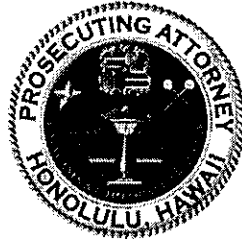


DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
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KEITH M. KANESHIRO  
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ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

# **LATE Testimony**

THE HONORABLE JOHN M. MIZUNO, CHAIR  
HOUSE JUDICIARY COMMITTEE  
Twenty-sixth State Legislature  
Regular Session of 2011  
State of Hawai'i

February 10, 2011

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

Chair Mizuno, Vice Chair Jordan, and members of the House Committee on Human Services, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 238 that includes enhanced penalties for violation of a temporary restraining order, and would like to include a friendly amendment to include all of the language in H.B. 239, which has the enhanced penalties for violations of the Order for Protections. H.B. 238 and H.B. 239 go hand in hand since the Order for Protection often follows a Temporary Restraining Order. Both bills are 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.

Finally, we kindly request inserting all of the language in H.B. 239, which has enhanced penalties for Order for Protections, which often follow Temporary Restraining Orders. The purpose of the language in this bill is to amend section 586-11, HRS to add enhanced penalties for a person who violates an order for protection and has 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.

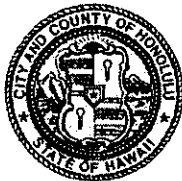
For these reasons, we strongly support the passage of H.B. 238 with an amendment including all of the language in H.B. 239. Thank you for this opportunity to testify.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

**LATE  
Testimony**

PETER B. CARLISLE  
MAYOR



LOUIS M. KEALOHA  
CHIEF

DELBERT T. TATSUYAMA  
RANDAL K. MACADANGDANG  
DEPUTY CHIEFS

OUR REFERENCE KK-DNK

February 10, 2011

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. 238, Relating to Temporary Restraining 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. 238. This bill would add a mandatory prison term and fine for persons with certain prior convictions who are found guilty for the first time of violating a temporary restraining order. The HPD supports the intent to strengthen the penalties for violating temporary restraining orders.

Thank you for the opportunity to testify.

Sincerely,

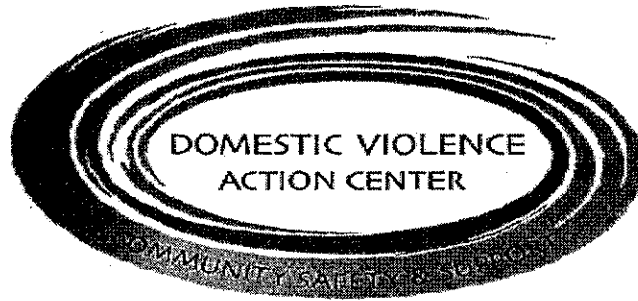
A handwritten signature in black ink, appearing to read "Kurt B. Kendro".

KURT B. KENDRO, Major  
Records and Identification Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha".  
LOUIS M. KEALOHA  
Chief of Police

*Serving and Protecting With Aloha*



## LATE Testimony

February 09, 2011

FROM: Nanci Kreidman, M.A.  
Domestic Violence Action Center

TO: Rep. John M. Mizuno, Committee Chair  
Rep: Jo Jordan, Vice Chair  
Members of the Committee

Ref: **HB 238 Support**  
Hearing: Thursday, February 10, 2011, 9:00am, Conf. Rm #329

Aloha and good morning.

In developing our community's response to domestic violence there has been a commitment to shaping a system which provides best efforts at securing safety for victims and accountability for abusers.

HB238 strengthens efforts to hold those abusers accountable who have shown disregard for court orders already issued. We consider those abusers most potentially lethal.

One of the important aspects of obtaining a restraining order is the opportunity to deliver a strong message to abusers about the community's zero tolerance for abuse. When an abuser violates the conditions of a court order repeatedly, it is essential that the criminal justice system reinforces the message and increases the penalty for the violations.

Serious crimes deserve serious consequences.

Thank you very much for your favorable consideration of HB 238.

P. O. Box 3198 Honolulu, HI 96801-3198  
Oahu Helpline:: 808 531-3771 Toll-free: 800 690-6200 Administration: 808 534-0040 Fax 808 531-7228  
[dvac@stoptheviolence.org](mailto:dvac@stoptheviolence.org) [www.stoptheviolence.org](http://www.stoptheviolence.org)



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**From:** Dara Carlin, M.A. [breaking-the-silence@hotmail.com]  
**Sent:** Wednesday, February 09, 2011 3:49 PM  
**To:** HUS testimony  
**Subject:** HB238 to be heard Thursday, 02/10/11, at 9:00am in Room 329

TO: Representative John Mizuno, Chair  
Representative Jo Jordan, Vice Chair  
Human Service Committee Members

## LATE Testimony

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

DATE: 02/10/11

RE: **Support** for HB238 with suggestion for willful TRO misuse

Good Morning Representatives and thank you for allowing me the opportunity to provide testimony in support of this measure.

While I don't want to complicate matters, I would like to offer a suggestion for an additional section to be added at the end of this proposal concerning the willful misuse of TROs.

At a meeting with Senator Chun-Oakland several months ago, Thomas Farrell, Esq., Chair of the Hawaii State Bar Association's Family Law Section, told those in attendance that it was a common for family court litigants to file for TROs as a first step in initiating child custody proceedings. He described litigants who openly admitted to him that they lied on their TRO applications in an effort to secure a TRO before their spouse filed for one against them, about appearing for Order To Show Cause Hearings where the applicant would withdraw her petition or admit in open court that the TRO was fabricated "because she was angry at him" without consequence by the family court judges. This was extra-ordinarily alarming to me as a survivor advocate because domestic violence victims have such a hard time being believed as-is and ANYONE misusing the TRO process should be criminally prosecuted for doing so if that is truly the case.

After the meeting I contacted my DV survivors locally in Hawaii and nationally to ask them about how they applied for their TROs and started their child custody cases. ALL of my survivors - 100% of them - said a third party agency directed them to file for their TROs (whether that was a DV agency, a police officer, a counselor, etc.). None of them knew on their own or independently about TROs, where to go/how to apply and most of them were served with divorce or child custody actions as a direct response to their TRO acquisition. (In other words, their spouses filed the initial divorce or custody action.)

Genuine victims of domestic violence who have to file for Protective Orders are TERRIFIED in having to do so because they know that obtaining a TRO will enrage their abuser worse than he already is and are literally betting their lives (and the lives of their children) that their shaky faith in the legal system will be stronger than their abuser's rage; I have yet to see ANY victim or survivor confidently stroll in to apply for a TRO against her abuser. As a matter of fact their reluctance and delay to do so frustrates even their staunchest supporters and has sadly cost some their lives.

ANYONE who falsely files a TRO against another for whatever reason (anger, retaliation, frivolously) needs to be criminally consequence for doing so because a legal document was fraudulently filed AND contributes to the trivialization of domestic violence as nothing more than "false allegations". Stating a cautionary warning about the consequences for the willful misuse of a TRO in statute would hopefully deter those who would otherwise file for disingenuous reasons.

The claim that obtaining a TRO to start family court proceedings makes no sense to me because as things are, TROs are responded to NEGATIVELY in child custody proceedings since they are an impediment to the equitable settlement process so if you have a TRO going in to child custody proceedings, you're already "starting off on the wrong foot". One of the problems the survivors face in family court is the judges ordering them to disclose their residential and/or contact information to the other side to facilitate co-parenting and cooperative case facilitation.

Victims recanting their claims is not an uncommon occurrence, but that doesn't mean she's necessarily lied on her application. DV Advocates are best able to determine whether they're in the presence of a victim or not and while the petitioner has the right to ask to dissolve the TRO for whatever reason, there should be a notice on such dismissal cases by a DV Advocate on what their assessment is. (ie: If an abuser has told the petitioner to "Make this TRO go away or I'll kill you" chances are she won't be in court begging the judge to extend it - if he's been able to successfully communicate such a message before the OSC with a TRO in-place, he's already proved to her that the TRO isn't going to change a thing and she'd better do as she's told.) The willful misuse of TROs must be taken seriously to ensure that the right party has received one, if one is indeed genuinely necessary.

Domestic violence does not end once the victim and abuser have been effectively separated; without third party observation and intervention, it will continue on so domestic violence cannot be simply determined by the presence (or absence) of a TRO - accurate and ongoing assessment is necessary to ensure that "we've got it right". If attorneys are advising non-victims to file for TROs to "gain a tactical advantage" there should be some form of disciplinary action for those attorneys since they are knowingly contributing to fraud.

TROs were created to be used as a SHIELD, never as a SWORD - how the TRO holder carries these orders tells you if they've been accurately assigned and appropriately awarded.

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate

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**Sent:** Wednesday, February 09, 2011 11:09 PM  
**To:** HUS testimony  
**Cc:** [executivedirector@hscadv.org](mailto:executivedirector@hscadv.org)  
**Subject:** Testimony for HB238 on 2/10/2011 9:00:00 AM

# **LATE Testimony**

Testimony for HUS 2/10/2011 9:00:00 AM HB238

Conference room: 329  
Testifier position: support  
Testifier will be present: Yes  
Submitted by: Veronika Geronimo  
Organization: Hawaii State Coalition Against Domestic Violence  
Address:  
Phone:  
E-mail: [executivedirector@hscadv.org](mailto:executivedirector@hscadv.org)  
Submitted on: 2/9/2011

Comments: