



The Judiciary, State of Hawaii

Testimony to the House Committee on Human Services

The Honorable John M. Mizuno, Chair

The Honorable Jo Jordan, Vice Chair

Monday, January 30, 2012 at 8:30 a.m.

State Capitol, Conference Room 329

by

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Deputy Chief Judge/Senior Judge

Family Court of the First Circuit

Bill No. and Title: Bill No. 1921, Relating to Temporary Restraining Orders

Purpose: Provides for the issuance of temporary restraining orders (“TROs”) by the Family and District Courts upon submission of sufficient oral sworn testimony communicated to the court by telephone, radio, or other means of electronic voice communication, if exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally.

Judiciary's Position:

The Judiciary opposes this bill and raises the following concerns.

(1) In addition to “law enforcement officer”, this bill allows the Supreme Court, through its rule making authority, to designate other “persons” to assist applicants requesting temporary restraining orders. Our concern is that the process will involve time-sensitive responses to applicants as well as the responsibility “to enter the court’s authorization verbatim on the appropriate form, designated the duplicate original temporary restraining order.” It may be clearer to restrict the designation to “law enforcement” and delete references to other “persons.”

(2) Limiting this bill to law enforcement officers is particularly important since this bill allows an officer to create a valid court order since the person assisting the petitioner creates a form that is “designated as the duplicate original temporary restraining order.” This is an unusual scheme. Currently, the police have the authority in domestic abuse cases, using their own powers, to issue “stay away orders” sufficient to give the petitioner enough time to obtain a temporary restraining order through the usual court procedures. This bill allows the police



(generally recognized as part of the Executive branch of government) to, in effect, be “deputized” as a member of the Judicial branch of government in both civil and domestic TRO cases and empowered to create an original court order (a responsibility generally kept strictly to judges and their staff in order to preserve the public’s confidence in court orders and to prevent fraud).

(3) These TROs are required to be served before they become enforceable. Thus, although they are “effective” when the court grants it, they are not “enforceable” until the respondent has been served with the court order. This means that, if a respondent contacts or abuses the petitioner after the order has been granted but before the order has been served, the respondent cannot be prosecuted for violating the court order (although the respondent could be arrested in the event a crime were committed). The Supreme Court may be unable to change this requirement of service through their rulemaking authority. In contrast, a respondent can be prosecuted for disobeying a valid police issued stay-away order.

(4) Additionally, without an explicit authorization from the Legislature, the Supreme Court would not have the authority to direct police procedures through their rulemaking authority.

(5) At this time, such orders are not served between the hours of 10pm to 6am, unless a judge specifically allows this in writing on the summons. If this bill’s intent is that process will be available 24 hours a day, then the bill should explicitly allow service 24 hours a day in order to keep this proposed process as streamlined as possible.

(6) We are unsure of the scope of this bill. Are these procedures applicable during regular court hours? Does this bill require this process to be available 24 hours a day?

(7) If this bill requires 24 hour coverage, the Judiciary will need additional appropriations, beyond our current budget requests, in order to provide these services. On the neighbor islands, it is anticipated that staff and judges will have to be available after-hours on an on-call basis. On Oahu, because of the size of its population, we anticipate the need to develop new after-hours staff dedicated for this purpose as well as assigning this as a “calendar” for a judge rather than leaving it on an on-call basis. We have not developed a cost plan primarily because of the ambiguities in this bill. However, as an example, pursuant to collective bargaining, the minimum cost for one Social Worker IV position (the person who would have the responsibility for fielding the contacts from law enforcement) to be on call would be approximately \$32,948.23 annually. This includes compensation for standby duty, mileage, night differential, and meal costs.



(8) Additionally, new equipment and software may be needed to develop this new system of processing TROs (for example, a new interface between law enforcement and the courts may be needed).

(9) Additionally, a training process will have to developed for both Judiciary and law enforcement personnel. In our experience, we have found that, when Petitioners in family court cases are assisted by untrained persons, there may be a greater dissatisfaction with the court process (for example, when a Petitioner claims that a non-family court related person did not accurately express the Petitioner's claims and statements—this in turn gives the Respondent less than adequate notice about the claims he/she will be required to address in court).

(10) There cannot be unfettered contact between the petitioner and the judge for very practical reasons. There are and will be procedural requirements that both the Petitioner and the law enforcement officer will need help with. Based on our experience, we have also found that Petitioners need help focusing their statements. While court officers are extremely careful not to place statements in the mouths of Petitioners and are extremely careful not to act as advocates, they provide necessary help in explaining what is and is not relevant or what may or may not be significant. For example, a Petitioner might present a rather minor annoyance with the Respondent as the basis for a TRO and then happen to mention as an aside an actual physical abuse event which they did not consider to be important because of the frequency of such occurrences. Court staff will also have to create files and complete paperwork after the judge has completed his/her part of the process.

(11) Besides the practical, there is another extremely important reason to avoid direct personal contact with the judge. Such a procedure is inherently unfair to Respondents and will be rightfully perceived as such. When court staff assists in the preparation of the petition or complaint, the judge is not exposed to all of the extraneous statements and information imparted by the Petitioner. The judge and the Respondent will read the same statements. The Respondent is assured that there were no ex parte communications between the Petitioner and the judge and that, at the initial hearing, both parties will be appearing before a judge at the same time.

All of the above listed factors relate to judicial processes. However, we also have a few policy comments to raise for the Legislature's consideration.

(A) Many district court cases are less volatile than family court cases since intimate relationships are not usually involved. Also, unlike family court cases, district court orders are generally less intrusive (for example, family court respondents can be ordered to vacate their home immediately and to have no further contact with their children until at least the first return hearing). If this bill intends 24 hour coverage, its implementation may be potentially very costly and so need for such coverage in district court cases may have to be re-examined.



(B) Allowing a more relaxed and remote process may possibly allow for more false claims based on improper motives.

(C) Besides the possibility of an increase in false claims, there may be an overall increase in petitions filed in both family and district courts. Of course, all valid petitions and complaints should be dealt with expeditiously and properly. However, if, for whatever reason, there is an overall increase in these petitions and complaints, the Judiciary will require increased judicial resources or delays may result.

The Judiciary takes issue with that part of the report by the Senate Committee on Judiciary and Labor (SB 1054, SD 1, SSCR #505, dated March 3, 2011) that comments on the perceived failure by the Supreme Court:

“ . . . the Judiciary has not adequately used its power under article VI, section 7, of the Hawaii State Constitution, which vests the Supreme Court with the power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure, and appeals, which shall have the force and effect of law.”

As discussed above, these matters are not simple and the solutions are not clearly indicated. Furthermore, the Supreme Court does not have the legislative authority to simply promulgate rules that would have the effect of law over all persons and all agencies. Lastly, as discussed above, the Judiciary and the family and district courts have done quite a bit to streamline processes and to make forms and processes more “user friendly” over the years. And, we intend to continue to work toward greater improvements.

If this bill should pass, we respectfully request that the effective date be at least two years from the date of promulgation, *i.e.*, sometime beyond the summer of 2013, in order to allow the Judiciary and all law enforcement agencies to first develop the procedures for all the different circuits, then enough time to seek adequate appropriations from the Legislature, and then enough time to train and implement the new program.

Thank you for the opportunity to testify on this matter.