

HB968,HD1

Testimony



The Honorable Clayton Hee
Senate Committee on Judiciary and Labor
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai`i

April 1, 2011

RE: HB968 - SUPPORT

Hearing Date: Monday, April 4 at 9:00am, Room 016

Chair Hee and members of the Senate Committee on Judiciary and Labor, the Hawai`i State Coalition Against Domestic Violence respectfully submits the following testimony supporting HB968. As a statewide coalition of domestic violence service providers, our mission is to ensure the safety and protection of women in intimate relationships by providing training and education, coordinating domestic violence prevention and intervention services, affecting public policy, and establishing coordinated and consistent procedures and actions by the civil and criminal justice systems in Hawaii.

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 allows a TRO to remain in effect for 90 days or until service of a PO, whichever occurs first, and amends the law to provide that protective orders orally stated by the court on the record shall be effective upon service on the respondent. This bill would address the issue of batterers who evade legalities and manipulate the systems intended to protect the victim.

Thank you for your consideration.

Submitted by:
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From: mailinglist@capitol.hawaii.gov
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Subject: Testimony for HB968 on 4/4/2011 9:00:00 AM
Date: Saturday, April 02, 2011 11:50:08 PM

Testimony for JDL 4/4/2011 9:00:00 AM HB968

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: lynne matusow
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Submitted on: 4/2/2011

Comments:

In February the Downtown Neighborhood Board voted to support Prosecuting Attorney Keith Kaneshiro's legislative package. Passage of HB 968 is important for public health and safety. We ask you to pass this bill.

Alvin Au, Chair
Lynne Matusow, Secretary

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Judiciary and Labor**

April 4, 2011

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

Chair Hee 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.