

# HAWAI`I CIVIL RIGHTS COMMISSION

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

March 22, 2011

11:00 a.m.

Conf. room 309

To: The Honorable Karl Rhoads, Chair  
The Honorable John Mizuno, Chair  
Members of the House Committees on Labor and Public Employment  
and Human Services

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

Re: S.B. No. 229, SD1

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, which adds "domestic abuse victim status" as a protected class under H.R.S. § 378-2, the state's employment discrimination law.

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.

However, the HCRC has three concerns regarding this bill:

**1. Need for clarification as to what an employer's obligations are under the newly created protected class.**

The bill would prohibit the discriminatory practices described in H.R.S. § 378-2, but it does not expressly require employers to provide reasonable safety, leave and/or other accommodations. Safety accommodations for employees who are victims of domestic abuse could include: changing phone numbers or screening phone calls, job restructuring, change in seating location or work place facility, installing locks on office doors, or allowing flexible work hours. If the legislature intends to require such accommodations, the bill should expressly state these affirmative obligations, delineate the kinds of accommodations required, and provide for any defenses or exceptions, e.g., the requested accommodation would not be required if it causes an undue hardship on the operation of the employer's business.

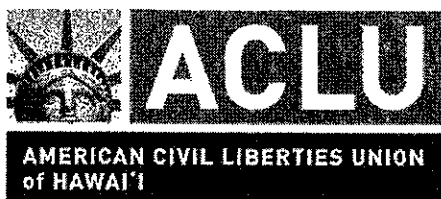
If the new protection includes reasonable accommodation requirements, the bill should also address how a person establishes he or she is a victim of domestic violence in order to trigger an employer's obligation to provide an accommodation. Other jurisdictions that require reasonable safety accommodations have allowed employers to require employees to certify that they are a "victim of domestic violence" through a medical certificate; a signed written statement from a victim services organization, an attorney or advocate, a member of the clergy, a medical or other professional stating that the employee has sought assistance related to the domestic violence; a police report or court record (including TRO) related to domestic violence; or other corroborating

evidence related to the domestic violence. Under H.R.S. Chapter 378 Part VI (the Victims Leave law), such certification may be similarly requested by employers prior to granting leave accommodations for domestic or sexual violence victims.

**2. If the bill requires employers to provide reasonable leave accommodations, this may create potentially overlapping jurisdiction with the specific provisions and private action procedure already provided under the Victims Leave law, H.R.S. Chapter 378 Part VI.**

**3. If “domestic abuse victim status” is added as a protected basis to H.R.S. Chapter 378-2, the HCRC will require additional funding and staffing.** During the current fiscal biennium, the HCRC lost 3 of 11 permanent investigator positions and 1 of 4 enforcement attorney positions, in addition to two days per month of work productivity lost to furloughs. As such, our focus will be on timely processing and effective enforcement in the face of a growing caseload and shrinking resources. 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 would also request the addition/restoration of one full time investigator position and one enforcement attorney position.

Thank you for considering these concerns.



Committee: Committees on Labor & Public Employment and Human Services  
Hearing Date/Time: Tuesday, March 22, 2011, 11:00 a.m.  
Place: Conference Room 309  
Re: Testimony of the ACLU of Hawaii in Support of S.B. 229, SD1.  
Relating to Employment Relations

Dear Chairs Rhoads and Mizuno and Members of the Committee on Labor & Public Employment and Human Services:

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

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.<sup>1</sup> Connecticut and Rhode Island bar employers from penalizing victims who have attended court or obtained restraining orders.<sup>2</sup> State anti-discrimination law must intervene to combat these stereotypes about victims of domestic violence, sexual assault, and stalking.<sup>3</sup>

#### **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.<sup>4</sup> The City extended these protections in 2003 to require employers to make reasonable

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

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

<sup>3</sup> 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.

<sup>4</sup> N.Y.C. Admin. Code § 8-107.1.

American Civil Liberties Union of Hawaii  
P.O. Box 3410  
Honolulu, Hawaii 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

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,”<sup>5</sup> 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.

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<sup>5</sup> A pseudonym has been used to protect “Kathleen”’s identity.

Chairs Rhoads and Mizuno and Members of the Committees on  
Labor & Public Employment and Human Services

March 1, 2011

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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 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

American Civil Liberties Union of Hawaii  
P.O. Box 3410  
Honolulu, Hawaii 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

COMMITTEE ON HUMAN SERVICES

Rep. John M. Mizuno, Chair

Rep. Jo Jordan, Vice Chair

DATE: Tuesday, March 22, 2011

TIME: 11:00 a.m.

PLACE: Conference Room 309

State Capitol

415 South Beretania Street

SB 229, SD1

RELATING TO EMPLOYMENT RELATIONS.

(SSCR561)

Status

TESTIMONY AGAINST BILL

BY

POKA LAENUI, EXECUTIVE DIRECTOR

HALE NA'AU PONO

(WAI'ANAE COAST COMMUNITY MENTAL HEALTH CENTER)

697-3045

I DO NOT ANTICIPATE BEING AVAILABLE TO TESTIFY

ALOHA KAKOU:

I do not support this bill because:

1) There does not seem to be adequate evidence to show that there has been a pattern of discrimination against victims of domestic violence requiring the creation of a separate category of non-discrimination in this area;

2) The committee report uses this bill to transfer upon employers cost of doing business the burden of underwriting what is essentially a social-criminal and financial societal issue; and,

3) As written, this bill would allow easy abuse of the protection of the prohibition against discrimination, thus wrecking havoc to employers attempting to carry out legitimate management decisions.

This bill has no verification provisions of an employee's claim of being a domestic abuse victim. HRS Sec. 586-1 merely defines the term, but does not require any process of determination, such as a court finding. Therefore, any employee would be able to raise the claim of being a domestic abuse victim, demand protection under this category of the "new" law, and leave an employer helpless in determining the correctness of such employee's claim.

Here's a scenario:

An applicant for employment identifies himself on the application form as a domestic abuse victim, declares that he has suffered psychological trauma from his wife, and wishes to be given reasonable accommodation in employment, including given special consideration for hours of employment, ability to work at home when not providing direct service to clients, and not to be supervised by female individuals



because of the possible reawaking of past traumatic memories. He further says that there has never been a formal complaints filed by him or determination made by any hearing process to confirm his status, but merely that he is defined as a domestic abuse victim by law and therefore protected.

The employer would be required, by the proposed bill, to place this applicant in the protected category, and is given no independent basis for verification of this applicant's claim of being a domestic abuse victim. Should the employer make a determination to select another applicant for employment, one who is not in a protected class, employer will have to be prepared to defend such action from a possible claim of discrimination by the Civil Rights Commission.

Under the current law, there is already a protective category for those who have been adjudicated victims of crime under "court record". Why not leave things as they are and allow those who have been adjudicated by the courts as such victims, claim that protection under that "court record" category, rather than create a new status which has no basis for verification behind it?

Poka Laenui, Executive Director, Hale Na'au Pono

Wai'anae Coast Community Mental Health Center

# HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: The Honorable Karl Rhoads, Chair  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

The Honorable John Mizuno, Chair  
HOUSE COMMITTEE ON HUMAN SERVICES

From: Veronika Geronimo  
Hawaii State Coalition Against Domestic Violence

RE: SB229 -SUPPORT

Hearing Date: 03-22-11, 11AM, Room 309

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 prohibit employers from discriminating against an employee or applicant for employment based upon the employee's or the applicant's domestic abuse victim status; provided that the domestic abuse victim notifies the employer of such status. This measure would protect survivors from potential discriminatory actions of employers so that they can gain and maintain employment and work towards economic self-sufficiency.

Thank you for your consideration.

**From:** Pema Gilman [mailto:pemagilman@yahoo.com]  
**Sent:** Friday, March 18, 2011 11:41 AM  
**To:** Rep. Karl Rhoads  
**Cc:** Rep. Kyle Yamashita  
**Subject:** Testimony SB229

To: Honorable Representative Karl Rhoads, Chair  
Committee on Labor and Public Employment  
From: Pema Gilman  
Re: **SB 229 Hearing, Tuesday, Mar. 22, 2011 - 11AM; Conf. Rm 309**

Dear Representative Rhoads,

As an advocate for women's rights, a member of the Maui community and a working woman I strongly support SB 229 that prohibits employers from discriminating against an employee or applicant for employment based upon the employee's or the applicant's domestic abuse victim status; provided that the domestic abuse victim notifies the employer of such status.

I have direct knowledge of the negative effect that this kind of discrimination has had on women such as; the act of firing (or not even hiring) prohibits the victim from earning a living wage with which to support her children, lowers her confidence and inhibits her ability to further pursue employment, causes other potential employers to see her in a less positive light, jeopardizes the ability to maintain a place to live, increases the risk of depression and increases the likelihood of having to go on public assistance and become a burden on the general tax paying public. All of these negative effects only serve to re-victimize the victim.

**I strongly urge you to pass SB 229 to prohibit employers from discriminating against an employee or applicant for employment based on the employee's or applicant's domestic abuse status, provided the domestic abuse victim notifies the employer of such status.**

Respectfully submitted,

*Pema Gilman*, Program Coordinator, Trainer & Advocate  
Women Helping Women - West Maui  
Email: [pemagilman@yahoo.com](mailto:pemagilman@yahoo.com) Ph: 661-7111 Fx: 661-7140



To: Honorable Clayton Hee and the Committee of Judiciary and Labor

Hearing Date: 03/22/2011, 11:00 am, Conference Room 309

Re: In Support for S. B. 229

Dear Honorable Mr. Hee and fellow respected Senators,

My name is Terri Nakamura and I am a graduate student in the school of Social Work at the University of Hawaii Manoa and I am in support of Senate Bill 229 in adding "domestic victim status" as a protected measure in making it unlawful to discriminate against domestic abuse victims as employees or potential employees based on the applicant's domestic abuse status, providing that the victims discloses the status to the employer or potential employer.

Victims in domestic abuse situations are often times psychologically disempowered and some may rely on their abusers financial support. This bill will assist victims in achieving and retaining employment and provide victims with empowerment and financial self sufficiency. I have personally known someone who lost her employment due to the abuser and stayed with him because she has no means to support herself and her children. This bill will offer protection that an abused victim can be reassured that their employment will be one less issue to worry about during a tumultuous time in their lives.

Domestic abuse is an underrated social issue in Hawaii and this bill will help assist in public awareness on how prevalent the issue really is.

Thank you for your time,

Terri Nakamura