



The Judiciary, State of Hawai‘i
Testimony to the Thirty-Second Legislature
2023 Regular Session

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

Thursday, February 16, 2023 at 9:30 a.m.
Conference Room 016 & Videoconference

by
Jessi L.K. Hall
Judge, Family Court of the First Circuit

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

Description: Allows petitioners to attend TRO hearings remotely when domestic violence or intimate partner violence is alleged or the petitioner has been diagnosed with post-traumatic stress disorder.

Judiciary's Position:

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

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.

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



Senate Bill No. 933, Relating to Temporary Restraining Orders
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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 do not question that petitioners can be intimidated by respondents nor do we discount the effects of post-traumatic stress disorder (“PTSD”). Tangentially, we note that these amendments may result in questions raised about what constitutes a diagnosis of PTSD.

If this bill is not held by this committee, we respectfully suggest the following amendment to the language found on page 3, lines 6-12:

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 upon request ~~[if the petitioner's allegations include at least one allegation of domestic violence or intimate partner violence or if the petitioner has been diagnosed with post-traumatic stress disorder]~~. 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.

Even before the pandemic and absent a statutory provision as proposed by this bill, the family court has 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.



The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

TO: Honorable Sen. Karl Rhoads
Chair, Senate Committee on Judiciary

Honorable Sen. Mike Gabbard
Vice Chair, Senate Committee on Judiciary

FROM: Connie Mitchell, Executive Director
IHS, Institute for Human Services, Inc.

RE: SB933 – RELATING TO TEMPORARY RESTRAINING ORDERS.

HEARING: Thursday, February 16, 2023 at 9:30 am.

POSITION: IHS supports the passing of SB933

IHS, the Institute for Human Services has been providing emergency shelter services to adult men, women, and families with children on Oahu for over 40 years. Over the years, we have seen an increase in conflicts and threats of bodily harm for guests. In some instances restraining orders have been requested to protect vulnerable households either directly or by proximity.

Last year, 76 guests at our Kaaahi Women’s Shelter and 21 guests at Sumner Men’s Shelter reported having experienced domestic violence. By allowing virtual hearings, restraining order court petitions can be heard in a manner that better protects survivors’ physical and mental health. Moreover, remote attendance allows a greater number of cases to be heard since in-person appearances can be time intensive, requiring petitioners to find childcare, transportation to/from court, all the while being potentially traumatizing for individuals who are having to share space with those they are training to protect themselves from.





HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

February 16, 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: SB933 Relating to Temporary Restraining 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, **we are in strong support of this measure** and respectfully suggest an amendments. SB933 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.

Amendment to page 3, lines 7-12:

The court shall allow the petitioner to attend the hearing remotely if the petitioner's allegations include at least one allegation of domestic violence as defined in section 586-1, Hawaii Revised Statutes or intimate partner violence or if the petitioner has been diagnosed with ~~post-traumatic stress disorder~~.

We're concerned about the broad language relating to post-traumatic stress disorder and think that including the definition of domestic abuse in statute would cover the intent of the bill's author.

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



HAWAI'I STATE COALITION AGAINST DOMESTIC VIOLENCE

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."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

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.

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



February 13, 2023

Representative Rhoads, Chair
Senate Committee on Judiciary

Re: S.B. 933 Relating to Temporary Restraining Orders

**Hearing: Thursday, February 16, 2023, 9:30 AM, Room 016 & Via
Videoconference**

Dear Chair Rhoads and Members of the Committee on Judiciary:

Hawaii Women Lawyers is a lawyer's trade organization that aims to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all.

Hawaii Women Lawyers submits testimony in **strong support of S.B. 933**, which amends Hawaii Revised Statutes Chapter 586 to allow petitioners to attend hearings for temporary restraining orders ("**TRO**" or "**TROs**") remotely when domestic violence or intimate partner violence is alleged, or the petitioner has been diagnosed with post-traumatic stress disorder.

Consistent with the findings of Legislature, Hawaii Women Lawyers is aware through its work with many sister organizations that there has been a significant increase in violence against women in Hawai'i since the onset of the COVID-19 Pandemic. It is a frightening and harsh reality for too many women in our State.

S.B. 933 acknowledges the very real fear that many women feel by being forced to be in the same room as their abuser during a TRO hearing. For these women, having to come face to face with their abuser during an already stressful and exhausting legal process can be a re-traumatizing event. S.B. 933 allows for the TRO process to be a bit gentler on these victims while upholding the integrity of the judicial system.

Hawaii Women Lawyers has historically supported the rights of victims of gender-based violence and stands beside all of those who find themselves in these horrible situations.

For the foregoing reasons, HWL strongly supports S.B. 933 and respectfully requests that the Committee pass this measure.

Thank you for the opportunity to testify in strong support of this measure.



February 15, 2023

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

We kindly urge the committee support and pass this measure.

Sincerely,

Nazeehah Khan

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

SB-933

Submitted on: 2/13/2023 8:49:16 PM

Testimony for JDC on 2/16/2023 9:30:00 AM

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

Comments:

Stand in STRONG SUPPORT!!!

Date: February 15, 2023

To: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Senator Mike Gabbard, Vice Chair
Senate Committee on Judiciary

Subject: SB933, RELATING TO TEMPORARY RESTRAINING ORDERS

My name is Jennifer Jung, and I write my strong support of SB933, Relating to Temporary Restraining Orders to increase safety provisions for victims of domestic violence by allowing petitioners of domestic violence protective orders to testify remotely in an Order to Show Cause (OSC) hearing. In addition to increasing safety for domestic violence victims this measure promotes economic justice and equitable access to the courts.

I respectfully request the following amendment to this measure be included:
Amendment to page 3, lines 7-12:

The court shall allow the petitioner to attend the hearing remotely if the petitioner's allegations include at least one allegation of domestic violence as defined in section 586-1, Hawaii Revised Statutes ~~or intimate partner violence or if the petitioner has been diagnosed with post-traumatic stress disorder.~~

The broad language relating to post-traumatic stress disorder is concerning as it may deter victims without official diagnosis from utilizing the remote option. Including the definition of domestic abuse in the statute covers the intent of the bill's author.

Prioritizing safety.

Leaving an abusive relationship is the most dangerous time for a victim of domestic violence. The act of leaving the abuser 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, both for their physical safety and felt sense of safety. 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.”¹

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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.

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“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.

In closing, I reiterate my **strong support of SB933** to increase safety options for victims of domestic violence. Providing meaningful choices for a survivor upholds a move towards trauma informed systems. Thank you for this opportunity to provide testimony.

Sincerely,

Jennifer Jung, Esq

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.

LATE

SB-933

Submitted on: 2/15/2023 12:08:51 PM

Testimony for JDC on 2/16/2023 9:30:00 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.

LATE

SB-933

Submitted on: 2/15/2023 12:14:06 PM

Testimony for JDC on 2/16/2023 9:30:00 AM

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

Comments:

COMMENTS

Sometimes the petitioner is the one who is actually the perpetrator of the violence, so would amend this to honor that fact.

This is from personal experience, there is a person who files for TRO and somehow gets them from judges with erroneous information. My friend and her family (we went as support) were called to court in Kapolei due to the TRO. Long story short, the Judge immediately saw that there was no case and dismissed it. The person who filed for the TRO began screaming, slamming doors, throwing things and at one point was chased by the deputies on duty to make sure she left the courthouse. This was traumatic for all of us as well as those in the area. It would have been so much less to do this remotely especially as this person has done this 2x before to the family and to others who are on the islands as well.

Thank you for reading my share.