



The Judiciary, State of Hawai'i

**Testimony to the Thirty-Second Legislature
2023 Regular Session**

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Friday, March 31, 2023, 9:45 a.m.
State Capitol
Conference Room 211 & Videoconference

by:
Thomas J. Berger
Staff Attorney for the Hawai'i Supreme Court

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 386, HD 1, Relating to the Safety of Judiciary Personnel.

Purpose: Creates a cause of action that allows a sitting full-time judge, probation officer, or public guardian ("covered party") to apply to court for declaratory and injunctive relief to remove the covered party's personal information (e.g., home address) from the internet in certain limited circumstances.

Judiciary's Position:

The Judiciary strongly supports HB 386, HD1 and respectfully requests the Committee pass this measure. The Judiciary would support a similar bill for other public officials, including elected officials, and submits that HB 386, HD1 could serve as a model for future legislation.

The need for HB 386 is demonstrated by the horrific murder of U.S. District Court Judge Esther Salas's son, Daniel Anderl, in their family home in New Jersey in 2020. Locally in Hawai'i, threats and inappropriate communications to judiciary employees have dramatically increased. In Hawai'i, over the last decade threats and other inappropriate communication towards judges have increased ten times and threats towards judiciary social workers providing probation oversight have increased nine times.



This bill creates a new civil remedy for the removal of the most egregious internet postings by allowing a state judge, probation officer, or public guardian (“covered party”) to request the removal of personal information, such as a home address, from the internet in limited circumstances where the risk of injury, harm, or violence is clearly visible from the contents of the internet posting.

The remedy provided by HB 386 is to seek declaratory and injunctive relief for the removal of the personal information on the basis that it violates Section 1 of the proposed law. There is no penalty and damage provision.

Nationally we find clear legislative momentum to enact laws that mitigate the risk of violence against judges at their homes. For example, numerous other states have enacted measures similar to HB 386 that work to shield judges’ and their family’s home addresses from public disclosure.¹ Similarly, in 2022 the U.S. Congress enacted legislation that allows federal judges to remove their personal information from the internet.²

In conclusion, the Judiciary supports HB 386, HD 1 as a measured and narrowly tailored policy solution that furthers a compelling government interest—the safety of judges, probation officers, and the public guardians, and the derivative ability of the judiciary to function.

The Judiciary requests the Committee pass House Bill 386, HD 1.

Thank you for the opportunity to testify on this matter.

¹ These states include: California, AB-473, California Public Records Act (2021-2022); Delaware, HB 230 (9/30/21); Illinois, HB 5877 (7/24/12); Nebraska, LB 1178 (4/18/22); New Jersey, P.L. 2021, c. 371 (1/12/22); South Dakota, HB 1106 (2/15/22); and Texas, SB 42 (5/27/17). Numerous other states are also moving similar legislation, some of which is awaiting Governor review and approval: Arizona, SB 1061 (2023); Idaho, SB 1059 (2023); Maryland, SB 221 (2023); and, Oklahoma, HB 2794 (2023).

² In December 2022, the U.S. Congress passed the Daniel Aderl Judicial Security and Privacy Act as part of H.R. 7776, and on December 23, 2022, President Biden signed the bill enacting Public Law No: 117-263 (the Federal Act). See <https://www.congress.gov/bill/117th-congress/house-bill/7776>.

TESTIMONY

Senate Committee on Ways and Means
Hearing: Friday, March 31, 2023 (9:45 a.m.)

TO: The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

FROM: Rhonda L. Griswold
HSBA President

RE: House Bill No. 386, HD1
Relating to the Safety of Judiciary Personnel.

Sitting judges on State and Federal levels make crucial decisions based upon facts and the law, which may at times be negatively viewed by a party as unfair or not balanced from an emotional viewpoint. National news reports of threats of violence, violence, and in one particular incident the death of a family member at a federal judge's residence, have raised concern for the health and safety of Hawaii judges. While the health and safety of justices, judges and other high risk judicial staff is of paramount importance, this must be balanced with the public's right to information on public officials who are relied upon to meet public responsibilities and obligations.

Act 46, Session Laws of Hawaii 2022 created a Judicial Security Task Force (Task Force) within the Judiciary to identify measures to enhance the security of judges and certain judiciary personnel. The Hawaii State Bar Association (HSBA) was represented on the Task Force. During the 2022 interim, the Task Force met and has submitted its report to the Legislature with a recommendation to prohibit, in certain circumstances, the publication of the of personal information of State and Federal judges as well as Judiciary social workers, Court appointed guardians in the Office of the Public Guardian, and probation and pretrial officers, where the Internet posting is made with the intent to intimidate or threaten, or where a reasonable person would believe that providing the information would expose the individual to harassment or risk of harm to life or property.

The HSBA **SUPPORTS** the intent of House Bill No. 386, HD1 and looks forward to continued discussions to protect the health and safety of Justices, Judges, and at-risk Judicial personnel.

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