

MAR 09 2018

SENATE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO CONVENE A WORKING GROUP TO DEVELOP
AND IMPLEMENT A PLAN FOR IMPROVING THE FAMILY COURT
RESTRAINING ORDER PETITION PROCESS, LAW ENFORCEMENT'S
RESPONSE TO VIOLATIONS OF RESTRAINING ORDERS, AND THE
JUDICIAL RESPONSE TO ALLEGED VIOLATIONS OF RESTRAINING
ORDERS.

1 WHEREAS, the State of Hawaii has enacted a number of laws
2 aimed at protecting victims of domestic violence; and
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4 WHEREAS, the Judiciary, county police departments, and
5 county prosecutors' offices each have systems in place to
6 address the personal safety of victims of domestic violence; and
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8 WHEREAS, often the only recourse for victims of domestic
9 violence who fear for the safety of themselves and their
10 children is to initiate a civil legal action, known as a
11 "petition for an order for protection" under section 586-3,
12 Hawaii Revised Statutes, to seek an ex parte temporary
13 restraining order (TRO) that is valid for up to one hundred
14 eighty days, at the family court's discretion, or in cases where
15 an ex parte temporary restraining order is already in effect, a
16 "protective order" that is valid for "a further fixed reasonable
17 period of time", as determined by the family court; and
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19 WHEREAS, even when victims of domestic violence are aware
20 of their rights under the law and take the appropriate steps to
21 petition the court for a temporary restraining order or pursue a
22 longer term protective order, the judicial process is often full
23 of delays and redundancies that disproportionately harm victims;
24 typical examples include cases in which:
25



1 (1) A victim petitions the family court for an ex parte
2 temporary restraining order; the family court grants
3 the temporary restraining order and schedules a
4 hearing within fifteen days for the purpose of
5 determining whether a protective order that is valid
6 for a further fixed reasonable period of time is
7 necessary to prevent domestic abuse or a recurrence of
8 abuse; the victim arrives at court for the hearing,
9 only to discover that the hearing must be postponed
10 because the perpetrator was not served with notice of
11 the hearing and is therefore not present for the
12 hearing; and
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14 (2) A victim is granted a temporary restraining order and
15 the order and notice of hearing with respect to a
16 protective order are served on the perpetrator; at the
17 hearing, the perpetrator indicates that more time is
18 needed to hire an attorney, and the court postpones
19 the hearing for one month; at the next hearing, the
20 perpetrator again requests more time to hire an
21 attorney, and the court postpones the hearing for
22 another month; by the time of the next hearing,
23 roughly two and a half months have elapsed, the victim
24 has gone to court at least four times, and yet, no
25 progress has been made toward obtaining a court order
26 that is designed to protect the victim for a longer
27 period of time; and
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29 WHEREAS, even when temporary restraining orders or
30 protective orders are issued without undue delay, law
31 enforcement agencies' response to violations of these orders is
32 frequently insufficient, even bewildering, as in the case of
33 victims with a valid order who, in compliance with the terms of
34 the order, report a violation (or multiple violations) of the
35 order to law enforcement authorities, but are told that no
36 enforcement action will be taken, which leaves victims
37 vulnerable and exposed to continued acts of violence; and



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2 WHEREAS, for years, victims of domestic violence, victim
3 advocates, and other concerned stakeholders have informed the
4 Judiciary, county police departments, and county prosecutors'
5 offices that the present system is extremely cumbersome and
6 slow, and often fails to adequately penalize perpetrators of
7 domestic violence who commit further temporary restraining order
8 or protective order violations; and
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10 WHEREAS, it is clear that victims of domestic violence
11 encounter obstacles at every stage of the process of seeking and
12 enforcing a temporary restraining order or longer term
13 protective order, hereinafter referred to as the "restraining
14 order petition and enforcement processes", including:
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- 16 (1) Inadequate information on or assistance with the
17 mechanics of filing a petition for an ex parte
18 temporary restraining order;
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20 (2) Delays in the scheduling of court hearings due to bad
21 faith by perpetrators of domestic violence seeking to
22 prolong the petition process or make it more
23 difficult;
24
25 (3) Lack of cooperation by law enforcement authorities
26 when asked to enforce a valid temporary restraining
27 order or protective order after a violation has
28 occurred; and
29
30 (4) Long delays in scheduling a case for trial after a
31 temporary restraining order or protective order
32 violation has been investigated by law enforcement
33 authorities and a criminal prosecution for violation
34 of the order has commenced; and
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36 WHEREAS, even when well-meaning public servants do their
37 best to assist victims of domestic violence, systemic problems



1 often result in victims becoming disenchanted with the
2 restraining order petition and enforcement processes and losing
3 faith in the overall ability of the legal system to protect
4 them; and

5
6 WHEREAS, a June 2016 report titled "Mapping a Pathway to
7 Safety: A Community Safety Assessment of the City and County of
8 Honolulu Protective Order Process" examined each stage of the
9 restraining order petition process, identified strengths and
10 weaknesses at each stage, and provided detailed recommendations
11 for improving the process using a more victim-centered approach;
12 and

13
14 WHEREAS, although the report's findings and recommendations
15 focused on the characteristics of the process encountered by
16 victims of domestic violence in the City and County of Honolulu,
17 it is well known that similar problems exist within the other
18 counties of the State; and

19
20 WHEREAS, it is in the interest of public safety and the
21 overall health of the State that action be taken to improve the
22 family court restraining order petition process, law
23 enforcement's response to violations of restraining orders, and
24 the judicial response to alleged violations of restraining
25 orders; now, therefore,

26
27 BE IT RESOLVED by the Senate of the Twenty-ninth
28 Legislature of the State of Hawaii, Regular Session of 2018, the
29 House of Representatives concurring, that the Judiciary is
30 requested to convene a working group to develop and implement a
31 plan for improving the family court restraining order petition
32 process, law enforcement's response to violations of restraining
33 orders, and the judicial response to alleged violations of
34 restraining orders; and

35
36 BE IT FURTHER RESOLVED that the working group is requested
37 to comprise members that represent the various perspectives of



1 public officials and other stakeholders with significant
2 involvement in the restraining order petition and enforcement
3 processes, and include:

- 4
5 (1) The Chief Justice or the Chief Justice's designee, who
6 shall serve as the chairperson of the working group;
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- 8 (2) A judge from the family court division of each circuit
9 court, to be appointed by the Chief Justice;
10
- 11 (3) A representative of the Department of the Attorney
12 General;
13
- 14 (4) A representative of each county police department;
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- 16 (5) A member of each house of the Legislature, to be
17 designated by the President of the Senate and the
18 Speaker of the House of Representatives, respectively;
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- 20 (6) A representative from the Hawaii State Coalition
21 Against Domestic Violence or other similar victim
22 advocacy organization selected by the Chief Justice;
23 and
24
- 25 (7) A representative from a domestic violence advocacy
26 organization from each county selected by the Chief
27 Justice; and
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29 BE IT FURTHER RESOLVED that no member be made subject to
30 chapter 84, Hawaii Revised Statutes, solely because of the
31 member's participation in the working group; and
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33 BE IT FURTHER RESOLVED that the Judiciary is requested to
34 provide administrative support to the working group; and
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36 BE IT FURTHER RESOLVED that the working group is requested
37 to consider the recommendations made in the June 2016 report



1 referenced above, as well as any other appropriate materials;
 2 and
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4 BE IT FURTHER RESOLVED that the working group is requested
 5 to submit a report of its findings and recommendations,
 6 including any proposed legislation, to the Legislature no later
 7 than twenty days prior to the convening of the Regular Session
 8 of 2019; and
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10 BE IT FURTHER RESOLVED that certified copies of this
 11 Concurrent Resolution be transmitted to the Chief Justice, the
 12 Senior Family Court Judge of each circuit, the Attorney General,
 13 the respective Police Chiefs of the City and County of Honolulu
 14 and the counties of Maui, Hawaii, and Kauai, the President of
 15 the Senate, the Speaker of the House of Representatives, and the
 16 Executive Director of the Hawaii State Coalition Against
 17 Domestic Violence.
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