



## *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

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. 352, 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 House Bill No. 352, 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



House Bill No. 352, Relating to Temporary Restraining Orders  
House Committee on Judiciary & Hawaiian Affairs  
Friday, February 17, 2023 at 2:00 p.m.  
Page 2

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 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.



HAWAI'I 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: HB352 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** and respectfully suggest an amendment. HB352 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.



## HAWAI'I STATE COALITION AGAINST DOMESTIC VIOLENCE

### **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."<sup>1</sup>*

### **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*

---

<sup>1</sup> "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>.



HAWAI'I STATE  
COALITION AGAINST  
DOMESTIC VIOLENCE

*selection, and remote and virtual hearings;*<sup>2</sup>

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

---

<sup>2</sup> "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](https://www.srln.org/system/files/attachments/Resolution-2_Remote-and-Virtual-Hearings.pdf), accessed April 4, 2022.



February 15, 2023

Representative Tarnas, Chair  
House Committee on Judiciary & Hawaiian Affairs

**Re: H.B. 352 Relating to Temporary Restraining Orders**

**Hearing: Friday, February 17, 2023, 2:00 PM, Room 325 & Via  
Videoconference**

Dear Chair Tarnas and Members of the Committee on Judiciary & Hawaiian Affairs:

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 H.B. 352**, 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.

H.B. 352 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. H.B. 352 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. Hawaii Women Lawyers previously submitted its support for companion bill S.B. 933, and now submits its strong support for H.B. 352. For the reasons set forth hereinabove, Hawaii Women Lawyers respectfully requests that the Committee pass this measure.

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

**HB-352**

Submitted on: 2/16/2023 10:05:09 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
nanci kreidman	domestic violence action center	Support	Written Testimony Only

Comments:

aloha,

we would request the removal of language about *diagnosis of PTSD*.

most survivors do not seek mental health treatment where a diagnosis is provided. this should not interfere with the ability to appear remotely, if the other requirements are met.

thank you!

**HB-352**

Submitted on: 2/15/2023 12:13:36 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
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.



**HB-352**

Submitted on: 2/15/2023 1:52:11 PM

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

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

Comments:

Stand in STRONG SUPPORT

**HB-352**

Submitted on: 2/15/2023 3:38:48 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support