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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
HOUSE JUDICIARY COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

February 22, 2011

RE: H.B. 238, H.D.1; RELATING TO TEMPORARY RESTRAINING ORDERS.

Chair Keith-Agaran, Vice Chair Rhoads, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 238, H.D. 1 that includes enhanced penalties for violation of a temporary restraining order, and would like to include a friendly amendment to also include all of the language in H.B. 239, which has the enhanced penalties for violations of the Order for Protections. H.B. 238 and H.B. 239 go hand in hand since the Order for Protection often follows a Temporary Restraining Order. Both bills are part of the Department of the Prosecuting Attorney, City and County of Honolulu's 2011 Legislative Package.

The purpose of this bill is to amend section 586-4, Hawaii Revised Statutes (HRS) to add a mandatory minimum jail sentence of fifteen days and a fine of not less than \$150 nor more than \$600 for a person who has a first conviction for a violation of the temporary restraining order and a prior conviction for any of the following felonies: murder in the first degree; murder in the second degree; assault in the first degree; assault in the second degree; kidnapping; unlawful imprisonment in the first degree; sexual assault in the first degree; sexual assault in the second degree; sexual assault in the third degree; continuous sexual assault of a minor under the age of fourteen years; promoting child abuse in the first degree; burglary in the first degree; burglary in the second degree; abuse of family or household members; or aggravated harassment by stalking, and any of these offenses has been committed against a family or household member.

With this bill, a person who has been convicted of a violent crime against a family or household member in the past will face an enhanced penalty if he violates a temporary restraining order. The Department of the Prosecuting Attorney strongly discourages individuals who have a violent history against a family or household member from going down that path again. There have been enough cases where an abusive situation turned deadly. We believe that the addition of this enhanced penalty for a violation of a temporary restraining will be a tool in our goal to reduce domestic violence in our society.

Finally, we kindly request inserting all of the language in H.B. 239, which has enhanced penalties for Order for Protections, which often follow Temporary Restraining Orders. The purpose of the language in this bill is to amend section 586-11, HRS to add enhanced penalties for a person who violates an order for protection and has a prior conviction for any of the following felonies: murder in the first degree; murder in the second degree; assault in the first degree; assault in the second degree; kidnapping; unlawful imprisonment in the first degree; sexual assault in the first degree; sexual assault in the second degree; sexual assault in the third degree; continuous sexual assault of a minor under the age of fourteen years; promoting child abuse in the first degree; burglary in the first degree; burglary in the second degree; abuse of family or household members; or aggravated harassment by stalking, and any of these offenses has been committed against a family or household member.

For these reasons, we strongly support the passage of H.B. 238, H.D. 1 with an amendment to also include all of the language in H.B. 239. Thank you for this opportunity to testify.

A BILL FOR AN ACT

RELATING TO ORDERS FOR PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 586-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§586-11 Violation of an order for protection. (a)
4 Whenever an order for protection is granted pursuant to this
5 chapter, a respondent or person to be restrained who knowingly
6 or intentionally violates the order for protection is guilty of
7 a misdemeanor. A person convicted under this section shall
8 undergo domestic violence intervention at any available domestic
9 violence program as ordered by the court. The court
10 additionally shall sentence a person convicted under this
11 section as follows:

12 (1) For a first conviction for violation of the order for
13 protection:

14 (A) That is in the nature of non-domestic abuse, the
15 person may be sentenced to a jail sentence of
16 forty-eight hours and be fined not more than
17 \$150; provided that the court shall not sentence
18 a defendant to pay a fine unless the defendant is



1 or will be able to pay the fine[+]. If the
2 person has a prior conviction for any of the
3 following felonies: section 707-701 relating to
4 murder in the first degree; section 707-701.5
5 relating to murder in the second degree; section
6 707-710 relating to assault in the first degree;
7 section 707-711 relating to assault in the second
8 degree; section 707-720 relating to kidnapping;
9 section 707-721 relating to unlawful imprisonment
10 in the first degree; section 707-730 relating to
11 sexual assault in the first degree; section 707-
12 731 relating to sexual assault in the second
13 degree; section 707-732 relating to sexual
14 assault in the third degree; section 707-733.6
15 relating to continuous sexual assault of a minor
16 under the age of fourteen years; section 707-750
17 relating to promoting child abuse in the first
18 degree; section 708-810 relating to burglary in
19 the first degree; section 708-811 relating to
20 burglary in the second degree; section 709-906
21 relating to the abuse of family or household
22 members; or section 711-1106.4 relating to



1 aggravated harassment by stalking, and if any of
2 these offenses has been committed against a
3 family or household member as defined in section
4 586-1, then for a first conviction for violation
5 of the order for protection, the person shall be
6 sentenced to a mandatory minimum jail sentence of
7 not less than fifteen days and be fined not less
8 than \$150 nor more than \$600; provided that the
9 court shall not sentence a defendant to pay a
10 fine unless the defendant is or will be able to
11 pay the fine;

12 (B) That is in the nature of domestic abuse, the
13 person shall be sentenced to a mandatory minimum
14 jail sentence of not less than forty-eight hours
15 and be fined not less than \$150 nor more than
16 \$500; provided that the court shall not sentence
17 a defendant to pay a fine unless the defendant is
18 or will be able to pay the fine[?]. If the
19 person has a prior conviction for any of the
20 following felonies: section 707-701 relating to
21 murder in the first degree; section 707-701.5
22 relating to murder in the second degree; section



H.B. NO. 239

1 707-710 relating to assault in the first degree;
2 section 707-711 relating to assault in the second
3 degree; section 707-720 relating to kidnapping;
4 section 707-721 relating to unlawful imprisonment
5 in the first degree; section 707-730 relating to
6 sexual assault in the first degree; section 707-
7 731 relating to sexual assault in the second
8 degree; section 707-732 relating to sexual
9 assault in the third degree; section 707-733.6
10 relating to continuous sexual assault of a minor
11 under the age of fourteen years; section 707-750
12 relating to promoting child abuse in the first
13 degree; section 708-810 relating to burglary in
14 the first degree; section 708-811 relating to
15 burglary in the second degree; section 709-906
16 relating to the abuse of family or household
17 members; or section 711-1106.4 relating to
18 aggravated harassment by stalking, and if any of
19 these offenses has been committed against a
20 family or household member as defined in section
21 586-1, then for a first conviction for violation
22 of the order for protection, the person shall be



1 sentenced to a mandatory minimum jail sentence of
2 not less than fifteen days and be fined not less
3 than \$150 nor more than \$600; provided that the
4 court shall not sentence a defendant to pay a
5 fine unless the defendant is or will be able to
6 pay the fine;

7 (2) For a second conviction for violation of the order for
8 protection:

9 (A) That is in the nature of non-domestic abuse, and
10 occurs after a first conviction for violation of
11 the same order that was in the nature of non-
12 domestic abuse, the person shall be sentenced to
13 a mandatory minimum jail sentence of not less
14 than forty-eight hours and be fined not more than
15 \$250; provided that the court shall not sentence
16 a defendant to pay a fine unless the defendant is
17 or will be able to pay the fine[?]. If the
18 person has a prior conviction for any of the
19 following felonies: section 707-701 relating to
20 murder in the first degree; section 707-701.5
21 relating to murder in the second degree; section
22 707-710 relating to assault in the first degree;



1 section 707-711 relating to assault in the second
2 degree; section 707-720 relating to kidnapping;
3 section 707-721 relating to unlawful imprisonment
4 in the first degree; section 707-730 relating to
5 sexual assault in the first degree; section 707-
6 731 relating to sexual assault in the second
7 degree; section 707-732 relating to sexual
8 assault in the third degree; section 707-733.6
9 relating to continuous sexual assault of a minor
10 under the age of fourteen years; section 707-750
11 relating to promoting child abuse in the first
12 degree; section 708-810 relating to burglary in
13 the first degree; section 708-811 relating to
14 burglary in the second degree; section 709-906
15 relating to the abuse of family or household
16 members; or section 711-1106.4 relating to
17 aggravated harassment by stalking, and if any of
18 these offenses has been committed against a
19 family or household member as defined in section
20 586-1, then for a second conviction for violation
21 of the order for protection, the person shall be
22 sentenced to a mandatory minimum jail sentence of



1 not less than thirty days and be fined not less
2 than \$250 nor more than \$1,000; provided that the
3 court shall not sentence a defendant to pay a
4 fine unless the defendant is or will be able to
5 pay the fine;

6 (B) That is in the nature of domestic abuse, and
7 occurs after a first conviction for violation of
8 the same order that was in the nature of domestic
9 abuse, the person shall be sentenced to a
10 mandatory minimum jail sentence of not less than
11 thirty days and be fined not less than \$250 nor
12 more than \$1,000; provided that the court shall
13 not sentence a defendant to pay a fine unless the
14 defendant is or will be able to pay the fine;

15 (C) That is in the nature of non-domestic abuse, and
16 occurs after a first conviction for violation of
17 the same order that was in the nature of domestic
18 abuse, the person shall be sentenced to a
19 mandatory minimum jail sentence of not less than
20 forty-eight hours and be fined not more than
21 \$250; provided that the court shall not sentence
22 a defendant to pay a fine unless the defendant is



1 or will be able to pay the fine[+]. If the
2 person has a prior conviction for any of the
3 following felonies: section 707-701 relating to
4 murder in the first degree; section 707-701.5
5 relating to murder in the second degree; section
6 707-710 relating to assault in the first degree;
7 section 707-711 relating to assault in the second
8 degree; section 707-720 relating to kidnapping;
9 section 707-721 relating to unlawful imprisonment
10 in the first degree; section 707-730 relating to
11 sexual assault in the first degree; section 707-
12 731 relating to sexual assault in the second
13 degree; section 707-732 relating to sexual
14 assault in the third degree; section 707-733.6
15 relating to continuous sexual assault of a minor
16 under the age of fourteen years; section 707-750
17 relating to promoting child abuse in the first
18 degree; section 708-810 relating to burglary in
19 the first degree; section 708-811 relating to
20 burglary in the second degree; section 709-906
21 relating to the abuse of family or household
22 members; or section 711-1106.4 relating to



1 aggravated harassment by stalking, and if any of
2 these offenses has been committed against a
3 family or household member as defined in section
4 586-1, then for a second conviction for violation
5 of the order for protection, the person shall be
6 sentenced to a mandatory minimum jail sentence of
7 not less than thirty days and be fined not less
8 than \$250 nor more than \$1,000; provided that the
9 court shall not sentence a defendant to pay a
10 fine unless the defendant is or will be able to
11 pay the fine;

12 (D) That is in the nature of domestic abuse, and
13 occurs after a first conviction for violation of
14 the same order that is in the nature of non-
15 domestic abuse, the person shall be sentenced to
16 a mandatory minimum jail sentence of not less
17 than forty-eight hours and be fined not [~~more~~]
18 less than \$150 nor more than \$600; provided that
19 the court shall not sentence a defendant to pay a
20 fine unless the defendant is or will be able to
21 pay the fine[+]. If the person has a prior
22 conviction for any of the following felonies:



1 section 707-701 relating to murder in the first
2 degree; section 707-701.5 relating to murder in
3 the second degree; section 707-710 relating to
4 assault in the first degree; section 707-711
5 relating to assault in the second degree; section
6 707-720 relating to kidnapping; section 707-721
7 relating to unlawful imprisonment in the first
8 degree; section 707-730 relating to sexual
9 assault in the first degree; section 707-731
10 relating to sexual assault in the second degree;
11 section 707-732 relating to sexual assault in the
12 third degree; section 707-733.6 relating to
13 continuous sexual assault of a minor under the
14 age of fourteen years; section 707-750 relating
15 to promoting child abuse in the first degree;
16 section 708-810 relating to burglary in the first
17 degree; section 708-811 relating to burglary in
18 the second degree; section 709-906 relating to
19 the abuse of family or household members; or
20 section 711-1106.4 relating to aggravated
21 harassment by stalking, and if any of these
22 offenses has been committed against a family or



1 household member as defined in section 586-1,
2 then for a second conviction for violation of the
3 order for protection, the person shall be
4 sentenced to a mandatory minimum jail sentence of
5 not less than thirty days and be fined not less
6 than \$250 nor more than \$1,000; provided that the
7 court shall not sentence a defendant to pay a
8 fine unless the defendant is or will be able to
9 pay the fine;

- 10 (3) For any subsequent violation that occurs after a
11 second conviction for violation of the same order for
12 protection, the person shall be sentenced to a
13 mandatory minimum jail sentence of not less than
14 thirty days and be fined not less than \$250 nor more
15 than \$1,000; provided that the court shall not
16 sentence a defendant to pay a fine unless the
17 defendant is or will be able to pay the fine.

18 Upon conviction and sentencing of the defendant, the court
19 shall order that the defendant immediately be incarcerated to
20 serve the mandatory minimum sentence imposed; provided that the
21 defendant may be admitted to bail pending appeal pursuant to



1 chapter 804. The court may stay the imposition of the sentence
2 if special circumstances exist.

3 The court may suspend any jail sentence under subparagraphs
4 (1) (A) and (2) (C), upon condition that the defendant remain
5 alcohol and drug-free, conviction-free, or complete court-
6 ordered assessments or intervention[-]; except the court shall
7 not suspend any jail sentence for a person with a prior
8 conviction for any of the following felonies: section 707-701
9 relating to murder in the first degree; section 707-701.5
10 relating to murder in the second degree; section 707-710
11 relating to assault in the first degree; section 707-711
12 relating to assault in the second degree; section 707-720
13 relating to kidnapping; section 707-721 relating to unlawful
14 imprisonment in the first degree; section 707-730 relating to
15 sexual assault in the first degree; section 707-731 relating to
16 sexual assault in the second degree; section 707-732 relating to
17 sexual assault in the third degree; section 707-733.6 relating
18 to continuous sexual assault of a minor under the age of
19 fourteen years; section 707-750 relating to promoting child
20 abuse in the first degree; section 708-810 relating to burglary
21 in the first degree; section 708-811 relating to burglary in the
22 second degree; section 709-906 relating to the abuse of family



1 or household members; or section 711-1106.4 relating to
2 aggravated harassment by stalking, and if any of these offenses
3 has been committed against a family or household member as
4 defined in section 586-1. Nothing in this section shall be
5 construed as limiting the discretion of the judge to impose
6 additional sanctions authorized in sentencing for a misdemeanor
7 offense. All remedies for the enforcement of judgments shall
8 apply to this chapter.

9 (b) Any fines collected pursuant to subsection (a) shall
10 be deposited into the spouse and child abuse special account
11 established under section 601-3.6."

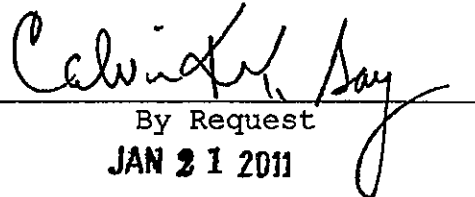
12 SECTION 2. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2011.

18

INTRODUCED BY:


By Request
JAN 21 2011



Report Title:

Order for Protection; Violations

Description:

Enhances penalties for a person who has a prior conviction for certain crimes and is subsequently convicted of violating an order of protection.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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

February 22, 2011

H.B. No. 238 HD 1: RELATING TO TEMPORARY RESTRAINING ORDERS

Chair Keith-Agaran and Members of the Committee:

We oppose passage of H.B. No. 238 HD 1. This measure seeks to treat differently, for purposes of sentencing, a person who violates a temporary restraining order (“TRO”) and who has a prior conviction for certain enumerated offenses and the prior offense was against a family or household member. All of the enumerated offenses are either offenses involving violence or sexual offenses except for burglary and harassment by stalking. A violator of a TRO who has a prior conviction for one of the enumerated offenses would receive a mandatory minimum term of imprisonment of fifteen days.

This proposed change in the law is not necessary. Violation of a TRO is classified as a misdemeanor. This means that a person convicted of this offense can receive up to one year of imprisonment – far greater than the fifteen days mandated by this bill. Offenders should receive a sentence which takes into account a variety of factors including, but not limited to: prior record, circumstances of the offense and public safety. This measure seeks to elevate the prior record of the defendant above all other factors and imposes a mandatory sentence based only upon one fact. It is common for persons currently convicted of Violation of a TRO to receive more than fifteen days of imprisonment. This happens when the court feels that a longer sentence is necessary under the circumstances that the court is required to consider by law in fashioning a sentence. We believe that the current law expresses the seriousness of a TRO violation and the proposed change in the sentencing provision will not add anything.

Thank for the opportunity to comment on this measure.



To: The Honorable Keith-Agaran
HOUSE COMMITTEE ON JUDICIARY

From: Veronika Geronimo
Hawaii State Coalition Against Domestic Violence

RE: HB238-SUPPORT

Hearing Date: 2/22/2011 2:00:00 PM, 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 HB238.

Engaging with the criminal justice system, including filing TROs and reaching out to law enforcement, can be very dangerous for domestic violence survivors. This measure strengthens the penalties for violating temporary restraining orders by adding a mandatory prison term of 15 days and a fine of not less than \$150 or more than \$600 for a person with certain prior convictions who is convicted for the first time for violation of a temporary restraining order (TRO). Specifically, this bill will hold repeat offenders accountable by increasing the penalties for violating a TRO for those who have committed previous violent crimes, including those who have had multiple convictions related to the abuse of family or household member.

We respectfully urge you to pass this measure. Thank you for your consideration.

2/21/11

Testimony IN SUPPORT of HB238 with Amendments

Aloha Representatives,

I am in SUPPORT of this measure with Amendments.
Requested Amendments are **Bolded**.

When I first filed for divorce after being attacked and fleeing my home, I requested and was granted a TRO against my now ex husband protecting myself, my son and my mother. My ex violated this protective order many times. He was charged with only 2 counts (after a year and a half) with violating the TRO even though he tried to grab my son from school, was escorted off the school property (resulting in my son being removed from school), stalked, threatened and terrified us at home, school and all over, did a lot of theft and property damage, brought in his parents to steal, intervene and do unauthorized practice of law. He was finally charged with 2 counts of gun possession (Rifles with scopes he was looking to kill us with), 4 guns were recovered and he turned in a handgun while under the TRO! While claiming extreme poverty he hired a big expensive attorney and these 2 counts were pled down to contempts of court. Nothing else happened TO HIM! Negligence and laziness of the State Prosecutor (Iwillani Mountcastle) allowed him time served (when it wasn't), being heard off the docket, I was not allowed to testify or comment and she dropped the felony gun charges when he said his brother (in another state) owed the guns. She never charged for the un-identified, no serial number handgun in his possession. I could prove he owned the guns! He never received anger management or restraining orders to protect us, substance abuse treatment (addicted to oxycontin, marijuana and alcohol) and the State refused us victim services or protection. He received only 1 year of PROBATION!

Before he was convicted the family court, Judge Keith E. Tanaka, terminated the TRO refusing to acknowledge Domestic violence saying that I was using the TRO to harass him. He said the 28+ police reports of stalking, violence and theft were harassment from me! When my son began accusing him of abuse and neglect, we were not protected by MPD, The State, CPS or the family court. My ex had a history of family and domestic violence, substance abuse, lying, was accused of sexual abuse by his children and their therapists and stalking and terroristic threatening of prior wife and children. Judge Tanaka instead moved us out of my home, never allowing us to return, allowed him back on the property where we were forced to pay him rent, alimony, endure terroristic threatening and later forced to flee. Fleeing was held against me in the custody and property hearings! Judge Tanaka ultimately gave this man my son, barred me from all contact with my son, allowed him to relocate out of the State and gave him all real property in 2 states and all valuables in the marital estate saying that I was harassing him.

Because this TRO was not enforced per statute my life has been destroyed, my heart broken, my son is gone and has been relocated and forced to live in another state while being abused and I am penniless and on State aid. One TRO handled and prosecuted properly would have saved us.

Penalties need to be strong and convictions need to happen quickly. Judges need to follow statute.

My amendments in Bold:

- 1. Penalties need to be immediate and need to be effective in Family court. A family court judge should not be able to call a conviction "harassment" and downgrade or use it against the victim or in the determination of property and custody.**
- 2. Fines or costs levied should not be able to be assessed against the victim in family court.**
- 3. In addition to undergoing domestic violence intervention classes, long term individual counseling for abuse needs to be put in place, also put in place an**

automatic 1 year no contact restraining Order in favor of the Victim and all child contact ordered supervised at their cost.

- 4. There needs to be a registry of DV abusers which carries into Family court un-amended by the family court judge.**
- 5. Drugs, even if prescribed, need to be monitored. My ex abused prescription Oxycontin and medical marijuana in addition to alcohol use while neglecting and abusing my son and this includes driving. If Class 1-3 drugs are in use, driving privileges need to be suspended and no children allowed in the car.**
- 6. Victim should ALWAYS have the option of testifying before a judgment is rendered.**

The failure to properly handle a TRO violation, and the de-valuing of the TRO (and by association us) by allowing it to be plead down to nothing and not protecting us, destroyed son and I, costs the State thousands while preserving intact and strengthening the criminal.

I appreciate your making this process more strict and protective for the victim.

Thank You,

Paige Calahan
PO Box 1380
Puunene, HI 96708