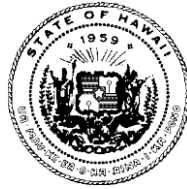


DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

BRIDGET HOLTHUS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96808

February 3, 2017

TO: The Honorable Dee Morikawa, Chair
House Committee on Human Services

The Honorable Takashi Ohno, Chair
House Committee on Intrastate Commerce

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 669 - Relating to Domestic Violence**

Hearing: Friday, February 3, 2017, 9:00 a.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this bill. Section 586-10.5, Hawaii Revised Statute (HRS) is duplicative of section 350-1.1(a) (3) and (4), and (b) (HRS), which mandates reporting to Child Welfare Services (CWS) by persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably near future.

PURPOSE: The purpose of this bill is to remove certain unnecessary and redundant reporting responsibilities of the Family Courts and the Department of Human Services in cases where temporary restraining orders are sought for alleged domestic violence abuse involving a family or household member who is a minor or incapacitated person.

Child Welfare Services (CWS) works closely with the Family Court to ensure the safety, permanency (stability), and well-being of children. Under the current statute, the Family Courts report all temporary restraining orders to the CWS branch where there are minors present in the home, regardless of the minors' exposure to the alleged domestic abuse. Many reports do not indicate any safety concerns for the children, consequently, the current statute has created

additional burden on CWS as CWS staff must screen the referrals, investigate the cases, and submit written reports to the court in advance of the hearings.

Additionally, the automatic referral for investigation to CWS is a potential deterrent to survivors seeking safety through the restraining order process, as petitioners fear being referred for investigation and having their children removed from their care. To prevent survivors from reporting domestic partner abuse, batterers often threaten that survivors will lose custody of their children.

Section 350-1.1, HRS, identifies those persons in their professional or official capacity who are "mandated reporters" of child abuse and neglect. Section 350-1.1(a)(3) and (4), and (b), HRS, requires, amongst others, law enforcement, court staff, the department of public safety, parole and probation officers report all situations of suspected abuse and neglect to Child Welfare Services. An automatic referral in every case through the restraining order process is not necessary. The Judiciary should have the discretion to refer cases to CWS for investigation on a case by cases given the circumstances.

Thank you for the opportunity to testify.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Human Services

Representative Dee Morikawa, Chair

Representative Chris Todd, Vice Chair

Friday, February 3, 2017, 9:00 AM
State Capitol, Conference Room 329

By

Judge R. Mark Browning
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 669, Relating to Domestic Violence

Purpose: Repeals HRS Section 586-10.5

Judiciary's Position:

The Judiciary opposes the complete repeal of HRS §586-10.5 and we respectfully strongly suggest the following language regarding reports requested by judges in HRS Chapter 586 cases.

The Judiciary staff will continue to report appropriate cases as mandated by HRS Chapter 350. However, we are concerned that, in some cases, we will not be able to adequately assess the safety of the children involved in domestic violence cases without timely input from the Department of Human Services (DHS). Therefore, we respectfully request this language that we believe balances the need of providing safety to children, the court’s need for information independent of the parties, and avoiding unnecessary work by the DHS.

§586-10.5 Reports by the department of human services. If directed by the court, the department of human services shall provide the family court with an oral or written report regarding the safety of a minor child of the parties on or prior to the next regularly scheduled court hearing. If the department chooses



House Bill No. 669, Relating to Domestic Violence
House Committee on Human Services
Friday, February 3, 2017 9:00 AM
Page 2

to provide a written report, the department need not appear at the hearing unless ordered by the court. The court shall provide copies of all written reports to the parties.

Our suggested language addresses the bill's concerns regarding redundancy of reporting requirements.

The Judiciary notes that, except with minor amendments, this section has been part of HRS Chapter 586 since 1987 and we have always been deemed a "mandatory reporter" under HRS Chapter 350. Despite this, the number of cases has drastically increased rather than decreased. National "best practices" are based on the diverse practices across the nation. Focusing just on our own state, it does not appear that fear of automatic referral to child welfare or adult protective services has dampened the flow of these cases.

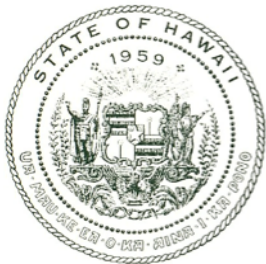
Victims, their children, and perpetrators need case management and access to a panoply of services needed to address this multi-faceted problem and to provide safety. The Family Court is not a service provider; our role is to hear cases and apply the law. Unlike child and incapacitated adult/elder abuse cases, there is no state agency that is a party to the HRS Chapter 586 proceedings that will investigate or find, or refer the parties and children to, appropriate resources. Lacking such an agency, the court must be able to get the help of the DHS through oral/written reports.

Furthermore, it is not enough to simply rely on the mandatory reporting procedures because there is no mechanism that will ensure the court's receiving the needed information within the time frames established by HRS Chapter 586. A complete repeal of HRS §586-10.5 will sever the necessary information flow from the DHS to the court and vice versa. These cases are among the toughest faced by Family Court. Alone, we can provide the required protective order but such an order may not address the needs and safety of the children.

For all these reasons, the Family Court respectfully opposes repealing HRS Section 586-10.5 and respectfully suggests alternative language to replace the current language.

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

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
JUDY KERN
MARILYN LEE
AMY MONK
LISA ELLEN SMITH

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February 3, 2017

To: Representative Dee Morikawa, Chair
Representative Chris Todd, Vice Chair
Members of the House Committee on Human Services

Representative Takashi Ohno, Chair
Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Intrastate Commerce

From: Cathy Betts
Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, HB 669, Relating to Domestic Violence

Thank you for this opportunity to testify in support of HB 669, which would repeal Hawaii Revised Statute section 586-10.5. This section requires family courts to report to the Department of Human Services in each case where a restraining order is sought for abuse of family or household member and a minor or incapacitated person is involved.

Under this statute, family court is mandated to involve child welfare in every petition for a temporary restraining order or protective order that is filed with children involved. A victim's petition for a restraining order is often the first step to safety. It takes tremendous courage and often lengthy periods of time for a victim to come forward and apply for a restraining order. When a child welfare investigation is automatically triggered, it has a chilling effect on victims coming forward as they may fear that the application will cause further scrutiny on their family.

Our family courts already have the discretion to direct the Department of Human Services to become involved where there is reason to believe that child abuse or neglect has occurred. The Department of Human Services regularly investigates cases of threat of harm or actual harm if the allegations surface from a restraining order application. The current practice of an automatic referral overburdens the court system and our child welfare workers, while potentially causing further harm to victims of domestic violence and abuse.

The Commission supports the passage of HB 669.

Thank you for this opportunity to testify.

Department of the Prosecuting Attorney
City and County of Honolulu

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515



KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHRISTOPHER D.W. YOUNG
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE DEE MORIKAWA, CHAIR
THE HONORABLE CHRIS TODD, VICE CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i**

February 3, 2017

RE: H.B. 669; RELATING TO DOMESTIC VIOLENCE.

Chair Morikawa, Vice-Chair Todd and members of the House Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 669.

The purpose of H.B. 669 is to repeal H.R.S. Section 586-10.5 and eliminate the requirement that a Child Protective Services Investigation be initiated every time a Protective Order is sought that involves a minor or incapacitated person. Not only is such a requirement a waste of the thinly stretched resources of the department of Human Services but it duplicates and creates confusion with existing mandatory reporting requirements for child and dependent adult abuse. A judge who is convinced that facts revealed in a Protective Order application requires a CPS investigation will still be required to report the matter for investigation. However, requiring that each and every application that involves a child or dependent adult trigger an investigation simply makes no sense. In addition there are very serious concerns among most domestic violence service providers that having such a requirement in the Protective Oder law inhibits many victims who badly need this type of legal protection from seeking them because they are wary of an unnecessary and unwarranted CPS investigation of their lives. This negative incentive is clearly counter to the very purpose of our Protective Oder law.

For all of the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 669. Thank you for the opportunity to testify on this matter.

HUStestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 1, 2017 8:28 PM
To: HUStestimony
Cc: mlopes@hscadv.org
Subject: Submitted testimony for HB669 on Feb 3, 2017 09:00AM

HB669

Submitted on: 2/1/2017

Testimony for HUS on Feb 3, 2017 09:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Marci Lopes	Hawaii State Coalition Against Domestic Violence	Support	Yes

Comments: Please think of all victims on all of our Islands.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



Hawaii Women's Coalition

COMMITTEE ON HUMAN SERVICES

Rep. Dee Morikawa, Chair

Rep. Chris Todd, Vice Chair

DATE: Friday, February 3, 2017

TIME: 9:00 A.M

PLACE: Conference Room 329

STRONG SUPPORT FOR HB669

Aloha Chair Morikawa, Vice Chair Todd and members,

The Coalition is in strong support of this bill that would repeal Hawaii Revised Statute section 586-10.5. This section requires family courts to report to the Department of Human Services in each case where a restraining order is sought for abuse of family or household member and a minor or incapacitated person is involved.

Such a procedure is not only intimidating to the victim but can also result in revealing the location of victim to the perpetrator putting her and her children in harms way. Under this statute, family court is mandated to involve child welfare in **every** petition for a temporary restraining order or protective order that is filed with children involved.

A victim's petition for a restraining order is often the first step to safety. It takes tremendous courage and often lengthy periods of time for a victim to come forward and apply for a restraining order. When a child welfare investigation is automatically triggered, it has a chilling effect on victims coming forward as they may fear that the application will cause further scrutiny on their family.

Our family courts already have the discretion to direct the Department of Human Services to become involved where there is reason to believe that child abuse or neglect has occurred. The Department of Human Services regularly investigates cases of threat of harm or actual harm if the allegations surface from a restraining order application. The current practice of an automatic referral overburdens the court system and our child welfare workers, while potentially causing further harm to victims of domestic violence and abuse.

Please pass this important bill out of committee.

Mahalo for the opportunity to testify,

Ann S. Freed Co-Chair, Hawai'i Women's Coalition

Contact: annsreed@gmail.com Phone: 808-623-5676

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

c/o 841 Bishop Street, Ste. 480, Honolulu, Hawaii 96813
www.hawaiifamilylawsection.org

February 2, 2017

TO: Representative Dee Morikawa, Chair
Representative Chris Todd, Vice Chair
House Committee on Human Services

FROM: LYNNAE LEE, Chair
TOM TANIMOTO, Vice-Chair
Family Law Section of the Hawaii State Bar Association

CHAIR
LYNNAE LEE
lee@lla-hawaiiilaw.com
VICE-CHAIR / CHAIR-ELECT
TOM TANIMOTO
ttanimoto@coatesandfrey.com
SECRETARY
ANTHONY PERRAULT
tony@farrell-hawaii.com
TREASURER
NAOKO MIYAMOTO
N.Miyamoto@hifamilaw.com

HEARING DATE: February 3, 2017 at 9 a.m.

RE: Testimony in Opposition to HB669 Relating to Domestic Violence

Dear Chair Morikawa, Vice Chair Todd, and fellow committee members:

We are writing in opposition to HB669 on behalf of the Family Law Section of the Hawaii State Bar Association which is comprised of approximately 140 members statewide all practicing and/or expressing an interest in Family Law.

First and foremost, we truly value the work of the Child Welfare Services (“CWS”) division of the Department of Human Services. Second, we know that they are overworked (and probably underpaid) for their time and commitment.

However, we respectfully submit that it is necessary to keep HRS 586-10.5 as is. HRS 586-10.5 is NOT REDUNDANT in its reporting requirements. Its uniqueness lies in the requirement for CWS to provide the court with a written report on the disposition of the referral at least two (2) days prior to the court hearing. This requirement is not contained in HRS 350.1.1(a)(4) and (b), nor in HRS 346-224(a)(3), and we submit it is necessary to facilitate justice in the Family Court with respect to the protection of our keiki.

HRS 586 provides a mechanism to protect abused spouses or intimate partners and/or children. Some individuals are particularly vulnerable and are in dire need of the protection a restraining order provides. The Court, though, does not provide case management, nor does it have the on-site resources to determine what services are appropriate to further the safety and protection of those who are abused. A mandatory reporting requirement for CWS to prepare reports provides just that; namely, information about recommended services not only for the abused, but for the abuser as well.

More importantly, we have seen an increase in individuals filing *ex parte* restraining orders, not to obtain safety, but mainly to gain custody. As practitioners we rely on the issuance of the CWS report pursuant to HRS 586-10.5 to wean out false allegations from actual threats of harm to a child. We believe the Court also heavily relies on that because the Court simply does not have the time to have full evidentiary hearings on every temporary restraining order ("TRO") matter.

The issuance of the TRO is done without a hearing and the respondent is not afforded an opportunity to defend him/herself against the allegations until the date of the court hearing, and in the meantime is prevented from contact with his/her children. Without the requirement of the report having to be provided by the next court hearing, those falsely accused of abusing their spouse or child would not be able to see their child for extended periods of time. This is extremely problematic particularly when the alleged abuser did not do anything to warrant the issuance of the TRO.

That being said, it is our understanding and our experience, that the Family Court does not automatically refer every TRO case to CWS. Family Court has been selective in only referring those that have sufficiently serious allegations to warrant a potential threat of harm or abuse or actual harm or abuse to a minor child. Without another process in place to carry out the services that CWS currently provides to help protect our community and facilitate justice in the Family Court, we cannot support HB669.

For the reasons stated above, the Family Law Section opposes repealing HRS 586-10.5.

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

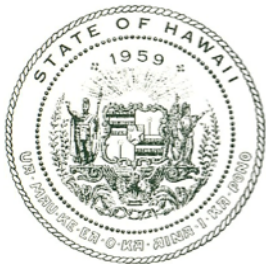
Sincerely,



Lynnae Lee, Chair, Family Law Section
Tom Tanimoto, Vice-Chair, Family Law Section

NOTE: *The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.*

HAWAII
STATE
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ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
JUDY KERN
MARILYN LEE
AMY MONK
LISA ELLEN SMITH

Executive Director
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February 3, 2017

To: Representative Dee Morikawa, Chair
Representative Chris Todd, Vice Chair
Members of the House Committee on Human Services

Representative Takashi Ohno, Chair
Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Intrastate Commerce

From: Cathy Betts
Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, HB 669, Relating to Domestic Violence

Thank you for this opportunity to testify in support of HB 669, which would repeal Hawaii Revised Statute section 586-10.5. This section requires family courts to report to the Department of Human Services in each case where a restraining order is sought for abuse of family or household member and a minor or incapacitated person is involved.

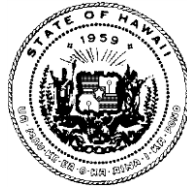
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Our family courts already have the discretion to direct the Department of Human Services to become involved where there is reason to believe that child abuse or neglect has occurred. The Department of Human Services regularly investigates cases of threat of harm or actual harm if the allegations surface from a restraining order application. The current practice of an automatic referral overburdens the court system and our child welfare workers, while potentially causing further harm to victims of domestic violence and abuse.

The Commission supports the passage of HB 669.

Thank you for this opportunity to testify.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

BRIDGET HOLTHUS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96808

February 3, 2017

TO: The Honorable Dee Morikawa, Chair
House Committee on Human Services

The Honorable Takashi Ohno, Chair
House Committee on Intrastate Commerce

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 669 - Relating to Domestic Violence**

Hearing: Friday, February 3, 2017, 9:00 a.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this bill. Section 586-10.5, Hawaii Revised Statute (HRS) is duplicative of section 350-1.1(a) (3) and (4), and (b) (HRS), which mandates reporting to Child Welfare Services (CWS) by persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably near future.

PURPOSE: The purpose of this bill is to remove certain unnecessary and redundant reporting responsibilities of the Family Courts and the Department of Human Services in cases where temporary restraining orders are sought for alleged domestic violence abuse involving a family or household member who is a minor or incapacitated person.

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Additionally, the automatic referral for investigation to CWS is a potential deterrent to survivors seeking safety through the restraining order process, as petitioners fear being referred for investigation and having their children removed from their care. To prevent survivors from reporting domestic partner abuse, batterers often threaten that survivors will lose custody of their children.

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Thank you for the opportunity to testify.



Women Helping Women

Until every home is safe

WomenHelpingWomenMaui.org

DATE: February 2, 2017

To: Rep. Dee Morikawa, Chair
Rep. Chris Todd, Vice Chair
Members of the Human Services Committee

From: Stacey Moniz, Executive Director, Women Helping Women

Hearing Date: Friday, February 3, 2017; 9:00 a.m., Conference Room 329

Re: Testimony in **Strong Support**, **HB 669** Relating to Domestic Violence

Thank you for this opportunity to testify in **strong support of HB 669**.

Women Helping Women is one of two non-profit organizations who help prepare Temporary Restraining Orders (TRO) on the islands of Maui and Lanai.

HB 669 would repeal Hawaii Revised Statute section 586-10.5. This section requires that the Child Welfare Services section of the Department of Human Services be automatically notified when a petitioner with children files for a restraining order against an abusive partner.

Eliminating this practice is a very good idea. We have seen examples where this practice has put victims in danger by their partners, and in fact, we have seen victims choose NOT to get a restraining order when we advised them of this law. In meeting with a Family Court Judge, we were informed that in practice, they are no longer doing this automatically, and we are grateful that they are using their discretion, however, the law remains on the books, and it is both unnecessary and dangerous.

There are numerous protections for children built into the restraining order process and TRO staff and court personnel are all mandated reporters. The system is on the lookout for ways to protect children in their homes.

Thank you for your consideration of removing this language from the Hawaii Revised Statutes and for all your hard work to help keep our communities safe.

I can be reached at 808.446.7343 or via email at director@whwmaui.net should you have any questions or need further clarification.

Maui
United Way



Partner Agency

1935 Main Street
Suite 202
Wailuku, HI 96793

Phone: (808) 242-6600
Fax: (808) 249-8147

www.whwmaui.net



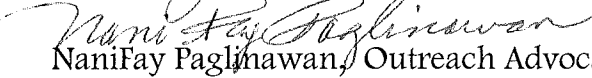
Women Helping Women

Until every home is safe

WomenHelpingWomenMaui.org

DATE: February 2, 2017

To: Rep. Dee Morikawa, Chair
Rep. Chris Todd, Vice Chair
Members of the Human Services Committee

From: 
NaniFay Paglinawan, Outreach Advocate Women Helping Women

Hearing Date: Friday, February 3, 2017; 9:00 a.m., Conference Room 329

Re: Testimony in Strong Support, HB 669 Relating to Domestic Violence

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LATE

TO: Chair Ohno
Vice Chair Choy
Members of the Committee on Intrastate Commerce

FR: Nanci Kreidman, M.A.

RE: HB 669 Support

Aloha. And thank you for scheduling this Bill for hearing early in the Session. This is an issue of great importance, and deserves the legislature's attention.

The requirement for Family Court to make an automatic report to child welfare when a temporary restraining order is sought by a survivor places an unnecessary burden on the child welfare system and creates an unfortunate impact on survivors. Seeking court protection and taking the affirmative step to secure a restraining order is a proactive step that is aimed at providing protection for a family. Involving child welfare, if necessary, could still be done if circumstances warrant such a report.

We would like to suggest an amendment to the Bill proposed. It would be useful for Family Court judges to have the authority, when necessary, and if desired, to direct child welfare services to conduct an investigation and make a report to the Court. Apparently, before this law was in effect (586-10.5) it was difficult to obtain reports from child welfare when the Court was interested in having the agency complete an investigation. Judges are given discretion in many ways, and have maintained consistently they function best with discretion. It appears in these kinds of cases, such discretion is well founded. Cooperation from child welfare services would be beneficial and assist the court and the family in achieving the greatest safety for those at risk.

Additionally, if a person reaches out for help it is an affirmative action and the community should not be forcing other system interventions that may be harmful or threatening in nature. It would be an unintended, and deleterious effect for survivors to avoid working with available resources, like Family Court restraining orders for fear that they would be investigated for potential child abuse. It is not uncommon or unfamiliar that child welfare services is over-extended and cannot conduct an investigation in a timely fashion, requiring multiple appearances by survivors. This burdens the Court and the community's families.

Thank you for your favorable action to amend HRS 586-10.5.



To: Rep. Dee Morikawa, Chair
Rep. Chris Todd, Vice Chair
Members of the Committee Human Services

LATE

From: Anonymous Domestic Violence Survivor

DATE/LOCATION: Friday, February 3, 2017; 9:00 a.m., Conference Room 329

Re: Testimony in Support, HB 669 Relating to Domestic Violence

As a domestic violence survivor, I would like the opportunity to remain anonymous to ensure my safety as I testify in **strong support** of HB 669. But before I begin I would like to thank you all for your ongoing efforts to improve the safety of domestic violence victims and their families.

HB 669 would repeal Hawaii Revised Statute section 586-10.5. This repeal is truly needed to eliminate one of the many barriers victims of domestic violence face. As you know section 586-10.5 requires that the Child Welfare Services section of the Department of Human Services be automatically notified when a petitioner with children files for a restraining order against an abusive partner. As you know victims of domestic violence and their children need support, but they face many barriers - section 586-10.5 is one of them.

When I attempted to end an abusive relationship, Child Welfare Services intercepted my case. I was threatened and told if I did not cooperate with Child Welfare Services my child could be taken away from me. Without hesitation, fearfully I cooperated. I was then told I had to "prove" I was a fit parent despite the fact that I have always been a wonderful mom to my child. I was told by "choosing" to be in an abusive relationship I was putting my child's life in jeopardy. Having my child's fate dangle before my eyes and at the hands of Child Welfare Services was far worse than the extreme abuse I experienced. In fact, because of this statute, I questioned if leaving that abusive relationship was the right thing. As a mother, the thought of losing my child was more unbearable than the excessive abuse.

I sought a temporary restraining order as a lifeline and first step to safety. Had I known at the time by doing so I risked having my child taken away from me -- I wouldn't have taken that first step. Although I'm thankful I had the courage to successfully overcome the many barriers I faced, Hawaii Revised Statute section 586-10.5 being one of them, I know there are a lot of other victims who were not. HB 669 would eliminate this barrier. Victims shouldn't feel like they have to choose between escaping an abusive relationship or risking the possibility of losing their children. What I think we need to remember is that many victims escape their abusive relationships for a better and safer life for their children but Hawaii Revised Statute section 586-10.5 puts them on a path to a dead end and forces them to turn around back into the hands of their abusers.

I am in **strong support** for the passage of HB 669. Thank you for this opportunity to testify on this matter, and for your efforts to keep victims and their families safe.

Respectfully,

An Anonymous Domestic Violence Survivor

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

c/o 841 Bishop Street, Ste. 480, Honolulu, Hawaii 96813
www.hawaiifamilylawsection.org

LATE

February 2, 2017

TO: Representative Dee Morikawa, Chair
Representative Chris Todd, Vice Chair
House Committee on Human Services

FROM: LYNNAE LEE, Chair
TOM TANIMOTO, Vice-Chair
Family Law Section of the Hawaii State Bar Association

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HEARING DATE: February 3, 2017 at 9 a.m.

RE: Testimony in Opposition to HB669 Relating to Domestic Violence

Dear Chair Morikawa, Vice Chair Todd, and fellow committee members:

We are writing in opposition to HB669 on behalf of the Family Law Section of the Hawaii State Bar Association which is comprised of approximately 140 members statewide all practicing and/or expressing an interest in Family Law.

First and foremost, we truly value the work of the Child Welfare Services (“CWS”) division of the Department of Human Services. Second, we know that they are overworked (and probably underpaid) for their time and commitment.

However, we respectfully submit that it is necessary to keep HRS 586-10.5 as is. HRS 586-10.5 is NOT REDUNDANT in its reporting requirements. Its uniqueness lies in the requirement for CWS to provide the court with a written report on the disposition of the referral at least two (2) days prior to the court hearing. This requirement is not contained in HRS 350.1.1(a)(4) and (b), nor in HRS 346-224(a)(3), and we submit it is necessary to facilitate justice in the Family Court with respect to the protection of our keiki.

HRS 586 provides a mechanism to protect abused spouses or intimate partners and/or children. Some individuals are particularly vulnerable and are in dire need of the protection a restraining order provides. The Court, though, does not provide case management, nor does it have the on-site resources to determine what services are appropriate to further the safety and protection of those who are abused. A mandatory reporting requirement for CWS to prepare reports provides just that; namely, information about recommended services not only for the abused, but for the abuser as well.

More importantly, we have seen an increase in individuals filing *ex parte* restraining orders, not to obtain safety, but mainly to gain custody. As practitioners we rely on the issuance of the CWS report pursuant to HRS 586-10.5 to wean out false allegations from actual threats of harm to a child. We believe the Court also heavily relies on that because the Court simply does not have the time to have full evidentiary hearings on every temporary restraining order ("TRO") matter.

The issuance of the TRO is done without a hearing and the respondent is not afforded an opportunity to defend him/herself against the allegations until the date of the court hearing, and in the meantime is prevented from contact with his/her children. Without the requirement of the report having to be provided by the next court hearing, those falsely accused of abusing their spouse or child would not be able to see their child for extended periods of time. This is extremely problematic particularly when the alleged abuser did not do anything to warrant the issuance of the TRO.

That being said, it is our understanding and our experience, that the Family Court does not automatically refer every TRO case to CWS. Family Court has been selective in only referring those that have sufficiently serious allegations to warrant a potential threat of harm or abuse or actual harm or abuse to a minor child. Without another process in place to carry out the services that CWS currently provides to help protect our community and facilitate justice in the Family Court, we cannot support HB669.

For the reasons stated above, the Family Law Section opposes repealing HRS 586-10.5.

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

Sincerely,



Lynnae Lee, Chair, Family Law Section
Tom Tanimoto, Vice-Chair, Family Law Section

NOTE: *The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.*



LATE

The Judiciary, State of Hawai'i

Testimony to the House Committee on Human Services

Representative Dee Morikawa, Chair

Representative Chris Todd, Vice Chair

Friday, February 3, 2017, 9:00 AM
State Capitol, Conference Room 329

By

Judge R. Mark Browning

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: House Bill No. 669, Relating to Domestic Violence

Purpose: Repeals HRS Section 586-10.5

Judiciary's Position:

The Judiciary opposes the complete repeal of HRS §586-10.5 and we respectfully strongly suggest the following language regarding reports requested by judges in HRS Chapter 586 cases.

The Judiciary staff will continue to report appropriate cases as mandated by HRS Chapter 350. However, we are concerned that, in some cases, we will not be able to adequately assess the safety of the children involved in domestic violence cases without timely input from the Department of Human Services (DHS). Therefore, we respectfully request this language that we believe balances the need of providing safety to children, the court's need for information independent of the parties, and avoiding unnecessary work by the DHS.

§586-10.5 Reports by the department of human services. If directed by the court, the department of human services shall provide the family court with an oral or written report regarding the safety of a minor child of the parties on or prior to the next regularly scheduled court hearing. If the department chooses



House Bill No. 669, Relating to Domestic Violence
House Committee on Human Services
Friday, February 3, 2017 9:00 AM
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to provide a written report, the department need not appear at the hearing unless ordered by the court. The court shall provide copies of all written reports to the parties.

Our suggested language addresses the bill's concerns regarding redundancy of reporting requirements.

The Judiciary notes that, except with minor amendments, this section has been part of HRS Chapter 586 since 1987 and we have always been deemed a "mandatory reporter" under HRS Chapter 350. Despite this, the number of cases has drastically increased rather than decreased. National "best practices" are based on the diverse practices across the nation. Focusing just on our own state, it does not appear that fear of automatic referral to child welfare or adult protective services has dampened the flow of these cases.

Victims, their children, and perpetrators need case management and access to a panoply of services needed to address this multi-faceted problem and to provide safety. The Family Court is not a service provider; our role is to hear cases and apply the law. Unlike child and incapacitated adult/elder abuse cases, there is no state agency that is a party to the HRS Chapter 586 proceedings that will investigate or find, or refer the parties and children to, appropriate resources. Lacking such an agency, the court must be able to get the help of the DHS through oral/written reports.

Furthermore, it is not enough to simply rely on the mandatory reporting procedures because there is no mechanism that will ensure the court's receiving the needed information within the time frames established by HRS Chapter 586. A complete repeal of HRS §586-10.5 will sever the necessary information flow from the DHS to the court and vice versa. These cases are among the toughest faced by Family Court. Alone, we can provide the required protective order but such an order may not address the needs and safety of the children.

For all these reasons, the Family Court respectfully opposes repealing HRS Section 586-10.5 and respectfully suggests alternative language to replace the current language.

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

todd2 - Chloe

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 3, 2017 9:52 AM
To: HUSstestimony
Cc: pili.kaninau@gmail.com
Subject: *Submitted testimony for HB669 on Feb 3, 2017 09:00AM*

HB669

Submitted on: 2/3/2017

Testimony for HUS on Feb 3, 2017 09:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Mitzi Thibodeaux	Women Helping Women	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Family Law Section of the Hawaii State Bar Association

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HEARING DATE: February 3, 2017 at 9 a.m.

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That being said, it is our understanding and our experience, that the Family Court does not automatically refer every TRO case to CWS. Family Court has been selective in only referring those that have sufficiently serious allegations to warrant a potential threat of harm or abuse or actual harm or abuse to a minor child. Without another process in place to carry out the services that CWS currently provides to help protect our community and facilitate justice in the Family Court, we cannot support HB669.

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Sincerely,



Lynnae Lee, Chair, Family Law Section
Tom Tanimoto, Vice-Chair, Family Law Section

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