



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 2131, RELATING TO CHILD VISITATION.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 18, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Jay K. Goss, Deputy Attorney General

Chair Morikawa and Members of the Committee:

The Department of the Attorney General (the "Department") provides the following comments.

The purpose of this bill is to allow the family court to award reasonable visitation to a grandparent if the denial of visitation would cause actual or potential 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.

The current version of section 571-46.3, Hawaii Revised Statutes ("HRS"), was held unconstitutional by the Supreme Court of the State of Hawaii in Doe v. Doe, 116 Hawaii 323, 172 P.3d 1067 (2007). The Supreme Court in Doe ruled that section 571-46.3, HRS, was unconstitutional because it did not require the person who was petitioning for visitation, to show that the denial of visitation would cause significant harm to the child.

This bill attempts to address the concerns raised by the Hawaii Supreme Court by: (1) making clear that 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) requiring that if a primary caregiver challenges the visitation decisions made by a parent, he or she must show that the denial of visitation would cause actual or potential harm to the child. The Supreme Court ruled, however, that the standard is not a showing of "actual or potential" harm to the child, but rather that the denial of the visitation would cause "significant" harm to the child.

To ensure that this bill will pass challenges based on the holding in Doe, the Department recommends that any changes track the wording used by the Supreme Court. The Department suggests that page 13, lines 15-16, be amended to read “Denial of reasonable visitation rights would cause significant harm to the child.” In addition, we suggest that the wording on page 14, lines 1-6, be amended to read “In any proceeding on a petition filed under this section, there shall be a rebuttable presumption that a parent's decision regarding visitation is in the best interest of the child. The presumption may be rebutted by evidence that denial of reasonable visitation rights would cause significant harm to the child.”