

NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

January 30, 2012

TO: The Honorable John M. Mizuno, Chair
House Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 1919 - RELATING TO DOMESTIC VIOLENCE**

Hearing: Monday, January 30, 2012; 8:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of this bill is to: establish a domestic violence court pilot program and a domestic violence task force; authorize the Department of Human Services to create a family justice task force; broaden the group of persons required to report child abuse and neglect; and to authorize electronic monitoring of persons convicted of violating a domestic abuse temporary restraining order or protective order.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the overall intent of this bill to ensure the safety of persons impacted by domestic violence.

The Department defers to the Judiciary regarding the proposed establishment of a domestic violence court pilot.

The Department does not support establishing a domestic violence task force in DHS. The Department of Health already has an established domestic violence task force and existing task forces on each island which have the participation and commitment of survivors, legislators, city council members, and community and organizational leaders. Establishing another task force in DHS is duplicative.

DHS believes that the concept of a single point of access for multiple services has merit and deserves discussion. Due to the State's current budget constraints, the Department is not in a position to explore or pursue the establishment of Family Justice Centers at this time.

The Department appreciates the inclusion of family members in the group of mandatory reporters required to report allegations of child abuse or neglect to the Department of Human Services or the police. DHS also appreciates the sensitive and volatile nature of domestic abuse, however, we have concerns regarding the exclusion of victims of domestic violence - "under this section if the alleged perpetrator is actively abusing both the child and the family member." The Department supports further discussions regarding the exclusion of domestic violence victims. We note also that the current reporting process allows reporters to remain anonymous and/or request that their identity be kept confidential and not shared with the perpetrator.

Thank you for the opportunity to testify.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Human Services

From: Cheryl Kakazu Park, Director

Date: January 30, 2012, 8:30 a.m.
State Capitol, Room 329

Re: Testimony on H.B. No. 1919
Relating to Domestic Violence

Thank you for the opportunity to submit testimony on H.B. No. 1919.

The Office of Information Practices (OIP) takes no position on the substance of this bill, which would establish a Domestic Violence Task Force, but seeks clarification of a provision on page 6 of the bill, lines 8-9, which states:

All proceedings and records of the task force shall be exempt
from chapter 92, Hawaii Revised Statutes.

The Sunshine Law is only part I of chapter 92. Parts II through IV of chapter 92 relate to non-Sunshine Law issues, such as boards' general powers and quorum requirements, copy charges for public records, and publication of legal notices. If the intent of this provision is to exempt the Task Force from the Sunshine Law, OIP recommends that the bill state that the Task Force "shall be exempt from part I of chapter 92."

In addition, OIP would like to express its concerns regarding the impact of this exemption. The Task Force is charged with seeking "input on policy" and making recommendations to the Legislature to address domestic violence in Hawaii, a public policy matter of significant importance to the public at large. The intent of

the Sunshine Law is to ensure public participation in the formation and conduct of public policy. The effect of exempting the Task Force from the Sunshine Law is that the Task Force will not be required to post notice of its meetings, or to allow the public to attend and testify at its meetings. Instead, any public input would be at the discretion of the Task Force and in the manner it chooses, and members of the public will have no recourse if they are not allowed to attend or participate in the proceedings.

Thank you for the opportunity to testify.



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

Monday, January 30, 2012 at 8:30 a.m.
State Capitol, Conference Room 329

by

R. Mark Browning

Deputy Chief Judge/Senior Judge

Family Court of the First Circuit

Bill No. and Title: Bill No. 1919, Relating to Domestic Violence

Summary:

Part I: Establishes a 3-yr domestic violence pilot program within the Family Court of the First Circuit, under one of the existing FC Judges. This Judge shall preside only in this court and shall preside over: 1) each FC criminal case involving offenses committed against a child by the child's parent/guardian, et al; any adult charged with misdemeanor offenses against the spouse and any violation of an FC-DA order; and 2) all FC-DA proceedings. In addition, this Judge shall monitor offenses and their compliance with FC-DA protective orders. The court shall be supposed by a resource coordinator and an on-site victim advocate, both of whom are licensed social workers. The Judiciary shall submit an annual report on this pilot program.

Part II: Establishes with DHS, a temporary domestic violence task force, to include one representative of the Family Court.

Part III: DHS may create a family justice center task force to consider the establishment of one or more multi-agency, multi-disciplinary family justice centers on any island to assist domestic abuse victims, as well as provide related family-based social services. This task force shall also include a representative from the Family Court.

Part IV: Amends HRS Section 350-1.1 (child abuse reporting law) to require mandatory reporting from any adult "family member" defined under HRS Section 587A-4.



Part V: Provides that the Family Court may order, as a condition of probation, that the defendant wear a global positioning satellite tracking device. The Judiciary shall establish and implement provisions relating to these devices within one year of the effective date of this Act.

Judiciary's Position:

Part I: Domestic Violence Pilot Program

The Judiciary **opposes** this Part. Currently, there are 5 Judges (2 Circuit judges and 3 Family District Judges) assigned to hear these cases. The two Circuit judges, operating two courtrooms at the same time, hear the Family Court criminal cases cited in Section 2, page 2, subsections (1) and (2) of this bill. One Family District judge hears all related arraignment and plea hearings. On the civil cases, two Family District judges hear the domestic abuse proceedings cited in Section 2, page 2, subsection (3) of this bill. They run two courtrooms every day except Friday with one courtroom operating. Additional courtrooms are added during the week whenever a holiday falls on a weekday. One of these two judges is "on duty" to review the daily ex parte applications for temporary restraining orders. (See, Section 2, page 2, subsection (3) of this bill.)

There is a specialized adult probation unit for domestic abuse criminal cases (comprised of 2 supervisors and 11 probation officers). Many of the functions of the "resource coordinator" mentioned in this bill are currently handled by these probation officers. Also, many of the functions of the "on-site victim advocate" are handled by private advocates, contracted by the Judiciary, who provide similar services. The Family Court judges already currently have the ability to order offenders to a range of comprehensive services.

This bill gives "exclusive and original jurisdiction" over some family-related cases but specifically *deletes* these cases from the overall Family Court jurisdiction. We do not believe that the bill truly intended this anomalous result. Furthermore, this is inconsistent with the Legislature's statutory mission and vision of unified family courts, which recognizes that families have a myriad of problems that must be dealt with in a coordinated manner.

The requirements regarding court staff providing victim advocacy would damage the public's well established and reasonable expectation that courts remain neutral.

This bill requires that the Legislature commit significant resources to its development and implementation. Enough funds must be appropriated to cover, among other things:

1. Creating more circuit judgeships along with the required staffing. In order to cover the current volume, this bill would require a minimum of 3 additional circuit court judges.



2. Intensive supervision requires more staffing and the creation of more services. While some existing resources and staff can be reallocated, the level of supervision and monitoring required by this bill is beyond the capabilities of the existing staff as well as the services available in the community (and note that such services are already stretched thin).

3. Creation of two new positions, i.e., a “resource coordinator” and an “on-site victim advocate” along with creating a new infrastructure for a new unit.

4. Monitoring all HRS Chapter 586 offenders and their compliance with these orders will require additional court staff. Furthermore, monitoring will not be effective without enforcement and “stepped –up” enforcement will mean that additional resources must be allocated to the Public Defender’s office and each circuits’ police departments and prosecutor offices.

5. This intense level of monitoring of both criminal and civil domestic abuse cases will also require additional programs in the community for both offenders and victims.

Part II: DHS: Domestic Violence Task Force

Part II: Establishes with DHS, a temporary domestic violence task force, to include one representative of the Family Court.

We have no comments regarding this part.

Part III: DHS: Family Justice Centers

Part III: DHS may create a family justice center task force to consider the establishment of one or more multi-agency, multi-disciplinary family justice centers on any island to assist domestic abuse victims, as well as provide related family-based social services. This task force shall also include a representative from the Family Court.

We have no comments regarding this part.

Part IV: Mandatory Reporting of domestic violence

Part IV: Amends HRS Section 350-1.1 (child abuse reporting law) to require mandatory reporting from any adult “family member” defined under HRS Section 587A-4.

We have no comments regarding this part.



Part V: Court may order defendants to wear global positioning satellite tracking devices

Part V provides that the Family Court may order, as a condition of probation, that the defendant wear a global positioning satellite tracking device. The Judiciary shall establish and implement provisions relating to these devices within one year of the effective date of this Act.

The Judiciary **opposes** this Part for the following reasons:

(1) This bill places the Judiciary in the untenable position of working as law enforcement. This bill requires the court to "immediately transmit" the defendant's whereabouts to the victim and the police in the event that the defendant enters a prohibited geographic zone. This is beyond the role, responsibility, and capabilities of the Judiciary.

(2) Although this bill gives the Judiciary the discretion to order electronic monitoring, it would be nearly impossible to deny a victim's request in the event that the defendant knows the victim's residence, school or workplace. Because this crime deals with "family and household members," more often than not, the defendant will know one or more of these locations. This means that this sort of electronic monitoring would be ordered in nearly all of the cases.

(3) The implementation of this bill would require a significant multi-year appropriation. This is not just a matter of buying equipment. We would need to form a highly trained unit of officers on duty 24 hours a day, 7 days a week. We will have to design extremely effective communication systems in each circuit that will allow real time, immediate notification of both victims and the police departments. Furthermore, the costs are not just limited to monitoring gear and personnel. Such a program would also have to ensure that the victims have the means to receive the warning.

(4) This bill sets up an expectation and a duty to warn a victim about impending danger. While judges have immunity, this service may be deemed non-judicial and, therefore, immunity might be limited or may be non-existent to the workers of this unit. The potential liability for court officers and the danger to be prevented may be insurmountable obstacles to the successful implementation of this endeavor. This obstacle could be dealt with by a sufficient appropriation to allow the Judiciary to "self-insure" coverage for our affected staff.

(5) Although the bill allows the court to charge the defendants with the cost of the program, it would be more equitable to operate on a sliding scale basis and, given the current economic circumstances of many defendants, only a small fraction of the actual cost of the program would be covered by defendants. The Judiciary does not have the resources to cover the balance.

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

Armina A. Ching
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES**

Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

January 28, 2012

Re: H.B. 1919, Relating to Domestic Violence

Chair Mizuno, Vice-Chair Jordan, and Members of the House Committee on Human Services, the Department of the Prosecuting Attorney ("Department") submits the following testimony on H.B. 1919, Relating to Domestic Violence.

In particular, the Department opposes Part III, Section 4 of H.B. 1919 for two reasons. First, the proposed Family Justice Center Task Force ("Task Force") fails to specifically include a survivor representative in its membership. Fundamental to the family justice center model is that the Center is victim-centered. Offenders are not allowed into the Center. Another core principle is that services offered at the Center are victim-driven. Survivor input is key to identifying needed services. Failure to include a survivor representative in the membership of a Task Force charged with identifying necessary services for victims of domestic violence is ill-conceived, demonstrates a lack of understanding of the family justice center model, and fatally flaws the proposed membership of the Task Force. For this reason alone, the Department opposes said Section.

Second, the Department opposes Part III, Section 4 of H.B. 1919 because the duties assigned to the proposed Task Force have already been accomplished. The Honolulu Family Justice Center is poised to open its doors in July 2012. Much planning, including holding focus group discussions with service providers and survivors, has already been done to lay the foundation for the Center. The Department has conducted a Strategic Plan conference for the purpose of "[c]oordinat[ing] with relevant state and county agencies and local nonprofit service providers to identify those services that are most needed." H.B. 1919, Part III, Section 4 (d) (1). In September 2010, the Department invited community stakeholders and survivors to a Strategic

Plan conference where “services that are most needed” were identified. Moreover, the Department has identified “federal, state, county [and] private funds for the establishment of a family justice center.” *Id.*, Section 4 (d) (2). In late 2009 and 2010, the Department applied for and was awarded several federal grants for start-up monies for the planning, development, and establishment of the Honolulu Family Justice Center. Finally, as part of the ongoing planning for the Honolulu Family Justice Center, an informed consent form “to authorize the sharing of confidential, privileged, or protected information between individuals or agencies working in a family justice center” has been drafted incorporating language from informed consent forms already in use by other, operating Family Justice Centers *Id.*, Section 4 (d) (3).

All of the tasks assigned to the Task Force have already been accomplished by the Honolulu Family Justice Center. The Honolulu Family Justice Center is scheduled to open in July 2012, having previously identified needed victim services, having obtained start-up funding for the establishment of the Center, and having drafted an informed consent form for the sharing of confidential and privileged information at the Center. The creation of the proposed Task Force would constitute a duplication of work and a waste of taxpayer monies. Simply stated, there is no need for the proposed Task Force.

For the reasons stated, the Department opposes Part III, Section 4 of H.B. 1919.



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

Fr: Nanci Kreidman, M.A.

RE: HB 1919

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

There currently exists a Domestic Violence Task Force in each county, established through the implementation of the statewide strategic plan, enacted by the legislature and under the direction of the Department of Health.

Loss of precious resources have seriously reduced the capacity of agencies to effectively deliver services, advocate for effective system reform through collaboration and ceaselessly seek funds to stabilize organizational budgets. New efforts to convene working groups (beyond those that already exist- Fatality Review, VAWA, DVTF, HSCADV, Oversight Body, Family Justice Center Steering and Planning Committees) would further strain resources and limit effectiveness.

The Domestic Violence Action Center has its practice in the First Judicial Circuit Family Court and through the close observation available as a result of on site staff and appearances by other agency program staff, it seems hard to imagine the development of a DV Court without additional resources. Currently there are courtrooms dedicated to restraining order calendars and misdemeanor criminal calendars.

The holistic court model has proven itself for identified constituencies (Mental Health Court, Girls Court, Drug Court) and there are enormous resources dedicated to those courts. Similarly, that would be necessary for a domestic violence court. At present, at the very least, the Domestic Violence Action Center, provides assistance (safety planning, crisis support, risk assessments, referrals, court accompaniment) in Kapolei, at Punchbowl and at Alakea Street in 8th floor criminal rooms).

Thank you for taking into consideration our perspectives from the "ground."

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: **STRONG Support** for HB1919, Relating to Domestic Violence

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

This is an incredible piece of legislation that is long overdue! Domestic violence is an insidious and highly misunderstood crime with one of the more complicating factors being that everyone thinks they know what domestic violence is. There are some inherent problems when domestic violence cases land in the family court system that cannot be readily corrected without an in-depth understanding of how domestic violence can be "fairly addressed" in court proceedings. I could (literally) go on all day about this but just as an example:

The primary form of domestic violence (of ALL abusive relationships actually) **is INVISIBLE**. It's the psychological/mental/emotional aspects of abuse and without this component there is no domestic violence or abusive relationship because all that's left without the primary form of abuse is physical assault, rape, torture, false imprisonment, property damage, terroristic threatening, theft, etc.

Because the primary form of abuse is invisible, there's often no hard, physical, concrete evidence to prove its existence. Unfortunately, victims enduring an assault don't typically reach for the camera to capture the Kodak moment or think to turn on a video tape or tape recorder - they're kinda preoccupied trying to figure out how to survive the attack with the least amount of damage, disability and pain - yet when victims turn to the court for protection and assistance to prevent future incidences of abuse, **the court relies heavily on and is looking for the hard, physical, concrete evidence of abuse that in the majority of cases DOESN'T EXIST** and this is one of the very first stumbling blocks for DV victim-survivors in the family court system.

Please support and pass HB1919 so we can begin to rectify this and other inherent problems that DV cases face in the family court system.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate