

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

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February 24, 2014

To: House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice-Chair

From: Dyan K. Mitsuyama, Treasurer and current
Legislative Committee Chair for the
Family Law Section, Hawaii State Bar Association

Re: Testimony in Support of HB2163 HD1
Hearing: Tuesday, February 25, 2014 at 2:00 p.m.

Good afternoon, Chair Rhoads, Vice Chair Har and the members of the Judiciary Committee, I am Dyan K. Mitsuyama, a partner in Mitsuyama & Rebman, LLLC, which is a law firm concentrating in all family law matters. I have been a licensed attorney here in the State of Hawaii for about 15 years now. I am the current Treasurer and current Chair of the Legislative Committee of the Family Law Section of the Hawaii State Bar Association, which is comprised of approximately 136 licensed attorneys all practicing or expressing an interest in practicing family law.

The Family Law Section did not originally support HB2163 as written because it removed judicial discretion, which is critical in family cases. It also appeared to have forced the judges to order that parents have equal contact even if that parent does not wish it or never had that type of relationship before.

No law should remove the need for a party to prove the best interests of a child when a party petitions the court for a certain custody arrangement. There can be no good presumption of the best interests of the child, as the range of possible facts for each individual family and each child is so wide-ranging.

The presumption appeared to be that every family coming to Family Court consists of (1) two parents in the same home; and (2) that each parent participated equally in the duties of raising the child. This is surely not the case.

The new language proposed in HB2163 HD1 which was actually proposed by members of the Family Law Section in prior testimony seems to be a good compromise to acknowledging that

sometimes there are situations where joint custody may be appropriate, but it also allows for the judges' to have discretion in determining when that is not appropriate and is not in the best interest of the child.

To be clear though, we are not in support of this measure because there is validity to Section 1 (the "preamble"). On the contrary, we strongly disagree with the statements contained in Section 1 and believe it should be removed all together.

Section 1 presents a narrow and one-sided view of the research in the field. The research does not support the strong statements contained in this preamble. For example, "Unfortunately, the prevailing arrangement of residing solely with the mother has had a profound negative impact on most children's relationships with their fathers" is mistaken on almost every level.

The prevailing arrangement post-contested custody case is not children residing solely with their mother. And there is no evidence provided (or, to the best of our knowledge, existing) that our current custody awards have had a negative effect on "most" children's relationships with their fathers.

In contrast to the language given Section 1, for instance, the opinion of a recent Washington case is that joint custody arrangements should "be encouraged primarily as a voluntary alternative for relatively stable, amicable parents...As a court-ordered arrangement imposed upon already embattled and embittered parents...it can only enhance familial chaos." It is important to note that "relatively stable, amicable parents" are not generally in family court, calling into question whether mandated "equal" time and/or access is appropriate.

On the flip side, Section 1 fails to recognize that sometimes, particularly in cases of domestic violence or child abuse, there are valid reasons that one parent may have more time with the child than the other. Moreover, sometimes one parent may voluntarily opt for the other to have more time with the child for varied reasons, including but not limited to work limitations; child care limitations; religious reasons; value-system reasons.

Essentially the Family Court is child-focused or child-centric in its policy in determining custody or what is in the child's best interest. Section 1 appears to be parent-focused and what is fair to them and that in itself is where the problem lies with the language.

Lastly, on an entirely different but related note, I would like to point out to the Committee though that with the passage of this bill, we would suggest that HB395 HD2 SD2, which is not scheduled to be heard before you today, be deferred indefinitely as this bill is very similar to that one. Passage of both bills would cause confusion.

NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.

Committee on Human Services
February 25, 2014 – 2:00 PM
State Capitol, Room 325
Testimony in support of H.B. No. 2163

Chair Rhoads and members of the committee,

I am in strong support of H.B. No. 2163 relating to parental equality in the case of separated parents. I believe that a system built to favor mothers over fathers is a blatant violation of parental rights.

Studies have shown that the absence of or limited contact with either mothers or fathers presents higher risk of future delinquent behavior, and can have adverse effects on the emotional and mental growth of the child.

In some cases, this inequity creates a bias towards one parent purely based on time spent with said parent. While this amendment may not completely resolve these issues, it will be a step in the right direction towards fixing the unfortunate side effects of an unfair system.

As a child of separated parents, I can tell you that any time that I could have spent with my father would have, more than likely, helped with some of the personal, mental, and emotional problems that I faced growing up. This bill will help prevent stories like mine in which the lack of my father's presence affected me and my sibling's perception of self-worth.

I imagine many children being raised by a single mother may feel they have no one else to turn to. Having a father figure as a stable part of the child's life will provide the support and guidance they need in these times.

Some fathers may choose not to pursue as much parental custody, but I believe that many are faced with an uphill battle to receive the rights that mothers are handed without a question.

Please vote in favor of this bill and support parental equity. Thank you.

Su Kim

To: Chair Rhoads &
Members of Judiciary Committee
In Support of HB2163

Hello Chair Rhoads and members of JUD,

As a father who has been a victim of the State of Hawaii's legal system that automatically gives fathers less custodial & visitation rights to their child, I support HB2163. I wish to tell you the reasons why I support HB2163. A father who wants/willing to care for his child should be given the equal opportunity to do so.

In most situations, fathers get shorthanded from the very beginning. Being in a marriage has the advantage of shared income, two people sharing the financial living costs and one. Going into a divorce, fathers are expected to find a new living space while paying child support, his own bills and personal needs. Furthermore, on top of having lost my home and simple pleasures, I got one third of my income deducted while still spending my personal money to buy food & gifts for my daughter.

Most of the laws written regarding custody requirements are based on the needs of the mothers and child in absence of a father. If the fathers are willing to share as many responsibility as needed, most of the needs of the child are made with less stress on the mothers. Speaking from experience, most of the problems between mother and father, after separation or divorce, is based on following court guidelines and financial responsibility made on the fathers by the courts.

Hardships that fathers must withstand are not taken into enough consideration while negotiations, in regards to custody & child support, are being made. I was ridiculed by my past in-laws and common friends for supposedly not caring for my child when I was prevented by the courts from seeing my child. I was only given two "supervised" one hour visitation and four hours every other weekend. Despite my pleas to the mother of my daughter for more visitation, she hid behind the guise of following the courts guidelines. I am an educated young man with a steady job who wants nothing more than to be with my daughter for as much time as I can possibly get. I make every sacrifice, financial & personal, that will benefit my daughter's future, yet I'm expected to walk the same path as an irresponsible father who didn't want a child when nothing could be further from the truth. I was held to the same requirements and given the same treatment as others who want and do less for their children as I. I do not believe this is right, to hold every father to the same guidelines made for a lesser individual. I do not expect to be given less responsibility for my willingness but I do think fathers who request more custody, if proven to be able fathers, should be given opportunity to do so.

I feel that my daughter is not being given the same amount of care as if there was two parents willing to make the time. As for the mother of my daughter, I do not doubt her love, but I do see that since she has to care for our daughter much more, on her own, her level of tolerance and understanding is lower due to emotional exhaustion. With two parents, taking turns giving each other a break from the constant supervision needed to care for our toddler will lead to the best outcome for all three of us. Emotional, physical and financially better for all. I am sure that there are some fathers who are irresponsible but I believe that more often than most, willing fathers will do what's best for their child. Forward motion in society is not possible without faith in humanity.

Sincerely
Christopher Manabat

TO: Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice-Chair
House Committee on Judiciary

FROM: Jessi L.K. Hall
E-Mail: jhall@coatesandfrey.com
Phone: 524-4854

HEARING DATE: February 25, 2014 at 2:00 p.m.

RE: Testimony in Support of HB2163, HD1

Good day Representative Rhoads, Representative Har, and members of the Committee. My name is Jessi Hall. I am an attorney who practices Family Law. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am here today to testify in support of HB2163, HD1.

I support the language in the amended Bill. It requires the Court to consider frequent and continuing contact with both parents, which is important. It further requires the Court to explain why anything other than frequent and continuing contact would not be in the best interest of the child. This amended language also removes the word "equal" which so many litigants tend to lock on to, often to the detriment to the child. I would suggest that the use of the word "also" be removed from the provision as I believe that it would provide more strength to the provision.

I would further suggest that HB395 be deferred indefinitely or removed from the docket as the requested provisions in both Bills are similar and could cause confusion if both were to pass.-

For reference I include herein below my reasoning for not supporting the original draft of this Bill.

First of all, I had (and still have) extreme doubts as to the validity of the information provided for in the preamble to the Bill. The preamble makes a broad assumption that a "large majority" of children reside with their mothers and have limited or inconsistent contact with their Fathers. The parties submitting the same should be required to provide details as to where they obtained these statements. I am personally aware of a large number of custody cases in the First Circuit in which both parents have significant contact with their children. Based on the cases that I am privy too, I would say that significant contact with both parents is the norm and situations as set out in the preamble are the minority.

Second, there are many factors in which the Court needs to consider in making a custody orders. Currently Hawaii Revised Statutes § 571-46(a)(1) as written encourages the Court to include in their consideration that there should be frequent and consistent contact between the child and both parents. This provision could strengthened by just modifying some of the current language. I would support HRS 571-46(a)(1) being modified as follows:

Custody should be awarded to both or either parent according to the best interests of the child, and the Court ~~may~~ shall consider maintaining frequent, continuing and meaningful contact between the child and both parents ~~of each child with the parent unless the Court finds that a parent is unable to act in the best interest of the child.~~

Finally, the biggest issue with the proposed language of the original draft of HB2163 was the use of the term “equal”. If parties removed labels and focused on the schedule that works best for the child and both parents based on their schedules, location of residence, and location of school then the best possible outcome would be reached for the child. Use of the word “equal” creates certain expectations. Parties will think that they won/loss (depending on the side that they are on) if the schedule is not equal down to the day (in some cases down to the hour). Most of the time a truly “equal” schedule is difficult for all involved, even intact families are incapable of doing everything on an “equal” basis. When parties get fixated on the term they are unable to see that something different may work better for all.

It is for the above reasons that I wrote in opposition of the prior draft of HB2163, but today I support the language of HB2163, HD1. Thank you for this opportunity to testify.

House Judiciary Committee

Tuesday, February 25, 2014 2:00 PM, State Capitol CR 325

Testimony of Marilyn M Moore in Strong Support of **HB 2163**

Relating to Parental Parity.

Dear Chair Karl Rhodes, Vice Chair Susan Har, and Members of JUD,

Thank you for the opportunity to testify in support of HB 2163. I strongly support retaining shared custody by both parents in the lives of children who are the product of divorce. Studies have shown most children with the continued influence of both parents not only become better adults, but also benefit by overall risk-reduction profile during childhood and adolescence.

Often children feel they are responsible for the break-up of their home. When lost or diminished contact with one parent is added to this, the child's future relationships almost invariably suffer. Studies show that single parent homes produce more drug-related problems, more school drop-outs, more pregnant teens, creating more dependence on social programs. This pattern has, unfortunately, been identified in the last decades as dependence on social programs has grown to approximately 48 percent of the United States population.

Shared custody has been known to frequently reduce or eliminate the adversarial relationship between divorced parents, thus enhancing each parent's relationship with the child as well as breaking the cycle of anger and retribution. Even if this does not happen, studies show that retention of a child's relationship with both parents clearly leads to a more well-balanced adult.

Thank you for taking the time to read my testimony.

MARILYN M MOORE

House Judiciary Committee

Tuesday, 02-25-14 2:00PM in House conference room 325

Testimony of Chris Lethem in Strong Support of **HB2163**

RELATING TO PARENTAL PARITY

Dear Chair Karl Rhoads and members of JUD,

Thank you for the opportunity to testify in support of HB 2163. I am strongly in support of moving the family court away from the adversarial model and respecting the unique and mutually important roles that both parents have in their children's lives.

Parenting has been and will always be a **time intensive activity**.

More parenting is better than less parenting. (2 > 1)

2 parents parenting is consistently better than either 1 parent parenting. (2 > 1)

Unfortunately, the language modification no longer supports the intent of this bill. The modified language does nothing to mitigate the vicious tactics used by Family Law attorneys. Until there is a standard of "clear and convincing", no real improvement will occur.

Also would please amend the language of this bill from:

shall consider frequent, continuing, and meaningful contact of the child with each parent

to:

shall ensure frequent, continuing and extensive parenting time with both parents

When there is respect (`lhi) for the important yet unique roles that both parents and also the grandparents have in their children's lives we soon realize that having a legal dispute isn't just destructive it is serves no purpose other than to create more conflict, ill will and drains families of much needed assets that could otherwise be put use for the benefit of our children. (2 > 1)

When the focus is about having a successful post marriage (successful divorce) relationship that gives both parents adequate time to parent their children, there is much less post decree litigation and children do better in all risk areas along with substantial reductions in family violence. (2 > 1)

Children who have lived in shared residential parenting families say the inconvenience of living in two homes was worth it – primarily because they were able to maintain strong relationships with both parents. (2 > 1)

Parenting time is how we pass on our traditions, values and beliefs. It is how parents teach nurturing, pass on standards of excellence, the principle of self-reliance, the importance of respect and reconciliation. For parents to parent effectively they need adequate time to parent. (2 > 1)

When both parents have adequate time with their children, they are able to engage them in day to day activities, where effective parenting occurs. Thus, avoiding the “Disneyland dad” scenarios that often leave both parent and child frustrated. Equal time also gives both parents adequate time to pursue other beneficial endeavors and interests. (2 > 1)

Too often custody litigation is ego driven or is about getting retribution, getting free money or having the power and control. Parents are easily enflamed by attorneys seeking to play on their hostility or fears. When parents engage in litigation they will often invent ways to gain an advantage through allegations or taking statements or behaviors out of context in a battle of he said, she said scenarios. These behaviors and motivations are self-serving for attorneys and parents while doing nothing to serve the goals of having healthy outcomes for our children. (2 > 1)

It should be a time of healing (Ho’oponopono). When there is ongoing conflict over custody, it sets the tone of the relationship in a very negative atmosphere where there no longer exists any goodwill between the parents for the remaining years of the child’s minority. The loss of trust and goodwill makes working together for the common good of the children much more difficult or impossible. (2 > 1)

Consistency is an imperative related to emotion not to location. Children function best when there is emotional consistency and regularity in their schedules. Spending adequate time with both parents gives children that level of emotional balance and certainty. (2 > 1)

Why did we think that effectively removing a parent from a child’s life would give them an advantage? We know today that it doesn’t. In fact, we know that 38 percent of children raised in a single parent household will grow up to live in poverty. Much more likely to drop out of school, get involved in drugs, be a victim of a violent act or engage in violent behavior. Teenage girls are far more likely to become pregnant - only to create an even a greater reliance on social welfare and perpetuating poverty. (2 > 1)

In summary, it is time to put an end to the adversarial model of litigating over time allocation or child custody. **We know that shared parenting is good for children and families.** It is time that

we have statutes that reflect our unique Hawaiian values and also better serves our children and families. Let's have a legal structure that engenders mutual respect for both parents and assures our children they will be the beneficiaries of the love, respect and protection of both parents. Thank you for taking the time to read my testimony. (2 >1)

Sincerely

Chris Lethem

"Our Liberty is not dependent on the good intentions of people in power, liberty is secured by our laws." OBAMA

HB2163

Submitted on: 2/24/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Oppose	No

Comments: Good Afternoon Representatives and apologies for submitting testimony in this manner (broken computer). From reading the testimony previously submitted on this measure, I don't understand how HB2163 advanced. I remain in STRONG OPPOSITION of HB2163 and hope that the research in opposition of HB2163 will speak for itself. Besides the volume of research previously submitted, please take note that those who testified in opposition are all professionals who work day in and day out on this very matter. I understand how passionately some will argue in favor of this legislation but I urge you to listen to the professionals and research that stands in opposition. Thank you for this opportunity to provide testimony. Respectfully submitted, Dara Carlin, Domestic Violence Survivor Advocate

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To: Committee on Judiciary

From: Dorie Dudoit-Mendoza

Regarding: H.B. NO.2163, Relating to Parental Parity.

I am in support of this bill because with this bill, better decisions can be made in the best interest of Hawaii's children by our family court system. When parents cannot come to a decision on who gets custody of the child/children, the judge of family court usually decides. This bill would make sure that more extensive investigations can be done by child custody evaluators, in which a case may have a good cause claim for a child not to be with a certain parent. A guardian ad litem can also be assigned to a case to advocate for the child, so that the judgment could be made in the best interest of the child.

I believe that there are men out there who are good fathers, but have issues in their marriage or relationship with their child's/children's mother. Some of these men seem to be penalized as fathers because of their poor relationship with the other parent. Fathers are not usually the guardian that gets granted custody of their child/children, which are not always in the best interest of the child when the father is a better caregivers for the child.

This bill's goal is to maintain the father –child relationship through shared parenting, which would ensure more time spent together. Studies show that shared parenting works out better for the parent's relationship, with better cooperation and with better outcomes for children's risk

factors (substance abuse, rape, suicide, murder, juvenile delinquency, teen pregnancies, and less violent behaviors).

This bill points out the studies done on the emotional stability of the child, which promotes shared parenting so that fathers would have equal time with their children as well as mothers. Such studies of the 1980's have shown that "the amount of time fathers spent with their children was strongly related to how close they felt to one another" (H.B.No. 2163). Confirmation of this relationship, were also in recent studies that explained how important it is for father and child to spend time together after a divorce, which determines their bond later in life.

With my own experience, my ex-husband and I share my children and we have an easier time working things out with our kids because of the equal balance that we share. My children do not feel deprived of any parent, which is important to me. I feel that this bill will help to make a difference in the lives of the children in our Hawaii communities.

Thank you for your time and consideration in accepting my testimony,

Dorie Dudoit-Mendoza

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LATE

TO: Representative Karl Rhoads, Chairman
Representative Sharon Har, Vice-Chair
House Committee on Judiciary

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE: February 25, 2014 at 2:00 p.m.

RE: Testimony in Support of HB 2163, HD1 Relating to Parental Parity

Good morning Representative Rhoads, Representative Har, and members of the Committee. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice solely in the area of Family Law for more than fifteen (15) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am here today to testify in support of HB2163, HD 1.

Although I strongly opposed (and would still oppose) HB2163 in its original form, HB2163, HD1 has been amended in such a way that my concerns (as set forth in the testimony I submitted to the House Committee on Human Services) have been satisfied. For that reason, I support HB2163, HD1.

I support the current language in Section 2 of HB2163, HD1. It requires the Court to consider frequent and continuing contact with both parents and requires the Court to explain why something other than frequent and continuing contact would be in the best interest of the child. However, I believe that Section 1 should be eliminated from the final bill, if possible.

Section 1 of this bill is completely misleading and should be eliminated from the final legislative history of this bill. Many of the "facts" stated in Section 1 of this the bill are completely unsupported and in my experience, simply untrue. For example, Section 1 states "the prevailing arrangement of residing solely with the mother has had a profound negative impact on most children's relationships with their fathers." In my 15+ years of experience as an attorney it is not the "prevailing arrangement" that children reside solely with their mothers. Moreover, the non-custodial parent usually has significant time with the children.

Section 1 goes on to claim that “The large majority of children of divorce are not spending extensive or consistent time with their fathers.” Again, Section 1 cites no authority in support of this statement and in my experience this simply isn’t true, especially in Hawai’i. In Hawai’i, children of divorce are spending extensive time with both of their parents.

Section 1 next claims, “Studies have shown that there are vast numbers of fathers who are willing, but are often denied the opportunity, to share the responsibility of raising their children.” Not only are these alleged “studies” unidentified, there is no indication that these alleged “studies” have studied Hawai’i and/or its Courts.

Section 1 next claims that “shared parenting” produces “better adult outcomes for children with divorced parents” and “also reduces the overall risk profile during childhood”. Since there is no support provided for this statement, it is impossible to evaluate whether it is true. What I know is true from my years of practice, however, is that children do better when there is less conflict between parents something “shared parenting” does not determine. In fact, if parents engage in high conflict behavior, “shared parenting” won’t help their children thrive and can actually lead to higher conflict. Based on my experience, high conflict cases often remain high conflict cases regardless of the custody and visitation arrangement present in the case. In high conflict cases, one or both parents will always be dissatisfied because of their animosity towards the other parent. Increasing or decreasing visitation won’t solve the problem.

Section 1 next claims various benefits supposedly associated with “shared parenting”. Once again, since there is no support provided for this statement, it is impossible to evaluate whether it is true. It would seem to be a matter of common sense, however, that if parents are getting along and each has significant contact with their children, their children will thrive.

Finally and most importantly, Section 1 claims that the purpose of HB2163 is to “help eliminate any preference in child custody decisions that unfairly favors one parent more than the other”. This stated purpose, however, appears to be untrue as HRS 571-46(a)(1) currently reads,

Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court may also consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child.

Clearly, there is no preference stated in the current law. For these reasons, I would support the elimination of Section 1 of HB2163, HD 1.

Thank you.

LATE

HB2163

Submitted on: 2/24/2014

Testimony for JUD on Feb 25, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
eloise bigelow	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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