

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE KK-VYH

February 1, 2010

The Honorable John M. Mizuno, Chair  
and Members  
Committee on Human Services  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Mizuno and Members:

Subject: House Bill No. 2796, Relating to Domestic Abuse Orders

I am Kurt Kendro, Major of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD strongly supports the passage of House Bill No. 2796. The passing of this bill would close a loophole that currently exists when dealing with temporary restraining orders (TRO) and protective orders (PO).

If someone petitions a court for a TRO and it has been properly served, the order is generally valid for up to 90 days. If that person then petitions a court for a PO, the TRO is immediately rendered invalid. This becomes problematic if the respondent has not been properly served with a copy of the PO. As a result, the petitioner does not have the protection of either the TRO or the PO until the respondent is properly served, regardless of the expiration date of the TRO.

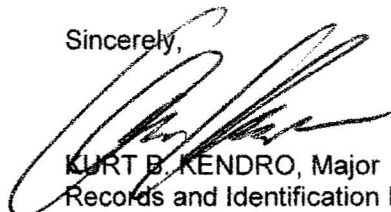
By passing this bill, the TRO will remain valid until the respondent is served with a PO or the expiration date of the TRO, whichever occurs first.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
LOUIS M. KEALOHA  
Chief of Police

  
KURT B. KENDRO, Major  
Records and Identification Division

*Serving and Protecting With Aloha*

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE JOHN M. MIZUNO, CHAIR  
HOUSE COMMITTEE ON HUMAN SERVICES**

**THE HONORABLE TOM BROWER, VICE CHAIR  
HOUSE COMMITTEE ON HUMAN SERVICES**

**TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2010**

February 1, 2010

**RE: HOUSE BILL 2796; RELATING TO DOMESTIC ABUSE ORDERS**

Good morning Chair Mizuno, Vice Chair Brower, and members of the Human Services Committee, the Department of the Prosecuting Attorney provides the following testimony **in strong support of H.B. 2796**, which proposes to amend Hawaii Revised Statutes Sections 586-5 and 586-5.6 to insure that Temporary Restraining Orders issued pursuant to H.R.S Chapter 586 do not expire until a Protective Order issued under the statute is served on the respondent.

Under the current provisions of H.R.S. Chapter 586, Temporary Restraining Orders issued under this chapter remain in effect until a Protective Order issued, the maximum ninety days have expired, or the T.R.O. is dismissed by the Court. Under normal circumstances these provisions are not a problem. However, when a respondent fails to appear at an Order to Show Cause (O.S.C.) hearing (after having been served with the T.R.O.), the Court may grant a default judgment to the petitioner and issue a Protective Order. Under statute, and Hawaii case law, a Protective Order is not fully effective (meaning a criminal complaint may not be filed unless and until the Protective Order has been served on the respondent. What this unfortunately means is that petitioners who are granted a Protective Order, which cannot be served in a timely manner (some domestic abusers are very proficient at avoiding service), are left with virtually no effective order and without legal protection for an extended period of time. The purpose of the statutory amendment proposed in H.B. 2796 is to insure that petitioners have a continuously effective, valid order for at least ninety days, or until the respondent is served, whichever comes first.

LATE  
Testimony

A small, but significant number of respondents have been taking advantage of this loophole in the law. Due to this technicality some abusers feel that they can violate Protective Orders with impunity. Unfortunately among this group of individuals are some of our most persistent offenders, who may commit dozens of violations, but escape criminal prosecution due to this legal gap. Passing this measure will close this gap and insure that violators of T.R.O.'s and Protective Orders are held criminally responsible for their behavior.

For the reasons cited above, we urge your support for H.B. 2796. Thank you for your time and consideration.

**From:** Dara Carlin, M.A. [breaking-the-silence@hotmail.com]  
**Sent:** Sunday, January 31, 2010 4:41 PM  
**To:** HUSTestimony  
**Subject:** HB2796 to be heard Monday, 02/01/10 at 8:30am in Room 329

TO: Representative John Mizuno, Chair  
Representative Tom Brower, Vice Chair  
Members of the Committee on Human Services

**LATE**  
Testimony

FROM: Dara Carlin, M.A.  
Domestic Violence Survivor Advocate  
881 Akiu Place  
Kailua, HI 96734

DATE: Monday, February 1, 2010

RE: Partial Support for HB2796, Relating To Domestic Violence Orders (with recommendations)

The only problem I see with the second part of this section is the elimination of the "as of the date of the hearing" wording substituted by "upon service of the respondent".

My concern pertains to the amount of time until service upon the respondent, which I know there may not be anything anyone can do about that for a number of reasons, but if just for consistency's sake, may-be keep the "as of" wording, add "or" before the "upon service" and add "whichever comes first" (because the concern is getting the order to be in effect).

If a TRO is being moved into being a Protective Order, there's going to be just cause for doing so and it's not for happy reasons. Evading service of a Protective Order to keep it from being in-effect is not an unknown tactic abusers take, which places the victim in a terrifying position; the sooner the PO's in effect, the safer she'll feel. So the wording would look like this:

"The temporary restraining order shall be effective as of the date of signing and filing; provided that if a temporary restraining order is granted orally in the presence of all the parties and the court determines that each of the parties understands the order and its conditions, if any, then the order shall be effective as of the date it is orally stated on the record by the court until further order of the court. Protective orders orally stated by the court on the record shall be effective as of the date of the hearing or upon service of the respondent, whichever comes first, until further order of the court; provided that all oral protective orders shall be reduced to writing and issued forthwith."

Or, while redundant, the wording provided below is consistent with the wording of the Temporary Restraining Order portion of this section:

"Protective orders orally stated by the court on the record shall be effective as of the date of signing; provided that if a protective order is granted orally in the presence of all the parties and the court determines that each of the parties understands the order and its conditions, if any, then the order shall be effective as of the date it is orally stated on the record by the court until further order of the court."

Thank you for this opportunity to provide testimony.

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate