

SB 2216

Measure Title: RELATING TO CHILD VISITATION.

Report Title: Child Custody; Primary Caregiver Visitation

Description: Permits family courts to award reasonable visitation to primary caregivers under certain circumstances. Establishes presumption that a parent's decision regarding visitation is in the best interests of the child, which may be rebutted by evidence that denial would cause harm to the child. Identifies factors a court may consider in awarding visitation. Grants the court discretion to place reasonable restrictions, including time limitations, on visitation.

Companion: [HB1784](#)

Package: Keiki Caucus

Current Referral: HMS, JDL

Introducer(s): CHUN OAKLAND, L. Thielen



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

S.B. NO. 2216, RELATING TO CHILD VISITATION.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 4, 2014

TIME: 1:00 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 (Department) provides the following comments.

The purpose of this bill is to allow the family court to award reasonable visitation to a person who is considered a primary caregiver if the denial of visitation would cause significant demonstrable harm to the child. The bill establishes a rebuttable presumption that visitation decisions made by a parent are in the best interest of the child.

This bill gives a person who meets the criteria to be considered a "primary caregiver" the same opportunities to visit a child that a grandparent would have under Senate Bill No. 2217 and Senate Bill No. 2240. The bill provides that (1) parents have a fundamental privacy right in making child rearing decisions, and that there is a presumption that their decisions regarding visitation are in their child's best interests, and (2) if a primary caregiver challenges the visitation decisions made by a parent, the primary caregiver must show that the denial of visitation would cause significant demonstrable harm to the child. However, this bill does not specify the standard of proof required by a primary caregiver in seeking to show that the denial of visitation would cause significant demonstrable harm to the child.

The Department recommends that the wording on page 2, line 16, of the bill be amended as set forth in Senate Bill No. 2217 on page 7, line 5, as follows: "The presumption may be rebutted by a preponderance of the evidence that denial of reasonable visitation rights would cause significant harm to the child." Senate Bill No. 2217 specifies that while parents have fundamental privacy right in making child rearing decisions including decisions concerning visitation with their children, a person can challenge those visitation decisions, if the person can

show by a preponderance of the evidence that the denial of visitation would cause significant demonstrable harm to the child.

TO: Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice-Chair
Senate Committee on Human Services

FROM: Alethea Kyoko Rebman
E-Mail: alethea@mitsuyamaandrebman.com
Phone: 545-7035

HEARING DATE: February 4, 2014 at 1:00 p.m.

RE: Testimony in Opposition to SB 2216 Relating to Child Visitation

Dear Chairwoman Chun Oakland & Vice Chair Green and fellow committee members:

I am a licensed attorney exclusively practicing Family Law here in the State of Hawaii.

A few colleagues and I are in opposition to adding a new provision related to primary caregivers' visitation rights.

First, the bill is vague as to the definition of "primary caregiver". As it reads now a primary caregiver is "an individual who provides daily care of a parental nature to a child". Most parents work and leave their children with sitters; day care providers; pre-school teachers; and/or nannies. This will allow every child care provider to file a motion in Family Court requiring them to have visitation with the children they take care of while the parents are at work.

Second, more importantly, the bill may be unconstitutional in light of *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000). The Fourteenth Amendment provides that no State shall deprive any personal of life, liberty, or property, without due process of law. A parent's right to the care, custody and control of a child is a fundamental right.

Here, this bill appears to suggest that parents' rights are protected by including a rebuttable presumption that the parents' decision regarding visitation is in the best interest of the child. However, the bill makes no mention of what standard of proof the presumption can be rebutted. Nor does the bill indicate what is "harm to the child".

In determining visitation for parents, the court relies on the best interest of the child standard. There is no mention of that here and as such it appears primary caregivers have a different standard. Other proposed legislation (i.e., SB 2217) allowing specifically grandparents visitation rights requires grandparents to prove "significant harm" would result if they were denied reasonable visitation rights. Three inconsistent standards but all related to children's visitation would be in place with the enactment of this bill and SB 2217.

Lastly, most importantly, this bill is unnecessary as the Court is already afforded the opportunity to allow third parties to visit with children in Hawaii Revised Statutes Section 571-46(7):

"Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child"

Thank you for your time.

TO: Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice-Chair
Senate Committee on Human Services

FROM: Dyan K Mitsuyama
E-Mail: dyan@mitsuyamaandrebman.com
Phone: 545-7035

HEARING DATE: February 4, 2014 at 1:00 p.m.

RE: Testimony in Opposition to SB 2216 Relating to Child Visitation

Dear Chairwoman Chun Oakland & Vice Chair Green and fellow committee members:

I am a licensed attorney exclusively practicing Family Law here in the State of Hawaii for fifteen (15) years. I am currently the Treasurer of the Family Law Section of the Hawaii State Bar Association, which is currently comprised of approximately 136 attorneys throughout the State of Hawaii.

A few colleagues and I are in opposition to adding a new provision related to primary caregivers' visitation rights.

First, the bill is vague as to the definition of "primary caregiver". As it reads now a primary caregiver is "an individual who provides daily care of a parental nature to a child". Most parents work and leave their children with sitters; day care providers; pre-school teachers; and/or nannies. This will allow every child care provider to file a motion in Family Court requiring them to have visitation with the children they take care of while the parents are at work.

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