

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96808

February 9, 2016

TO: The Honorable Dee Morikawa, Chair
House Committee on Human Services

FROM: Rachael Wong, DrPH, Director

SUBJECT: HB 1906, Relating to Domestic Violence

Hearing: Thursday, February 11, 2016, 9:30.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this bill as section 586-10.5, Hawaii Revised Statute (HRS) is duplicative of section 350-1.1(a)(3) and (4), and (b) (HRS), which mandates reporting to Child Welfare Services (CWS) by persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably near future.

PURPOSE: The purpose of this bill is to remove certain unnecessary and redundant reporting responsibilities of the Family Courts and the Department of Human Services in cases where temporary restraining orders are sought for alleged domestic violence abuse involving a family or household member who is a minor or incapacitated person.

Child Welfare Services (CWS) works closely with the Family Court to ensure the safety, permanency (stability), and well-being of children. Under the current statute, the Family Courts report all temporary restraining orders to the CWS branch where there are minors in the home, regardless of the minors' exposure to the alleged domestic abuse. Many reports do not indicate any safety concerns for the children, consequently, this practice has created an unnecessary burden on the Courts and CWS as CWS staff must screen the referrals, investigate the cases, and submit written reports to the court in advance of the hearings.

Additionally, the automatic referral for investigation to CWS is a potential deterrent to survivors seeking safety through the restraining order process, as petitioners fear being referred for investigation and having their children removed from their care. To prevent survivors from reporting domestic partner abuse, batterers often threaten that survivors will lose custody of their children.

Section 350-1.1, HRS, identifies those persons in their professional or official capacity who are "mandated reporters" of child abuse and neglect. Section 350-1.1(a)(3) and (4), and (b), HRS, requires, amongst others, law enforcement, court staff, the department of public safety, parole and probation officers report all situations of suspected abuse and neglect to Child Welfare Services. An automatic referral in every case through the restraining order process is not necessary. The Judiciary should have the discretion to refer cases to CWS for investigation on a case by cases given the circumstances.

Thank you for the opportunity to testify.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Human Services

Representative Dee Morikawa, Chair

Representative Bertrand Kobayashi, Vice Chair

Thursday, February 11, 2016, 9:30 a.m.

State Capitol, Conference Room 329

By

R. Mark Browning

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: House Bill No. 1906, Relating to Domestic Violence

Purpose: Repeals HRS Section 586-10.5

Judiciary's Position:

The Judiciary opposes repealing HRS Section 586-10.5, in its entirety. We are not in opposition to the concerns of the Department of Human Services (“Department”) so, we respectfully request consideration of alternative language rather than a complete repeal of the section. We believe our language states more clearly that the family court will not refer *all* protective order petitions involving children and incapacitated adults to the Department and that its representatives will not be required to report to the court unless so ordered.

This is our suggested language which tracks the original HRS Section 586-10.5 as it was first enacted by the Legislature 28 years ago in 1987 (Act 315 of 1987, Section 7):

§586-10.5 Reports by the department of human services. In cases where there are allegations of domestic abuse involving a minor family or household member who is a minor or an incapacitated person as defined in sections 350-1.1(a) and 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, only as required under chapters 350 and 587A, and



section 346-224 and shall further notify the department of the granting of the temporary restraining order and of the hearing date. If ordered by the court, the department of human services shall provide the family court with an oral or written report of the investigation's progress or on the disposition of the referral on or before the hearing date or any subsequent hearing date. If the department chooses to provide a written report, the department need not be at the hearing unless ordered by the court. The court shall provide copies of all written reports to the parties.

The Ramseyer formatting for the amendments to the existing law would be:

§586-10.5 Reports by the department of human services~~[; court responsibilities]~~. In cases where there are allegations of domestic abuse involving a family or household member who is a minor or an incapacitated person as defined in sections 350-1.1(a) and 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, only as required under chapters 350 and 587A and section 346-224, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. If ordered by the court, t[The department of human services shall provide the family court with an oral or written report of the investigation's progress or on the disposition of the referral on or before the hearing date or any subsequent hearing date. The court shall file the report and mail it to the petitioner and respondent at least two working days before the hearing date, if possible. If circumstances prevent the mailing of the report as required in this section, the court shall provide copies of the report to the petitioner and respondent at the hearing. The report shall be noted in the order dismissing the petition or granting the restraining order. If the department chooses to provide a written report, the department need not be at the hearing unless ordered by the court. The court shall provide copies of all written reports to the parties.

The reasons for our position are:

(1) There are simply more petitioners than the Judiciary can assist on a timely basis. Fortunately for our community, Ala Kuola stepped up to the plate and works closely with the Family Court of the First Circuit to assist the petitioners. Essentially, HRS Section 586-10.5 includes “appropriate nonjudicial agency designated by the family court to assist the petitioner” as a “mandated reporter” under HRS Chapters 350 and 587A, and HRS Section 346-224.



Without this section, these very important mandates would not cover nonjudicial agencies and each of the mandated reporting statutes would have to be amended.

(2) Our suggested language addresses the Department's concerns by:

- a. limiting the abuse reports to only those required by the mandatory reporting statutes;
- b. requiring a progress report from the Department only when court ordered
- c. giving the Department the discretion to provide an oral or a written report in the event they are court ordered;
- d. not requiring attendance at the hearing unless court ordered; and,
- e. the court's assuming the responsibility of providing copies of the written report to the parties.

(3) The preamble of House Bill No. 1906 states that:

“Best practices suggest that families experiencing domestic violence should have access to protective orders and other domestic services without fear that they will automatically be referred for investigation by child welfare or adult protective services.”

This statement suggests two things: that the mandatory reporting provisions in HRS Chapter 586 cause these concerns and that the referral to the Department will be “automatic.” Regarding the first belief, even without these provisions in HRS Chapter 586, mandatory reporting requirements are present in other statutes. For the second belief, our suggested language makes it clear that our reporting will not be automatic.

Furthermore, except with minor amendments, this section has been part of HRS Chapter 586 since 1987 and the number of cases have increased rather than decreased. Therefore, if these provisions are adding to the “fear” referenced in the preamble, then that fear is not, thankfully, preventing victims from seeking the safety of a protective order.

(4) Victims, their children, and perpetrators need case management and access to a panoply of services needed to address this multi-faceted problem and to provide safety. The Family Court is not a service provider; our role is to hear cases and apply the law. Unlike child and incapacitated adult/elder abuse cases, there is no state agency that is a party to the HRS Chapter 586 proceedings that will find or refer the parties and children to appropriate resources and then consistently monitor and enforce the conditions of the court orders. Lacking such an agency, the court must be able to get the help of the Department through oral/written reports as well as court appearances.



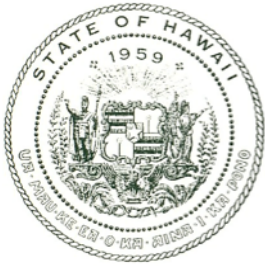
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(5) When children are involved, the stakes are obviously higher for the family and the community. This has been acknowledged in this 2016 Legislative Session by the introduction of Senate Bill No. 2247 and House Bill No. 1517 seeking to provide “that the commission of certain offenses of assault in the presence of the victim's minor child is an aggravating factor in the sentencing of the defendant convicted of the offense.” These cases are among the toughest faced by Family Court. Alone, we can provide the required protective order but such an order may not address the needs of the parties and their children. Without the additional help, domestic violence continues to breed. We acknowledge the difficulties faced by the Department but we also wish to be able to work with them to further community safety.

For all these reasons, the Family Court respectfully opposes repealing HRS Section 560-10.5 and respectfully suggests the alternative language above to replace the current language.

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

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
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February 11, 2016

To: Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair
Members of the House Committee on Human Services

From: Cathy Betts
Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, HB 1906, Relating to Domestic Violence

Thank you for this opportunity to testify in support of HB 1906, which would repeal Hawaii Revised Statute section 586-10.5. This section requires family courts to report to the Department of Human Services in each case where a restraining order is sought for abuse of family or household member and a minor or incapacitated person is involved.

Under this statute, family court is mandated to involve child welfare in every petition for a temporary restraining order or protective order that is filed with children involved. A victim's petition for a restraining order is often the first step to safety. It takes tremendous courage and often lengthy periods of time for a victim to come forward and apply for a restraining order. When a child welfare investigation is automatically triggered, it has a chilling effect on victims who come forward. Women who are victims of abuse should not have to feel afraid that filing for a restraining order will automatically render their families open to further scrutiny, or worse, that their children may be taken from them into state custody by virtue of their applying for a restraining order.

Our family courts already have the discretion to direct the Department of Human Services to become involved where there is reason to believe that child abuse or neglect has occurred. The Department of Human Services regularly investigates cases of threat of harm or actual harm if the allegations surface from a restraining order application. The current practice of an automatic referral overburdens the court system, often requiring victims to appear multiple times in court while the automatic investigation is pending. This puts victims at risk for further harm.

The Commission supports the passage of HB 1906.

Thank you for this opportunity to testify.



February 10, 2016

To: Hawaii State House Committee on Human Services
Hearing Date/Time: Tuesday, February 11, 2016 (9:30 a.m.)
Place: Hawaii State Capitol, Rm. 329
Re: Testimony of American Association of University Women –
Hawaii in **support of H.B. 1906**, relating to domestic
violence

Dear Representative Dee Morikawa (Chair), and Representative Bertrand Kobayashi
(Vice Chair), and Members of the Committee,

I am grateful for this opportunity to testify in **strong support of H.B. 1906**, which would
repeal Hawaii Revised Statute section 586.10.5, improving the situation in Hawaii for
survivors of domestic violence and their children.

My testimony is on behalf of the approximately 400 members of the American
Association of University Women (AAUW) in Hawaii, who list gender-based violence as
an important current concern.

This submission is informed by many years of work in the field of domestic violence, and
research conducted with survivors of intimate partner violence. In addition, when I lived
in New Zealand, I managed a 24-hour, 7-days/week domestic violence hotline, and
trained Advocates for Women to respond skillfully and empathetically to survivors of
violence. At many times, we worked with police, courts, and other service agencies on
behalf of survivors. At that time, New Zealand did not involve child protective services
automatically when a protection order was issued for a family member. This legal stance
occurred because previously, when social workers were notified automatically on behalf
of children, women stopped obtaining protection orders from the court, and deaths of
women and children at the hands of abusive partners increased.

In conclusion, passage of H.B. 1906 is an important step in improving justice for women.
Children's safety is maintained by existing statutes, and Hawaii Revised Statute section
586.10.5 additionally burdens overloaded agencies, and discourages women from needed
court assistance.

Thank you for the opportunity to testify.

Sincerely
Susan J. Wurtzburg, Ph.D.
Policy Chair

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE DEE MORIKAWA, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i**

February 11, 2016

RE: H.B. 1906; RELATING TO DOMESTIC VIOLENCE.

Chair Morikawa, Vice-Chair Kobayashi, members of the House Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 1906.

The purpose of H.B. 1906 is to repeal H.R.S. Section 586-10.5 and eliminate the requirement that a Child Protective Services Investigation be initiated every time a Protective Order is sought that involves a minor or incapacitated person. Not only is such a requirement a waste of the thinly stretched resources of the department of Human Services but it duplicates and creates confusion with existing mandatory reporting requirements for child and dependent adult abuse. A judge who is convinced that facts revealed in a Protective Order application requires a CPS investigation will still be required to report the matter for investigation. However, requiring that each and every application that involves a child or dependent adult trigger an investigation simply makes no sense. In addition there are very serious concerns among most domestic violence service providers that having such a requirement in the Protective Order law inhibits many victims who badly need this type of legal protection from seeking them because they are wary of an unnecessary and unwarranted CPS investigation of their lives. This negative incentive is clearly counter to the very purpose of our Protective Order law.

For all of the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 1906. Thank you for the opportunity to testify on this matter.



Hawaii Women's Coalition

COMMITTEE ON HUMAN SERVICES
Rep. Dee Morikawa, Chair
Rep. Bertrand Kobayashi, Vice Chair

LATE

DATE: February 11, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 329

STRONG SUPPORT FOR HB1906 relating to Domestic Violence

Good afternoon Chair Morikawa, Vice Chair Kobayashi, and members. The Hawai'i Women's Coalition is in **strong support of HB 1906** which would **repeal** Hawaii Revised Statute section 586-10.5. This section requires family courts to report to the Department of Human Services in each case where a restraining order is sought for abuse of family or household member and a minor or incapacitated person is involved.

Under this law, family court is **mandated to involve child welfare in every petition for a temporary restraining order** or protective order that is filed with children involved. When a child welfare investigation is automatically triggered, it has a **chilling effect on victims** who come forward. Women who are victims of abuse should not have to feel afraid that filing for a restraining order would automatically subject them and their children to lengthy and punitive scrutiny. Nor should they be made to feel that their children might be taken from them into state custody by virtue of their applying for a restraining order. That is the system re-victimizing the victim.

The Coalition is in strong support of this bill. Please pass the important bill out of committee.

Mahalo for the opportunity to testify,
Ann S. Freed Co-Chair, Hawai'i Women's Coalition
Contact: annsfreed@gmail.com Phone: 808-623-5676



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

February 10, 2016

To: Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair
Members of the House Committee on Human Services

LATE

From: Michelle Rocca, Training and Technical Assistance Director
Hawaii State Coalition Against Domestic Violence

Re: Testimony in Support, HB 1906, Relating to Domestic Violence

Thank you for this opportunity to testify in strong support of HB 1906 which would repeal Hawaii Revised Statute section 586-10.5. This section requires that the Child Welfare Services section of the Department of Human Services be notified when a petitioner with children files for a restraining order against an abusive partner.

Victims and advocates from across the state have reported to HSCADV that this automatic referral is a barrier to seeking a restraining order. In many rural areas of the state, word of mouth has spread among each other that CPS will investigate them if they take this otherwise protective measure. In some cases, this has resulted in folks who would benefit from obtaining a restraining order refraining from engaging in the process out of fear that they may lose their children or be mandated to participate in a system that they do not feel would be beneficial to their current circumstances. Victims of abuse should not have to feel afraid that filing for a restraining order will automatically render their families to further scrutiny, or worse, that their children may be taken from them into state custody by virtue of their applying for a restraining order.

Our family courts already have the discretion to direct the Department of Human Services to become involved in the instance that the need for the service is warranted. Advocates who are working with domestic violence victims are mandated reporters and are required to report to CWS if they observe child abuse or neglect. The current practice of an automatic referral overburdens our DHS social workers and prevents them from focusing more of their time and attention on serious cases of abuse and neglect.

HSCADV supports the passage of HB 1906.

Thank you for this opportunity to testify on this matter.

kobayashi2-Jessi

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 10, 2016 4:28 PM
To: HUS testimony
Cc: amymonk99@hotmail.com
Subject: *Submitted testimony for HB1906 on Feb 11, 2016 09:30AM*

LATE

HB1906

Submitted on: 2/10/2016

Testimony for HUS on Feb 11, 2016 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Monk	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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