

TESTIMONY OF THOMAS D. FARRELL  
Regarding HB 767, Relating to Temporary Restraining Orders  
Committee on Judiciary  
Representative Chris Lee, Chair/Representative Joy San Buenaventura, Vice Chair  
Thursday, February 7, 2019 2:05 p.m.  
Conference Room 325, State Capitol

Good afternoon Representative Lee and Members of the Committee:

As a family law practitioner who appears regularly on the Family Court TRO calendar, I have to say that HB 767 is a real head-scratcher. It adds a subsection to §586-4, to provide that a TRO can be enforced by the family court judge “upon a finding of civil contempt of court.” There are no findings or purposes stated in the bill, so I’m struggling to figure out just what problem this bill is attempting to solve.

I’m not sure whether this is supposed to provide some additional enforcement mechanism, or whether it is meant to limit the application of existing remedies by requiring a finding of civil contempt.

Violation of a TRO is already a specific crime under §586-4, and that criminal process is well understood and used regularly. Civil contempt, unlike criminal contempt, usually involves locking someone up until they do a specific act that they have been ordered to do. Using civil contempt, I once had an opposing party sent to OCCC until he paid his child support. Since TROs are negative injunctions, and don’t generally require any positive action, I’m not sure how a court would use civil contempt to enforce it. However, if the TRO contained an order to do some specific thing (like leave the house or turn in your guns), and the defendant refused to comply, I have no doubt that the court already has the power to use civil contempt to compel compliance. However, it’s much faster and more effective to simply call the cops.

And, of course, if the bill means that you can’t punish anyone for a TRO violation without first finding that there has been civil contempt, you may inadvertently add a new and unnecessary layer of complication to what is currently a straightforward process for criminally prosecuting TRO violators.

So, until there is some clarity as to just what problem this bill attempts to address, I recommend that you hold the bill.

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**HB-767**

Submitted on: 2/5/2019 11:02:13 PM

Testimony for JUD on 2/7/2019 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Fred Delosantos	Individual	Oppose	No

Comments:

I oppose this measure. I think a TRO is going a step too far for a simple civil contempt of court.