



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Human Services

The Honorable John M. Mizuno, Chair

The Honorable Jo Jordan, Vice Chair

Thursday, February 3, 2011, 9:00 a.m.

State Capitol, Conference Room 329

by

Sabrina S. McKenna

Deputy Chief Judge/Senior Family Court Judge

Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 135, Relating to Domestic Abuse Orders

Purpose: Allows a temporary restraining order to remain in effect for 90 days or until service of a protective order, whichever occurs first. Also amends law to provide that protective orders orally stated by the court on the record shall be effective upon service on the respondent.

Judiciary's Position:

The Judiciary takes no position on this bill. However, we respectfully propose the following changes to reflect our current court practices. After a domestic abuse temporary restraining order (TRO) is issued, a hearing date is scheduled for both parties to appear in court. At this hearing, the court order is read aloud during the hearing and then put in writing shortly after the hearing. Both parties (i.e., Petitioner and Respondent) are instructed to wait to receive certified copies of the filed court protective order. Unless the respondent does not wait to receive his or her copy, the respondent will leave the courthouse with a copy of the order. The bill deletes the existing statutory language in HRS Section 586-5.6 (Section 2, page 1, line 18, page 2, line 1) which provides that this protective order is effective as of the date of this court hearing. The bill instead provides that the protective order is not effective until the Respondent is served with this order. Therefore, if the Respondent, even though he/she is present in court and has full knowledge of the protective order, leaves without waiting for a copy and then



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thereafter evades service, the protective order is not effective until the Respondent is located and served with a copy of the order.

In the interest of ensuring continuing and unambiguous protection for petitioners, we respectfully recommend the following amendments (in bold and italics):

(Section 1 of the bill) HRS Section 586-5(a) to read . . . "for a period not to exceed ninety days from the date the order is granted[-] or until the effective date of a protective order issued by the court as defined in Section 586-5.6, whichever occurs first."

(Section 2 of the bill) HRS Section 586-5.6 to read . . . "Protective orders orally stated by the court on the record shall be effective [as of the date of the hearing] as of the date of the hearing if the respondent attends the hearing or, if the respondent was served but failed to appear, then upon service of the protective order upon the respondent until further order of the court; . . ."

Thank you for the opportunity to submit testimony on this matter.



The Honorable John Mizuno
House Human Services Committee
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

February 2, 2011

RE: HB135 - SUPPORT

Hearing Date: Thursday, February 3, 2011 at 9 am, Room 329

Chair Mizuno, Vice Chair Jordan, and members of the House Committee on Human Services, the Hawai'i State Coalition Against Domestic Violence respectfully submits the following testimony supporting HB135. As a statewide coalition of domestic violence service providers, our mission is to ensure the safety and protection of women in intimate relationships by providing training and education, coordinating domestic violence prevention and intervention services, affecting public policy, and establishing coordinated and consistent procedures and actions by the civil and criminal justice systems in Hawaii.

Temporary Restraining Orders (TRO) and Protective Orders (PO) are a valuable tool which victims of domestic violence can use to help protect them from abuse. However, there is a lapse in protection in cases where the respondent is served the TRO, but does not appear at the Order to Show Cause Hearing (OSC) where the Protective Order is granted. The approval of the PO makes the TRO no longer enforceable, meanwhile the PO is not enforceable until it has been served. Batterers are often aware of this gap in the system and are intentionally absent from OSC and avoid service of POs, leaving domestic violence survivors vulnerable.

HB 135 allows a TRO to remain in effect for 90 days or until service of a PO, whichever occurs first, and amends the law to provide that protective orders orally stated by the court on the record shall be effective upon service on the respondent. This bill would address the issue of batterers who evade legalities and manipulate the systems intended to protect the victim.

Thank you for your consideration.

Submitted by:
Veronika Geronimo
Executive Director, Interim
Hawaii State Coalition Against Domestic Violence
Phone (808) 832-9316 x 104
executivedirector@hscadv.org