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**Sent:** Sunday, February 13, 2011 7:54 PM  
**To:** HUS testimony  
**Cc:** lt@acluhawaii.org  
**Subject:** Testimony for HB56 on 2/14/2011 10:00:00 AM  
**Attachments:** 2.14.11.pdf

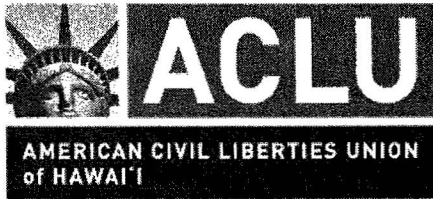
**LATE**  
**Testimony**

**Categories:** need to print

Testimony for HUS 2/14/2011 10:00:00 AM HB56

Conference room: 329  
Testifier position: comments only  
Testifier will be present: No  
Submitted by: Laurie Temple  
Organization: ACLU of Hawaii  
Address:  
Phone:  
E-mail: [lt@acluhawaii.org](mailto:lt@acluhawaii.org)  
Submitted on: 2/13/2011

Comments:



## LATE Testimony

Committee: Committee on Human Services  
Hearing Date/Time: Monday, February 14, 2011, 10:00 a.m.  
Place: Room 329  
Re: Testimony of the ACLU of Hawaii to Offer Comments on H.B. 56, Relating to Child Visitation

Dear Chair Mizuno and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes to offer comments to H.B. 56, relating to child visitation.

In 2007, the Hawaii Supreme Court struck down H.R.S. § 571-46.3, establishing grandparents visitation rights, and noted that legislative action was necessary to correct the statute's unconstitutional provisions. *Doe v. Doe*, 116 Hawaii 323, 336 (2007). H.B. 56 appears to be the Legislature's attempt to address the issues raised by the court in that case. The ACLU of Hawaii acted as co-counsel in that case and, given our expertise with this issue, we hope this Committee will act upon our comments through amendment to H.B. 56.

H.B. 56 and its predecessor in law, H.R.S. § 571-46.3, were undoubtedly prompted by laudable goals. Indeed, innumerable children enjoy loving and beneficial relationships with grandparents (as well as other family members) who certainly contribute to the reservoir of nurturing and beneficial experiences, and unconditional love, that establish a sense of familial intimacy. The ACLU of Hawaii does not wish to detract from those relationships. But the question presented by this statute is whether, and under what standards, the state can override a parent's determination regarding visitation by a grandparent. The lack of standards contained in H.B. 56 may subject the bill to constitutional scrutiny for failure to include the necessary deference to a fit parent's decision that is required to comport with that parent's constitutional rights. *See Doe*, 334-336; *Troxel v. Granville*, 530 U.S. 57, 67 (2000).

We would suggest that H.B. 56 be amended to articulate the following standards:

- 1) Clear and convincing evidence that denial of reasonable visitation rights would cause significant harm to the child;<sup>1</sup>

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<sup>1</sup> To be clear, the ACLU of Hawaii does not contend that all child-rearing decisions by fit parents are immune from all judicial inquiry. But for the State to establish a compelling interest sufficient to override parental discretion, the ACLU of Hawaii believes that, with respect to a request for visitation by a grandparent, a finding that significant

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- 2) What age the child must be in order for a grandparent to petition for visitation (age 1, e.g.);
- 3) Enumeration of factors:
  - the preference of the child, if the court finds the child is to be of sufficient maturity to make this decision
  - the mental and physical health of the child
  - the mental and physical health of the grandparent, great-grandparent or sibling
  - the length of the prior relationship between the child and the grandparent, great-grandparent, or sibling
  - the good faith of the party in filing the petition
  - the good faith of the person denying the visitation
  - the quantity of the visitation time requested and the potential for adverse impact the visitation would have on the child's customary activities
  - whether the child resided with the petitioner for at least six consecutive months with or without the current custodian present
  - whether the petitioner had frequent or regular contact or visitation with the child for at least twelve consecutive months
  - any other fact that establishes that the loss of relationship between the person bringing the action and the child is likely to harm the child's mental, physical, or emotional health, and
  - whether the grandparent, great-grandparent, or sibling was a primary caretaker of the child for a period no less than six consecutive months.<sup>2</sup>

These amendments would ensure that all parties' rights are maintained. While the fundamental rights of parents are the ACLU of Hawaii's immediate concern, we would also suggest that the Legislature consider extending familial rights to all Hawaii's families, particularly those lesbian and gay parents and hanai families who are unable to exercise the same rights and responsibilities as those given to their "married" counterparts.

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harm exists should be proved by the enhanced "clear and convincing evidence" standard that applies when individual constitutional interests are at stake. *See e.g., Santosky v. Kramer*, 455 U.S. 745 (1982) (requiring clear and convincing evidence of neglect to terminate parental rights); *V.C. v. M.J.B.*, 163 N.J. 200 (2000) (requiring clear and convincing evidence of harm to deny psychological parent visitation).

<sup>2</sup> The foregoing factors are taken from the Illinois statute on grandparent visitation and are included for guidance only. 750 ILCS 5/607.

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Hon. Rep. Mizuno, Chair, HUS Committee  
and Members Thereof  
February 14, 2011  
Page 3 of 3

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple  
Staff Attorney  
ACLU of Hawaii

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**From:** Dara Carlin, M.A. [breaking-the-silence@hotmail.com]  
**Sent:** Sunday, February 13, 2011 5:00 PM  
**To:** HUSstimony  
**Subject:** HB56 to be heard Monday, 02/14/11, at 10:00am in Room 329

**Importance:** High

**LATE  
Testimony**

TO: Representative John Mizuno, Chair  
Representative Jo Jordan, Vice Chair  
Human Service Committee Members

FROM: Dara Carlin, M.A.  
Domestic Violence Survivor Advocate  
881 Akiu Place  
Kailua, HI 96734

DATE: 02/14/11

RE: **COMMENTS & SUGGESTIONS, NO POSITION on HB56**

Good Morning Representatives and thank you for allowing me the opportunity to provide testimony on this topic.

I frequently feel like "The Bad News Fairy" whenever I have to insert the issue of domestic violence into everything, but I HAVE TO because domestic violence touches EVERY ASPECT of our lives, whether you see/feel it or not.

As a former Marriage & Family Therapist, this is not the wisest piece of legislation to pursue but it is particularly harmful if applied to cases of domestic violence so I would like to ask for a DV EXEMPTION, like we have in the "Best Interests" statute if this bill is to move forward.

SAFETY of the children and survivor is the #1 concern for cases involving domestic violence and often times the parents of the abuser and/or victim do not take the safety risks seriously because they believe the abuser to be innocent or incapable of the acts he's accused of. I have seen some grandparents of both abusers AND victim-survivors completely disregard court orders because they do not see the terms of the court orders as being applicable to them and also know of instances where grandparents "supervising" visitations have allowed the abuser unsupervised access to the children because they feel the supervision is unnecessary. Again, in the context of domestic violence, this proposed legislation is inappropriate.

In a "normal" non-abusive context, if a grandparent has to turn to the family court to ask for intervention re: visitation with their grandchildren, it's probably fair to say that the relationship between the grandparent and the parent is already strained. If the grandparents are at all interested in ever seeing these strained relationships improve, the grandparents would be better off seeking the intervention of a FAMILY THERAPIST instead of the FAMILY COURT because pursuing court action will most likely become the final blow to whatever's left of the parent-grandparent relationship.

If this measure should go forward, I would suggest the following be included:

"If a grandparent awarded visitation is found to be circumventing the orders of the court or allows their visitation time to include a parent whom the court has oversight, the grandparent/s shall be found in contempt of court". While I know this sounds particularly harsh, "helping" their child from "an unfair court order" by increasing a parent's visitation time through the guise of grandparent visitation IS a violation of court orders and hence, contempt. EVERYONE is subject to the law; NO ONE is above it and if we're all honest, law-abiding citizens then we shouldn't experience any problems with it being disregarded or broken.

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate

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**Sent:** Monday, February 14, 2011 4:04 AM  
**To:** HUS testimony  
**Cc:** robin@angelgroup.org  
**Subject:** Testimony for HB56 on 2/14/2011 10:00:00 AM

## LATE Testimony

Testimony for HUS 2/14/2011 10:00:00 AM HB56

Conference room: 329  
Testifier position: comments only  
Testifier will be present: No  
Submitted by: Robin  
Organization: AngelGroup  
Address:  
Phone:  
E-mail: [robin@angelgroup.org](mailto:robin@angelgroup.org)  
Submitted on: 2/14/2011

Comments:  
Comments for HB56

It seems this proposed bill interferes with a parent's right to choose appropriate contact for their child.

AngelGroup has been witness to parents not choosing in the best interest of the child and disallowing grandparent contact and this "preponderance of evidence" was ignored by family court judges.

On the other hand we've also witnessed grandparents interfering in parent/child relationship against best interest criteria, and this too was ignored by family court judges. It seems "broad judicial discretion" is applied either way so we're not sure how much of an effect legislating this issue is going to have.

Either way, should this bill proceed, we request that an exemption be made in cases involving domestic and family violence.

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**Sent:** Monday, February 14, 2011 1:15 AM  
**To:** HUS testimony  
**Cc:** paigeemail@yahoo.com  
**Subject:** Testimony for HB56 on 2/14/2011 10:00:00 AM  
**Attachments:** 2011\_0214\_Testimony AGAINST HB56.pdf

**LATE**  
**Testimony**

Testimony for HUS 2/14/2011 10:00:00 AM HB56

Conference room: 329  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Paige Calahan  
Organization: Individual  
Address:  
Phone:  
E-mail: [paigeemail@yahoo.com](mailto:paigeemail@yahoo.com)  
Submitted on: 2/14/2011

**Comments:**

I am located on Maui. The Family Court Judge who has not followed statute and caused so much additional harm to myself and my Son is Keith E. Tanaka.



(HB56)  
RELATING TO CHILD VISITATION.

TO: Representative Mizuno, Chair  
Representative Jordan, Vice Chair  
Members of the Committee on Human Services

FROM: Paige E. Calahan "DV Survivor"  
POB 1380  
Puunene, HI 96784

DATE: 02/14/11, 10am

Against HB56 with **STRONG CONCERNS** and Suggestions.

Good Morning Representatives,

I would like to thank you for addressing what can be a potentially dangerous and undesirable position for a child and protective parent.

I am against awarding grandparent rights to visitation with a child and to the forced contact between a DV victim and the grandparents of the man that has caused so much harm and the Child incurring the abuse.

I am a survivor of domestic violence as is my Son. Our experience with Grandparents, in my case, parents of the man that abused us, was very negative.

In a normal family relationship dynamic Grandparents are a beneficial and educational mentor for a child to experience and learn from. They embody the longevity of the family and the love and learning process that can take place. In this type of family we do not need a law to allow Grandparents a relationship or right to see a grandchild. In the event of friction, issues can generally be better addressed through family counseling than in the family court where resources are already stretched.

When issues between the parties can't be worked out, forcing a protective parent, and perhaps the Child, to allow visitation by the abusers parents will destroy the possibility of any amicable solution. These are not generally family members that have loving relationships in place prior to the divorce. When DV is involved many additional concerns come up and are not being addressed well in family court, especially given the Judges not following statute.. There needs to be a DV exemption to all visitation, especially in light of the current environment of family court corruption.

SAFETY for the survivor and children is the **ONLY** issue to look at and unless the paternal (or even maternal) grandparents will not allow access to the abuser on their visitation time and this can turn into a dangerous situation. No potential for access should be available in DV or highly contested custody cases. The number of grandparents who will give their abusive son access to the children during their visitation time is high! I'm **suggesting that a criminal "aiding and abetting" with automatic TRO or contempt of court clause be included** if a grandparent is found to be circumventing court orders by using their visitation time for their grandchild's parent.

If a child is hurt by a perp during visitation time, the Grandparents should be **charged with accessory to child abuse** and prosecuted.

In my case the perp's mother was a paralegal and registered nurse. His father is an attorney practicing law in Hawaii without a license. They used the Grandparents Visitation venue to attempt to intervene and take custody if their abusive, drug addicted son were to die. Although ultimately deemed unconstitutional, they did obtain supervision rights during which they allowed their Son access. Their "good word" was used against me when a custody determination was made. I suggest **that ALL parties must agree** as to the safety, follow through and access to children in a DV or highly contested custody case. **When a CHILD specifies they DO NOT want contact, it should not be considered at all!** The Grandparents in my case also testified against me regarding property because as "Elders and Attorneys" their word was considered good by the court. Pictures of them carting off my belongings, my Son's statements that they stood by and watched his father abuse him were thrown aside because they said their son would never do that. The Elders in my case lied, manipulated and worked the system in which as family court attorneys they were very familiar with. We also need to make sure that **IF Grandparent rights are allowed its ALL Grandparents** and not just the perps. My whole family is banned from contact with my Son and my ex doesn't even know their names because they didn't involve themselves in my case.

Care and Safety of the Child and Victim still tops everything. When you add family court abuses to the factors the court can consider when awarding visitation rights, these become additional points of potential abuse because most perps have a set plan to bring the court on board and remove children from the protective parents. In Hawaii, as in my case, they are successful!

My Son was removed from my care begging for help and threatening to kill his father and the grandparents because of the abuse perpetrated on himself and I by the father. Please don't give grandparents rights in DV and contested custody cases. In my case it has cost me my son. It might cost my son his life and at the very least his right to peace, safety, security and love.

I appreciate your looking to allow good Grandparents more rights. Before you do that I would ask that you **AMEND THIS BILL to include that Children have a statutory right NOT to be abused and to be safe.** Perps and the people that raised them should not be given additional rights that they would automatically have if Domestic Violence were not made a part of the life of the Grandchild they state they so dearly love.

Respectfully Submitted,

Paige Calahan  
Mother of an abused child

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**Sent:** Monday, February 14, 2011 5:08 AM  
**To:** HUS testimony  
**Cc:** adamtm@lava.net  
**Subject:** Testimony for HB56 on 2/14/2011 10:00:00 AM

# LATE Testimony

Testimony for HUS 2/14/2011 10:00:00 AM HB56

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: Tom Marzec  
Organization: Individual  
Address:  
Phone:  
E-mail: [adamtm@lava.net](mailto:adamtm@lava.net)  
Submitted on: 2/14/2011

**Comments:**

Hawaii's grandparent visitation statute needs to be updated. Grandparents form a vital component in the development of children. The positive role grandparents can fulfill in providing stability for a child experiencing divorce is obvious and desired.

I strongly support HB56 and I urge you to NOT amend the bill to include a requirement for clear and convincing evidence. The existing language, requiring a showing that 'Denial of reasonable visitation rights would cause **\*\*significant harm\*\*** to the child.' and the associated factors to be considered, are sufficient. A clear and convincing evidence standard, given the requirement to show **\*\*significant harm\*\*** and the court's consideration of the listed specific factors is excessive and would be very difficult to meet given existing family court processes.

Your consideration of these issues is very appreciated.