



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Friday, February 17, 2023 at 2:00 p.m.
Conference Room 325 & Via Videoconference

by:

Andrew T. Park
Judge, Family Court of the First Circuit

Bill No. and Title: House Bill No. 752, Relating to Protective Orders.

Purpose: Allows nonresidents to apply for a temporary restraining order or order for protection in cases of domestic abuse. Allows nonresidents to apply for a temporary restraining order and an injunction from further harassment.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 752. We offer the following comments.

1. The language at page 1, line 8, and page 2, lines 4-5, "The respondent resides, is temporarily located, or is served" is ambiguous. The language also raises concerns about whether it comports with constitutional "minimum contacts" requirements, which are necessary for a court to assert personal jurisdiction over a respondent.

2. The word "offense", page 1, line 10, and page 2, line 6, is not defined in Hawai'i Revised Statutes ("HRS") Chapter 586 and Chapter 604 and, specifically, §604-10.5. The word "offense" is used in HRS §586-1, the definitions section, as follows:

"Domestic abuse" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme



psychological abuse, coercive control, or malicious property damage between family or household members; or

(2) Any act which would constitute an **offense** under section 709-906, or under part V or VI of chapter 707 committed against a minor family or household member by an adult family or household member.

but neither HRS §709-906 or parts V or VI of HRS Chapter 707 provide a satisfactory “stand alone” definition of “offense” sufficient for the purposes of this bill.

3. In several previous cases, the family court has been presented with a jurisdictional question of whether the petitioner needs to be a resident when filing on behalf of a subject who is a resident. We would like to take the opportunity presented by this bill to clarify that issue.

4. Both the family courts and the district courts will need time to draft new forms and procedures so a later effective date is respectfully requested.

5. The Judiciary respectfully suggests the following modifications to this bill. We applied Ramseyer formatting to the existing language of the statutes.

SECTION 1. Section 586-2, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§586-2]]~~ **Court jurisdiction.** (a) An application for relief under this chapter may be filed in the family court for the circuit in which:

(1) The petitioner resides or is temporarily located;

(2) The respondent resides;

(3) The subject of the petition, a petitioner’s family or household member who is a minor or who is an incapacitated person as defined in section 560:5-102 or who is physically unable to go to the appropriate place to complete or file the petition, resides or is temporarily located; or

(4) The domestic abuse, as defined by section 586-1, occurred.

(b) Actions under this chapter shall be given docket priorities by the court."

SECTION 2. Section 604-10.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who has been subjected to harassment may petition the district court [~~of the district in which the petitioner resides~~] for a temporary restraining order and an injunction from further harassment[.] in the district in which:

(1) The petitioner resides or is temporarily located;

(2) The respondent resides; or

(3) The harassment occurred. “



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SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect September 1, 2023.

Thank you for the opportunity to testify on this matter.



February 15, 2023

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

My name is Nazeedah Khan, I was sexually assaulted while visiting my hometown in Honolulu, Hawaii, and I am the survivor who prompted HB 752. I was born and raised in Ewa Beach, attended James Campbell High School, studied at the University of Hawaii – Manoa, and moved to California for work in 2019.

Background

As a former state employee managing Section 8 cases in Hawaii, I often told my clients to have faith in our systems, they are made to help. But when I was assaulted, the system abandoned me. **13 months since my assault, I have been denied a restraining order by both California and Hawaii due to residency status.** I petitioned for a restraining order after returning to California. In California, after 4 months of hearings, the Judge dismissed my restraining order request because the perpetrator lived in Hawaii and contested an out of state court's jurisdiction. I turned to Hawaii only to find HRS 586-2 and HRS 604-10.5 limits restraining order petitions to residents. Today, the evidence I collected while being assaulted sits in a flashdrive in my home because no Judge had the jurisdiction to assess the merits of my case. The sexual assault clinic I turned to advised that I wait for my perpetrator to come to California or make contact with me to try again.

Restraining Orders Without Borders

I felt helpless and abandoned by the state that was my home. I replayed my court cases again and again. I realized the gap wasn't in my court arguments, it was in the law. **I was not an anomaly – case law and policy research exposed gaps in our nationwide justice system impacting 25 million survivors across America, 300,000 of whom live in Hawaii¹ and all of whom are vulnerable to Hawaii's laws when they visit.** I founded Restraining Orders Without Borders, a federal & state campaign advocating for the right to restraining orders and police reports for domestic and sexual assault survivors. I gained the support of Rise, the organization behind the federal Survivor Bill of Rights which passed Congress unanimously in 2016. I began a petition with 41,000 signatures. **I stopped reliving my hearings and started rewriting the law.**

The Problem

- 1) Defendants have the federal right, based on the Federal Rules of Civil Procedures, to submit themselves to an out of state court while victims must rely on state-by-state laws for the same right. Hawaii does not currently provide this right for restraining orders while 28 other states do.
- 2) States inconsistently apply case law and the minimum contacts requirement when determining jurisdiction in cases of interstate sexual and domestic violence. As a result, courts are denying restraining orders to resident survivors due to jurisdiction concerns over a nonresident offender, leaving the survivor to turn to the offender's court for protection. In Hawaii, this is not possible, as a nonresident may not petition for a restraining order.

Why Hawaii

HB 752 is crucial in the State of Hawaii due to the following reasons:

- 1) Hawaii is one of seven states with the most restrictive restraining order requirements for victims of sexual/domestic violence in the nation;
- 2) Hawaii faces a unique case of invisible survivors. These are survivors who have no paper trail of having been abused in Hawaii or of needing protection from a Hawaii perpetrator if they do not call the police while on the island as the state's judicial system does not grant them the ability to engage with the system;

¹ 2010 National Intimate Partner and Sexual Violence Survey, Center for Disease Control and Prevention.



RESTRAINING ORDERS WITHOUT BORDERS

- 3) Hawaii has a prominent tourism industry which receives almost 10 million tourists a year – that is almost half the amount of nationwide survivors. Roughly 60% of visitors are from the Mainland;² and
- 4) While a federal bill is being actively pursued, federal legislation can take up to 10 years to pass, and survivors need their right to protection urgently.

The Precedent

The bill is modeled off of states which already have the provisions of HB 752 in place:

- 1) **14 states** currently allow petitions where the victim is a resident, temporarily located, the defendant is a resident, and where the offense occurred. (DE, FL, IL, IN, MN, MO*, MS, MT, NV, NJ, PA*, UT**, WV, WI)
- 2) **25 states** (+ DC) allow petitioners to be nonresidents. (AL, DC, DE, FL, ID, IL, IN, KS, KY, ME, MA, MN, MS, MO*, MT, NM, ND, NV, NJ, OH, PA*, UT, VT, WA, WV, WI)
- 3) **33 states** allow filing in the abuser's county. (AL, AR*, CO, CT, DE, FL, GA, ID, IL, IN, IA, LA, ME, MN, MS, MO*, MT, NV, NH, NJ, NY, NC, OK, OR, PA*, SC, SD, TN, TX, UT, VA, WV, WI)
- 4) **25 states** allow filing if the abuse occurred there. (AR*, CO, DE, FL, GA, IL, IN, LA, MD, MN, MS, MO*, MT, NV, NJ, NY, OK, PA*, SC, TN, TX, UT, VA, WV, WI)

* In AR, MO, PA, the petition may also be filed where the defendant is temporarily located.

** In UT, the petition may also be filed anywhere a defendant may be served.

Benefit to Hawaii

- 1) Hawaii would join 14 other states with the most comprehensive restraining order access laws;
- 2) Hawaii creates a safety net for its 6 million annual Mainland visitors, including those who are former residents, and ensures their safety from sexual/domestic violence;
- 3) Hawaii takes a proactive approach which prevents future instances of sexual/domestic violence;
- 4) Passing HB 752 ensures Hawaii's congressional and state lawmakers are aligned as Restraining Orders Without Borders has met with Hawaii's congressional senators who are in support of this model of legislation federally;
- 5) Hawaii would reassure the 41,000 people who signed our campaign's petition from Hawaii, across the nation, and across the world that the Hawaii State Legislature prioritizes survivor protection and all who enter our islands are safe; and
- 6) This bill does more than ensure safety, it ensures trust. Trust in our government, the Hawaii State Legislature, and the systems which are meant to protect us, the systems that are currently failing survivors in Hawaii today.

When our laws protecting survivors are weak, our laws protecting perpetrators are inadvertently strong. When the survivor is unprotected, it is the perpetrator that is safe to continue committing acts of violence. **It is time interstate violence is met with interstate protection. I am grateful this bill has been brought to the House JHA Committee and thank Chair Tarnas, Vice Chair Takayama, sponsor Rep. Ichiyama, and the Committee for their prioritization of survivor safety. I am happy to be contacted for questions and encourage the Committee's passage of HB 752.**

Sincerely,

Nazeehah Khan

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

² 2014 Annual Visitor Research Report, The Department of Business, Economic Development & Tourism, State of Hawaii.



HAWAII STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

February 17, 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: HB752 Relating to Protective 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, I respectfully submit testimony **supporting HB752**.

We already allow non-residents such as the University of Hawai'i students to petition for an order of protection. This measure would ensure that former residents or temporary residents have the same access to remedies provided by an order of protection, including for instances when the offense occurred in the state. The changes to our current law are not unprecedented, there are:

- **14 states** currently allow petitions where the victim is a resident, temporarily located, the defendant is a resident, and where the offense occurred. (DE, FL, IL, IN, MN, MO*, MS, MT, NV, NJ, PA*, UT**, WV, WI)
- **25 states** (+ DC) allow petitioners to be nonresidents. (AL, DC, DE, FL, ID, IL, IN, KS, KY, ME, MA, MN, MS, MO*, MT, NM, ND, NV, NJ, OH, PA*, UT, VT, WA, WV, WI)
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** In UT, the petition may also be filed anywhere a defendant may be served.



HAWAI'I STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

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

Sincerely,
Angelina Mercado, Executive Director

HB-752

Submitted on: 2/15/2023 1:53:08 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

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

Comments:

Stand in Support

HB-752

Submitted on: 2/15/2023 2:23:03 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carol Kwan	Individual	Support	Written Testimony Only

Comments:

I support HB 752. I have had to obtain a temporary restraining order myself about 30 years ago, and we shouldn't be limiting them to nonresidents only.

My daughter attends college in Washington and plans to live there after graduation. If someone attacked her while she was visiting us, she should be able to get a TRO so that she would feel safe enough to visit us again in the future.

Mahalo for considering my testimony.

Carol L Kwan

HB-752

Submitted on: 2/15/2023 3:40:27 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support

HB-752

Submitted on: 2/15/2023 4:11:35 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sarah Pearson	Individual	Support	Written Testimony Only

Comments:

My name is Sarah Pearson and I support both HB752 and SB1267. The notion of a survivor being deprived of protection solely based on jurisdiction is deeply concerning. In this era, where travel is easily accessible and communication can be established through various technological means, a survivor deserves safeguarding against all conceivable interactions with the perpetrator. I trust that the members of this committee will identify the flaws in the current policies and take appropriate action.

Written Testimony of Melissa Terada
House Committee on Judiciary and Hawaiian Affairs

In Support of HB752

February 17, 2023

Aloha Chair Tarnas and Members of the Committee:

My name is Melissa Terada and I'm a student at the University of Hawai'i. I am studying social work. I want to thank you for the opportunity to testify in support of House Bill 752, which would allow nonresidents to apply for a temporary restraining order or order for protection.

I support HB752 because it can have an impact on individuals, families, and communities. According to the Centers for Disease Control, nearly three in every 10 women (about 32 million) and one in 10 men experienced some form of violence. While some of the violence may be similar, the responses vary from person to person. Some of these impacts can be long or short-term and they can include a decrease in physical and psychological health, a decrease in quality of life, and can cause depression or suicidal thoughts, injury or disability, and substance abuse.

Regardless if individuals are immigrants, nonresidents, or locals they are entitled to live in a safe environment. No one should live in constant fear of harassment or abuse. Survivors should have the capability to remove the perpetrator from their life. By passing this bill, it can help break the cycle of abuse and allow the survivor time to process and create a plan to move forward.

I support House Bill 752 as I strongly believe everyone is entitled to live in a safe environment. Not only would you be protecting individuals who experienced domestic violence, but families, friends, and communities from having lasting negative impacts. I respectfully ask you to pass this bill to protect all human lives.

Thank you for your time,

Melissa Terada

HB-752

Submitted on: 2/16/2023 2:02:29 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rehnuma khan	Individual	Support	Written Testimony Only

Comments:

I want to support HB752. My daughter , Nazeedah khan is pushing this bill.i have seen my daughter go througj so much since she got assaulted. She has continuous nightmares and sometimes we cant even hug herbor touch her face without her freaking out.

I wish i could keep her here in Hawaii with her or at least have her visit us sometime. But she cant come because she is so scared of running into her perpetrator or him trying to come near her.

Please consider this bill.. its a mothers request gor her daughters safety ànd well being..

HB-752

Submitted on: 2/16/2023 6:56:18 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Katie Pham	Individual	Support	Written Testimony Only

Comments:

Dear Committee Members,

I'm writing in **strong support** of HB752.

The current protective order statute restricts the right to obtain a protective order in Hawaii to only Hawaii residents. This requirement operates to exclude survivors who happen to not be Hawaii residents but have significant ties to the state. I urge you to consider the reality that many families based in Hawaii have roots and branches that spread beyond our state borders. In practice, this means that the current law can unintentionally operate to keep families apart because a non-resident member does not feel safe to visit the state. Similarly, a non-resident survivor may not be able to return to Hawaii, where they might have spent their whole life, because they are not protected under Hawaii law.

HB752 proposes changes to the current law that reflect laws that have been adopted in many states which expand protection for survivors. Please pass HB752 to ensure that survivors are protected, not abusers.

Thank you for the opportunity to testify on this measure.

HB-752

Submitted on: 2/16/2023 7:12:34 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Zoha	Individual	Support	Written Testimony Only

Comments:

My name is Zoha and I support HB752. Survivors MUST have access to restraining orders regardless of their location