REPORTS TO THE TWENTY-SIXTH LEGISLATURE

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THE JUDICIARY, STATE OF HAWAIʻI

DECEMBER 2011

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ANNUAL REPORT TO THE TWENTY-SIXTH LEGISLATURE

ON

ACT 113
SESSION LAWS OF HAWAIʻI 2011

A Report on the Limited News Media Privilege Against the Compelled Disclosure of Sources and Unpublished Information

Prepared by:

The Supreme Court Standing Committee on the Rules of Evidence
The Judiciary, State of Hawaiʻi

December 2011

The Standing Committee on the Rules of Evidence's June 8, 2011 meeting accommodated a request from Jeffrey S. Portnoy, Esq., a proponent of the news media privilege, to meet with the committee and discuss the matter. The exchange between Portnoy and committee members that took place is described in the June 8th minutes, included as Appendix A of this report. In addition to valuable input from Mr. Portnoy, the committee had two memoranda from committee reporter Prof. Addison M. Bowman and one from committee member Deirdre Marie-Iha, Esq. These three memoranda are included in Appendix B of this report.

The minutes of the committee's September 14th meeting memorialize its discussion of the journalists' privilege and its recommendations to the Legislature.[1] What follows is quoted from the minutes.

> The committee recommends that the sunset provision be eliminated and that Act 210 be integrated into H.R.S. ch.621. The committee also suggests that the Legislature might, were it so inclined, elect to take another look at: (1) subsection (a)(2), shielding a journalist's unpublished information; (2) the possibility of deleting the words, "for defamation," from the exception of subsection (c)(3); and (3) the possibility of redrafting subsection (d) to read: "No fine or imprisonment shall be imposed against a person validly claiming a privilege pursuant to this section.

The reasons for the committee's suggestions follow:

(1) The policy of this privilege is limited to protecting the identity of sources. It does not extend to unpublished information, which may or may not have been given in confidence. If the information will tend to disclose the source, then it can be redacted pursuant to subsection (a)(1). This subsection (a)(2) is unnecessary and inconsistent with the underlying justification for the privilege. A substantial number of states limit their privileges to sources and do not shield "unpublished information."

(2) The defamation limitation is too narrow, and the exception should apply to felonies and civil actions generally, provided the criteria of subsections (c)(3)(A), (B), and (C) are met.

(3) The shield should arguably extend only to valid privilege claims, as defined in this section. If the claim is rejected, then the normal contempt remedies should apply.

[1] Please note that this report is not subject to supreme court review or analysis, and, thus, does not represent the opinion of the court. The Judiciary would be pleased to respond to any inquiries the Legislature may have regarding this report.

Appendix A

First Judicial Circuit – THE JUDICIARY • STATE OF HAWAI'I
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Standing Committee on Rules of Evidence

MINUTES OF MEETING

Date: June 8, 2011

Place: Multi-Purpose Room
777 Punchbowl Street, 3rd Floor
Honolulu, Hawai'i 96813

1. Call to Order

Present: Chair and Member: Hon. Glenn J. Kim

Members: John Thomas, Phil Lowenthal, Judy Pavey, Donn Fudo, Jack Tonaki, Deirdre Marie-Iha, Judge Chang, and Charlene Iboshi

Also Present: Julia Verbrugge, 1st Circuit Court Staff Attorney (Drafter of minutes)

Excused: Prof. Addison Bowman, David Hall, Judge Chan, and Prof. Barkai

The meeting was called to order by Judge Kim at 1:40 p.m.

2. The Committee members discussed the background of the journalist privilege bill, which was passed a few years ago. Before it passed, the Committee had asked the Legislature to refer the bill to the Committee for comment. However, rather than doing so, the bill passed with a 3-year sunset provision.

This past session, the Legislature was planning on eliminating the sunset provision, thereby making the bill permanent. However, when the Committee again requested that it have a chance to review the bill, the Legislature passed it with another sunset provision.

Jeff Portnoy, a supporter of the bill, had wanted the bill to pass without a sunset provision. He requested that he be given a chance to speak with the Committee, which led to this current meeting.

3. Jeff Portnoy arrived and addressed the Committee:

His hope is that the Committee will endorse the bill. He helped to draft this bill, which developed through extensive discussions with members of the Legislature, Mark

Bennet (of the Attorney General's office at the time) and Peter Carlisle (the prosecutor at the time). This bill provides protection to both bloggers and journalists, with bloggers having a more difficult burden than the traditional journalist.

Lowenthal asked Portnoy how he is defining "bloggers." Portnoy responded that it's defined in section (b)(1) and (2). Lowenthal asked whether a person who posts regularly falls under the blogger definition. Also, does news agency have the duty to claim privilege on behalf of poster? Portnoy noted that 99.9% of journalists will impose the shield on behalf of the source.

Lowenthal asked what does subsection (d) mean? If, by definition, it's not privileged, Thomas doesn't think you are protected by the paragraph.

Fudo stated that section A of the bill indicates what compellable testimony is but doesn't see anything in B other than stating by whom the privilege can be claimed. Portnoy responded that there is no independent compellable testimony in B since it's already in A. B applies to blogger whereas A applies to journalist.

Thomas observed that currently, bill is in statute but privileges are in evidence code. Is there any distinction in your mind where it would go? Portnoy "didn't even think about that" until 2 months ago.

Iboshi wanted to know why comments on the internet would be protected. Portnoy responded that the issue is complicated. Very few courts have found identity of poster falls within shield law. Courts have refused disclosure of anonymous poster under Communications Decency Act which provides immunity to the "Googles" of the world. If someone posted anonymously a defamatory statement about Portnoy, almost every court has refused to force the disclosure, finding that it's privileged under the Communications Decency Act. This Act says that you're not liable and that the anonymity of poster is protected. Courts have severely criticized it.

Portnoy believes that this bill rarely impacts civil cases, unless defamation is involved.

4. After speaker left, Judge Kim noted that Prof. Bowman is currently researching issues, including examining the law in other jurisdictions. Since a report is due to the Legislature, members should communicate their thoughts directly to Prof. Bowman. Committee members will decide whether to come up with their own version or simply "tinker" with current version of bill.

Lowenthal will work on bill to make it uniform for civil and criminal cases and circulate it to Prof. Bowman and members. Iboshi will conduct research regarding blogging, noting that there must be some commentary based on our law. Members may consider similarity of bill to the bills in other states (i.e, protection afforded to bloggers).

5. The next meeting is tentatively set for **September 14, 2011, Wed afternoon, at 1:30 p.m.** in the multipurpose room, but a notice will issue with confirmed date, time, and location. Lowenthal might phone in for the next meeting. The meeting was adjourned at 3:40 p.m.

Appendix B

Addison M. Bowman
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Memorandum

To: Hon. Glenn J. Kim, Chair
Standing committee on rules of evidence

Committee members

From: Addison M. Bowman, reporter

Subject: Preliminary research of journalists' privilege

Introduction. Act 210 of the 2008 Hawaii Session Laws created a privilege against compelled disclosure of a journalist's sources and unpublished information. Act 210 contained a sunset clause pursuant to which the privilege was scheduled to expire on June 30, 2011.

H.B. No. 1376, S.D. 1, approved by the 2011 Legislature and now awaiting the Governor's signature, extends the expiration date of Act 201 to June 30, 2013, and instructs the Judiciary of Hawaii, "through its standing committee of rules of evidence, [to] report to the legislature no later than twenty days prior to the convening of the regular session of 2012" the committee's recommendation whether to retain Act 210 or to allow it to expire."

HB 1376 also requests that the evidence rules committee's report discuss privilege laws of "other states that have enacted legislation that is similar to Act 210 and [furnish] a citation to any enacted legislation." Additionally, our report should discuss "the effects of Act 210 on the media and the prosecution of cases." Our report should also include "any proposed legislation to amend Act 210."

This memorandum reports preliminary research concerning the journalists' privilege.

Policy considerations. We start with Justice Stewart, dissenting in Branzburg v. Hayes:

> Enlightened choice by an informed citizenry is the basic ideal upon which an open society is premised, and a free press is thus indispensable to a free society. Not only does the press enhance personal self-fulfillment by providing people with the widest possible range of fact and opinion, but it also is an incontestable precondition of self-government. . . . As private and public aggregations of power burgeon in size and the pressures for conformity necessarily mount, there is obviously a continuing need for an independent press to disseminate a robust variety of information and opinion through reportage, investigation, and criticism, if we are to preserve our constitutional tradition of maximizing freedom of choice by encouraging diversity of expression.

"Obviously." Agreed. He's got it right, doesn't he? Given the need for "enlightened

choice by an informed citizenry," the case for the journalists' privilege is instrumental in nature. Investigation, reportage, and criticism by the press is wholly dependent upon the ability to gather news, which, in turn, implies, as the Colorado Supreme Court put it, "the right to a confidential relationship between a reporter and his source." Gordon v. Boyles, 9 P.3d 1106, 1116 (Colo. 2000). This follows from three factual predicates: (1) Gathering news requires informants; (2) Informants require confidentiality; and (3) The absence of privilege will deter sources from disclosing information and will deter reporters from seeking information. Has this matter been empirically tested? Not so far as my research shows. Should that matter? It hasn't mattered in the case of lawyers, physicians, victim counselors, police officers, and other professionals whose status is embellished and rewarded by the symbol of an evidentiary privilege. Why shouldn't newspersons be admitted to the club?

Does the lack of privilege really chill news gathering? The code of ethics of the Society of Professional Journalists speaks to the matter of sources: "Always question sources' motives before promising anonymity.. Clarify conditions attached to any promise made in exchange for information. Keep promises." It does not say, "Keep promises whenever a privilege or shield against contempt is available." Thus, even in the absence of privilege, reporters promise confidentiality and sources supply confidences. See Imwinkelried, The New Wigmore, A Treatise on Evidence §§ 7.5.1 & 7.5.2 (2d ed. 2010), reviewing recent scholarshipon this topic. Efforts to enact a federal journalists' privilege have not succeeded, yet "investigative journalism is thriving and leaking is rampant." Examples such as Watergate, Abu Graib, and surveillance by the NSA abound. "From all appearances," one researcher concludes, "sources are quite impervious to the chills" that exist in the absence of privilege. On the other hand, much of this analysis overlooks a point we make in the next section of this report -- that nearly all the United States Courts of Appeals have adopted some form of news gatherers' privilege as a matter of common law development.

Privilege in the federal courts. In Branzburg v. Hayes, 408 U.S. 665 (1972), the Supreme Court decided that the First Amendment does not require a journalists' privilege, and held that newspersons could not withhold the identities of confidential sources from a grand jury investigating crimes. Nonetheless, remarks 3 Weinstein's Federal Evidence § 501.04 [1] (2d ed. 2011): "Primarily in civil cases, confidential information and sources have been protected from disclosure by a qualified journalist's privilege based on the First Amendment." The footnote accompanying that sentence runs for two and a half pages and cites cases from eight of the U.S. Courts of Appeals.

An illustrative federal case is United States v. Treacy, 2011 U.S. App. LEXIS 4623 (2d Cir.), recognizing a qualified privilege that protects both confidential and nonconfidential sources:

> (1) "[W]here a party seeks confidential material from a journalist, 'disclosure may be ordered only upon a clear and specific showing that the information is: [(1)] highly material and relevant, [(2)] necessary or critical to the maintenance of the claim, and [(3)] not obtainable from other available sources.' "
>
> (2) "Where a civil litigant seeks nonconfidential materials from a nonparty press entity, thge litigant is entitled to the requested discovery notwithstanding a valid assertion of the journalists' privilege if he can show that the materials at issue are of likely relevance to a significant issue in the case, and are not reasonably obtainable from other available sources."

Slip op. at 23-24; compare Wen Ho Lee v. Department of Justice, 428 F.3d 299 (D.C. Cir 2005)("qualified reporter's privilege . . . in civil cases . . . [determined by] weighing the

public interest in protecting the reporter's sources against the private interest in compelling disclosure"); Mark v. Shoen, 48 F.3d 412, 414-15 (9th Cir. 1995)("qualified privilege for journalists against compelled disclosure of information gathered in the course of their work" and including sources as well as materials).

In summary, the federal courts recognize and apply a qualified privilege for journalists' sources and unpublished materials that relies heavily upon trial judges to balance the reporter's interest in nondisclosure against a litigant's need to prove her case.

Privilege or contempt shield? Committee members may wish to examine CA Evid. Code § 1070: "A [journalist] . . . cannot be adjudged in contempt by a judicial, legislative, administrative body, or any other body having the power to issue subpoenas, for refusing to disclose . . . the source of any information . . . ." The Imwinkelried book observes that this rule, which resembles a counterpart New York provision, "confers only an immunity from a contempt citation [and] . . . will not prevent the use of other sanctions for refusal of a newsman to make discovery when he is a party to a civil proceeding." "Only an immunity from a contempt citation"? How might Branzburg, hauled before a Kentucky grand jury and asked for the identities of hashish makers he had written about, have felt about the relative merits of a contempt shield versus a qualified privilege subject to a balancing test?

Section 1070 deserves attention. It does not protect a party-journalist against discovery sanctions, but it assures that a journalist will not be adjudged in contempt and locked up or fined pending her submission and revelation of information and sources.

What about other states? Branzburg v. Hayes surveyed the situation in 1972: "A number of states have provided newsmen a statutory privilege of varying breadth, but the majority have not done so . . . ." 408 U.S. at 689. In a footnote the Court cited statutes in 17 states that "provided some type of statutory protection to a newsman's confidential sources." The roll call is vastly different today. The number of states with shield statutes has risen to 32, and in 16 other states there is some form of privilege protection afforded by judicial decision. The result? "Today, only Hawaii and Wyoming have not recognized some form of reporter's privilege." Imwinkelried, § 7.5.

Here is where my current research ends. I have Colo. Rev. Stat. §13-90-119, which is a very nice piece of legislation combining a privilege against disclosure with a contempt ban. And Mich. Comp. L. § 767.5a is admirable in its brevity:

> (1) A reporter or other person who is involved in the gathering or preparation of news for broadcast or publication shall not be required to disclose the identity of an informant, any unpublished information obtained from an informant, or any unpublished matter or documentation, in whatever manner recorded, relating to a communication with an informant, in any inquiry authorized by this act, except an inquiry for a crime punishable by imprisonment for life when it has been established that the information which is sought is essential to the purpose of the proceeding and that other available sources of the information have been exhausted.

Given our need to cite and discuss other states' legislation "that is similar to Act 210," it seems we must look at the statutes of 32 states. And we need to develop a criterion for similarity. I will miss the meeting on June 8, but hope the members will talk about similarity. Also, if members can send me citations to (1) other state statutes and (2) other states' decisions adopting journalists' privileges, it would be appreciated.

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Memorandum

To: Hon. Glenn J. Kim, Chair
Standing committee on rules of evidence

Committee members

From: Addison M. Bowman, reporter

Subject: The journalist's privilege

Date: August 25, 2011

This supplements my recent memo to Judge Kim entitled "Preliminary research of journalists' privilege." I have examined the shield laws of eighteen of the thirty-two states that are listed in Comment, The Underprivileged Profession: The Case for Supreme Court Recognition of the Journalist's Privilege, 154 U. Pa. L. Rev. 201, 225 n.120 (2005). What follows is a comparative analysis.

(1) **Models of brevity.**

Ariz. Rev. Stat. § 12-2237, *Reporter and informant*:

A person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station, shall not be compelled to testify or disclose in a legal proceeding or trial or any proceeding whatever, or before any jury, inquisitorial body or commission, or before a committee of the legislature, or elsewhere, the source of information procured or obtained by him for publication in a newspaper or for broadcasting over a radio or television station with which he was associated or by which he is employed. [That's it. Period.]

N.D. Cent. Code § 31-01-06.2, *Disclosure of news sources and information required only on court order:*

No person shall be required in any proceeding or hearing to disclose any

information or the source of any information procured or obtained while the person was engaged in gathering, writing, photographing, or editing news and was employed by or acting for any organization engaged in publishing or broadcasting news, unless directed by an order of a district court of this state which, after hearing, finds that the failure of disclosure of such evidence will cause a miscarriage of justice.

42 Pa. C.S. § 5942, *Confidential communications to news reporters:*

(a) General rule. No person engaged on, connected with, or employed by any newspaper of general circulation or any press association or any radio or television station, or any magazine of general circulation, for the purpose of gathering, procuring, compiling, editing or publishing news, shall be required to disclose the source of any information procured or obtained by such person, in any legal proceeding, trial or investigation before any government unit.

(b) Exception. The provisions of subsection (a) insofar as they relate to radio or television stations shall not apply unless the radio or television station maintains and keeps open for inspection, for a period of at least one year from the date of the actual broadcast or telecast, an exact recording, transcription, kinescopic film or certified written transcript of the actual broadcasr or telecast.

N.M. Stat. Ann. § 38-6-7, *News sources and information; mandatory disclosure prohibited; definitions; special procedure for prevention of injustice issue:*

A. Unless disclosure be essential to prevent injustice, no journalist or newscaster, or working associates of a journalist or newscaster, shall be required to disclose before any proceeding or authority, either:

(1) the source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or
(2) any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public.

[That's it for NM, except for a § of definitions and another regulating the proceeding to determine injustice.]

Reporter's comment: Brevity is elegant and green. This statute will be administered by judges, who are accustomed to sifting facts and exercising discretion. Maybe we should recommend one of these.

(2) What's shielded, sources or information or both?

Sources only: Alaska Stat. § 09.25.300; Ariz. Rev. Stat. § 12-2237 (reprinted above); Ind. Code Ann. § 34-46-4-2 (reprinted below); 42 Pa. C.S. § 5942 (reprinted above);

Sources and unpublished information: Many states include both sources and unpublished information within their shield statutes, e.g., D.C. Code § 16-4702, shielding:

> (1) The source of any news or information procured by the person while employed by the news media and acting in an official news gathering capacity, whether or not the source has been promised confidentiality; or
>
> (2) Any news or information procured by the person while employed by the news media in the course of pursuing professional activities that is not itself communicated in the news madia, including any:
>
> (A) Notes;
> (B) Outtakes;
> (C) Photographs or photographic negatives;
> (D) Video or sound tapes;
> (E) Film; or
> (F) Other data, irrespective of its nature, not itself communicated in the news media.

Information only: N.C. Gen. Stat. § 8-53.11 shields "any confidential of nonconfidential information, document, or item obtained or prepared while acting as a journalist," but this formulation may be broad enough to include sources of information.

Reporter's comment: Why shield information? If the information will reveal the souce, then the source shield should apply.

(3) Besides journalists and newscasters, who's covered?

Maryland includes student journalists, see Md. Cts. & Jud. Proc. Code Ann. § 9-112(b): "Persons affected. The provisions of this section apply to any person who is, or has been:

(1) Employed by the news media in any news gathering or news disseminating capacity; or

(2) Enrolled as a student in an institution of postsecondary education and engaged in any news gathering or news disseminating capacity recognized by the institution as a scholastic activity or in conjunction with an activity sponsored, funded, managed, or supervised by school staff or faculty."

Florida limits its shield to "professional journalists," who are defined as "person[s] regularly engaged in collecting, photographing,recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine. Book authors and others who are not professional journalists, as defined in this paragraph, are not included in the provisions of this section." To the same effect are Ind. Stat. Ann. § 34-46-4-1, N.M. Stat. Ann. §38-6-7B (7) and (8), N.Y. CLS Civ. R. § 79-h(a)(6) and (7) and (b), and R.I. Gen. Laws §9-19.1-2 (requiring that the shield claimant have acted "in his or her capacity as a reporter, editor, commentator, journalist, writer, correspondent, newsphotographer, or other person directly engaged in the gathering or presentation of news for any accredited newspaper, periodical, press association, newspaper syndicate, wire service, or radio or television station").

Reporter's comment: The statutes limiting the shield protection to "professional journalists" stand in sharp distinction to the proposed Hawaii shield law, which, in subsection (b), extends protection to any individual who regularly disseminates "information of substantial public interest . . . to the general public by means of tangible or electronic media." Should bloggers have a shield? Why?

(4) What is the nature of the protection?

Absolute privilege: Oregon's privilege, see ORS §§ 44.510 through 44.540, prohibiting compelled disclosure of "(a) the source of any published or unpublished information obtained by the person in the course of gathering, receiving or processing information for any medium of communication to the public; or (b) any unpublished information obtained or prepared by the person in the course of gathering, receiving or processing information for any medium of communication to the public," is virtually unqualified, giving way only in civil defamation actions pursuant to ORS § 44.530(3). This reporter's earlier undated memo, entitled "Preliminary research of journalists' privilege," discussed CA Evid. Code § 1070, which, by eliminating the contempt sanction, has one hallmark of an absolute privilege. And see ARS § 12-2237, quoted above as a model of brevity, and containing no exceptions to its prohibition of compulsion to disclose sources of information.

Qualified privilege: New Mexico's shield, N.M. Stat. Ann. § 38-6-7, quoted above, yields only when "disclosure be essential to prevent injustice." Similar to that of New Mexico is the shield of North Dakota, quoted above, which is overcome only when a court "finds that the failure of disclosure . . . will cause a miscarriage of justice."

The most common qualification employs a three factor judicial determination, "by a preponderance of the evidence . . . (a) That the news information is directly relevant to a substantial issue involved in the proceeding; (b) That the news information cannot be obtained by any other reasonable means; and (c) That a strong interest of the party seeking to subpoena the newsperson outweighs the interests under the first amendment to the United States constitution of such newsperson in not responding to a subpoena and of the general public in receiving news information." Colo. Rev. Stat. §13-90-119(3). To more or less the same effect are D.C. Code § 16-4703; Fla. Stat. § 90.5015(2); Md. Cts. & Jud. Proc. Code Ann. § 9-112(d); Minn. Stat. § 595.024; N.J. Stat. § 2A: 84A-21.3; N.C. Gen. Stat. §8-53.11(c); and O.C.G.A. § 24-9-30.

N.Y. CLS Civ. R. § 79-h appears unique in distinguishing "confidential news," for which "absolute protection" is furnished, from"nonconfidential news," for which the protection is qualified by the above three-factor disclosure exception.

(5) Reporter's choice:

Burns Ind. Code Ann. § 34-46-4-1 and -2 (2011)

34-46-4-1. Applicability of chapter.

This chapter applies to the following persons:

(1) any person connected with, or any person who has been connected with or employed by:

(A) a newspaper or other periodical issued at regular intervals and having a general circulation; or

(B) a recognized press association or wire service;

as a bona fide owner, editorial or reportorial employee, who receives or has received income from legitimate gathering, writing, editing and interpretation of news; and

(2) any person connected with a licensed radio or television station as owner, official, or as an editorial or reportorial employee who receives or has received income from legitimate gathering, writing, editing, interpreting, announcing or broadcasting of news.

34-46-4-2. Privilege.

A person described in section 1 [IC 34-46-4-1] of this chapter shall not be compelled to disclose in any legal proceedings or elsewhere the source of any information procured or obtained in the course of the person's employment or representation of a newspaper, periodical, press association, radio station, television station, or wire service, whether:

(1) published or not published:

(A) in the newspaper or periodical; or

(B) by the press association or wire service; or

(2) broadcast or not broadcast by the radio station or television station;

by which the person is employed.

MEMORANDUM

To: Members of the Standing Committee on the Rules of Evidence
From: Deirdre Marie-Iha, Committee Member, Department of the Attorney General
Re: Proposed Amendments to Journalists' Shield Law
for Consideration at September 14, 2011 Meeting
Date: August 22, 2011

The Department of the Attorney General respectfully submits the following proposed amendments to the journalist's shield law, 2008 Haw. Sess. L. Act 210, for the Committee's consideration at our next meeting.

Proposal No. 1. The Attorney General's office strongly recommends that the language governing the exception for information material to the investigation of felony (subsection (c)(3)) be improved in three ways. These improvements will guarantee the effectiveness of the exception and minimize confusion about its application. Because the exception governs both the prosecution and the defense of a felony, these suggested changes would assist defendants in accessing information relevant to their cases, as much as it would assist the State.[1]

(a) The exception should be extended in two ways. First, language should be added to cover the investigation, prosecution or defense of not only felonies, but "serious crimes involving unlawful injury to persons or animals" as well. Second, the exception should be extended to the investigation of "potential felonies."

If "serious crimes involving unlawful injury to persons or animals" is added into subsection (c)(3), it would also allow the courts some discretion in situations where a crime, though classified as a misdemeanor, could fairly be considered "serious" in the factual circumstances presented. See, e.g., HRS § 707-733 (sex assault in the fourth degree); HRS § 707-759 (indecent electronic display to a child); HRS § 711-1109 (cruelty to animals in the second degree) (all misdemeanors). This is desirable because, despite their status as misdemeanors, some of these crimes may be serious threats to public health and safety, depending on the facts presented. Note that the use of the word "serious" envisions some degree of judicial discretion in determining when (in the cases falling within this category) the privilege applies, based on the circumstances at hand.

[1] The provision also governs civil defamation actions. § (c)(3).

The addition of "potential felonies" is necessary because while an investigation is underway, it may not be immediately apparent whether the crime under investigation is a felony or a misdemeanor.[2] Adding in this language would prevent the unintended consequence of information being released in some prosecutions but not in others. This disparity in treatment would be based only on happenstance, that is, on whether the status of the crime was known at the time the investigation was conducted. Note that this disparity could potentially affect the information available to a defense attorney as well as a prosecutor. Act 210, § (c)(3). Both of these additions would remain subject to the "substantial evidence" requirement in the first phrase of § (c)(3).

(b) Under the existing language, the exception for felonies (§ (c)(3)) has three requirements before the exception may apply. The first requirement is that the information sought is "[u]navailable, despite exhaustion of reasonable alternative sources[.]" Act 210 § (c)(3)(A). The Attorney General's office believes that this language is too restrictive and, in the context of criminal investigations, too difficult to enforce or interpret. How will someone "exhaust" other sources if the information sought is critical to the investigation of a crime, when every other hypothetical source has a reason to be secretive? Instead, the language should require that the information sought is "not reasonably available from other sources." Note that although the language has changed, with this alteration there is still an unavailability requirement, based on what is reasonable in the circumstances. Eliminating the word "exhaust" will clarify that this unavailability requirement is not meant to bar application of the exception when, realistically speaking, there are no other sources where the information might be obtained.

(c) The third requirement for the application of the § (c)(3) exception should also be reworked. At present it requires that the information sought is "[n]ecessary and relevant to the charge, claim, or defense asserted[.]" There are two reasons why this requirement should be

[2] Compare, e.g., HRS § 707-711(1)(b) (Supp. 2010) with HRS § 707-712(1)(a) (1993) (recklessly causing "bodily injury to another" is a class C felony if the injury is "serious" but a misdemeanor if the injury is not); compare HRS § 707-713 (1993) with HRS § 707-714 (Supp. 2010) (reckless endangerment established by a person (among other things) recklessly placing another person in danger of death or serious bodily injury; first degree reckless endangerment is a class C felony if the person "employs widely dangerous means" to do so, but a misdemeanor if the person does not); compare HRS § 707-766 (1993 & Supp. 2010) with HRS § 707-767(1) (1993 & Supp. 2010) (extortion of property, labor or services under $50 in a twelve month period is extortion in the second degree, a class C felony, while extortion of property, labor or services (without specifying value) is a misdemeanor).

altered. First, it is redundant. The first portion of § (c)(3) already requires that the information sought is "material to the investigation, prosecution, or defense of a felony , or to a civil action for defamation[.]" § (c)(3) (emphasis added). There is no need to repeat a relevancy requirement when § (c) requires that the information sought is "material." Second, and more importantly, the word "necessary" should be removed from § (c)(3)(C). If the information sought is "material" to the prosecution or defense of a felony (or a potential felony, or serious crime involving unlawful injury to persons or animals, if the additions requested above are made), that should be sufficient to trigger the exception. Stating that the information is "necessary" would require the courts to decide what the prosecutors and defense attorneys "need" to serve their clients. Because part of § (c)(3)(C) is redundant and part is overly restrictive, that entire subsection can be removed. Instead the exception can be triggered by the requirement that the information sought be "material." (We note again that because the exception applies equally to the prosecution and defense of crimes, the language suggested here would make the exception more effective on both sides of criminal cases. The removal of § (c)(3)(C) will not expand this exception to the privilege unnecessarily, because the "substantial evidence" requirement at the beginning of § (c)(3) remains in place).

With the changes suggested above, section (c)(3) of Act 210 would be amended to read:

(c) This section shall not apply if:

. . . .

(3) There is substantial evidence that the source or information sought to be disclosed is material to the investigation, prosecution, or defense of a felony, potential felony, or serious crime involving unlawful injury to persons or animals, or to a civil action for defamation, and the source or information sought is:

(A) [~~Unavailable, despite exhaustion of reasonable alternative~~] Not reasonably available through other sources; and

(B) Noncumulative.[~~;] and~~

[~~(C) Necessary and relevant to the charge, claim, or defense asserted;~~]

Proposal No. 2. The Department of the Attorney General suggests that Act 210 be amended to add an exception for parties in criminal cases that have a constitutional right to the disclosure of the information. Without this exception, a criminal defendant who is denied access to potentially exculpatory information might either (1) claim that the journalists' shield law is

unconstitutional without such an exception[3] or (2) seek to have an otherwise proper prosecution dismissed on that ground. Either result is undesirable as a matter of public policy. Like our other suggestions noted above, the addition of this language would serve the defense bar as much as the prosecutors. This change could be accomplished by adding a new subsection (6) to the existing list of exceptions in § (c), reading: " (c) This section shall not apply if . . . . (6) A party in a criminal prosecution has a constitutional right to the disclosure of the information."

Proposal No. 3. In the Attorney General's view, subsection (a)(2) of the shield law is too broad and should be either eliminated or restricted with other language. As presently written, § (a)(2) protects "[a]ny unpublished information" from compelled disclosure by a journalist. Because the journalist's privilege should be concerned about protecting the *identity* of the source, not the information given by the source, this language is too broad. The identity of the source is already protected under § (a)(1). In addition, § (a)(2) protects *all* unpublished information in a journalist's possession, even if the information was not obtained under any express expectation of confidentiality and even if it cannot be reasonably assumed it will lead to the disclosure of the identity of the source (as is already protected under § (a)(1)).

As presently written, (a)(2) lacks any requirement that the information is dependent on any express expectation of confidentiality. The Attorney General suggests that this subsection be deleted entirely. Barring that, the section could be significantly improved by limiting it to unpublished information given with an express expectation of confidentiality. And there is no reason to protect information "prepared" by the journalist that did not originate from a confidential source. With these alterations, (a)(2) would read: "(2) Any unpublished information obtained [~~or prepared~~] by the person while so employed or professionally associated in the course of gathering, receiving, or processing information for communication to the public, provided that the unpublished information was given by the source with an express expectation of confidentiality."

Proposal No. 4. Finally, the Attorney General urges the committee to either eliminate or (at the very least) add restrictive language into section (b) of the shield law, the provision that protects bloggers and other regular users of electronic media. We are very concerned about the breadth of this provision, because it lacks any workable limiting principle. Act 210 currently

[3] This is not intended as any statement that the Attorney General's office would agree with such an assertion, of course.

requires that the person claiming the privilege be in a "materially similar" position to a professional journalist. § (b)(2). But it does not define that phrase. Though the provision appears, on first glance, to contain some hefty requirements (i.e., "clear and convincing evidence," "regularly and materially participated" in reporting, or "materially similar" to a journalist), the language is so vague that no functioning method emerges to limit it to on-line news sources who are truly comparable to the individuals already covered by subsection (a).

Including bloggers in the journalist's shield law is troubling. Consider this scenario, for example. A local scandal develops involving some high-placed individuals and attracts public attention in Honolulu. A criminal investigation is underway. There is an individual, who has never been a professional journalist, never participated in the publication of news professionally in any way, and never run a column or blog before. This individual posts their thoughts and commentary about the developing scandal every day for three months on their Facebook account. Then the individual comes across some confidential or sensitive information and, when questioned, refuses to disclose their source. Should this individual be protected by a journalists' privilege? The language of subsection (b) is so vague that the answer is potentially unclear.

The Attorney General's office is troubled by this extension of the principle of a journalist's shield law, and believes this aspect of Act 210 is ripe for abuse. This privilege is new to Hawaii law. In the circumstances, the more prudent step would be to eliminate this provision and allow this area of law to develop further—both in Hawaii and in other jurisdictions—before extending the privilege in such a vague and potentially problematic manner. In suggesting this change, we do <u>not</u> intend to remove the language from subsection (a) that extends the privilege to electronic versions of traditional media (i.e., a writer whose work appeared in the on-line version of the Honolulu Star Advertiser). Removing subsection (b) should not reduce the flow of information from confidential sources, because sources would of course retain the option of speaking to a traditional journalist.

It is our strong preference that this provision be eliminated. If this provision is to be kept, however, its application could be improved by adding another requirement designed to add some limiting principle. For example, the subsection would be improved by adding a requirement that the non-journalist individual seeking application of the privilege meet some objective criteria to be considered "materially similar" to a journalist.

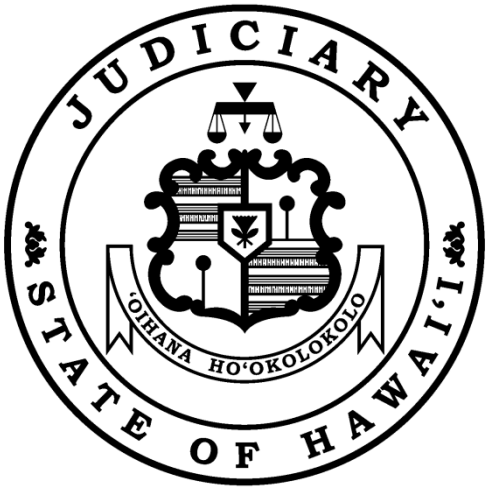
Thank you for considering our proposed amendments to Act 210.

ANNUAL REPORT TO THE TWENTY-SIXTH LEGISLATURE

ON

House Resolution No. 174
2011 Legislature

A Report on the Implementation of the Hawai‘i Uniform Collaborative Law Act



Prepared by:

The Supreme Court Standing Committee on the Rules of Evidence
The Judiciary, State of Hawai‘i

December 2011

At its September 14, 2011 meeting, the Standing Committee on the Rules of Evidence took up the matter of the Uniform Collaborative Law Act (UCLA), House Bill No. 626, 2011 Legislature. The committee focused its attention on Sections 16 through 19, which contain the evidentiary provisions of this measure. Thus, this report does not address the balance of the collaborative law act, which concerns civil procedure and beyond the purview of committee.[1]

What follows is quoted from the September 14 minutes.

> Members noted that the UCLA evidence provisions provide for confidentiality, privilege, and exclusion of collaborative law communications, except for material that is otherwise admissible or subject to discovery pursuant to established rules of evidence or procedure. These provisions are compatible with H.R.E. 408, entitled "Compromise, offers to compromise, and mediation proceedings." Indeed, given that collaborative law processes, aimed at resolution and settlement of disputes by collaborative lawyers, would constitute "compromise negotiations" under rule 408, the UCLA adds nothing of substance to existing Hawaii evidence rules. On the other hand, this committee finds this redundancy benign and tolerable.

Thus, the Standing Committee on the Rules of Evidence has no objections to the evidence provisions contained in House Bill No. 626, 2011 Legislature.

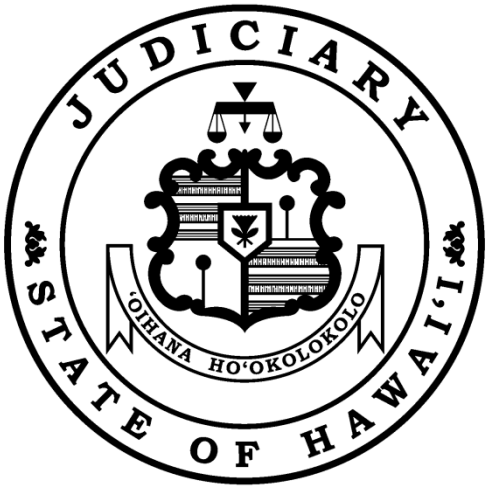
[1] Please note that this report is not subject to supreme court review or analysis, and, thus, does not represent the opinion of the court. The Judiciary would be pleased to respond to any inquiries the Legislature may have regarding this report.

ANNUAL REPORT TO THE TWENTY-SIXTH LEGISLATURE

ON

ACT 40
SESSION LAWS OF HAWAIʻI 2004
HRS §601-21

A Report on Statewide Substance Abuse Treatment Monitoring Program



Prepared by:

Adult Client Services Branch, First Circuit
The Judiciary, State of Hawaiʻi

December 2011

HRS 601-21 requires the following of the Judiciary: (a) to collect data in accordance with section 321-192.5 from any circuit court, adult probation, and any provider of substance abuse treatment that provides substance abuse treatment to persons served through public funds administered by the judiciary; (b) to include in the contract with any treatment provider all criteria established by the department of health pursuant to section 321-192.5 to determine whether the treatment provider is achieving success in treating individuals with substance abuse.

The Judiciary's efforts to comply with the above-referenced statute are outlined below.

- The Judiciary has included language in its Requests for Proposals and existing contracts with substance abuse treatment providers to hold programs accountable for complying with Department of Health criteria to determine success in treating individuals with substance abuse.

- In 2011, the Judiciary and the Alcohol and Drug Abuse Division, Department of Health (ADAD/DOH) have made concerted efforts to comply with the reporting requirements of HRS 601-21 and HRS 321-192.5, respectively. However, due to problems associated with data collection and development of the Judiciary's Case Explorer (CE) management information system and ADAD/DOH's Web Infrastructure for Treatment Services (WITS) information system[1], statistics from the Judiciary and ADAD/DOH do not correlate.

  While efforts continue toward full compliance with the above-referenced statutes, the Judiciary respectfully provides the following information to respond, in part, to the reporting requirements of HRS 601-21.

  - Since early 2010, the Judiciary's Adult Client Services Branch (ACSB), statewide, has entered information into its CE management information system from invoices of offenders who received funding from the Judiciary for substance abuse treatment services.

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[1] The WITS system is a collaborative information technology approach to the administration, planning, and monitoring of Substance Abuse Treatment Programs. Sponsored by State Alcohol and Other Drug Agencies and the United States Department of Health Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment, the WITS system's purpose is to provide software that facilitates the cooperation and collaboration across treatment providers by enabling the sharing of client treatment information (within the constraints of the Health Insurance Portability Act regulations).

The following data is a partial capture of the information generated by the Judiciary in fiscal year 2010-2011.

- 815 adults (unduplicated) entered treatment statewide;
- adding those offenders who were already in treatment before the start of the fiscal year, there were a total of 1,672 adults who received treatment services during fiscal year 2011;
- of these 1,672 adults, 1,296 were male, 358 were female, and 18 were indicated as “other” or no data was entered;
- treatment services ranged from sober support to residential care.

The Adult Client Services Branches statewide will continue to pursue compliance with the reporting requirements of HRS 601-21. Toward that end, the following activities will be undertaken in 2012: 1) “business rules” will be formalized to ensure that available data is accurately entered into the CE system and quality assurance activities are enacted; 2) funding will be sought to modify the CE system to require mandatory input of required data and to capture statewide data on admissions and discharges, length of treatment, and the primary substance for which treatment was sought; and 3) the Judiciary will continue to work with ADAD/DOH to capture and report information from its WITS information system.

ANNUAL REPORT TO THE TWENTY-SIXTH LEGISLATURE

ON

ACT 162, HRS
SESSION LAWS OF HAWAIʻI 2002
§577-7.5

A Report on Parental Preferences in Government Contracts

Prepared by:

Financial Services Division
Office of the Administrative Director of the Courts
The Judiciary, State of Hawaiʻi

December 2011

Act 162, SLH 2002, HRS §577-7.5, provides that Judiciary contracts, programs, and services shall not favor one parent over the other in terms of child rearing and that the Judiciary provide annual report to the Legislature.

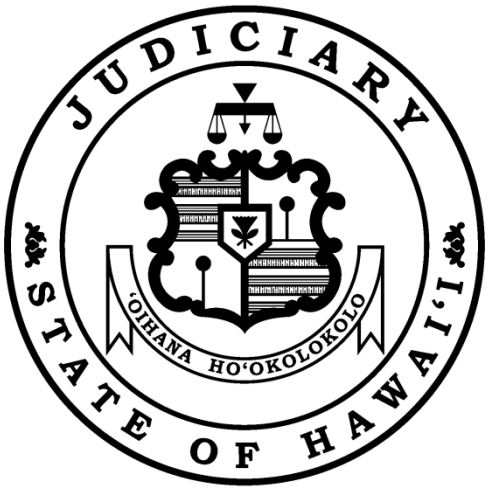
We report that the Judiciary program administrators, program specialists and contracting officers are continuing to monitor their contracts to ensure compliance with this Act. In addition to using standard contract boilerplates, our Judiciary staff attorney assures compliance with all applicable laws by reviewing these contracts prior to finalization. None of our policies and procedures in the contracting of individuals or groups providing contractual services to the Judiciary has ever reflected in the past, nor will they ever reflect in the future, any parental preference.

ANNUAL REPORT TO THE TWENTY-SIXTH LEGISLATURE

ON

ACT 274
SESSION LAWS OF HAWAIʻI 1997
HRS §607-5.6

A Report on the Parent Education Special Fund



Prepared by:

Family Court, First Circuit
The Judiciary, State of Hawaiʻi

December 2011

Act 274, Session Laws of Hawai‘i, 1997, requires the Judiciary to submit a report on the Parent Education Fund.

The Parent Education Special Fund was established by the 1997 Legislature, State of Hawai‘i, through Act 274. On May 2, 2003 HRS 607-5.6 was amended to increase the Fund's surcharge to $50 for family court matrimonial cases and to add the surcharge to paternity actions.

Purpose of the Fund

Parents attending the Kids First parent education programs in Hawai‘i are encouraged to refocus on their children's needs and to see how continued fighting negatively impacts their family. The families are given island-specific parent handbooks containing resources for counseling, domestic violence, parenting classes, and anger management classes. They watch the award winning Purple Family video, and are encouraged to mediate rather than litigate their custody conflicts. The program also assists children ages 6 – 17 cope with their parents' separation. Children learn that they are not the cause of their parents' divorce, that parents do not divorce their children, and that their family is not the only one going through a separation. Through mock trials teens learn about the court system. They are given resource materials and encouraged to seek counseling if they are depressed or angry about the separation.

Current Programs

Each Circuit has a parent education program for separating and divorcing parents and their minor children (ages 6 – 17).

Judicial Circuit	Adults Attending	Children Attending	FY 10-11 Total Attending
First (O‘ahu)	2,855	1,566	4,421
Second (Maui)	481	298	779
Third (Hilo)	226	161	387
Third (Kona)	154	118	272
Fifth (Kaua‘i)	219	126	345
Total:	3,935	2,269	6,204

Never-married parties contesting custody or visitation are also included in the Kids First program to teach them co-parenting skills. In Fiscal Year 2011 on O‘ahu 4,143 new marital actions (divorce) were filed, half included families with minor children. Additionally 1,147 paternity (unmarried parents) petitions were filed. Approximately 46% of O‘ahu's paternity cases involve contested custody or visitation issues. The remaining cases are filed by the Child Support Enforcement Agency seeking child support reimbursement. The O‘ahu program alternates the program weekly between the Honolulu First Circuit Court and the Ronald T.Y. Moon Kapolei Court Complex.

The percentage of divorce filings in each Circuit mirrors each island's population. The vast majority of the state's cases are on O‘ahu where 73% of the divorces and 62%

of the paternity cases are filed. During the 2011 fiscal year, the O‘ahu Kids First divorce program assisted 4,421 individuals (2,855 adults and 1,566 children).

The paternity calendar consists of families who are unmarried and have children. Currently in Hawai‘i, 40% of children are born to unmarried parents (this percentage proportion is comparable to the national average). Over 1,100 paternity cases are filed each year on O‘ahu, 46% are private (non-Child Support Enforcement Agency cases).

Statewide, 98 parent education sessions were held serving 3,935 adults and 2,269 children. Statewide revenue collected ($149,118) increased slightly from the previous year.

On O‘ahu, 12% of families attending have active restraining orders and one-third of all divorces are filed by military personnel.

All parents are told:

- Family violence must stop immediately.
- Violence is never appropriate and is extremely harmful to children.
- The court takes into account the safety of victims and children in making custody and visitation decisions.

Judicial Circuit FY 10-11	Census Population	Population %	Divorces Filed	Divorce %	Paternity Filed	Paternity %
First (O‘ahu)	953,207	70	4,143	73	1,147	62
Second (Maui, Lanai, Molokai)	154,924	11	667	11.5	245	13
Third (Kona, Hilo)	185,079	4	623	11	377	21
Fifth (Kaua‘i, Niihau)	67,091	5	257	4.5	70	4
Total:	1,360,301	100%	5,690	100%	1,839	100%

Financial Status of the Fund

The Parent Education Special Fund began collecting filing fee surcharges and donations on July 1, 1997. The attached financial report reflects the fourteenth year of collections. The Parent Education Fund continues to support parent education programs in all Judiciary circuits.

PARENT EDUCATION FUND REVENUE
Fiscal Year 2010 -2011

Judicial Circuit:	First	Second	Third	Fifth	Total
Surcharge	109,900	15,900	13,250	4,700	143,750
Interest	5,368	0	0	0	5,368
Total:	115,268	15,900	13,250	4,700	149,118

PARENT EDUCATION FUND EXPENSES
Fiscal Year 2010 – 2011

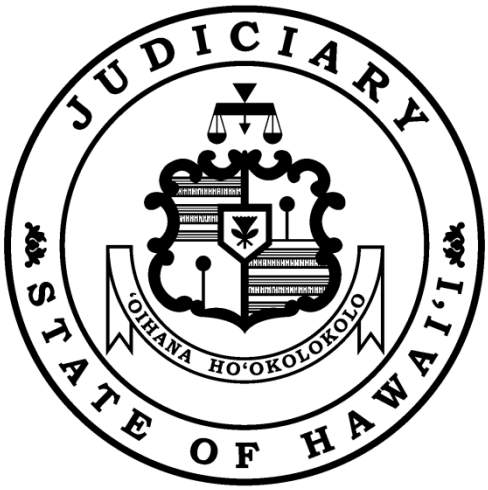
Judicial Circuit:	First	Second	Third	Fifth	Total
Security	11,460	2,732	0	2,996	17,188
Duplicating	3,798	0	0	0	3,798
Data Process	427	0	0	0	427
Stationary/ Office Supplies	1,474	0	0	0	1,474
Food Supplies	6,702	0	0	751	7,453
Materials and Supplies	42	0	0	0	42
Dues	215	0	0	0	215
Postage	588	0	0	0	588
Printing	460	0	0	0	460
Transportation	30	0	0	0	30
Subsistence Intra- employee	158	0	0	0	158
Trans employee	2,094	0	0	0	2,094
Trans-others	0	0	0	968	968
Subsistence employee	2,486	0	0	0	2,486
Subsistence	0	0	0	955	955
Car- employee	125	0	0	0	125
Car- other	0	0	0	40	40
Public Support	2,635	0	0	0	2,635
Interpreter Fees	1,261	0	0	0	1,261
Services on Fee	38,020	15,000	18,750	4,200	75,970
Spec. Assess	7,243	0	0	0	7,243
Training	1,250	0	0	560	1,810
Misc exp	2,709	0	0	0	2,709
Projectors	926	0	0	0	926
Interest	0	13	0	0	13
Total:	84,103	17,745	18,750	10,470	131,068

ANNUAL REPORT TO THE TWENTY-SIXTH LEGISLATURE

ON

ACT 232
SESSION LAWS OF HAWAIʻI 1994
HRS §601-3.6

A Report on the Spouse and Child Abuse Special Account



Prepared by:

Circuit Court, First Circuit
The Judiciary, State of Hawaiʻi

December 2011

This report is respectfully prepared pursuant to Act 232, Session Laws of Hawai‘i 1994, HRS 601-3.6, which requests a report on the Spouse and Child Abuse Special Account.

The Spouse and Child Abuse Special Account, placed in the Judiciary, was created by the Legislature, State of Hawai‘i, in 1994 for the purpose of developing and/or expanding new and existing programs. The scope of the Judiciary's Special Account may include, but is not limited to, grants or purchases of services which support or provide domestic violence or child abuse intervention or prevention, as authorized by law, and staff programs, as well.

The Judiciary's Special Account is financed through a portion of the monies collected by the Department of Health from the issuance of birth, death, and marriage certificates. In addition, any fines collected pursuant to Hawai‘i Revised Statutes Chapter 586-11 (Violation for an Order of Protection) and contributions from state tax refunds are deposited into the Judiciary's Special Account.

PROGRAMS AND ACTIVITIES FUNDED THROUGH THE SPOUSE AND CHILD ABUSE SPECIAL ACCOUNT

Monies from the Judiciary's Spouse and Child Abuse Special Account continue to provide funding for a broad range of programs, projects and activities statewide, which provide interventions in domestic violence and address the prevention of child abuse and neglect. The process of determining which services, programs and activities receive funding involved internal planning and collaboration within the Judiciary, as well as coordination with private and public stakeholders in the community.

The following programs, projects and activities were funded by the Judiciary's Special Account in Fiscal Year 2011:

Purchase of Service Programs:

The following nonprofit organizations received funding to provide or supplement their contracted services with the Judiciary:

Child and Family Service/Turning Point for Families

Funding was used to restore court advocacy services for victims who had petitioned the court for a temporary restraining order on the island of Hawai‘i. Funding of these core services had been eliminated due to budget cuts. The specific advocacy services provided included: information about the legal system and community resources, safety planning, and accompaniment at court hearings. During Fiscal Year 2011, the agency provided court advocacy at 2,192 hearings (1,790 in Hilo, and 402 in Kona.)

Child and Family Service/Developing Options to Violence
The Developing Options to Violence program provided specialized domestic violence intervention services to adolescents on the island of O‘ahu. The adolescents had been adjudicated in Family Court for the abuse of a household or family member, or a related charge, such as intimate partner violence. Services were also extended to family members of the juveniles.

Domestic Violence Action Center
Advocacy services to victims of intimate partner violence were provided on the island of O‘ahu. Services were targeted to victims who were filing for temporary restraining orders, and included risk assessments, development of safety plans, information and referrals, accompaniment to court proceedings, and advocacy.

Island of Hawai‘i YMCA
Supervised child visitation and exchange services were provided for families involved in domestic violence and/or high conflict cases by the Family Visitation Center. Services were provided to families from East Hawai‘i. The majority of referrals were from the Family Court and included parents with temporary restraining orders, or orders of protection.

Parents and Children Together/Family Peace Center
Funding was provided to the Family Peace Center on O‘ahu to supplement services to victims of intimate partner violence. The specific services provided included risk assessments, development of safety plans, advocacy, support groups, counseling, and counseling for children exposed to domestic violence.

Parents and Children Together/Family Visitation Center
Supervised child visitation and exchange services were provided to court referred families on the islands of O‘ahu and Kaua‘i. On O‘ahu, the Center serviced families in Honolulu and Waipahu, and on Kaua‘i, the Center operated in Kapa‘a. The majority of referrals involved temporary restraining order cases, however, other referrals involved divorce, child custody and paternity cases.

YWCA of Kaua‘i/Domestic Violence Intervention Alternatives to Violence Juvenile Program
Funding to this program allowed the provision of services to 22 juveniles referred from the Family Court for Fiscal Year 2011. The program also worked with family members and the juvenile’s probation officers on behalf of the juveniles when needed.

One of the juveniles in the program was experiencing trauma and extreme negative peer relationships, in part because of a family tragedy. The youth successfully completed the program and later became a volunteer for a community program.

Federal Grant Projects:

Matching funds from the Judiciary's Special Account were used for the federally-funded Judiciary grant projects listed below:

State Access and Visitation Program Grant

This formula grant is awarded to the Judiciary annually by the U.S. Department of Health and Human Services, Office of Child Support Enforcement, to provide supervised child visitation and exchange services in a safe setting. The federal grant funds and matching funds from the Special Account were used to provide these services on the island of O'ahu and Hawai'i. Priority was given to those cases involved in domestic violence, or other high conflict situations. Although the grant, in the amount of $100,000 required a 10% match (equivalent to $11,000), $50,000 in matching funds was allocated in response to the high volume of referrals. The two non-profit agencies receiving purchase of service contracts were Parents and Children Together/Family Visitation Center on O'ahu and the Island of Hawai'i YMCA in East Hawai'i.

STOP Violence Against Women Act Grant/"The Impact of Domestic Violence on Victims"

Matching funds from the Special Account were used to provide funds to partially fund the annual Family Court Symposium for all Family Courts judges and selected administrative staff, statewide. The Symposium focused on the topic of "Accounting for Domestic Violence in Child Custody Cases." Four national speakers, the agenda and materials were provided in consultation with the National Council of Juvenile and Family Court Judges.

This grant also provided funding to send a five member team from Hawai'i to a national fatality review conference, "New Directions in Domestic Violence Fatality Reviews," held in Phoenix, Arizona in August 2010. All five members of the team were participants in the Hawai'i Domestic Violence Fatality Review Team and represented both the public and private sectors.

STOP Violence Against Women Act Grant/"Improving Judicial Response"

The Special Account provided matching funds for this grant which provided judicial education on domestic violence to all fulltime judges in the state of Hawai'i. Endorsed and mandated by the Chief Justice, this two day training was attended by 65 judges. The decision to focus on domestic violence was initiated by the Judiciary's Judicial Education Committee, which recognized that domestic violence was a pervasive issue found not only in Family Courts but throughout all dockets. In addition, current training in domestic violence had not been provided to all judges for a number of years. Two national speakers, a panel of domestic violence survivors in Hawai'i, and the Honorable Susan Carbon, Director of the Office of Violence Against Women, spoke at the conference. Director Carbon was originally scheduled to be the keynote speaker but could not attend, due to

federal budget restrictions which developed, but was able to address the judges through a video recording made expressly for them.

Training, Meetings, and Other Expenses:

A mandated one day training of all statewide judges, held on November 19, 2010, focused on issues relevant to temporary restraining orders and orders of protections. Special Account monies were used for some of the expenses not covered by a federal grant.

Funds from the Special Account also provided for the training of probation officers supervising domestic violence offenders and stakeholders in the criminal justice system on best practices in treatment of offenders; maintaining a statewide data base of domestic violence probationers and their assessments; conducting site visits on projects on the neighbor islands; purchasing video conferencing equipment linking the Ronald T.Y. Moon Kapolei Courthouse to other courthouses in the state; purchasing publications in domestic violence and child abuse and neglect; and toward sending staff to conferences and training in the state.

Special Fund Assessment (ACT 34, SLH 1964)

The Special Fund Assessment fee for Fiscal Year 2011 was $22,446.

SUMMARY

The Judiciary's Spouse and Child Abuse Special Account continues to enable the Judiciary to develop, implement and maintain a proactive stance in responding to domestic violence and child abuse and neglect in the state of Hawai'i. One of the major strengths in the establishment of the Special Account has been the opportunity given to the Judiciary, which has encouraged and allowed funding for a comprehensive range of services and activities, which would have not been possible otherwise. As a result, services for victims of domestic violence and child abuse and neglect have been maintained and improved, as well as the promotion of appropriate intervention and effective practices for batterers.

The Judiciary remains committed to the responsible use of monies from the Special Account to promote the safety and well being of domestic violence and child abuse and neglect victims, family members, and the community at large.

THE JUDICIARY
SPOUSE & CHILD ABUSE SPECIAL FUND

EXPENDITURES & ENCUMBRANCES FOR THE FISCAL YEAR 2010-2011
AS OF 11/21/11

PERSONAL SERVICES		
2023	PERDIEM JUDGES	3691
	TOTAL PERSONAL SERVICES	3,691
OTHER CURRENT EXPENSES		
3204	DUPLICATING SUPPLIES	0
3206	DATA PROCESSING SUPPLIES	0
3209	OTHER OFFICE SUPPILES	150
3301	FOOD SUPPLIES	6,309
3430	OTHER MATERIALS & SUPPLIES	11
3502	SUBSCRIPTIONS	356
4201	TRANSPORTATION, INTRA-STATE - EMPLOYEES	1,906
4202	TRANSPORTATION, INTRA-STATE - OTHERS	0
4301	SUBSIST ALLOWANCE, INTRA-STATE - EMP	1,760
4302	SUBSIST ALLOWANCE, INTRA-STATE - OTHERS	0
4401	TRANSPORT, OUT-OF-STATE - EMPLOYEES	1,265
4402	TRANSPORTATION, OUT-OF-STATE - OTHERS	893
4501	SUBSIST ALLOW, OUT-OF-STATE - EMPLOYEES	1,932
4502	SUBSIST ALLOW, OUT-OF-STATE - OTHERS	3,020
4601	HIRE OF PASSENGER CARS - EMPLOYEES	869
4602	HIRE OF PASSENGER CARS - OTHERS	72
5701	OTHER RENTALS	248
6609	PURCHASE OF SERVICES CONTRACTS	412,237
7198	OTHER SERVICES ON FEE BASIS	15,025
7204	SPECIAL FUND ASSESSMENT (ACT 34, SLH 1964)	22,446
7205	TRAINING COSTS AND REGISTRATION FEES	0
7215	OTHER MISC CURRENT EXP	319
7300	INTEREST	
	TOTAL OTHER CURRENT EXPENSES	468,818
EQUIPMENT		
7712	DESKS	0
7713	FILES AND CABINETS	0
7725	OTHER OPTICAL EQUIPMENT	0
7739	OTHER ACOUSTICAL EQUIPMENT	0
7751	DATA PROCESSING SOFTWARE	1,060
7752	DATA PROCESSING EQUIPMENT	10,508
	TOTAL EQUIPMENT	11,568
	TOTAL EXPENDITURES	484,077