



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Public Safety, Veterans, & Military Affairs

Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 13, 2019, 10:00 a.m.
State Capitol, Conference Room 430

by
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Family Court of the First Circuit

Bill No. and Title: House Bill No. 1543, Relating to Gun Violence Protective Orders

Purpose: Establishes a process allowing law enforcement officers and family or household members to obtain a court order to prevent a person from accessing firearms and ammunition when the person poses a danger of causing bodily injury to oneself or another.

Judiciary's Position:

The Judiciary supports the intent of this bill and respectfully suggests that the Legislature request an analysis of this bill by the Legislative Reference Bureau so that a workable strategy can be developed. We respectfully offer the following comments:

1. Under HRS Chapters 586, 604 and 134, Respondents who are found to pose a threat of imminent bodily injury to others are already prohibited from owning or possessing firearms.
2. Further, under HRS Chapter 586 (Domestic Abuse Protective Orders “DAPO”), if a temporary restraining order is granted, the family court orders the Respondent to surrender all firearms and ammunition in accordance with Haw. Rev. Stat. § 134-7(f). The proposed amendment of Haw. Rev. Stat. § 134(f), eliminates the court’s authority to do so. Thus, in the event that a Petitioner is claiming domestic abuse and the Respondent has a firearm, the Petitioner would be required to file two petitions, one for abuse and one for the firearm. A possible solution is to allow the court to order a surrender under either a DAPO or a Gun Violence Protective Order (“GVPO”).



3. With regard to the costs to implement this measure, the bill will require significant additional funds to process and adjudicate GVPOs over and above our current budget. The increase will be caused by: (1) providing Petitioners help with filing the petition (§134-C(a)); (2) researching and verifying any existing order(s) (§134-C(b) and §134-D(1)&(2)); (3) reviewing and processing of petitions; (4) holding a hearing at the ex parte stage (§134-D(c) in lieu of allowing the court to issue a decision based upon the written petition/motion (as currently allowed in DAPO cases); (5) holding a further hearing within fourteen days on the issue of the one-year GVPO and hearing any subsequent motions to extend or dissolve the GVPO (§134-E, §134-F and §134-G); and (6) mandatory reporting to the Hawaii Criminal Justice Data Center (§134-J).
4. Aside from requiring a Petitioner to file two petitions noted above, the practical application of this measure should also be examined based upon the following concerns:
 - a. Requiring a Petitioner to file a petition for GVPO and an ex parte motion for a GVPO. This procedure could be combined similar to a DAPO and the requirement to hold a hearing at the ex parte stage be eliminated. This would streamline the process and would eliminate the costs of holding a hearing on each ex parte motion and the burden on a Petitioner who would be required to file said documents and wait at the court house for a hearing.
 - b. Requiring a Petitioner to provide notice to all adult family or household members. Although not mandatory, it may place a Petitioner (and said family members) in danger by requiring such notice because it increases the chances of a Respondent finding out about a petition before it is served by law enforcement. In the context of a DAPO, only notice to the Respondent is required and said notice is served by a law enforcement order.
 - c. Not requiring law enforcement to confiscate the firearm when notice of the petition is served. As drafted, a police officer does not need to take custody of the firearm when serving the petition or ex parte order (§134-H(b)). Currently in DAPO cases, the firearms are confiscated when the petition is served on the Respondent and it would seem to appear that this is the better practice.
 - d. Requiring the Court to conduct its own research regarding whether a Respondent owns any firearms will be problematic (§134-D(c)(1)). The court does not have access to such information.
5. Provided the concerns are addressed, the Judiciary supports the purpose and concept of the bill.

Thank you for the opportunity to testify on this measure.