



TO: Chair Taniguchi
Vice Chair Rhoads
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Oppose SB 2344 Relating to Automatic Restraining Orders

Domestic violence remains poorly understood. The cunning tactics used by abusers are sometimes difficult to believe or impossible to absorb.

We are not in favor of the Court issuing an automatic restraining order in any divorce, annulment or separation. It would seem to us that judges should have the discretion to determine, after hearing evidence, on a case by case basis whether an order should be issued pertaining to sale or transfer of any property or assets.

Sometimes a victim may not anticipate the harm that can befall her (him) if a partner decides to hide assets or claim marital assets. It would seem that a better way could be devised to put protections into place to guard against such exploitation. On the other hand, incurring debt may be an inevitable outcome for victims, as they are more often without resources, and too often, return to their abusers because they do not have sufficient resources to sustain independence or support for the children. On page 3, section (2) the word “unreasonably” is used to set a standard – unreasonable can be interpreted to mean different things by the parties, and by the system, depending on the parties’ assertions/stories in a divorce or annulment.

Developing statute that allows for “automatic” anything may seem like a protective endeavor, and yet can have the opposite outcome. The language, “it is a defense to any enforcement action under this section that an act of domestic abuse as defined in section 586-1 has occurred, would be imperative, and yet may not provide the safeguard intended.

Prohibiting a victim from fleeing with a child (ren) may create danger. We are also opposed to the prohibition of parties to remove the children from the island or from the school they are attending. The use of the term “indirectly” on page 3, section (4) is not clear; how does a person indirectly remove a child from an insurance policy or other health benefit? There are safety considerations that must be taken into consideration and assessed appropriately. There may be real needs to escape that



should not result in punishment of a victim acting in the best interests of herself (himself) and her (his) children.

Moreover, this proposal has a double-edge sword effect. While it intends to “create a level playing field for unrepresented parties” and protect “those who have lesser financial needs,” this scenario will only apply when the filing party is the one who has “superior financial means.” This proposal is a detriment to those who do not have the financial means and are seeking protection for their children. They will be facing an additional automatic financial and custodial constraint by simply filing a complaint for annulment, divorce, or separation. Meanwhile, the opposing party, until they are served, still has the liberty to dispose of personal and real property from the marriage, continue to incur in debts and, most concerning, are allowed to remove the minor child from the island. As a result, this can increase avoidance of service while the filing party continues to be submitted under the automatic restraint.

It also appears that an automatic restraining order will be issued, even if an order was granted under HRS 586. Finally, it is not clear why these requirements are only applied to those who have entered into legal marriage. Parties with children in common and partners living in a shared household would be exempt from the conditions imposed in this Bill.

We rely on our Courts to have judges well trained and equipped to address property and safety issues.

Thank you.

Good Morning Chair Taniguchi, Vice Chair Rhoads and Senate Judiciary Committee Members,

SB2344's companion bill, HB1614, was "PASSED, WITH AMENDMENTS" by the House Judiciary Committee but as of this date (02/03/18) and time, I cannot find what those amendments are since there is no Committee Report available so my comments will be crafted without reference to the amendments.

As a Domestic Violence Survivor Advocate, I am compelled to call the following to your attention:

If SB2344's intent is to curtail all separating/divorcing parties from divesting jointly-held or familial materials and financial holdings, then I would propose that the title of this action be changed

from *Automatic* Restraining Order to **Financial** Restraining Order

so as not to confuse this particular RO (restraining order) from a domestic violence (DV) RO that is ordered when an act of abuse has occurred and to prevent an act of abuse from recurring. This clarification is particularly important because non-abusive and non-violent parties should not be given the appearance as such.

Because the face of this proposed legislation appears to be universal (to include all separating/divorcing cases in Hawaii, DV cases included) I must ask that the following Section/s be completely stricken from Page 4:

(5) Neither party shall remove a minor child of the parties from the island of that child's current residence nor remove a minor child of the parties from the school that child is currently attending.

(c) It is a defense to any enforcement action under this section that an act of domestic abuse as defined in section 586-1 has occurred.

Ten years ago on January 16, 2008, Janel Tupuola, who had successfully escaped an abusive relationship, finished her workday and went to retrieve her youngest children from their daycare provider in Kailua - *a location known to her abuser*. If the name and case don't immediately come to mind, below is what happened next as reported by <http://www.warriortalk.com/archive/index.php/t-33897.html>:

Kailua residents watched helplessly last night as a woman was brutally beaten to death by her estranged boyfriend wielding a shotgun. The 30-year-old suspect, a convicted felon, also injured a man who intervened to try to help the woman.

"The guy is just banging away at her, banging away at her, then she hit the ground," said witness Walter Guerreiro, 52.

At about 5:30 last night, the victim, identified by the medical examiner's office as 29-year-old Janel Tupuola, arrived at her children's babysitter's home on Maluniu Avenue, police said.

When she saw the suspect, listed on the police arrest log as Alapeti Siuanu Tunoa Jr., she tried to drive away, police said. But Tunoa chased her with his car, police said.

The suspect allegedly rammed his sport utility vehicle into the woman's car, a white four-door Chevy sedan, four times, causing her car to spin out, homicide Lt. Bill Kato said. At the intersection of Maluniu Avenue and Kawainui Street the suspect got out of his SUV, pulled the woman from her vehicle and began beating her with a shotgun, Kato said.

The man then turned on a neighbor who had come out to help the woman, according to police and witnesses. Police said the suspect threatened and assaulted the 69-year-old man with the shotgun. "And then he went back to her" and continued the beating, said Guerreiro, adding that he feared the man might turn the gun on him if he tried to help. "I never seen one animal getting beaten like that." said Guerreiro.

The good Samaritan was taken to Castle Medical Center in stable condition, said Bryan Cheplic, spokesman for city Emergency Medical Services.

Neighbors saw the gun splintering as the man mercilessly beat the woman, and said they felt frustrated because they were unable to do anything. Kato said police recovered pieces of the firearm, which seemed to have come apart.

Because we want to PREVENT instances like this from ever occurring again and want to DECREASE the chances for abusers' success in hunting down their victims post-separation, Section (5) MUST be removed from the body of this bill.

To address subsection (c) I'd propose language substitution to the effect of:

"If domestic violence or family abuse is discovered to be the cause for the separation, annulment or divorce the victim will be excused from this order for accessing financial resources and materials if used to escape the abuser/an abusive situation."

If these changes are not implemented, SB2344 will be misused by abusers and deal a crushing blow to DV victims because it will keep mothers and their children hostage in abusive relationships; without the resources to flee and without the ability to take their children with them to safety, SB2344 will keep victims under the thumb of their abusers with nowhere to go (and if they do go, the abusers will know EXACTLY where to catch up with them like Janel's did).

Whenever we have a DV-related homicide, we make all kinds of promises saying "We'll do everything we can to make sure this never happens again" so please, let's not renege on that vow already made and not dishonor Janel, her surviving children and her family by allowing SB2344 to go forward as is.

Thank you for this opportunity to express my concerns regarding SB2344.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

SB-2344

Submitted on: 2/5/2018 9:26:13 AM

Testimony for JDC on 2/6/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Yuki Lei Sugimura	Maui County Council	Support	No

Comments:

This bill automatically imposes a restraining order upon parties filing for annulment, divorce, or separation to preserve the financial assets of the parties and their dependents.