



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

House Committee on Human Services
Representative John M. Mizuno, Chair
Representative Terez Amato, Vice Chair

Thursday, February 9, 2023 at 9:00 a.m.
State Capitol, Conference Room 329 & Videoconference

by
Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 618, Relating to Family

Purpose Summary: Establishes an exemption from mediation in paternity proceedings where there are allegations of domestic abuse if the party alleging domestic abuse does not wish to participate. Prohibits a mediator from engaging in mediation where there are allegations of domestic abuse unless certain requisites are met. Prohibits a court from requiring mediation in paternity proceedings if there is a temporary restraining order or a protective order in effect and the party alleging domestic abuse does not wish to participate. Allows the court to order mediation in paternity proceedings where there are allegations of domestic abuse but there is no temporary restraining order or no protective order, under certain circumstances. Replaces the term "family violence" with "domestic abuse" in section 580-41.5, HRS.

Judiciary's Position:

The Judiciary supports House Bill No. 618. This bill balances the autonomy of parties who allege domestic abuse in paternity cases to choose to mediate with appropriate safety measures.

The family courts of Hawai‘i have championed mediation in many of the case types under our jurisdiction, including divorce and paternity cases. We have decades of experience



House Bill No. 618, Relating to Family
House Committee on Human Services
Thursday, February 9, 2023 at 9:00 a.m.
Page 2

that support our continued policy championing mediation. We have witnessed countless cases where parties, including parties who have alleged domestic abuse, have reached positive results through mediation. In cases with domestic abuse allegations, safety concerns have prompted the application of different physical protections and legal process protections such as the judges' consideration of the allegations before accepting the mediation agreement.

Recognizing the possible advantages of mediation, House Bill No. 618 balances the autonomy of a party to exercise mediation opportunities in paternity cases and applies to these cases the many protections afforded to parties in divorce cases that involve allegations of domestic abuse.

Thank you for the opportunity to testify on this important bill.



TO: Chair John Mizuno
Vice Chair Terez Amato
FR: Nanci Kreidman, M.A.
Chief Executive Officer
RE: H.B. 618

Thank you for hearing this important Bill. It has long been our experience and our concern that survivors of abuse are forced to mediate issues needing resolution in a partnership that is ending. The imbalance of power, intimidation and threat of retaliation is real and terrifying. No one speaks up in those circumstances.

Many people do not enter into an official marriage, but have children together. At the end of that partnership, issues needing resolution pertaining to that relationship would be on the paternity calendar in Family Court. We would suggest that mediation is not a good approach for resolution of disagreements when the matter before Family Court judges is a paternity case, involving a couple where there has been domestic violence.

This Bill is really kind of a housekeeping measure, aligning the two pathways out of an abusive partnership, and not facing mediation if it poses risks, panic or a loss of rights that are surrendered in the presence of a partner who has tormented them.

Thank you for your consideration of this Bill and we shall look forward to favorable action.

DOMESTIC VIOLENCE ACTION CENTER

ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198

LEGAL HELPLINE: (808) 531-3771

TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200

WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG

EMAIL: DVAC@STOPTHEVIOLENCE.ORG



HAWAII STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

February 9, 2023

Members of the House Committee on Human Services:

Chair John M. Mizuno
Vice Chair Terez Amato
Rep. Della Au Belatti
Rep. Greggor Ilagan
Rep. Bertrand Kobayashi
Rep. Scott Y. Nishimoto
Rep. Jenna Takenouchi
Rep. Diamond Garcia

Re: HB618 Relating to Family

Dear Chair Mizuno, Vice Chair Amato, and Members of the House Committee on Human Services:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 28 member programs statewide, I respectfully submit testimony in **strong support of HB618**. This bill would enable a survivor of domestic violence engaged in a contested custody proceeding with their abusive partner the option to engage in mediation instead of court litigation.

The language in this measure mirrors the language in HRS 580-41.5 Battered spouses; exemption from mediation in divorce proceedings and all the protections contained therein including prior agreement of the survivor, a mediator who is trained in family violence and a supportive person, including, but not limited to, an attorney or advocate, present during mediation.

Survivors should not be required to face an abusive partner during paternity proceedings unless they have made an informed decision where they are able to prepare themselves physically, mentally and emotionally. Paternity proceedings may be a way for a survivor of domestic violence to cut ties with their abusive partner and should not be a way for an abuser to inflict additional harm or hurt.

Thank you for the opportunity to testify on this important matter.

Sincerely,
Angelina Mercado, Executive Director



HAWAI'I STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

HB-618

Submitted on: 2/8/2023 12:56:34 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Midwives Alliance of Hawaii	Midwives Alliance of Hawaii	Support	Written Testimony Only

Comments:

I respectfully submit testimony in strong support of HB618. This bill would enable a survivor of domestic violence engaged in a contested custody proceeding with their abusive partner the option to engage in mediation instead of court litigation. Survivors should not be required to face an abusive partner. These proceedings should be done in such a way that an abuser cannot inflict additional harm to the survivor.

Please SUPPORT HB618.

Midwives Alliance of Hawaii

HB-618

Submitted on: 2/8/2023 10:39:19 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Doris Segal Matsunaga	Save Medicaid Hawaii	Support	Written Testimony Only

Comments:

Save Medicaid Hawaii supports HB 618

HB-618

Submitted on: 2/8/2023 1:06:41 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Melissa W. Chong	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in strong support of HB618. This bill would enable a survivor of domestic violence engaged in a contested custody proceeding with their abusive partner the option to engage in mediation instead of court litigation. Survivors should not be required to face an abusive partner. These proceedings should be done in such a way that an abuser cannot inflict additional harm to the survivor.

Please SUPPORT HB618.

HB-618

Submitted on: 2/8/2023 8:17:57 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dr. Faith Joyner	Individual	Support	Written Testimony Only

Comments:

Aloha, I support this bill. Mahalo for your consideration.

HB-618

Submitted on: 2/8/2023 9:37:29 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in STRONG SUPPORT!!!

HB-618

Submitted on: 2/8/2023 11:12:58 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Deb Nehmad	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill.

thank you for considering

deb nehmad

HB-618

Submitted on: 2/8/2023 1:46:19 PM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Mara Garcia	Individual	Support	Written Testimony Only

Comments:

Thank you for your consideration of this Bill. I am concerned that survivors of abuse are forced to mediate issues needing resolution in a partnership that is ending. The imbalance of power, intimidation and threat of retaliation is real - which makes it near impossible for anyone to speak up in those circumstances.

Many people do not enter into an official marriage, but have children together. At the end of that partnership, issues needing resolution pertaining to that relationship would be on the paternity calendar in Family Court. Mediation is not a good approach for resolution of disagreements when the matter before Family Court judges is a paternity case, involving a couple where there has been domestic violence.

Thank you for your consideration of this Bill. I look forward to favorable action.

HB-618

Submitted on: 2/8/2023 3:01:06 PM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Kyle Shelly	Individual	Support	Written Testimony Only

Comments:

I am testifying in support of H.B. 618 as an individual citizen. I have witnessed and observed a loved one, who is a survivor of domestic violence, suffer through a mediation process that was intended to bring resolution but instead resulted in continued suffering as well as being financially expensive. Ultimately, the mediation process was not productive, was tainted with bias and it should not be a requirement for those who have suffered and survived domestic violence.

Thank you for hearing and considering this Bill and for your service to the State of Hawaii.

Kyle J Shelly

HB-618

Submitted on: 2/8/2023 9:32:53 PM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Caroline Austin	Individual	Support	Written Testimony Only

Comments:

I am testifying in support of H.B. 618 as an individual citizen. For the last few years I have been part of the family court system, I filed for divorce in February 2018 and my case only went to trial in November of 2022, and I have yet to receive a final judgement. As a victim of domestic violence it was incredibly difficult to leave my abusive partner and the court system allowed him to draw out the process even longer putting me into debt due to the endless frivolous motions which created six figure legal bills.

After two years of ignoring my pleas to get a divorce my son's father filed a motion for pre-decree relief and a motion to set, which forced us into mediation as it is a requirement in order for us to get a trial. In mediation with a former family court judge, I experienced extraordinarily unethical behavior from our mediator, my attorney has been in practice for 40 years and was shocked by her behavior. The mediator inserted herself into our case, turned a blind eye to the evidence of domestic violence, and asked me if I was willing to reconcile and get back together with my abusive ex because he is in "mourning" and still in love with me. My attorney and I reminded her of the several instances of domestic violence against myself, my son, my sisters, and my mom, to which she responded that this was too long ago to have an impact that the court should care about. Coercive control during the relationship and after we had separated was completely disregarded by the mediator, as the law only came into play in 2020 and our case was filed in 2018. My son was seven years old and had been diagnosed with pervasive developmental disorder (similar to autism), PTSD, OCD, ADHD, and dyslexia while we were in mediation in 2020. These serious diagnoses make it difficult for my son to deal with visitation scheduling changes, especially overnight visitation, resulting in him self-harming (hitting his head repeatedly against the wall) and attempting to get out of visitation by making himself sick. After these instances which were corroborated by family members and the school, the mediator dismissed both the diagnoses and the behavior and continued to claim that the visitations were uneventful because "his father has not attempted to kill him or set him on fire during visitation". The mediator set up my son's father with a therapist as he was in violation of our temporary orders requiring him to see a psychologist weekly, and the mediator would provide my ex counseling calls to make sure he was "on track" to receive overnights. I was made aware of the counseling calls as they showed up in the bills I received from the mediator where it was evident that she was spending a significant amount of time on the phone with my son's father. The mediator made derogatory comments about my son after his psychological evaluation, "the best you can hope for is that he will be stocking shelves at Safeway when he is an adult". The mediator was determined to expand overnight visitation which was having negative consequences for my son, she attempted to force me to allow his father to have two overnights in

one week. Since I would not agree to two overnights a week, as my son was not coping with the one overnight a week, the mediator wanted us to have the pre-decree relief hearing and would not assist with a continuance or an alternative schedule as she believed the judge would make us have an every other weekend schedule of expanded visitation to 3 overnights in a row. At the hearing the judge recommended stability for my son and no changes to the current visitation schedule since it was clear in the documents presented at the hearing that my son was struggling, and he ordered a court appointed best interest fact finder to further investigate our case. The mediator was incensed that the judge did not agree with her take on my case, as her intent was to show me that the court would deny the domestic violence because I had not filed a restraining order.

The mediator did not support any of the efforts I made to obtain the necessary and recommended treatments from the psychological evaluation for my son, and in fact delayed my son from going to Assets School, a school that could meet his needs. The mediator supported my son's father in refusing to pay for the medical expenses, tuition, extracurricular activities, clothing, and shoes, and instead threatened to recommend that I pay my ex alimony since I supported him during the relationship. Ultimately the mediator required my ex to pay a monthly \$85 for child support, not remotely close to the calculated amount per the child support guidelines. As the psychological evaluation for my son recommended changing therapists, I found a new therapist for my son which his father agreed to, as this therapist was competent in treating a child with these diagnoses which was not easy to find, as trauma and domestic violence are not required in the curriculum for psychologists when getting their degree. The mediator told my ex and his attorney to file sanctions against me in court for changing the child's therapist, this motion was filed and was ultimately denied by the judge as my son's father agreed to the therapist in writing. The outcome of both of the court hearings was in my favor, however the cost was \$20,000 per hearing (total \$40k in a month and a half), which many victims of domestic violence could not afford. Trying to support and provide the necessary treatment for my son drove me to continue going through this arduous process but it should not be this difficult or expensive to provide a child with doctor recommended medical care. The mediator suspended mediation after this hearing, but not before she told my attorney that she really needs to see my ex husband in person because he is such a handsome and charming guy.

My son endured felony child abuse and neglect, in addition to witnessing domestic violence and assaults on family members. I cannot change what he remembers of this time and how this trauma has negatively affected his nervous system, coping abilities, and his health for the rest of his life as these early life adverse childhood experiences (ACEs) have lifelong negative outcomes. I deeply regret not being brave enough to leave sooner, we were scared everyday and hoped the abuse would stop and at no point did I think of calling the police because when you live in an environment like this you are trying to deescalate the situation not make it worse. Families and survivors of domestic violence should not be penalized for being afraid and not reporting shameful abuse to the police as it was happening.

Please consider this bill so that domestic violence survivors don't have to live through the same horrible experiences that my son and I had to endure, mediation gave power to a mediator to rule

as she pleased dismissing evidence that a judge would later conclude was relevant and important.

Mahalo,
Caroline