

TESTIMONY OF THOMAS D. FARRELL
Regarding HB1614, HD1, Relating to Automatic Restraining Orders
Committee on Judiciary
Senator Brian Taniguchi, Chair
Thursday, April 5, 2018 10:46 a.m.
Conference Room 016, State Capitol

Good Morning Senator Taniguchi and Members of the Committee:

I support HB 1614, and I am not swayed by the objections of DVAC or their allies. Nor should you be.

I have had uncounted clients who came to me with their spouse having cleaned out the bank accounts, taken the kids, and disappeared. DVAC thinks that victims of abuse should be able to do this. I disagree.

I have handled literally thousands of divorce cases since 1995, and I can tell you from experience that there are people who become parties to contested divorce cases involving child custody who will say or do anything to get what they want. So, while I am not in favor of spouse or child abuse, I respectfully suggest that allegations of domestic violence are easy to make and child custody cases almost always begin with these allegations. Sometimes they are true and sometimes they are not.

I am in favor of a fair process and respect for the rule of law. DVAC has different priorities. It exists to advocate for every advantage to be afforded to those to have been abused, or think they have been abused, or say they have been abused.

While it is beyond the scope of today's hearing to deal with these problems and divergent philosophies, it is certainly within your purview to enact a bill that freezes the status quo upon the filing of a divorce complaint.

If there is a question about children or spouses needing protection from domestic abuse, there is a very quick and easily available process for obtaining stay-away orders against an abuser. It is used thousands of times every year. Based on mere allegations of abuse, the family court will issue a temporary restraining order, and award temporary custody where appropriate. On the

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Senate Committee on Judiciary
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strength of that order, a parent can take the children and go into hiding¹---but that isn't an authorization to take the kids and run to the neighbor islands, to the mainland, or to foreign lands. True, a temporary restraining order is only a piece of paper, but police regularly arrest those who violate temporary restraining orders and orders for protection. An entire floor of the courthouse on Alakea Street is devoted to the prosecution of those cases.

My only reservation about this bill is that I am not sure that a lack of statutory authorization precludes the court from doing this. On Kauai, the family court has been issuing automatic financial restraining orders for years. On Oahu, Judge Browning was of the opinion that there needed to be a statutory authorization. So, we have no consistency among the various circuits. This bill would cure that.

So, I think that HB 1614 is a good idea on balance, and I urge you to report it out of your committee.

Thank you for your consideration of these comments.

¹ Recently, for example, I successfully defended a mother who was not allowed to have any contact with her children for over six weeks, based on the false domestic abuse allegations by her husband. He was in hiding with them on-island, but DVAC apparently thinks it would be fine if he had chosen to run from the State.

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

c/o 841 Bishop Street, Suite 480
Honolulu, Hawaii 96813
www.hawaiifamilylawsection.org

CHAIR
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ttanimoto@coatesandfrey.com

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TREASURER
NAOKO MIYAMOTO
n.miyamoto@hifamlaw.com

April 5, 2018

TO: Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice-Chair
Senate Committee on Judiciary

FROM: Dyan K Mitsuyama, Vice-Chair
Family Law Section of the Hawaii State Bar Association
E-Mail: dyan@mitsuyamaandrebman.com
Phone: 545-7035

HEARING DATE: April 5, 2018 at 10:46 a.m.

RE: Testimony in Support of HB 1614 HD1 Relating to Automatic Restraining Orders

Dear Chair Taniguchi & Vice Chair Rhoads and fellow committee members:

I am Dyan K. Mitsuyama, a partner in Mitsuyama & Rebman, LLLC, which is a law firm concentrating in all family law matters. I have been a licensed attorney here in the State of Hawaii for more than 19 years.

I submit testimony today in support of HB 1614 HD1 on behalf of the Family Law Section of the Hawaii State Bar Association, which is comprised of approximately 135 licensed attorneys statewide all practicing or expressing an interest in practicing family law. Unfortunately, I am unable to appear in person, but am available for questions by phone at any time.

The Family Law Section of the Hawaii Bar Association supports HB 1614 HD1 as it clearly emphasizes and reinforces the current law regarding annulment, divorce, and separation matters, particularly in the area of dividing assets and debts. This measure makes great sense as it seeks to guard against asset dissipation and/or concealment which can happen all too frequently in divorces. It also encourages parties to place everything on the table so to speak in the hopes of simplifying the marshalling, accounting and ultimate division of assets and debts.

This law will eliminate the necessity to file separate motions for these types of relief at the onset of any divorce case which will in turn reduce the amount of court proceedings at Family Court. This law will also bring unity within the Family Court amongst all Circuits as one Circuit currently

has an “automatic financial restraining order” attached when one files the initial Complaint for Divorce. It will allow Family Court to spend time on more urgent, more pressing issues regarding children and families.

In response to some of the criticism from domestic violence victim advocates, this actually helps victims who are often times more financially disadvantaged than their spouse. I personally have represented victims who have nothing left because a batterer has wiped out bank accounts or hid money.

Regarding the issue of the child’s residence or school- this unfortunately should not even have to be stated as no one should remove a child from the jurisdiction without an agreement or prior court order. Too many times children are removed, again sometimes where batterers take children away from the victims. The current proposed legislation appears to allow for someone to provide a good cause defense in domestic violence situations.

However, if the Committee has reservations about the child-related section of this proposed legislation, then I would suggest, remove that language and instead clarify that an Automatic **Financial** Restraining Order will be imposed at the time of the filing of the Complaint For Divorce.

In short, this measure regarding the prevention of dissipation of assets is a long overdue.

For the reasons stated above, the Family Law Section supports HB 1614 HD1.

Thank you for your time.

NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.

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Email: kjabola-carolus@dhs.hawaii.gov

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

April 4, 2018

LATE

To: Rep. Nishimoto, Chair
Rep. San Buenaventura, Vice Chair
Honorable Members of the H. Committee on Judiciary

From: Khara Jabola-Carolus
Executive Director
Hawai'i State Commission on the Status of Women

Re: Testimony in Support, HB 1614 HD1

Thank you for this opportunity to testify in opposition to HB 1614, which would automatically impose a restraining order upon parties filing for annulment, divorce, or separation to preserve the financial assets of the parties and their dependents and maintain the current island of residence and school of enrollment of a minor child of the parties. The Commission is concerned that this well-intentioned measure may actually have a negative impact on women, particularly women filing for divorce in domestic violence situations.

Sincerely,

Khara Jabola-Carolus

HB-1614-HD-1

Submitted on: 4/4/2018 4:46:23 AM

Testimony for JDC on 4/5/2018 10:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barry Goldstein	Testifying for Stop Abuse Campaign	Oppose	No

Comments:

Communities that have been successful in preventing domestic violence and especially murders use a group of best practices that include practices that make it easier for victims to leave their abusers. One of the problems with the judicial response to DV is they do not use current research to inform their practices and decisions. They treat contested custody as "high conflict" when it is mostly DV involving the most dangerous abusers. This legislation seems to be based on this mistaken assumption and it is dangerous because it makes it harder for victims to escape. I would suggest the legislature work on reforms based on important research like ACE and Saunders and make courts safe for children instead of making things more dangerous for victims.

April 5, 2018

Good Morning Chair Taniguchi, Vice Chair Rhoads and Senate Judiciary Committee Members and thank you for the opportunity to provide testimony in STRONG OPPOSITION to HB1614.

Suspect found victim via baby sitter, relatives say

<http://archives.starbulletin.com/2008/01/18/news/story02.html>

Does anyone remember the January 2008 Star Bulletin headline that described the brutal murder of *Janel Tupuola*, a mother of 5 who had "successfully escaped" an abusive relationship? In case you're unfamiliar, here are some excerpts from the article:

A man charged with beating his ex-girlfriend to death with the stock of a shotgun tracked her down by staking out her baby sitter, family members said yesterday.

Alapeti Siuanu Tunoa Jr. is accused of bludgeoning Janel Tupuola to death Wednesday night in front of several witnesses along a public road in Kailua.

Tupuola, 29, who had two children with Tunoa, had left after chronic abuse, family members said, and had found a new address.

A few weeks ago, Tupuola found herself an apartment on Kuulei Road that Tunoa could not find. **But he knew where the different baby sitters were.**

After Janel's highly publicized murder, coming within days of Jenny Hartsock's brutal domestic violence related murder, lawmakers joined the community to vow "Never again" but just 10 years down the road and *this*, HB1614, is what "never again" looks like?

HB1614 is not honest legislation where the body betrays its proclaimed intention: ***Automatic*** Restraining Order? Reads like a ***Financial*** Restraining Order to me but read on further and in the midst of all the financial concerns comes "*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.*" If this legislation is put into law, HOW exactly is this going to protect domestic violence survivors and their children from post-separation abuse, abduction and murder? I'll tell you right now: IT WON'T - it'll end up killing them.

Don't like what the Star Bulletin article reveals? Then don't pass HB1614 so we don't have to ever hear of something so preventable and tragic again. Added benefit: you won't be even remotely responsible for the death of the next domestic violence victim who dies courtesy of this legislation. Lay HB1614 to rest as Janel has been.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

HB-1614-HD-1

Submitted on: 4/4/2018 8:45:58 AM

Testimony for JDC on 4/5/2018 10:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
May Lee	Individual	Oppose	No

Comments:

The exception on domestic violence is not enough to prevent misuse of this bill by an abuser to control the victim. Domestic violence is so much more than a black eye. It is a complex issue involving power and control. This bill does not consider mental abuse, financial abuse, spiritual abuse and emotional abuse or threats to one's life, all of which could make a spouse to decide to leave a relationship for their safety and that of the children only to find they are charged with violating an automatic restraining order. The HRS only defines abuse as physical...meaning that something is physically broken, bleeding, bruised, lacerated and generally requires medical attention. Anything short of that is not considered abuse by current Hawaii state law. So, either the law on what defines abuse needs to be expanded to include emotional abuse including threats of violence, or this bill needs to expand the definition of abuse to include such things. Otherwise, this bill has a huge potential to be yet another tool an abuser uses in the court system to control the victim through power and control.

HB-1614-HD-1

Submitted on: 4/4/2018 9:08:33 AM

Testimony for JDC on 4/5/2018 10:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Honda	Individual	Support	No

Comments:

Aloha Chair Taniguchi and Vice Chair Rhoads,

I humbly support this bill and I am very grateful for your giving it a chance to be heard in your committee!

Sincerely,

John

HB-1614-HD-1

Submitted on: 4/3/2018 7:56:36 PM

Testimony for JDC on 4/5/2018 10:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Guy Yatsushiro	Individual	Oppose	No

Comments:

HB-1614-HD-1

Submitted on: 4/4/2018 1:20:11 PM

Testimony for JDC on 4/5/2018 10:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Esther McDaniel	Individual	Oppose	No

Comments:

Aloha Senators:

I'm concerned for domestic violence survivors and their **children** being further harmed by automatic restraining orders during annulment, divorce or separation thus I oppose HB 1614. I understand that the intent of using an automatic restraining order in these situations is meant to keep assets/finances safe and fairly divided, but when domestic violence is present in a relationship the automatic restraining order can harm and hinder the partner/spouse who is seeking safety from harm. I'm especially concerned about the section related to children:

"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."

Please consider revising this bill to make sure domestic violence survivors (parents and children) are taken into consideration.

Mahalo,

Esther McDaniel

HB-1614-HD-1

Submitted on: 4/4/2018 1:47:59 PM

Testimony for JDC on 4/5/2018 10:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Circe Carr	Individual	Oppose	No

Comments: