



*THE JUDICIARY, STATE OF HAWAII*

**Testimony to the House Committee on Human Services**

The Honorable John M. Mizuno, Chair

The Honorable Jo Jordan, Vice Chair

Monday, February 7, 2011, 9:35 a.m.

State Capitol, Conference Room 329

by

Sabrina S. McKenna

Deputy Chief Judge/Senior Family Court Judge

Family Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 968, Relating to Domestic Abuse Protective Orders

**Purpose:** Allows a temporary restraining order to remain in effect for 90 days or until service of a protective order, whichever occurs first. Provides that protective orders orally stated by the court on the record shall be effective upon service on the respondent.

**Judiciary's Position:**

The Judiciary takes no position on this bill. However, we respectfully propose the following changes to reflect our current court practices. After a domestic abuse temporary restraining order (TRO) is issued, a hearing date is scheduled for both parties to appear in court. At this hearing, the court order is read aloud during the hearing and then put in writing shortly after the hearing. Both parties (i.e., Petitioner and Respondent) are instructed to wait to receive certified copies of the filed court protective order. Unless the respondent does not wait to receive his or her copy, the respondent will leave the courthouse with a copy of the order. This bill deletes the existing statutory language in HRS Section 586-5.6 (Section 2, page 1, line 18, page 2, line 1) which provides that this protective order is effective as of the date of this court hearing. This bill instead provides that the protective order is not effective until the Respondent is served with this order. Therefore, if the Respondent, even though he/she is present in court and has full knowledge of the protective order, leaves without waiting for a copy and then thereafter evades service, the protective order is not effective until the Respondent is located and served with a copy of the order.

In the interest of ensuring continuing and unambiguous protection for petitioners, we respectfully recommend the following amendments (in bold and italics):



House Bill No. 968, Relating to Domestic Abuse Protective Orders  
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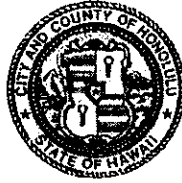
(Section 1 of the bill) HRS Section 586-5(a) to read . . . "for a period not to exceed ninety days from the date the order is granted[;] or until the effective date of a protective order issued by the court as defined in Section 586-5.6, whichever occurs first."

(Section 2 of the bill) HRS Section 586-5.6 to read . . . "Protective orders orally stated by the court on the record shall be effective [as of the date of the hearing] as of the date of the hearing if the respondent attends the hearing or, if the respondent was served but failed to appear, then upon service of the protective order upon the respondent until further order of the court; . . .  
"

Thank you for the opportunity to submit testimony on this matter.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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February 7, 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. 968, Relating to Domestic Abuse Protective 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. 968. 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.

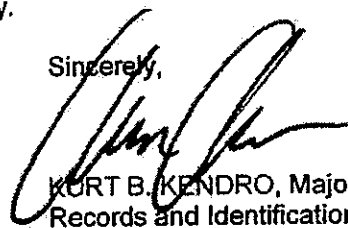
By passing this bill, the TRO will remain valid until the respondent is served with a PO or the expiration date of the TRO, whichever occurs first.

Thank you for the opportunity to testify.

APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police

Sincerely,

  
KURT B. KENDRO, Major  
Records and Identification Division

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

February 7, 2011

**H.B. NO. 968: RELATING TO DOMESTIC ABUSE PROTECTIVE ORDERS**

Chair Mizuno and Members of the Committee:

We oppose the passage of H.B. No. 968. 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 H.B. No. 968 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.

The solution to the problem sought to be addressed by H.B. No. 968 is to expedite protective order hearings and to have prompt service of the order issued by the court.

Thank for the opportunity to comment on this measure.