



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Human Services

Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair

Thursday, February 11, 2016, 9:30 a.m.
State Capitol, Conference Room 329

By

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Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 1906, Relating to Domestic Violence

Purpose: Repeals HRS Section 586-10.5

Judiciary's Position:

The Judiciary opposes repealing HRS Section 586-10.5, in its entirety. We are not in opposition to the concerns of the Department of Human Services (“Department”) so, we respectfully request consideration of alternative language rather than a complete repeal of the section. We believe our language states more clearly that the family court will not refer *all* protective order petitions involving children and incapacitated adults to the Department and that its representatives will not be required to report to the court unless so ordered.

This is our suggested language which tracks the original HRS Section 586-10.5 as it was first enacted by the Legislature 28 years ago in 1987 (Act 315 of 1987, Section 7):

§586-10.5 Reports by the department of human services. In cases where there are allegations of domestic abuse involving a minor family or household member who is a minor or an incapacitated person as defined in sections 350-1.1(a) and 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, only as required under chapters 350 and 587A, and



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section 346-224 and shall further notify the department of the granting of the temporary restraining order and of the hearing date. If ordered by the court, the department of human services shall provide the family court with an oral or written report of the investigation's progress or on the disposition of the referral on or before the hearing date or any subsequent hearing date. If the department chooses to provide a written report, the department need not be at the hearing unless ordered by the court. The court shall provide copies of all written reports to the parties.

The Ramseyer formatting for the amendments to the existing law would be:

§586-10.5 Reports by the department of human services~~[; court responsibilities]~~. In cases where there are allegations of domestic abuse involving a family or household member who is a minor or an incapacitated person as defined in sections 350-1.1(a) and 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, only as required under chapters 350 and 587A and section 346-224, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. If ordered by the court, t~~[(The~~ department of human services shall provide the family court with an oral or written report of the investigation's progress or on the disposition of the referral on or before the hearing date or any subsequent hearing date. ~~The court shall file the report and mail it to the petitioner and respondent at least two working days before the hearing date, if possible. If circumstances prevent the mailing of the report as required in this section, the court shall provide copies of the report to the petitioner and respondent at the hearing. The report shall be noted in the order dismissing the petition or granting the restraining order.~~ If the department chooses to provide a written report, the department need not be at the hearing unless ordered by the court. The court shall provide copies of all written reports to the parties.

The reasons for our position are:

(1) There are simply more petitioners than the Judiciary can assist on a timely basis. Fortunately for our community, Ala Kuola stepped up to the plate and works closely with the Family Court of the First Circuit to assist the petitioners. Essentially, HRS Section 586-10.5 includes “appropriate nonjudicial agency designated by the family court to assist the petitioner” as a “mandated reporter” under HRS Chapters 350 and 587A, and HRS Section 346-224.



Without this section, these very important mandates would not cover nonjudicial agencies and each of the mandated reporting statutes would have to be amended.

(2) Our suggested language addresses the Department's concerns by:

- a. limiting the abuse reports to only those required by the mandatory reporting statutes;
- b. requiring a progress report from the Department only when court ordered
- c. giving the Department the discretion to provide an oral or a written report in the event they are court ordered;
- d. not requiring attendance at the hearing unless court ordered; and,
- e. the court's assuming the responsibility of providing copies of the written report to the parties.

(3) The preamble of House Bill No. 1906 states that:

“Best practices suggest that families experiencing domestic violence should have access to protective orders and other domestic services without fear that they will automatically be referred for investigation by child welfare or adult protective services.”

This statement suggests two things: that the mandatory reporting provisions in HRS Chapter 586 cause these concerns and that the referral to the Department will be “automatic.” Regarding the first belief, even without these provisions in HRS Chapter 586, mandatory reporting requirements are present in other statutes. For the second belief, our suggested language makes it clear that our reporting will not be automatic.

Furthermore, except with minor amendments, this section has been part of HRS Chapter 586 since 1987 and the number of cases have increased rather than decreased. Therefore, if these provisions are adding to the “fear” referenced in the preamble, then that fear is not, thankfully, preventing victims from seeking the safety of a protective order.

(4) Victims, their children, and perpetrators need case management and access to a panoply of services needed to address this multi-faceted problem and to provide safety. The Family Court is not a service provider; our role is to hear cases and apply the law. Unlike child and incapacitated adult/elder abuse cases, there is no state agency that is a party to the HRS Chapter 586 proceedings that will find or refer the parties and children to appropriate resources and then consistently monitor and enforce the conditions of the court orders. Lacking such an agency, the court must be able to get the help of the Department through oral/written reports as well as court appearances.



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(5) When children are involved, the stakes are obviously higher for the family and the community. This has been acknowledged in this 2016 Legislative Session by the introduction of Senate Bill No. 2247 and House Bill No. 1517 seeking to provide “that the commission of certain offenses of assault in the presence of the victim's minor child is an aggravating factor in the sentencing of the defendant convicted of the offense.” These cases are among the toughest faced by Family Court. Alone, we can provide the required protective order but such an order may not address the needs of the parties and their children. Without the additional help, domestic violence continues to breed. We acknowledge the difficulties faced by the Department but we also wish to be able to work with them to further community safety.

For all these reasons, the Family Court respectfully opposes repealing HRS Section 560-10.5 and respectfully suggests the alternative language above to replace the current language.

Thank you for the opportunity to provide testimony on this bill.