

SB 577

Measure Title: RELATING TO DOMESTIC ABUSE.

Report Title: Child Abuse; Emergency Protective Order; Law Enforcement Officer

Description: Establishes that if a law enforcement officer asserts reasonable grounds that a person is in immediate and present danger of domestic abuse, a child is in immediate and present danger to abuse by a family or household member, a child is in immediate and present danger of being abducted by a parent or relative, or an elder or dependent elder is in immediate and present danger of abuse, the court shall issue an emergency protective order. Establishes procedures for an emergency protective order by a law enforcement officer.

Companion:

Package: None

Current Referral: HMS/PSM, JDL

Introducer(s): KIDANI, BAKER, CHUN OAKLAND, GREEN, TOKUDA, WAKAI



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Human Services

The Hon. Suzanne Chun Oakland, Chair

The Hon. Josh Green, Vice Chair

**Testimony to the Senate Committee on Public Safety,
Intergovernmental and Military Affairs**

The Hon. Will Espero, Chair

The Hon. Rosalyn Baker, Vice Chair

Thursday, February 7, 2013

1:00 p.m.

State Capitol, Conference Room 016

WRITTEN TESTIMONY ONLY

by

R. Mark Browning

Deputy Chief Judge, Senior Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 577, Relating to Domestic Abuse

Purpose: Provides procedures for a law enforcement officer to obtain an emergency protective order on behalf of a person, child, or a dependent adult who is in immediate and present danger of abuse.

Judiciary's Position:

The Judiciary takes **no position** on this bill. We raise a number of questions about the language of this bill for the Committee's consideration.

1. Page 1 to 2: This language implicates other major statutes. Section (1) deals with HRS Chapter 586 (Domestic Abuse Protective Orders) ; Section (2) with HRS Chapter 587A (Child Protective Act); section (3) with HRS Chapter 580 (Annulment, Divorce and Separation), HRS Chapter 584 (Uniform Parentage Act), and HRS Chapter 583A (Uniform Child-Custody



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Jurisdiction and Enforcement Act- UCCJEA); section (4) with HRS Chapter 346, Part X, Dependent Adult Protective Services.

2. If the legislative intent is to expand Chapter 586's reach to these other major statutes, then each of those statutes must be analyzed for possible amendments to comport with this bill. Please note that the UCCJEA is a national and possibly international uniform law and that, while each state has the authority to deviate from any uniform law, the consequences of changes in this area must be carefully scrutinized. The UCCJEA is frequently used in all states and it is important that cautious measures are taken to ensure the viability of Hawaii's orders in the rest of the nation.

3. Page 2, from line 12: The family court will need guidance about the procedure required to issue these emergency orders. For example, at line 13, "making the findings" usually happens after a hearing or, at the very least, after review of an affidavit or a sworn statement from a party in HRS Chapter 586. This language appears to mimic the requirements for probable cause findings in criminal cases. The legality or the constitutionality of such a procedure in civil cases may or may not be a concern. Even if this point were to be refined, the court would still refrain from taking a position since we will be the entity that rules on those issues.

4. Page 3, from line 7: Based on our experience with probable cause findings, the court is only required to make one finding (i.e., was there probable cause for the arrest) and that is generally possible from the detailed affidavits submitted by the police. In contrast, section (d) gives the court authority to make visitation, custody, and counseling orders. If the police affidavit does not include any statements regarding these requested orders, the court will not have any basis to apply them.

5. Page 4, line 1, section (3): Since every circuit has only one family courthouse except the Big Island of Hawaii, which has two, and Molokai and Lanai, which are part of the Second Circuit (Maui), listing the address of the court may be unnecessary. Perhaps it might be sufficient to list the circuit that the "endangered person or child" resides in.

6. Page 4, line 15, section (2)(i): The law enforcement officer will have to be responsible for reducing the petition and emergency order to writing and sign the petition. However, the judge will have to sign the order.

7. Page 5, line 5, section (3): Generally, orders are required to be filed before service. This section may be compared to ex parte emergency examination and hospitalization orders that are made and acted upon before filing. In those cases, the order primarily serves to authorize transport of the respondent to an emergency room and, if found necessary by the medical staff,



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kept at the hospital for up to two days. We simply point out that the current restraining orders are all filed before service.

8. Page 6, and following: It may be important to draft new language that deals with the extension of these “emergency protective orders” in order to leave the current statutes for the current orders intact.

Thank you for the opportunity to testify on this bill.

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: Chair Suzanne Chun Oakland
Vice-Chair Josh Green, M.D.
SENATE COMMITTEE ON HUMAN SERVICES

Chair Will Espero
Chair Rosalyn H. Baker
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND
MILITARY AFFAIRS

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

Hearing Date and Time: February 7, 2013, 1:00 pm

Place: Conference Room 016

RE: SB577 – **Comments only**

The Hawaii State Coalition Against Domestic Violence wishes to offer comments on SB577, which establishes that if a law enforcement officer asserts reasonable grounds that a person is in immediate and present danger of domestic abuse, a child is in immediate and present danger to abuse by a family or household member, a child is in immediate and present danger of being abducted by a parent or relative, or an elder or dependent elder is in immediate and present danger of abuse, the court shall issue an emergency protective order. This bill also establishes procedures for an emergency protective order by a law enforcement officer.

Protections already exist under Hawaii Revised Statutes 709-906 that gives the victim essential time to seek refuge and get to safety, or seek a protective order, if they choose. “General orders” can provide victims immediate protection by law enforcement, who shall order the person doing the harm to leave the premises for twenty-four hours, and prohibits them from initiating any contact. If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member.

Furthermore, it is essential that law enforcement be well trained and equipped in determining which party is the predominant aggressor in order for them to issue the ex parte emergency order to the true victim, and so that offenders are held accountable. Batterers may try to convince the police that the violence was mutual and that they are also a victim, thus law

enforcement could wrongfully issue an ex parte emergency protective order to abusers posing as victims.

We hope the Committee will consider these comments before moving forward with SB577. Thank you.

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TO: Chair Chun Oakland
Vice Chair Green
Members of the Committee on Human Services

Chair Espero
Vice Chair Baker
Members of the Committee on Public Safety and Intergovernmental and
Military Affairs

FR: Nanci Kreidman, M.A.

SB. 577

Good afternoon. We submit these **comments** for consideration by the Senate Committee on Human Services and the Committee on Public Safety and Intergovernmental and Military Affairs.

Orders for protection currently issued by the Family Court in each Circuit allow for many of the same things that are contained in this Bill, for example custody and visitation. It is not entirely clear what kinds of circumstances would arise that such an order by law enforcement would be necessary.

Restraining orders are sought by survivors when they are in danger and on behalf of their children when they are in danger. Dependent and elderly survivors, similarly, have access to the Courts. Law enforcement are authorized to issue citations requiring perpetrators to leave the premises and the period governed by the citation gives reasonable time for survivors to seek court protection.

Without additional training and sufficient law enforcement involvement in developing the protocols for such new authority, it may be burdensome for police departments across the State to issue emergency protection orders.

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Mahalo for the opportunity to share our perspective on SB 577.