



The Judiciary, State of Hawai'i

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

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

Tuesday, March 14, 2023, 9:30 a.m.
State Capitol
Conference Room 016 & Videoconference

by:
Thomas J. Berger
Staff Attorney for the Hawai'i Supreme Court

Bill No. and Title: House Bill No. 386, HD 1, Relating to the Safety of Judiciary Personnel.

Purpose: Creates a cause of action that allows a sitting full-time judge, probation officer, or public guardian (“covered party”) to apply to court for declaratory and injunctive relief to remove the covered party’s personal information (e.g., home address) from the internet in certain limited circumstances.

Judiciary’s Position:

The Judiciary strongly supports this bill, which is part of the Judiciary’s Administrative Package, and respectfully requests the committee pass the measure. HB 386, HD 1 is identical to SB 486 that was passed by this committee on January 31, 2023 with the addition of a reference to family court judges. (SB 486 was deferred by WAM on March 1, 2023.)

This bill creates a new civil remedy that would allow a state judge, probation officer, or public guardian (“covered party”) to request the removal of personal information, such as a home address, from the internet in limited circumstances where the risk of injury, harm, or violence is clearly visible from the express contents of the internet posting.



Efforts to ensure security for judges and their families have taken on new urgency given the horrific murder of U.S. District Court Judge Esther Salas's son, Daniel Anderl, in their family home in New Jersey in 2020. This attack was a chilling reminder to judges and other court personnel of the risks inherent in their work. Locally in Hawai'i, threats and inappropriate communications to judiciary employees have also increased. In Hawai'i, over the last decade threats and other inappropriate communication towards judges have increased ten times and threats towards judiciary social workers providing probation oversight have increased nine times. Overall, threats and other inappropriate communication toward judiciary employees rose from seven in 2012 to forty-two in 2022.

House Bill No. 386 is carefully crafted to respect the First Amendment rights of the public and the press. It provides a remedy to remove personal information, such as a home address, from the internet in two limited situations. First, where the posting was done with "the intent to intimidate or to threaten injury, harm, or violence" to the covered party and/or immediate family members. Second, where the posting was done "under circumstances in which a reasonable person would believe that providing the information would expose the individual to harassment or a risk of harm to life or property." The remedy provided by the bill is to seek declaratory and injunctive relief for the removal of the personal information on the basis that it violates Section 1 of the proposed law. There is no penalty and damage provision.

As background, in the 2022 legislative session the Hawai'i Legislature passed Act 46 which created a judicial security task force to identify appropriate measures to enhance the security of judges and judiciary personnel while not diminishing civil liberties. The task force met and finalized its report in December 2022, and the report was transmitted to the Hawaii Legislature on December 9, 2022.

The task force report concluded, in pertinent part, that "the original intent and content of HB No. 1539 (2022) are still appropriate in regards to addressing the security concerns of justices, judges, and probation officers." And House Bill 386 before this committee is substantially similar to House Bill 1539 (2022), with two additions: the objective "reasonable person" test at Section 1, and a severability clause at Section 3.

Finally, we would note that federal protections for the removal of personal information of federal judges from the internet were recently enacted. Specifically, on December 16, 2022, the United States Congress passed the Daniel Anderl Judicial Security and Privacy Act as part of H.R. 7776, and on December 23, 2022, President Biden signed the bill enacting Public Law No: 117-263 (the Federal Act).¹ The passage was covered extensively by the press.² But the federal legislation only applies to federal judges and their immediate family. It does not apply to state judges. Under the Federal Act any covered information posted on the internet about a federal judge (essentially location information such as a home address) is subject to removal. There is no requirement that the content posted include a threat. In sum, the Federal Act creates a notice-

¹ See <https://www.congress.gov/bill/117th-congress/house-bill/7776>

² See e.g., <https://www.reuters.com/world/us/judicial-security-measure-clears-us-congress-part-defense-bill-2022-12-16/>.



and-removal process whereby a person, business, or association that posts covered information of the federal judge has 72 hours to remove the information after receiving a written request for removal. If the information is not removed, the civil remedies in the Federal Act include declaratory and injunctive relief, as well as penalties and damages.

The Federal Act goes much further than the instant House Bill 386 before this committee. While the Federal Act includes some broader policy solutions that Hawai'i may want to consider in the future, these broader policy solutions (which include removal of public record information for federal judges) would need further study and collaboration with local stakeholders (e.g., the Bureau of Conveyances, real property tax offices, and Office of Information Practices) to be implemented locally. At this time, the Judiciary supports House Bill 386 as a measured and narrowly tailored policy solution that furthers a compelling government interest-the safety of judges, probation officers, and the public guardians, and the derivative ability of the judiciary to function.

CONCLUSION

The Judiciary requests the Committee pass House Bill 386, HD 1.

Thank you for the opportunity to testify on this matter.



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS
" A Police Organization for Police Officers Only "
Founded 1971

March 10, 2023

VIA ONLINE

The Honorable Karl Rhoads
Chair
The Honorable Mike Gabbard
Vice-Chair
Senate Committee on Judiciary
Hawaii State Capitol, Rooms 228, 201
415 South Beretania Street
Honolulu, HI 96813

Re: **HB 386 HD1 -Relating to the Safety of Judiciary Personnel**

Dear Chair Rhoads, Vice-Chair Gabbard, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write in **strong support** of HB 386 HD1. This bill will enhance the safety of judiciary officials and staff by precluding, in certain circumstances, the publication of their personal information, especially those who are potential targets or at risk for acts of violence and threats.

We support this bill for the safety concerns it seeks to address. This bill provides safeguards relating to the publication of a judiciary official's personal information. The clear intent is to minimize the risk of intimidation, threats of harm, and harassment relating to their jobs and execution of their judicial duties. For our community, it is imperative that the judiciary be able to function free of any threats of reprisal or harm. Therefore, all reasonable measures must and should be implemented to ensure our judiciary officials are not subjected to threats of violence or intimidation in any form.

As police officers, we are frequently in the courthouses to testify in cases involving defendants who have been arrested by our officers. Many of these defendants are considered dangerous, possess violent criminal records, and can be very intimidating. Our officers have witnessed defendants become unruly, yell obscenities, and make verbal threats inside of the courthouse. Based on our observations, courthouse security, in general, is not at the highest levels. While there is usually a security detail manning the courthouse entrance, those

Main Office & Honolulu Chapter Office
1717 Hoe Street
Honolulu, Hawaii 96819-3125
Tel: (808) 847-4676 "84 SHOPO"
www.shopohawaii.org Fax: (808) 841-4818

Hawaii Chapter Office
688 Kinoole Street, Room 220B
Hilo, Hawaii 96720-3877
Tel: (808) 934-8405
Fax: (808) 934-8210

Kauai Chapter Office
3176 Oihana Street, Suite 104, Lihue
Mailing Add: P. O. Box 1708
Lihue, Hawaii 96766-5708
Tel: (808) 246-8911

Maui Chapter Office
1887 Wili Pa Loop, Suite 2
Wailuku, Hawaii 96793-1253
Tel: (808) 242-6129
Fax: (808) 242-9519

The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice-Chair
Senate Committee on Judiciary
March 10, 2023

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Re: **HB 386 HD1 -Relating to the Safety of Judiciary Personnel**

individuals appear to be unarmed private security guards who are tasked with monitoring the metal detectors at the courthouse entrance. Any additional safety steps that can be taken to protect our judiciary officials should be taken expeditiously and without hesitation. This bill represents a step in that direction and any concerns about security issues involving other branches of government or agencies should be addressed expeditiously as well, but without delaying the implementation of this particular bill.

We thank you for allowing us to be heard on this very important issue and we hope your committee will unanimously support HB 386 HD1.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President

TESTIMONY
Senate Committee on Judiciary
Hearing: Tuesday, March 14, 2023 (9:30 a.m.)

TO: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair

FROM: Rhonda L. Griswold
HSBA President

RE: House Bill No. 386, HD1
Relating to the Safety of Judiciary Personnel.

Sitting judges on State and Federal levels make crucial decisions based upon facts and the law, which may at times be negatively viewed by a party as unfair or not balanced from an emotional viewpoint. National news reports of threats of violence, violence, and in one particular incident the death of a family member at a federal judge's residence, have raised concern for the health and safety of Hawaii judges. While the health and safety of justices, judges and other high risk judicial staff is of paramount importance, this must be balanced with the public's right to information on public officials who are relied upon to meet public responsibilities and obligations.

Act 46, Session Laws of Hawaii 2022 created a Judicial Security Task Force (Task Force) within the Judiciary to identify measures to enhance the security of judges and certain judiciary personnel. The Hawaii State Bar Association (HSBA) was represented on the Task Force. During the 2022 interim, the Task Force met and has submitted its report to the Legislature with a recommendation to prohibit, in certain circumstances, the publication of the of personal information of State and Federal judges as well as Judiciary social workers, Court appointed guardians in the Office of the Public Guardian, and probation and pretrial officers, where the Internet posting is made with the intent to intimidate or threaten, or where a reasonable person would believe that providing the information would expose the individual to harassment or risk of harm to life or property.

The HSBA **SUPPORTS** the intent of House Bill No. 386, HD1 and looks forward to continued discussions to protect the health and safety of Justices, Judges, and at-risk Judicial personnel.

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