

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 31, 2011 5:07 AM
To: HUS testimony
Cc: adamtm@lava.net
Subject: Testimony for HB944 on 1/31/2011 9:00:00 AM

LATE Testimony

Testimony for HUS 1/31/2011 9:00:00 AM HB944

Conference room: 329
Testifier position: comments only
Testifier will be present: No
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Submitted on: 1/31/2011

Comments:

This bill allows for alleged victims of domestic violence to petition the court to file as a "doe" case and allows for the sealing of all of the associated court documents.

This bill is problematic in several respects.

First, neither in this bill, nor anywhere in statute, is a *victim* of domestic violence defined. The FIRST policy decision that must be made is what exactly is a victim of domestic violence and how shall that be defined and determined? This bill circumvents this major problem by assuming a Chapter 586 ex parte TRO or Protective Order (PO) makes the petitioner a domestic violence victim. This is a poor assumption because ex parte TROs are granted if the proper allegations are made. There is no evaluation of the evidence and if the proper check marks are made and words used, the ex parte TRO is granted. Even if a PO is not subsequently issued, the fact that a TRO was issued allows one to petition for a doe filing or sealing of records. Next, a majority of family court TRO cases stipulate out at the show cause hearing, i.e. both parties agree to a PO with no finding by the court. Without a court finding, turning an agreement for a PO between parties into a domestic violence victim is poor public policy.

A starting point for defining a victim of domestic violence can be a PO, with sufficient findings, issued by the court.

This returns to the issue that a domestic violence victim must be defined -- either in statute or by giving the courts explicit guidance. Building additional policy decisions (i.e. employer and rental considerations for DV victims) on whether an ex parte TRO was granted or not has significant other undesired consequences.

I recommend that this bill be amended to include a definition section which clearly defines a victim of domestic violence.

Next, the courts may make certain decisions regarding domestic violence victims that in hindsight reflect poorly upon the judge(s) involved. The sealing of "all documents" would be a simple way to hide these actions from public and/or judicial selection commission, etc. scrutiny. The public would never know if "significant and compelling circumstances" existed, because all of the documents could be sealed.

I recommend that his bill be amended to delete the sealing provision, or, to allow for an independent comprehensive audit of all such sealed records, on a periodic and recurring basis, where the subsequent report is released to the public.

Next, this bill does not address district court TROs and POs. How should this policy be applied fairly to non-family court victims of violence? As alleged victims of violence, such individuals would also need to have their privacy protected.

Your consideration of these issues is very appreciated.