



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
Thursday, March 31, 2011, 2:00 p.m.
State Capitol, Conference Room 325

by

R. Mark Browning
Deputy Chief Judge, Senior Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1054, SD1, HD1, Relating to Temporary Restraining Orders.

Purpose: Establishes a temporary task force to establish a process to issue temporary restraining orders by the family and district courts upon submission of sworn oral testimony or complaint communicated to the court by means of electronic voice communication. Allows the Judiciary to establish a program to assist persons seeking temporary restraining orders and protective orders. Effective July 1, 2050.

Judiciary's Position:

The Judiciary takes no position on this bill but offers the following comments.

1. We respectfully suggest that the Legislature consider adding to the Task Force a representative from a non-profit agency that provides direct services to petitioners who seek temporary restraining orders.
2. It may be difficult to prepare an adequate report with findings and recommendations if this bill is completed unfunded.



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3. We wish to inform the Legislature that the assistance to petitioners on “furlough Fridays” described in Part II of this bill is already occurring so Part II may not be necessary and could be deleted. A private non-profit agency, Ala Kuola, already provides such services. Unfortunately, their funding is precarious. The Judiciary has attempted to provide funding for these services but has not been able to sustain this and the Legislature’s emergency “rainy day” funds are not yet available.

Thank you for the opportunity to testify on Senate Bill 1054, SD1, HD1.

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

March 31, 2011

S.B. No. 1054 SD1 HD1: RELATING TO TEMPORARY RESTRAINING ORDERS

Chair Keith-Agaran and Members of the Committee:

Because we opposed the original draft of this bill which would have allowed the family court to issue temporary restraining orders ["TRO"s] without the physical presence of the applicant, we support the current version of the measure which would establish a task force to study the matter. We have a serious concern that such a procedure, if established, would result in abuse of the TRO process.

The task force established by the bill currently does not include a representative from the Office of the Public Defender. We respectfully recommend that such a representative be placed on the task force to provide better balance of views within the group.

Thank for the opportunity to comment on this measure.

JUDtestimony

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Friday, March 25, 2011 5:08 PM
To: JUDtestimony
Subject: SB1054 SD1 HD1 to be heard Thursday, 03/31/11, at 2:00pm in Room 325

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: 03/31/11

RE: Support for SB1054 SD1 HD1

Please support this proposal that would greatly assist victims of domestic violence, particularly on our outer islands, who already have additional hurdles to overcome in obtaining a TRO against their abuser.
Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice-Chair
HOUSE COMMITTEE ON JUDICIARY

From: Veronika Geronimo
Hawaii State Coalition Against Domestic Violence

RE: SB1054

Hearing Date: Thursday, March 31, 2pm in 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. On behalf of our member agencies, we thank you for the opportunity to testify on SB1054.

While establishing a task force to discuss the development of a system utilizing electronic voice communication for the filing of restraining orders is a thoughtful approach, there are already initiatives and programs within the judiciary that increase access and improve the expediency of the TRO process. For example, the Hawaii Supreme Court authorized a pilot project for the filing of restraining orders via fax in the Second Circuit (Maui County) in July of 2007. The Judiciary has also successfully developed and implemented an electronic filing system for appellate cases. During a time of limited and diminishing resources, we believe it is more prudent to expand best practices already in place that allow for greater flexibility in the process for applying to a Family Court for a restraining order.

In addition, due to the potential to wrongfully issue Temporary Restraining Orders (TROs) to domestic violence abusers under the proposed system, it is critical to have the participation of domestic violence programs and agencies, who have a deep understanding of the dynamics of domestic violence, on the task force. These are just a few of the concerns with issuing temporary restraining orders upon submission of sworn oral testimony or complaint communicated to the court by means of electronic voice communication:

- Domestic violence abusers often pose as victims and abuse the TRO process. Abusers have been known to file false claims not because of fear of personal safety, but to exclude the victim from the home or prohibit contact with their children.
- Law enforcement or other persons assisting the applicant in communicating the sworn testimony should be well-trained and equipped to discern the veracity of the petitioner.
- Furthermore, there are also obstacles for victims who do not speak English or victims who may not seek assistance from law enforcement.

We respectfully request that SB1054 be amended to include one representative from a statewide coalition of domestic violence programs and/or representatives from a domestic violence program or organization from each of the circuits of the judiciary.

Thank you for your consideration.

The Honorable Gilbert Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice-Chair
HOUSE COMMITTEE ON JUDICIARY

RE: SB1054 - OPPOSE

Hearing Date: Thursday, March 31, 2pm in Room 325

Aloha Chair Keith-Agaran and Vice-Chair Rhoads,

The **Hawai'i Women's Coalition** must stand with the Domestic Violence advocates in opposing this bill. Although it seems great on the surface, in practice TRO's have been used by abusers to get access to their victims. Allowing electronic submission has the possibility of allowing even greater anonymity and therefore greater possibility of misuse.

If you choose to establish such a task force we suggest that you include at least two representatives agencies/organizations who advocate/treat victims of domestic violence so that such a task force does not wind up making things worse for victims through unintended consequences of policy decisions.

Ann S. Freed
Co-Chair Hawai'i Women's Coalition
Mililani, Hawai'i

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