defendant objects to a jury instruction, or even if a defendant actually proposes an erroneous jury instruction. If the instruction is incorrect, there will often be a reversal of the conviction, even if it was the defendant who proposed the instruction in the first place, and even if defendant cannot prove the result of the trial would have been different without the "error."

This makes no sense. And, as noted, in other court systems, there is no reversal unless the defendant objected or unless the mistake was so serious, that the interests of justice require a reversal. This bill conforms Hawaii law to the law virtually everywhere else. Unless an objection is made to a jury instruction by the defendant, there can be no reversal unless the error seriously affected the fairness, integrity, or public reputation of the trial and more likely than not affected the outcome of the trial.

Police Officer Retention

- Resolution to establish a task force to study and offer solutions to the police officer retention problem in Hawaii.

Hawaii is losing police officers on a daily basis because law enforcement on the mainland and the private sector pay much more. We need to address this problem before the safety of Hawaii's citizens is jeopardized by simply having too few qualified police officers on the job. This resolution would establish a task force to study the problem and recommend solutions to the 2008 Legislature. Hawaii needs to act on this problem in the next few years, and this task force will be the first step in finding a solution.

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