



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Human Services
The Honorable John M. Mizuno, Chair
The Honorable Tom Brower, Vice Chair

Monday, February 9, 2009, 8:15 a.m.
State Capitol, Conference Room 329

by
Karen M. Radius
District Family Judge
Family Court, First Circuit

Bill No. and Title: House Bill No. 1095, Relating to Notice of Guardianship Proceedings

Purpose: Amends existing guardianship law, in HRS Chapter 560, to provide that notice to parents is not required if the parents were previously notified in a separate court proceeding under HRS Chapter 587, the Child Protective Act, and a permanent plan has been ordered by the Court.

Judiciary's Position:

The Judiciary opposes the passage of House Bill No. 1095, which proposes to amend the existing guardianship law (HRS Section 560:5-113) to add that notice to the minor's parents is not required if the parents were previously notified in HRS Chapter 587 proceedings and a permanent plan was ordered by the Court, in a separate action.

HRS Section 560:5-205(a)(3) currently provides that notice of a petition for guardianship of a minor be given to each living legal parent of the minor whose parental rights have not been terminated pursuant to (HRS) Chapter 571 or 587 (the Child Protective Act). This bill proposes to also waive notice to parents who were previously served notice in a proceeding under HRS Chapter 587, the Child Protective Act, and a permanent plan has been ordered by the Court. In this situation, the parents' rights have not been divested. Because statutory and case law are clear that a guardianship does not terminate parental rights and because HRS Chapter 587 cases



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eventually end, this bill will result in an ongoing case (i.e., the guardianship case) where there has been no attempt to actually notice a party.

Further, in HRS Chapter 587 cases, parents may have received notice years before a guardianship action is initiated. The guardianship statute also authorizes the parents or any person interested in the welfare of the minor to subsequently petition for any order that is in the best interests of the minor; therefore, notice to these parents is fundamental to the exercise of their rights (HRS Section 560:5-210).

Thank you for the opportunity to testify on this matter.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

February 9, 2009

MEMORANDUM

TO: Honorable John M. Mizuno, Chair
House Committee on Human Services

FROM: Lillian B. Koller, Director

SUBJECT: H. B. 1095, RELATING TO NOTICE OF GUARDIANSHIP
PROCEEDINGS

Hearing: February 9, 2009, Monday, 8:15 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of H.B. 1095, an Administration bill, is to amend chapter 560, HRS, to provide that notice to parents shall not be required if the parents have been served in a proceeding under chapter 587, HRS, and a permanent plan has been ordered by the court.

DEPARTMENT'S POSITION: The Department of Human Services strongly supports this Administration bill.

This legislation is a housekeeping measure to ensure that the Department is not required to provide duplicative notice in guardianship proceedings under chapter 560, to parents whose rights have not been terminated, if they have already been noticed in the chapter 587 proceeding.

Act 106, Session Laws of Hawaii 2007, amended chapter 587, Hawaii Revised Statutes, to allow the Family Court to order legal guardianship without termination of parental rights. A corresponding revision to chapter 560:5-113, Hawaii Revised Statutes, is needed to clarify that notice is not required to be served on persons who are not, and will not, be parties to the guardianship proceedings. Since section 560:5-113 still requires such notice, the Department cannot proceed with petitions for legal guardianship without providing the currently required notices, even if such notices have already been provided pursuant to chapter 587 proceedings.

The cost to publish a notice is approximately \$600 so having to publish a notice twice would double this expense unnecessarily.

Thank you for the opportunity to testify