

SB2505

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

February 3, 2012

S.B. No. 2505: RELATING TO TEMPORARY RESTRAINING ORDERS

Chair Hee and Members of the Committee:

We oppose the passage of S.B. No. 2505 which seeks to allow courts to issue temporary restraining orders [“TRO”s] without the physical presence of the applicant. We believe that this measure will allow persons to abuse the TRO process for their personal objectives.

The family court has already made the TRO process a simple one for an applicant. The application can be filled out and filed ex parte (without giving notice to the restrained person) to the family court. The judiciary has designed self-explanatory forms which a person can fill out without assistance of a lawyer. Once submitted to the court, a judge reviews the application and, in the vast majority of cases, grants the TRO. The process has been described by some detractors as a “rubber stamp” process because the applications are almost never denied.

While the process is simple, the issuance of TROs can have very serious, life-changing results for the person who is restrained. The subject of a TRO can lose his/her place of residence, be prohibited from having contact with his/her children and even be prevented from working (if the applicant works in the same building or near to the subject).

In the past, detractors of the TRO process have recounted situations where the process is abused. Parties to divorce proceedings have sought TROs simply to assert leverage in financial settlements or child custody disputes and not because there was any fear for a party’s personal safety. Spouses, during arguments, have threatened their partners with TROs so that they would be excluded from the family home and be prohibited from having contact with their children.

At the very least, the current system contains an inherent deterrent to unwarranted issuances of TROs. If an applicant must fill out a written application prior to the issuance of a TRO, thereby swearing to a judge that he/she fears for personal safety, that applicant is far less likely to fabricate facts and proceed with improper motives than would be the case if an applicant can simply phone in an application or have someone submit an application on behalf of him/her. We don’t feel that the provision which requires that the oral testimony be reduced to writing and filed with the court after the issuance of the TRO is a sufficient safeguard.

An additional concern presented by S.B. No. 2505 is that the relaxation of TRO application procedures will eventually lead to electronic filing of applications. We feel that this expansion of access to TROs will open the floodgates to false claims in the

family court. This is evidenced by the phenomena of internet blogging, website commentary, and social media. There is clear daily evidence that the internet and seeming anonymity provided by it leads to many false claims and reprehensible conduct. This situation will almost assuredly lead to a myriad of problems with wrongfully issued TROs if electronic filing comes to pass.

Thank for the opportunity to comment on this measure.

From: mailinglist@capitol.hawaii.gov
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Subject: Testimony for SB2505 on 2/3/2012 10:00:00 AM
Date: Thursday, February 02, 2012 8:38:39 AM

Testimony for JDL 2/3/2012 10:00:00 AM SB2505

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Betty Sestak
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Submitted on: 2/2/2012

Comments:
Not easily verified, too easy to use for fraudulent purposes.