



The Judiciary, State of Hawai‘i

**Testimony to the Thirty-Second Legislature
2023 Regular Session**

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Thursday, March 16, 2023 at 2:00 p.m.
Conference Room 325 & Videoconference

by

Andrew T. Park

Judge, Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 933, SD1, Relating to Temporary Restraining Orders.

Description: Allows petitioners to attend TRO hearings remotely when domestic violence or intimate partner violence is alleged. (SD1)

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 933, SD1 but we wish to share concerns regarding the best interests of petitioners and efficient and effective courtroom process.

We do not question that petitioners can be intimidated by respondents in the courtroom but there are other factors to take into account that would be in the best interests of petitioners.

The parties' physical presence in the courtroom is vital, particularly if the parties request a contested hearing (*i.e.*, a trial). In many, if not most, temporary restraining order ("TRO") trials, the only evidence is the oral testimony of the parties. In those cases, the judge must make credibility determinations in deciding whether to continue or to dissolve the TRO. Witness credibility is best determined through live, in-person testimony. That is the primary reason that, even at the height of the pandemic-related restrictions, TRO hearings were one of the few family court calendars that remained almost entirely in-person.



Senate Bill No. 933 SD1, Relating to Temporary Restraining Orders
House Committee on Judiciary & Hawaiian Affairs
Thursday, March 16, 2023 at 2:00 p.m.
Page 2

The pandemic has also taught us that the person appearing by video is often at a disadvantage by not being in the courtroom physically, particularly if the other party is physically present. The parties have a stake in experiencing the entire process and to be an active participant. Our experience has shown that video appearances can be highly inefficient and more time consuming—exhibits and other documents cannot be readily shared, sound and video problems abound, poor internet connections put everyone on edge, people “speak over” each other, and the judges and participants have no reliable way of knowing who else may be present but are not shown on the screen. The petitioners will not have access to the trained advocates who assist people at the courthouse and who accompany them into the courtroom.

We respectfully suggest the following amendment to the language found on page 3, lines 4-8 (the court’s suggestions are in bold):

All parties shall ~~[be present at]~~ attend the hearing and may be represented by counsel. The court ~~may~~ **shall** allow the petitioner to attend the hearing remotely if the petitioner’s allegations include at least one allegation of domestic abuse as defined in section 586-1. **The court shall consider factors such as lack of transportation, child care, and paid time off as well as the petitioner’s fear of respondent’s presence. The court shall develop a form that will enable petitioners to request remote appearances by oral request through a court officer or a domestic violence advocate.**

Before the pandemic and even without a statutory provision as proposed by this bill, the family court had allowed parties to participate remotely on a case-by-case basis, and we will continue to do so. The court retains the inherent discretion and authority to make these determinations in all cases based on various factors including: the type of case, the purpose of the hearing, the need for remote participation, and, of course, matters of due process and fairness.

Thank you for the opportunity to testify on this matter.



HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

March 16, 2023

Members of the House Committee on Judiciary & Hawaiian Affairs
Chair David A. Tarnas
Vice Chair Gregg Takayama
Rep. Sonny Ganaden
Rep. Troy N. Hashimoto
Rep. Daniel Holt
Rep. Linda Ichiyama
Rep. Greggor Ilagan
Rep. Sam Satoru Kong
Rep. John M. Mizuno
Rep. Kanani Souza

Re: SB933 SD1 Relating to Temporary Restraining Orders

Dear Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary & Hawaiian Affairs:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 28 member programs statewide, **we are in strong support of this measure.** SB933 SD1 would require the Judiciary to allow petitioners of domestic violence protective orders to testify remotely in an Order to Show Cause (OSC) hearing. This would result in greater safety for victims of domestic violence, economic justice and equitable access to the courts.

Safety, first.

The most dangerous time for a victim of domestic violence is when they choose to leave an abusive relationship. That action usually coincides with starting the restraining order/order of protection process through the family court, culminating in a confrontation with the abuser at the OSC hearing. The hallways or parking lot of our family courts could very well be the most dangerous place for victims of domestic violence. They are often victims of witness intimidation by their abuser and their abuser's friends and families when appearing in court for the OSC hearing. AEquitas: The Prosecutors' Resource on Violence Against Women (AEquitas) found that:

"Victims of domestic violence are almost always subjected to some form of intimidation



HAWAI'I STATE COALITION AGAINST DOMESTIC VIOLENCE

or
manipulation during the course of criminal proceedings, as are their children.”¹

Economic Justice and Access to the Courts.

Remote testimony helps victims who do not have access to childcare or paid leave access the courts. In addition to being one of the most expensive states in the US, Hawai'i also has one of the highest costs of childcare, and simply not enough childcare to meet the needs of our families. Families on the neighbor islands and our rural communities are particularly vulnerable to the dearth and expense of childcare. While well-intended, [HRS 378-72](#) Leave of absence for domestic or sexual violence mandates a maximum of 30 days or 5 days of unpaid time off, depending on the size of the company. Domestic violence advocates across the state have successfully worked with victims to prepare for and navigate remote hearings while minimizing risk of losing their jobs for excessive absences or the loss of childcare.

Remote and Virtual Hearings Are Recommended by the Conference of Chief Justices and Conference of State Court Administrators (CCJ/COSCA).

Hawaii's Chief Justice is a member of the CCJ/COSCA Access and Fairness Committee that proposed Resolution 2 In Support of Remote and Virtual Hearings. The resolution was adopted at the CCJ/COSCA 2021 Annual Meeting on July 28, 2021 and sets forth six principles to guide technological changes for post-pandemic court technology.

“Although the downward trajectory of US COVID-19 cases has enabled the beginning of a transition towards more in-person court operations, courts should not stop the usage or adoption of technology for court operations, including the filing of court documents, jury selection, and remote and virtual hearings;”²

Committee members found that remote technology has allowed courts to maintain operations during the pandemic, keep court employees safe and resulted in higher appearance rates, which in the case of Hawai'i, would help alleviate the post-pandemic backlog of the judicial calendar.

Thank you for the opportunity to testify on this important matter.

Sincerely,
Angelina Mercado, Executive Director

¹ “Witness Intimidation: Meeting the Challenge,” AEquitas: The Prosecutors’ Resource on Violence Against Women, 2013, <https://aequitasresource.org/wp-content/uploads/2018/09/Witness-Intimidation-Meeting-the-Challenge.pdf>.

² “Resolution 2: In Support of Remote and Virtual Hearings,” Conference of Chief Justices and Conference of State Court Administrators, https://www.srln.org/system/files/attachments/Resolution-2_Remote-and-Virtual-Hearings.pdf, accessed April 4, 2022.



TO: Committee on Judiciary and Hawaiian Affairs
Chair David Tarnas
FR: Nanci Kreidman, M.A.
Chief Executive Officer

RE: S.B. 933 SD 1

Thank you for hearing this important Bill. We support this Bill creating an opportunity for survivors to attend a protective order hearing remotely.

The prospect of facing one's partner who has used a variety of tactics to hurt, torment and terrorize you is daunting – immobilizing. Seeking a restraining order is a huge decision, with the real fear of retaliation for speaking up, obtaining support from the system and breaking the silence about what has been going on behind closed doors.

This option provides a pathway to safety, involvement by the system, and a clear message to an abusive partner that they must stop – without the potential risks of “going public”

So much other business, communication and transactions are occurring remotely and accepted as legitimate. A survivor who seeks a protective order should be able to benefit from the new ways of conducting business.

Thank you for your consideration and favorable action on SB. 933 SD 1.



RESTRAINING ORDERS
WITHOUT BORDERS

March 14, 2023

Dear Chair Tarnas, Vice Chair Takayama, and distinguished members of the House Judiciary & Hawaiian Affairs Committee:

Restraining Orders Without Borders (ROWB) is a federal and state campaign advocating for the right to restraining orders and police reports for 25 million survivors across America.

ROWB is in **strong support of SB 933** and **supports the testimony/recommendations of the Hawaii State Coalition Against Domestic Violence.**

The ability to testify and engage with court proceedings virtually ensures a trauma-informed judicial system and protects the safety of a victim of domestic violence. By being obligated to attend court proceedings in-person, a victim makes themselves vulnerable to their offender, intimidation, and risks re-traumatization.

This bill is also necessitated by SB 1267/HB 752, which permits nonresidents to request a protective order in cases of domestic violence and civil harassment. Without SB 933, nonresident survivors will be expected to bear the burden of travel and lodging costs in order to request a protective order.

We kindly urge the committee support and pass this measure.

Sincerely,

Nazeehah Khan

Founder, Restraining Orders Without Borders | ROWB.National@gmail.com

SB-933-SD-1

Submitted on: 3/14/2023 12:40:13 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
cheryl B.	Individual	Support	Written Testimony Only

Comments:

I SUPPORT this bill to protect those who find themselves in situations where a TRO has been filed. As I stated in previous testimony, sometimes it is the person who files the TRO who is actually the person of whom to be afraid. This bill does not seem to take that situation into consideration and I believe the bill could have that as an addition. Having actually had this experience, I believe that every path to ensuring everyone's safety during a TRO hearing, including the courtroom personnel is essential.

SB-933-SD-1

Submitted on: 3/14/2023 1:00:05 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Samuel M Mitchell	Individual	Support	Written Testimony Only

Comments:

Strongly support allowing persons with restraining orders to attend meetings on Zoom.

Samuel Mitchell

SB-933-SD-1

Submitted on: 3/14/2023 7:31:53 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alexandra Chou	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in support of HB841 HD1. This bill amends HRS 586-10.5, Domestic Abuse Protective Orders to require reports by the Department of Human Services Child Welfare Services when there are allegations of child abuse as defined in HRS 350-1 instead of allegations of domestic abuse.

Without this amendment, survivors of domestic violence would continue to face the potential of a Child Welfare Services (CWS) investigation when they include their children in a domestic violence protective order. Too often, survivors are subjected to more traumatization and victimization during a CWS investigation - instead of receiving trauma-informed help and resources, they are subjected to victim blaming and are held accountable for the abuse, not their partner. Survivor safety is not addressed, and yet we know, when a survivor is safe, their children are more likely to be safe as well.

Domestic violence protective orders are the only survivor-led legal remedy to which they have access and we must balance strengthening the intent of domestic violence protective orders and ensuring that allegations of child abuse are investigated and children are protected.

Thank you for the opportunity to testify on this important matter.

SB-933-SD-1

Submitted on: 3/14/2023 7:47:29 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carolyn Lee	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in support of SB933. This bill amends HRS 586-10.5, Domestic Abuse Protective Orders to require reports by the Department of Human Services Child Welfare Services when there are allegations of child abuse as defined in HRS 350-1 instead of allegations of domestic abuse.

Without this amendment, survivors of domestic violence would continue to face the potential of a Child Welfare Services (CWS) investigation when they include their children in a domestic violence protective order. Too often, survivors are subjected to more traumatization and victimization during a CWS investigation - instead of receiving trauma-informed help and resources, they are subjected to victim blaming and are held accountable for the abuse, not their partner. Survivor safety is not addressed, and yet we know, when a survivor is safe, their children are more likely to be safe as well.

Domestic violence protective orders are the only survivor-led legal remedy to which they have access and we must balance strengthening the intent of domestic violence protective orders and ensuring that allegations of child abuse are investigated and children are protected.

Thank you for the opportunity to testify on this important matter.

SB-933-SD-1

Submitted on: 3/14/2023 10:01:10 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Deanna Espinas	Individual	Support	Written Testimony Only

Comments:

I support this bill.

SB-933-SD-1

Submitted on: 3/15/2023 10:51:35 AM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cheryl Harris	Individual	Support	Written Testimony Only

Comments:

I support this bill

SB-933-SD-1

Submitted on: 3/15/2023 2:05:54 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alyssa Rabinowitz	Individual	Support	Written Testimony Only

Comments:

I am in strong support of this measure. SB933 SD1 would require the Judiciary to allow petitioners of domestic violence protective orders to testify remotely in an Order to Show Cause (OSC) hearing. This would result in greater safety for victims of domestic violence, economic justice and equitable access to the courts.

Safety, first.

The most dangerous time for a victim of domestic violence is when they choose to leave an abusive relationship. That action usually coincides with starting the restraining order/order of protection process through the family court, culminating in a confrontation with the abuser at the OSC hearing. The hallways or parking lot of our family courts could very well be the most dangerous place for victims of domestic violence. They are often victims of witness intimidation by their abuser and their abuser’s friends and families when appearing in court for the OSC hearing. AEquitas: The Prosecutors’ Resource on Violence Against Women (AEquitas) found that:

“Victims of domestic violence are almost always subjected to some form of intimidation or manipulation during the course of criminal proceedings, as are their children.” (“Witness Intimidation: Meeting the Challenge,” AEquitas: The Prosecutors’ Resource on Violence Against Women, 2013, <https://aequitasresource.org/wp-content/uploads/2018/09/Witness-Intimidation-Meeting-the-Challenge.pdf>)

Economic Justice and Access to the Courts.

Remote testimony helps victims who do not have access to childcare or paid leave access the courts. In addition to being one of the most expensive states in the US, Hawai‘i also has one of the highest costs of childcare, and simply not enough childcare to meet the needs of our families. Families on the neighbor islands and our rural communities are particularly vulnerable to the dearth and expense of childcare. While well-intended, [HRS 378-72](#) Leave of absence for domestic or sexual violence mandates a maximum of 30 days or 5 days of unpaid time off, depending on the size of the company. Domestic violence advocates across the state have successfully worked with victims to prepare for and navigate remote hearings while minimizing risk of losing their jobs for excessive absences or the loss of childcare.

Remote and Virtual Hearings Are Recommended by the Conference of Chief Justices and Conference of State Court Administrators (CCJ/COSCA).

Hawaii's Chief Justice is a member of the CCJ/COSCA Access and Fairness Committee that proposed Resolution 2 In Support of Remote and Virtual Hearings. The resolution was adopted at the CCJ/COSCA 2021 Annual Meeting on July 28, 2021 and sets forth six principles to guide technological changes for post-pandemic court technology.

“Although the downward trajectory of US COVID-19 cases has enabled the beginning of a transition towards more in-person court operations, courts should not stop the usage or adoption of technology for court operations, including the filing of court documents, jury selection, and remote and virtual hearings.” (“Resolution 2: In Support of Remote and Virtual Hearings,” Conference of Chief Justices and Conference of State Court Administrators, https://www.srln.org/system/files/attachments/Resolution-2_Remote-and-Virtual-Hearings.pdf)

Committee members found that remote technology has allowed courts to maintain operations during the pandemic, keep court employees safe and resulted in higher appearance rates, which in the case of Hawai'i, would help alleviate the post-pandemic backlog of the judicial calendar.

Thank you for the opportunity to testify on this important matter.

SB-933-SD-1

Submitted on: 3/15/2023 4:05:27 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
aimee chung	Individual	Support	Written Testimony Only

Comments:

The prospect of facing one's partner who has used a variety of tactics to hurt, torment and terrorize you is terrifying and never should be part of the process. Seeking a restraining order is a huge decision that victims do not make without great scrutiny. Victims are most often in fear and afraid of retaliation. Research tells us that when a victim leaves their abuser, it is the most life-threatening part of their relationship. Participating in a hearing virtually provides an option that is safer, assuring, and sends a clear message to an abusive partner that they must stop.

So much other business, communication and transactions are occurring remotely and are accepted as legitimate. A survivor who seeks a protective order should be able to benefit from this virtual option. Thank you for your consideration and favorable action on SB. 933 SD 1. Thank you for hearing and supporting this important Bill.

Aimee Chung, MSW, LSW

Executive Board Member, Domestic Violence Action Center

Faculty, University of Hawai'i at Mānoa

SB-933-SD-1

Submitted on: 3/15/2023 5:59:12 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support