

July 13, 2005

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

Re: House Bill No. 1378 HD1 SD2 CD1

On July 12, 2005, House Bill No. 1378, entitled "Relating to the Judiciary" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill establishes that any findings relating to a temporary restraining order (TRO) petition are not binding on a subsequent family court case and requires de novo review in the proceeding of the facts and circumstances that led to issuance of the TRO.

Over the years, the Legislature has expanded the permitted use of TROs to cover both a broader scope of offenses, e.g., physical abuse, property damage, emotional and psychological abuse, as well as a wider range of those eligible to seek TROs, e.g., married couples, family members, household members, and even dating couples. In addition, the time period for which TROs can be in effect has been expanded from an original length of ninety days to one year, and now three years and, in some cases, for the foreseeable future.

Many of the modifications to the TRO law have been necessary and serve to enhance the safety and well-being of our citizens. However, this bill seeks to curtail the impact of temporary restraining orders and protective orders. While there may be occasions where the TRO law is abused by parties in dispute, a concern arises that this bill might be perceived by some as diluting the power of TROs in certain cases and, thus, may have the unintended consequence of causing those who truly require the protections afforded by a TRO to hesitate or neglect to obtain the protection for themselves and others.

Findings related to TROs or protective orders can be very relevant to judges when they are making determinations of child custody and visitation rights. To require judges

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to set aside the relevance of this information could be detrimental to the child and other involved parties.

Many individuals in court represent themselves (i.e. Pro Se) because they do not have funds to hire a lawyer. It will be hard for them to understand and know what prior proceedings can or cannot be considered by a judge during divorce or child custody proceedings. Already many victims of abuse initiate and then abandon divorce proceedings due to the many complex issues involved in such a situation. This law will only further complicate what may or may not be heard and considered by a judge when divorce, separation, annulment, and child custody matters are being heard.

Therefore, I allowed House Bill No. 1378 HD1 SD2 CD1 to become law as Act 242, effective July 12, 2005, without my signature.

Sincerely,

LINDA LINGLE