

HB238,HD2

Measure Title: RELATING TO TEMPORARY RESTRAINING ORDERS.

Report Title: Temporary Restraining Order; Violations

Description: Adds a mandatory prison term of fifteen days and a fine of not less than \$150 nor more than \$600 for a person with certain prior convictions who is convicted for the first time for violation of a temporary restraining order. Effective January 7, 2059. (HB238 HD2)

Companion:

Package: CCH Prosecutor

Current Referral: HMS, JDL

Introducer(s): SAY (BR)



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 238, H.D. 2, RELATING TO TEMPORARY RESTRAINING
ORDERS.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, March 17, 2011 TIME: 1:45 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Chun Oakland and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to provide greater protection to victims of domestic violence, whom the courts are attempting to keep safe through family court temporary restraining orders.

Under current law, a first-time violator of a temporary restraining order is subject to a mandatory minimum jail sentence of forty-eight hours. This bill will increase that mandatory minimum term to fifteen days, if the first-time violator has a prior conviction for specified felony crimes of violence or sexual assault against family or household members.

This bill will help to enforce compliance with temporary restraining orders and deter violence against a particularly vulnerable class of victims in dangerous situations. These victims have sought temporary restraining orders against individuals because they have committed acts involving violence, threats, stalking, or harassment against the victims. These individuals also have a history of committing felony crimes of violence or sexual assault against family or household members. The increased mandatory minimum jail sentence is a clear warning to these high risk

individuals that any violation of temporary restraining orders will not be tolerated.

We respectfully request passage of this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR
SENATE HUMAN SERVICES COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

March 17, 2011

RE: H.B. 238, H.D.2; RELATING TO TEMPORARY RESTRAINING ORDERS.

Chair Chun Oakland, Vice Chair Ihara, and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 238, H.D. 2 that includes enhanced penalties for violation of a temporary restraining order. This bill is part of the Department of the Prosecuting Attorney, City and County of Honolulu's 2011 Legislative Package.

The purpose of this bill is to amend section 586-4, Hawaii Revised Statutes (HRS) to add a mandatory minimum jail sentence of fifteen days and a fine of not less than \$150 nor more than \$600 for a person who has a first conviction for a violation of the temporary restraining order and a prior conviction for any of the following felonies: murder in the first degree; murder in the second degree; assault in the first degree; assault in the second degree; kidnapping; unlawful imprisonment in the first degree; sexual assault in the first degree; sexual assault in the second degree; sexual assault in the third degree; continuous sexual assault of a minor under the age of fourteen years; promoting child abuse in the first degree; burglary in the first degree; burglary in the second degree; abuse of family or household members; or aggravated harassment by stalking, and any of these offenses has been committed against a family or household member.

With this bill, a person who has been convicted of a violent crime against a family or household member in the past will face an enhanced penalty if he violates a temporary restraining order. The Department of the Prosecuting Attorney strongly discourages individuals who have a violent history against a family or household member from going down that path again. There have been enough cases where an abusive situation turned deadly. We believe that the addition of this enhanced penalty for a violation of a temporary restraining will be a tool in our goal to reduce domestic violence in our society.

For these reasons, we strongly support the passage of H.B. 238, H.D. 2. Thank you for this opportunity to testify.

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: The Honorable Suzanne Chun Oakland, Chair
The Honorable Les Ihara, Jr., Vice Chair
SENATE COMMITTEE ON HUMAN SERVICES

From: Veronika Geronimo
Hawaii State Coalition Against Domestic Violence

RE: HB238-SUPPORT

Hearing Date: 1/17/2011, 1:45p.m., Room 016

The Hawai'i State Coalition Against Domestic Violence (HSCADV) is a statewide coalition of domestic violence programs and shelters. HSCADV and its member agencies advocate for policies and services to end domestic violence in Hawai'i. Our primary focus is on the empowerment, safety, and protection of domestic violence survivors and their children, and the accountability of batterers. On behalf of our member agencies, we thank you for the opportunity to testify in support of HB238.

Engaging with the criminal justice system, including filing TROs and reaching out to law enforcement, can be very dangerous for domestic violence survivors. Between 2000-2002, Hawaii's Domestic Violence Fatality Review team examined 17 homicides related to domestic violence. Four of these victims had filed for a temporary restraining order. (Domestic Violence in Hawaii: preliminary report from the Hawaii Domestic Violence Fatality Review, Hawaii Journal of Public Health, October 2009, Vol 2 No 1.)

This measure strengthens the penalties for violating temporary restraining orders by adding a mandatory prison term of 15 days and a fine of not less than \$150 or more than \$600 for a person with certain prior convictions who is convicted for the first time for violation of a temporary restraining order (TRO). Specifically, this bill will hold repeat offenders accountable by increasing the penalties for violating a TRO for those who have committed previous violent crimes, including those who have had multiple convictions related to the abuse of family or household member.

We respectfully urge you to pass this measure. Thank you for your consideration.

ChunOakland2 - Tyrell

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 14, 2011 4:43 PM
To: HMS Testimony
Cc: lynnehi@aol.com
Subject: Testimony for HB238 on 3/17/2011 1:45:00 PM

Testimony for HMS 3/17/2011 1:45:00 PM HB238

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: lynne matusow
Organization:
Address:
Phone:
E-mail: lynnehi@aol.com
Submitted on: 3/14/2011

Comments:

At its February 2011 meeting, the Downtown Neighborhood Board voted to support the Honolulu Prosecuting Attorney's legislative package. HB 238 is part of that package. We believe that the public will be safer if this bill becomes law and ask you to pass it.

Alvin Au, Chair
Lynne Matusow, Secretary

ChunOakland2 - Tyrell

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2011 8:25 AM
To: HMS Testimony
Cc: maukele@gmail.com
Subject: Testimony for HB238 on 3/17/2011 1:45:00 PM

Testimony for HMS 3/17/2011 1:45:00 PM HB238

Conference room: 016
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Chris Miller
Organization: Individual
Address:
Phone:
E-mail: maukele@gmail.com
Submitted on: 3/15/2011

Comments:

TRO's have become a strategy often deployed in divorce. Most occur within 60 days of a proposed court date and create immense stress for families and a large burden on law enforcement and family court. While there is a value to TRO's where a history of violence or harrassment exists, there are no consequences for false TRO's. This bill expands the potential harm of TRO's without compensating for their potential misuse. Police have reported TRO's held by all members of a household living in the same home as well as a TRO on a dog. David Letterman, TV Host, had a TRO filed against him from someone he had never met. This bill will become much better for the community while lessening the burden on law enforcement and family court if it incorporates an amendment that creates consequences for false TRO's that are frivolous or used to malign someone's character without evidence. Court costs and community service would end the use of false TRO's while strengthening a bill designed to support those truly in need.

**Testimony of the Office of the Public Defender
State of Hawaii
to the Senate Committee on Human Services**

March 17, 2011

H.B. No. 238 HD 2: RELATING TO TEMPORARY RESTRAINING ORDERS

Chair Chun Oakland and Members of the Committee:

We oppose passage of H.B. No. 238 HD 2. This measure seeks to treat differently, for purposes of sentencing, a person who violates a temporary restraining order (“TRO”) and who has a prior conviction for certain enumerated offenses and the prior offense was against a family or household member. All of the enumerated offenses are either offenses involving violence or sexual offenses except for burglary and harassment by stalking. A violator of a TRO who has a prior conviction for one of the enumerated offenses would receive a mandatory minimum term of imprisonment of fifteen days.

This proposed change in the law is not necessary. Violation of a TRO is classified as a misdemeanor. This means that a person convicted of this offense can receive up to one year of imprisonment – far greater than the fifteen days mandated by this bill. Offenders should receive a sentence which takes into account a variety of factors including, but not limited to: prior record, circumstances of the offense and public safety. This measure seeks to elevate the prior record of the defendant above all other factors and imposes a mandatory sentence based only upon one fact. It is common for persons currently convicted of Violation of a TRO to receive more than fifteen days of imprisonment. This happens when the court feels that a longer sentence is necessary under the circumstances that the court is required to consider by law in fashioning a sentence. We believe that the current law expresses the seriousness of a TRO violation and the proposed change in the sentencing provision will not add anything.

Thank for the opportunity to comment on this measure.