

SB 916

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 that would constitute a felony between family or household members or if a licensed mental health professional submits an affidavit made under oath or under penalty of perjury to a court stating that the person suffers from instances of extreme psychological abuse, 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): KIM (Introduced by request of another party)



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

Tuesday, January 29, 2013, 1:30 p.m.

State Capitol, Conference Room 016

by

Catherine H. Remigio

District Family Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 916, Relating to Domestic Abuse

Purpose: Establishes that if a protective order is issued to prevent sexual offenses or child abuse or a recurrence of such acts that would constitute a felony between family or household members or if a licensed mental health professional submits an affidavit made under oath or under penalty of perjury to a court stating that the person suffers from instances of extreme psychological abuse, 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.

Judiciary's Position:

The Judiciary takes no position on this bill. However, we are concerned about the following points:

1. The bill does not appear to add any new remedy. This bill appears to be drafted in response to an appellate court ruling that H.R.S. Chapter 586 orders cannot be indefinite, that is, all such orders must have a determinate time period. However, the current procedures appear to work in the petitioners' interests—the petitioner requests a time period, which is generally granted. There are no established time frames that petitioners are bound to.



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2. This bill deprives petitioners of their ability to make decisions about their civil action and their lives (and, often, the lives of children).

3. There may well be unintended and unforeseen consequences because of the bill's specifics. For example, court hearings may shift away from focusing on the petitioner's safety to the defendant's actions and whether such actions can be deemed a felony offense.

4. While a felony level abuse mandates a permanent order, the bill gives the court authority to issue a permanent order based on an affidavit from a "licensed mental health professional" regarding extreme psychological abuse. Unless the defendant agrees to the court's reliance on an affidavit, the court will be unable to follow this provision because of due process problems. A remedy as severe as a permanent protective order would mandate that rules of evidence and procedural due process be honored and fairly applied. Therefore, absent a stipulation or agreement of the parties, the "licensed mental health professional" would be subject to the same rules as any other "expert," including, needing to be qualified as an expert, completing the affidavit and giving the defendant a reasonable amount of time to review the affidavit in order to plan for the hearing and to decide whether to bring his/her own expert, and be subject to cross-examination. Allowing such practice would benefit those parties with sufficient funds to hire such a professional. The majority of parties who cannot afford such a professional would be at a disadvantage in the proceedings.

As noted above, the Judiciary takes no position on this bill. However, we wanted to share our concerns about the need for this bill and some of the possible problems based on the amended language.

Thank you for the opportunity to testify on this bill.

From: mailinglist@capitol.hawaii.gov
To: [HMS Testimony](#)
Cc: ypeia01@yahoo.com
Subject: Submitted testimony for SB916 on Jan 29, 2013 13:30PM
Date: Friday, January 25, 2013 10:00:02 AM

SB916

Submitted on: 1/25/2013

Testimony for HMS on Jan 29, 2013 13:30PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
christine johnson	Individual	Support	No

Comments: Thank you so much for this Bill. It appears to protect children from serial incestuous sexual assaults and tells the predator they may not be near that child or family situation. permanently. It also appears to expand the definition of domestic violence to include incest .. i hope the penalty for predators who disobey the order will be strong.. perhaps instant imprisonment for life.. again thank you.. christine johnson

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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To: Chair of HMS
Suzanne Chun-Oakland

From: a survivor

IN REFERENCE TO BILL SB916

I Apologize for The anonymity of this testimony but I carry a common last name and I Don't want to insinuate anyone who is not involved that carries this name...

Healing is a long long process From childhood sexual abuse.....it will not start until you become aware that you need healing...this could be 10,20,30,40 or 50 years down the road when it can show its ugly headusually when you can no longer control the secret anymore (like holding that ball under water) and or more stress comes into your life.... Showing up as a out-of-control spirit.... And the only way to deal with it usually is with a mental health professional that is experienced and trained in dealing with this very subject....

This is where I believe this legislation would be so very very important/helpful for many Weather Survivors of childhood sexual Or physical abuse, Rape, Domestic violence, etc..... Many times You can't Acknowledged the problems if it staring you in the face.... When therapist are trying to change your mindset but your reality is telling you something else....

The TRO THAT IS IN PLACE NOW seem to only cover if someone is harming you now! It doesn't take into account the Psychological effect one might have just being around the person that has caused injury in the past....

I am a survivor Of childhood sexual abuse having struggled now for 10 years I'm have been diagnosed with PTSD....going to therapy and coming home to a different reality (from that that they taech)of that that my perpetrator arrogantly living next-door to me makes my healing process impossible... I continue to feel that intimidation I felt as a child ... That silent message that you still don't matter..... That no one will believe you and no one cares.....To give an another analogy would be trying to treat a veteran with PTSD while he's still out on the front lines.... This is what was causing the problem in the first place So I believe you need to step back away from the problem and work on your issues before ever considering putting yourself back in the situation So your new perspective becomes more anchored and Not as Vulnerable...

I believe so strongly that mental health professionals should have some kind of say in terms of what's best for their patients..... Just as we go to the doctor for cold and they give us a prescription that will help us get better.... It had been prescribed that I stay away from my brother though he has moved into my area where I can't even feel comfortable doing my own yardwork are going to the mailbox And sleeping at night brings me back to childhood days(And financially speaking it's impossible for me to move)....

So please give the mental health professionals the ability to use there experites and prescribe what's best for their patientsgiving them the ability to

prescribed a TRO (temporary or a permanent) which ever the professional feels necessary.....based on Psychological effects on the patient...

It's about how you are dealt with and your support system that will gage how you will do in your recovery

Thank you do much for your time in looking into this matter...