



## *The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Judiciary**  
Representative Karl Rhoads, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Friday, March 27, 2015 3:05 PM  
State Capitol, Conference Room 329

By

Judge R. Mark Browning  
Deputy Chief Judge and Senior Judge, Family Court

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**Bill No. and Title:** House Concurrent Resolution No. 37 and House Resolution No. 14, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence of a Parent, to Assess the Use and Application of Section 571-46, HRS.

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

The Judiciary has grave concerns about House Concurrent Resolution (HCR) No. 37 and House Resolution (HR) No. 14 and respectfully offers the following reasons for our position:

1. While we are certainly well aware of the consequences of family violence, the lethality surrounding the victim's attempts to leave the perpetrator, and the courage it takes for victims to take those steps to leave, HCR No. 37 and HR No. 14 require the Auditor to go far beyond her authority and her mission and seriously abridge the fundamental democratic policy of separation of powers. HCR No. 37 and HR No. 14 should not be passed out of committee for these reasons alone. We address these issues and include other reasons for our grave concerns.

2. Separation of powers is a critical concept underpinning of our democracy. Basically, it recognizes that our country's strength is in part based on three co-equal branches of government, with all three being able to work robustly and vigorously within its own kuleana. The Legislature makes the laws; the Executive carries out the laws; and the Judiciary enforces and interprets the laws.



House Concurrent Resolution No. 37 & House Resolution No. 14, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence of a Parent, to Assess the Use and Application of Section 571-46, HRS  
House Committee on Judiciary  
Friday, March 27, 2015, 3:05 PM  
Page 2

3. In researching whether the Auditor can conduct such an “assessment” of specific judicial cases, we made a cursory review of reports by the U.S. General Accounting Office (GAO) (similar to our Legislative Auditor’s Office). We first noted its scope of operations:

Congress created GAO in the Budget and Accounting Act of 1921 in order assist in the discharge of its [Congress’] core constitutional powers-- the power to investigate and oversee the activities of the executive branch, the power to control the use of federal funds, and the power to make laws. All of GAO's efforts on behalf of Congress are guided by three core values: (1) Accountability-- GAO helps Congress oversee federal programs and operations to ensure accountability to the American people; (2) Integrity-- GAO sets high standards in the conduct of its work. GAO takes a professional, objective, fact-based, non-partisan, nonideological, fair, and balanced approach on all activities; and (3) Reliability-- GAO produces high quality reports, testimonies, briefings, legal opinions, and other products and services that are timely, accurate, useful, clear and candid.  
<http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-02-816T/html/GAOREPORTS-GAO-02-816T.htm> (accessed March 5, 2015).

Based on this cursory review, we found three reports concerning the judiciary. One report was made in order for the Congressional Judicial Resources Committee to determine when additional courts of appeals judgeships needed to be created. Here is a sample of their sources of data:

The design for the new case weights relied on three sources of data for specific types of cases: (1) data from automated databases identifying the docketed events associated with the cases; (2) data from automated sources on the time associated with courtroom events for cases, such as trials or hearings; and (3) consensus of estimated time data from structured, guided discussion among experienced judges on the time associated with noncourtroom events for cases, such as reading briefs or writing opinions.

<http://www.gao.gov/products/GAO-13-862T> (accessed March 5, 2015).



House Concurrent Resolution No. 37 & House Resolution No. 14, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence of a Parent, to Assess the Use and Application of Section 571-46, HRS  
House Committee on Judiciary  
Friday, March 27, 2015, 3:05 PM  
Page 3

Here are the purpose and methodology for another report concerning judicial data:

Laws, such as the Clean Air Act, require EPA to issue rules by specific deadlines. Citizens can sue EPA for not issuing rules on time. These lawsuits are sometimes known as deadline suits. EPA sometimes negotiates a settlement to issue a rule by an agreed upon deadline. Some have expressed concern that the public is not involved in the negotiations and that settlements affect EPA rulemaking priorities. GAO was asked to review EPA settlements in deadline suits. This report examines (1) key environmental laws that allow deadline suits and the factors EPA and DOJ consider in determining whether to settle these suits, (2) the terms of settlements that led EPA to issue major rules in the last 5 years and the extent to which the public commented on the settlements, and (3) the extent to which settlements in deadline suits have affected EPA's rulemaking priorities.

<http://www.gao.gov/assets/670/667532.pdf> (accessed March 5, 2015).

We found one 1985 report regarding special education that looked a little deeper into specific cases:

In response to a request from your office [Senator Lowell Weicker, Jr., Chairman, Subcommittee on the Handicapped, Committee on Labor and Human Resources], we have reviewed several lawsuits filed under The Education of All Handicapped Children Act (EAHCA) (Public Law 94-142). The act provides for "a free appropriate public education which emphasizes special education and related services designed to meet . . . [the] unique needs . . . of handicapped children." As agreed with your office, our review was limited to obtaining information on only the successfully litigated cases under EAHCA from those court cases identified for your Subcommittee by the Congressional Research Service. We determined (1) whether each successfully litigated case was brought by an individual or a class; (2) the attorney's fees awarded, if any, and who paid; (3) the amount of the damage award, if any, and who paid; and (4) the nature of each case and the reasons litigation was brought.



House Concurrent Resolution No. 37 & House Resolution No. 14, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence of a Parent, to Assess the Use and Application of Section 571-46, HRS  
House Committee on Judiciary  
Friday, March 27, 2015, 3:05 PM  
Page 4

<http://www.gao.gov/assets/210/207656.pdf> (accessed March 5, 2015).

As illustrated by these reports, there are legitimate reasons for a legislature to obtain information from the judiciary and even information regarding specific cases. However, the scope, intent, and methodology of HCR No. 37 and HR No. 14 go way beyond anything found in these three examples.

4. Similarly, HCR No. 37 and HR No. 14 would require the Auditor to go beyond what our own state would allow. It is clear that, similar to the GAO, the Auditor's primary mission is to be an independent watchdog over spending of public funds.

In 1950, the delegates to Hawaii's first Constitutional Convention considered the position of the Auditor sufficiently important to be established in the State Constitution. *The delegates envisioned an Auditor who would help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.*

The State Constitution in Article VII, Section 10, establishes the position of Auditor. To ensure independence from undue pressure from individual legislators, the executive branch, and forces outside government, the Constitution specifies that the Auditor be appointed for an eight-year term by a majority vote of each house in joint session. The Auditor may be removed only for cause by a two-thirds vote of the members in joint session.

It is the constitutional duty of the Auditor to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices, and agencies of the State and its political subdivisions. The 1978 Constitutional Convention clarified these duties, making clear that the office's post-auditing functions are not limited to financial audits, but also include program and performance audits of government agencies. . . .

The Auditor also undertakes other studies and investigations as may be directed by the Legislature. In addition, Hawai'i Revised



House Concurrent Resolution No. 37 & House Resolution No. 14, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence of a Parent, to Assess the Use and Application of Section 571-46, HRS  
House Committee on Judiciary  
Friday, March 27, 2015, 3:05 PM  
Page 5

Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers, and documents, to summon persons to produce records and answer questions under oath, to hold working papers confidential, and to conduct post-audits as the Auditor deems necessary. These powers in their totality support the principles of objectivity and independence that the *1950 constitutional drafters envisioned for a fearless watchdog of public spending*.

<http://auditor.hawaii.gov/about-us/> (accessed March 14, 2015, emphases added).

5. The common law upon which our nation's judiciaries are designed provides for orderly and predictable court processes. Persons dissatisfied with the decision at the trial level in our state have two levels of appellate courts to turn to. The appellate courts defer to the trial court on credibility matters but not on matters of law. This makes common besides legal sense. At a contested trial, the trial judge sees and hears the litigants. The trial judge observes body language, interactions, facial expressions, and myriad other human cues. The trial judge makes findings of fact based on all the pleadings, testimony at trial, and the arguments made by the litigant or the litigant's attorney.

Furthermore, the Family Court is committed to judicial training. Nationally, Family Courts and Juvenile Courts have long been viewed as courts with specially trained judges. Such special training promotes better understanding of certain areas such as child abuse, divorce, and family/domestic violence. In addition to training provided to all judges by the Judiciary, the Family Court judges of all the circuits also attend an annual Family Court Symposium. Family/domestic violence is a major topic that is regularly presented in addition to other matters and topics. For example, in the last five years, the judges have received training on the following family/domestic violence subjects:

(table on next page)



House Concurrent Resolution No. 37 & House Resolution No. 14, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence of a Parent, to Assess the Use and Application of Section 571-46, HRS  
 House Committee on Judiciary  
 Friday, March 27, 2015, 3:05 PM  
 Page 6

| Year | Topic   | Speaker(s)   |
|------|---|--|
| 2010 | Accounting for Domestic Violence in Child Custody Cases: <ul style="list-style-type: none"> <li>• Victim &amp; Perpetrator Behavior</li> <li>• Implications for Parenting</li> <li>• Custody &amp; Visitation: Getting the Right Information</li> </ul> Crafting Plans: Best Interests of the Child | National Council of Juvenile and Family Court Judges (NCJFCJ)  |
| 2011 | Domestic Violence and Child Welfare   | National Council of Juvenile and Family Court Judges   |
| 2012 | Child Witness in Domestic Violence, CPS, & Divorce Cases  | National Council of Juvenile and Family Court Judges   |
| 2013 | Context for Understanding Trauma in Victims of Domestic Violence & Sexual Assault<br><br>Responding to Trauma in Victims of Domestic Violence & Sexual Assault  | Olga Trujillo, J.D.<br>Danielle Pugh-Markie<br>Honorable Tamona Gonzalez<br><br>Olga Trujillo, J.D.<br>Danielle Pugh-Markie<br>Honorable Tamona Gonzalez |
| 2014 | Intimate Partner Violence & Trauma <ul style="list-style-type: none"> <li>• Examining the Impact from the Inside Out</li> <li>• Connecting the Neurobiology of Trauma</li> <li>• Victim Behavior &amp; Assessing Credibility</li> <li>• What You Can Do to Help</li> </ul>                          | Olga Trujillo, J.D.  |

6. The common law also recognizes that the public good requires certainty in judicial decisions. Even in a court such as Family Court that deals with ever changing human beings and their family systems, certainty must be available absent material changes in circumstances. A lack of certainty harms the community, the litigants, and their children.



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House Committee on Judiciary  
Friday, March 27, 2015, 3:05 PM  
Page 7

7. The Auditor's assessing "the use and application of section 571-46(a) (9) to (14), Hawaii Revised Statutes" in the manner suggested in HCR No. 37 and HR No. 14 will cause upheaval in the lives of families and serious breaches of privacy. And, in the end, the Legislature will not be able to affect any of the final decisions and orders. The Legislature has other avenues and resources that can inform its work and does not have to rely on the kind of "audit" found in HCR No. 37 and HR No. 14. The Legislature can make different, new, and better laws based on input appropriate to legislative bodies such as by working with advocacy professionals, surveying national best practices, networking with other state legislatures, and other legislative resources.

8. The Auditor's work as envisioned by HCR No. 37 and HR No. 14 may be a Sisyphean task of rolling a large boulder up a steep hill only to have it roll back down near the top. The initial petitions in divorce and paternity cases do not usually include allegations of family violence. The family court becomes aware of such allegations through subsequent pleadings or by reviewing related cases or when the allegations are orally made during a pretrial proceeding. Transcripts will need to be ordered and examined. In the end, the Auditor will find herself taking on the role of a finder of fact and making determinations of credibility. This is clearly an undesirable outcome for all parties to the investigation.

9. The preamble at page 2, from line 1, recognizes a dynamic that the Family Court is already aware of, i.e., perpetrators extend their coercive controls even outside the home—with family members, neighbors, circles of friends, the workplace, church, and courtrooms. Please do not add the Auditor to this list. Although we know it is not the Legislature's intent, perpetrators will find an "audit" to be a new fertile ground upon which to further torment the victims and their children.

10. The intrusions into personal and family privacy cannot be underscored enough; neither can the harsh consequences for all litigants and their children. This is especially true since the Auditor will have powerful authority under §23-5:

(b) The auditor may cause search to be made and extracts to be taken from any account, book, file, paper, record, or document in the custody of any public officer without paying any fee for the same; and every officer having the custody of the accounts, books, records, files, papers, and documents shall make such search and furnish such extracts as thereto requested.

(c) The auditor may issue:



House Concurrent Resolution No. 37 & House Resolution No. 14, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence of a Parent, to Assess the Use and Application of Section 571-46, HRS  
House Committee on Judiciary  
Friday, March 27, 2015, 3:05 PM  
Page 8

(1) Subpoenas compelling at a specified time and place the appearance and sworn testimony of any person whom the auditor reasonably believes may be able to provide information relating to any audit or other investigation undertaken pursuant to this chapter; and

(2) Subpoenas *duces tecum* compelling the production of accounts, books, records, files, papers, documents, or other evidence, which the auditor reasonably believes may relate to an audit or other investigation being conducted under this chapter.

Upon application by the auditor, obedience to the subpoena may be enforced by the circuit court in the county in which the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of the circuit court.

11. HRS §23-5 mandates certain duties required of the “officer having the custody of the accounts, books, records, files, papers, and documents.” Although we normally do everything we can to respond to legislative and Auditor’s requests, we will not be able to offer the same level of assistance pursuant to HCR No. 37 and HR No. 14. For example, we would not be able to duplicate the volumes and volumes of files that may be requested without an appropriation to cover temporary clerical assistance and related costs. We cannot provide the transcripts; those will have to be purchased through the court reporters. We certainly cannot make any comment on any of the cases.

12. We reiterate that, in the end, neither the Auditor nor the Legislature can change the outcome of a particular case. The Legislature has other avenues to determine whether new laws are needed or whether current laws should be amended. As noted above, local and national advocacy groups and professionals can advise the Legislature. The Legislative Reference Bureau can report on national best practices and the work of other states’ legislatures.

13. As a final note, the Judiciary, including Family Court, is deeply concerned about access to justice issues. We respectfully suggest that what is truly needed is more significant funding of Legal Aid and other providers of legal services such as the Domestic Violence Action Center. The control wielded by perpetrators includes control over finances and family resources. They, therefore, are more likely to have legal representation. The Family Court is not a social services provider, neither is it a legal services provider. The judges are not and should not be advocates. It is our job to be objective, fair, and neutral. Our democracy demands this and our community rightfully expects this. The Judiciary does what we can to promote access to the





House Concurrent Resolution No. 37 & House Resolution No. 14, Requesting an Audit of Child Custody Proceedings Involving the Commission of Family Violence of a Parent, to Assess the Use and Application of Section 571-46, HRS  
House Committee on Judiciary  
Friday, March 27, 2015, 3:05 PM  
Page 9

court through steps such as working hard on *pro se* packets of forms and directions, working with the bar to provide opportunities to consult with attorneys at self-help centers, and by adopting procedures that are appropriately accommodating without running the risk of perceptions of impropriety or bias. Victims desperately need legal representation and support for legal services funding will help ensure that they can get such representation.

Thank you for the opportunity to testify on these measures.

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| Robin        | AngelGRoup   | Support            | No                 |

Comments: AngelGroup strongly supports HCR37. We have sought and advocated for accountability for many years. The Legislature has heard strong testimony, seen documented evidence of of abuses that continue via court proceedings and has shown a deep and sincere desire to remedy the issues arising out of lack proper application and/or enforcement of 571-46. While "judicial discretion" and "separation of powers" has been a successful defensive fallback position, the casual lack of adherence to statutory law should raise valid concerns. It appears that 'judicial discretion' may have over-stepped its authority and the 'separation of powers' has been utilized to disregard laws for which court officers have taken sworn oaths. Accordingly, this lack of application - whether by ignorance or agenda-driven mischief - has a 'sunshine' opportunity via HCR37 to be addressed in a meaningful way. By allowing this assessment to publicly recognize and admit shortcomings, solutions / remedies can be sourced / applied. Its practical approach is long overdue and will provide much needed information to improve the current system(s). As we see it: • "Reasoned opposition" based on misplaced loyalties most certainly flies in the face of factual cases and lives that are forever negatively impacted. • Any willingness to settle for status quo – with awareness that statutory laws are being ignored - is neglectful. • Any allowance of slippery 'checks and balances' causes harm to Citizens, State and Nation in the short and long term. If there is nothing to hide, open the doors. Find a qualified, independent entity to illuminate the room so we can all focus and lean forward with progressive and streamlined movement, instead of cleaning up unnecessary messes from the 'elephant in the room'. The latter is a waste of time. The former is the way forward. We respectfully request allowance of the audit. We thank you for your informed support. AngelGroup

| <b>Submitted By</b> | <b>Organization</b>     | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|-------------------------|---------------------------|---------------------------|
| Cindy Dumas         | Safe Kids International | Support                   | No                        |

Comments:

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Andrew Willis       | Stop Abuse Campaign | Support                   | No                        |

Comments:

| <b>Submitted By</b> | <b>Organization</b>                      | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--|---------------------------|---------------------------|
| Steve Burdo         | Advocates for Child Empowerment & Safety | Support                   | No                        |

Comments: An audit similar to HCR 37 was passed in CA in 2010. When completed in 2011, the audit identify significant access to justice issues with regards to child custody. Please pass HCR 37 to ensure children and victims of domestic violence are protected in the family courts.

| <b>Submitted By</b> | <b>Organization</b>            | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--------------------------------|---------------------------|---------------------------|
| Kathleen Russell    | Center for Judicial Excellence | Support                   | No                        |

Comments: The Center for Judicial Excellence led the 2010 advocacy campaign to pass an audit of the California family courts through our Legislature's Joint Legislative Audit Committee. The audit ultimately revealed significant access to justice issues for family court litigants, which were not previously identified by the courts. The Center for Judicial Excellence strongly supports passage of HCR 37 to ensure protection of litigants who are victims of family violence.

TO: Representative Karl Rhoads, House Judiciary Chair  
Representative Joy San Buenaventura, House Judiciary Vice Chair  
House Judiciary Committee Members

FROM: Dara Carlin, M.A.  
Domestic Violence Survivor Advocate  
881 Akiu Place  
Kailua, HI 96734

DATE: March 27, 2015

RE: **STRONG SUPPORT for HCR 37 / HR 14**

Good Afternoon Representatives and thank you for this opportunity to provide testimony in STRONG SUPPORT of HCR 37 / HR14.

In the previous hearing of this Reso on March 17<sup>th</sup> before the House HUS Committee, Deputy Chief and Senior Judge, R. Mark Browning provided 13 (numbered below) grave concerns in his Written Testimony. To address these concerns, I offer you the following responses and clarifications:

1. That the Auditor would be required to go far beyond her authority and mission and seriously abridge the fundamental democratic policy of separation of powers.

According to *The Office of The Auditor* the Auditor can perform “special studies requested by the Legislature” and would not be exceeding her authority and mission since part of her role is to “help eliminate waste and inefficiency in government”.

“It is the constitutional duty of the Auditor to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices, and agencies of the State and its political subdivisions. The 1978 Constitutional Convention clarified these duties, making clear that the office’s post-auditing functions are not limited to financial audits, but also include program and performance audits of government agencies. While financial audits attest to the accuracy of financial statements and adequacy of financial records and internal control systems of agencies, program and performance audits assess the performance, management, and effectiveness of government agencies and programs providing information to improve operations, facilitate decision-making, and increase public accountability.” (Underlines added.) <http://auditor.hawaii.gov/about-us/>

This is how HCR 37/HR14 would **help eliminate waste and inefficiency in government:**

If **HRS 571-46(9)** were being applied and enforced, the need for Child Custody Evaluations in cases involving family/domestic violence would be *completely eradicated*. According to online sources, a typical retainer fee for a Custody Evaluation is \$5000 – that’s \$5000 that doesn’t need to be spent in a DV/family violence case. In a case I presently have, the *documented* physical evidence of domestic abuse against the mother and family violence against the child has been completely ignored by

the Custody Evaluator assigned to the case (and ignored by the judge and opposing counsel for over two years); there shouldn't be a Custody Evaluator assigned to this case! Custody shouldn't even be an issue *two years* after mom "successfully escaped" her abuser and there wouldn't even be a two year-old case had the law, **HRS 571-46(9)** been applied and enforced in the first place.

2. More on the separation of powers.

My recollection of the separation of powers was that it is under a system of checks and balances to hold the three branches of government accountable to each other as well as to ensure transparency and maintain the public's confidence; the separation of powers was not intended to be used as an exclusionary clause, a privacy statement or as a secret-keeping mechanism.

3. Whether the Auditor can conduct such an "assessment" of specific judicial cases, the inquiry into which revealed three reports pertaining to the Judiciary.

In Judge Browning's cursory review of reports concerning the Judiciary, he missed one from 2002: *Auditor finds flaws in Family Court system* (<http://the.honoluluadvertiser.com/article/2002/Dec/25/In/In23a.html>)

Judge Browning points to the responsibilities of the GAO; HCR37/HR14 is not necessarily wedded to the idea of the audit being performed by the Auditor – Representative Kobayashi suggested an Ombudsman but ANY office or officer who will faithfully and diligently execute the three attributes of the GAO as offered by Judge Browning will suffice:

1. **Accountability** – oversight to ensure accountability to the American people
2. **Integrity** – using high standards of professional, objective, fact-based, non-partisan, nonideological, fair and balanced approach
3. **Reliability** – timely, accurate, useful, clear and candid results

I've always found college/university students to be a wonderful, untapped resource. Students pursuing degrees in law, psychology, sociology, criminal justice and social work are often young, motivated, intent on doing meaningful and quality work; an audit of this nature could be a great internship and an excellent learning experience as well as perform a public service.

4. The Auditor would be required to go beyond what our own state would allow in terms of her role: as an independent watchdog over the spending of public funds.

The intent and point of HCR37/HR14 is not about **who** does the audit but **what** the audit will reveal; again, the Auditor doesn't *have* to be "the assessment tool" – if this goes beyond the Auditor's role, let's find someone/people who *can* fulfill the role.

5. The provision of orderly and predictable court processes, where persons dissatisfied at the trial level can seek remedy from two levels of appellate courts.



HCR37/HR14 is not about dissatisfied persons or about seeking remedy from the appellate courts; it's about seeing whether HRS 571-46(9) is being accurately applied and used in all domestic abuse/family violence-related cases according to the law. No one is above or excused from the law; we are ALL subject to it as US citizens.

5a. The family court's commitment to judicial training in the areas of child abuse, divorce, family/domestic violence with a table exemplifying 5 years of judicial trainings, by whom and covering what topic.

HCR37/HR14 is not about judicial training, although since raised... Years ago, an abuse expert who traveled from the mainland to train our judges reported the following: It was the trainer's impression that the judges appeared for the training under mandate for attendance/participation purposes, not with a sincere desire for advanced training. The trainer felt offended because the judges were inattentive to the presentation, instead focusing on their cell phones, ipads and laptops throughout the day. The trainer expressed frustration because at the end of the day, the judges were now deemed "trained" in the subject matter. If this is true, no amount of training is going to contribute to subject matter competency; perhaps administering competency tests at the end of such trainings would serve as a better standard than sign-in sheets at the beginning?

6. Certainty in judicial decisions where certainty must be available.

Judge Browning is correct in saying that a lack of certainty harms the community, the litigants and their children – a lack of certainty in ANY profession has potential to harm: medicine, aviation, military, media, waste management, emergency services, politics, education, etc. but the difference is that if malpractice or malfeasance occurs, the public has recourse for justice and/or recompense but when malpractice or malfeasance occurs in the family court setting, the public has no recourse because court-related professionals have immunity and the prescribed remedy is the problem (remedy through the court process). This is not only *timely* (as in the remedy can take years) but *costly*; retainer fees for an appeal can start at \$30,000 and by the time a DV survivor reaches that level, her money and resources have been long exhausted. Proceeding "pro se" is too overwhelming for those already overwhelmed by the emotionality of their cases and recommending appeal in absence of competent representation has the same effect as saying "Let them eat cake" adding insult to injury.

7. Upheaval in the lives of families and serious breaches in privacy. The legislature can make different, new and better laws based upon input appropriate to legislative bodies. Work with advocacy professionals, surveying national best practices, networking with other state legislatures and other legislative resources.

For years I've testified to the Legislature that our state boasts some of the best anti-abuse legislation and laws in the nation, however, these laws and legislation mean nothing when they are not *appropriately applied and enforced*.

We don't need different, new and better laws – the ones we have are solid, strong, empirically, scientifically, and longitudinally supported – we need the laws that we have applied and enforced. DV survivors know and can prove that **HRS 571-46(9)** is

not being applied and enforced in their cases, hence the request for an audit to prove this fact since no one wants to believe that **HRS 571-46(9)** isn't being applied and enforced.

8. Concern for the Auditor that her task will find herself taking on the role of fact finder and making determinations of credibility. When the family court becomes aware of abuse.

I truly don't understand all the concern for the Auditor; can we say Ombudsman, auditors, review team, working group, task force, whoever's assigned/best-fitted to conduct this audit? Considering Judge Browning's prior concern about certainty, wouldn't HCR37/HR14 help to that end? As Deputy Chief and Senior Judge, doesn't he want to know if the law is indeed being ignored, violated and broken by those entrusted to carry out the law?

Judge Browning raises a very important timing issue here because **HRS 571-46(9)** doesn't specify *when* family violence is identified, it just states the criteria of "a determination by the court that family violence has been committed by a parent". Indeed initial filings rarely identify DV from the get-go, which is why it's critical for ALL family court-related professionals to be fully competent in the area of DV and abuse because in MANY cases, the victim herself will be the last to recognize that what's happened/is happening is abuse. (That failure to recognize her own abuse is then used by Opposing Counsel as evidence to prove that her allegations are false/manufactured.)

Frankly, it doesn't matter *when* the issue of DV/family violence is discovered by the court; **the issue at hand is when abuse is identified, that HRS 571-46(9) is being accurately applied in all domestic abuse/family violence-related cases according to the law**, NOT that a judge or court-related professional has used broad judicial discretion to override, overlook or not apply the law in contradiction of best practice standards or placing "best interests of the child standards" over and above **HRS 571-46(9)**. The *only* best interest standard for children in abused-related cases is safety, nothing else need apply.

9. Concern that the Auditor will join the list of those coopted by the perpetrator to further torment the victims and their children.

The DV survivors don't share this concern at all and would welcome a neutral, unbiased party taking a look at what's happened to them and their children. If someone doesn't want to participate in the audit, let him/her opt out – there are plenty of people who won't mind opting in.

10. Intrusions into personal and family privacy.

Again, the DV survivors would welcome such an intrusion. If an audit of all child custody proceedings where family violence has been alleged to have been committed by a parent is too large a sample, scope or seems to target specific judicial cases as Judge Browning expresses concern for, then perhaps we could ask for audit volunteers and make a public announcement that those interested in participating in a family court

audit step forward. The audit sample size identified in HCR37/HR14 was chosen to avoid skewing and specifying judicial cases but if that's not random enough, we could leave it in the public's hands and make participation on a voluntary basis.

The other point worth remembering here is that in any human service-related profession, **confidentiality is the client's right for protection** – it is not the professional's right to invoke as protection. Confidentiality is the client's right to maintain or waive and professionals are bound to it according to the client's wishes.

11. Concern about how the Auditor will gain access to materials and files to conduct an audit as proposed in HCR37/HR14.

Having an audit based upon volunteers is one way to address this concern and going through transcripts would be an unnecessary burden; this is not a complicated audit:

- The Auditor/auditors would need to know what **HRS 571-46(9)** is,
- what DV/family violence looks like,
- review custody decisions to see if **HRS 571-46(9)** was applied because if it were it'd be stated/referenced, and
- make a phone call/provide a survey/conduct an interview with both parties.

If the audit period identified in HCR37/HR14 is what's causing the concern (from January 1, 2004, through December 31, 2009) because the audit timeframe is too old and "digging" for files is the issue, then we could easily change the timeframe from January 1, 2009 through December 31, 2014. The timeframe is not what's important here; the DV survivors can prove in any year at any time that **HRS 571-46(9)** wasn't being applied or enforced in their cases.

12. Concern that in the end, the Auditor & the Legislature cannot change the outcome of a particular case

Agreed – changing the outcome of a case is not the Auditor or Legislature's kuleana – that would be the Judiciary's responsibility, a judge's job. Judges can and do change judgments all the time in light of new evidence or changed information; people get released from prison and even Death Row – righting a wrong is the right thing to do at any time and it can be done.

Changing the outcomes of cases is also not the goal of HCR37/HR14; congressional oversight hearings is. HCR 37/HR14 is only one part of a national movement towards the goal of congressional oversight hearings into the "family court crisis". Our congressional leaders in Washington need to see that this human rights crisis is a national problem, not a state or local one. This is an opportunity for Hawaii to "get it right" at home before this issue hits the national stage.

13. Access to justice issues and more funding for Legal Aid and DVAC as remedies.

As already mentioned, recommending the problem as the solution is not only nonsensical, but where HCR37/HR14 is concerned, it's irrelevant. Respectfully, giving

legal aid resources increased funding to only do more of the same - ignore, violate and break **HRS 571-46(9)** - defeats everything.

God's honest truth, a Custody Evaluator once asked me "What's that?" when I asked her if she had considered **HRS 571-46(9)** when conducting her "investigation"/evaluation on a case of mine. In that particular case, the judge refused to move forward on the scheduled all-day trial, saying repetitively (as in literally all day long) that he "wanted a settlement, not a trial". The judge repeatedly instructed mom that it was her right to proceed with a trial BUT warned that things "could get much worse for her" if she proceeded with a trial. Mom never got her trial and the abuser got their four small children despite the domestic violence and child sexual abuse that caused mom to take the four children and flee to a shelter in the first place.

Despite the good work that the Domestic Violence Action Center did long, long ago, it too has become part of the problem by failing to advocate for the application of **HRS 571-46(9)** in domestic violence cases and in failing to respond to the plight of domestic violence survivor moms and their children in the child custody arena. DVAC's silent advocates can do nothing but bear witness to the devastation of DV survivor moms losing custody of their children to their abusers in contradiction of **HRS 571-46(9)**. DVAC is the very entity who should be leading this charge, championing this cause and pressuring the passage of HCR37/HR14 since the family court crisis is one of the National Coalition Against Domestic Violence's top priorities. Family court-related professionals not knowing any better is understandable but DV-related professionals who *do* know better and fail to actively impact and correct the family court crisis is a betrayal.

**Please let's find a way to make HCR37/HR14 happen so we can bring an end to the family court crisis in Hawaii.**

Thank you once again for the opportunity to provide testimony in support of HCR37/HR14.

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Marilyn Yamamoto    | Individual          | Support                   | No                        |

Comments: All government entities have an obligation to provide the tax paying public accountability and transparency of services. I strongly support the request for an audit of the issues in HCR37.

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Kathy Lee           | Individual          | Support                   | No                        |

Comments:

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Eileen King         | Individual          | Support                   | No                        |

Comments: Child Justice supports every effort that will bring oversight, accountability and reform to end the Family Court Crisis.

To: Representative Karl Rhoads, Judiciary Chair  
Representative San Beunaventura, Judiciary Vice Chair  
Judiciary Committee Members

March 26, 2015

RE: Support of HCR37/HR14

Good Afternoon Chair, Vice Chair and Judiciary Committee Members.

I am in support of the above-mentioned Resolution. I believe we should all support the law, and determine how well the law is being followed, because of the following:

**Loss of Faith in Hawaii's Judicial Process.** The evidence is clear. In a multipart award-winning article titled, "***Crossing The Line: Abuse in Hawaii Homes***," by Kevin Dayton, Rob Perez, Jeff Widener, and Russell McCrory printed in the *Honolulu Advertiser* in 2009, they state:

"The distrust of the system is not surprising: news about case outcomes considered outrageous quickly spreads in the domestic violence community. In one recent case, a Honolulu judge gave sole custody of a divorcing couples two teen daughters to the husband even though child protective services recommended against it, partly because the husband had sexually molested a teen daughter, court documents show."

"So many battered women have lost faith in ways criminal justice system that many are not reporting their beatings and some even say that abuse can be more tolerable than the trauma of dealing with unsympathetic people in a growing judicial process."

"So many women have opted not to report their beatings that abuse calls the police state wide have plunged 64% over the last decade-even though virtually everyone in the domestic violence community says Hawaii's problem is not getting any better and some believe it's getting worse, particularly with the economy sputtering and illicit drugs rampant."

"Even though Honolulu is one of the safest major US cities in terms of violent crimes overall, the state almost every year since 1997 has topped the national average in domestic violence homicides per capita, according to an advertiser analysis of state and federal data."

"Victims and advocates say a dysfunctional system of accountability is a key reason why he has made little progress in stemming the domestic violence problem."

In a disturbing story recounted in the above-mentioned article:



"In a confidential report to the court, CPS noted that the man had been physically abusive to his wife, had a serious alcohol problem and had sexually molested his stepdaughter, according to the court documents filed by the wife's attorney. One of his teenage daughters even told the teacher that her father had laid down naked in her room while he was drunk, scaring her, the documents say. Yet the court, following the confidential recommendation of the judiciary unit that investigates such cases, this month awarded the husband sole legal and physical custody of the two daughters, making permanent a temporary arrangement that was approved in June."

"Sometimes, I just break down crying because the system is so broken," said the wife, who asked not to be named. "If I known then what I know now, maybe I should've just put up with the abuse."

<http://dartcenter.org/content/crossing-line-abuse-in-hawai%E2%80%99i-homes#.VRSKoOHRY5w>

**Training is not enough.** All of the above has occurred despite the judges receiving, "regular training." Too many cases receiving wide exposure, have made it clear that our system is completely broken, and needs revamping. Laws are already in place. They need to be followed. As a physician, we all receive regular training, just as judges purportedly receive. If we make a mistake, we get sued and pay the price. If judges make judicial errors, they receive a slap on the hand, or more commonly nothing. There is no penalty. No follow-up. No oversight. All of the records are locked away. Having these records hidden from public view, is preposterous, and unintentionally covers up judicial malpractice, instead of the rights of the innocent. This would be akin to a physician, stating that his medical record in a malpractice case could not be reviewed because of confidentiality.

**Lack of accountability.** The law is already in place for judges to follow. The system is in disarray, and there is evidence to demonstrate that the law is not being followed. Simply stating that we must trust the system, is not sufficient. Having the fox tell us that the chicken house is safe is not enough.

Catholic Charities' (Joe) Bloom said it best, "Women can learn all the karate they want and carry all the mace they want, but until men decide violence against women is going to end, it is not going to end," he said. **"We're just not being held accountable."**

Please ensure that HCR37/HR14 is passed for the people of Hawaii's best interests. Thank you for this opportunity to provide testimony in support of HCR37/HR14.

Guy Yatsushiro, M.D.

| <b>Submitted By</b>  | <b>Organization</b> | <b>Testifier<br/>Position</b> | <b>Present at<br/>Hearing</b> |
|----------------------|---------------------|-------------------------------|-------------------------------|
| Paul Stanley Holdorf | Individual          | Support                       | No                            |

Comments:

To Representative Karl Rhoads, Representative San Buenaventura, and  
Judicial Committee Representatives

From a domestic violence survivor

For testimony in support of HCR 37 and HR 14 to be heard on March 27,  
2015 at 3:05pm in State Capitol Room 325

Good afternoon Chair Rhoads, Vice Chair San Buenaventura, and Judicial  
Committee Representatives. I am submitting this testimony through my DV  
survivor advocate, Dara Carlin, as I fear stepping forward. I want my story  
told but I don't want to be killed for it or be targeted for further retaliation  
for sharing it.

I met my ex-husband in 1997 and we were married in 1999. I fled for my  
life and my infant daughter's life in 2007.

Realizing I was a victim of Domestic Violence wasn't too hard for me. Six  
months into our marriage, he punched me in the mouth so hard I literally had  
no idea what hit me. One minute, I was in the kitchen talking to him, and  
the next, I was on the floor. I was so shocked and stunned, I couldn't wrap  
my mind around it. The physical abuse was bad enough but the  
psychological abuse was worse. People always ask "Why didn't you just  
leave?" but I DID - 5 or 6 different times! Each time I sought help from  
authorities, NO ONE would help me so I'd have no choice but go back to  
him. One time, I spoke to his commanding officer and was told to "Go  
home, don't cause any more trouble, and make him a nice dinner" and this is  
looking at him with black eyes and a split lip! I suffered a miscarriage  
following a particularly bad beating (he didn't want children) so when I  
became pregnant the second time, I knew the child I was carrying was not  
going to be safe from him either.

My abuse was documented, however, because my ex is considered to be  
highly dangerous to my daughter and me, I went through a program called  
the "New Numbers For Victims of Domestic Violence", a program that's  
administered by the Social Security Administration that helps to conceal DV  
survivor's identities and locations from abusers who relentlessly stalk their  
victims. You can't just get into this program - you need VOLUMES of  
verified third party documented abuse to prove your victimization so if  
you're in it, you ARE a "bona fide victim of domestic violence". A  
condition of this program is erasing your former identity - you're asked to

destroy all evidence tying you to your former identity so the only physical evidence I have left to prove my abuse are the scars, memory loss due to head injuries, and a single piece of paper saying my social security number was changed due to extreme violence and abuse against me.

In September 2008, I took my then year and a half-old daughter to an Emergency Room for treatment after she developed a high fever that wouldn't break after receiving 7 immunizations (4 of which were live viruses) at the same time, which I've been told is a potentially NORMAL response to that amount of vaccines she was given all at once. Because of a lifelong pre-existing condition I have combined with the stress related to this event, I was also hospitalized then given a drug I'M ALLERGIC to. When my husband and sister vehemently objected to my being given a drug I'm allergic to, it was documented that they were "hostile and belligerent" towards hospital staff. My daughter and I were discharged home TOGETHER (no CPS intervention) yet 5 nights later when my daughter was sleeping, CPS took my daughter from us with no explanation as to why. **The CPS Investigator and GAL then CONTACTED MY ABUSER** - the man I had successfully escaped from through the help of the Identity & Relocation program - effectively undoing every protective measure that had been put into place to keep my daughter and me safe from him!

The Executive Director of the Hawaii State Coalition Against Domestic Violence at the time was Carol Lee, who was involved in my case from the beginning but she, and later, Ana Maring, DID ABSOLUTELY NOTHING to verify my status as a DV survivor, advocate for me or stop the over-zealous efforts of the GAL and CPS from dismantling the very safety precautions Carol herself helped put into place! Carol never took a stand for me with CPS or the family court, although she signed an agreement between herself and DHS in 2004 to collaborate on DV/CWS cases! By this point, my case was no secret in the "DV community" yet NONE of the "DV Professionals" on Oahu who knew the truth of my case came forward to verify their involvement with me, including Nancy Kreidman.

Because Dara (my DV Survivor Advocate) was COMPLETELY IGNORED by CPS and the GAL, not only was my safety compromised, but my daughter was wrongfully removed from our care, my husband almost lost his job several times, pursuing my college education to become a teacher became worthless, and we were brought to the brink of bankruptcy.

Personally, the tab for my family court-related expenses in Hawaii totaled over **\$68,000**, all of which cumulated over a period of just a year and a half! At one point in our case, I had to sell our furniture so we could afford to see our daughter at the PACT visitation center. The amount of money spent by Domestic Violence services to keep me and my daughter safe, all of which was completely compromised by CPS and the GAL and the tab that the state paid for the GAL and CPS's mistake, I can't even fathom. Here is what would be covered by that bill that came at the state AND taxpayers' expense:

DV services that were compromised:

- 140 shelter bed days, authorized by Child & Family Service
- 3 Flight To Freedom Fund airfares, authorized by the HSCADV
- 1 car transportation from the Big Island, paid for by the HSCADV
- 3 – 4 Days of round-the-clock security services during my hospitalization following my attack by "an unknown assailant", paid for by the HSCADV
- The time and resources expended by 4 HSCADV staff over the course of a year and a half
- The time and resources expended by a Domestic Violence Action Center (DVAC) Victim Advocate
- Costs involved in changing my identity and social security number through the NNEDV's Identity Change & Relocation Program

Because Ms. Lee failed to take a stand in this case and the GAL and CPS chose to ignore my DV Survivor Advocate, the following services were squandered on me alone:

- The services of a state-appointed attorney
- The services of a state-appointed Guardian Ad Litem
- The time and resources expended by a CPS Investigator, Case Manager and Supervisor whose efforts stripped me of all the protective measures put into place by DV services
- The time and resources required for 12 family court proceedings that included the employment of 2 judges, court officers and 2 attorneys from the AG's office
- 4 psychological evaluations

- Supervised visitation services through the Department of Human Services (2x a week for 6 months) AND The Parents & Children Together program (3x a week for 3 months)
- 3 Ohana Conferences
- 2 multi-disciplinary meeting at the Kapiolani Child Protection Center where the DV service providers and my Survivor Advocate were deliberately excluded from participating (I have since learned that DHS is not allowed to exclude anyone on the case)
- 9 1/2 months of non-relative out-of-home foster care (my suggestions for family placements were all summarily rejected)
- Enhanced Healthy Start services (which are designed to strengthen the parent-child bond) being afforded to the FOSTER PARENTS
- Placing my husband in Catholic Charities foster parent training classes to become a licensed child-specific foster care placement (including paying for FBI and other background checks) only to be told that he would NOT be a placement option for our daughter
- 3 Home Inspection-Evaluations by Catholic Charities, CPS & the GAL with a 4th planned by Parents Inc.
- 1 court-ordered mediation that my Survivor Advocate was not allowed to participate in
- 2 Substance Abuse Evaluations (because my ex accused me of abusing prescription drugs)
- 2 urinalysis proving my sobriety
- 1 hair follicle test to ensure that I was REALLY sober even after 2 clean UAs!

I have full physical/legal custody of my daughter, but am terrified that my ex could show up at any moment and try to challenge that.

Before this all started, my husband was at the final step of adopting my daughter. The ironic thing is that right before CPS came in and destroyed our quiet life, we were at family court to file something regarding the adoption and I passed in front of the men and women who had filed for TROs. I saw the expressions on the women's faces and remembered well being there not so long ago myself, but as I passed them thought "Those poor things - I can't imagine what they must be going through". Several weeks later, I (once again) became one of them. I was right back where I started but this time my abuser was the family court system.

One last thing: after we finally got my daughter back, my husband and I picked up where we left off in her adoption process but guess what? When we went to finalize the adoption in March 2010, it turns out that her adoption had already been finalized in September 2008 by Judge Broderick BEFORE CPS got involved! That means my daughter had been legally adopted, my husband was her legal parent and everything CPS put my husband through was completely ILLEGAL!

I hope you're angry reading this but more importantly I hope you're angry enough to do something about it. Making HCR 37 and HR 14 happen will reveal more cases like mine so please, make it happen to make this stop. Thank you for listening to my story.

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Sandy McKendree     | Individual          | Support                   | Yes                       |

Comments:



Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Committee on Judiciary and Labor

Ashley N. Jenkins  
Honolulu, HI 96818

Friday, March 27, 2015

Support for S.B. No. 265, Relating to Sex Trafficking

I ***strongly support*** the passage of S.B. 265, as it would provide the state of Hawaii with the legislation needed to effectively combat this disturbingly violent crime. I currently feel like I am living in a state that is failing to appropriately recognize sex trafficking as a legitimate issue or concern. As a young woman and as a mother, this is absolutely terrifying. I fear that without a comprehensive sex trafficking ban, this issue will continue to flourish and safety will be increasingly compromised. I am also broken by the knowledge that without proper legislation, we are actively failing the victims that are currently trapped behind closed doors. The passage of this bill will rejuvenate lost feelings of hope. Additionally, this bill holds the incredible power to rescue, support, and protect.

As a social work student, I have additional concerns about the issue relating to sex trafficking. Common perceptions, and law, are built around the dominant paradigm that deems prostitution as voluntary, and harshly criminalizes the women involved. These perceptions are dangerously flawed because they fail to account for the common elements of coercion and force.

I am afraid that Hawaii is especially vulnerable to the discreet manipulation of sex traffickers. Stressful situations resulting from poverty, abuse, and runaway youth dramatically increase vulnerability and the likelihood of being convinced to pursue an alternative lifestyle. Sex traffickers essentially offer the at-risk population false promises and hope. This initial willingness to comply could very well be what mistakenly fuels the old-age dominant paradigm mentioned above; however, this is not compliance, but rather a dangerous trap. Accordingly, Hawaii is one of two states left in our nation that have yet to adopt the more comprehensive, alternative model that accounts for this trickery.

S.B. 265 is consistent with the new model that so many other states have already successfully adopted. It is time to recognize that sex trafficking is a sickening problem. Furthermore, we must also recognize that entrance is anything but voluntary when we are discussing an industry that preys upon the vulnerabilities of its victims. The new model, as well as its associated laws, focuses on the criminalization and prosecution of traffickers, buyers, and facilitators. Alternatively, women and girls involved are supported and appropriately acknowledged as victims of a violent crime. I do say violent because we are talking about the

daughters of our community being drugged, beaten, raped, brainwashed, and physically held against their will. In my opinion, this should be the very definition of violence.

A paradigm shift needs to happen in Hawaii, and the passage of this bill would certainly encourage that. I urge the committee to join the fight against sex trafficking, and pass S.B. 944. Thank you for the opportunity to testify.

Sincerely,

Ashley N. Jenkins