



## *The Judiciary, State of Hawai‘i*

### **Testimony to the Thirty-First Legislature 2022 Regular Session**

**Senate Committee on Judiciary**  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Wednesday, April 6, 2022 at 9:31 a.m.  
Conference Room 016 & Videoconference

by  
Andrew T. Park  
Judge, Family Court of the First Circuit

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**Bill No. and Title:** SCR No. 54 and SR No. 49: REQUESTING THE JUDICIARY TO PERMANENTLY PROVIDE AN OPTION ALLOWING PETITIONERS OF TEMPORARY RESTRAINING ORDERS TO REMOTELY TESTIFY FOR THOSE HEARINGS.

#### **Judiciary's Position:**

The Judiciary takes no position on SCR 54 / SR 49 and offers the following comments.

Temporary Restraining Order (TRO) petitions are acted upon by a family court judge the day they are submitted **without** a court hearing and **without** notice to or the presence of the Respondent, *i.e.*, ex parte. Hawaii Revised Statutes (H.R.S.) §586-4. Therefore, Petitioners do **not** appear at an initial in-person court hearing when a TRO is issued.

Within fifteen days from the granting of the TRO, the statute requires a court hearing to determine whether to continue the TRO. H.R.S. §586-5 requires that “[a]ll parties shall be present at the hearing[.]”

The parties’ physical presence in the courtroom is absolutely vital, particularly if the parties request a contested hearing (*i.e.*, a trial). In many, if not most, TRO trials, the only evidence is the oral testimony of the parties. In those cases, the judge must make credibility determinations in deciding whether to continue or to dissolve the TRO. Witness credibility is best determined through live, in-person testimony. That is the primary reason that, even at the



height of the pandemic-related restrictions, TRO hearings were one of the few family court calendars that remained almost entirely in-person. It is also the reason that appellate courts often give deference to trial judges' credibility determinations. Even when video recordings of a trial are available, it is generally understood that you have "to be in the room where it happens" to best judge the credibility of witnesses.

The pandemic has also taught us that the person appearing by video is often at a disadvantage by not being in the courtroom physically, particularly if the other party is physically present. Unlike third party witnesses, the parties have a stake in experiencing the entire process and the outcome. The pandemic has also taught all of us how video appearances can be highly inefficient and more time consuming—exhibits and other documents cannot be readily shared, sound and video problems abound, poor internet connections put everyone on edge, people "speak over" each other, and the judges and participants have no reliable way of knowing who else may be present but are not shown on the screen.

That is not to say that video hearings do not have their place in family court, including TRO proceedings. They do. Even before the pandemic, the family court allowed parties to participate remotely on a case-by-case basis, and we will continue to do so. The court retains the inherent discretion and authority to make these determinations based on various factors including: the type of case, the purpose of the hearing, the need for remote participation, and, of course, matters of due process and fairness.

Finally, we are fully aware of the stress and safety concerns that in-person court hearings can engender and we will therefore continue to adhere to strict safety protocols, including, among other things: maintaining separate waiting areas for petitioners and respondents; ensuring that petitioners and respondents are brought into the courtroom and excused from their hearings in sequence rather than simultaneously so as to minimize unnecessary contact between the two; and monitoring and promptly addressing inappropriate behaviors in our courthouses and courtrooms.

Thank you for the opportunity to testify on this matter.



TO: Chair Rhoads  
Vice Chair Keohokalole  
Members of the Committee  
FR: Nanci Kreidman, M.A.  
Chief Executive Officer  
RE: SCR 54

Aloha! It is important for our community and its systems to recognize and give credence to the experiences of survivors. Seeking a restraining order is a terrifying step to take.

Revealing the intimate details of your relationship, the fear you feel, and the uncertainty about the prospect of retaliation is immobilizing. Facing your partner and being in close proximity is unimaginable for those of us who have not had to obtain court protection.

Survivors who work with DVAC EXPO Court Outreach team on site at court in Kapolei and Circuit Court describe their panic.

An option to participate remotely, with the ability to be cross-examined in the Order to Show Cause hearing is a good compromise.

Thank you for hearing this Bill. And considering it for favorable action.

**DOMESTIC VIOLENCE ACTION CENTER**

ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198  
LEGAL HELPLINE: (808) 531-3771  
TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200  
WEBSITE: [WWW.DOMESTICVIOLENCEACTIONCENTER.ORG](http://WWW.DOMESTICVIOLENCEACTIONCENTER.ORG)  
EMAIL: [DVAC@STOPTHEVIOLENCE.ORG](mailto:DVAC@STOPTHEVIOLENCE.ORG)

**SCR-54**

Submitted on: 4/3/2022 3:31:04 PM

Testimony for JDC on 4/6/2022 9:31:00 AM

Submitted By	Organization	Testifier Position	Testify
L Basha	Individual	Support	Written Testimony Only

Comments:

This measure is needed to remove the burden of free time, and costs of appearing in person off of working class people (mostly women) who are requesting a temporary restraining order.

**SCR-54**

Submitted on: 4/4/2022 4:49:29 PM

Testimony for JDC on 4/6/2022 9:31:00 AM

Submitted By	Organization	Testifier Position	Testify
Kanoelani Ruiz	Individual	Support	Written Testimony Only

Comments:

I support this bill because of my personal experience as a petitioner for a TRO who did not follow through because there was no alternative to being in the same room as my abuser.

**LATE**

**SCR-54**

Submitted on: 4/5/2022 2:52:36 PM

Testimony for JDC on 4/6/2022 9:31:00 AM

Submitted By	Organization	Testifier Position	Testify
Jordan Mastin	Individual	Support	Written Testimony Only

Comments:

I believe this can help survivors of abuse by giving them the emotional and mental protections needed to testify without having to bring up the trauma of their abuse.

**LATE**

**SCR-54**

Submitted on: 4/5/2022 8:03:41 PM

Testimony for JDC on 4/6/2022 9:31:00 AM

Submitted By	Organization	Testifier Position	Testify
Jamie Lin	Individual	Support	Written Testimony Only

Comments:

I support this testimomy because my sister is a survivor and I saw how terrifying and scary this process is.