



The Judiciary, State of Hawaii

Testimony to the House Committee on Human Services

The Honorable John M. Mizuno, Chair

The Hon. Jo Jordan, Vice Chair

Monday, March 12, 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

Bill No. and Title: Senate Bill No. 2505, S.D.1, Relating to Temporary Restraining Orders

Purpose: Provides for the issuance of temporary restraining orders ("TROs") by the Family and District Courts upon submission of sufficient oral sworn testimony communicated to the court by telephone, radio, or other means of electronic voice communication, if exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally.

Judiciary's Position:

Although the Judiciary supports procedures that provide safety for victims of domestic violence, we are unable to support this bill, for the reasons noted below, and so respectfully ask that the bill be held.

(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" and delete references to other "persons."

(2) Limiting this bill to law enforcement officers is particularly important since this bill allows an officer to create a valid court order since the person assisting the petitioner creates a form that is "designated as the duplicate original temporary restraining order." This is an

unusual scheme. Currently, the police have the authority in domestic abuse cases, using their own powers, to issue "stay away orders" sufficient to give the petitioner enough time to obtain a temporary restraining order through the usual court procedures. This bill allows the police (generally recognized as part of the Executive branch of government) to, in effect, be "deputized" as a member of the Judicial branch of government in both civil and domestic TRO cases and empowered to create an original court order (a responsibility generally kept strictly to judges and their staff in order to preserve the public's confidence in court orders and to prevent fraud).

(3) These TROs are required to be served before they become enforceable. Thus, although they are "effective" when the court grants it, they are not "enforceable" until the respondent has been served with the court order. This means that, if a respondent contacts or abuses the petitioner after the order has been granted but before the order has been served, the respondent cannot be prosecuted for violating the court order (although the respondent could be arrested in the event a crime were committed). The Supreme Court may be unable to change this requirement of service through their rulemaking authority. In contrast, a respondent can be prosecuted for disobeying a valid police issued stay-away order.

(4) Additionally, without an explicit authorization from the Legislature, the Supreme Court would not have the authority to direct police procedures through their rulemaking authority.

(5) At this time, such orders are not served between the hours of 10pm to 6am, unless a judge specifically allows this in writing on the summons. If this bill's intent is that process will be available 24 hours a day, then the bill should explicitly allow service 24 hours a day in order to keep this proposed process as streamlined as possible.

(6) We are unsure of the scope of this bill. Are these procedures applicable during regular court hours? Does this bill require this process to be available 24 hours a day?

(7) If this bill requires 24 hour coverage, the Judiciary will need additional appropriations, beyond our current budget requests, in order to provide these services. On the neighbor islands, it is anticipated that staff and judges will have to be available after-hours on an on-call basis. On Oahu, because of the size of its population, we anticipate the need to develop new after-hours staff dedicated for this purpose as well as assigning this as a "calendar" for a judge rather than leaving it on an on-call basis. We have not developed a cost plan primarily because of the ambiguities in this bill. However, as an example, pursuant to collective bargaining, the minimum cost for one Social Worker IV position (the person who would have the responsibility for fielding the contacts from law enforcement) to be on call would be

approximately \$32,948.23 annually. This includes compensation for standby duty, mileage, night differential, and meal costs.

(8) Additionally, new equipment and software may be needed to develop this new system of processing TROs (for example, a new interface between law enforcement and the courts may be needed).

(9) Additionally, a training process will have to developed for both Judiciary and law enforcement personnel. In our experience, we have found that, when Petitioners in family court cases are assisted by untrained persons, there may be a greater dissatisfaction with the court process (for example, when a Petitioner claims that a non-family court related person did not accurately express the Petitioner's claims and statements—this in turn gives the Respondent less than adequate notice about the claims he/she will be required to address in court).

(10) There cannot be unfettered contact between the petitioner and the judge for very practical reasons. There are and will be procedural requirements that both the Petitioner and the law enforcement officer will need help with. Based on our experience, we have also found that Petitioners need help focusing their statements. While court officers are extremely careful not to place statements in the mouths of Petitioners and are extremely careful not to act as advocates, they provide necessary help in explaining what is and is not relevant or what may or may not be significant. For example, a Petitioner might present a rather minor annoyance with the Respondent as the basis for a TRO and then happen to mention as an aside an actual physical abuse event which they did not consider to be important because of the frequency of such occurrences. Court staff will also have to create files and complete paperwork after the judge has completed his/her part of the process.

(11) Besides the practical, there is another extremely important reason to avoid direct personal contact with the judge. Such a procedure is inherently unfair to Respondents and will be rightfully perceived as such. When court staff assists in the preparation of the petition or complaint, the judge is not exposed to all of the extraneous statements and information imparted by the Petitioner. The judge and the Respondent will read the same statements. The Respondent is assured that there were no ex parte communications between the Petitioner and the judge and that, at the initial hearing, both parties will be appearing before a judge at the same time.

All of the above listed factors relate to judicial processes. However, we also have a few policy comments to raise for the Legislature's consideration.

(A) Many district court cases are less volatile than family court cases since intimate relationships are not usually involved. Also, unlike family court cases, district court orders are generally less intrusive (for example, family court respondents can be ordered to vacate their home immediately and to have no further contact with their children until at least the first return hearing). If this bill intends 24 hour coverage, its implementation may be potentially very costly and so need for such coverage in district court cases may have to be re-examined.

(B) Allowing a more relaxed and remote process may possibly allow for more false claims based on improper motives.

(C) Besides the possibility of an increase in false claims, there may be an overall increase in petitions filed in both family and district courts. Of course, all valid petitions and complaints should be dealt with expeditiously and properly. However, if, for whatever reason, there is an overall increase in these petitions and complaints, the Judiciary will require increased judicial resources or delays may result.

As discussed above, these matters are not simple and the solutions are not clearly indicated.

Furthermore, the Supreme Court does not have the legislative authority to simply promulgate rules that would have the effect of law over all persons and all agencies. Lastly, as discussed above, the Judiciary and the family and district courts have done quite a bit to streamline processes and to make forms and processes more "user friendly" over the years. And, we intend to continue to work toward greater improvements.

If this bill should pass, we respectfully request that the effective date be at least two years from the date of promulgation, i.e., sometime beyond the summer of 2014, in order to allow the Judiciary and all law enforcement agencies to first develop the procedures for all the different circuits, then enough time to seek adequate appropriations from the Legislature, and then enough time to train and implement the new program.

Thank you for the opportunity to testify on this matter.

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THE HONORABLE JOHN M. MIZUNO, CHAIR
HOUSE HUMAN SERVICES COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

Monday, March 12, 2012

RE: S.B. 2505, S.D 1; RELATING TO TEMPORARY RESTRAINING ORDERS.

Chair Mizuno, Vice Chair Jordan, and members of the House Committee on Human Services, the Department of the Prosecuting Attorney submits the following testimony **in opposition to S.B. 2505, S.D. 1**, which proposes to allow temporary restraining orders against harassment and domestic abuse to be issued upon the submission of oral sworn testimony or complaint to a judge by electronic measures.

Although we appreciate the motivation behind this measure, we feel that there are adequate existing provisions in H.R.S. Section 709-906(4) that with a slight amendment can accomplish the same purpose as S.B. 2505, S.D. 1. S.B. 223, S.D. 1, which has been referred to your Committee, proposes to amend HRS §709-906 to **require** that police officers impose a 24-hour "no-contact period," where there are "reasonable grounds to believe" that harm was inflicted and that there is probable danger of further harm. The Department agrees that it is important for police officers to make this determination--and to impose the no-contact period as appropriate--because this period provides a valuable buffer to protect victims from ongoing abuse, particularly on weekends or over holidays when victims are not be able to seek a TRO immediately. Unlike the procedures outlined in S.B. 2505, S.D. 1, the provisions of S.B. 223, S.D. 1 require no additional resources, no complicated changes in existing law, and no development or implementation of complex changes in Court Rules.

The legislative history of HRS 709-906(4) indicates that the 24-hour "no-contact period" (currently "period of separation") has been beneficial to domestic violence victims, when imposed. In 1995, legislators found it --"was very successful in preventing further domestic violence...[and] created a 'safe' period during which abuse victims might seek refuge in a shelter or use other safety options." See House Standing Committee Report No. 1566 (1995). In 1997, it was similarly stated that the no-contact periods "have had a significant impact in denying domestic violence perpetrators access to their victims." See House Standing Committee Report No. 1481 (1997). In 1998, legislators further amended the statute to facilitate police officers' quick determination of whether to issue the no-contact order, with hopes that those amendments

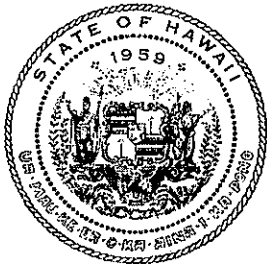
“would result in more twenty-four hour warnings, thereby protecting more victims of domestic abuse.” See Conference Committee Report No. 80, House Standing Committee Report No. 578-98. Thus by simply changing “may” to “shall”, requiring police officers to consistently invoke the period of separation that has, as the Legislature intended, provide an effective means of protecting victims of domestic abuse. Similar to a Temporary Restraining Order, orders issued pursuant to H.R.S. 709-906(4) are also rendered into written form:

- (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person.

Not only are copies of the written orders provided to all parties, they are issued based on actual evidence observed by a police officer at the scene of the crime. An officer is able to take into account physical evidence actually observed and the demeanor of the parties involved, among other factors, in making the decision to effect an arrest and issue the period of separation warning and citation. These are advantages that no judge ever has, and as previously emphasized, it is already provided for in existing law and proven effective.

For these reasons, we urge you to hold S.B. 2505, S.D. 1 and schedule S.B. 223, S.D. 1 for a hearing at your earliest opportunity. Thank you for your time and consideration.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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March 11, 2012

Testimony in Opposition to SB 2505, SD 1

To: Representative John Mizuno, Chair
Representative Jo Jordan, Vice Chair
Members of the House Committee on Human Services

From: Catherine Betts, Esq., Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Opposition to SB 2505, SD 1, Relating to Temporary Restraining Orders

On behalf of the Hawaii State Commission on the Status of Women, I would like to thank the committee for this opportunity to provide testimony on this important issue. I would like to express my opposition to this bill, which would allow petitioners for temporary restraining orders to provide oral sworn testimony or a complaint to a judge by electronic means.

While this legislation may be well intentioned in that it seeks to allow victims of domestic violence to bypass some steps in the path toward safety, I do not believe that greater safety for victims will be the actual result. The restraining order process is sometimes the only means toward safety for a victim and her children. Increasingly, batterers have learned how to manipulate the TRO process in order to further abuse their partners and children and once again, to reassert control over them. Often times, batterers race to the courthouse in order to claim that they are the true victims, and their partners, the actual batterers.¹

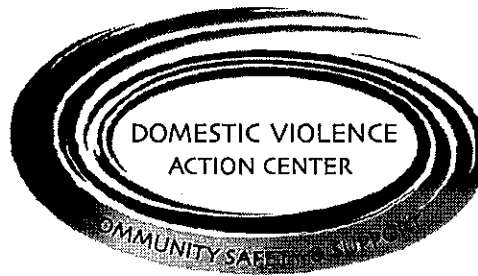
By allowing petitioners to provide oral sworn testimony to law enforcement officers or by providing a complaint to a judge by electronic means, this legislation would allow further manipulation of the protective order system, making it difficult for the courts to discern and assess the true levels of violence and danger. Further, the bill does not provide for the law enforcement officer, or "other person designated by rule to assist the applicant" to be well trained in the dynamics of domestic violence or in assessing credibility of the petitioner. This further muddies the process and enables batterers to potentially manipulate the system in order to gain control over their victims. It also makes it difficult for victims, including immigrants and non-English speakers, who may be reluctant to seek assistance from law enforcement.

Finally, when victims come to court to apply for a restraining order, they are given the opportunity to receive crisis support, safety planning, relevant referrals and information about service of process. These services are essential to victims' safety and without these services in place, victims may be placed in greater danger. I do not believe SD 1 adequately remedies the potential pitfalls found in this bill. I respectfully request that this Committee not pass SB 2505, SD 1.

Thank you for this opportunity,

Catherine Betts, Esq.

¹ Lundy, Bancroft and Jay G. Silverman, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (Sage Publications 2002).



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

Fr: Nanci Kreidman, M.A.

RE: SB 2505, SD 1

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

There is no doubt that restraining orders are an effective tool for many victims seeking avenues for escape and options for their safety. This Bill, while on its face, a seemingly helpful advancement-increasing the accessibility of orders, raises some concern we offer today.

There are victims who may be reluctant to seek assistance from law enforcement, due to language barriers, previous criminal offenses, substance abuse or community history with the criminal justice system that has been objectionable. Other persons, cited in the bill, may be a reasonable substitute-but at this time, resources are a key concern for all community agencies. This would also be a challenge for the Judiciary-whose already over-extended staff may have difficulty meeting the mandate.

The current process for obtaining a restraining order and a protective order has been designed with the needs of victims in sharp focus. A key feature of the process is the ability to assist victims at the time of filing to assess their danger and craft their safety. Having crisis support available when making very important and potentially life threatening decisions as well as receiving information about the effective use of the justice system can be life saving. This assistance also conserves resources for the Judiciary- as uninformed petitioners (or respondents) in courts slows the process.

Further, it is no secret that abusers will pose as victims and use this process to further control or retaliate against the victim. The ability of courts to assess these kinds of factors is weakened through reliance on electronic means—oral sworn testimony. Extensive training, currently not provided, would be essential for law enforcement or other persons assisting the petitioner with the sworn testimony—without that there is the potential to ineffectively discern the veracity of the petitioner.

Thank you for your consideration of the issues.



To: The Honorable John Mizuno, Chair
The Honorable Jo Jordan, Vice-Chair
HOUSE COMMITTEE ON HUMAN SERVICES

From: Veronika Geronimo, Executive Director
Hawaii State Coalition Against Domestic Violence

RE: SB2505 - OPPOSE

Hearing Date and Time: Monday, March 12, 2012 @ 8:30AM

Good morning Chair Mizuno, Vice-Chair Jordan, and members of House Committee on Human Services. The Hawai'i State Coalition Against Domestic Violence respectfully submits the following testimony in opposition to SB2505. As a statewide coalition of domestic violence service providers, our mission is to engage communities and organizations to end domestic violence through education, advocacy, and action for social justice.

While we recognize the need to increase access to Temporary Restraining Orders for victims, the bill may have some dangerous unintended consequences. Without the proper safeguards in place, an electronic submission has the potential to wrongfully issue TROs to abusers posing as victims. It is not uncommon for perpetrators to abuse the TRO process. Abusers have been known to file false claims not because of fear of personal safety, but to exclude the victim from the home or prohibit contact with their children, as a way of retaliating, or further exerting power and control over a victim. Electronic means of filing TROs weakens the ability of the courts to assess the veracity of the petitioner, and accurately assess violence levels and danger.

Rather than create a new program during a time of limited state resources, we urge the legislature to pass SB223 SD1, instead. SB223 SD1 was introduced to address the gaps which SB2505 intends to address. SB223 SD1 requires a police officer to order a person to have no contact with a family or household member for a twenty-four hour period, or longer if the incident occurs on the weekend, when a police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm to the family or household member. SB223 SD1 strengthens HRS 709-906, a valuable tool which law enforcement can use to help protect victims from abuse on evenings, weekends and holidays, or on neighbor islands and rural communities, where there is limited access to courts where Temporary Restraining Orders can be filed. We believe this proposal is a simpler and more sustainable approach to providing victims protection.

Thank you for your consideration.

Testimony for HUS 3/12/2012 8:30:00 AM SB2505

Conference room: 329

Testifier position: Oppose

Testifier will be present: No

Submitted by: Ann S Freed

Organization: Hawaii Women's Coalition

E-mail: annfreed@hotmail.com

Submitted on: 3/12/2012

Comments:

Aloha Chair Mizuno, Vice Chair Jordan and Committee members.

We submitted testimony in opposition to a similar house bill and our position has not changed.

The Public Defender, testifying in opposition has said: "We believe that this measure will allow persons to abuse the TRO process for their personal objectives.

The Hawaii State Coalition Against Domestic Violence has also testified in opposition for the same reason: "Without the proper safeguards in place, an electronic submission has the potential to wrongfully issue TROs to abusers posing as victims. It is not uncommon for perpetrators to abuse the TRO process. Abusers have been known to file false claims not because of fear of personal safety, but to exclude the victim from the home or prohibit contact with their children, as a way of retaliating, or further exerting power and control over a victim."

The Hawaii State Commission on the Status of Women has also testified against for the same reasons.

I think that we should defer to the wisdom of the women and men who are in the trenches working with victims.

Please don't pass this bill.

Mahalo for allowing us to testify.

Ann S. Freed

Co-Chair, Hawaii Women's Coalition.

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