

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON HUMAN SERVICES
ON
SENATE BILL NO. 384, S.D. 2

March 17, 2015

RELATING TO ADDRESS CONFIDENTIALITY

Senate Bill No. 384, S.D. 2, establishes within the State treasury a special fund to be known as the Address Confidentiality Program Surcharge Fund. The bill authorizes the deposit of gifts, grants, donations, and 95% of the \$28 surcharge paid by individuals who are convicted of crimes set forth in the bill, such as stalking. The disbursements of money from the fund are to be used to pay for the administration costs incurred by the Address Confidentiality Program to be created within the Crime Victim Compensation Commission of the Department of Public Safety.

The Department of Budget and Finance does not take any position on the proposed Address Confidentiality Program; however, as a matter of general policy, the department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the HRS. In regards to Senate Bill No. 384, S.D. 2, it is difficult to determine whether the proposed source of revenues will be self-sustaining or if there is a clear nexus between benefits sought and charges made upon the users or beneficiaries of the program.

I encourage the Legislature to review the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, HRS.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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Interim Commissioner
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Commissioner
PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON SENATE BILL 384 S.D. 2
RELATING TO ADDRESS CONFIDENTIALITY

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Human Services
Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair

Tuesday, March 17, 2015; 9:30 AM
State Capitol, Conference Room 329

Chair Morikawa, Vice Chair Kobayashi, and Members of the House Committee on Human Services:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to submit testimony in support of Senate Bill 384 with an amendment to locate the program under a more appropriate agency, include an indemnity clause, and set the priority of payment for the fee. Senate Bill 384 establishes the address confidentiality program to help survivors of domestic violence, sexual assault, and stalking relocate and keep their addresses confidential. The measure also creates a court fee to be imposed on and collected from persons convicted of certain crimes. While the Commission supports the intent of the bill, the program should be placed under an agency that can better ensure confidentiality and safety of the address confidentiality program participants.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by crime victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crimes could not afford to pay their medical

bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available. In 2003, the Commission initiated the Restitution Recovery Program to serve as the clearinghouse for restitution payments collected from inmates and parolees.

THE PROGRAM SHOULD BE UNDER AN AGENCY THAT CAN ENSURE THE CONFIDENTIALITY AND PRIVACY OF THE PARTICIPANTS

As part of the Restitution Recovery Program, the Commission collects restitution payments from parolees. Every day, parolees are in the Commission's office to make payments. Because the applicants for compensation rarely appear at the Commission in person, there has not been an issue of victims being forced to be in the same room with perpetrators. However, the Commission's office is in a privately owned building that is open to the public.

If the address confidentiality program is located within the Commission, the Commission would require a separate office in a different building with sufficient distance between the buildings to provide adequate security and confidentiality for participants of the address confidentiality program. The building must be a secured building.

Additionally, because the Commission is administratively attached to the Department of Public Safety (PSD), the Commission's network is administered by PSD and the Commission's data is housed on PSD's server. Therefore, the Commission's current network would not be sufficient to provide secured access and to prevent accidental access by PSD users. In order to ensure confidentiality, the Commission would require a separate, secured network that is not accessible by any other agency or department including PSD.

In order to run the program, at a minimum, the Commission would require funding for:

- 1) The creation and establishment of a Program Director position.
- 2) Startup and operating expenses.
- 3) Dedicated, secure computer server and network.
- 4) A database program to store the confidential information.
- 5) A secured undisclosed office space.

AN INDEMNITY CLAUSE MUST BE ADDED TO THE STATUTE

The Commission recommends that the statute also include an indemnity clause that states essentially that “Nothing in this chapter shall be construed to create a cause of action against the State, the Crime Victim Compensation Commission, or any of their agencies, officials, or employees.”

CLARIFICATION OF THE PRIORITY OF PAYMENTS

The bill proposes a fee to be imposed on certain criminal defendants but does not state the priority in which the fee should be collected. The Commission proposes an amendment that will make the bill consistent with other provisions of the Hawaii Revised Statutes (HRS).

HRS § 706-605(6), § 706-646(2), § 706-648(2), § 706-650.5, and § 846F-3, state that the courts shall collect restitution first, the Crime Victim Compensation Fee (Compensation Fee) second, the probation fee third, all other fees fourth, and fines last. This priority recognizes the importance of addressing the crime victim’s needs first. The Compensation Fee is the Commission’s main source of revenue. The collection of the Compensation Fee has diminished in recent years.

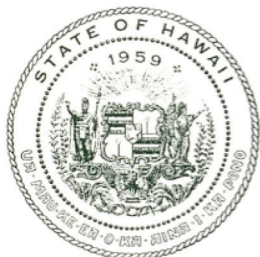
The Commission proposes that §__-L(e) of the bill be amended to add the following language:

When a defendant is ordered to make payments in addition to the fee, payments by the defendant shall be made in the following order of priority:

- (a) Restitution;
- (b) Crime victim compensation fee;
- (c) Probation services fee;
- (d) Other fees; and
- (e) Fines.

Thank you for providing the Commission with the opportunity to testify in support with amendment to Senate Bill 384.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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March 17, 2015

To: Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair
Members of the House Committee on Human Services

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

Re: Testimony in Support, SB 384, SD2, Relating to Address Confidentiality

Thank you for this opportunity to testify in strong support of SB 384, SD2, which would establish an address confidentiality program for victims of domestic violence, sexual assault, and stalking. SB 384, SD2, would assist victims by allowing them to use a substitute legal address in place of their physical address. Additionally, this measure would provide for a mail forwarding system for program participants, so that perpetrators of violence against women would not be able to seek out and find victims' physical addresses. Offenders often use public data to find their victims. In cases of domestic violence, sexual assault, and stalking, this entails the intensive use of people search engines which have proliferated over the last decade. For a small fee, it is very simple for people to find out personal information about their victims, including social media profiles, email addresses, and physical addresses.

Thirty-six other states in the nation have enacted and successfully implemented address confidentiality programs. Other states that have successfully implemented address confidentiality programs see the programs as vital to protecting victims of violence. However, the programs are most successful when government agencies communicate and collaborate with victim service agencies to make victims' safety and privacy a priority.

The Commission urges the passage of SB 384, SD2, and would likewise recommend a strong outreach and education campaign within the division that will implement this program. Finally, as the Crime Victims Compensation Commission interfaces with offenders on a daily basis, it is best that this program is housed within a different agency. Some considerations that should be taken into account when determining the agency to house this program are: safety, privacy, ability to keep records safe and confidential, and a lack of public interface with offenders or potential domestic violence perpetrators. Thank you for this opportunity to provide testimony.



PROTECTING HAWAII'S OHANA, CHILDREN, UNDER SERVED, ELDERLY AND DISABLED

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TO: Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair
Members, House Committee on Human Services

FROM: Scott Morishige, Executive Director, PHOCUSED

HEARING: **Tuesday, March 17, 2015 at 9:30 a.m. in Conf. Rm. 329**

Testimony in Support of SB384 SD2, Relating to Address Confidentiality.

Thank you for the opportunity to provide testimony in **support** of SB384 SD2, which would establish an address confidentiality program to help survivors of domestic violence and sexual assault to relocate and keep their addresses confidential. PHOCUSED is a nonprofit membership and advocacy organization that works together with community stakeholders to impact program and policy change for the most vulnerable in our community, including survivors of domestic violence.

Our membership includes organizations, such as Child & Family Service, Parents & Children Together, the Hawaii State Coalition Against Domestic Violence and Domestic Violence Action Center, which serve survivors of domestic violence and their families. We believe that this legislation ensures the safety of survivors, while still enabling their accessibility for service of process, child support enforcement, and driver's license registration, etc. Since 1991, 36 other states have enacted legislation and implemented address confidentiality programs.

Address confidentiality programs are especially needed in this age of modern technology where information is now easily available through the Internet and public records. By providing survivors the ability to shield their actual locations through substitute addresses, and by penalizing the unauthorized disclosure of actual address information, SB384 SD1 ensures both the privacy and safety of domestic violence survivors and their families.

Once again, PHOCUSED urges your support of this bill. We strongly believe that this will be a step in the right direction to ensuring the safety and protection of domestic violence survivors throughout Hawaii. If you have any questions, please do not hesitate to contact PHOCUSED at 521-7462 or by e-mail at admin@phocused-hawaii.org.



March 16, 2015

House Committee on Human Services
Representative Dee Morikawa, Chair
Hawaii State Capitol

**Re: S.B. 384, SD2 Relating to Address Confidentiality
Tuesday, March 17, 2015, 9:30 a.m.**

Dear Chair Morikawa and Members of the Committee on Human Services:

Hawaii Women Lawyers submits testimony in **support of** S.B. 384, SD2 which would establish an address confidentiality program for victims of domestic violence, sexual assault, and stalking. S.B. 384, SD2 would help victims by allowing them to use a substitute legal address to in place of their physical address. Additionally, the bill would provide for a mail forwarding system for program participants, so that perpetrators of violence against women would not be able to seek out and find victims' physical addresses.

Hawaii Women Lawyers encourages the Committee to consider the potentially life-saving effects S.B. 384, SD2 could have on female victims of violence. Washington State first passed a similar law which provided a mechanism to keep victims of domestic violence safe, yet still be accessible for key government functions such as service of process, child support enforcement, voting and drivers license registration. Since then, 36 other states in the nation have enacted and successfully implemented address confidentiality programs.

Violent perpetrators are very resourceful and can be determined to harm their victims. Due to the proliferation of people search engines over the last decade, it is very easy for perpetrators to find personal information about their victims. The confidentiality program proposed in the bill will help to keep vulnerable women and children shielded from violent perpetrators by providing victims with a way to shield their protect their privacy through the use of substitute addresses, and by penalizing unauthorized disclosures of actual address information. Moreover, not all victims of domestic violence necessarily report incidents of domestic violence or go through the criminal justice system, so this program would offer another avenue of protection for these victims.

In summary, S.B. 384, SD2 allows the State of Hawai'i to send a strong message reaffirming a survivor's right to privacy and safety, and represents an opportunity to place Hawai'i on equal footing with 36 other states that have already enacted address confidentiality programs.

Hawaii Women Lawyers is committed to enhancing the status of women in the State, and believes that this measure will address a critical need to help protect victims of domestic violence, sexual assault, and stalking.

We respectfully request that the Committee pass this bill. Thank you for the opportunity to submit testimony on this measure.

Sincerely,

Tricia M. Nakamatsu, President



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: March 17, 2015

TO: The Honorable Dee Morikawa, Chair
The Honorable Bertrand Kobayashi, Vice Chair
House Committee on Human Services

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: Testimony in Support of S.B. 384, S.D. 2
Relating to Address Confidentiality

I would like to thank the Committee for this opportunity to provide testimony on behalf of The Sex Abuse Treatment Center (the SATC), a program of Kapi'olani Medical Center for Women & Children, in support of Senate Bill 384, Senate Draft 2 (S.B. 384, S.D. 2). We further respectfully request your consideration of our additional comments concerning this measure.

S.B. 384, S.D. 2 would establish an address confidentiality program to help survivors of domestic violence and sexual assault relocate and keep their addresses confidential, and provide funding for this program by creating the address confidentiality program surcharge fund.

Most sexual assaults are not committed by strangers, but by intimate partners, family members, and acquaintances. Moreover, sexual assault often does not occur in isolation, but can be one feature of a pattern violence and intimidation between non-strangers that also includes physical abuse and stalking. In order to assure their own safety and the safety of loved ones, survivors are sometimes forced to relocate in order to avoid further actual or threatened violence.

Unfortunately, modern search technologies and access to public records make it easy for perpetrators to find survivors' new addresses. This places survivors in harm's way and can complicate the difficult task of recovering from the trauma of sexual assault.

By providing survivors the means to shield their actual locations through the use of substitute addresses, and by penalizing unauthorized disclosures of actual address information, S.B. 384, S.D. 2 allows the State of Hawai'i to send a strong message reaffirming that survivors have a right to privacy and safety. In addition, S.B. 384, S.D. 2 represents an opportunity to place Hawai'i on equal footing with 36 other states that have already enacted address confidentiality programs.

The SATC also has the following comment concerning S.B. 384, S.D. 2 that we respectfully submit for your consideration:

The SATC observed that the Senate Committee on Judiciary and Labor amended S.B. 384 by deleting language that would have allowed an applicant to submit documentation from religious, medical or other professionals from whom the applicant sought assistance, as evidence that the applicant was a survivor of sexual assault.

Survivors of sexual assault do not report attacks to law enforcement or other government entities in up to 75% of cases for many reasons, such as shame, desire to preserve their privacy, fear of the perpetrator, or lack of trust in the criminal justice system. Survivors may also not seek services from a sexual assault program or non-profit organizations for similar reasons, or due to a lack of access to such programs.

Rather, many survivors seek help from, and provide information about attacks to, community leaders or professionals, such as their pastor or physician, with whom they may have an established relationship of trust.

This should not prevent a survivor from being able to protect themselves from their attacker, especially where there is medical, counseling, or legal assistance documentation from a credible professional source supporting their status as a survivor of sexual assault.

Therefore, we request that the legislature consider allowing survivors to use documentation from religious, medical, or other professionals from whom they sought assistance as evidence that they are in fact survivors of sexual assault.

By ensuring that survivors of sexual assault who are forced to relocate to escape their attackers are able to enjoy the security and peace of mind that is due to them, your support of S.B. 384, S.D. 2 is a powerful reaffirmation of the State of Hawaii's commitment to protect its citizens from offenders of violent crime.

March, 16 2015

Testimony in Support of SB384 SD2, Relating to Address Confidentiality

To: Rep. Dee Morikawa, Chair
Rep. Bertrand Kobayashi, Vice Chair
Members of the House Committee on Human Services

From: Fawn Jade Koopman, Esq.

Re: Testimony in Support of SB384 SD2, Relating to Address Confidentiality

I would like to thank the committee for the opportunity to provide testimony in strong support of SB384 SD2 establishing an Address Confidentiality Program (“ACP”) in Hawaii, but requesting the bill include the language omitted in § -3 c3D in version SD2. The ACP creates a mechanism to assist survivors of domestic violence, sexual assault, and stalking relocate and keep their addresses confidential.

Since 1991, thirty-six states enacted legislation and launched ACP’s. The legislative intent of every program is to protect the location of a survivor’s actual address and reduce the risk of future harm. Women in Hawaii who are fleeing domestic abuse must leave their home and relocate to a safe place. However, each woman is only safe so long as her abuser does not track her down. Advancing Internet technologies, the release of personal information by state agencies, and Court-ordered disclosures in family court proceedings make it easier than ever for abusers to locate survivors. The risks may also prove deadly for the woman who underestimates the lengths to which her abuser will go to continue the abuse. Further, the fear of having identifying information disclosed has actually deterred survivors from filing restraining orders, and divorce complaints.

There are countless women whose lives may be saved as a result of this legislation. These are not perceived or imagined threats to survivor’s safety. Last year, a survivor of sexual assault was terrorized in her home by her abuser two and a half years after she relocated. Last month, a woman with a young child reported her abuser found her months after she relocated. He sat outside her home in his car. After enduring years of domestic abuse, his presence alone was a threat. These women were my clients, and it is because of their stories and experiences that an ACP is necessary in the State of Hawaii.

Our ACP bill must also employ both a practical, and culturally sensitive understanding of domestic violence, sexual assault, and stalking. In doing so, I urge this legislature to consider how difficult it is for survivors to seek help, and to disclose abuse. In fact, the majority of survivors do not ever report abuse, or seek assistance. But, when survivors do disclose, they often disclose to trusted individuals first, and sometimes solely. Many survivors will disclose to their medical provider when seeking medical treatment resulting from the abuse. Further, many survivors are not U.S. Citizens, and they fear their status may be placed in jeopardy if they report abuse to any authority, organization, or agency, especially when their status in the United States

is tied to their abuser. I have represented over 100 survivors of domestic abuse in the past year and a half, and nearly all are immigrants, and most have limited English proficiency. My clients regularly admit they disclosed to a religious, medical, or other professional sometimes years or months before seeking assistance elsewhere.

SB 384SD2's amendment and deletion of § -3 c3D will unnecessarily deter many survivors from participation in Hawaii's ACP by eliminating a variety of commonly trusted individuals who are privy to the survivors abuse. Therefore, I oppose the deletion of the language that *an applicant may provide any documentation from a religious, medical, or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking* from the types of evidence an applicant may include in the application. I respectfully urge this committee insert the original language in this section. There is little risk of fraud by permitting these individuals to provide documentation. The only risk raised by the omission of this language is the countless survivors who will be deterred from seeking participation in the ACP.

This testimony is provided to your committee to respectfully request the passage of Senate Bill 384 SD2, with the inclusion of the omitted section above, which reflects a significant legislative concern for survivors of domestic violence, and a desire to facilitate their efforts to start a new life free from abuse.

Thank you for this opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 384, SD 2, RELATING TO ADDRESS CONFIDENTIALITY.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

LATE

DATE: Tuesday, March 17, 2015

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Renee R. Sonobe Hong, Deputy Attorney General

Chair Morikawa and Members of the Committee:

The Department of the Attorney General supports the intent of this bill but notes various areas of concern below.

This measure provides for an address confidentiality program to assist victims of domestic violence, sexual offenses, and stalking. This program would establish a substitute legal address system that could be used by victims to keep their addresses confidential.

First, to clarify the terminology used, we suggest that the term “domestic abuse” be substituted for the term “domestic violence” and that page 3, lines 5-6, be amended to read:

“Domestic ~~violence~~ abuse” means an act described has the same meaning as this term is defined in section 586-1.

We further suggest that page 4, lines 3-4, be amended to include:

“Stalking” means an act of harassment as described in sections 711-1106, 711-1106.4 and 711-1106.5.

We also suggest clarifications of other terms such as “any professional who is trained” on page 4, line 18, and “bona fide statutory and administrative need” on page 21, lines 18-19. These terms are vague and may be difficult to interpret and implement as intended, without further clarification.

Second, while the intent of the bill is to protect victims of domestic violence and sexual offenses, this bill, as currently written, may have the unintended consequence of doing just the opposite. We provide the following examples:

- Page 6, line 3 through page 7, line 2, provides that legal service of process upon a program participant (victim) may be perfected if “process, notice, or demand” is signed for, on behalf of the victim, by the director or designee of the address confidentiality program. The concern is that if the program cannot then subsequently notify a victim that service has been made, adverse legal action may be taken against the victim without the victim’s knowledge.
- The bill, on page 15, lines 13-14 and page 16, lines 4-6, provides that “the substitute address shall not be used for the purposes of listing, appraising, assessing, or collecting property taxes” or “on any document related to real property recorded with a county clerk and recorder.” These exceptions are inconsistent with, and will work against, protecting and keeping confidential a victim’s location because the victim will still be required to use his or her actual address for these official purposes.

Third, section 351-G(e), on page 19, lines 8-10, provide that intentional or knowing disclosure of protected information by a program employee would be a misdemeanor offense.

For clarification, we suggest the following amendment:

“(e) Any person who knowingly and intentionally obtains or discloses information in violation of this ~~part~~ section shall be guilty of a misdemeanor.”

Fourth, section 351-H, on page 19, line 11 through page 26, line 9, provides for the disclosure of a program participant’s actual address to state or local government agencies based upon specific criteria and procedures, and allows for judicial review of a decision adverse to the requesting agency by the Crime Victim Compensation Commission program. We suggest that instead of providing a separate structure for inter and intra-governmental sharing of information, such issues be addressed under section 92F-19, HRS (Limitations on disclosure of government records to other agencies).

Finally, we also suggest for your consideration a provision regarding immunity from liability for state and county employees:

§351-N Good faith immunity. The Crime Victim Compensation Commission, its employees, agents, and volunteers, and state and county officials involved with this program shall be immune from liability for good faith conduct under this chapter.

Further input from stakeholders and affected agencies, both private and public, would be essential to ensure that this program can be effectively implemented if passed into law. In this

regard, we suggest consideration of a delayed effective date that will allow imputed agencies and programs time to adopt rules, regulations, policies, and procedures as may be necessary prior to implementation. We remain available to work with the committee to assist with any amendments.