

# SB 2217

- Measure Title:** RELATING TO CHILD VISITATION.
- Report Title:** Child Custody; Grandparent Visitation
- Description:** Permits family court to award reasonable visitation to grandparents of a child if denial of visitation would cause significant harm to the child. Establishes presumption that visitation decisions by parent are in the best interests of the child. Presumption may be rebutted by a preponderance of the evidence. Identifies factors court may consider in awarding visitation.
- Companion:** [HB1786](#)
- Package:** Keiki Caucus
- Current Referral:** HMS, JDL
- Introducer(s):** CHUN OAKLAND, L. THIELEN, Baker, Galuteria, Shimabukuro

# KLEINTOP, LURIA & MEDEIROS

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

FROM: Dyan M. Medeiros  
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Phone: 524-5183

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

RE: Testimony in Opposition to SB 2217 Relating to Child Visitation  
(Grandparents' Visitation)

Good afternoon Senator Chun Oakland, Senator Green, and members of the Committee. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice in Family Law for 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 against SB 2217.

I oppose SB2217 related to grandparents' visitation rights.

I would like to state that on a personal level, I recognize the important contribution that grandparents can make in the raising of their grandchildren. After my mother passed away (when I was barely 2 years old), I was raised by a single father. His parents took my sister and I to school, picked us up from school, and helped with other child care. I was very close to my paternal grandparents and value the influence they had on my life.

However, my father also felt it was important that I spend significant time with my maternal relatives. As a result, I visited them regularly until my early teens when I refused to visit with them due to their criticism and badmouthing of my father, something he never really knew about because as a child I couldn't explain it.

My point is that not all grandparents are the same and "someone" other than a Court should have the final say about who children ultimately spend time with. That "someone" should be a child's parent.

Both as a Family Law attorney and as an adult who has personally experienced the good and the bad of grandparent visitation, I simply cannot support this

bill. It is an open invitation for increased litigation, something which is not usually in a child's best interest. It also has the potential to overburden the Family Court as potentially each of four (4) grandparents will now have the ability to initiate family court litigation for visitation.

Custody cases between parents are always highly emotional and often contentious. This bill would allow grandparents to personally become involved in an already contentious matter and simply put, make things worse. From a public policy perspective, this legislation seems to be encouraging or promoting the destruction of families rather than strengthening families.

While SB2217 purports to address the repercussions of *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000), it is potentially opening the floodgates to additional, unnecessary litigation. A parent's right to the care, custody and control of his or her child has been found to be a fundamental right under the Fourteenth Amendment.

This bill acknowledges that there is a "rebuttable presumption that the parent's decision regarding visitation is in the best interests of the child". However, the bill goes on to state that the presumption may be rebutted by only a "preponderance of the evidence that the denial of reasonable visitation rights would cause significant harm to the child." The preamble of this bill notes that the governor previously vetoed a bill that imposed the higher burden of proof of "clear and convincing evidence" in order for a grandparent to impose visitation over a parent's objection.

If the Family Court awarded visitation to a grandparent over a parent's objection, it would be essentially overruling a parent's fundamental right to raise his or her children. Given the right at stake, a "clear and convincing evidence" burden of proof is more appropriate.

The preamble of this bill further argues that since the orders are "temporary" and subject to modification, a preponderance of the evidence standard is appropriate. This reflects a misunderstanding of the modification of visitation orders. Although all child-related orders are always subject to modification, that doesn't make them "temporary" orders. In fact, at the conclusion of custody or visitation cases, the Court issues "final orders" that can be modified in the future upon a showing that there has been a material change in circumstances and that a modification of the current order is in the best interests of the child. This bill completely ignores the reality of final custody orders.

Further, "significant harm to the child" is not defined in this bill. Instead, thirteen (13) factors are listed that the Court may consider. Although some of the factors appear to be similar to factors the Court considers in determining what is in a child's best interest, some are not. In fact, some factors seem to ignore what is in a child's best interest.

For example, Factor #6 is a financial factor that shouldn't matter when awarding visitation. If a grandparent has paid for child care but otherwise had little contact with a child, should that grandparent be awarded visitation over a parent's objection?

In addition, Factor #10 ignores the reality that a parent and grandparent can have an issue with each other that won't affect a grandparent's ability to "safely" care for a child but does impact the child. For example, grandparents badmouthing the other parent in front of children.

This bill doesn't limit the ability to file a petition for visitation to grandparents who have no contact with their grandchildren. In other words, under this bill, a parent or parents could actually allow contact with grandparents but if the grandparents want more time with their grandchildren, they could file a petition for more visitation. This is actually what happened in *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000).

When determining visitation for parents, the Family Court applies the best interest of the child standard. There is no mention of that standard in this bill and it appears therefore that a different standard would apply to grandparents.

Lastly and most importantly, this bill is unnecessary as the Court can already allow third parties (including grandparents) to visit with children under 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.

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 2217 Relating to Child Visitation (Grandparents' Visitation)

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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 grandparents' visitation rights.

As a Family law attorney, I cannot support this bill as it is an open invitation for increased litigation and it will clog the family court system as potentially each grandparent will now be a party to family court proceedings.

Custody cases are already highly contentious between parents, and often times, the litigation may be funded or emotionally fueled by extended family members. This would allow grandparents to personally become involved in an already contentious matter and as such, grandparents could be directly at odds with their own children in litigation involving a grandchild. From a public policy perspective, this legislation seems to be encouraging or promoting the destruction of families not strengthening families.

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 states that there is a "rebuttable presumption that the parent's decision regarding visitation is in the best interests of the child". The presumption may be rebutted by a "preponderance of the evidence that the denial of reasonable visitation rights would cause **significant harm to the child.**"

Significant harm to the child is not defined at all in the bill; instead there are factors that the Court should consider in making its determination that "significant harm" may exist. Some of the factors appear to be similar to factors the Court considers in determining what is in a child's best interest, but some are not.

In determining visitation for parents, the court relies on the best interest of the child standard. There is no mention of that and as such it appears grandparents have a different standard. Proposed legislation (i.e., SB 2216) allowing primary caretakers' visitation rights requires them to prove simply that "harm" would result if they were denied reasonable visitation rights. Two inconsistent standards but all related to children's visitation would be in place with the enactment of this proposed legislation and SB 2216.

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](mailto:dyan@mitsuyamaandrebman.com)  
Phone: 545-7035

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

RE: Testimony in Opposition to SB 2217 Relating to Child Visitation (Grandparents' Visitation)

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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 grandparents' visitation rights.

I would like to first state that on a personal level, I recognize particularly here in Hawaii that grandparents' play a vital role in the development of children's lives. I was afforded the opportunity to be somewhat raised by my grandmother as she lived with us and provided child care when my parents were at work.

However, as a Family law attorney, I cannot support this bill as it is an open invitation for increased litigation and it will clog the family court system as potentially each grandparent will now be a party to family court proceedings.

Custody cases are already highly contentious between parents, and often times, the litigation may be funded or emotionally fueled by extended family members. This would allow grandparents to personally become involved in an already contentious matter and as such, grandparents could be directly at odds with their own children in litigation involving a grandchild. From a public policy perspective, this legislation seems to be encouraging or promoting the destruction of families not strengthening families.

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 states that there is a "rebuttable presumption that the parent's decision regarding visitation is in the best interests of the child". The presumption may be rebutted by a "preponderance of the evidence that the denial of reasonable visitation rights would cause **significant harm to the child.**"

Significant harm to the child is not defined at all in the bill; instead there are factors that the Court should consider in making its determination that "significant harm" may exist. Some of the factors appear to be similar to factors the Court considers in determining what is in a child's best interest, but some are not.

In determining visitation for parents, the court relies on the best interest of the child standard. There is no mention of that and as such it appears grandparents have a different standard. Proposed legislation (i.e., SB 2216) allowing primary caretakers' visitation rights requires them to prove simply that "harm" would result if they were denied reasonable visitation rights. Two inconsistent standards but all related to children's visitation would be in place with the enactment of this proposed legislation and SB 2216.

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: Jessi L.K. Hall  
E-Mail: [jhall@coatesandfrey.com](mailto:jhall@coatesandfrey.com)  
Phone: 524-4854

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

RE: Testimony in Opposition to SB 2217 & SB 2240 Relating to Child Visitation (Grandparents' Visitation)

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Good day Senator Chun Oakland, Senator Green, and members of the Committee. My name is Jessi Hall. I am an attorney who concentrates my practice in 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 against SB2217 and SB2240.

In general I recognize how close of a bond children have with grandparents and what an important relationship that is for children. But, as a parent I would not want anyone telling me who will see my children and when. That is something that is my right as a parent to decide.

Also as a Family law attorney, I cannot support this bill as it is an open invitation for increased litigation, tearing families apart, and further clogging the Family Court system as each grandparent will have the opportunity to now be a party to Family Court proceedings.

Custody cases are already highly contentious between parents, and often times, the litigation may be funded or emotionally fueled by extended family members. This Bill would allow grandparents to personally become involved in an already contentious matter and as such, grandparents would be directly at odds with their own children in litigation involving a grandchild. From a public policy perspective, this legislation seems to encourage or promote the destruction of families not strengthening of families.

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 person of life, liberty, or property, without due process of law. A parent's right as to the care, custody and control of a child is a fundamental right.

Here, this Bill states that there is a "rebuttable presumption that the parent's decision regarding visitation is in the best interests of the child". The presumption may be rebutted by a "preponderance of the evidence that the denial of reasonable visitation rights would cause ***significant harm to the child.***"

Significant harm to the child is not defined at all in the Bill; instead there are factors that the Court should consider in making its determination that "significant harm" may exist. Some



of the factors appear to be similar to factors the Court considers in determining what is in a child's best interest, but some are not.

In determining visitation for parents, the court relies on the best interest of the child standard. There is no mention of that in the Bill and as such it appears grandparents have a different, possibly easier, standard. Proposed legislation (i.e., SB 2216) allowing primary caretakers' visitation rights requiring them to prove simply "harm" would result if they were denied reasonable visitation rights. This means if this Bill were to pass, there would be three inconsistent standards all related to children's visitation.

Lastly, and most importantly, this bill is unnecessary as the Court is already afforded the opportunity to allow third parties to request visitation 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 the opportunity to testify in opposition to SB2217 and SB2240.