

STATE OF HAWAII  
DEPARTMENT OF DEFENSE

TESTIMONY ON HOUSE BILL 2061  
A BILL FOR AN ACT RELATING TO CHILDREN

PRESENTATION TO THE  
HOUSE COMMITTEE ON HUMAN SERVICES

BY

MAJOR GENERAL ROBERT G. F. LEE  
ADJUTANT GENERAL  
February 1, 2010

Mr. Chairman and Committee Members:

I am Major General Robert G. F. Lee, State Adjutant General. I am testifying on House Bill 2061. This bill provides that in child custody proceedings, courts shall not give undue weight to a parent's absence away from the child, when such absence is due to service in the military or duties as a public official.

We strongly support House Bill 2061. As our nation continues its war on terrorism, many of our citizen soldiers and airmen have been and will continue to be called to active military duty and deploy to Afghanistan, Iraq, and other global contingency operations. These tours of active military duty may last up to 18 months. Some of our divorced service members have custody or visitation rights with children whose other parent is not the service member's current spouse. Absences due to military service can undermine and disrupt existing arrangements creating stress on parents and children.

Passage of House Bill 2061 would send a clear message to all of our service members that their absence due to military duty will not affect the court's decision on child custody and visitation. Additionally, this bill would ensure participation by the service members in any scheduled hearings or proceedings while they are absent due to military deployments.

Mr. Chairman, thank you for the opportunity to submit this written testimony.

LATE  
testimony



*THE JUDICIARY, STATE OF HAWAII*

**Testimony to the House Committee on Human Services**

The Honorable John M. Mizuno, Chair  
The Honorable Tom Brower, Vice Chair

Monday, February 1, 2010, 8:30 a.m.  
State Capitol, Conference Room 329

by  
Thomas R. Keller  
Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

**Bill No. and Title:** House Bill No. 2061, Relating to Children

**Purpose:** Provides that in child custody hearings, Court shall not give undue weight to parent's absence from the child, when such absence is due to service in the military or duties as a public official. Requires Court to make a reasonable effort to expedite proceedings or use electronic communication systems to facilitate a parent's participation in a proceeding when the parent is a substantial distance away from the Court.

**Judiciary's Position:**

The Judiciary takes no position on this bill but offers the following comments.

First, the summary provided for this bill establishes the intent to avoid giving undue weight, in custody or visitation decisions, to a parent's absence due to military and other public service. However, the bill actually **prohibits** the Court from **any** consideration of this fact. Such a prohibition is untenable and impractical. The public, including military personnel and public officials, will not understand how any decision could be made without any regard to such a monumental event in the life of the child and parents. This is true regardless of the age of the child; however, such a prolonged absence becomes increasingly relevant for younger children. We respectfully suggest that the bill be amended to incorporate the language found in the summary, that is: The Court shall not give undue weight to parent's absence from the child,



House Bill No. 2061, Relating to Children  
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when such absence is due to service in the military or duties as a public official, in the proposed subsection (c) (page 11, lines 21-22, page 12, lines 1-2), as follows:

(c) In awarding custody and visitation pursuant to this section, the Court shall not give undue weight to a parent's absence from the child, when such absence is due to service in the military or duties as a public official.

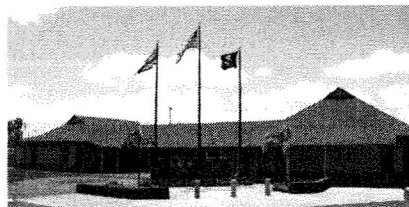
Second, the provisions in subsection (d) mandate that the Court make a reasonable effort to expedite the hearing or use available electronic means to facilitate the parent's participation at the hearing. It is our practice to expedite hearings, when we are able to, when we are informed of an imminent deployment. We cannot do this in all cases because the other parent must have notice and a reasonable amount of time to prepare for such an important hearing. We respectfully suggest that the Court be given the discretion to expedite the hearing and that the word, "shall," be changed to "may," in subsection (d), page 12, line 7. Also, it is our practice to allow participation by electronic means when it is practical and fair to do so. There are many considerations in our decision to allow electronic, remote participation--these considerations directly impact the court's ability to make fair and sound decisions. Thus, this bill will not greatly impact court operations.

Last, under the federal Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003) (codified at 50 U.S.C.S. app. §§ 501-596), a deployment generally results in an initial stay (that is, a suspension) of the proceedings for not less than 90 days, upon request. The servicemember may seek a further stay, if the situation warrants. The bill's language may be inconsistent with this federal law. We respectfully suggest that the bill be amended to recognize the federal act, such as "Nothing in this section modifies the rights of servicemembers pursuant to federal law."

Thank you for the opportunity to provide testimony on this matter.

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January 30, 2010

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## TESTIMONY IN FAVOR OF HOUSE BILL 2061 RELATING TO CHILDREN

### HOUSE COMMITTEE ON HUMAN SERVICES

**HEARING MONDAY, FEBRUARY 1, 2010, 8:30 AM, ROOM 329**

Aloha Chair Representative John M. Mizuno, Representative Tom Brower, Vice Chair, and members of the Committee. My name is Fred Ballard, President Oahu Veterans Council. The Oahu Veterans Council is comprised of over 35 Oahu veteran organizations that in turn represent over 80,000 veterans and their families. The Council's Legislative Committee recently met and agreed to fully support HB 2061.

Courts should not give undue weight to a military parent's absence, especially when the military parent is deployed away from home. The stress of deploying and combat is enough without the added stress of worrying how the custody proceedings will go and knowing they have no say in the matter. HB 2061 will certainly help relieve some of this stress by allowing the parent's participation by utilizing modern electronic communication systems.

The Oahu Veterans Council strongly supports the passage of House Bill 2061.

Mahalo for allowing us the opportunity to testify in support of this very important bill.

Fred Ballard  
President  
Oahu Veterans Council



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Hawaii Chapter, MOAA  
P.O. Box 1185  
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**Testimony of**

**Thomas Smyth, President**

**Military Officers Association of America, Hawaii Chapter**

**Before the House Committee on Human Services**

**Monday, February 1, 2010, 8:30pm, Room 329**

**On HB 2061 Relating to Children**

**Chair Mizuno, Vice Chair Brower and Members of the Committee:**

**Our association of 500 retired and currently serving officers of the seven Uniformed Services strongly supports HB 2061, which takes a military parent's deployment status into account in child custody cases.**

**With the increase in unit deployments since the beginning of military operations in Iraq, Afghanistan and other places around the world, there has been a corresponding increase in challenges to the child custody responsibilities of parents who have court-ordered child custody, but are ordered to deploy. With more women serving in all branches of the Armed Forces, and since mothers are more likely to be the court ordered custodial parent, this issue has become even more significant.**

**About 7.8% of all military members are single parents and there are about 36,000 families where both parents are in the armed forces. These parents must prepare a Family Care Plan designating a person, living in their area and often, but not always, a relative, to take care of the child while they are deployed.**

**Even when a child custody plan has been prepared and accepted by the military command, non-custodial individuals are more frequently filing for custody, just on the basis of the custodial parent's absence. They argue that the custodial parent is now "unfit" since they are absent. Ironically, the person making this claim has often been ruled to be "unfit" by the court.**

**As noted in Section 1 of the bill, states are beginning to recognize this problem and take deployment status into account. To date no similar federal legislation has been proposed but child custody is, after all, a state matter. Hawaii should take action now and we believe HB 2061 will be an important step in this direction. The bill does not limit the authority of Family Court judges to act in child custody disputes; it just sets forth some guidelines for those actions.**

**The provision for accommodation of the absent parent not being able to be present at a hearing and allowing other means of representation is very important. In this age of inexpensive and convenient video conferencing, all parties should have a fair opportunity to participate.**

**Thank you for the opportunity to provide this testimony.**

TESTIMONY OF CHUNMAY CHANG  
FAMILY LAW SECTION, HAWAII STATE BAR ASSOCIATION  
**RE HOUSE BILL 2061 RELATING TO CHILDREN**

LATE  
Testimony

House Committee on Human Services  
February 1, 2010

Good Morning Chairman Mizuno and members of the committee.

I am Chunmay Chang, chair of the Family Law Section of the Hawaii State Bar Association. The Family Law Section<sup>1</sup> cannot support HB 2061, which totally bars the family court judges from considering the absences of a parent due to military service or as a result of being a public official, in making child custody determinations.

Our opposition to the bill in no way diminishes our respect and appreciation for those who serve in our armed forces. However, the best interests of children must remain paramount. In making a child custody determination, the Family Court judge must be able to consider all relevant circumstances and factors in determining what is best for that child. Those factors should include a parent's absence due to military service and/or public officials' duties.

Unless shown to be unfit, a parent has a constitutional right to the care, custody and control of his or her child. The corollary of that principle is that when one parent is unable to exercise his or her parental duties--- whether due to illness, deployment, incarceration, or whatever cause--- then the other parent is entitled to custody of the child.

When making a decision as to which parent shall be awarded custody of a child, the paramount consideration for the Family Court judge is the best interest of the child. I can assure you that no custody decision made by a Family Court judge is ever truly in the best interest of the child. What is in the best interest of the child is for the family to remain intact and for both parents to treat each other with love and respect. However, if parents cannot remain together, and cannot agree on parenting arrangements, then a Family Court judge must decide. The Family Court does its best to protect the child and minimize the damage. That means that fairness to either parent is nice, but is an entirely secondary consideration. After all, the parents created this problem, not the child.

Some scenarios that are representative of custody cases involving deployment:

- Dad is deployed while mom is pregnant. Mom gives birth and the baby is 10 months old when Dad returns. Unfortunately, the marriage does not

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<sup>1</sup> This testimony is offered on behalf of the Family Law Section, consisting of over one hundred attorneys who practice primarily in the Family Court. The Hawaii State Bar Association takes no position on this legislation.



last and a divorce is filed. Your bill bars the court from considering dad's absence.

- Mom and dad were never married, broke up, and in a paternity action, soldier dad agreed that civilian mom should have custody subject to dad's visitation. Mom then enlists in the military and is deployed. She'll be gone for a year. Dad just came back from his own deployment to find that mom sent the child to live with her aunt in Minnesota. Dad files for a change of custody. He says that mom isn't here, he is, and he has a constitutional right to the custody of his child. Your bill says the court can't consider mom's absence.
- Or how about this scenario? Mom and dad are divorcing. They have two teenage kids at Iolani. Dad is an Air Force officer, in a job which will require him to rotate every six months between Iraq and Davis-Monthan AFB, Arizona. Mom plans to stay in Hawaii until the kids finish high school. Should the court not consider Dad's anticipated periods of absence in determining what is in the best interest of these children?

In my own experience, I can recall one case where the parties divorced and were awarded joint legal and physical custody of two preteen children. They each had the children for a week, alternating back and forth. Dad then deployed for 12 months. Upon his return, the parties resumed their equal time sharing. In that situation, his deployment was not used to modify the custodial arrangement, and properly so.

HB 2061 would apply to all scenarios described above. For that reason, we cannot support this bill, specifically Subsection (c), which creates an absolute bar prohibiting Family Court judges from considering a parent's long absences due to military or public official duties.

I would also like to share some thoughts from the vice chair/chair elect of the Family Law Section, Thomas D. Farrell. By way of background, Tom served for twenty nine years as an Army Reserve officer---including a deployment to Iraq--and he grew up in a military family. He represents clients in custody matters in the Family Court, and at least half of his clientele are military personnel, married to someone in the military, or parenting a child with someone in the military. One would think that he would be sympathetic to this legislation, but he is not. He agrees with the Family Law Section's position.

Tom writes:

With all due respect to the other services, the campaigns in Iraq and Afghanistan are being waged primarily by the Army and the



Marine Corps. The Army's rotation plan for active duty soldiers is twelve months in theater and twelve to twenty four months at home. The Marine Corps operates on a six months on/six months off rotation plan. In a typical case coming before the Hawaii Family Court, the service member is stationed here, but will permanently relocate somewhere else in three or four years. The other parent is also frequently a service member, and when the other parent is a civilian, that parent may or may not plan to remain in Hawaii.

We need to remember that these scenarios come about as a result of adult choices. It's an adult choice to have a child, it's an adult choice to end a relationship with your child's parent, and it's an adult choice to serve in the armed forces. And on that last choice, surely no one who has entered or remained in service after September 11, 2001, should have had any doubt that they might be deployed to a combat zone for extended periods. So if one makes all three of these choices, then one must understand that a possible consequence is that a Family Court judge will award custody to the other parent.

It would be nice, of course, if parents could figure these things out on their own, without having to get a Family Court judge to decide these cases for them, but that's how it is sometimes. So the Family Law Section opposes HB 2061 because it attempts to handcuff our Family Court judges from making custody decisions that should be based solely on the best interest of the child. We believe that the men and women who sit on the Family Court bench have the wisdom, integrity and compassion to make these decisions based on the unique facts of each case, and to be as fair as possible to both parents, but to put the needs of children first.

We do not oppose that portion of the bill that encourages the Family Court to expedite these cases and to allow participation by electronic communication, although we do not believe that further encouragement from the legislature is required. Our judges have been very accommodating in allowing service members who are deployed overseas to participate in hearings by telephone and in granting requests to advance particular matters on the calendar when there is good cause to do so.

Thank you for the opportunity to testify.

**Representative John Mizuno , Chair, Human Services Committee**

**January 29, 2010**

**LATE**  
testimony

**Testimony of  
Laurie Crehan, Ed.D.  
Quality of Life Regional Liaison  
Office of the Under Secretary of Defense, Military Community and Family  
Policy  
DoD-State Liaison Office**

**Support of: HB 2061 Relating to Children: Child Custody (Evans)**

**The Department of Defense State Liaison Office** operates under the direction of Under Secretary of Defense for Personnel and Readiness, and the Deputy Under Secretary for Military Community and Family Policy. Our mission is to be a resource to state policymakers as they work to address quality of life issues of military families.

**Testimony**

Chair Mizuno, on behalf of the Department of Defense, I would like to thank you for the opportunity to submit testimony today on HB 2061, a bill relating to child custody and Service members. Many divorced Service members have custody of, or visitation rights with, children whose other parent is not the Service member's current spouse. Many of these Service members who are deployed away from their family find that States do not consider the unique aspects of military service when making custody decisions. These absences due to military service can undermine and disrupt existing arrangements, creating stress on parents and children.

Although the Department of Defense believes the welfare of the child is paramount, it also believes the demands of military service should not abrogate the parent's rights. The Department thinks States are in the best position to balance such equities and believes there are several protections states could enact which would serve both the parent's rights and the welfare of the children.

The policy put forth in the language of HB 6021 appears to address two areas of concern related to Service members and child custody. The first prevents the courts from considering absences due to military service when making custody and visitation decisions. The second allows for expedited

hearings or the use of electronic communication so that deployment does not prevent a Service member from participating in court hearings. We strongly support these two measures to help protect the rights of Service members and their families.

Additionally, a number of states have strengthened their state statutes in this policy area by enacting the following provisions as part of their state statute:

**1) Reinstatement of the Custody Order after Return from Deployment:**

The return of the Service member should give rise to at least the presumption that the arrangement in place before the absence would be restored upon the Service member's return

*Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted.*

**2) Delegation of Visitation Rights and Visitation During Periods of Leave:**

When Service members with visitation rights are absent due to military duty, their contact with their children is obviously curtailed. This is especially true if the custodial parent refuses to allow visitation with other relatives, claiming that visitation rights belong solely to the non-custodial parent. Such delegated visitation rights would likely provide the absent Service member greater contact with the child through electronic means and through the other efforts of the person to whom the visitation rights were delegated.

*Upon motion of the deploying parent, the court may delegate his or her parent-child contact rights, or a portion of them, to a family member, a person with whom the deploying parent cohabits, or another person with a close and substantial relationship to the minor child or children for the duration of the deployment, upon a finding that it is in the child's best interests. Such delegated contact does not create separate rights to parent-child contact for a person other than a parent once the temporary order is no longer in effect.*

*A temporary modification order issued pursuant to this section shall designate the deploying parent's parental rights and responsibilities for, and parent-child contact with,*

*a child during a period of leave granted to the deploying parent, in the best interests of the child.*

*A temporary order issued under this section may require any of the following if the court finds that it is in the best interests of the child:*

*(1) The nondeploying parent shall make the child reasonably available to the deploying parent when the deploying parent has leave.*

*(2) The nondeploying parent shall facilitate opportunities for telephonic, electronic mail, and other such contact between the deploying parent and the child during deployment.*

*(3) The deploying parent shall provide timely information regarding his or her leave schedule to the nondeploying parent. Actual leave dates are subject to change with little notice due to military necessity and shall not be used by the nondeploying parent to prevent parent-child contact.*

We believe these additional protections assist in addressing the unique aspects of military service when balancing equities involved in decisions about child custody and will strengthen state policy in this regard.

I appreciate the opportunity to submit testimony and look forward to Hawaii's leadership in adopting these vital protections for our Service members. Please do not hesitate to contact me if you have any concerns or questions.

Dr. Laurie Crehan  
858-274-3314  
[lcrehan@juno.com](mailto:lcrehan@juno.com)

THE CHAMBER OF COMMERCE OF HAWAII  
1132 Bishop Street, Suite 402  
Honolulu, HI 96813

Testimony to the House Committee on Human Services  
Monday, February 1, 2010  
8:30 AM  
Conference Room 329  
RE: HOUSE BILL NO. 2061, RELATING TO CHILDREN

**LATE**  
Testimony

Chair Mizuno, Vice Chair Brower, and members of the committee.

My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state The Chamber's support of House Bill 2061, Relating To Children.

The Chamber's Military Affairs Council (MAC) serves as the liaison for the state in matters relating to the US military and its civilian workforce and families, and has provided oversight for the state's multi-billion dollar defense industry since 1985.

The measure proposes to provide that in custody proceedings, courts shall not give undue weight to a parent's absence away from the child, when such absence is due to service in the military or duties as a public official. Requires courts to make a reasonable effort to expedite proceedings or use electronic communications systems to facilitate a parent's participation in a proceeding when the parent is a substantial distance away from the court.

We believe that this measure would provide Hawaii's military parents with the degree of protection needed to prevent the courts from denying custody or visitation rights based on the parents' extended deployment in the service of the Nation.

In light of the growing number of single parents, the US military takes strong measures to ensure that the child or children of deployed single parents are properly cared for during the period of deployment. They are required to prepare documents prior to a deployment that clearly identify the names and relationships of qualified adults to care for their child. This may include sending the child to the home of the member's family. Necessary legal documents such as power of attorneys are usually completed by the parent.

For these reasons, we respectfully request that the proposed measure be approved for further review and adoption.

Thank you for the opportunity to testify.