



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Judiciary**

Representative Karl Rhoads, Chair

Representative Joy San Buenaventura, Vice Chair

Thursday, January 28, 2016 2:01 p.m.

State Capitol, Conference Room 325

**WRITTEN TESTIMONY ONLY**

by

Judge Rom Trader

First Circuit Court

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**Bill No. and Title:** House Bill No. 1517, Relating to Sentencing.

**Purpose:** Provides that the commission of certain offenses of assault in the presence of the victim's minor child is an aggravating factor in the sentencing of the defendant convicted of the offense.

**Judiciary's Position:**

The Judiciary takes no position on House Bill No. 1517 and respectfully offers the following comments regarding elements of this proposal that may result in sentencing disparities.

In proposed subsection (a), beginning at page 1, line 9, the aggravating factors to be considered would include only convictions of certain violent felonies (committing or attempting to commit Assault 1, Assault 2 & Sex Assault 1), yet a host of other violent felonies would be inexplicably excluded, i.e., murder, attempted murder, kidnapping, robbery and terroristic threatening.

In proposed subsection (b), beginning at page 1, line 14, the language, "in the actual physical presence of a minor child of the victim or with the defendant's knowledge that a minor child of the victim was present..." would apply as an aggravating factor only if the victim's child was present or the defendant had knowledge that the victim's child was present. As proposed, this appears not to apply if there was a minor child present *other than* a child or children of the victim. Beyond this, the language, "in the actual physical presence of a minor child" may be less



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than clear and difficult to interpret without a corresponding definition of “physical presence.” For example, the assaultive conduct may occur in one part of a residence while the child is fast asleep in a separate part of the residence and completely unaware of it. As proposed, this language potentially establishes an aggravating sentencing factor in situations where it arguably may not be appropriate.

Lastly, beginning at page 2, line 1, subsection (b) includes the additional element that the child of the victim “might hear or see the offense.” The term “might” similarly is less than clear and may be difficult to interpret without a corresponding definition. As proposed, it may invite speculation as to what constitutes circumstances in which the child “might hear or see the offense.” As a result, this has the potential to lead to disparate outcomes in sentencing.

Thank you for the opportunity to testify on House Bill No. 1517.