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STATUS OF
WOMEN



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March 12, 2013

Testimony in Support of SB 529, SD1, Relating to Parental Rights

To: Honorable Mele Carroll, Chair
Honorable Bertrand Kobayashi, Vice-Chair
Members of the House Committee on Human Services

From: Cathy Betts, Executive Director, Hawai'i State Commission on the Status of Women

Re: Testimony in Support of SB 529, SD1

The Hawai'i State Commission on the Status of Women is in strong support of SB 529, SD1. Several states have already enacted legislation that prevents convicted rapists from attempting to obtain visitation and/or custody of the child borne from a sexual assault.

Rape is a crime of power and control. It is estimated that 1 out of 4 women will be the victim of a completed rape within her lifetime. The vast majority of rapes are committed by someone the victim knows, which makes the resulting legal implications from a pregnancy even more troubling. Under current Hawai'i law, a man who fathers a child through rape has the same legal rights to custody and visitation that any other father of a child does.

While HRS 571-46 allows a court to make a determination of family violence and use that determination as a rebuttable presumption against giving the offender custody, there is nothing specifically limiting a convicted rapist from attempting to gain visitation and/or custody. Victims of a sexual assault should not be re-victimized by seemingly endless custody and visitation battles and numerous court hearings in which they have to see the convicted offender. This bill would require courts to deny custody and visitation to a convicted perpetrator. Additionally, it gives courts the authority to terminate parental rights. Finally, the Commission supports the provisions in SD1, which allow for a victim to petition the courts for an award of child support or a reinstatement of parental rights. The Commission urges the Committee to pass SB 529, SD1.

Thank you for this opportunity to testify.

Cathy Betts
Executive Director
Hawaii State Commission on the Status of Women



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director
Adriana Ramelli

DATE: March 12, 2013

Advisory Board

TO: The Honorable Mele Carroll, Chair
The Honorable Bertrand Kobayashi, Vice Chair
House Committee on Human Services

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Vice President
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FROM: Alana Peacott-Ricardos, Policy Research Associate
The Sex Abuse Treatment Center

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RE: S.B. 529 S.D. 1
Relating to Parental Rights

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Good morning Chair Carroll, Vice Chair Kobayashi and members of the House Committee on Human Services. My name is Alana Peacott-Ricardos and I am the Policy Research Associate for the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

SATC strongly supports S.B. 529 S.D. 1, which would authorize family courts to prohibit custody and visitation, and to terminate parental rights of a person with regard to a minor child conceived through a rape perpetrated by that person.

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

Sexual violence remains a major public health issue here in Hawai'i. According to the Attorney General's report, *Crime in Hawai'i*, there were 353 reported forcible rapes in 2011.¹ The impact of sexual violence is significant. Survivors face not only emotional trauma, but very real physical consequences including pregnancy. One study found that approximately five percent of rapes result in pregnancy.² At last estimate, this translated to about 25,000 rape-related pregnancies each year in the United States.³

A number of women who become pregnant through a sexual assault against them choose to carry their pregnancies to term and keep the child. An analysis of the National Women's Study raw data revealed that of thirty-four cases of rape-related pregnancy, the woman kept the infant in 32.3% of the cases.⁴ The majority of rape-related pregnancies involve a known perpetrator, usually a partner or spouse, rather than a stranger.⁵

Presently in Hawai'i, if a child is conceived through an act of sexual assault, the perpetrator of the sexual assault has the same parental rights as any other biological parent. Consequently, the parent who is also now a survivor of sexual assault may be forced to raise a child with the person who raped her or him. The perpetrator is then allowed to assert power and control again over the survivor by using the child.

This bill is narrowly-tailored to only those cases where the perpetrator has been convicted of the assault in a court of competent jurisdiction. It would require family

courts to deny custody and visitation to a person who is convicted of a sexual assault with respect to the child conceived through that assault. Additionally, family courts would also have the authority to terminate the perpetrator's parental rights under the same circumstances.

This bill also recognizes that there may be instances, in which a parent may choose to raise the child with the convicted person or want that person to have parental rights, including custody and visitation. For example, this might happen in situations involving statutory rape. It could be that after conviction and the completion of the person's sentence, the non-offending parent and convicted parent may decide to co-parent. This bill would allow a non-offending parent to petition to allow the convicted parent custody and visitation or to reinstate that person's parental rights.

In addition, this bill makes explicit that it is not intended to affect the obligation of the natural parent to support the minor child. A parent should not have to choose between terminating the parental rights of the person who raped her or him or terminating that person's obligation to support the child conceived through that person's violent act.

We urge you to pass S.B. 529 S.D. 1. It is sound legislation that protects survivors of sexual assault and ensures that a convicted sex offender will not be allowed to further victimize a survivor through a child conceived from the assault.

Thank you for this opportunity to testify.

¹ State of Hawai'i, Attorney General, Crime Prevention & Justice Assistance Division, Research & Statistics Branch, *Crime in Hawai'i: 2011*, at 4 (Nov. 2012), available at http://hawaii.gov/ag/cpja/main/rs/crimeinhawaii/CIH2011/Crime_in_Hawaii_2011.pdf.

² Melissa M. Holmes et al., *Rape-related pregnancy: estimates and descriptive characteristics from a national sample of women*, 175(2) *Am. J. Obstet. Gynecol.* 320, 321 (1996).

³ Felicia H. Stewart & James Trussell, *Prevention of Pregnancy Resulting from Rape: A Neglected Preventive Health Measure*, 19(4) *Am. J. Prev. Med.* 228, 228 (2000).

⁴ Holmes et al., *supra* note 2, at 322.

⁵ *Id.*