



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 31, 2011
2:00 p.m.
Conf. room 325

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the House Committee on Judiciary

From: Coral Wong Pietsch, Chair, and Commissioners of the Hawai‘i Civil Rights
Commission

Re: S.B. No. 229, SD1, HD1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai‘i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports the intent of S.B. No. 229, SD1, HD1 which adds "domestic abuse victim status" as a protected class under H.R.S. § 378-2, the state's employment discrimination law, contingent on additional funding and staffing required for the HCRC to take on this expanded jurisdiction and the additional complaints that will be generated. With the impact of recent reduction in force, the loss of 3 of 11 permanent investigators, and furloughs, the HCRC has suffered a substantial loss of capacity to investigate complaints of discrimination based on existing statutory bases. This has resulted in a substantial increase in investigation caseload, up from 271 cases at the end of FY 2007 to 429 at the end of FY 2010, which directly affects and

increases the length of time it takes to investigate cases from filing to closure. This loss of capacity affects the timeliness and effectiveness of HCRC investigation of employment discrimination cases based on existing protected bases (disability, sex, ancestry, race, retaliation, etc.), which make up more than 85% of our caseload. We simply cannot take on expansion of our jurisdiction to include the additional protected basis of “domestic abuse victim status” without adversely affecting the investigation of all cases, unless additional resources are provided. The proposed new protected basis will require additional funding and staffing, in light of the data suggesting that the affected protected class will be large, and we request the addition/restoration of one full time investigator position and one enforcement attorney position in order to timely enforce it.

The HCRC recognizes the serious and devastating impact that domestic violence has on victims’ physical and emotional health and financial security. Domestic abuse takes a heavy toll on both victims and their employers, including increased security and safety concerns, reduced productivity, and increased health care costs. As a result, victims of domestic abuse can face loss of their jobs at a time when employment and financial independence is critical.

Section 2 of the bill requires employers to provide reasonable safety accommodations for employees who are victims of domestic abuse or sexual violence under H.R.S. Chapter 378 Part VI, which is not under the jurisdiction of the HCRC. H.R.S. Chapter 378 Part VI presently contains the Victims Leave Law, and under §378-72(j) an employee denied leave in violation of that part may file a civil action in state court and recover costs and reasonable attorney fees. The proposed amendments regarding safety accommodations do not contain similar enforcement and remedy provisions, and we suggest that such provisions be added.

In addition, the bill states that reasonable safety accommodations are not required if they cause an undue hardship on the operations of the employer. We also suggest that a definition of “undue hardship” be included. Under the Illinois Victims’ Economic Security and Safety Act, “undue hardship” is defined as an action requiring significant difficulty or expense when considering factors such as: the nature and cost of the reasonable accommodation requested, the overall financial resources of the facility, the overall financial resources of the employer and the type of operation of the employer. See, 820 ILCS 180/30, and H.A.R. §12-46-182 “undue hardship” under disability discrimination rules.)

Thank you for considering these concerns.

JUDtestimony

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Friday, March 25, 2011 5:02 PM
To: JUDtestimony
Subject: SB229 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: Firm Support for SB229 SD1 HD1

Please support this proposal that would truly send the message that we care and "we know" to those who are suffering and will be need us to care and know in order for them to see themselves through one of their darkest hours.

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: SB229 -SUPPORT

Hearing Date: March 31, 2:00pm, 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 SB229.

All too often domestic violence can jeopardize a survivor's ability to keep and maintain a job, because of discrimination and fear. It is not unlikely for a survivor to be fired, demoted, suspended, or forced to quit their job after their employer has learned that they were in an abusive relationship. SB229 would protect survivors from potential discriminatory actions of employers so that they can gain and maintain employment and work towards economic self-sufficiency. SB229 would also require an employer to make reasonable accommodations for an employee who is a victim of domestic abuse in order to keep her safe; provided that it does not cause undue hardship to the operations of the employer.

We respectfully urge your support of this measure. Thank you for your consideration.



Committee: Committees on Judiciary
Hearing Date/Time: Thursday, March 31, 2011, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of S.B. 229, SD1, HD1, Relating to Employment Relations

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 229, SD1, HD1.

State legislation is needed to prohibit employment and insurance discrimination against survivors of domestic violence, sexual violence, and stalking. Currently, a victim is vulnerable to being rejected for or fired from a position when an employer learns that she may have been subjected to abuse. An employer may act on outdated, but commonly held, notions about a victim – that she must enjoy being abused because she stayed in a relationship, or that she invited sexual assault by her attire or behavior. Very few jurisdictions currently deal with this issue. Only the state of Illinois, as well as New York City and Westchester County in New York state, ban discrimination against a victim of domestic violence, sexual assault, or stalking.¹ Connecticut and Rhode Island bar employers from penalizing victims who have attended court or obtained restraining orders.² State anti-discrimination law must intervene to combat these stereotypes about victims of domestic violence, sexual assault, and stalking.³

Success of Legislation like the SAFE Act

Laws containing provisions such as those embodied in the previously introduced federal SAFE Act already have proven effective in guaranteeing the rights of survivors on the local level. In 2001, New York City amended its Human Rights Law to prohibit employment discrimination against victims of domestic violence – the first jurisdiction in the country to do so.⁴ The City extended these protections in 2003 to require employers to make reasonable

¹ 820 Ill. Comp. Stat. 180/30; N.Y.C. Admin. Code § 8-107.1; Westchester County Code §§ 700.02, 700.03.

² Conn. Gen. Stat. § 54-85b; R.I. Gen. Laws § 12-28-10.

³ State legislatures have acted to prohibit discrimination on the basis of one’s status as a victim of domestic violence, sexual assault, and stalking in other contexts, notably housing. N.C. Gen. Stat. §§ 42-40, -42.2, -42.3, -45.1; R.I. Gen. Laws §§ 34-37-1, -2, -2.4, -3, -4; Wash. Rev. Code Ann. § 59.18.130(8)(b)(ii). The 2005 reauthorization of the Violence Against Women Act also prohibited discrimination against these survivors in public and Section 8 housing. See 42 U.S.C. §§ 1437d, 1437f.

⁴ N.Y.C. Admin. Code § 8-107.1.

American Civil Liberties Union of Hawaii
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accommodations – such as allowing time off from work or shifts in schedule – to employees who are experiencing domestic and sexual violence or stalking.

The national ACLU relied on these provisions of the Human Rights Law when representing “Kathleen,”⁵ a long-time employee of the New York City public schools. After her intimate partner assaulted her, Kathleen obtained an order of protection. She needed to take off several days of work in order to attend court proceedings and seek medical attention. When her employer reprimanded her for excessive absences, she disclosed her partner’s violence and requested to be transferred to another school for safety reasons. Shortly after this conversation, she was fired. The same day, another woman at the school where Kathleen worked who had also experienced domestic violence was terminated under similar circumstances. Because she lost her job and was unable to find comparable employment, Kathleen was forced to move to substandard housing and send her son to live with a relative.

The national ACLU brought suit against the New York City Department of Education on Kathleen’s behalf, invoking the anti-discrimination mandate of the City Human Rights Law. Ultimately, the Department of Education agreed to settle the case and to void Kathleen’s termination and pay her retroactive compensation and damages. It also agreed to undertake systemic changes, including amending its Equal Employment Opportunity policy to cover victims of domestic violence, sexual assault, and stalking as protected classes, acknowledging that reasonable accommodations must be offered to these survivors, and publicizing its new policies throughout the school system. Had the New York City Human Rights Law not existed, Kathleen may have been out of work with no recourse, as a result of the violent conduct of her partner. Had Kathleen lived almost anywhere else in the country, financial ruin likely would have been her fate.

Enacting state protection for the employment rights of victims of domestic violence, sexual assault, and stalking is crucial to building on local progress and ensuring economic security to survivors nationwide. State legislation that models the previously introduced federal SAFE Act would enable battered women to seek safety while working towards financial independence. The ACLU of Hawaii therefore calls on this Committee to pass state legislation that would secure the employment rights of victims of domestic violence, sexual assault, and stalking and allow these survivors to pursue both physical security and economic independence.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private

⁵ A pseudonym has been used to protect “Kathleen”’s identity.

Chair Keith-Agaran and Members of the Committee on Judiciary
March 31, 2011
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non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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