SB 1054

TESTIMONY

The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Monday, February 7, 2011, 10:00 a.m.
State Capitol, Conference Room 016

by
Judge Sabrina S. McKenna
Deputy Chief Judge / Senior Family Court Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1054, Relating to Temporary Restraining Order.

Purpose: Provides for the issuance of domestic abuse temporary restraining orders by the Family Court, and temporary restraining orders by the District Court, to be issued upon submission of oral sworn testimony or complaint. The oral testimony may be communicated to the Court by means of electronic voice communication

Judiciary's Position:

The Judiciary takes no position on this bill but raises the following concerns.

(1) In addition to "law enforcement officer", this bill allows the Supreme Court, through its rule making authority, to designate other "persons" to assist applicants requesting temporary restraining orders. Our concern is that the process will involve time sensitive responses to applicants as well as the responsibility "to enter the court's authorization verbatim on the appropriate form, designated the duplicate original temporary restraining order." It may be clearer to restrict the designation to "law enforcement" (although the bill could allow law enforcement to appropriately delegate this responsibility).

(2) We are unsure whether these restraining orders can be effective immediately without notice to the respondents. Such orders are required to be served before they become effective.

The Supreme Court may be unable to change this requirement of service through their rulemaking authority

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

Testimony of the Office of the Public Defender, State of Hawaii, to the Senate Committee on Judiciary and Labor

February 7, 2011

S.B. No. 1054: RELATING TO TEMPORARY RESTRAINING ORDERS

Chair Hee and Members of the Committee:

We oppose the passage of S.B. No. 1054 which seeks to allow courts to issue temporary restraining orders ["TRO"s] without the physical presence of the applicant. We believe that this measure will allow persons to abuse the TRO process for their personal objectives.

The family court has already made the TRO process a simple one for an applicant. The application can be filled out and made ex parte (without giving notice to the restrained person) to the family court. The judiciary has designed self-explanatory forms which a person can fill out without assistance of a lawyer. Once submitted to the court, a judge reviews the application and, in the vast majority of cases, grants the TRO. The process has been described by some detractors as a "rubber stamp" process because the applications are almost never denied.

While the process is simple, the issuance of TROs can have very serious, life-changing results for the person who is restrained. The subject of a TRO can lose his/her place of residence, be prohibited from having contact with his/her children and even be prevented from working (if the applicant works in the same building or near to the subject).

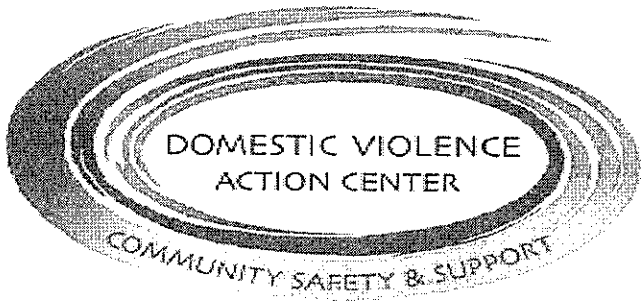
In the past, detractors of the TRO process have recounted situations where the process is abused. Parties to divorce proceedings have sought TROs simply to assert leverage in financial settlements or child custody disputes and not because there was any fear for a party's personal safety. Spouses, during arguments, have threatened their partners with TROs so that they would be excluded from the family home and be prohibited from having contact with their children.

At the very least, the current system contains an inherent deterrent to unwarranted issuances of TROs. If an applicant must fill out a written application, thereby swearing to a judge that he/she fears for personal safety, that applicant is far less likely to fabricate facts and proceed with improper motives than would be the case if an applicant can simply phone in an application or have someone submit an application on behalf of him/her.

An additional concern presented by S.B. No. 1054 is that the relaxation of TRO application procedures will eventually lead to electronic filing of applications. We feel that this expansion of access to TROs will open the floodgates to false claims in the family court. This is evidenced by the phenomena of internet blogging, website commentary, and social media. There is clear daily evidence that the internet and seeming anonymity provided by it leads to many false claims and reprehensible conduct. This situation will almost assuredly lead to a myriad of problems with wrongfully issued TROs if electronic filing comes to pass.

Finally, the delegation of the TRO application process to a "law enforcement officer" or "other person designated by rule" is very problematic. A law enforcement officer is not an unbiased party with regard to TROs. That officer is likely to encourage the applicant even when a TRO is not warranted under the circumstances. The officer's understandable position would be "better safe than sorry." The bill does not specify who the "other person designated by rule" would be. The fear is that the delegation of the application process will go to domestic violence counselors or victim-witness counselors who, likewise, are not unbiased parties in this area.

Thank for the opportunity to comment on this measure.



FROM: Nanci Kreidman, M.A.
Domestic Violence Action Center

February 04, 2011

TO: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Committee

RE: SB 1054 Concerns
Hearing Date: Monday, February 07, 2011, 10:00am, Conf. Rm #016

Aloha. We submit this testimony to raise issues related to S.B. 1054. Although on its face, it seems like a good idea to increase access to protection, there are issues related to safety and the integrity of the process that should not be overlooked. There has been community discussion in Hawaii and national exposure of issues raising enough concern for our testimony today about electronic filing or sworn oral testimony to obtain a restraining order.

It seems that expecting law enforcement to assist the person in communicating the oral testimony is beyond the scope of law enforcement's role and possibly beyond their resources. Recording the testimony adds additional burden for law enforcement. Our courts have in place a division which helps victims with restraining orders, and in addition has supplemented the court staff with a private contractor to be available to assist petitioners in person in obtaining a restraining order. Are we expecting judges to be available to receive the electronic transfer of the petition only during working hours or at nights and on weekends?

It would be essential for those assisting the petitioner with the sworn testimony to be well trained and equipped to discern the veracity of the petitioner. It is no longer uncommon for abusers to pose as victims.

Further, if the petition/affidavit is deemed sufficient and an order is granted, how will the order be served on the respondent? New mechanisms will need to be put into effect for this to be done.

There are also obstacles for victims who do not speak English or victims who may not seek assistance from law enforcement, and thus this measure does not increase access to victims in our community.

Finally, when victims come to court in person, they have the opportunity to receive crisis support, safety planning, risk assessments and relevant referrals for other needs they may have. The absence of this kind of support may put victims in further jeopardy.

Is the purpose of this Bill to provide an additional measure of safety, so the petitioner does not have to travel to file the petition? If this is the intent, then it seems resources will have to be factored into the equation for expanding the ways to obtain the court's protection.

Resources are so strained, with programs endeavoring to meet overwhelming demands in potentially life threatening situations, the addition of a new program component may or may not be a useful enhancement at this time.

It just isn't clear whether this is a helpful amendment and will improve the ability of victims to seek restraining orders. Perhaps these could be worked out, but unless and until these ideas are examined, it seems prudent to proceed cautiously or not at all.

Thank you for permitting us to weigh in on this proposal.

P. O. Box 3198 Honolulu, HI 96801-3198
'Oahu Helpline:: 808 531-3771 Toll-free: 800 690-6200 Administration: 808 534-0040 Fax 808 531-7228
dvac@stoptheviolence.org www.stoptheviolence.org