



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Judiciary**

The Hon. Karl Rhoads, Chair  
The Hon. Sharon E. Har, Vice Chair

Friday, February 8, 2013  
2:00 p.m.  
State Capitol, Conference Room 325  
by

Catherine H. Remigio  
District Family Judge  
Family Court of the First Circuit

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**Bill No. and Title:** House Bill No. 644, Relating to Temporary Restraining Orders

**Purpose:** Allows temporary restraining orders against harassment and domestic abuse to be issued upon submission of oral sworn testimony or complaint to a Judge, by electronic means.

**Judiciary's Position:**

The Judiciary respectfully opposes this bill for the following reasons:

1. The family court already has systems in place that does not require the physical presence of petitioners at the Kapolei Courthouse. Moreover, these systems do not require the extra steps of recording statements and generating a duplicate "original" of the court order. The present systems do require that the petitioner work through either the court's staff or a court contracted non-profit agency, insuring that (a) the petitioner's statement is accurately and adequately reduced to writing and (b) there is no direct contact between the petitioner and the judge so that all appearances of improper contact are avoided.

2. Hawaii Revised Statutes Section 604-10.5 confers on the District Courts the power to issue general temporary restraining orders. The parties involved in these types of restraining order cases are NOT family members, or parties that are or were intimately involved. Therefore,



House Bill No. 644, Relating to Temporary Restraining Orders  
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the provisions regarding the District Court mentioned in this bill are not appropriate for a bill designed to address domestic abuse.

3. In any case, a Judge cannot speak directly to a petitioner because that would violate the Code of Judicial Conduct that requires Judges to avoid all appearances of impropriety (that is, having ex parte contact with a party in a case).

If the Legislature chooses to pass this bill, we respectfully request that the effective date be amended to December 31, 2014. This may give the police departments enough time to set up their procedures, develop forms, and train their officers. This may also be enough time for the Supreme Court to develop and adopt rules of procedure.

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

**Testimony of the Office of the Public Defender, State of Hawaii,  
to the House Committee on Judiciary**

February 8, 2013

H.B. No. 644: RELATING TO TEMPORARY RESTRAINING ORDERS

Chair Rhoads and Members of the Committee:

We oppose the passage of H.B. No. 644 which seeks to allow courts to issue temporary restraining orders [“TRO”s] without the physical presence of the applicant via oral statements over the phone, radio or other electronic voice communication. 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 H.B. No. 644 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.

An alternative to H.B. No. 644 that should be considered is sworn testimony to a judge via video transmission in emergency circumstances. Given the state of technology, it would not be a very complicated process to establish a video hookup to the family and district courts from the police station for the giving of testimony by a complainant in the obtaining of a TRO. With regulations and provisions for recording the testimony, this could be a reasonable alternative to H.B. No. 644.

Thank for the opportunity to comment on this measure.

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**THE HONORABLE KARL RHOADS, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Seventh State Legislature**  
**Regular Session of 2013**  
**State of Hawai'i**

February 8, 2013

**RE: H.B. 644; RELATING TO TEMPORARY RESTRAINING ORDERS.**

Chair Rhoads, Vice-Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 644. 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 H.B. 644 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. Furthermore the provisions of H.B. 644 seem far too complicated to achieve their intended purpose. 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.

In addition to the above concerns about H.B. 644, we note that the Legislature passed and Governor signed into law Act 205 to specifically respond to the issues presumably underlying the purpose of this bill. This Act required that every time a police officer has reasonable grounds to believe that domestic abuse has occurred that they are mandated to issue a 24 hour Period of Safety Warning which requires the suspected abuser to leave the residence and not contact the victim. Although we clearly cannot verify that Police have followed this mandate in every single case, it is apparent from all current information the Honolulu Police Department is consistently complying with the law.

For the reasons cited above, we urge that you hold HB 644, as it appears unnecessary and may create an obstacle rather than a benefit to victims of abuse. Thank you for your time and consideration.

# hscadv



## HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: Chair Karl Rhoads  
Vice Chair Sharon Har  
Members of the House of Representatives Committee on Judiciary

From: Veronika Geronimo, Executive Director  
Hawaii State Coalition Against Domestic Violence

Hearing Date and Time: February 8, 2013, 2:00 p.m.

Place: Conference Room 325

RE: HB644 - OPPOSE

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The Hawai'i State Coalition Against Domestic Violence respectfully submits the following testimony in opposition to HB644. As a statewide coalition of domestic violence service providers, our mission is to engage communities and organizations to end domestic violence through education, advocacy, and action for social justice.

While we recognize the need to increase access to Temporary Restraining Orders for victims, the bill may have some dangerous unintended consequences. We are concerned that without the proper safeguards in place, an electronic submission has the potential to wrongfully issue TROs to abusers posing as victims. It is not uncommon for perpetrators to abuse the TRO process. Abusers have been known to file false claims not because of fear of personal safety, but to exclude the victim from the home or prohibit contact with their children, as a way of retaliating, or further exerting power and control over a victim. Electronic means of filing TROs weakens the ability of the courts to assess the veracity of the petitioner, and accurately assess violence levels and danger.

The bill also requires cooperation and assistance from law enforcement, making it essential for law enforcement to be well trained and equipped to assist the petitioner with the sworn testimony and to discern the veracity of the petitioner. Without this training, law enforcement could wrongfully issue TROs to abusers posing as victims, jeopardizing the safety of the true victim, while also failing to hold the person doing the harm, accountable.

Lastly, efforts are already in place to strengthen protections for domestic violence victims. Last year, SB223 SD1 was passed to address the gaps in the current system and help ensure the safety of domestic violence survivors. The current law (Hawaii Revised Statutes 709-906) has clear guidelines and protocols, and takes great care to ensure that victims are

protected, even when courts and judges may not be available, such as evenings, weekends and holidays.

We hope the Committee will consider these concerns with HB644 and not pass the measure. Thank you.

Sincerely,  
The Hawaii State Coalition Against Domestic Violence  
810 Richards Street, Suite 960  
Honolulu, HI 96813  
PH: (808) 832-9316





To: Chair Rhoads  
Vice Chair Har  
Members of the Committee on Judiciary

Fr: Nanci Kreidman, M.A.

RE: HB 644 Opposed

Aloha!. Thank you for the opportunity to raise issues of significance impacting safety of victims and effectiveness of system response.

The process for obtaining a restraining order and a protective order has been designed with the needs of victims in sharp focus. A key feature of the process is the ability to assist victims at the time of filing to assess their danger and craft their safety. Having crisis support available when making very important decisions and receiving information about the effective use of the justice system can be life saving. The assistance also conserves resources for the Judiciary.

It is no secret that abusers will pose as victims and use this process to further control or retaliate against the victim. The ability of courts to assess these kinds of factors is weakened through reliance on electronic means -- oral sworn testimony. Extensive training, currently not provided, would be essential for law enforcement or other persons assisting the petitioner with the sworn testimony-without that there is the potential to ineffectively discern the veracity of the petitioner.

Finally, we note that challenges for immigrant communities and victims without proficiency in English are greater. There are also victims who may be reluctant to seek assistance from law enforcement.

For these reasons we stand in opposition to the proposed legislation before you. Thank you.

# hscadv



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