LATE
Testimony

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 10, 2011, 9:00 a.m.
State Capitol, Conference Room 329

by
Christine E. Kuriyama
District Family Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 772, H.D. 1, Relating to Domestic Abuse Orders

Purpose: Establishes a domestic violence court within the family court. There is an appropriation for eight social worker positions statewide.

Judiciary's Position:

The Judiciary takes no position on this bill, but notes that the major provisions of the bill are currently being provided by the Judiciary and private agencies. The Judiciary is committed to providing domestic violence services, which is why it has expressed concern over statewide budget cuts, which have significantly impacted the availability of these services for domestic violence victims and abusers. The Judiciary notes that the application of this court model will necessitate money and resources to the Judiciary, the Public Defender's office, and the police and prosecutors in all circuits.

The Family Courts are divisions of the circuit courts (HRS Section 571-3) that include both circuit-level and district-level family judges. In the most populous circuit, the Family Court of the First Circuit (Oahu), there is a Senior Family Court Judge, who is a circuit judge, and two other circuit judges who deal exclusively with HRS Section 709-906 (crime of abuse of family or household members) cases and violations of temporary restraining orders and protective orders pursuant to Chapter 586. There are ten District Family judicial positions, who hear divorce,

paternity, adoption, guardianship, juvenile law violation and status offense cases, child protective act cases, domestic abuse, dependent adult abuse, interstate custody and support, custody, involuntary hospitalization, and other miscellaneous cases (one of these positions deals primarily with the arraignments, motions and related proceedings for the two circuit judges noted above). In contrast, our least populated circuit, the Family Court of the Fifth Circuit (Kauai), consists of two circuit-level judges (both hear all civil, criminal and family circuit level cases and one of them is designated the Senior Family Court Judge) and two district-level judges, one of whom is designated as the district family judge.

This bill creates a domestic violence court, within the family courts statewide, with one judge so designated in each circuit. This judge will hear domestic abuse criminal and civil cases. In addition, this judge will preside over felony or misdemeanor offenses committed against a child by his or her parent, guardian, or legal or physical custodian, and misdemeanor offenses committed against the person of a defendant's husband or wife. Thus, all judges in this court must be circuit-level judges. District-level judges would not be able to preside over felony level offenses and jury trials.

On Oahu, there are already three dedicated courtrooms described above. Furthermore, there is a specialized adult probation unit for domestic abuse criminal cases (comprised of 2 supervisors and 11 probation officers). Many of the functions of the "resource coordinator" mentioned in this bill are currently handled by these probation officers. Also, many of the functions of the "on-site victim advocate" are handled by private advocates, contracted by the Judiciary, who provide similar services. The Family Court judges already currently have the ability to order offenders to a range of comprehensive services and the probation officers monitor the defendant's compliance with these services.

Two district family courtrooms hear HRS Chapter 586 (civil domestic abuse protective orders) cases four mornings a week and one courtroom covers Fridays (with an additional calendar added if there is a holiday during the week). One of these two judges is "on duty" to review the daily ex parte applications for temporary restraining orders. However, if needed, all nine family district judges at the Kapolei courthouse are available to deal with these TRO applications, depending on who might have a few free moments from their calendars.

Additionally, circuit judges in the criminal division are designated "Family Court judges" to preside over felonies committed by the parent, guardian, or custodian against a child.

This bill gives "exclusive and original jurisdiction" over some family-related cases but specifically deletes these cases from the overall Family Court jurisdiction. This is inconsistent with the vision of unified family courts, which recognizes that families have a myriad of

problems that must be dealt with in a coordinated manner. The requirement of an on-site victim advocate may be perceived as a lessening of the court's neutrality.

As illustrated by the above explanation of the system on Oahu, court management is a much more complicated process than designating judges exclusively to a specialized court.

The Legislature must be willing and able to commit ***significant*** resources to this bill. Appropriations would have to cover, among other things:

1. Creating more circuit-level judgeships and/or designating existing district-level judges to the circuit-level. Circuit-level work requires more staffing because of the cases and laws involved, and because jury trials must be accommodated. If existing district-level judges are re-designated without the creation of more district positions, the court will then have to rely on increased utilization of per diem judges.

2. Intensive supervision requires more staffing and the creation of more services. While some existing resources and staff can be reallocated, the level of supervision and monitoring required by this bill is beyond the capabilities of the existing staff as well as community services.

3. While a "resource coordinator" mirrors the present work of adult probation officers, the "on-site victim advocate" is a new creation and has no present counterpart in the Judiciary. Merely appropriating funds for eight new social worker positions is not enough. Also, funding will be needed to provide the infrastructure for this new unit.

4. Monitoring all HRS Chapter 586 offenders and their compliance with these orders will require additional court staff. Furthermore, monitoring will not be effective without enforcement and "stepped –up" enforcement will mean that additional resources must be allocated to the Public Defender's office and each circuits' police departments and prosecutor offices.

5. This intense level of monitoring of both criminal and civil domestic abuse cases will also require additional programs in the community for both offenders and victims.

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

LATE
Testimony

February 09, 2011

Strong Support for **HB772 HD1**

Dear Representatives,

Thank you for your sincere commitment to the protection of Survivors of Domestic and Family Violence (DV). AngelGroup fully supports the formation of a DV Court.

Presently in Family Court, there are disturbing patterns related to cases involving DV and a few examples are as follows:

- Attorneys forcing Survivors to "stipulate" to "no abuse"
- Para-professionals who lack education and expertise to: (a) recognize DV relationship dynamics and (b) respond appropriately to these dynamics
- Lack of application of DV statutes by Family Court judges
- Lack of application of "best interest of the child" criteria – sole physical and legal custody is given to abusive parents and protective parents are denied all contact with children
- Unwillingness of a judge or para-professional to correct their position and decisions when DV is proven to be an active ingredient in the relationships and case.
- Judges and para-professionals holding "protective" behaviors (moving household, installing video cameras in house, calling police for violations of TROs, etc) against DV survivors.
- Lack of inclusion of convictions in criminal court (TRO violations, stalking, assault, etc.) in Family Court considerations.
- Dissolution of TROs in Family Court if prosecution of TRO violations have not fallen within the same timeline as Family Court.
- Disallowance of evidence gathering (photo-taking, video/audio recording, witness affidavits, etc.) by Survivor (of abuser). In Family Court it is called "harassment" of Abuser.
- Misnomer that abuse stops once the "victim" leaves the "abuser".
- Lack of clear understanding that "Domestic Violence" and "Family Violence" have distinct definitional differences.
- Lack of clear understanding that DV is not limited to physical violence and that "control" is utilized by abusers to re-abuse via the court system
- Lack of clear understanding that family members of abusers participate in the abuse either by denial or direct action
- Mislabeling a "protective parent" as the "aggressor".

Having professionals (whether appointed, or hired) that are trained in the dynamics of an abusive relationship - and having those professionals view and assess the facts in the case – would (in part):

- Reduce the time it takes to resolve the issues in a case; thereby, expediting court dockets and clearing backlog for an overburdened judiciary

- Increase "safety" for survivors of abuse, and their children
- Reduce survivors that are forced to state aid (Med-Quest and Foodstamps) because litigation to protect themselves, their children and their assets took them beyond their "ability to afford".
- Reduce the financial burden on the state because it would eliminate: (a) unnecessary involvement of CWS; (b) unnecessary involvement of police; (c) unnecessary extended need for custody evaluators, Guardian ad Litems, psychological evaluations; (d) intake into DV shelters because of stalking, etc.
- Lessen the chances that an abuser can re-abuse via litigation
- Lessen the chances that DV statutes can misapplied, or not applied at all.
- Increase the confidence and frequency of DV "victims" leaving an abusive situation because they won't fear: (a) re-abuse by abuser, (b) lack of understanding by Judiciary, or (c) loss of their children to abuser or State
- Reduce chances that issues will be ongoing for years after case is resolved
- Reduce escalation into lengthy contested litigation
- Increase chances that children will be raised in a more healthy environment after being removed from the abuse; thereby, allowing them to grow up to be productive members of society.
- Decreasing generational abuse by not allowing children to be in unsupervised contact with abusive parent
- Present more opportunities for treatment and rehabilitation of abusers by accurately assessing the situation - in essence, forcing the abuser to face and acknowledge the problem so treatment can be administered.

There are a few things that remain unclear:

- What are the standards of evidence in determining whether a case is remanded to DV Court?
- Will judges in Family Court receive training and education in DV in order to properly assess whether a case is remanded to DV Court?
- What level of training and education will the "professionals" (judges, GALs, CEs, etc.) in DV Court be required to have in order to acquire and retain their position(s)?
- Will acts of DV be treated appropriately as a "crime" in DV Court instead of a "family matter" as they are now treated in Family Court?
- In cases initiated prior to enactment of this law; wherein, DV was involved – Will those cases be remanded to DV court or will Family Court retain jurisdiction?
- In cases initiated prior to enactment of this law; wherein, DV was acknowledged by a "professional" in the case (psychologist, custody evaluator, etc.) but NOT acknowledge by the judge, will these cases be considered for DV court?
- In cases remanded to DV court that were initiated prior to enactment of this bill, <u>who</u> will make the determination of DV? The sitting judge? An assessment committee?

Thank you in advance for your continued efforts to protect the vulnerable of Hawaii, and set a precedent for other states.

Sincere appreciation,
AngelGroup

(HB772 HD1)

LATE
Testimony

TO: Representative Mizuno, Chair
Representative Jordan, Vice Chair
Members of the Committee on Human Services

FROM: Paige E. Calahan "DV Survivor"
PO Box 1380
Puunene, Maui, Hawaii 96784

DATE: 02/9/11

RE: Strong Support for HB772 w/recommended amendments and questions.

Good Morning Representatives and thank you for taking the time to hear such an important bill and for allowing me the opportunity to provide testimony on this measure and make suggestions.

I have gone through years of family court abuse by my ex and Judge Tanaka. This judge refused to acknowledge abuse (despite evidence). This was abuse in and of itself and it went on for years. The para-professionals in my case either had NO CLUE, or were beyond biased. Even in reading the psychological evaluations in my case, both the evals of my son and I report DV. My ex's may as well but I was forbidden to see it (although he could see mine). History of abuse was not allowed in the courtroom, despite statute demanding that it be considered.

ALL of this resulted in substantial harm to BOTH my son and me. Non-compliance to statute allowed my ex to compound, falsify and further abuse me. I have **NO CONTACT** with my son. All I did was refuse to be abused another day longer, and try to give my son this same protection and freedom. My son is now forced to live with his abusers (ex + family members) in another state, deprived of the one person (his Mom) who showed him appropriate love and care. Had I been offered the opportunity to attend a DV court (where DV would have been recognized) my son would now be safe, would have been less traumatized throughout the court proceedings, would cry less often right now from the losses he suffered and continues to suffer. In so many ways this terminated his childhood. It heavily impacts (very negatively) his adolescence and adulthood. His future would have been brighter if he had been protected from our abuser.

The Judge had no training in DV. The Guardian ad Litem had no training in DV. My son's therapist has no training in DV. If any of them did have training, it was not evident in any of their behaviors.

Violent and NON-violent cases cannot be treated in a one-size-fits-all manner. Where there is a history of abuse (as in my case) there is potential for more/ongoing violence and potential lethality. This has occurred. My Ex lost custody of 2 other children in his first marriage from sexual abuse allegations from the children and their therapists. He was professionally evaluated to be suffering from Narcissistic and Histrionic disorders. Healthcare practitioners were cautioned to approach "with great care". Judge Tanaka sealed the psych evals of my ex but mine were not safeguarded. My son alleged the same behaviors as the other children. This proved that his father's rehabilitation is POOR and that his recidivism rate is HIGH. There's a HUGE overlap between domestic violence, child abuse and animal abuse. All three were present in my case but the Judge refused to consider the evidence.

Domestic violence does have the very real issues of LETHALITY and ONGOING ABUSE. My ex threatened my life multiple times to the point where my son accepted abuse so I would not remain the target. All the things my son and I loved were threatened, killed or removed. I ran from the escalating abuse and this was held against me. Even in my son's relocation, his pets were again abandoned and he was not allowed to say goodbye to me.

In my concern that the Bill be as inclusive as possible I have a few concerns I would like to address before its passage.

1. Who makes the determination that a case needs to be transferred to DV court? Judge Tanaka ignored DV in my case so no DV determination was made.
2. Does a history of prior DV constitute automatic DV in Hawaii and does it need to be prosecuted to be real?
   My Ex has a long history of DV, Substance abuse, child abuse and violence but his attorney father prevented prosecution.
3. If DV history occurred in another state does that constitute DV history in Hawaii?
4. If DV is alleged in the middle of family court proceedings is the case transferred to DV court?
   My Son and myself have DV identified in our psyc evals (in addition to the black eye, bruising and cigarette burns) but Tanaka found no DV)
5. Since the family court retains jurisdiction over the child and support, if the case is transferred to DV court does jurisdiction transfer accordingly?
6. What is the standard of evidence used in order to determine whether a case transfers to DV court?
7. If a case is transferred to DV court and DV is found, will DV be treated as crime and automatically prosecuted?
8. Will criminal court enter DV court or will those charges be transferred to criminal court for prosecution and DV held to be occurring in DV court?
9. If DV is NOT prosecuted in criminal court or a guilty verdict is not found does that wipe out DV status for the victim in the rest of the case in the DV court?
10. Will DV determination extend to that parents side of family so kids can't be supervised by DV supportive Grandparents?
11. Will a finding of DV be made public? The embarrassment factor heavily affects perpetrators of DV that really care how others see them.
12. If DV is found and monitoring occurs can we amend to "if incarcerated monitoring to occur for one additional year after release?"
13. If DV is found can the court NOT be allowed to transfer jurisdiction unless it is transferred to the criminal court for prosecution.
14. Domestic abuse is different from family abuse. I would like the bill to be amended to include family abuse. Domestic abuse can include a neighbor, friend, relative that may be abusing in a "family" capacity but not be a parent or husband or wife.
15. In cases where the issue of DV has been raised prior to July 2011 whether or not the family court judge acknowledged DV, are those cases remanded to the DV court or do they continue with family court.

Respectfully,
Paige Calahan

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From: Edwina L. Reyes [edwina.reyes@catholiccharitieshawaii.org]
Sent: Wednesday, February 09, 2011 3:38 PM
To: HUStestimony
Subject: Strong Support for HB772

LATE
Testimony

TO: Representative Mizuno, Chair
Representative Jordan, Vice Chair
Members of the Committee on Human Services

FROM: Edwina Reyes
Program Director/Catholic Charities Hawaii
1822 Keeaumoku Street
Honolulu, HI 96822

DATE: 02/9/11

RE: Strong Support for HB772

Edwina Reyes, MFT, CSAC
CATHOLIC CHARITIES HAWAI'I
Clarence T.C. Ching Campus
HI-IMPACT
Program Director II
1822 Keeaumoku Street
Honolulu, HI 96822
(808) 527-4981
(808) 527-4989 Fax
edwina.reyes@catholiccharitieshawaii.org
www.CatholicCharitiesHawaii.org

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LATE Testimony

(HB725)

TO: Representative Mizuno, Chair
Representative Jordan, Vice Chair
Members of the Committee on Human Services

FROM: Paige E. Calahan "DV Survivor"
POB 1380
Puunene, HI 96784

DATE: 02/9/11

Partial Support for HB772 with **STRONG** CONCERNS

Good Morning Representatives,

Thank you for taking the time to consider a bill that should further protect children by giving them access to both parents. I do have some important concerns though that I would like to share.

In order to decide whether we should replace "visitation time" with "parenting time", across the board, we need to look at the definition of these things and the potential ramifications of the change.

Parenting is: a person acting as a guardian; acting as a parent.
Parenting is much more than being a biological contributor to the creation of a child. It is providing protection, love and care. It is making sure your child is educated, encouraged, introduced to the world from a secure and safe place so he/she can grow up to be a confident, loving human being.

If a child is exposed to Domestic Violence, they already are at a disadvantage. If they are forced to continue a relationship with their abuser, or the abuser of their "parent" (in an unsupervised setting), this creates fear, anger and insecurities that shadow the child into and through adulthood. <u>This does not have to happen</u>. We have existing laws that are supposed to prevent this.

If this bill is allowed to become law without any consideration of how it will cripple the DV statute, many children and protective parents will be harmed.

In the past year there have been many news headlines that were the result of children being forced to "parenting time" with an abusive parent. Children died. Protective parents died. Other family members died.

DV is a crime. Abusers are criminals. These criminals have a pattern of behavior that is dangerous for a child. This cannot be ignored. Abusive parents don't parent, they HARM. They require supervision. They need to "visit" children in a safe environment. They have forfeited their equal access rights by being a dangerous influence on a vulnerable and influential child, or the other parent of that child.

In cases where DV is not an issue, parenting time is good for the child. Anything affecting DV statute - 571-46(9-14) - should remain UNCHANGED. This Bill should only be considered in combination with HB772.

THE BIGGEST problem with domestic violence is that survivors and children **ARE NOT SAFE** and "parenting time" is a forced measure that has increased lethality and heightened risk for the survivor and the Child! Visitation with the abuser, when appropriate, should be supervised if it meets the best interests criteria **and if this is something the Child wants.**

I am a survivor of Domestic Violence. In my divorce custody case (under Judge Keith E. Tanaka), my son wanted to only see his father with supervision. He wanted to live with me and see his father "sometimes". He was being abused and neglected. He was allowed no friends or activities. He ran away from his abuser, and he became protective of me – physically shaking when my abuser got too close, begging me to stay away from the abuser, going to visitation so his father wouldn't be angry with me, etc. He peed himself when he was delivered to visitation. He would defecate in his pants and cry when he was forced to his abusive "parent". I told the court and the GAL but they didn't listen. My son came home with bruises, disturbing behaviors and statements. I reported these but I was then accused of "coaching" my son. My son was not allowed to testify (even though it's allowed under law), he was not allowed an attorney (though allowed under law), his GAL didn't talk to him (though mandated under law) and his "individual therapy" (court ordered) was attended only with the abuser in the room (a severe conflict of interest and violation of court order).

DV statutes were ignored in my case. Abuse and neglect were ignored in my case. "Best interest" criteria was ignored in my case. My son now lives with our abuser. I have NO CONTACT with him at all. I don't understand how laws can be in place and judges can just ignore them like they don't exist. These same judges would no doubt give "parenting time" to an abusive parent if the option existed. This is not healthy for a child of any age. **Please do NOT change the DV statutes to read "parenting time".** It didn't save my son but perhaps it can save another child.

Allowing additional rights for abusers and making the playing field level is **not** a reasonable risk for survivors and children who bear heightened lethality risks and the stripping of their DV status in custody and visitation proceedings. "Parents" cannot be created in a courtroom. Parenting skills are not likely to develop just because they've been given "equal status". Giving this equality without accountability and/or merit, strips the survivor and her children of much needed protections. My abuser didn't stop when I left him. He just found different ways to hurt and control me. He has eliminated all contact between my son and I...that is abuse. I escaped. My son wasn't as fortunate.

We need to make sure the existing DV statutes are **enforced**. If we accomplish that, THEN let's talk about modifying them. My position won't change but I hope you understand the importance in my testimony. **We don't need to endanger children to make things equal for criminals**. There are many good parents out who deserve the right to protect and parent their children without fear. This isn't something that should be legislated away.

I would LOVE to have "parenting time" with my son. I support enforcement of THIS.

Domestic violence **perpetrators are bad parents** and **bad role models.** The difference between a visiting violent person who is supervised and a "parent" is night and day. DV experts can tell you that a perpetrator's rehabilitation rate is POOR, their recidivism rate is HIGH and there's a HUGE overlap between domestic violence and child abuse.

Narcissism and lack of empathy is a dominant trait in abusers! In cases involving DV you'll see the perpetrator constantly asking for THEIR RIGHTS or "equal rights" (which coincides nicely with judicial ethics that seeks a "level 'playing field"). You'll keep hearing the survivor raising SAFETY CONCERNS and asking for ASSURANCES OF SAFETY for her children and herself.

DV cases MUST be kept separate from the other non-lethal cases; equality and fairness may work beautifully in all other cases so keep "parenting time" verbiage restricted to those cases and statutes that have NO domestic violence history to them, leave "visitation" in-place as-is. There is NO REASON WHATSOEVER to touch the DV statutes and those statutes are in-place to protect the victims and children who've been "lucky enough" to escape the initial abusive situation.

Supporting such a change to the DV statutes would loosen the protections for survivors and their children. Supporting perpetrators of abuse in their ongoing self-centered, post-separation behaviors is nothing short of DANGEROUS. Please do not allow "visitation" to be switched for "parenting time" in DV statutes 571-46(9-14).

Respectfully,

Paige Calahan
DV survivor and Mother of an abused Child