



Testimony to the Twenty-Fourth Legislature
House Committee on Human Services & Housing
The Honorable Maile S. L. Shimabukuro, Chair
The Honorable Karl Rhoads, Vice Chair

Tuesday, January 29, 2008, 8:50 a.m.
State Capitol, Conference Room 329

by
Janice Yamada
Adult Client Services Branch Administrator
Hawaii State Judiciary

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2766, Relating to Electronic Monitoring

Purpose: Requires electronic monitoring of persons convicted of violating a domestic abuse temporary restraining order or protective order.

Judiciary's Position:

The Judiciary takes no position on this measure; however, we note the following concern. Although the appropriations section of this measure indicates offenders may be assessed the costs associated with equipping themselves with electronic monitoring devices as a special condition of their probation, many of these offenders will be unable to pay because they are indigent or have very limited funds.

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

Testimony on behalf of the
Office of the Public Defender, State of Hawai'i
to the House Committees on
Human Services & Housing and Health

January 29, 2008

RE: H.B. 2766: Relating To Electronic Monitoring.

Chairs Shimabukuro and Green and Members of the Committees:

H.B. 2766 proposes to create a discretionary sentencing measure for violations of temporary restraining orders that would allow a judge to:

“prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant’s residence, place of employment, and the complainant’s child’s school, and order that the defendant wear a global positioning satellite tracking device designed to transmit and record the defendant’s location data. If the defendant enters a court defined exclusion zone, the defendant’s location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the court. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke the probation and the defendant shall be fined, imprisoned, or both, as provided in this subsection.”

We have a number of questions about this proposed measure.

First, what is the cost? What is the cost of the entire program, what is the cost to the Judiciary to “administer” it, what is the cost of the actual device, etc? The fact that the law contains a provision that the defendant may be ordered to pay for the monthly cost of the monitoring is not a realistic method of affording this program. Certainly, in the case of public defender clients who are indigent, there would not be sufficient funds to pay for the program.

How sophisticated is the “tracking” program? For example, there may be a TRO in place between persons who both live in an area that has one road providing access such as Waianae, Laie, or Lanikai on O`ahu, Lahaina or Hana on Maui, parts of the Hamakua coast, or South Point to Kona on Hawaii, etc. If a defendant is restricted from traveling on specific smaller roads in those areas, will the tracking device be able to discern that? From the anecdotal information we have been able to gather, such sophisticated tracking ability is very expensive.

What information is gathered and to whom is it disseminated? While defendants lose some rights by virtue of having been convicted of a crime, they do not lose all rights, such as the right to privacy. Will the tracking device keep a record of all travel done by a defendant, even if it is NOT within the excluded area? Will such information be available to law enforcement or to a complainant? Will it be discoverable in divorce or civil actions?

None of these important questions are addressed in this bill. While the intention behind this proposed legislation may be worthwhile, these issues need to be addressed before such legislation should be enacted.

We cannot support H.B. 2766. Thank you for the opportunity to comment on this bill.

NA LOIO

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January 26, 2008

Hearing date and time: January 29, 2008 at 8:50 a.m., Committees on Human Services and Housing and Health

RE: H.B. 2766, RELATING TO ELECTRONIC MONITORING

TO: Chair Shimabukuro, Vice Chair Rhoads and members of the Committee on Human Services and Housing; Chair Green, Vice Chair Mizuno and members of the Committee on Health

FROM: Calleen Ching, Attorney, Na Loio

Na Loio *supports this bill*, proposing the electronic monitoring of restraining or protection order violators.

Na Loio is a statewide private, nonprofit agency providing immigration legal services to immigrants. Assisting immigrant victims of domestic violence and sexual assault is a top priority for Na Loio.

Many of Na Loio's immigrant victims obtain temporary restraining orders and/or protection orders ("orders") against their abusers. In many situations their abusers comply with the orders and stay away from the victim. However, in some lethal situations, the order does nothing to deter the abuser from pursuing and harming the victim. In these cases, the victims need more protection.

Electronic monitoring will provide victims with an alert that abuser is near. It also will make abusers aware of their actions and make them more accountable.

Studies have shown that orders are effective in most situations in decreasing violence in abusive relationships. However, they may not be as effective with abusers who have had a history of violence. The purpose of electronic monitoring is to reduce contact between an order violator and the victim. If the order violator enters a court defined exclusion zone, the violator's location

will be immediately sent to the victim and the police. See in general, “Electronic Monitoring of Domestic Violence Cases – A Study of Two Bilateral Cases,” Federal Probation, Vol. 68, Number, 1 (June 2004). It will provide the victim a greater sense of security and enhance the effectiveness of the order itself.

Thank you for allowing Na Loio to testify on this bill.



TO: Josh Green, Chair
John Mizuno, Vice Chair
Members of the Health Committee

Maile Shimabukuro, Chair
Karl Rhoads, Vice Chair
Members of the Human Services & Housing Committee

FR: Nanci Kreidman, M.A.

RE: HB 2766

Aloha! We submit this testimony in support of HB 2766. Over the last twenty five years in this community we have enhanced our initiatives, amended our statutes and invested additional monies in response to domestic violence. The Bill before the Committee today is a strategy to strengthen accountability and provide greater safety.

The only issue we would call attention to in the crafting of this measure is the disclosure of the victims' residence address to be included as a listed prohibited location. If a victim is hiding, for safety reasons, it would be foolish to inform the abuser in order to protect her through utilization of an electronic monitoring device. Perhaps some research or additional discussion with corrections experts and other communities with similar programs could provide the guidance we need to resolve this issue.

Thank you for your wise consideration of this new tool to increase safety and protect the lives of victims whose abusers have become stalkers, are insistent in their pursuit, or potentially lethal.

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

Hearing date and time: January 29, 2008 at 8:50 a.m., Committees on Human Services and Housing and Health

RE: H.B. 2766, RELATING TO ELECTRONIC MONITORING

TO: Chair Shimabukuro, Vice Chair Rhoads and members of the Committee on Human Services and Housing; Chair Green, Vice Chair Mizuno and members of the Committee on Health

FROM: Ana Maring, Hawaii State Coalition Against Domestic Violence

Aloha, my name is Ana Maring and I represent the Hawaii State Coalition Against Domestic Violence (HSCADV). HSCADV is a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV strongly supports HB2766 with amendments.

Research shows that victims intimate partner violence (IPV) often continue to be in danger from their batterer and are in fact likely to be at increased risk once they separate. Statistics show that approximately 75% of the women murdered by a partner or former partner had separated from their batterer or told their batterer they planned to leave. Many victims of IPV seek Temporary Restraining Orders (TRO)/Protective Orders (PO) as a tool to increase their safety.

Electronic monitoring for TRO/PO violators serves as an additional tool that would assist in protecting victims and their children's safety by alerting the victim if the batterer has crossed into an exclusionary zone. As stated in *Electronic Monitoring of Domestic Violence Cases-A Study of Two Bilateral Programs*, *"The intimate nature of these relationships means that the offender will be well versed in the victim's routines, and personal and social affiliations, such as family, friends, and membership in organizations. He knows when and where she works, the school where she waits to pick up the children, her telephone numbers, as well as her travel routes to reach home, work, or fulfill other responsibilities, needs or preferences. Such knowledge of her routines furnishes the abuser with numerous opportunities to harass, stalk, intimidate, assault or abuse the victim in violation of protective orders."*

In order that victims' safety not be further jeopardized we request that in circumstances where the batterer is not familiar with the victims new routine or housing the following language be added to the statute: *page 3, line 2 and page 7, line 22 "exclusion zones **known to the defendant including, but not limited to,**"*. Our concern is that Electronic Monitoring only be used in appropriate cases and will not provide the defendant any information regarding the victims location or information the defendant could use to deduce where the victim will be based on the exclusionary zone. This will require the courts to work with the victims who can best predict how batterers will respond to different punitive measures and explain victims the limitations of the system so they can appropriately plan for their safety.

We request that the Committee Report reflect the concerns raised in our testimony. Thank you for the opportunity to testify.