

Honolulu, Hawaii

FEB 20 2015

RE: S.B. No. 494
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Human Services and Housing, to which was referred S.B. No. 494 entitled:

"A BILL FOR AN ACT RELATING TO CHILD VISITATION,"

begs leave to report as follows:

The purpose and intent of this measure is to provide primary caregivers with child visitation rights by:

- (1) Authorizing the family court to award reasonable visitation to a primary caregiver under certain circumstances, regardless of whether the child has been formally adopted by the caregiver;
- (2) Establishing the 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;
- (3) Identifying factors a court may consider in awarding visitation; and
- (4) Granting the court discretion to place reasonable restrictions on visitation.

Your Committee received testimony in support of this measure from one individual. Your Committee received testimony in opposition to this measure from Farrell and Associates; Family Law Section of the Hawaii State Bar Association; Kleintop, Luria and



Medeiros; and one individual. Your Committee received comments on this measure from the Department of the Attorney General and the Judiciary.

Your Committee finds that hanai relationships in which caregivers who have no biological relationship with a child undertake duties of a parental nature are very common in Hawaii. Hanai relationships have been acknowledged by the Hawaii Supreme Court as a strong custom in the State. Your Committee further finds that children have the right to maintain strong relationships with caregivers with whom they have created a special, parent-like bond.

Your Committee has received testimony expressing concern that the term "primary caregiver" is vague and undefined, and that this measure is unnecessary because current statute provides the family court with the discretion to award visitation to nonparents interested in the welfare of a child unless it is shown that visitation would be detrimental to the best interests of the child. Your Committee also recognizes the concern expressed about the constitutionality of language in this measure and, accordingly, has amended the measure to include language that follows established case law.

Your Committee has amended this measure by:

- (1) Amending the criteria for reasonable visitation to require that denial of reasonable visitation rights would cause significant harm to the child instead of just harm to the child;
- (2) Establishing clear and convincing evidence as the standard of proof required to rebut the presumption that a parent's decision regarding visitation is in the child's best interests; and
- (3) Amending the requirement for rebuttal of the presumption that a parent's decision regarding visitation is in the child's best interest to require proof that denial of reasonable visitation rights would cause significant harm to the child instead of just harm to the child.

As affirmed by the record of votes of the members of your Committee on Human Services and Housing that is attached to this report, your Committee is in accord with the intent and purpose of



S.B. No. 494, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 494, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committee on Human Services and
Housing,


SUZANNE CHUN OAKLAND, Chair



