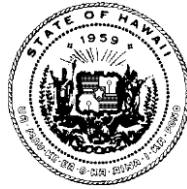


SB 2311

Measure Title:	RELATING TO DOMESTIC VIOLENCE.
Report Title:	Domestic Abuse; Department of Human Services; Family Court; Report
Description:	Removes certain unnecessary and redundant reporting responsibilities of the family courts and the department of human services in cases where temporary restraining orders are sought for alleged domestic abuse involving a family or household member who is a minor or incapacitated person.
Companion:	HB1906
Package:	None
Current Referral:	HMS, JDL
Introducer(s):	BAKER, GREEN, INOUYE, KIDANI, SHIMABUKURO, TOKUDA, Espero, Kim

DAVID Y. IGE
GOVERNOR



RACHAEL WONG, DrPH
DIRECTOR

PANKAJ BHANOT
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96808

February 9, 2016

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Rachael Wong, DrPH, Director

SUBJECT: SB 2311, Relating to Domestic Violence
Hearing: Thursday, February 11, 2016, 1:20 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this bill as section 586-10.5, Hawaii Revised Statute (HRS) is duplicative of section 350-1.1(a)(3) and (4), and (b) (HRS), which mandates reporting to Child Welfare Services (CWS) by persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably near future.

PURPOSE: The purpose of this bill is to remove certain unnecessary and redundant reporting responsibilities of the Family Courts and the Department of Human Services in cases where temporary restraining orders are sought for alleged domestic violence abuse involving a family or household member who is a minor or incapacitated person.

Child Welfare Services (CWS) works closely with the Family Court to ensure the safety, permanency (stability), and well-being of children. Under the current statute, the Family Courts report all temporary restraining orders to the CWS branch where there are minors in the home, regardless of the minors' exposure to the alleged domestic abuse. Many reports do not indicate any safety concerns for the children, consequently, this practice has created an unnecessary burden on the Courts and CWS as CWS staff must screen the referrals, investigate the cases, and submit written reports to the court in advance of the hearings.

Additionally, the automatic referral for investigation to CWS is a potential deterrent to survivors seeking safety through the restraining order process, as petitioners fear being referred for investigation and having their children removed from their care. To prevent survivors from reporting domestic partner abuse, batterers often threaten that survivors will lose custody of their children.

Section 350-1.1, HRS, identifies those persons in their professional or official capacity who are "mandated reporters" of child abuse and neglect. Section 350-1.1(a)(3) and (4), and (b), HRS, requires, amongst others, law enforcement, court staff, the department of public safety, parole and probation officers report all situations of suspected abuse and neglect to Child Welfare Services. An automatic referral in every case through the restraining order process is not necessary. The Judiciary should have the discretion to refer cases to CWS for investigation on a case by cases given the circumstances.

Thank you for the opportunity to testify.



February 10, 2016

To: Senator Suzanne Chun Oakland, Chair
Senator Gil Riviere, Vice Chair
Members of the Senate Committee on Human Services

From: Michelle Rocca, Training and Technical Assistance Director
Hawaii State Coalition Against Domestic Violence

Re: Testimony in Support, SB 2311, Relating to Domestic Violence

Thank you for this opportunity to testify in strong support of SB 2311 which would repeal Hawaii Revised Statute section 586-10.5. This section requires that the Child Welfare Services section of the Department of Human Services be notified when a petitioner with children files for a restraining order against an abusive partner.

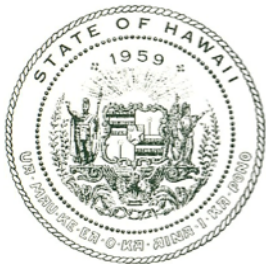
Victims and advocates from across the state have reported to HSCADV that this automatic referral is a barrier to seeking a restraining order. In many rural areas of the state, word of mouth has spread among each other that CPS will investigate them if they take this otherwise protective measure. In some cases, this has resulted in folks who would benefit from obtaining a restraining order refraining from engaging in the process out of fear that they may lose their children or be mandated to participate in a system that they do not feel would be beneficial to their current circumstances. Victims of abuse should not have to feel afraid that filing for a restraining order will automatically render their families to further scrutiny, or worse, that their children may be taken from them into state custody by virtue of their applying for a restraining order.

Our family courts already have the discretion to direct the Department of Human Services to become involved in the instance that the need for the service is warranted. Advocates who are working with domestic violence victims are mandated reporters and are required to report to CWS if they observe child abuse or neglect. The current practice of an automatic referral overburdens our DHS social workers and prevents them from focusing more of their time and attention on serious cases of abuse and neglect.

HSCADV supports the passage of SB 2311.

Thank you for this opportunity to testify on this matter.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
JUDY KERN
MARILYN LEE
AMY MONK
LISA ELLEN SMITH

Executive Director
Catherine Betts, JD

Email:
Catherine.a.betts@hawaii.gov
Visit us at:
humanservices.hawaii.gov
/hscsw/

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

February 11, 2016

To: Senator Suzanne Chun Oakland, Chair
Senator Gil Riviere, Vice Chair
Members of the Senate on Human Services

From: Cathy Betts
Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 2311, Relating to Domestic Violence

Thank you for this opportunity to testify in support of SB 2311, which would repeal Hawaii Revised Statute section 586-10.5. This section requires family courts to report to the Department of Human Services in each case where a restraining order is sought for abuse of family or household member and a minor or incapacitated person is involved.

Under this statute, family court is mandated to involve child welfare in every petition for a temporary restraining order or protective order that is filed with children involved. A victim's petition for a restraining order is often the first step to safety. It takes tremendous courage and often lengthy periods of time for a victim to come forward and apply for a restraining order. When a child welfare investigation is automatically triggered, it has a chilling effect on victims who come forward. Women who are victims of abuse should not have to feel afraid that filing for a restraining order will automatically render their families open to further scrutiny, or worse, that their children may be taken from them into state custody by virtue of their applying for a restraining order.

Our family courts already have the discretion to direct the Department of Human Services to become involved where there is reason to believe that child abuse or neglect has occurred. The Department of Human Services regularly investigates cases of threat of harm or actual harm if the allegations surface from a restraining order application. The current practice of an automatic referral overburdens the court system, often requiring victims to appear multiple times in court while the automatic investigation is pending. This puts victims at risk for further harm.

The Commission supports the passage of SB 2311.

Thank you for this opportunity to testify.



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Human Services

Senator Suzanne Chun Oakland, Chair

Senator Gil Riviere, Vice Chair

Thursday, February 11, 2016, 1:20 p.m.

State Capitol, Conference Room 016

By

R. Mark Browning

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2311, Relating to Domestic Violence

Purpose: Repeals HRS Section 586-10.5

Judiciary's Position:

The Judiciary opposes repealing HRS Section 586-10.5, in its entirety. We are not in opposition to the concerns of the Department of Human Services (“Department”) so, we respectfully request consideration of alternative language rather than a complete repeal of the section. We believe our language states more clearly that the family court will not refer *all* protective order petitions involving children and incapacitated adults to the Department and that its representatives will not be required to report to the court unless so ordered.

This is our suggested language which tracks the original HRS Section 586-10.5 as it was first enacted by the Legislature 28 years ago in 1987 (Act 315 of 1987, Section 7):

§586-10.5 Reports by the department of human services. In cases where there are allegations of domestic abuse involving a minor family or household member who is a minor or an incapacitated person as defined in sections 350-1.1(a) and 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, only as required under chapters 350 and 587A, and



section 346-224 and shall further notify the department of the granting of the temporary restraining order and of the hearing date. If ordered by the court, the department of human services shall provide the family court with an oral or written report of the investigation's progress or on the disposition of the referral on or before the hearing date or any subsequent hearing date. If the department chooses to provide a written report, the department need not be at the hearing unless ordered by the court. The court shall provide copies of all written reports to the parties.

The Ramseyer formatting for the amendments to the existing law would be:

§586-10.5 Reports by the department of human services~~[; court responsibilities]~~. In cases where there are allegations of domestic abuse involving a family or household member who is a minor or an incapacitated person as defined in sections 350-1.1(a) and 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, only as required under chapters 350 and 587A and section 346-224, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. If ordered by the court, t[The department of human services shall provide the family court with an oral or written report of the investigation's progress or on the disposition of the referral on or before the hearing date or any subsequent hearing date. The court shall file the report and mail it to the petitioner and respondent at least two working days before the hearing date, if possible. If circumstances prevent the mailing of the report as required in this section, the court shall provide copies of the report to the petitioner and respondent at the hearing. The report shall be noted in the order dismissing the petition or granting the restraining order. If the department chooses to provide a written report, the department need not be at the hearing unless ordered by the court. The court shall provide copies of all written reports to the parties.

The reasons for our position are:

(1) There are simply more petitioners than the Judiciary can assist on a timely basis. Fortunately for our community, Ala Kuola stepped up to the plate and works closely with the Family Court of the First Circuit to assist the petitioners. Essentially, HRS Section 586-10.5 includes “appropriate nonjudicial agency designated by the family court to assist the petitioner” as a “mandated reporter” under HRS Chapters 350 and 587A, and HRS Section 346-224.



Without this section, these very important mandates would not cover nonjudicial agencies and each of the mandated reporting statutes would have to be amended.

(2) Our suggested language addresses the Department's concerns by:

- a. limiting the abuse reports to only those required by the mandatory reporting statutes;
- b. requiring a progress report from the Department only when court ordered
- c. giving the Department the discretion to provide an oral or a written report in the event they are court ordered;
- d. not requiring attendance at the hearing unless court ordered; and,
- e. the court's assuming the responsibility of providing copies of the written report to the parties.

(3) The preamble of Senate Bill No. 2311 states that:

“Best practices suggest that families experiencing domestic violence should have access to protective orders and other domestic services without fear that they will automatically be referred for investigation by child welfare or adult protective services.”

This statement suggests two things: that the mandatory reporting provisions in HRS Chapter 586 cause these concerns and that the referral to the Department will be “automatic.” Regarding the first belief, even without these provisions in HRS Chapter 586, mandatory reporting requirements are present in other statutes. For the second belief, our suggested language makes it clear that our reporting will not be automatic.

Furthermore, except with minor amendments, this section has been part of HRS Chapter 586 since 1987 and the number of cases have increased rather than decreased. Therefore, if these provisions are adding to the “fear” referenced in the preamble, then that fear is not, thankfully, preventing victims from seeking the safety of a protective order.

(4) Victims, their children, and perpetrators need case management and access to a panoply of services needed to address this multi-faceted problem and to provide safety. The Family Court is not a service provider; our role is to hear cases and apply the law. Unlike child and incapacitated adult/elder abuse cases, there is no state agency that is a party to the HRS Chapter 586 proceedings that will find or refer the parties and children to appropriate resources and then consistently monitor and enforce the conditions of the court orders. Lacking such an agency, the court must be able to get the help of the Department through oral/written reports as well as court appearances.



Senate Bill No. 2311, Relating to Domestic Violence
Senate Committee on Human Services
Thursday, February 11, 2016 1:20 p.m.
Page 4

(5) When children are involved, the stakes are obviously higher for the family and the community. This has been acknowledged in this 2016 Legislative Session by the introduction of Senate Bill No. 2247 and House Bill No. 1517 seeking to provide “that the commission of certain offenses of assault in the presence of the victim's minor child is an aggravating factor in the sentencing of the defendant convicted of the offense.” These cases are among the toughest faced by Family Court. Alone, we can provide the required protective order but such an order may not address the needs of the parties and their children. Without the additional help, domestic violence continues to breed. We acknowledge the difficulties faced by the Department but we also wish to be able to work with them to further community safety.

For all these reasons, the Family Court respectfully opposes repealing HRS Section 560-10.5 and respectfully suggests the alternative language above to replace the current language.

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



TO: Chair Suzanne Chun Oakland
Vice Chair Josh Green
Members of the Committee

FR: Nanci Kreidman, M.A

RE: 2311 Support

Aloha. And thank you for scheduling this Bill for hearing early in the Session. This is an issue of great importance, and deserves the legislature's attention.

The requirement for Family Court to make an automatic report to child welfare when a temporary restraining order is sought by a survivor places an unnecessary burden on the child welfare system and creates an unfortunate impact on survivors. Seeking court protection and taking the affirmative step to secure a restraining order is a proactive step that is aimed at providing protection for a family. Involving child welfare, if necessary, could still be done if circumstances warrant such a report.

We would like to suggest an amendment to the Bill proposed. It would be useful for Family Court judges to have the authority, when necessary, and if desired, to direct child welfare services to conduct an investigation and make a report to the Court. Apparently, before this law was in effect (586-10.5) it was difficult to obtain reports from child welfare when the Court was interested in having the agency complete an investigation. Judges are given discretion in many ways, and have maintained consistently they function best with discretion. It appears in these kinds of cases, such discretion is well founded. Cooperation from child welfare services would be beneficial and assist the court and the family in achieving the greatest safety for those at risk.

Additionally, if a person reaches out for help it is an affirmative action and the community should not be forcing other system interventions that may be harmful or threatening in nature. It would be an unintended, and deleterious effect for survivors to avoid working with available resources, like Family Court restraining orders for fear that they would be investigated for potential child abuse. It is not uncommon or unfamiliar that child welfare services is over-extended and cannot conduct an investigation in a timely fashion, requiring multiple appearances by survivors. This burdens the Court and the community's families.

Thank you for your favorable action to amend HRS 586-10.5.



From: mailinglist@capitol.hawaii.gov
To: [HMS Testimony](#)
Cc: lawrencejholbrook@gmail.com
Subject: Submitted testimony for SB2311 on Feb 11, 2016 13:20PM
Date: Tuesday, February 09, 2016 10:04:35 AM

SB2311

Submitted on: 2/9/2016

Testimony for HMS on Feb 11, 2016 13:20PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lawrence J Holbrook	Individual	Support	No

Comments: Honorable Representatives: In SUPPORT OF SB 2311, I believe this is a good bill that will remove redundancy in the laws of the State of Hawaii. Advocates for victims of domestic violence comprise a fairly large cottage industry in almost every state receiving hundreds of thousands of Federal and state dollars. These advocates, while well-intentioned, tend to seek criminalization of every slight against a domestic partner. In an overzealous pursuit, they have a tendency to share proposed legislation among all 50 U.S. States and even from other countries regardless of its logic or its duplicative effect on the civil and criminal code already in place. They do this year after year, legislative session after legislative session. They stoke fears of male dominance and overplay female victimhood to the exclusion of the fact that, where domestic violence occurs, everyone becomes a victim. It would be helpful to see a provision under HRS 586 that would require changes to be reviewed and cross-checked with the entire Hawaii Revised Statute before submission. Lawrence J. Holbrook Nuuanu, HI 808-735-8426

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

TESTIMONY OF THOMAS D. FARRELL

Regarding Senate Bill 2311 Relating to Domestic Violence
Senate Committee on Human Services
Senator Suzanne Chun Oakland, Chair

Thursday, February 11, 2016 1:20 p.m.
Conference Room 016, State Capitol

Good afternoon Senator Chun Oakland and Members of the Committee:

I support SB 2311.

This bill would not prevent judges from referring reports of child abuse (or abuse of an incapacitated adult) to DHS, but it would restore their discretion to do so, and to choose whether to do upon the filing of a petition or after a trial.

Currently, every *Petition for Protection* which alleges any abuse to a minor or incapacitated person is immediately referred to DHS for an investigation. Perhaps DHS or the Judiciary has good numbers on this, but I would offer the conservative estimate of at least 2,000 such referrals each year on Oahu. Often, these cases involve a related custody battle where both parents are fighting over a child who has allegedly been abused by the other. In fact, in a growing number of cases, BOTH parents file *Petitions for Protection* on behalf of the child, accusing the other of abuse. Most of these cases are really disputes over parenting, not abuse cases.

In some cases, a DHS investigation and report have been helpful. In others, particularly where the allegations are not in the nature of sex abuse or serious physical harm, DHS has delegated the investigation and reporting function to purchase of service contractors, such as Catholic Charities. Their reports are rarely useful, never resolve the truth of the allegations, and usually merely state that the family is in turmoil and would benefit from the contractor's services. In addition, these reports are often not prepared in time for the hearing, which results in delay to the parties and unnecessary attorneys' fees for a wasted trip to Kapolei.

Family Court judges have the primary responsibility for hearing the evidence and deciding whether abuse has occurred. If so, the entry of an *Order for Protection* usually is sufficient to protect the victim. If, after trial, the court still has concerns about the future safety of the child or incapacitated adult, an investigation and report by DHS might be warranted. The repeal of section 586-10.5 will not prevent that.

Thank you for the opportunity to testify.

Divorce ♦ Paternity ♦ Custody ♦ Child Support ♦ TROs ♦ Arbitration
also handling national security cases involving revocation or denial of security clearances

700 Bishop Street, Suite 2000, Honolulu, Hawaii 96813
Telephone 808.535.8468 ♦ Fax 808.585.9568 ♦ on the web at: www.farrell-hawaii.com

*Certified by the National Board of Trial Advocacy. The Supreme Court of Hawaii grants Hawaii certification only to lawyers in good standing who have successfully completed a specialty program accredited by the American Bar Association.