



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 2806, RELATING TO TEMPORARY RESTRAINING ORDERS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, February 14, 2008 **TIME:** 10:00 AM

LOCATION: State Capitol Room 016
Deliver to: Committee Clerk, Room 219, 1 copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Robyn B. Chun, Deputy Attorney General

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General supports this measure.

In light of what appears to be a steady increase in incidences of spouse abuse, child abuse, elder abuse and other violent crimes against persons and property, as well as the over-loaded dockets in our courts statewide, it is imperative that our judicial system examine alternatives that will more expeditiously address the often urgent needs of a vulnerable population in our State. The task force and pilot project established by this bill will, at a minimum, investigate the possibility of expeditiously addressing emergencies in a manner that does not currently exist and, if the pilot project is successful, it will give law enforcement personnel another means of protecting those who cannot protect themselves.



Testimony to the Twenty-Fourth Legislature
Senate Committee on Judiciary and Labor
The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair

Thursday, February 14, 2008, 10:00 a.m.
State Capitol, Conference Room 016

by
Judge Karen Radius
Family Court, First Circuit

AMENDED TESTIMONY

Bill No. and Title: Senate Bill No. 2806, Relating to Temporary Restraining Orders.

Purpose: Requires Judiciary to establish a 3-yr statewide electronic TRO pilot project to allow the filing and issuance of TRO orders on weekends and nights. Makes an appropriation.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 2806.

This is a very good idea. However, our state may not be ready or capable of implementing even a pilot project.

At the present time, the vast majority of temporary restraining orders ("TROs"), in both District and Family (family or household members and dating relationships) Courts, are processed by court staff.

For example, in Family Court, these are the filing procedures in a "nutshell." Nearly every work day morning, petitioners come to the court for assistance with filling in the required forms. After that, the court staff finds an available judge to review and act upon the requests for temporary restraining orders. The court staff then assists the petitioners in filing their petitions. Thereafter, the petitioners must take a certified copy of the TRO to the police sub-station for the district in which the Respondent resides. The TRO is not effective until the Respondent has been served.



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In New Jersey, the process is as follows (quoted from the New Jersey Judiciary website <www.judiciary.state.nj.us/notices/2007/n070720a.htm>, accessed February 1, 2008):

“The program provides an efficient means for filing domestic violence complaints and temporary restraining orders after normal court hours. E-TRO streamlines the procedures so that after hours, a police officer interviews the complainant at the police station, completing both the complaint and the proposed TRO at a computer terminal. The rule relaxations allow the police officer to enter the complainant's name electronically on the complaint in lieu of requiring the complainant's signature. The judge then takes sworn testimony by telephone. If the judge determines to issue the TRO, the judge directs the police officer to enter the judge's name on the TRO electronically. The electronic TRO is immediately enforceable and may be served on the defendant. Police staff prints out and retains hard copies of the complaint and TRO and then transmits the documents to a server that is interfaced with the Judiciary's mainframe computer. The interface allows the complaint and TRO to be immediately available on the Domestic Violence Central Registry ("Central Registry") and entered in FACTS ("Family Automated Case Tracking System") without the need for additional manual data entry. A Municipal Court or Superior Court judge thereafter will sign a confirmatory order. Thus, the E-TRO eliminates the need for the police officers to fax documents to the Family Division. The E-TRO also eliminates the need for Family Division staff to enter this faxed information into FACTS.”

New Jersey's pilot program began in 2002 and has been such a success that they are now poised for statewide implementation. This is most certainly an example that we should heed.

We must note, however, that the New Jersey model is based on their police department having a much larger role in the process than our police departments presently have. They also have computer technology that we presently do not. In particular, police sub-stations would require public access computer terminals, capable of electronic signatures. We would also have to develop a particular kind of computer connectivity between the various county police departments and the Judiciary (bearing in mind that the Judiciary is at this time in the midst of a multi-year development of a Judiciary Information Management System that will replace "HAJIS", the current data base for civil cases, including these TRO cases).



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Both New Jersey's and Hawaii's systems are based on face-to-face interaction between a petitioner and a state/county/city official. This Bill does not provide for that. Without a police-based system similar to New Jersey, the Judiciary would not be able to provide for staff to be available on a 24 hours / 7 days a week basis.

Also, without some sort of connectivity and email/web/in-person notification that a petition has been filed and a judge has approved a TRO, the police departments would be very much exposed to liability even though it is probably not reasonable to require them to constantly monitor the Judiciary's website to track the filing of these after-hours TROs.

We want to reiterate that the New Jersey model is a very, very good idea; an idea that has already been proven effective. We also want to reiterate that the Judiciary stands ready to work collaboratively with the law enforcement community to enhance community safety.

We would be remiss if we failed to point out that a restraining order, by itself, may not adequately protect a victim from further violence. An important feature of the New Jersey plan is the early involvement of the police who can provide protection against immediate violence, assess the possibility of further imminent violence (even if the victim receives a restraining order), and refer the victim to other services to assist in further safety planning.

There are a number of different avenues that could be followed in order to implement the intent of this Bill. For example, monies could be appropriated for a much smaller pilot project limited to one of our counties and, perhaps, limited to *either* District Court *or* Family court proceedings. Otherwise, statewide implementation, no matter whether it is "just" for three years, may stall these efforts altogether. However, the planning money must come first and then the implementation money must be similarly assured.

Lastly, we need to point out that there has been a vocal group over the past several years which has loudly espoused the assertion that HRS Chapter 586 (Domestic Abuse Protective Orders) is regularly and widely misused by petitioners. Although we do not see much evidence of this, there have been attempts to circumscribe the effect of HRS Chapter 586. It is necessary for the Legislature to act consistently in this regard. In other words, it would be counter-productive on one hand to make these TROs even easier to obtain and on the other hand pass laws that may create other barriers, for example, specifically stating that "misuse" of TROs will affect custody decisions.

Thank you for providing the opportunity to testify on this measure.



OFFICE OF HAWAIIAN AFFAIRS
OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony

SB 2806 RELATING TO TEMPORARY RESTRAINING ORDERS

Senate Committee on Judiciary and Labor

February 14, 2008

10:00 a.m.

Room 016

The Office of Hawaiian Affairs is providing testimony in support of SB 2806. Our interest in this issue is primarily based on the fact that over 30% of filings for Temporary Restraining Orders involve Native Hawaiian families and our concern regarding the growing incidents of domestic abuse and violence, particularly on our children and kupuna.

OHA strongly supports this measure because it addresses the current problem of victims of domestic violence not being able to obtain a TRO in a timely manner.

Evidence and case studies have shown that the inability of domestic violence victims to obtain TRO's expeditiously can have tragic and sometimes fatal consequences. There

is also much evidence that indicates that most incidents of domestic violence occur at night or on weekends, so the pilot project proposed in this bill is important to give us baseline data as to the need to make filings available during these times.

Ensuring the safety of our children, kupuna, and families is of utmost importance to OHA, and we urge your passage of this bill.

Mahalo nui loa for the opportunity to present testimony.

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**THE HONORABLE BRIAN T. TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

**TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008**

**HEARING: Thursday, February 14, 2008
10:00 A.M., Conference Room 016**

RE: SENATE BILL 2806, RELATING TO TEMPORARY RESTRAINING ORDERS

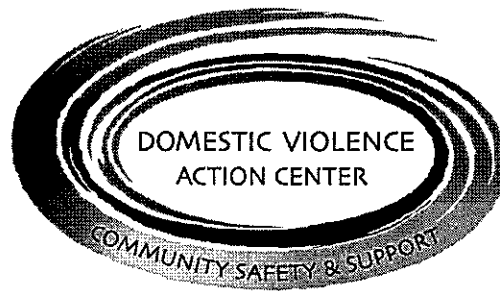
Good morning Chair Taniguchi and members of the Judiciary and Labor Committee, the Department of Prosecuting Attorney provides the following testimony **in support of the concept of S.B. 2806**, which proposes to establish a three-year statewide pilot project for the electronic filing of temporary restraining orders and the issuance of temporary restraining orders on nights and weekend, when the courts are closed.

As the Victim Witness Kokua Services Division in our office once served as the primary agency assisting petitioners with applying for Temporary Restraining Orders (T.R.O.'s) and Protective Orders (P.O.'s) under H.R.S. Chapter 586 (1979-86) in the First Circuit, we are acutely aware of the challenges of expeditiously processing requests for TRO's. The safety issues involved with families beset by family violence present many complex challenges for both the police and the courts. The competing interests of victims' safety and adequate due process in considering the merits of petitions filed under Chapter 586 have caused most previous efforts to investigate how to handle requests occurring outside of normal government work hours to meet dead ends. Although the authority invested in the Police under H.R.S. Section 709-906 (4), Abuse of a Family or Household Member, to order a family violence offender for a 24 hour period of safety (expanded to include weekends and holidays), serves somewhat as a substitute for TRO's outside of normal business hours, many victim advocates are concerned that this may be inadequate to meet all victim safety needs. However, all parties involved in the TRO process (Judiciary, Police, Domestic Violence Legal Services Providers, Judiciary's Contract TRO agencies on the

Neighbor Islands, as well as Prosecutors) understand that expanding our services to better meet community needs requires close cooperation as well as the funding and technology to make any newly proposed procedure work effectively. We stand ready to work diligently and cooperatively with the other key agencies in this process to pursue the type of improvements outlined in this bill.

In summary, **we support S.B. 2806**, and recommend your favorable consideration.

Thank you for your time and consideration.



TO: Chair Brian Taniguchi
Vice Chair Clayton Hee
Members of the Committee on Judiciary and Labor

FR: Nanci Kreidman, M.A.
Executive Director

RE: S.B. 2806

Aloha. We submit this testimony in opposition to the Bill before the Committee today. Although on its face, it seems like a good idea to increase access to protection, there are issues that should not be overlooked and community discussion that had taken place when this idea surfaced initially several years ago.

It would be difficult to confirm the authenticity of any assertions contained in a petition submitted on-line, and provides greater opportunity for using the system designed to protect victims, to manipulate or control them instead. The other practical features are elusive; a petition is filed, a judge signs it electronically (at 2 a.m.) — then how does the victim get it, who serves the abuser with it, how does the law enforcement system know its effective enabling them to respond, if there is an immediate violation? Perhaps these could be worked out, but unless and until these ideas are examined, it seems prudent to proceed cautiously or not at all.

We examined this issue previously, and extended the “cooling off” period during the week and weekends, as well as holidays to permit victims the opportunity to go in person to court and file a petition for a restraining order. In addition, the police were empowered with the authority to issue a citation instructing the perpetrator to leave the premises — which provides for the safety in the moment.

There are also obstacles for victims who do not speak English or victims without access to computers which in effect does not increase access to victims in our community.

Thank you for inviting comment on S.B. 2806.



Hearing date and time: February 14, 2008 at 10:00 a.m., Committee on Judiciary and Labor

RE: SB2806 Relating to Temporary Restraining Orders

TO: Chair Taniguchi, Vice Chair Hee and members of the Committee

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 supports the intent of SB2806 with concerns.

"A 1997 study by the National Center for State Courts found that in the vast majority of cases, civil protection orders deter repeated physical and psychological abuse and help victims regain a sense of well-being. This type of legal remedy may be one of the most important tools the judicial system offers to protect domestic violence victims from ongoing abuse, particularly when crafted to address areas of ongoing conflict." (Somewhere To Turn: Making Domestic Violence Services Accessible To Battered Immigrant Women. A 'How To' Manual For Battered Women's Advocates And Service Providers, Written and edited by Leslye E. Orloff, and Rachel Little. AYUDA, Inc. (May 1999))

Temporary restraining orders (TRO) are a valuable tool for victims seeking safety. Making them available through a variety of means is an important part of the process. Each circuit has implemented an assortment of services to make this process available to victims. Being able to submit a petition for a TRO electronically could be another access point for those seeking safety. The technology that makes this possible can be greatly beneficial but it can also be very dangerous without proper planning. Many batterers have become skilled at using technology to harass and track their victim. Using a computer to apply for a TRO must be done in the safest fashion.

This is one of the many issues that must be reviewed and discussed prior to implementing an electronic petitioning program. A task force to address the issue of electronic TRO's would allow all the parties involved in the process to discuss the benefits and unique challenges that must be considered. If a task force is implemented, we request that domestic violence programs from across the state be consulted with as they are often the access point for victims seeking orders of protection.

Thank you for the opportunity to testify.

Senator Brian Taniguchi, Chair,
Judiciary and Labor Committee,
and Committee Members

S.B. No. 2806, Relating to Temporary Restraining Orders

Hearing date: February 14, 2008, 10. a.m.

Testimony of Susan Jaworowski - in Support

I strongly support S.B. No. 2806, which would require the Judiciary to establish a three-year statewide pilot project for the electronic filing and issuance of temporary restraining orders on nights and weekend, when the courts are closed. At present, TROs are only available in person, only at the courts, only on weekdays, and only until 3 pm. These limitations are a deterrent for women, particularly those who work, for applying for one.

Recent tragedies have shown that domestic violence does not wait to occur during office hours. The proposed pilot project is based on the E-TRO program of New Jersey, in which a person feeling threatened can go to a police station at any time of night or day and apply for a TRO at any police station. The applicant will not need her own computer or access to one.

The fact that the E-TRO is applied for at a police station will help ensure that only those who truly feel threatened will apply. Having to apply at a police station also provides the benefit of having the police officer advise the woman of further steps she can take to preserve her safety, such as going directly to a shelter.

New Jersey started with a pilot project five years ago, and it proved so successful that it was expanded to the whole state last July. No TRO is a "magic shield" that will fully protect someone from domestic violence. However, obtaining a TRO is often a necessary step in separating a woman from her abuser, and the current significant constraints on obtaining one justifies examining a successful program like New Jersey's to help protect the women of Hawai`i.

Please pass out S.B. No. 2806.