

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 2:42 AM
To: JDLTestimony
Cc: ddunn@honolulu.gov
Subject: Testimony for SB1054 on 2/7/2011 10:00:00 AM
Attachments: Testimony SB 1054 020711 Prosecuting Attorney.doc

Testimony for JDL 2/7/2011 10:00:00 AM SB1054

Conference room: 016
Testifier position: support
Testifier will be present: Yes
Submitted by: Dennis Dunn
Organization: Department of the Prosecuting Attorney
Address: 1060 Richards Street, 9th Floor Honolulu, HI
Phone: 768-7485
E-mail: ddunn@honolulu.gov
Submitted on: 2/7/2011

Comments:

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THE HONORABLE CLAYTON HEE, CHAIR
THE HORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR

SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

February 7, 2011

RE: S.B. 1054; RELATING TO TEMPORARY RESTRAINING ORDERS

Good morning, Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following testimony in support of S.B. 1054, with amendments, which proposes to amend H.R.S. Chapter 586, to permit the use of electronic means in applying for a temporary restraining order.

While we readily recognize the need for greater flexibility in the process for applying to a Family Court for a restraining order, the provisions contained in S.B. 1054 are unnecessarily complex, narrowly defined, and probably generally unnecessary. The inconvenience of having to access the limited number of court locations and hours that currently provide access to the temporary restraining order process often means that the most commonly utilized legal tool for protection from domestic abuse is often delayed from helping as quickly as it could. Added to this are concerns in many areas of the Neighbor Islands and parts of rural Oahu that the geographic distances from court locations contribute significantly to the lack of access for many of our rural low income communities. To address some of these obstacles the Hawaii Supreme Court authorized a pilot project for the filing of restraining orders via fax in the Second Circuit (Maui County) in July of 2007. The Judiciary has also successfully developed and implemented an electronic filing system for appellate cases. We see no reason why the Judiciary cannot extend

existing processes to implement procedures via its rule making authority that can appropriately utilize technology to increase access and improve the expediency of the TRO process.

The provisions of S.B. seem far too complicated to achieve their intended purpose. Furthermore their emphasis on getting police agencies involved in civil legal procedures for which they lack the appropriate training and expertise would seem to be a recipe for disaster. We seriously doubt that our County Police Departments wish to launch into the legal services arena, given the many difficult demands currently faced by law enforcement. Those factors alone suggest that the best approach is to limit the proposed amendments to Chapter 586 to only those absolutely necessary to permit the Supreme Court to establish the rules required to permit electronic applications for temporary restraining orders within the existing parameters of the Judiciary's electronic filing procedures. Presumably the Judiciary can appropriately determine which agencies can provide the adequate safeguards to undertake the process of assisting petitioners seeking these orders.

For the reasons cited above, we urge that you support S.B. 1054, with amendments. Thank you for your time and consideration.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 06, 2011 8:58 PM
To: JDLEvidence
Cc: shartley@hmfamilylaw.com
Subject: Testimony for SB1054 on 2/7/2011 10:00:00 AM
Attachments: SB 1054 testimony.docx

Testimony for JDL 2/7/2011 10:00:00 AM SB1054

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: Steven L. Hartley
Organization: Family Law Section, Hawaii State Bar Association
Address: 40 Aulike Street Kailua, Hawaii 96734
Phone: 808 263-6900
E-mail: shartley@hmfamilylaw.com
Submitted on: 2/6/2011

Comments:



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TESTIMONY OF THE FAMILY LAW SECTION, HAWAII STATE BAR ASSOCIATION, AGAINST SENATE BILL NO. 1054, RELATING TO TEMPORARY RESTRAINING ORDERS

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Conference Room 016, State Capitol
February 7, 2011, 10:00 a.m.

Good morning Senators:

My name is Steven L. Hartley and I am the Vice Chair/Chair Elect of the Family Law Section of the Hawaii State Bar Association. I submit this written testimony on behalf of the Family Law Section.

The Family Law Section is comprised of over one hundred attorneys who practice law in the Family Court. The majority of us handle all types of family law matters, including divorce, paternity, domestic violence and guardianship cases. As a Section, our testimony represents the views of our members.

In this regard, we strongly oppose SB 1054 for the following reasons:

1. The proposed bill is not necessary at this time and will likely serve to further delay and clog the Family Court's already overwhelmed system, making it more difficult for legitimate victims of domestic violence to obtain the protection they need.
2. Unfortunately, even with the past amendments to the custody laws to account for the filing of unfounded Petitions for Restraining Orders, this practice has continued. The proposed bill will make it easier for divorcing parties to obtain unfounded Temporary Restraining Orders in an effort to gain an advantage in the custody issues in their divorces.
3. The proposed bill is unworkable, as it will require a level of cooperation and assistance from law enforcement that is likely far beyond law enforcement's current ability and budget.

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Conference Room 016, State Capitol
February 7, 2011, 10:00 a.m.
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4. The proposed bill will require the court to contemporaneously record the testimony or complaint by means of an audio-recording device or stenographic machine if available, otherwise, adequate long hand notes summarizing the applicant's statements shall be made by the court. This will most certainly cost the Family Court time and money that it simply doesn't have now, especially with the current furloughs in place.

Thank you for allowing us to present our testimony.

LATE TESTIMONY

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Sunday, February 06, 2011 4:55 PM
To: JDLEvidence
Subject: SUPPORT for SB1054 to be heard MONDAY, 02/07/11, at 10:00am in Room 016

Importance: High

TO: Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Members of the Judiciary & Labor Committee

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place
Kailua, HI 96734

DATE: 02/07/11

RE: Strong Support for SB1054, Relating to TROs

Good Morning Senators and thank you for this opportunity to provide testimony.

On behalf of domestic violence survivors - particularly those from remote places on the outer islands - I would like to voice our strong support of this proposal.

When domestic violence victims have to apply for a TRO, it's a VERY UNCOMFORTABLE and frightening process; they are fully aware that obtaining a TRO is going to REALLY upset their abuser so making the commitment and following through on a decision to get a TRO is often fraught with a lot of "false starts" as the victim weighs the pros and cons of doing so. The more steps and inconveniences presented become more reasons to "just forget it". Submission of oral sworn testimony or complaint to a judge by electronic means will make the process easier AND more cost-efficient for all involved.

Thank you again for this opportunity to provide testimony on this matter.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 12:17 AM
To: JDLTestimony
Cc: edkflores@yahoo.com
Subject: Testimony for SB1054 on 2/7/2011 10:00:00 AM
Attachments: TestimonySB1054 (1).doc

Testimony for JDL 2/7/2011 10:00:00 AM SB1054

Conference room: 016
Testifier position: support
Testifier will be present: Yes
Submitted by: Ed Flores
Organization: Hawaii Family Law Clinic dba Ala Kuola
Address: 550 Halekauwila Street, 210 Honolulu, Hawaii 96813
Phone: 545-1880
E-mail: edkflores@yahoo.com
Submitted on: 2/7/2011

Comments:

Hawaii Family Law Clinic, dba



TESTIMONY ON SB 1054 REALTING TO TEMPORARY RESTRAINING ORDERS SENATE COMMITTEE JUDICIARY AND LABOR

February 7, 2011

10:00 a.m.

Room 016

Aloha Chairman Hee, Vice Chair and members of the Committee.

Thank you for allowing me to submit testimony on Senate Bill 1054.

My name is Ed Flores. I am the Executive Director of the Hawaii Family Law Clinic dba Ala Kuola, hereinafter Ala Kuola.

Currently, throughout the State, the Family Court is the entity that can process a petition for a temporary restraining order for a victim of domestic abuse/violence, although private agencies or attorneys can assist with the pro se processing.

As our organization is the only non-judicial, court appointed, private organization on Oahu who assists victims with filings of TROs in the First Circuit, I would like to take this opportunity to briefly describe the procedures to obtain a TRO on Oahu.

TROs can be processed through the Adult Client Services Branch (ACSB) of the Family Court. For an individual to obtain a TRO through ACSB, one needs to call in advance to set an appointment and be at the appointment no later than 8:00 a.m., or the individual may need to reset an appointment. TRO's handled through ACSB are either processed at the First Circuit Court or at the Family Court in Kapolei. It is my understanding that the process takes approximately 2-3 hours. When a TRO is processed through ACSB in Honolulu, the completed petition is scanned and emailed to the Family Court in Kapolei for a Judge's review. After review, the petition is signed by the Judge if granted, then filed, and a hearing noticed is issued and is scanned and returned to Honolulu via email to be photocopied. It is then taken to the documents receiving clerk of the First Circuit Court to be certified. This process completes the filing of the document for distributions to the individual requesting the TRO.

It should be noted that currently, services to obtain a TRO through ACSB in Honolulu are not available on Tuesdays and Thursdays, and on furlough Fridays.

Ala Kuola, as the only private organization that processes TRO's for residents of Oahu, will see individuals throughout the business day, currently five days a week. Ala Kuola, however, is required to deliver any completed TRO petitions to ACSB at the First Circuit Court usually by 10:30 a.m. each day where the petition is scanned and emailed to Kapolei for a Judge's review. Once the document is processed similar to ACSB's procedure, and returned to Ala Kuola, it is photocopied and taken to the First Circuit Court for certification. On furlough Friday's, which occur twice per month, Ala Kuola either delivers the TRO petitions to a Judge in Kapolei or has a pre-arranged to meet with a Family Court Judge at a location at his/her discretion, to review the TRO whereby if deemed appropriate, the Judge will sign, stamp file, issue the hearing notice and certify the document.

The current process and timeline would be greatly streamlined and improved with the passage of SB1054. It will expedite processing of TROs for victims and will also provide greater access to justice for these victims. For these reasons we strongly support SB1054.