



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Human Services

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Jr., Vice Chair

Thursday, February 10, 2011, 1:45 p.m.

State Capitol, Conference Room 016

by

Judge Sabrina S. McKenna

Deputy Chief Judge / Senior Family Court Judge

Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 288, Relating to Family Courts.

Purpose: Requires the Court to allow an alleged victim to be listed as "Jane Doe" or "John Doe" within court filings in certain cases of alleged domestic abuse. Also permits the court to seal court records.

Judiciary's Position:

The Judiciary respectfully requests that this bill further clarify the application of "Jane and John Doe" filings. This bill appears to be designed to protect victims' identities from public disclosure. We take no position on this policy issue. However, the public and the Judiciary will need more specific directions. For example, will the defendant or respondent be served with pleadings that do contain the victim's name, so that the defendant/respondent knows the identity of the complainant? Will the existing domestic abuse orders of protection remain public (the victim's name could otherwise be easily traced through the defendant's/respondent's name)? Would this new section apply to any and all pleadings and filings by the victim, such as divorce and paternity actions?

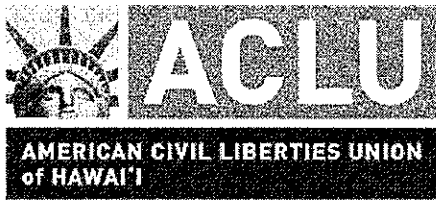
At this time, the Family Court will, from time to time, exercise its equitable powers to protect persons and children by "sealing" or making confidential selected files which would otherwise be open to the public. This step is not taken lightly and is generally predicated on the possibility of harm to a person or a child. However, the standard of "significant and compelling



Senate Bill No. 288, Relating to Family Courts
Senate Committee on Human Services
Thursday, 2/10/11
Page 2

circumstances" is very high. This section should be clarified to allow the court to exercise this authority with wider discretion.

Thank you for the opportunity to submit testimony on this matter.



Committee: Committee on Human Services
Hearing Date/Time: Thursday, February 10, 2011, 1:45 p.m.
Place: Conference Room 16
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 288, Relating to Family Courts

Dear Chair Chun Oakland, Vice Chair Ihara and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to S.B. 288, Relating to Family Courts, which requires the family court to allow an alleged victim to be identified as "Jane Doe" or "John Doe" within court filings in cases of alleged domestic abuse in certain circumstances and additionally permits the family courts to seal such records from the public in certain instances. The state family courts already have the necessary discretion to allow parties to proceed under pseudonym and to seal portions of records when appropriate. The proposed bill is not required to protect the victims of alleged abuse.

As a preliminary matter, it is well-settled that courts are presumptively open to the public. *See Gannet Pacific Corp. v. Richardson*, 29 Haw. 224, 233, 580 P.2d 49, 56 (1978). While the right to public access is not absolute, it may only be overcome by a showing of "strong countervailing reasons" that outweigh the public's interest in access. *In re Estate of Campbell*, 106 Haw. 453, 465, 106 P.3d 1096, 1108 (2005). The Hawaii Supreme Court has already held, outside of the family court context, that a party must "demonstrate that strong countervailing reasons weigh against the public's presumptive right of general access to judicial proceedings and records." *Id.* The determination of whether and to what extent access is permitted "is one best left to the sound discretion of the trial court, a discretion to be exercised in the light of the relevant facts and circumstances of the particular case." *Honolulu Advertiser, Inc. v. Takao*, 59 Haw. 237, 239, 580 P.2d 58, 61 (1978) (quoting *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 297 (1978)).

Although the Hawaii Supreme Court has never ruled on the applicability of the balancing test in family court proceedings (*see Campbell, supra*), our state family courts *already* have the authority to apply an appropriate balancing test to determine whether and when to seal portions of family court proceedings and records. Accordingly, the proposed bill is unnecessary. Moreover, it cannot be disputed that any bill that required "Doe" identification and sealing in alleged domestic violence cases would be facially unconstitutional. *Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 608 (1978) (striking as unconstitutional a

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Chair Chun Oakland, Vice Chair Ihara and Members Thereof
February 9, 2011
Page 2 of 2

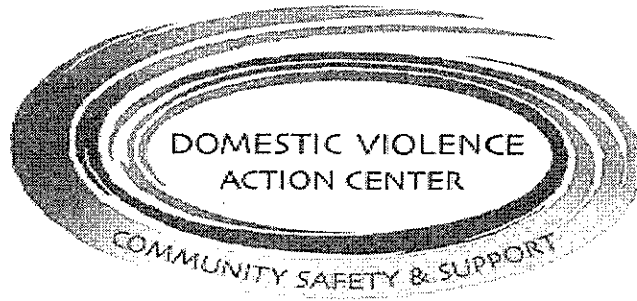
Massachusetts statute that required judges, at trials for specified sexual offenses involving victims under age of 18, to exclude press and general public from courtroom).

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,
Laurie Temple
Staff Attorney
ACLU of Hawaii

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February 09, 2011

FROM: Nanci Kreidman, M.A.
Domestic Violence Action Center

TO: Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair
Members of the Committee

Ref: SB 288 Support
Hearing Date: February 10, 2011, 1:45pm, Conf. Rm #016

Please accept this testimony in support of SB 288. Privacy and safety are key for victims of intimate partner violence. Seeking assistance from community agencies is a big step. Seeking remedy in court is very frightening. Exploitation and harassment of victims by their abusers is not uncommon and very often, immobilizes victims.

The passage of this Bill will provide an option to victims who fear exposure, embarrassment or danger. It is a very daunting notion to bring one's private life into the purview of public discourse and scrutiny.

Whenever we can pave the way for victims to find resolution, make a successful escape or allow her to regain her dignity, it is our view that should be done.

Thank you for giving SB 288 your full consideration.

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**TESTIMONY OF THE FAMILY LAW SECTION, HAWAII STATE
BAR ASSOCIATION, AGAINST SENATE BILL NO. 288,
RELATING TO TEMPORARY RESTRAINING ORDERS**

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Committee on Human Services
Senator Susan Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair
Conference Room 016, State Capitol
February 10, 2011, 1:45 p.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 288 for the following reasons:

1. Requiring the already over-burdened Family Court to make a determination whether or not the request for anonymity would be necessary to protect the privacy of the alleged victim will cause further delays and increase court costs.
2. If the Temporary Restraining Orders and Orders for Protection do not contain the Petitioner/Victim's identity, enforcement of the Orders will be impossible because law enforcement officers will not know if the Petitioner/Complainant is the Jane Doe listed in the Order.
3. Attorneys representing the alleged perpetrators would not be able to obtain the prior filings of the alleged victim to determine whether or not the alleged victim is a chronic filer. This will likely cause even more delays and cost even more time and money as falsely accused perpetrators will be forced to appeal Orders they believe violate their right to confront their accusers.

Scott K. Wong
3913 Kaimuki Ave
Hon, HI 96816
808-469-1789

Subject: SB 288; Relating to Family Court

To Whom It May Concern:

I am submitting this testimony in OPPOSITION of this Bill.

1. If a person is filing a Temporary Restraining Order (TRO) or is granted a Restraining Order (RO), having their name listed as Jane or John Doe is not going to afford them anymore or less protection then the existing or future order will give them.
2. What this bill does afford the person filing the TRO is the anonymity of having their name out there on public records (Online) along with the alleged abuser. This would also show to the general public how many TRO's an alleged victim filed under their name.
3. This would allow victims who abuse the system of TRO's to file multiple TRO's on multiple people in their lives and/or relationships without the public or Defense attorneys being able to find the persons names.
4. To hide the victims name from an abuser who is obviously in the same trial for abuse and already knows who is filing the TRO does not make sense for this bill to pass or to be enacted.

Scott Wong
Hawaii Fathers-4-Justice
State Coordinator

ChunOakland2 - Tyrell

From: Ann Freed [annfreed@hotmail.com]
Sent: Tuesday, February 01, 2011 12:52 AM
To: HMS Testimony
Subject: SB 288 In support

COMMITTEE ON HUMAN SERVICES
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair

Chair Chun Oakland
Vice Chair Ihara
Committee Memebers

SB 288 RELATING TO FAMILY COURTS.

Requires a court to allow an alleged victim to be listed as "jane doe" or "john doe" within court filings in cases of alleged domestic abuse...

IN SUPPORT

This measure is needed to protect victims of domestic violence from harassment, intimidation and/or discrimination in housing or employment.

I support the protection of domestic violence victims from these and many other harms that are the additional traumas associated with the crimes of the perpetrator.

Ann Freed
Mililani, HI

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