

Honolulu, Hawaii

March 16, 2010

RE: S.B. No. 2368  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Sir:

Your Committee on Human Services, to which was referred S.B. No. 2368 entitled:

"A BILL FOR AN ACT RELATING TO CHILD VISITATION,"

begs leave to report as follows:

The purpose of this bill is to help provide continuity and stability to children by permitting the Family Court to award reasonable visitation to grandparents upon consideration of certain factors and if denial of visitation would cause significant harm to the child.

Parents for Righteousness testified in support of this bill. The American Civil Liberties Union of Hawaii provided comments.

Your Committee notes that in 2007, the Hawaii Supreme Court declared in *Doe v. Doe*, 116 Hawaii 323, (2007), that certain provisions of section 571-46.3, Hawaii Revised Statutes, are unconstitutional and noted that legislative action is necessary to correct those provisions.

Accordingly, your Committee has amended this bill by:

- (1) Clarifying that there must be clear and convincing evidence that denial of reasonable visitation rights would cause significant harm to the child;



- (2) Including an unspecified required minimum age of the child for the grandparent to petition for visitation;
- (3) Including the following additional factors the court may consider when ruling on the petition:
  - (A) Whether the grandparent was a primary caregiver for the child and if so, for how long;
  - (B) The amount of visitation time requested and the potential for adverse impact on the child's customary activities;
  - (C) The child's preference, if the child is of sufficient age to state a preference;
  - (D) The physical and mental health of the child and the grandparent;
  - (E) The good faith of the grandparent and the parent or custodian denying visitation; and
  - (F) Any other factor that establishes that the loss of relationship between the grandparent and the child is likely to harm the child's mental, physical, or emotional health;
- (4) Clarifying that the court may consider the prior relationship between the child and the grandparent;
- (5) Changing the effective date to January 1, 2050, to encourage further discussion; and
- (6) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee also notes the suggestion that the Legislature consider extending familial rights to all Hawaii's families, particularly hanai families and gay and lesbian parents who are unable to exercise the same rights and responsibilities as those given to their married counterparts. Your Committee respectfully requests that subsequent Committees consider this suggestion should this measure be heard as it falls outside of this Committee's purview.



As affirmed by the record of votes of the members of your Committee on Human Services that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2368, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2368, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Human Services,

  
JOHN M. MIZUNO Chair



State of Hawaii  
House of Representatives  
The Twenty-fifth Legislature

HSCR 768-10

**Record of Votes of the Committee on Human Services**

<b>Bill/Resolution No.:</b> SB 2368	<b>Committee Referral:</b> HUS, JUD	<b>Date:</b> 3/8/10		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
HUS Members	Ayes	Ayes (WR)	Nays	Excused
1. MIZUNO, John M. (C)	/			
2. BROWER, Tom (VC)	/			
3. BELATTI, Della Au	/			
4. BERTRAM, Joe, III				/
5. CARROLL, Mele	/			
6. NISHIMOTO, Scott Y.				/
7. SHIMABUKURO, Maile S.L.	/			
8. YAMANE, Ryan I.				/
9. WARD, Gene	/			
<b>TOTAL (9)</b>	6	0	0	3
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; margin-left: 100px;">committee acronym(s)</div>				
<b>Vice Chair's or designee's signature:</b> <u>Tom Brower</u>				
<b>Distribution:</b> Original (White) – Committee    Duplicate (Yellow) – Chief Clerk's Office    Duplicate (Pink) – HMSO				