

**Testimony of the Office of the Public Defender
State of Hawaii
to the Senate Committee on Judiciary and Labor**

January 31, 2012

H.B. No. 238 HD 2: RELATING TO TEMPORARY RESTRAINING ORDERS

Chair Hee 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. A person’s prior record is always taken into consideration by the sentencing judge and it must be within a judge’s discretion to accord the weight to an offender’s prior record that he/she feels it should be entitled.

Moreover the bill does not contain any time limitation on the prior conviction. As a result, a conviction committed at age 18 can be held to the offender’s detriment at age 50 even if the offender had maintained a clean record in the interim. The bill also contains a requirement that the prior offense have been committed against a family member. The court will have to conduct a fact-finding hearing at the time of the TRO sentencing to make this determination. If the prior case was many years prior, the record from that case could be difficult to find.

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 adequately reflects the seriousness of a TRO violation.

Thank for the opportunity to comment on this measure.