

SB 2142

Measure Title: RELATING TO DOMESTIC ABUSE.

Report Title: Child Abuse; Permanent Protective Order; Sexual Abuse

Description: Establishes that if a protective order is issued to prevent sexual offenses or child abuse or a recurrence of such acts between family or household members, the court shall issue a permanent protective order. Amends the definition of domestic abuse to include sexual offenses or child abuse committed by one family or household member against another family or household member.

Companion:

Package: None

Current Referral: HMS, JDL

Introducer(s): CHUN OAKLAND (BR)

LATE

NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
DIRECTOR

BARBARA A. YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

February 14, 2012

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 2142 - RELATING TO DOMESTIC ABUSE**

Hearing: Tuesday, February 14, 2012; 1:25 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of this bill is to establish the basis for a permanent protective order if a protective order is issued to prevent sexual offenses or child abuse.

DEPARTMENT'S POSITION: The Department of Human Services appreciates the intent of this bill to ensure the safety of persons impacted by domestic violence. We cannot, however, support the bill as written since it makes all offenses covered by chapter 707, Parts V and VI, Hawaii Revised Statutes, the basis for issuance of a permanent protective order, including misdemeanors and petty misdemeanors.

The Department's Child Welfare Services interventions are based on the need to ensure the safety of children within their family. Engaging family members in this process helps to mobilizing the strengths within the family to provide for their children. Critical to this process is the belief that a person can change behavior and can develop the know ledge, skills and ability to provide a safe family home for children. A permanent protective order could prevent the engagement and growth of family members necessary for this process, and could prevent any future contact, destroying family connections for the children.

Thank you for the opportunity to testify on this bill.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 6:56 PM
To: HMS Testimony
Cc: breaking-the-silence@hotmail.com
Subject: Testimony for SB2142 on 2/14/2012 1:25:00 PM

Categories: Red Category

Testimony for HMS 2/14/2012 1:25:00 PM SB2142

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Dara Carlin, M.A.
Organization: Individual
E-mail: breaking-the-silence@hotmail.com Submitted on: 2/13/2012

Comments:
Good Afternoon Senators ~

It is said that "A victim's first cry is for help; a victim's second cry is for justice"; and this measure is about ensuring justice for victims of domestic violence and child sexual abuse.

It's always been concerning to me that both the criminal justice and family court systems decide or decree for the victim when they're "supposed to be finished"; with the trauma of their abuse, when a victim-survivor's "allowed"; to report the abuse in time to get justice for it (with an almost "you snooze, you lose"; attitude) and how an abuser's civil rights take precedence and are given more support than a victim's right to justice for the crime/s that've been committed against him/her.

One of the more perplexing issues for me is when a court puts a time limit on orders for protection - how does the court know what the victim experiences or what his/her needs are? And given the history of abuse, how does the court know that the abuser will cease and desist in X amount of time? Until the victim states otherwise - NOT the abuser! - permanent protection orders should be issued to keep a survivor safe from all potential future incidences of abuse, intimidation and/or retaliation.

Permanent protection orders are especially needed for the crime of child sexual abuse, a term that is being used to cover both non-relative abuse and incest. Between non-relative abuse and incest, incest is particularly damaging due to the familial nature of the relationship between the abuser and victim (yet courts place a preference on maintaining and repairing such family relationships - something that no criminal court would EVER do or support in cases of stranger rape and assault). If the long-term damage of incest is so severe, why is it treated so lightly by the law?

From "Child sexual abuse"; on Wikipedia:

Incest between a child or adolescent and a related adult has been identified as the most widespread form of child sexual abuse with a huge capacity for damage to a child.[10] One researcher stated that more than 70% of abusers are immediate family members or someone very close to the family.[79] Another researcher stated that about 30% of all perpetrators of sexual abuse are related to their victim, 60% of the perpetrators are family acquaintances, like a neighbor, babysitter or friend and 10% of the perpetrators in child sexual abuse cases

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are strangers.[12] A child sexual abuse offense where the perpetrator is related to the child, either by blood or marriage, is a form of incest described as intrafamilial child sexual abuse.[80] The most-often reported form of incest is father-daughter and stepfather-daughter incest, with most of the remaining reports consisting of mother/stepmother-daughter/son incest.[81] Father-son incest is reported less often, however it is not known if the prevalence is less, because it is under-reported by a greater margin.[82][83] Similarly, some argue that sibling incest may be as common, or more common, than other types of incest: Goldman and Goldman[84] reported that 57% of incest involved siblings; Finkelhor reported that over 90% of nuclear family incest involved siblings;[85] while Cawson et al. show that sibling incest was reported twice as often as incest perpetrated by fathers/stepfathers.[86]

It should not be up to the abuser or the court to decide how long a protection order should last for since the victim had absolutely no say over the duration, severity and trauma of the abuse. A permanent protection order should be granted if the victim requests one and should only be dismissed when the victim says enough is enough.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 8:55 PM
To: HMS Testimony
Cc: breaking-the-silence@hotmail.com
Subject: Testimony for SB2142 on 2/14/2012 1:25:00 PM

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Testimony for HMS 2/14/2012 1:25:00 PM SB2142

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Adult Survivor of Child Sexual Abuse
Organization: Individual
E-mail: breaking-the-silence@hotmail.com Submitted on: 2/13/2012

Comments:

As a survivor of child sexual abuse who has struggled a lifetime with the consequences, I would like to make a few friendly amendments to SB2142 that would assist in preventing the reoccurrence of abuse as well as support victim-survivors in their struggle to heal from their trauma. If the following language could be added (in capitals):

Establishes that if a protective order is issued to prevent sexual offenses, child abuse, a recurrence of such acts between family or household members, OR FURTHER/ONGOING ACTS OF INTIMIDATION the court shall issue a permanent protective order. PROHIBITS A VICTIM'S ABUSER FROM MOVING INTO A RESIDENCE NEAR OR IN THE VICTIM'S VICINITY.

Learning that your abuser has "accidentally, inadvertently, coincidentally, haphazardly or unwittingly or on purpose" (as in my case) moved into the same building or into the neighborhood where you live poses very real problems for survivors who are trying to move on and forget about what happened to them. Telling the victim-survivor to "just move" is once again compromising the victim and catering to "the rights" of the abuser" and in an abuser-victim situation, the rights of the victim and the rights of the abuser are NOT the same because the victim's rights have already been violated in unspeakable ways! To then say "In all fairness" or that "he has rights too" rubs salt into the wound adding insult to injury. Victims should not have to spend the rest of their lives literally running away from the person who abused them!

In my particular circumstance, I thought I could handle my abuser's choice of residence location next door to me until it started to affect me: I became mad at everything, had nightmares, insomnia and was recommended to a psychologist. Though my abuser agreed to participate in therapy with me, after 9 exhausting months it became apparent that this wasn't a healthy situation for me to be in. After failing all options in therapy with my abuser, both w/ a private specialist and then with the Catholic Charities "sexual abuse center" (which felt like being abused all over again) I was left with no other relief but to pursue a TRO. To my shock and dismay, my applications (I applied twice) were denied because he was not physically abusing me "today" (now) and the judge did not see how his moving in next door to me rose to the "imminent harm" standard. Because the TROs were denied, my abuser has been able to happily live next door to me for the past 8 years while I have not had a day's peace since. While he has not physically re-victimized me, the stress, fear, anxiety and psychological harm has gone on unabated for 8 years. Of course I've been told to "just move" but think about this: he intruded upon me in the past, he's intruded upon me again yet "all's forgiven" and I need to "just get over it"?

I was told that what he did to me was criminal, wrong, illegal and prosecutable - but I was only a child then and didn't hear this message until well into my adulthood - for years I thought it was all my fault.

Please understand how this man has affected me mentally and physically with his presence in the past as a child: when you have been abused more than once as a child, you learn to anticipate the future acts (of sexual abuse) and become extremely anxious, hyper-vigilant and fearful as a result because you don't know when the next incident will happen but what you DO know is that it WILL happen so you plan your days and nights accordingly, even if the abuse didn't happen daily. Years later the doctors would tell me they believe that my learning was affected and compromised due to my preoccupying fears and behaviors that resulted. Trying to correct, get over and break such habits when the abuser is still around is impossible!

This is were the mental aspect of abuse CONTINUES and as any survivor of abuse will tell you, the mental/psychological aspects of abuse are much worse than any of the physical aspects, so when the judges shrug their shoulders because "imminent harm" is only being looked at in physical terms, they're minimizing and ignoring the most severe part of the abuse. The unconscious mechanisms that were built into me as a child in response to the trauma of the abuse are beyond my control mentally or psychologically speaking, and while the following are very private things that are extremely tough for me to share, I need you all to understand that the psychological residue from yesterday's abuse is not something easily erased and needs to be taken seriously for all victim-survivors of abuse.

I have been through 7 years of therapy, including my last 45 sessions of PTSD treatments due to my recurrence of symptoms that reappeared once my abuser moved in next door. I have nightmares and insomnia so its painful to sleep and painful not to sleep. The anxiety over my abuser being so close in proximity has kept me so on edge that my teeth have to be rebuilt due to severe teeth-grinding - a condition I previously overcame that re-emerged once my abuser moved in next door. They had tried all the sleep aids available (5 of them) which failed to work and the one that did work ended up being the dangerous and addictive anti-anxiety drug (that Michael Jackson and now Whitney Huston were taking at their deaths). After 3 years I was taken off of it and have struggled with sleep ever since.

Five doctors have treated me throughout the years to address my trauma-related symptoms (for OCD, therapy for intimacy issues affecting my marriage, anxiety, sleep disorders, other behaviors that I do during the night to protect myself) and the financial bill for these services is substantial. In addition the frustration and injustice I feel because of his unwelcomed incursion (one again) into my personal space has left me with no quality of life - I live in a world that feels unstable and confusing - and though I've been told I deserve justice and protection for what's been done to me, none is forthcoming. This should not have to happen to ANY other victim of abuse so please support SB2142 to address the serious and long-term consequences of abuse crimes.