



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Human Services**

Representative John M. Mizuno, Chair

Representative Jo Jordan, Vice Chair

Monday, January 30, 2012, 8:30 a.m.

State Capitol, Conference Room 329

by

R. Mark Browning

Deputy Chief Judge/Senior Judge

Family Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 1729, Relating to Temporary Restraining Order

**Purpose:** Requires petitioners for temporary restraining orders to disclose all pending litigation involving the petitioner. Specifies a court's discretion to meet with the petitioner to receive additional information prior to granting a temporary restraining order. Defines "imminent" with regard to the type of harm for which a temporary restraining order may be issued.

**Judiciary's Position:**

The Judiciary has many concerns about this bill but takes no position regarding its passage. The concerns are:

- (1) The language in subsection (3) on page 2 penalizes a petitioner who fails to comply with disclosure of all pending litigation. It is difficult to rely on individuals' knowledge and report of all cases they are or have been involved in. To subject petitioners to the possibility of paying attorneys' fees of the respondents in the event that they forget or cannot identify or have no knowledge of litigation would be an unnecessary deterrent to legitimate requests for protection. For example, the petitioner may not know that the respondent has just filed for divorce. Also, there



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will be many cases involving petitioners that are not relevant to and do not apply to their respondents and so there would be no reasonable nexus between the petitioners' failure to report and any expenses incurred by the respondents.

- (2) The bill could specify the type of current litigation, for both HRS Chapters 586 and/or 604 cases, that the Legislature determines to be relevant, such as divorce, paternity, criminal, or child abuse cases, etc.
- (3) (p.2, Section 3) This bill gives discretion to the judge to meet with a Petitioner alone without the Respondent in order to receive "information to determine the validity of the facts and circumstances stated in the petition." We note that this discretion will be rarely, if ever, exercised. Such a practice would seriously undermine public trust in the Judiciary. In fact, "receiving information to determine the validity of the facts and circumstances stated in the petition" is what occurs under the current statutes in the context of a court hearing with both parties present.

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



To: Chair Mizuno  
Vice Chair Jordan  
Members of the Committee on Human Services

Fr: Nanci Kreidman, M.A.

RE: HB 1729 Opposed

Good morning. Thank you for the opportunity to raise issues of significance impacting safety of victims and effectiveness of system response.

Temporary restraining orders are important tools designed to assist victims in achieving or increasing safety. Any other pending litigation would seem irrelevant to the goals and dilute public policy initiatives established through consistent legislative action maintaining safety as the primary objective of restraining orders.

Any need to strengthen the community's use of restraining orders would fall in the purview of training and advocacy by experts and system partners.

Thank you.

TO: Representative Mizuno, Chair  
Representative Jordan, Vice Chair  
Human Services Committee Members

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

DATE: January 30, 2012

RE: Support for HB1729 **with suggestion**, Relating to Temporary Restraining Orders

Good Morning Representatives and thank you for this opportunity to provide testimony on this measure.

While I support the intent of this proposal, I'm a little concerned about the ex-parte meeting with the petitioner part. While I can see this as necessary for gaining additional information, I think there should be some language that would act as a deterrent to false reporting. Section 2 (3) has a consequence for failure to comply so there should be some consequence for falsely reporting.

Having to come forward publicly to disclose abuse or potential harm in a relationship is an extremely humiliating, embarrassing and terrifying thing to do. Breaking the silence of abuse can literally get you killed and victims are painfully aware of that and all the potential consequences for coming forward so it's incredibly disturbing to hear about the misuse of the TRO system, ie: to get "a leg up" in divorce and custody proceedings (which makes no sense to me because mention DV in your family court case and matters get worse, NOT better).

When people falsely report, it hurts the people who sincerely need protection and only makes a farce of a serious situation by causing doubt about what abuse really is. Domestic violence and relationship abuse need to be taken seriously, but false reporting not only makes a joke out of the TROs but of domestic violence as well. Just like falsely reporting a crime to police or a fire to the fire department is a punishable crime (that actually works in deterring people from falsely reporting) the same should be applied to TROs and to the DHS.

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]  
Sent: Sunday, January 29, 2012 10:48 AM  
To: HUS testimony  
Cc: robertscottwall@yahoo.com  
Subject: Testimony for HB1729 on 1/30/2012 8:30:00 AM

Testimony for HUS 1/30/2012 8:30:00 AM HB1729

Conference room: 329  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: Scott Wall  
Organization: Individual  
E-mail: robertscottwall@yahoo.com  
Submitted on: 1/29/2012

Comments:

It is expected that twenty million baby boomers could become Alzheimer's patients. That will place them in the Consumer, Family, & Youth Alliance ohana. Bearing that in mind I feel that they deserve all protection possible. It is not only the right thing to do. It's the ethical and moral thing to do.

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]  
Sent: Sunday, January 29, 2012 7:30 PM  
To: HUS testimony  
Cc: Brenda.Kosky@gmail.com  
Subject: Testimony for HB1729 on 1/30/2012 8:30:00 AM

Testimony for HUS 1/30/2012 8:30:00 AM HB1729

Conference room: 329  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Brenda Kosky  
Organization: Consumer Family Youth Alliance  
E-mail: Brenda.Kosky@gmail.com  
Submitted on: 1/29/2012

Comments:  
Aloha I am in support