

**Testimony of the Office of the Public Defender
to the House Committee on Judiciary**

February 16, 2010

H.B. No. 2796: RELATING TO DOMESTIC ABUSE ORDERS

Chair Karamatsu and Committee Members:

We oppose passage of H.B. No. 2796 because it remove the discretion of the family court to discontinue the effectiveness of a temporary restraining order [TRO]. Although the bill would retain the phrase "A temporary restraining order . . . shall remain in effect at the discretion of the court," this phrase is arguably rendered ineffective by the proposed amendment presented by H.B. No. 2796. The bill would make a TRO effective for a period not to exceed ninety days or until the service of a protective order issued by the court, whichever occurs first. Thus a TRO could remain in effect for ninety days even if the court feels that it should no longer continue or if a subsequent protective order is issued but not served upon the respondent.

There are major differences between a temporary restraining order and protective order under H.R.S. Chapter 586. A TRO can be obtained *ex parte* or by one party to a dispute. It is a paper application to the court and although it is subject to court approval, it can be granted without a hearing and even without notice to the party being restrained. Due to the *ex parte* nature in which TROs are obtained, complaints have arisen in the past that such orders have been subject to abuse by parties seeking to gain leverage in on-going domestic disputes such as divorce and child custody proceedings.

A protective order, on the other hand, is the result of a more comprehensive legal proceeding. This order is issued only after a hearing during which all parties have had an opportunity to be heard. The party being restrained must be served with notice of this hearing and must be allowed to attend the hearing and inform the court of his/her concerns. The protective order can continue all of the orders contained in the TRO and can modify or add any other terms that the court deems appropriate following a full hearing on the matter. The purpose for a time limit on the effectiveness of a TRO is that such orders can deal with very critical matters such as housing, finances and child custody. These matters must be subject to a full hearing as soon as practicable in order for the court to issue a full and fair ruling.

This measure assumes that the court would issue a more permanent protective order which would mirror the TRO. If a court declines to issue a protective order, the TRO would remain in effect for ninety days from the date of the TRO's issuance. If the court, in a protective order, decides to relax some of the requirements in the TRO, the more stringent TRO would nevertheless remain in place until the protective order is served even though this might not be the intent of the court.

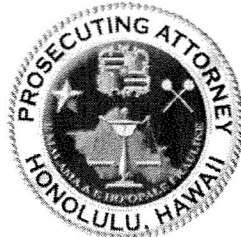
Therefore, the amendments proposed by this bill could result in an order remaining in effect contrary to the intention of the family court. Thank you for the opportunity to be heard on this matter.

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**THE HONORABLE JON RIKI KARAMATSU, CHAIR
HOUSE COMMITTEE ON JUDICIARY**

**THE HONORABLE KEN ITO, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY**

**TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2010**

February 16, 2010

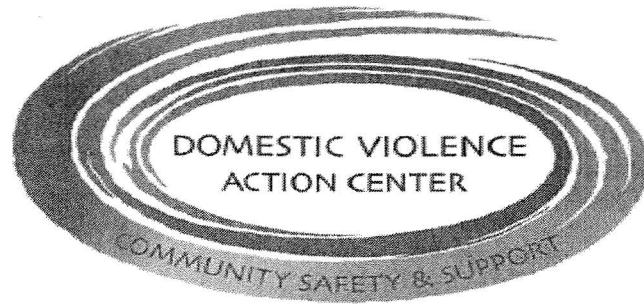
RE: HOUSE BILL 2796; RELATING TO DOMESTIC ABUSE ORDERS

Good afternoon Chair Karamatsu, Vice Chair Ito, and members of the Judiciary Committee, the Department of the Prosecuting Attorney provides the following testimony **in strong support of H.B. 2796**, which proposes to amend *Hawaii Revised Statutes Sections 586-5 and 586-5.6* to insure that Temporary Restraining Orders issued pursuant to *H.R.S Chapter 586* do not expire until a Protective Order issued under the statute is served on the respondent.

Under the current provisions of H.R.S. Chapter 586, Temporary Restraining Orders issued under this chapter remain in effect until a Protective Order issued, the maximum ninety days have expired, or the T.R.O. is dismissed by the Court. Under normal circumstances these provisions are not a problem. However, when a respondent fails to appear at an Order to Show Cause (O.S.C.) hearing (after having been served with the T.R.O.), the Court may grant a default judgment to the petitioner and issue a Protective Order. Under statute, and Hawaii case law, a Protective Order is not fully effective (meaning a criminal complaint may not be filed unless and until the Protective Order has been served on the respondent). What this unfortunately means is that petitioners who are granted a Protective Order, which cannot be served in a timely manner (some domestic abusers are very proficient at avoiding service), are left with virtually no effective order and without legal protection for an extended period of time. The purpose of the statutory amendment proposed in H.B. 2796 is to insure that petitioners have a continuously effective, valid order for at least ninety days, or until the respondent is served, whichever comes first.

A small, but significant number of respondents have been taking advantage of this loophole in the law. Due to this technicality some abusers feel that they can violate Protective Orders with impunity. Unfortunately among this group of individuals are some of our most persistent offenders, who may commit dozens of violations, but escape criminal prosecution due to this legal gap. Passing this measure will close this gap and insure that violators of T.R.O.'s and Protective Orders are held criminally responsible for their behavior.

For the reasons cited above, we urge your support for H.B. 2796. Thank you for your time and consideration.



TO: Chair Jon Riki Karamatsu
Vice Chair Ken Ito
Members of the Committee

FR: Nanci Kreidman, M.A.
Chief Executive Officer

RE: H.B.2796

Aloha. Thank you for moving this Bill forward for continued deliberation. We submit this testimony in support of H.B. 2796.

It is imperative that any weaknesses in the system that come to our attention are rectified. The Bill before you is intended close a gap that appears to be occurring in the community.

The remedy offered is simple enough.

Thank you for assisting us in helping victims pursue their safety and self-sufficiency-which is, in no way, an easy path.

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HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

TO: Chair Karamatsu, Vice-Chair Ito, and Committee Members

FR: Jane Seymour, Hawaii State Coalition Against Domestic Violence

Hearing date and time: Tuesday, February 16, 2010

RE: Support for HB 2796: Relating to Domestic Abuse Orders

Aloha, my name is Jane Seymour and I am representing the HSCADV, a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV strongly supports HB 2796.

Victims of domestic violence often seek Temporary Restraining Orders (TRO) and Protective Orders (PO) as tools to increase their safety. Current Hawaii law contains a loophole that could endanger victims and leave them with no legal protection against their batterer.

When a victim seeks a PO, and the respondent does not attend the Order to Show Cause (OSC) hearing, a judge may grant a default judgment to the petitioner and issue the Protective Order. However, this PO is not in effect until it can be served to the respondent, therefore a respondent cannot be charged with violating the PO if he has not been properly served. Unfortunately, some batterers have learned that they can use this legal loophole to continue to commit violations and harass the victim while escaping criminal prosecution.

We strongly encourage you to pass HB 2796, to close this loophole and provide greater protection to victims of domestic violence. Thank you for the opportunity to testify.