



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

**LATE
Testimony**

ON THE FOLLOWING MEASURE:

H.B. NO. 2725, RELATING TO CHILD CUSTODY.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 2, 2012

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Jay K. Goss, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but provides the following comments.

The purpose of this bill is to determine visitation rights between a custodial and non-custodial parent. The bill creates a rebuttable presumption that a custodial parent's decision regarding visitation is in the best interests of the child and that the presumption can be rebutted by evidence that denial of the visitation would cause significant demonstrable harm to the child.

The Hawaii Constitution, article III, section 14, provides in part that "[n]o law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title." (Emphasis added). The title of this bill is "Relating to Child Custody." This bill, addresses the visitation rights of parents. Should this bill become law and there was a legal challenge to the law based on article III, section 14, it is not clear that this law could withstand a constitutional challenge. It is the opinion of the Department of the Attorney General that if the title of the bill was "Relating to Child Visitation," and the bill became law, it would have a better chance to withstand a constitutional challenge because the subject matter of this bill deals directly with child visitation.

LATE Testimony

Testimony for HUS 2/2/2012 8:30:00 AM HB2725

Conference room: 329

Testifier position: Oppose

Testifier will be present: No

Submitted by: Dara Carlin, M.A.

Organization: Individual

E-mail: breaking-the-silence@hotmail.com Submitted on: 2/1/2012

Comments:

Good Morning Representatives and apologies once again for this late testimony.

Unfortunately, I cannot stand in support of this measure because it is premature, will benefit abusers is and ill-fitted at this point in time. To explain:

Despite HRS 571-46(9) domestic violence victims lose custody of their children time and time again due to the ignorance, omission and disregard of the statute as well as the zeal of attorneys who only want to win/win for their clients at all costs. Sadly, it is only a matter of time before a DV survivor will lose custody of her children in family court proceedings. This is not a local problem but a national one.

Because DV is so misunderstood and abusers are typically "in much better shape" (resource and otherwise) then victim-survivors in court, allegations and even evidence of DV are easy to be discounted.

Once an abuser realizes he no longer has access to his primary victim (wife, girlfriend, mother of his child/ren) he immediately employs his power and control tactics over those he does have legal access to: the children.

In family court proceedings, it becomes irrelevant that the abuser had little to nothing to do with the children before the separation/divorce because all that matters is "from this day forward" which is the precise moment when a history of DV is ignored.

If this proposal is viewed from a non-violent, non-abusive prospective, it makes perfect sense but please take a moment to realize what this would mean to a DV survivor whose just lost custody of her children to her abuser. Do you REALLY think he's going to "turn over a new leaf" and put "the best interests of the children" first by allowing the survivor access to his trump cards (the kids)?

Also please be aware that the MAJORITY of divorce and custody cases are decided amicably, outside of family court. Of those cases that appear on the family court docket, 75% are estimated to be cases involving domestic violence so please be aware that these bills will apply more to domestic violence cases then to non-violent cases.

An abuser's sole mission once his victim has successfully escaped him is to make her pay for breaking the cardinal rule of domestic violence: "You will not leave me". Once she crosses that line, ALL bets are off and there is no such thing as mercy in domestic violence.

I have WAY TOO MANY CASES where the DV survivor does not have custody of the children despite Hawaii state statute (and even despite a historical acquittal in CA for the medical evidence of abuse against the child - that case is on Kauai, FYI) so that's why I'm saying this measure is premature.

Until we're all on the same page about what DV really is, a measure like this is only going to aid the abuser.

I apologize for the lack of support although I see the good intentions behind this. Thank you for your time and consideration.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

Testimony in strong Support of HB2725

Hearing: February 2, 2012

Time 8.30 am

Room 329 State Capital

COMMITTEE ON HUMAN SERVICES

Rep. John M. Mizuno, Chair

Rep. Jo Jordan, Vice Chair

Report Title: Child Custody; Parental Visitation Rights

From: Chris Lethem

Subj: Testimony in ***strong Support of HB2725***

I would like to offer the following amendments as follows:

(2) There shall be a rebuttable presumption that joint custody should be awarded if each of the following elements exist:

- (2)-(A) The parents or parties, at the time the action was initiated, exercised joint custody over the child whose custody is contested;
- (B) Both parents or parties have or had prior to the action meaningful contact with the child;
- (C) Either parent or party OR both parents or parties request or apply for joint custody of the child;
- (D) There is no determination by the court pursuant to section 571-46(a) (10) that family violence has been committed by either parent or party;
- (E) The parents or parties requesting joint custody have filed with the court a parenting plan pursuant to section 571-46.5 that is sufficiently detailed to support an award of joint custody;
- (F) No court finding or conclusion exists that shows joint custody is not in the best interest of the child or that the parents or parties requesting joint custody are unable to act in the best interest of the child;

Your consideration is appreciated.

Chris Lethem

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Testimony for HUS 2/2/2012 8:30:00 AM HB2725

Conference room: 329

Testifier position: Support

Testifier will be present: No

Submitted by: John Bigelow

Organization: Individual

E-mail: ebig681116@aol.com

Submitted on: 2/1/2012

Comments:

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Testimony for HUS 2/2/2012 8:30:00 AM HB2725

Conference room: 329

Testifier position: Support

Testifier will be present: No

Submitted by: Eloise Bigelow

Organization: Individual

E-mail: ebig681116@aol.com

Submitted on: 2/1/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 9:44 AM
To: HUS testimony
Cc: tperez856@gmail.com
Subject: Testimony for HB2725 on 2/2/2012 8:30:00 AM

LATE
Testimony

Testimony for HUS 2/2/2012 8:30:00 AM HB2725

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Terri Santos
Organization: Individual
E-mail: tperez856@gmail.com
Submitted on: 2/2/2012

Comments:
I support this bill.