



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 4, 2020 at 2:05 pm
State Capitol, Conference Room 325

by

Judge Paul T. Murakami
Family Court of the First Circuit

Bill No. and Title: House Bill No. 2060, Relating to Domestic Violence.

Purpose: Provides that family courts may withhold from public inspection any record of a denied temporary restraining order or denied protective order; provided that these records shall remain accessible to law enforcement without a court order.

Judiciary's Position:

The Judiciary takes no position on this bill as this is a matter of policy. The Judiciary offers the following comments and observations. With regard to the request to withhold from the public a denied Temporary Restraining Order (“TRO”) petition record, hearings are not required by the statute. If the ex parte TRO petition is denied, the denied petition is filed. This is the end of the case; no other hearings are held.

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

THE CIVIL BEAT
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House Committee on Judiciary
Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair

RE: Testimony Commenting on H.B. 2060, Relating to Domestic Abuse
Hearing: February 4, 2020 at 2:05 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit comments on H.B. 2060.

This bill opens the door to denying all public access to judicial records concerning the adjudication of domestic abuse TROs and protective orders when those orders are denied – irrespective of the reason for denial or other circumstances. The proposal raises constitutional concerns under the First Amendment right of public access to judicial records. *E.g., Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 607-10 (1982) (striking down state statute that barred public access to all court testimony by minor victims of sex crimes because it failed to consider individualized circumstances on a case-by-case basis).

From the preamble, it appears that the intent of the bill focuses on discrimination against domestic abuse victims in housing and employment. **We would ask that the Committee consider addressing such concerns directly in the relevant discrimination statutes.** Hiding court records is not the solution.

Thank you again for the opportunity to provide comments on H.B. 2060.

HB-2060

Submitted on: 2/1/2020 4:54:18 AM

Testimony for JUD on 2/4/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	aaup of hawaii	Support	No

Comments:

HB-2060

Submitted on: 2/2/2020 11:17:35 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Midwives Alliance of Hawaii	Midwives Alliance of Hawaii	Support	No

Comments:



To: Chair Chris Lee
Vice Chair Joy A. San Buenaventura
Fr: Nanci Kreidman, MA,
CEO, Domestic Violence Action Center
Re: HB 2060; Support

Aloha. And thank you for placing this Bill on your agenda for consideration. We offer testimony to support this initiative which represents a positive change that would impact many survivors and island families. This Bill creates a response to tactics used to harm victims that we believe is worth considering.

It is an identifiable trend for abusers to fabricate and file petitions for restraining orders as an act of retaliation; it may also be a way of continuing efforts to assert power in a relationship that is ending or is over.

These acts by abusers become part of the public record. And the information is accessible to employers and landlords. The presence of the record creates barriers for survivors that interfere with their capacity to live independently and become financially stable.

Even though the survivor did not create the problems, landlords and employers do not look kindly on a victim applicant to a job or a home.

If there is no merit to the allegations, and the protection order is not granted, after an Order to Show Cause hearing where both parties are

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present, and where witnesses and evidence are presented, it would be a tremendous boon to a victim's journey to have the retaliatory behavior invisible.

This Bill will permit the Court to withhold the records from public inspection. The exception would be for law enforcement, in the event other incidents, problems or need arises.

We shall look forward to your favorable action on HB 2060.
Thank you.

HB-2060

Submitted on: 2/3/2020 5:04:06 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

HB-2060

Submitted on: 2/3/2020 5:38:10 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Hawaii Women's Coalition	Support	No

Comments:

HB-2060

Submitted on: 1/31/2020 6:37:42 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

HB-2060

Submitted on: 2/1/2020 7:29:10 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Chris Lee and Members of the Committee of the Judiciary,

I am writing in support of HB2060 - RELATING TO DOMESTIC ABUSE.

We need to be more sensitive in handling of domestic abuse cases so that we do not jeopardize the victim's ability to acquire housing and gain employment. This bill allows family courts to withhold from public inspection any record of a denied temporary restraining order or denied protective order; provided that these records shall remain accessible to law enforcement without a court order.

Sealing records of temporary restraining orders and protective orders that were denied would provide indemnity to victims of domestic abuse. Unfortunately some abusers will seek retaliation against their victims by filing unnecessary temporary restraining orders and protective orders. This type of retaliation should not embolden the abuser - we need to protect the victims and children.

Mahalo,

Caroline Kunitake

HB-2060

Submitted on: 2/2/2020 10:36:48 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Marten	Individual	Support	No

Comments:

Please protect women. Pass HB2060.

HB-2060

Submitted on: 2/2/2020 11:37:16 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lea Minton	Individual	Support	No

Comments:

TESTIMONY OF ANTHONY A. PERRAULT
Regarding HB 2060, Relating to Domestic Abuse
Rep. Chris Lee, Chair/Rep. Joy A. San Buenaventura, Vice Chair
Tuesday, February 4, 2020 2:05 p.m.
Conference Room 325, State Capitol

Good afternoon Representative Chris Lee and Members of the Judiciary Committee:

I object to the passage of House Bill 2060 (Relating to Domestic Abuse) because the TRO process is frequently and substantially abused by Petitioners who file frivolous and fallacious Petitions for Orders for Protection in order to gain an advantage in custody proceedings and/or to otherwise cause damage to innocent Respondents. HRS 571-46(b)(16) (prohibiting willful misuse of the TRO process to gain advantage in custody proceedings) is a weak and ineffective deterrent, and it does not protect Respondents from the various other ways the TRO process is used to harm innocent Respondents – e.g., by harming their employment or reputation.

The principle of *res judicata* protects innocent Respondents from the civil version of “double jeopardy” by prohibiting a Petitioner from re-alleging the same facts that formed the basis of the original Petition after that Petition has been denied. HB 2060 attempts to circumvent *res judicata* and make it more difficult for innocent Respondents to protect themselves from Petitioners who maliciously misuse the TRO process.

I am a family law attorney who has both prosecuted and defended many Petitions for Orders for Protection (“Petition”) since my admission to the Hawaii State Bar in 2008. I am one of the most experienced family law litigators for whom TROs are a substantial component of his practice. A substantial portion of my clientele are military members and/or their dependents.

An Order for Protection is a very powerful and useful tool for deterring domestic violence. It is also a tool that can cause substantial damage to innocent Respondents and their children. In many ways, an Order for Protection can be more damaging than a criminal conviction even though the legal standard for issuing an Order for Protection (preponderance of the evidence) is much lower than the standard of proof required to convict someone of a similar crime – e.g., Abuse of a Household Member (beyond a reasonable doubt).

After a Petition is denied because: 1) it did not state a prima facie case of domestic abuse, or 2) because the evidence did not show by a preponderance of the evidence that domestic abuse has occurred, the principle of *res judicata* protects the Respondent from being re-attacked with the

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same allegations in a different forum. But if HB 2060 passes, the Respondent will not know what the false allegations were in the first place, therefore, he cannot defend himself if (and most certainly when) those allegations are re-alleged in a subsequent Petition or in a divorce or paternity proceeding.

After a Petition fails, a Petitioner frequently files a second Petition that repeats the same allegations as the original Petition (or some variation thereof). Knowing what the Petitioner alleged in the original Petition and comparing it to the second Petition is critical to defending the Respondent against frivolous and fallacious allegations that have already been dismissed with prejudice.

Petitioners also frequently make the same allegations raised in the failed Petition in a corresponding divorce or paternity matter in an effort to gain an unfair advantage in custody proceedings. The Respondent must be able to show the divorce or paternity Court that the Petitioner's allegations have already been proven false, and therefore, he is entitled to the protection of *res judicata*.

Finally, Petitioners frequently make the same allegations in "extra-legal" forums in an effort to damage innocent Respondents in other contexts. For example, Petitioners will frequently report false allegations of abuse to a military member's Command or to the Family Advocacy Program (FAP). These forums do not afford military members the usual rights to legal representation and a fair trial. A military member's ability to show his Command or FAP that the Petitioner's allegations were proven false in a Court of law will frequently save his career and preserve his ability to provide for his children.

In short, HB 2060 has the potential to cause damage to innocent Respondents while doing little to protect unsuccessful Petitioners, therefore, I object to its passage.

HB-2060

Submitted on: 2/3/2020 2:59:12 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Bilyk	Breastfeeding Hawaii	Support	No

Comments: