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**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary**

January 28, 2025

S.B. No. 94: RELATING TO TEMPORARY RESTRAINING ORDERS.

Chair Rhoads, Vice-Chair Gabbard and Members of the Committee:

The Office of the Public Defender **opposes S.B. 94.**

This measure would mandate a penalty for a first violation of a temporary restraining order a 72-hour jail term (an increase from the current mandated 48-hour minimum]. It also requires a defendant to “undergo mental health counseling” as an additional penalty.

Re: 72-hour mandatory minimum jail sentence:

There is a penalty structure currently built into HRS Section 586-4 that functions effectively and has been amended numerous times by the legislature. Many violations of HRS Section 586-4 are non-violent and do not include a threat of violence; they are violations in that they may or may not be considered a “contact.” We oppose mandatory sentencing for a first offense that does not involve violence or the threat of violence (i.e. an unwelcome single text message regarding child care) to require 72-hours of incarceration.

This measure would restrict the abilities of trial court judges. The courts have the ability to create sentences to penalize different types of violations and to take into

consideration the unique facts and circumstances of each case, together with the attendant circumstances, to determine an appropriate punishment. We oppose any measure that takes individualized sentencing out of the hands of the trial judges who are in the best position to fashion an appropriate sentence in each case.

A trial judge becomes intimately familiar with defendants who are found guilty of these types of offense(s) after a comprehensive review of that individual's social, family, and criminal history. This review includes the defendant's criminal record or lack thereof. The review also includes details about past trauma, the need for mental health treatment, and the socio-economic impacts on an individual. Passage of this measure will prevent a judge from deciding the most appropriate sanction for the individual offender who is currently before them rather than to have their "hands tied" by mandatory sentencing.

A consequence of this measure will be the increase in defendants demanding jury trials to avoid an unduly harsh sentence. This will lead to foreseeable issues: cases being "dropped" as congestion on the trial calendar increases, which may lead to more dangerous behavior by parties. These jury trials take months or years to resolve and will contribute to the state's continued issues of pretrial crowding in correctional centers.

Re: Mental health counseling:

The Office of the Public Defender does acknowledge that some of our clients charged with the offense of violating a Temporary Restraining Order might benefit from mental health counseling, though this is not the case for every defendant. A failure to comply with counseling, which includes numerous classes, a fee, and meetings with a probation officer, will lead to individuals facing incarceration for a failure to complete coursework, and is not aligned with the goal of decreasing intimate partner violence. As an alternative, an assessment is a single meeting and could be done with existing resources available to the Judiciary and the Department of Public Safety.

We recommend that the bill be amended as follows: ***"undergo a mental health assessment and comply with the recommendations of the assessment"***

With the recent nationwide review of criminal justice policies, it is concerning that the trend in the state is to increase penalties while removing judicial discretion. Restraining order hearings often involve a complicated dynamic of family or household members, trauma, mental illness, and rehabilitation. Many defendants

are themselves victims of violence and trauma and could benefit from treatment. The courts should retain the ability to acknowledge and support defendants who are already in treatment or counseling and who have a strong support system to prevent new offenses without requiring mandatory incarceration.

Thank you for the opportunity to comment on this measure.



January 28, 2025

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Mike Gabbard
Sen. Stanley Chang
Sen. Joy A. San Buenaventura
Sen. Brenton Awa

Re: SB94 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 25 member programs statewide, I respectfully request this measure be **DEFERRED**.

This measure increases the minimum sentence for a first conviction of knowingly or intentionally violating a temporary restraining order from forty-eight to seventy-two hours and requires mandatory mental health counseling for a first conviction of knowingly or intentionally violating a temporary restraining order.

We appreciate the intent of the measure to hold abusive partners accountable; however, as written, it will not achieve the relief survivors seek and has the potential for unintended consequences.

First, this measure only addresses violations of *temporary restraining orders*, codified in HRS 586-4. This order, if granted, is *ex-parte*. Within 15 days, both parties appear before a judge who may grant an order for protection for a longer period of time (i.e., 1-3 years). The penalties for an order of protection are codified in HRS 586-11, which this measure does not address.

Further, this measure requires "mental health counseling" but does not provide further detail on the qualifications of the mental health provider. Hawai'i already has a shortage of mental health providers in the aftermath of COVID-19 and the Maui Wildfires; this is especially true for the neighbor islands. Not all mental health professionals are trained to identify,

understand, and address the dynamics of domestic violence (which center around power and control) and may, therefore, be unqualified to work with perpetrators of domestic violence.

For instance, an uninformed mental health professional may address depression and trauma associated with suicidal ideation but miss that it is one of the top five indicators of lethality and that the abuser is more likely to kill their partner. A person's mental health condition does not cause domestic abuse. In fact, nothing in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM 5) states that a mental illness *solely* causes a partner to be abusive in a relationship.¹ Court-ordered cognitive-behavioral domestic violence intervention programs best address the dynamics of domestic violence.

Mental health counseling, as provided in this measure, could have unintended consequences for survivors of domestic violence. Too often, survivors are the respondents to the TRO/PO because law enforcement has misidentified the primary aggressor or the abuser arrived at the court before the survivor. Additionally, survivors may have experienced mental health coercion from their partners, which could lead to unfavorable outcomes for them in future judicial matters, such as child custody cases.

A survey domestic violence survivors conducted by The National Domestic Violence Hotline and the National Center on Domestic Violence, Trauma, and Mental Health surveyed survivors and found that:²

- 89% had experienced at least one type of mental health coercion, including:
 - 4 in 5 said their partners accused them of being “crazy”
 - 3 in 4 said their partner deliberately did things to make them feel like they were losing their mind
 - 1 in 2 said their partner threatened to report they were “crazy” to keep them from things they wanted or needed, such as protection or child custody

Finally, seven other bills (SB460, HB383 / SB276, HB301 / SB477, HB176 / SB295) offer more comprehensive amendments to violations of TROs and POs. Therefore, we respectfully request that this measure be **deferred**.

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

Sincerely,
Angelina Mercado, Executive Director

¹ National Domestic Violence Hotline. Access at <https://www.thehotline.org/resources/abuse-and-mental-illness-is-there-a-connection/>.

² Mental Health and Substance Use Coercion Surveys Report from the National Domestic. Access at <https://ncdvtmh.org/our-work/dv-field/>.



SB94 TRO Mental Health Assessments
[COMMITTEE ON JUDICIARY](#)
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Tuesday, Jan 28, 2025: 9:15: Room 016 Videoconference

Hawaii Substance Abuse Coalition Supports SB94:

ALOHA CHAIR, VICE CHAIR, AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment and prevention agencies and recovery-oriented services.

HSAC applauds the effort to mandate mental health wellness examinations for people subject to a restraining order that involves domestic violence issues.

Including a substance abuse assessment in a mental health wellness examination is critical because substance abuse and mental health are closely interconnected. Here's why it matters:

1. **High Co-occurrence of Disorders:** Many people with mental health conditions also struggle with substance use disorders (SUD), and vice versa. Addressing both is essential for effective treatment.
2. **Substances Can Mask or Worsen Symptoms:** Alcohol or drug use can sometimes hide or amplify symptoms of mental health issues, making it harder to identify and treat the root causes without an assessment.
3. **Risk of Self-Medication:** Individuals with mental health conditions may use substances to cope with stress, anxiety, depression, or trauma, which can lead to dependence or addiction over time.
4. **Substance Use Impacts Treatment:** Active substance use can interfere with the effectiveness of mental health treatments, including therapy and medication. Understanding substance use patterns helps tailor interventions.
5. **Improved Holistic Care:** Including substance abuse assessments ensures a comprehensive understanding of an individual's overall well-being, leading to more integrated and effective care.

6. **Early Intervention:** Identifying substance use issues early during a mental health exam can prevent them from escalating into more severe problems, such as addiction or severe health complications.

7. **Physical Health Risks:** Substance use can have significant physical health consequences, such as liver damage, heart problems, or overdose, which may overlap with or worsen mental health conditions.

BY INCORPORATING SUBSTANCE ABUSE ASSESSMENTS, MENTAL HEALTH WELLNESS EXAMINATIONS PROVIDE A FULL PICTURE OF AN INDIVIDUAL'S MENTAL, EMOTIONAL, AND BEHAVIORAL HEALTH, ALLOWING FOR BETTER PREVENTION, INTERVENTION, AND RECOVERY SUPPORT.

*A mental health wellness examination is important for several reasons, as it focuses on evaluating emotional, psychological, and social well-being.
Here are the key benefits:*

1. **Early Detection of Issues:** Regular mental health check-ups can identify early signs of conditions like anxiety, depression, or stress-related disorders, allowing for timely intervention before issues escalate.

2. **Improved Overall Health:** Mental health is closely linked to physical health. Poor mental health can contribute to chronic conditions like heart disease or weakened immunity. Addressing mental wellness promotes overall well-being.

3. **Stress Management:** Routine examinations provide an opportunity to assess stress levels and develop coping mechanisms, helping individuals better manage life's challenges.

4. **Better Relationships:** Good mental health contributes to healthier relationships by improving communication, empathy, and emotional stability.

5. **Enhanced Productivity:** Addressing mental health issues can improve focus, decision-making, and productivity at work or in daily life.

6. **Reduction of Stigma:** Prioritizing mental health check-ups normalizes discussions about mental well-being, encouraging others to seek help and reducing societal stigma.

7. **Support During Life Transitions:** Life events such as career changes, loss of a loved one, or parenting can be overwhelming. A mental health evaluation provides guidance and support during these transitions.

8. **Holistic Self-Care:** Mental health check-ups complement physical health examinations, fostering a balanced approach to overall self-care.

REGULAR MENTAL HEALTH EVALUATIONS ENSURE THAT INDIVIDUALS RECEIVE THE CARE AND RESOURCES THEY NEED TO MAINTAIN A HEALTHY, FULFILLING LIFE.

We appreciate the opportunity to provide testimony and are available for questions.

LATE

SB-94

Submitted on: 1/27/2025 10:32:07 AM

Testimony for JDC on 1/28/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Lindsey A Drayer	Individual	Oppose	Written Testimony Only

Comments:

This could greatly impact victims in negative ways as offenders often succeed at using the system in an abusive way i.e calling the poice, filing a TRO.

SB-94

Submitted on: 1/25/2025 10:57:50 PM

Testimony for JDC on 1/28/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Deanna Espinas	Individual	Oppose	Written Testimony Only

Comments:

This measure restricts trial court judges in their efforts to make appropriate sentencing. Also the proposed bill amendment of the Office of the Public Defender should be considered.

SB-94

Submitted on: 1/26/2025 6:54:03 PM

Testimony for JDC on 1/28/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Olderr	Individual	Support	Written Testimony Only

Comments:

I support this bill. Restraining orders are toothless as they are now. They need to be more enforceable and effective deterrents for those who violate them. I also appreciate the bill's provision for mandatory counseling for those who break the restraining order. I personally believe a lot of criminal activity can be deterred if people have more accessible mental health care. If there was anything to add to this bill, I think 72 hours isn't enough. I prefer 96 hours instead. Either way, I support this bill.

LATE

SB-94

Submitted on: 1/27/2025 5:51:45 PM

Testimony for JDC on 1/28/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Monique R. Ibarra	Testifying for Domestic Violence Action Center	Oppose	Written Testimony Only

Comments:

Hearing Date: 1/28/25, 9:15 am

Committee: JDC

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

On behalf of the Domestic Violence Action Center, I respectfully request this measure be **DEFERRED**.

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in a relationship.[1] Court-ordered cognitive-behavioral domestic violence intervention programs best address the dynamics of domestic violence.

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Finally, seven other bills ([SB460](#), [HB383](#) / [SB276](#), [HB301](#) / [SB477](#), [HB176](#) / [SB295](#)) offer more comprehensive amendments to violations of TROs and POs. Therefore, we respectfully request that this measure be deferred.

Mahalo for the opportunity to testify on this important matter.

Monique R. Ibarra, MSW

Chief Executive Officer

[1] National Domestic Violence Hotline. Access at <https://www.thehotline.org/resources/abuse-and-mental-illness-is-there-a-connection/>.

[2] Mental Health and Substance Use Coercion Surveys Report from the National Domestic. Access at <https://ncdvtmh.org/our-work/dv-field/>.