

## **Report to the American Judicature Society Board of Directors**

### **From Criminal Justice Subcommittee**

**December 6, 2018**

In June 2018, the Honolulu Star Advertiser published a series of articles about the delays in the court system regarding domestic violence cases. In the course of this article, several domestic violence victims expressed displeasure concerning the course their cases took through the court system. The most common complaint was multiple court appearances, unjustifiable delays and unsatisfactory resolutions of their cases.

The criminal justice subcommittee was asked to review this situation to determine if any suggestions could be made to further the administration of justice in the domestic courts. The Star Advertiser series dealt with the Family Circuit Court Criminal Courtrooms. There are currently two judges assigned to this calendar. The main type of cases they handle are Abuse of Family or Household Member under H.R.S. § 709-906 and Violation of an Order for Protection under H.R.S. §586-11. The penalties for both of these offenses include mandatory jail terms which lead many defendants to elect jury trials.

The subcommittee met with Circuit Judges Viola and Somerville who currently handle the Family Court Criminal Calendar. They indicated that there is not a backlog of trials in their courtrooms. Each week, during trial calls, a number of cases are continued for various reasons, the most common being that the case is not ready to proceed. When dismissals of cases occur, the most commonly cited reason is lack of prosecution due to witness unavailability.

Prior to the Star Advertiser series, the 2018 Legislature debated Senate Bill No. 2343 which would have overhauled the present Abuse of Family or Household Member law. Its main component would have created a petty misdemeanor category for Abuse of Family or Household Member and allowed for deferred pleas for misdemeanor domestic abuse. Deferred pleas direct a defendant to completion of intensive domestic violence counseling and other court-imposed conditions. After successful completion of the deferral period, the defendant is eligible for expungement of all his/her arrest records. The bill was supported by various groups involved in the criminal justice system from prosecutors and police to victim advocates. The bill was not passed by the House when issues arose as to judicial resources needed to implement the changes proposed by S.B. No. 2343.

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State Senator Laura Thielen who was one of the main architects of S.B. No. 2343 has indicated that another version of the bill will be introduced in the 2019 Legislature. The criminal justice subcommittee has determined that a bill similar in contents to the one considered by the 2018 Legislature will further the administration of justice in the domestic courts and hopefully alleviate many of the frustrations expressed by parties in the Star Advertiser series. The subcommittee respectfully requests that AJS support such measures in the upcoming 2019 Legislature. The subcommittee also recommends that, in the event that the anticipated legislation creates a petty misdemeanor category for Abuse of Family or Household Member, the Judiciary assign a family district court judge to the domestic violence calendar.