SB 390

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:	HB447
Package:	Women's Legislative Caucus
Current Referral:	HSH, JDL
Introducer(s):	KIDANI, BAKER, INOUYE, SHIMABUKURO, 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 96809-0339

February 13, 2015

Memorandum

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

FROM: Rachael Wong, Director

SUBJECT: **S.B. 390** **Relating to Domestic Violence**

Hearing: Tuesday, February 17, 2015, 1:20 p.m.
Conference Room 016, State Capitol
415 South Beretania Street, Honolulu

PURPOSE: The purpose of this bill is to remove certain 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.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the proposed bill as section 586-10.5, Hawaii Revised Statutes, (HRS), is duplicative of sections 350-1.1(a)(3) and (4), and (b), HRS, which mandates reporting 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. Similarly, section 346-224(a) (3) mandates similar reporting requirements in cases involving vulnerable adults.

In practice, per the current statute, the Family Courts are reporting to the DHS **all** temporary restraining orders where there are minors in the home, regardless of the minors' involvement in the alleged domestic abuse. As many reports do not indicate any safety concerns for the children, this reporting practice has created an unnecessary burden on the DHS' Child Welfare Services (CWS) staff that must screen the referrals, investigate the cases, and submit written reports to the court in advance of the hearings.

Survivors of domestic violence have stated that the automatic referral of temporary restraining orders to CWS is a deterrent to their seeking safety through the temporary restraining order process as these victims fear having their children removed from their care. Batterers often use the threat of losing custody of the children to prevent survivors from reporting domestic abuse.

Thank you for the opportunity to testify.

The Judiciary, State of Hawaii

Testimony to the Senate Committee on Human Services and Housing
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair

Tuesday, February 17, 2015
1:20 p.m.
State Capitol, Conference Room 016

By
R. Mark Browning
Deputy Chief Judge, Senior Family Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No 390, Relating to Domestic Violence.

Judiciary's Position:

The Family Court respectfully opposes Senate Bill No. 390. After a review of all the other testimony presented before the House Committee on Human Services (HSCR No. 47) on this bill's House Companion, House Bill No. 447, it appears that there are some fundamental misunderstandings of the current law. This testimony will try to clear up these misunderstandings.

1. Many of the letters provided at the first hearing on this bill refer to "redundancies." We believe that this may point to a general misunderstanding of how the current law actually works.

2. The Family Court does not report cases twice (therefore, no "redundancy") to the Department of Human Services (DHS) and the Family Court does not report any cases except those already mandated by law (and these are reported just once). Even without this section, the Family Court will remain a mandated reporter—we do not have discretion in what we must report regarding child abuse.

3. The Department of Human Services is not required to do anything "redundant." They are only receiving reports that they are already mandated to receive by law. Hawaii Revised

Statutes Chapter 586 does not require them to respond differently to these reports as compared to all other reports they receive.

4. Hawaii Revised Statutes Chapter 586 *does* require a report (generally about two pages) to the court so that the court knows how to better write an order that helps to prevent further violence and harm. Without the current requirement, the family court will no longer receive useful, third party information.

Currently, DHS has a system whereby all reported cases are subject to being "diverted," i.e., the reported case is assessed (this is not a full investigation) and, if appropriate, the case is referred out of DHS to an agency that meets with the family and coordinates and/or offers programs and resources to enhance parenting and increase safety of the children. In these cases, the court receives the report from the assigned agency and not DHS. With both DHS and assigned diversion agencies, the court does not require elaborate reports. In fact, many of the reports are completed by using a simple template and many are about two pages.

5. The court needs this crucial information in order to better protect the children in families with domestic violence. Hawaii Revised Statutes Chapter 586 encompasses some of the court's most dangerous cases. Because there is no coordinated public effort or public agency statutorily mandated to assist domestic violence victims and their children, the court overwhelmingly receives evidence from just the two parties because no investigation has been conducted. Where the alleged danger strongly implicates the children of the parties, the lack of neutral third party information is, simply put, distressing. Without a mandated public agency, the court cannot rely on ongoing monitor of the children's welfare by a neutral third party. Therefore, what in other cases may seem inconsequential, a short two page report in Chapter 586 cases is disproportionately significant because of the overall lack of information.

A particularly hopeful outcome is the possibility of early engagement by the parents in counseling services in some cases. Social workers from both DHS and the appointed agencies are very diligent about identifying needs and suggesting resources. Many victims take advantage of these referrals, which in turn provides greater safety to the children in their custody. These positive steps are reflected in the short report that the court receives. This is welcomed information indeed. These opportunities and information would not be available if this section is repealed.

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

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

FR: Nanci Kreidman, M.A

RE: SB 390 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 is 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.

P.O. BOX 3198 • HONOLULU, HI 96801-3198
'Oahu Helpline: 808 531-3771 • Toll-free: 800 690-6200 • Administration 808 534-0040 • Fax 808 531-7228

PHOCUSED

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

TO: Senator Suzanne Chun-Oakland, Chair
Senator Josh Green, Vice Chair
Members, Committee on Human Services and Housing

FROM: Scott Morishige, Executive Director, PHOCUSED

HEARING: Senate Committee on Human Services and Housing
Tuesday, February 17, 2015 at 1:20 p.m. in Conf. Rm. 016

Testimony in Support of SB390, Relating to Domestic Violence

Thank you for the opportunity to provide testimony in **support** of SB390 which would repeal Hawaii Revised Statute section 586-10.5, which requires family courts to report to the Department of Human Services (DHS) in each case where a restraining order is sought for abuse of family or household member and a minor or incapacitated person is involved. 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 victims of domestic violence.

Our membership includes organizations, such as Child & Family Service, Parents & Children Together, and Domestic Violence Action Center, which serve victims of domestic violence and their families. Advocates at these organizations have reported that victims are often hesitant to complete a Temporary Restraining Order (TRO) against an abuser due to fear that they will lose custody of their children to DHS.

HRS 586-10.5 is duplicative and unnecessary. Regardless of this section of the HRS, the Family Courts already have the discretion to direct DHS to become involved where there is a reason to believe that child abuse and neglect has occurred. Domestic violence advocates are mandated reporters, and must report to DHS.

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

American Savings Bank Tower (1001 Bishop St., Ste. 780) Honolulu, HI 96813 P: 808.521.7462
www.phocused-hawaii.org admin@phocused-hawaii.org

WomenHelpingWomen
EMERGENCY SHELTER & PROGRAMS FOR VICTIMS OF DOMESTIC VIOLENCE

DATE: February 16, 2015

TO: STATE OF HAWAII SENATE HUMAN SERVICES & HOUSING COMMITTEE
Chair, Senator Suzanne Chun Oakland, Vice Chair: Senator Josh Green
Members: Senator Breene Harimoto, Senator Sam Slom and Senator Gil Riviere

FROM: STACEY MONIZ, EXECUTIVE DIRECTOR

RE: SB 390 / HB 447: RELATING TO DOMESTIC VIOLENCE
STRONG SUPPORT

Aloha Chair Chun Oakland, Vice Chair Green and members of the Senate Committee on Human Services and Housing:

I am writing today in strong support of SB 390/HB 447, Relating to Domestic Violence. This bill will repeal the mandatory reporting of EVERY Family Court Temporary Restraining Order (TRO) with children involved to Child Welfare Services (CWS), also known as Child Protective Services (CPS).

Please let me repeat that: this current law requires that EVERY restraining order in families where there are children must be reported to CPS. This is unnecessary and puts families in danger. Not all families who need a TRO need to be reported to CPS. If victims of domestic violence are told this information, an overwhelming majority of them will choose not to get the protection from the courts that they need. I have already been approached by multiple victims of domestic violence who say they would never have gotten the TRO if they had known this would happen. Some even regret obtaining the TRO. This is NOT how I want victims to feel.

There is already a requirement as mandated reporters that any TRO where there is a threat or harm to any child will be reported to CPS, so this particular requirement is redundant and unnecessary.

Individuals who are obtaining a TRO are being protective of their children and the vast majority of investigations done will not require a CPS case being opened. But the damage has already been done; their names are on a list in the child welfare systems. Which leads me to my final objection to this practice: there's no reason every single petitioner in family court should have their name submitted to Child Welfare Services. Once anyone has their name in 'the system,' it will always be there, even if there is never any finding of any risk of harm to the child(ren) in their home.

Please support SB390 and eliminate this redundant requirement that discourages victims of domestic violence from seeking help and protection and puts families into the Child Welfare system even before learning of any risk or harm to any children.

I can be reached at 446-7343 or via email at director@whwmaui.net. Thank you so much for your consideration!

1935 Main Street
Suite 202
Wailuku, HI 96793

Phone: (808) 242-6600
Fax: (808) 249-8147

www.whwmaui.net

Maui United Way
Partner Agency

KLEINTOP, LURIA & MEDEIROS

A LIMITED LIABILITY LAW PARTNERSHIP

CHARLES T. KLEINTOP
TIMOTHY LURIA
DYAN M. MEDEIROS

NAOKO C. MIYAMOTO
CATHY Y. MIZUMOTO

DAVIES PACIFIC CENTER, SUITE 480
841 BISHOP STREET
HONOLULU, HAWAIʻI 96813

TELEPHONE:
(808) 524-5183

FAX:
(808) 528-0261

EMAIL:
D.Medeiros@hifamlaw.com

TO: Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice-Chair
Senate Committee on Human Services and Housing

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE: February 17, 2015 at 1:20 p.m.

RE: Testimony in Opposition to SB390 Relating to Domestic Violence

Good morning Senator Shimabukuro, Senator Galuteria, Senator Chun Oakland, Senator Green, and members of the Committees. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice solely in the area of Family Law for more than sixteen (16) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I submit this testimony in opposition to SB390.

I strongly oppose SB390 which would have a significant and severe impact on families involved in Temporary Restraining Order cases. Section 1 of SB390 specifically states that the purpose of the bill is to repeal HRS §586-10.5 and then claims that HRS §586-10.5 is redundant because it's requirements are included in other sections of the HRS. This claim, however, is only partially true and more importantly it only warrants a repeal of HRS §586-10.5 if you completely ignore the purpose of HRS §586-10.5.

It is important to understand the Court context within which HRS §586-10.5 functions. When an Ex Parte Petition for a Temporary Restraining Order ("Ex Parte Petition") is granted by the Court, it is granted on an ex parte basis, meaning the alleged abuser does not have an opportunity to respond to the allegations. A hearing must be held on such Ex Parte Petitions within fifteen (15) days of them being filed so that the alleged abuser has the opportunity to respond to the allegations. During that fifteen (15) day period, however, the alleged abuser is not to have any contact with the alleged victim. As a result, when the party filing an Ex Parte Petition includes the children in that Ex Parte Petition, the other parent (i.e. the allegedly abusive parent) can go as much as fifteen (15) without any contact with his or her children whatsoever.

In addition, HRS 571-46 establishes a rebuttable presumption that a perpetrator of family violence should not have custody (even joint custody) of

his or her children. This presumption has led some parents to file Ex Parte Petitions as a "first strike" in a custody battle. If they prevail at the hearing on the Ex Parte Petition which includes the parties' children, they have just gotten a leg up in the upcoming custody battle. Obviously, there are victims of domestic abuse who need the protections of the Court's restraining orders for them and their children. However, there are people who claim to be victims in order to take advantage of the system.

HRS §586-10.5 balances this out by requiring the Department of Human Services to investigate the claims of child abuse and issue a report to the Court and the parties at least two (2) days before the hearing on the Ex Parte Petition. More often than not, the report is not completed two (2) days before the hearing and is not provided to the parties. However, in my experience, the Court does have the report by the time of the hearing and provides copies to the parties. These reports provide invaluable, unbiased information to assist the Court and attorneys in trying to reach reasonable resolutions to these difficult issues. There is simply no reason to delete the requirement of these reports other than to ease the burden on DHS. Frankly, easing that burden should not be as important as doing everything possible to ensure the safety of children and parents.

I also disagree with the statement in Section 1 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." Why should teachers and doctors and others be mandated to report of child abuse but not parents seeking protective orders? It simply makes no sense. If a parent who is a victim of abuse is deemed a protective parent by DHS (as in those cases where the parent seeks a protective order), there is no danger presented by a DHS investigation. In fact, a DHS investigation could strengthen that parent's case. Moreover, HRS §586-10.5 only applies when a parent claims that domestic abuse involving the children has occurred. It does not apply if a parent only files an Ex Parte Petition on his or her own behalf. If a parent alleges that a child has suffered abuse whether that allegation occurs in the context of an Ex Parte Petition or somewhere else, DHS should absolutely be required to investigate the allegation and issue a report.

<u>Both</u> parents have rights in this situation. An alleged victim's rights should not be elevated above an alleged abuser's rights and vice versa. Eliminating investigations by DHS will result in a he said/she said situation that does not serve the best interests of either party and, more importantly, the children.

For all of these reasons, HRS §586-10.5 is critically important in cases involving restraining orders and I strongly oppose SB390.

Thank you.

COMMITTEE ON HUMAN SERVICES AND HOUSING
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair

DATE: Tuesday, February 17, 2015
TIME: 1:20 pm
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

Testimony in Opposition to Senate Bill 390

Dear Chair Senator Suzanne Chun Oakland and members,

Thank you for the opportunity to testify in **strong opposition** of SB 390.

This bill should have been titled "Removing Safeguards from False Allegations of Domestic Violence"

What are the protections under the current law?

§586 10.5 protects parents accused of child abuse allegations by ensuring there is an investigation of the facts prior to the "Show-Cause Hearing".

By requiring CPS to investigate and report to the courts you ensure an independent review of the allegations, you dissuade attorneys from telling their clients to make false allegations to gain an advantage in child custody disputes.

The consequences of removing this language!

By removing the under §586 10.5 you remove a fundamental safeguard that was instituted just a few years ago to protect the accused from false allegations of child abuse, by ensuring that there is an independent investigation of the facts by CPS Before the show cause hearing. We will return to the days of **HE WHO FILES FIRST, WINS!!**

Why is do women's advocacy groups want this language gone?

Without an investigation by CPS, Family Law Attorneys can go back to the good old days of arm twisting the accused (often innocent people) to accept a

restraining order of a lesser magnitude. This is a tactic to gain an advantage in child custody cases.

Why do this?

It virtually ensures that the accuser will get full custody of the children during the pendency of the divorce.

Why is that important?

Often the temporary custody order becomes the **status quo for the final custody order**. Especially for parents who haven't the funds to fight the allegations.

The Source of the Problem

Family court is supposed to be about serving the needs of our children and families.

Family court has for too long been a mommy pity court.

If we want to serve truth and families, it's time to abandon the adversarial model that feeds this kind of nonsense. This language exists because of the ridiculous "Pick a winner" mentality of the family court system.
There isn't a single problem that un-equal time allocation between parents actually solves. None. Every justification for uneven time allocation can be solved 20 other ways besides picking a primary custodial parents.

Thank You for allowing me to submit testimony on this important legislation.

Best Regards,

Chris Lethem

(415) 845 4370