

SB2183

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Judiciary and Government Operations**

February 5, 2010

S.B. No. 2183: RELATING TO DOMESTIC ABUSE ORDERS

Chair Taniguchi and Members of the Committee:

We oppose the passage of S.B. No. 2183. This bill would extend the effective period of a temporary restraining order from the current ninety-day maximum duration. Where a protective order has been issued subsequent to the temporary restraining order ("TRO"), the temporary restraining order would remain in effect until service of the protective order.

There are major differences between a temporary restraining order and protective order under H.R.S. Chapter 586. A TRO can be obtained *ex parte* or by one party to a dispute. It is a paper application to the court and although it is subject to court approval, it can be granted without a hearing and even without notice to the party being restrained. Due to the *ex parte* nature in which TROs are obtained, complaints have arisen in the past that such orders have been subject to abuse by parties seeking to gain leverage in on-going domestic disputes such as divorce and child custody proceedings.

A protective order, on the other hand, is the result of a more comprehensive legal proceeding. This order is issued only after a hearing during which all parties have had an opportunity to be heard. The party being restrained must be served with notice of this hearing and must be allowed to attend the hearing and inform the court of his/her concerns. The protective order can continue all of the orders contained in the TRO and can modify or add any other terms that the court deems appropriate following a full hearing on the matter.

The purpose for a time limit on the effectiveness of a TRO is that such orders can deal with very critical matters such as housing, finances and child custody. These matters must be subject to a full hearing as soon as practicable in order for the court to issue a full and fair ruling. If the time limit is deleted as S.B. No. 2183 would do, the TRO process would be subject to even greater abuse. Even though the bill provides for an extension the TRO terms only until a protective order can be served on the respondent, the measure does not require that the court in fact issue a protective order. Therefore, under this bill, the TRO could remain in effect in perpetuity. This bill opens the family court system up to abuse of its procedures. It would also lead to a variety of unjust court orders.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE BRIAN T. TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

THE HONORABLE DWIGHT Y. TAKAMINE, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2010

February 5, 2010

RE: SENATE BILL 2183; RELATING TO DOMESTIC ABUSE ORDERS

Good morning Chair Taniguchi, Vice Chair Takamine, and members of the Judiciary and Government Operations Committee, the Department of the Prosecuting Attorney provides the following testimony **in strong support of S.B. 2183**, 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.

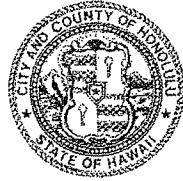
Under the current provisions of H.R.S. Chapter 586, Temporary Restraining Orders issued under this chapter remain in effect until a Protective Order issued, the maximum ninety days have expired, or the T.R.O. is dismissed by the Court. Under normal circumstances these provisions are not a problem. However, 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 S.B. 2183 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.

A small, but significant number of respondents have been taking advantage of this loophole in the law. Due 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 S.B. 2183. Thank you for your time and consideration.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE KK-VYH

February 5, 2010

The Honorable Senator Brian T. Taniguchi, Chair
and Members
Committee on Judiciary and Government
Operations
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

Subject: Senate Bill No. 2183, 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 Senate Bill No. 2183. The passing of this bill would close a loophole that currently exists when dealing with temporary restraining orders (TRO) and protective orders (PO).

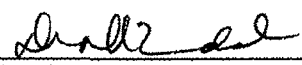
If someone petitions a court for a TRO and it has been properly served, the order is generally valid for up to 90 days. If that person then petitions a court for a PO, the TRO is immediately rendered invalid. This becomes problematic if the respondent has not been properly served with a copy of the PO. 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,



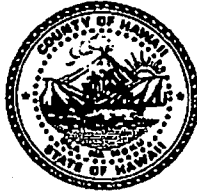
LOUIS M. KEALOHA
Chief of Police


KURT B. KENDRO, Major
Records and Identification Division

for

Serving and Protecting With Aloha

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

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February 3, 2010

The Honorable Brian T. Taniguchi
Chair and Members
Committee on Judiciary and Government Operations
State Capitol
415 South Beretania Street, Conference Room 016
Honolulu, Hawai'i 96813

Re: SENATE BILL 2183, RELATING TO DOMESTIC ABUSE ORDERS

Dear Senator Taniguchi and members:


The Hawai'i Police Department strongly supports the passage of Senate Bill No. 2183. The passing of this bill provides further protection to victims of domestic abuse by eliminating a period of no protection which currently exists.

Presently, when a victim (petitioner) has petitioned the court for a Temporary Restraining Order (TRO), followed by the proper service of the TRO on the respondent, the order is generally valid for up to 90 days. However, should the victim petition the court for a Protective Order (PO) regarding the same matter, the TRO is immediately deemed invalid, regardless if the PO has been served. This creates a period of vulnerability where the victim is afforded no protection until such time that the PO has been properly served.

The passage of this bill will allow the TRO to remain valid until such time that the respondent is served with a PO or the expiration date of the original TRO, whichever occurs first.

For these reasons, we urge this committee to support this legislation. Thank you for allowing the Hawai'i Police Department to testify on S.B. No. 2183.

Sincerely,


HARRY S. KUBOJIRI
POLICE CHIEF

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

TO: Chair Taniguchi, Vice-Chair Takamine, and Committee Members

FR: Jane Seymour, Hawaii State Coalition Against Domestic Violence

Hearing date and time: Friday, February 5, 2010; 9:35am

RE: Support for SB 2183: Relating to Domestic Abuse Orders

Aloha, my name is Jane Seymour and I am representing the HSCADV, 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 SB 2183.

Victims of domestic violence often seek Temporary Restraining Orders (TRO) and Protective Orders (PO) as tools to increase their safety. Current Hawaii law contains a loophole that could endanger victims and leave them with no legal protection against their batterer.

When a victim seeks a PO, and the respondent does not attend the Order to Show Cause (OSC) hearing, a judge may grant a default judgment to the petitioner and issue the Protective Order. However, this PO is not in effect until it can be served to the respondent, therefore a respondent cannot be charged with violating the PO if he has not been properly served. Unfortunately, some batterers have learned that they can use this legal loophole to continue to commit violations and harass the victim while escaping criminal prosecution.

We strongly encourage you to pass SB 2183, to close this loophole and provide greater protection to victims of domestic violence. Thank you for the opportunity to testify.

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Wednesday, February 03, 2010 2:42 PM
To: JGO Testimony
Subject: SB2183 to be heard Friday, February 5th at 9:35am in Room 016

TO: Senator Tanuguchi, Chair
Senator Takamine, Vice Chair
Members of the Committee on the Judiciary & Government Operations

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

DATE: Monday; February 5, 2010

RE: Partial Support for SB2183, Relating To Domestic Violence Orders (with recommendations)

Although I support the intent of this proposal, I'm a little concerned about the second part of this section regarding 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