

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

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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR  
HOUSE JUDICIARY COMMITTEE  
Twenty-sixth State Legislature  
Regular Session of 2011  
State of Hawai`i

February 24, 2011

RE: H.B. 968, H.D. 1; RELATING TO DOMESTIC ABUSE ORDERS.

Chair Keith-Agaran, Vice Chair Rhoads, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu submits the following testimony in support of H.B. 968, H.D. 1.

The purpose of H.B. 968, H.D. 1 is to amend Sections 586-5 and 586-5.6, Hawaii Revised Statutes ("HRS"), to ensure that Temporary Restraining Orders ("TRO") issued pursuant to HRS Chapter 586 remain in effect for one hundred eighty days or until the service of a Protective Order upon the respondent, whichever occurs first.

For the effective time period of the TRO, the additional ninety days allows more time for law enforcement to follow-up on a service of a Protective Order since some individuals purposely try to avoid being served.

For the following reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 968, H.D. 1. Thank you for this opportunity to testify.

**Testimony of the Office of the Public Defender, State of Hawaii,  
to the House Committee on Judiciary**

February 24, 2011

H.B. No. 968 HD1: RELATING TO DOMESTIC ABUSE ORDERS

Chair Keith-Agaran and Members of the Committee:

We oppose the passage of H.B. No. 968 HD1. This bill would extend the effective period of a temporary restraining order from the current ninety-day maximum duration to one hundred eighty days. 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.

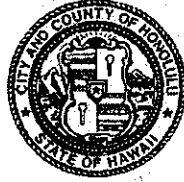
A protective order, on the other hand, is the result of a more comprehensive legal proceeding. This order is issued only after a hearing during which all parties have had an opportunity to be heard. The party being restrained must be served with notice of this hearing and must be allowed to attend the 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 lengthened as H.B. No. 968 HD1 would do, the TRO process could be subject to even greater abuse. Under this bill, the TRO could remain in effect longer than a court might intend. 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.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE JR-DNK

February 24, 2011

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 968, H.D. 1, Relating to Domestic Abuse Protective Orders

I am Jeffrey Richards, Captain 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. 968, H.D. 1. The passing of this bill would close a loophole that currently exists when dealing with temporary restraining orders (TRO) and protective orders (PO). It will also allow law enforcement officers additional time to locate and serve the respondent thus adding additional protection for the public.

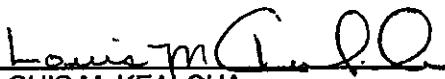
If someone petitions a court for a TRO and it has been properly served, the order is generally valid for up to 90 days. If that person then petitions a court for a PO, the TRO is immediately rendered invalid. This becomes problematic if the respondent has not been properly served with a copy of the PO.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

  
JEFFREY D. RICHARDS, Captain  
Records and Identification Division



To: The Honorable Keith-Agaran  
HOUSE COMMITTEE ON JUDICIARY

From: Veronika Geronimo  
Hawaii State Coalition Against Domestic Violence

RE: HB968, HD1-SUPPORT

Hearing Date: Thursday, 02-24-11 2:15PM in conference room 325

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 HB968.

Temporary Restraining Orders (TRO) and Protective Orders (PO) are a valuable tool which victims of domestic violence can use to help protect them from abuse. However, there is a lapse in protection in cases where the respondent is served the TRO, but does not appear at the Order to Show Cause Hearing (OSC) where the Protective Order is granted. The approval of the PO makes the TRO no longer enforceable, meanwhile the PO is not enforceable until it has been served. Batterers are often aware of this gap in the system and are intentionally absent from OSC and avoid service of POs, leaving domestic violence survivors vulnerable.

HB 968 would address the issue of batterers who evade legalities and manipulate the systems intended to protect the victim by allowing a temporary restraining order to remain in effect for up to 180 days or until the protective order's effective date, whichever occurs first.

Thank you for your consideration.

## JUDtestimony

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**From:** Dara Carlin, M.A. [breaking-the-silence@hotmail.com]  
**Sent:** Wednesday, February 23, 2011 5:16 PM  
**To:** JUDtestimony  
**Subject:** HB968 HD1 to be heard Thursday, 02/24/11, at 2:15pm in Room 325

**Importance:** High

TO: Representative Keith-Agaran, Chair  
Representative Rhoads, Vice Chair  
Judiciary Committee Members

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

DATE: 02/24/11

RE: **Support for HB968 HD1**

Please support HB968 HD1 that will greatly assist in "closing the gap" by making Temporary Restraining Orders effective sooner rather than later (or too late). As it stands, evading service makes TROs ineffectual which defeats their purpose and leaves a legal window wide open which can prove quite dangerous for the person seeking protection. This measure is a step in the right direction. Thank you for allowing me the opportunity to provide testimony on this topic.

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate