



*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

Thursday, February 3, 2011, 9:00 a.m.

State Capitol, Conference Room 329

by

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Family Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 1264, Relating to Electronic Monitoring

**Purpose:** Gives the court the discretion to order the electronic monitoring of a person, convicted of a violation of a domestic abuse temporary restraining order, or a domestic abuse protective order. Requires the court to administer the global positioning satellite tracking device and its tracking. If a defendant enters a court-defined geographic exclusion zone, the defendant's location shall be immediately transmitted to the protected party and to the police, through appropriate means. If the court finds that the defendant has entered a geographic exclusion zone, the court is mandated to revoke the probation and the defendant shall be fined, imprisoned, or both. Based upon ability to pay, the court may order the defendant to pay some or all of the monthly costs of this monitoring system.

**Judiciary's Position:**

The Judiciary takes no position on this bill but has the following strong concerns.

(1) This bill places the Judiciary in the difficult position of working as law enforcement. It is clear that the intent of this bill is to protect victims. However, this bill requires the court to "immediately transmit" the defendant's whereabouts to the victim and the police, should the defendant enter a prohibited geographic zone. This is beyond the role, responsibility, and capabilities of the Judiciary.



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(2) Although this bill gives the Judiciary the discretion to order electronic monitoring, it would be difficult to deny a victim's request in the event that the defendant knows the victim's residence, school or workplace. Because this crime deals with "family and household members," more often than not, the defendant will know one or more of these locations.

(3) However, in addition to being outside the scope of our role, the Judiciary would need a sufficient appropriation in order to perform this service. This is not just a matter of buying equipment. We would need to form a highly trained unit of officers on duty 24 hours a day, 7 days a week.

(4) This bill sets up an expectation and a duty to warn a victim about impending danger. While judges have immunity, this service may be deemed non-judicial and, therefore, immunity might be limited or non-existent to the workers of this unit. The potential liability for court officers and the danger to be prevented may be insurmountable obstacles to the successful implementation of this endeavor.

(5) Furthermore, the costs are not just limited to monitoring gear and personnel. Such a program would also have to ensure that the victims have the means to receive the warning.

(6) Although the bill allows the court to charge the defendants with the cost of the program, it would be more equitable to operate on a sliding scale basis and, given the current economic circumstances of many defendants, only a small fraction of the actual cost of the program would be covered by defendants.

Thank you for the opportunity to provide testimony on this measure.