

STAND. COM. REP. NO. 2070

Honolulu, Hawaii

FEB 09 2012

RE: S.B. No. 2301
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Human Services, to which was referred S.B. No. 2301 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Permit the family court to award reasonable visitation rights to grandparents if the denial of visitation would cause significant demonstrable harm to the child;
- (2) Establish a rebuttable presumption that visitation decisions made by a parent are in the best interests of the child; and
- (3) Identify factors the court shall consider in awarding visitation rights to a grandparent.

Your Committee received testimony in support of this measure from the Family Law Section, Hawaii State Bar Association; and two individuals. Your Committee received comments on this measure from the American Civil Liberties Union of Hawaii.

Your Committee finds that innumerable children enjoy loving and beneficial relationships with grandparents who contribute to the children's experiences and establish a sense of familial intimacy. Grandparents that offer a child a comforting, safe, and secure haven should be able to visit their grandchildren.

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Your Committee also finds that legal issues regarding grandparents' visitation rights in Hawaii are currently unresolved. In 2007, the Hawaii Supreme Court struck down section 571-46.3, Hawaii Revised Statutes, establishing grandparents' visitation rights, and noted that legislative action was necessary to correct the statute's unconstitutional provision (*Doe v. Doe*, 116 Hawaii 323, 336 (2007)).

Your Committee further finds that as the measure is currently drafted, the question still remains whether, and under what standards, the State can override a parent's determination regarding visitation by a grandparent. This measure, as currently drafted, does not answer this question or include such standards and may be subject to constitutional scrutiny for failure to include necessary deference to a parent's decision that is in line with that parent's constitutional rights.

Accordingly, your Committee has amended this measure by:

- (1) Changing the effective date to July 1, 2050, to ensure further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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. 2301, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2301, S.D. 1, and be referred to the Committee on Judiciary and Labor.

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



SUZANNE CHUN OAKLAND, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Human Services
HMS

Bill / Resolution No.:* SB 2301	Committee Referral: HMS, JDL	Date: 1-31-12
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The committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
CHUN OAKLAND, Suzanne (C)	✓			
IHARA, Jr., Les (VC)		✓		
GREEN, M.D., Josh	✓			
SLOM, Sam				✓
TOTAL	2	1	0	1

Recommendation:
 Adopted
 Not Adopted

Chair's or Designee's Signature: *[Handwritten Signature]*

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*Only one measure per Record of Votes