



The Judiciary, State of Hawai'i

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

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, February 17, 2023 at 9:35 a.m.
Conference Room 016 & Videoconference

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

Bill No. and Title: Senate Bill No. 1267, 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 Senate Bill No. 1267. 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 Hawaii 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
 - (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;



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(2) The respondent resides; or
(3) The harassment occurred.“

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.



The Judiciary, State of Hawai'i

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

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, February 17, 2023 at 9:35 a.m.
Conference Room 016 & Videoconference

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

Bill No. and Title: Senate Bill No. 1267 – Relating to Protective Orders (Supplemental Testimony)

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 has already filed its testimony for Senate Bill No. 1267. In our testimony, we took no position and suggested modifications to the bill based on our comments.

This supplemental testimony is offered to correct an oversight in the following subsection at page 2:

(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



Because our modifications were meant to “track” the original language of this bill, we should have added “**or is temporarily located**” after the highlighted word “resides.” We have inserted the correction below. For the Committee’s convenience we include all of our suggested revisions as found in our testimony with the added phrase (bolded in red).

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.”

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.



RESTRAINING ORDERS WITHOUT BORDERS

February 15, 2023

Dear Chair Rhoads, Vice Chair Gabbard, and distinguished members of the Senate Judiciary Committee:

My name is Nazeedah Khan, I was sexually assaulted while visiting my hometown in Honolulu, Hawaii, and I am the survivor who prompted SB 1267. 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

SB 1267 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 SB 1267 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) Restraining Orders Without Borders has met with Hawaii's congressional senators who are in support of this model of legislation federally. Passing SB 1267 ensures Hawaii's congressional and state lawmakers are aligned;
- 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 courts are dismissing survivors' cases, it is the perpetrator they rule in favor of. When the survivor is unprotected, it is the perpetrator that is safe. **It is time interstate violence is met with interstate protection. I am grateful this bill has been brought to the Senate Judiciary Committee and thank Chair Rhoads, Vice Chair Gabbard, and the Committee for their prioritization of survivor safety. I am happy to be contacted for questions and encourage the Committee's passage of SB 1267.**

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.

SB-1267

Submitted on: 2/14/2023 9:26:05 AM

Testimony for JDC on 2/17/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Rainbow Family 808	Support	Written Testimony Only

Comments:

RAINBOW FAMILY 808 supports SB1267. Please pass this bill.

Mike Golojuch, Sr., Secretary/Board Member



HAWAII STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

February 17, 2023

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Mike Gabbard
Sen. Brandon J.C. Elefante
Sen. Joy A. San Buenaventura
Sen. Brenton Awa

Re: SB1267 Relating to Protective Orders

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

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 SB1267**.

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)
- **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)
- **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.

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

Sincerely,
Angelina Mercado, Executive Director

SB-1267

Submitted on: 2/14/2023 12:05:06 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

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

Comments:

My name is Sarah Pearson and I support SB1267. It's appalling that in today's day and age, where the world has gotten so much smaller with means of travel, the internet, and technology, jurisdiction can be the one thing that stands between a survivor from feeling some semblance of safety after going through something horrifying. The fact that protection like this doesn't already exist shows how much we disregard survivors and protect perpetrators. I trust that the members of this committee will do the right thing.

SB-1267

Submitted on: 2/14/2023 2:17:43 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Naadiya Vaa	Individual	Support	Written Testimony Only

Comments:

My name is Naadiya Va'a and I support SB 1267.

SB-1267

Submitted on: 2/14/2023 2:37:20 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Uzma hussain	Individual	Support	Written Testimony Only

Comments:

Hello,

my name is Dr. Hussain, I was raised in Hawaii for over 18 years. I went to JCHS and always proudly say that I am from Hawaii. My family lives in Hawaii and every time I come to visit I have to be cautious because the man that sexually assaulted me remains in Hawaii and remains protected by the law. The man I'm talking about is the same man that assaulted the founder of ROWB. I humbly ask that in the spirit of aloha and the Hawaiian spirit of safety and acceptance, you pass this bill in order to allow the good to survive and thrive in Hawaii and in that vein support survivors rather than the predators.

SB-1267

Submitted on: 2/15/2023 2:43:56 AM

Testimony for JDC on 2/17/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Carrieschwartz@me.com	Individual	Support	Written Testimony Only

Comments:

This is a critical bill. It is so simple to put laws in place to protect assault survivors. Sadly, it takes being touched by sexual violence to realize the terror, trauma and severity of the aftermath for victims. My daughter was assaulted her senior year in high school, an event that fully upended and derailed her young life. I have walked beside her for the past year as she rebuilds her life, her trust, her faith in humanity. You cannot conceive of the repercussions of assault until it happens to someone you love with your whole heart. I beg you to understand how scared victims are to complete the most simple of tasks in the wake of an assault. My daughter won't leave my side at the grocery store, too scared to walk one aisle away for fear she will see her assailant or one of his family members.

Violence is real. It knows no boundaries. It doesn't follow state lines. It is everywhere, all consuming.

Please, support victims and survivors and support this bill.

SB-1267

Submitted on: 2/15/2023 11:57:56 AM

Testimony for JDC on 2/17/2023 9:35:00 AM

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

Comments:

Stand in Support

SB-1267

Submitted on: 2/15/2023 12:11:00 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Dr. Faith Joyner	Individual	Support	Written Testimony Only

Comments:

Aloha, I support this bill. Mahalo for your consideration.

SB-1267

Submitted on: 2/16/2023 2:14:54 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

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

Comments:

I support SB1267. My daughter Nazeedah khan is pushing this bill because last year she got assaulted in Honolulu and has been trying to get a restraining order against her perpetrator but hasn't been successful due to jurisdiction issues.

My child goes through nightmares and anxiety and has to stay away from home because she doesn't feel safe coming home. We can't even hug her or touch her face without her freaking out that the hands belong to the perpetrator.

Please make this bill possible so Nazeedah as well as so many other girls and women or anybody for that matter have some sense of protection. Our system has failed the victims in so many ways.

This is a mother's plea ..please please consider this. So the victims have some sense of protection and they don't feel let down by our judicial system

SB-1267

Submitted on: 2/16/2023 6:55:05 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

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

Comments:

Dear Committee Members,

I'm writing in **strong support** of SB1267.

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.

SB1267 proposes changes to the current law that reflect laws that have been adopted in many states which expand protection for survivors. Please pass SB1267 to ensure that survivors are protected, not abusers.

Thank you for the opportunity to testify on this measure.

SB-1267

Submitted on: 2/16/2023 7:11:50 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

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

Comments:

My name is Zoha and I support SB 1267. Survivors **MUST** have access to restraining orders regardless of their location.

SB-1267

Submitted on: 2/16/2023 8:04:27 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Marissa Danta	Individual	Support	Written Testimony Only

Comments:

I am currently a social work major at UH Manoa. The very purpose of social work is to help people who need it, particularly focusing on meeting the needs of vulnerable or oppressed populations. Needs are often considered in tiers, with the first tier being our basic needs of food, air, water and more. Directly after that comes the need for safety. I support SB1267 because it would allow nonresidents a right to safety by being able to apply for a temporary restraining order or order for protection in cases of domestic abuse. With the Hawaii State Judiciary website claiming that “any person, regardless of his or her immigration or citizenship status, has a right to live in a safe environment, free from the threat of harm from a family member or an acquaintance”, I believe passing this bill would support the beliefs that Hawaii has expressed and set a precedence for. All people deserve protection and safety, regardless of residency.

SB-1267

Submitted on: 2/16/2023 11:10:01 PM

Testimony for JDC on 2/17/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Jordana Ferreira	Individual	Support	In Person

Comments: