

SB 3057

Measure Title: RELATING TO CHILD CUSTODY.

Report Title: Child Custody; Parental Visitation Rights

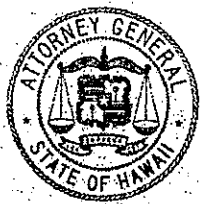
Description: For determinations of parental visitation rights, establishes a rebuttable presumption that the custodial parent's decision regarding visitation is in the best interests of the child. Requires the court to consider various factors in awarding parental visitation rights.

Companion:

Package: None

Current Referral: HMS, JDL

Introducer(s): FUKUNAGA, CHUN OAKLAND, KAHELE



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:
S.B. NO. 3057, RELATING TO CHILD CUSTODY.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 7, 2012 **TIME:** 1:30 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Jay K. Goss, Deputy Attorney General

Chair Chun Oakland and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but provides the following comments.

The purpose of this bill is to determine visitation rights between a custodial and non-custodial parent. The bill creates a rebuttable presumption that a custodial parent's decision regarding visitation is in the best interests of the child and that the presumption can be rebutted by evidence that denial of the visitation would cause significant demonstrable harm to the child.

The Hawaii Constitution, article III, section 14, provides in part that "[n]o law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title." (Emphasis added). The title of this bill is "Relating to Child Custody." This bill, addresses the visitation rights of parents. Should this bill become law and there was a legal challenge to the law based on article III, section 14, it is not clear that this law could withstand a constitutional challenge. It is the opinion of the Department of the Attorney General that if the title of the bill was "Relating to Child Visitation," and the bill became law, it would have a better chance to withstand a constitutional challenge because the subject matter of this bill deals directly with child visitation.



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**TESTIMONY OF THE FAMILY LAW SECTION, HAWAII
STATE BAR ASSOCIATION, IN OPPOSITION TO SB
3057, RELATING TO CHILD CUSTODY**

Committee on Human Services
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair
Conference Room 016, State Capitol
February 7, 2012, 1:30 p.m.

Good morning Senators:

My name is Steven L. Hartley and I am the current Chair of the Family Law Section of the Hawaii State Bar Association. I submit this written testimony on behalf of the Family Law Section.

The FLS is comprised of over one hundred attorneys who practice law in the Family Court. The majority of us handle all types of family law matters, including divorce, paternity, domestic violence and guardianship cases. As a Section, our testimony represents the views of our members.

The FLS submits this testimony in opposition to SB 3057 because it will result in significant unnecessary litigation and confusion for family court judges, attorneys and litigants. If enacted, this Bill will allow a custodial parent in a custody dispute to control the non-custodial parent's visitation rights, a power subject to significant potential abuse. As a result, this Bill will encourage custody battles between parents in an effort to "gain control" over the process instead of considering their children's best interests. This Bill would also establish an unfair presumption in favor of a custodial parent. Finally, this Bill fails to define what a "custodial parent" is. This term could potentially refer to a range of "custodial" authority, such as sole legal custody, sole physical custody, or a parent with the greater amount of overnights in a joint physical custody arrangement, among other possible definitions.

For these reasons, we oppose SB 3057.

Thank you for allowing us to submit our testimony.

(

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 07, 2012 8:11 AM
To: HMS Testimony
Cc: ebig681116@aol.com
Subject: Testimony for SB3057 on 2/7/2012 1:30:00 PM

Testimony for HMS 2/7/2012 1:30:00 PM SB3057

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Eloise Bigelow
Organization: Individual
E-mail: ebig681116@aol.com
Submitted on: 2/7/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 07, 2012 8:12 AM
To: HMS Testimony
Cc: ebig681116@aol.com
Subject: Testimony for SB3057 on 2/7/2012 1:30:00 PM

Testimony for HMS 2/7/2012 1:30:00 PM SB3057

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: John Bigelow
Organization: Individual
E-mail: ebig681116@aol.com
Submitted on: 2/7/2012

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 3:36 PM
To: HMS Testimony
Cc: breaking-the-silence@hotmail.com
Subject: Testimony for SB3057 on 2/7/2012 1:30:00 PM

Testimony for HMS 2/7/2012 1:30:00 PM SB3057

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Dara Carlin, M.A.
Organization: Individual
E-mail: breaking-the-silence@hotmail.com Submitted on: 2/6/2012

Comments:
Good Afternoon Senators ~

I would come in to testify on this measure because it's of particular importance to DV survivors but have a 12:00pm appointment that I may not get out in time for (but I will try).

Unfortunately, I cannot stand in support of this measure because it is premature, will benefit abusers is and ill-fitted at this point in time. To explain:

Despite HRS 571-46(9) domestic violence victims lose custody of their children time and time again due to the ignorance, omission and disregard of the statute as well as the zeal of attorneys who only want to win/win for their clients at all costs. Sadly, it is only a matter of time before a DV survivor will lose custody of her children in family court proceedings. This is not a local problem but a national one.

Because DV is so misunderstood and abusers are typically "in much better shape" (resource and otherwise) then victim-survivors in court, allegations and even evidence of DV are easy to be discounted.

Once an abuser realizes he no longer has access to his primary victim (wife, girlfriend, mother of his child/ren) he immediately employs his power and control tactics over those he does have legal access to: the children.

In family court proceedings, it becomes irrelevant that the abuser had little to nothing to do with the children before the separation/divorce because all that matters is "from this day forward"; which is the precise moment when a history of DV is ignored.

If this proposal is viewed from a non-violent, non-abusive prospective, it makes perfect sense but please take a moment to realize what this would mean to a DV survivor whose just lost custody of her children to her abuser. Do you REALLY think he's going to "turn over a new leaf" and put "the best interests of the children" first by allowing the survivor access to his trump cards (the kids)?

Also please be aware that the MAJORITY of divorce and custody cases are decided amicably, outside of family court. Of those cases that appear on the family court docket, 75% are estimated to be cases involving domestic violence so please be aware that these bills will apply more to domestic violence cases than to non-violent cases.

An abuser's sole mission once his victim has successfully escaped him is to make her pay for breaking the cardinal rule of domestic violence: "You will not leave me". Once she crosses that line, ALL bets are off and there is no such thing as mercy in domestic violence.

I have WAY TOO MANY CASES where the DV survivor does not have custody of the children despite Hawaii state statute (and even despite a historical acquittal in CA for the medical evidence of abuse against the child - that case is on Kauai, FYI) so that's why I'm saying this measure is premature.

Until we're all on the same page about what DV really is, a measure like this is only going to aid the abuser.

I apologize for the lack of support although I see the good intentions behind this. Thank you for your time and consideration.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 7:35 PM
To: HMS Testimony
Cc: mskatherinerose@yahoo.com
Subject: Testimony for SB3057 on 2/7/2012 1:30:00 PM

Testimony for HMS 2/7/2012 1:30:00 PM SB3057

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Katherine Rose
Organization: Individual
E-mail: mskatherinerose@yahoo.com
Submitted on: 2/6/2012

Comments:

I am a strong support of two active parents in a child's life. This gives a child a healthy balance. As a teacher for the DOE the benefits that a child receives by having two active parents in their development years is imperative.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 7:36 PM
To: HMS Testimony
Cc: crslethem@gmail.com
Subject: Testimony for SB3057 on 2/7/2012 1:30:00 PM

Testimony for HMS 2/7/2012 1:30:00 PM SB3057

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Chris Lethem
Organization: Individual
E-mail: crslethem@gmail.com
Submitted on: 2/6/2012

Comments: