



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Human Services

The Hon. Suzanne Chun Oakland, Chair

The Hon. Josh Green, Vice Chair

**Testimony to the Senate Committee on Public Safety,
Intergovernmental and Military Affairs**

The Hon. Will Espero, Chair

The Hon. Rosalyn Baker, Vice Chair

Thursday, February 7, 2013

1:00 p.m.

State Capitol, Conference Room 016

WRITTEN TESTIMONY ONLY

by

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Deputy Chief Judge, Senior Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 577, Relating to Domestic Abuse

Purpose: Provides procedures for a law enforcement officer to obtain an emergency protective order on behalf of a person, child, or a dependent adult who is in immediate and present danger of abuse.

Judiciary's Position:

The Judiciary takes no position on this bill. We raise a number of questions about the language of this bill for the Committee's consideration.

1. Page 1 to 2: This language implicates other major statutes. Section (1) deals with HRS Chapter 586 (Domestic Abuse Protective Orders) ; Section (2) with HRS Chapter 587A (Child Protective Act); section (3) with HRS Chapter 580 (Annulment, Divorce and Separation), HRS Chapter 584 (Uniform Parentage Act), and HRS Chapter 583A (Uniform Child-Custody



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Jurisdiction and Enforcement Act- UCCJEA); section (4) with HRS Chapter 346, Part X, Dependent Adult Protective Services.

2. If the legislative intent is to expand Chapter 586's reach to these other major statutes, then each of those statutes must be analyzed for possible amendments to comport with this bill. Please note that the UCCJEA is a national and possibly international uniform law and that, while each state has the authority to deviate from any uniform law, the consequences of changes in this area must be carefully scrutinized. The UCCJEA is frequently used in all states and it is important that cautious measures are taken to ensure the viability of Hawaii's orders in the rest of the nation.

3. Page 2, from line 12: The family court will need guidance about the procedure required to issue these emergency orders. For example, at line 13, "making the findings" usually happens after a hearing or, at the very least, after review of an affidavit or a sworn statement from a party in HRS Chapter 586. This language appears to mimic the requirements for probable cause findings in criminal cases. The legality or the constitutionality of such a procedure in civil cases may or may not be a concern. Even if this point were to be refined, the court would still refrain from taking a position since we will be the entity that rules on those issues.

4. Page 3, from line 7: Based on our experience with probable cause findings, the court is only required to make one finding (i.e., was there probable cause for the arrest) and that is generally possible from the detailed affidavits submitted by the police. In contrast, section (d) gives the court authority to make visitation, custody, and counseling orders. If the police affidavit does not include any statements regarding these requested orders, the court will not have any basis to apply them.

5. Page 4, line 1, section (3): Since every circuit has only one family courthouse except the Big Island of Hawaii, which has two, and Molokai and Lanai, which are part of the Second Circuit (Maui), listing the address of the court may be unnecessary. Perhaps it might be sufficient to list the circuit that the "endangered person or child" resides in.

6. Page 4, line 15, section (2)(i): The law enforcement officer will have to be responsible for reducing the petition and emergency order to writing and sign the petition. However, the judge will have to sign the order.

7. Page 5, line 5, section (3): Generally, orders are required to be filed before service. This section may be compared to ex parte emergency examination and hospitalization orders that are made and acted upon before filing. In those cases, the order primarily serves to authorize transport of the respondent to an emergency room and, if found necessary by the medical staff,



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kept at the hospital for up to two days. We simply point out that the current restraining orders are all filed before service.

8. Page 6, and following: It may be important to draft new language that deals with the extension of these “emergency protective orders” in order to leave the current statutes for the current orders intact.

Thank you for the opportunity to testify on this bill.