



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

Tuesday, January 29, 2013, 1:30 p.m.

State Capitol, Conference Room 016

by

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District Family Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 916, Relating to Domestic Abuse

Purpose: Establishes that if a protective order is issued to prevent sexual offenses or child abuse or a recurrence of such acts that would constitute a felony between family or household members or if a licensed mental health professional submits an affidavit made under oath or under penalty of perjury to a court stating that the person suffers from instances of extreme psychological abuse, the court shall issue a permanent protective order. Amends the definition of domestic abuse to include sexual offenses or child abuse committed by one family or household member against another family or household member.

Judiciary's Position:

The Judiciary takes no position on this bill. However, we are concerned about the following points:

1. The bill does not appear to add any new remedy. This bill appears to be drafted in response to an appellate court ruling that H.R.S. Chapter 586 orders cannot be indefinite, that is, all such orders must have a determinate time period. However, the current procedures appear to work in the petitioners' interests—the petitioner requests a time period, which is generally granted. There are no established time frames that petitioners are bound to.



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2. This bill deprives petitioners of their ability to make decisions about their civil action and their lives (and, often, the lives of children).

3. There may well be unintended and unforeseen consequences because of the bill's specifics. For example, court hearings may shift away from focusing on the petitioner's safety to the defendant's actions and whether such actions can be deemed a felony offense.

4. While a felony level abuse mandates a permanent order, the bill gives the court authority to issue a permanent order based on an affidavit from a "licensed mental health professional" regarding extreme psychological abuse. Unless the defendant agrees to the court's reliance on an affidavit, the court will be unable to follow this provision because of due process problems. A remedy as severe as a permanent protective order would mandate that rules of evidence and procedural due process be honored and fairly applied. Therefore, absent a stipulation or agreement of the parties, the "licensed mental health professional" would be subject to the same rules as any other "expert," including, needing to be qualified as an expert, completing the affidavit and giving the defendant a reasonable amount of time to review the affidavit in order to plan for the hearing and to decide whether to bring his/her own expert, and be subject to cross-examination. Allowing such practice would benefit those parties with sufficient funds to hire such a professional. The majority of parties who cannot afford such a professional would be at a disadvantage in the proceedings.

As noted above, the Judiciary takes no position on this bill. However, we wanted to share our concerns about the need for this bill and some of the possible problems based on the amended language.

Thank you for the opportunity to testify on this bill.