



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 28, 2017 2:00 PM
State Capitol, Conference Room 325

by
Judge R. Mark Browning
Senior Family Judge and Deputy Chief Judge
First Circuit

Bill No. and Title: House Bill No. 669, House Draft 1, Relating to Domestic Violence.

Purpose: Relating to reports from the Department of Human Services to the Family Court, per HRS Section 586-10.5

Judiciary's Position:

The Judiciary supports this bill that is now amended by the critical changes made by House Draft 1 (HD 1).

We had opposed the original House Bill No. 669 because it was a complete repeal of HRS §586-10.5. Repealing that section would have severed an important channel of communication between the Family Court and the Department of Human Services (DHS) in cases filed under HRS Chapter 586. H.D. 1 addresses the original intent of the bill, that is, it relieves the Department of Human Services (DHS) from receiving duplicate referrals *and* H.D. 1 successfully balances the need of providing safety to children, the court's need for information independent of the parties, and avoiding unnecessary work by the DHS.

Victims, their children, and perpetrators need case management and access to a panoply of services to address the multi-faceted problem of family violence 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 adult abuse cases, there is no state agency that is a party to the HRS Chapter 586 proceedings that will investigate the allegations or refer the parties to appropriate resources.



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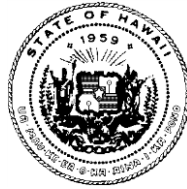
Lacking such an agency in HRS Chapter 586 cases, the court must be able to access help from DHS through oral and written reports.

It is not enough to simply rely on the mandatory reporting procedures of HRS Chapter 350. That chapter has no mechanism for timely communication of information necessary for cases under HRS Chapter 586. H.D. 1 successfully addresses this critical issue without increasing DHS's responsibilities in non-HRS Chapter 586 cases.

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 and safety of the children. For all these reasons, the Family Court respectfully supports H.D. 1 of House Bill No. 669.

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

DAVID Y. IGE
GOVERNOR



LATE

PANKAJ BHANOT
DIRECTOR

BRIDGET HOLTHUS
DEPUTY DIRECTOR

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

February 28, 2017

TO: The Honorable Scott Y. Nishimoto, Chair
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 669 HD1 - Relating to Domestic Violence**

Hearing: February 28, 2017, 2:00 p.m.
Conference Room 325, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this bill and the amendments of the Committee on Human Services.

PURPOSE: The purpose of this bill is to streamline the reporting requirements of the Department of Human Services (DHS) and the family courts to require DHS, upon direction of the court, to provide the family court with an oral or written report regarding the safety of a minor child of the parties on or prior to the next regularly scheduled court hearing; provide that if DHS provides a written report, the DHS social worker need not appear at the hearing unless ordered to do so; require the court to provide copies of all written reports to the parties.

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 present 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, the current statute has created additional burden on 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 case given the circumstances.

Thank you for the opportunity to testify.

To: Rep. Dee Morikawa, Chair
Rep. Chris Todd, Vice Chair
Members of the Committee Human Services
From: Marci Lopes, Executive Director
Hawaii State Coalition Against Domestic Violence

Re: Testimony in **Support, HB 669** Relating to Domestic Violence

Thank you for this opportunity to testify in **strong support of HB 669**. The Hawaii State Coalition Against Domestic Violence (HSCADV) is a statewide partnership of 25 domestic violence programs and shelter providers across our Hawaiian Islands. We would like to thank you all for your ongoing efforts to work towards ensuring victims of domestic violence in Hawaii are safe.

HB 669 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 automatically notified when a petitioner with children files for a restraining order against an abusive partner. **Hawaii is the only State that has this policy and practice in place.** Domestic violence is a dangerous and often lethal crime. Research strongly indicates that domestic violence is one of, if not the most predominant social issues in our State. According to the Bureau of Justice, one third of all murdered females are killed by their current or former intimate partners. We must eliminate all barriers for victims of domestic violence to seek safety and to protect her children.

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 Child Welfare Services often referred to by victims as 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 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 intimate partner violence 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. Domestic Violence Advocates working with domestic violence victims are mandated reporters and are required to report to CWS if they observe any 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 is in strong support for the passage of HB 669. Thank you for this opportunity to testify on this matter, and for your efforts to keep victims safe.

Respectfully,

Marci Lopes
Executive Director

mlopes@hscadv.org

Together we can do amazing things



LATE

TO: Chair Nishimoto
Vice Chair San Buenaventura
Members of the Committee on Judiciary

FR: Nanci Kreidman, M.A.

RE: HB 669 HD1 Support

Aloha. And thank you for scheduling this Bill for hearing. 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.

DOMESTIC VIOLENCE ACTION CENTER
ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198
LEGAL HELPLINE: (808) 531-3771
TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200
WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG
EMAIL: DVAC@STOPTHEVIOLENCE.ORG