

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

ON THE FOLLOWING MEASURE:

H.B. NO. 2282, RELATING TO PARENTAL RIGHTS.

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
Julie Ebato, Crime Prevention and Justice Assistance Administrator

Chair Morikawa and Members of the Committee:

The Department of the Attorney General supports this bill. The purpose of this bill is to provide that parental rights of an alleged perpetrator may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of rape or sexual assault, creating a presumption that termination of parental rights is in the best interest of the child.

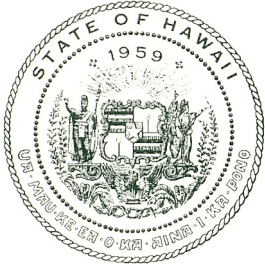
Rape is one of the most under-prosecuted serious crimes, with estimates of criminal conviction occurring in less than five per cent of rapes. The Supreme Court established that the clear and convincing evidence standard satisfies due process for allegations to terminate or restrict parental rights in Santosky v. Kramer, 455 U.S. 745 (1982). The clear and convincing evidence standard is the most common standard for termination of parental rights among the fifty States, the territories, and the District of Columbia. The rapist may use the threat of pursuing custody or parental rights to coerce survivors into not prosecuting rape, or otherwise harass, intimidate, or manipulate them.

Victims of rape or sexual assault that choose to raise their child conceived through rape or sexual assault may face custody battles with their rapists. Those victims should not have to share with their rapists custody of, guardianship of, visitation with, and access to their child. This bill will better protect these victims from further trauma or harassment by rapists seeking parental rights.

We request that the word “evidence” be added on line 5 of page 1 to read “clear and convincing evidence standard” and that the word “and” be added on line 11 of page 5 to read “clear and convincing evidence.”

We respectfully ask the Committee to pass this bill with these technical amendments.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
JUDY KERN
MARILYN LEE
AMY MONK
LISA ELLEN SMITH

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February 18, 2016

Testimony in Support of HB 2282, Relating to Parental Rights

To: Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice-Chair
Members of the House Committee on Human Services

From: Cathy Betts, Executive Director
Hawai'i State Commission on the Status of Women

Re: Testimony in Support of HB 2282

The Hawai'i State Commission on the Status of Women is in strong support of HB 2282. Thirty-three states have enacted legislation that prevents convicted rapists from attempting to obtain visitation and/or custody of the child borne from a sexual assault. While some states require a criminal conviction, the national trend is moving towards the termination based on a finding of clear and convincing evidence.

It is estimated that anywhere from 17,000 to 32,000 rapes result in pregnancy each year. Of the 73% of women who carry these pregnancies to term, 64% decide to raise the child themselves. The vast majority of rapes are committed by people victims know, resulting in serious legal implications from a pregnancy. Under current Hawaii law, a man who fathers a child through rape has the same legal rights to custody and visitation that any other father of a child does, unless there is a criminal conviction for the underlying sexual assault. While HRS 571-46 allows a court to make a determination of family violence and use that determination as a rebuttable presumption against giving the offender custody, there is nothing specifically limiting a convicted rapist from attempting to gain visitation and/or custody, absent a criminal conviction. Victims of a sexual assault should not be re-victimized by seemingly endless custody and visitation battles and numerous court hearings in which they have to see their perpetrator. Given that only 2% of rapes actually result in a conviction, terminating a perpetrator's parental rights becomes extremely difficult.

HB 2282 would allow a parent to petition the court, requesting a specific finding that a sexual assault occurred and the sexual assault resulted in a pregnancy that the parent carried to term, based on a clear and convincing evidentiary standard. A "clear and convincing" standard is the evidentiary standard that is applied in most determinations regarding the termination of parental rights, both nationally and here in Hawaii. This would allow a court to make that determination based on the evidence before the court without having to rely on a criminal conviction.

On May 29, 2015 the Rape Survivor Child Custody Act became federal law. The Act incentivizes states to pass legislation that would allow survivors of sexual assault to terminate the parental rights of their perpetrators with respect to a child conceived as a result of the offense, based on a clear and convincing standard of evidence that the sexual assault occurred and the child resulted from it, by making such states eligible to obtain a significant increase in funding to support sexual assault services. In passing this bill, Hawaii would become eligible for increased funding for sexual assault services. The Commission respectfully urges this Committee to pass this bill. Thank you for this opportunity to testify.



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director
Adriana Ramelli

DATE: February 18, 2016

Advisory Board
President
Mimi Beams

Vice President
Peter Van Zile

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

Marilyn Carlsmith

RE: Testimony in Strong Support of H.B. 2282
Relating to Parental Rights

FROM: The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women and Children

TO: The Honorable Dee Morikawa, Chair
The Honorable Bertrand Kobayashi, Vice Chair
House Committee on Human Services

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

Good morning Chair Morikawa, Vice Chair Kobayashi, and members of the House Committee on Human Services.

Donne Dawson

Dennis Dunn

Councilmember
Carol Fukunaga

David I. Haverly

Linda Jameson

The Sex Abuse Treatment Center (SATC) strongly supports H.B. 2282, which provides that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of rape or sexual assault, creating a presumption that termination of parental rights is in the best interest of the child.

Michael P. Matsumoto

Robert H. Pantell, MD

Gidget Ruscetta

Joshua A. Wisch

Sexual assault remains a serious public health issue in Hawai'i. According to the Attorney General's report, *Crime in Hawai'i*, there were 341 forcible rapes reported in Hawai'i in 2013, a 21.2 percent increase over the prior year. It is important to note that this figure almost certainly does not reflect the actual number of forcible rapes that occurred, as only 15.8 to 35 percent of all sexual assaults are reported to police.

The impact of sexual violence is significant. Survivors face not only emotional trauma, but significant physical consequences, including pregnancy. One study found that approximately five percent of rapes result in pregnancy. At last estimate, this translated to about 32,000 rape-related pregnancies each year in the United States.

A number of women who become pregnant as a result of sexual assault choose to carry their pregnancies to term and keep the child. An analysis of the National Women's Study raw data revealed that of thirty-four cases of rape-related pregnancy, the woman kept the infant in 32.3% of the cases.

Hawai'i law currently requires a criminal conviction for sexual assault in order to support termination of parental rights, including custody of and visitation with the child. Unfortunately, securing a criminal conviction is nearly impossible in most cases for various reasons, including the applicable evidentiary standard being 'beyond a reasonable doubt,' an extremely high threshold of proof. Moreover, many survivors of

sexual assault are unable to avail themselves of the criminal justice system at all due to very real and justifiable trauma, fear of reprisal, concerns about social and cultural stigmatization, distrust of the criminal justice system, or fear of publicity.

Consequently, a survivor of sexual assault may be forced to endure ongoing involvement of her rapist in the upbringing of her child, presenting the opportunity for the perpetrator to further control and harm both the survivor mother and the child.

A 'clear and convincing' standard – which is a lower threshold for fact finding than 'beyond a reasonable doubt' and the appropriate evidentiary standard that is applied in most determinations regarding the termination of parental rights, both nationally and here in Hawai'i – would allow for the family court to decide, based on an evidentiary hearing, that a sexual assault occurred without requiring a criminal conviction.

On May 29, 2015 the Rape Survivor Child Custody Act (the Act) became federal law. The Act incentivizes states to pass legislation that would allow survivors of sexual assault to terminate the parental rights of their perpetrators with respect to a child conceived as a result of the offense, based on a clear and convincing standard of evidence that the sexual assault occurred and the child resulted from it, by making such states eligible to obtain a significant increase in Violence Against Women Act funds each year to address sexual violence.

We note that such funds are badly needed in Hawai'i to support sexual assault survivors and their families in communities across the state. In recent years, demand has rapidly outpaced our state's capacity to deliver services, and some services have even been scaled back due to ongoing reductions in budget.

By ensuring that survivor mothers will be able to protect themselves and their children from their attackers without needing to first obtain a criminal conviction, and by allowing Hawai'i to access federal funds to support sexual assault services for survivors and their families, H.B. 2282 sends a profound message that the State of Hawai'i cares about protecting its citizens from the lasting aftereffects of sexual violence.



Hawaii Women's Coalition

COMMITTEE ON HUMAN SERVICES

Rep. Dee Morikawa, Chair

Rep. Bertrand Kobayashi, Vice Chair

DATE: Thursday, February 18, 2016

TIME: 9:00 a.m.

PLACE: Conference Room 329

Good afternoon Chair Morikawa, Vice Chair Kobayashi, and members,

The Hawaii Women's Coalition strongly supports HB2282, which provides that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of rape or sexual assault, creating a presumption that termination of parental rights is in the best interest of the child. This seems like common sense but sadly victims have lacked protection from the rapists who claim rights over children created by that most heinous of crimes.

Sexual assault remains a serious public health issue in Hawai'i. According to the Attorney General's report, Crime in Hawai'i, there were 341 forcible rapes reported in Hawai'i in 2013, a **21.2 percent increase** over the prior year. It is important to note that this figure does not reflect the actual number of forcible rapes that occurred, as only 15.8 to 35 percent of all sexual assaults are reported to police.

The impact of sexual violence is substantial. Survivors face not only emotional trauma, but significant physical consequences, including pregnancy. One study found that approximately five percent of rapes result in pregnancy. At last estimate, this translated to about 32,000 rape-related pregnancies each year in the United States.

A number of women who become pregnant as a result of sexual assault choose to carry their pregnancies to term and keep the child. An analysis of the National Women's Study raw data revealed that of thirty-four cases of rape-related pregnancy, the woman kept the infant in 32.3% of the cases.

Hawai'i law currently requires a criminal conviction for sexual assault in order to support termination of parental rights, including custody of and visitation with the child. Unfortunately, securing a criminal conviction is **nearly impossible** in most cases. The various reasons, include the applicable evidentiary standard being 'beyond a reasonable doubt,' **an extremely high threshold of proof.** Moreover, some survivors of sexual assault are unable to avail themselves of the criminal justice system at all due to real and justifiable



Hawaii Women's Coalition

trauma, fear of reprisal, concerns about social and cultural stigmatization, or distrust of the criminal justice system.

Consequently, a survivor of sexual assault may be forced to endure ongoing horrific involvement of her rapist in the upbringing of her child, presenting the opportunity for the perpetrator to further control and harm both the survivor mother and the child.

A **'clear and convincing' standard** – which is a lower threshold for fact finding than 'beyond a reasonable doubt' and the appropriate evidentiary standard that is applied in most determinations regarding the termination of parental rights, both nationally and here in Hawai'i – would allow for the family court to decide, based on an evidentiary hearing, that a sexual assault occurred without requiring a criminal conviction.

On May 29, 2015 the Rape Survivor Child Custody Act (the Act) became federal law. The Act incentivizes states to pass legislation that would allow survivors of sexual assault to terminate the parental rights of their perpetrators with respect to a child conceived as a result of the offense, based on a clear and convincing standard of evidence that the sexual assault occurred and the child resulted from it, by making such states eligible to obtain a significant increase in Violence Against Women Act funds each year to address sexual violence.

We note that such funds are needed in Hawai'i to support sexual assault survivors and their families in communities across the state. In recent years, demand has rapidly outpaced our state's capacity to deliver services, and some services have been scaled back due to ongoing reductions in budget.

By ensuring that survivor mothers will be able to protect themselves and their children without needing to first obtain a criminal conviction, and by allowing Hawai'i to access federal funds to support sexual assault services for survivors and their families, HB2282 sends a profound message that the State of Hawai'i cares about protecting its citizens from the lasting aftereffects of sexual violence.

We are heartened to see this bill that we have supported in the past, in the Governor's Package. Please pass this important bill out of committee.

Mahalo for the opportunity to testify,
Ann S. Freed Co-Chair, Hawaii Women's Coalition
Contact: annsfreed@gmail.com Phone: 808-623-5676



February 17, 2016

To: Hawaii State House Committee on Human Services
Hearing Date/Time: Thursday, February 18, 2016 (9:00 a.m.)
Place: Hawaii State Capitol, Rm. 329
Re: Testimony of American Association of University Women –
Hawaii in **support of H.B. 2282**, relating to parental rights

Dear Representative Dee Morikawa (Chair), and Representative Bertrand Kobayashi (Vice Chair), and Members of the Committee,

I am grateful for this opportunity to testify in **strong support of H.B. 2282**, which would improve the situation in Hawaii for survivors of sexual assault and their children.

My testimony is on behalf of the approximately 400 members of the American Association of University Women (AAUW) in Hawaii, who list violence against women as their most important current concern. This testimony is also informed by almost six years experience of teaching undergraduate students at the University of Hawaii at Manoa. In addition, my area of expertise is gender violence, and I worked for many years with survivors of violence in New Zealand.

On behalf of these groups, I argue strongly that HB 2282 should be approved today for a number of reasons. This bill terminates the parental rights of men who have committed rape, based on “clear and convincing” standards, when the rape has resulted in the birth of a child. Many women do not take their rapist to court, knowing the low probability of obtaining a conviction, but many of these women do decide to bear their child. The “clear and convincing” standard is used in other decisions regarding child custody, and should also be applied in this issue. No woman should be forced to confront her sexual assailant years after the event in ongoing custodial discussions. This is cruelty to both the woman and her child, and makes it difficult for survivors to maintain good emotional health. Some legal scholars have termed this abusive court process as “the second rape.”

Not only can men use the vagueness of the current statute as a means for ongoing contact with their rape victim, they can also use the current law to elude legal sanctions. When parental rights are not automatically terminated, men can use parental rights as a bargaining tool encouraging women not to testify against them in court, which is poor justice indeed.

For all of these reasons, I argue strongly that HB 2282 should move forward into law.

Thank you for the opportunity to testify.

Sincerely
Susan J. Wurtzburg, Ph.D.
Policy Chair

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

February 17, 2016

To: House Committee on Human Services
Representative Morikawa, Chair
Representative Kobayashi, Vice Chair

From: Michelle Rocca, Training and Technical Assistance Director
Hawaii State Coalition Against Domestic Violence

Re: Testimony in Support of HB 2282

Good morning Chair Morikawa, Vice Chair Kobayashi, and members of the committee. On behalf of the Hawaii State Coalition Against Domestic Violence we thank you for the opportunity to share our testimony in support of HB 2282 relating to parental rights. HB 2282 determines that a parent's rights may be terminated if the court determines, by clear and convincing evidence that the child was conceived during an act of rape or sexual assault, creating a presumption that termination of parental rights is in the best interest of the child.

Survivors of trauma are often unable to fully participate in the legal process of prosecuting their offender due to the trauma, fear, stigma, and distrust of the system. Discovering one is pregnant as a result of the traumatic sexual assault further compounds these issues making the criminal conviction of the perpetrator without her full participation in the legal process a daunting task. Currently, if a conviction cannot be obtained the survivor may be forced to interact with her perpetrator and endure the assailant's participation in the upbringing of the child, which puts both the mother and the child in potential danger.

Allowing the family courts to operate from the standard of clear and convincing evidence provides an obtainable standard to meet given the complexity of the outcomes that survivors are managing after becoming impregnated by a sexual assault, and is also consistent with the standard that is currently applied when determining the termination of parental rights. Further, the US Congress has determined that a clear and convincing standard of evidence should be adopted in these cases nationwide, and passed The Rape Survivor Child Custody Act in May 2015.

HSCADV encourages the committee to support this measure which protects both the survivor and child from further victimization through the criminal justice system and removes the potential for the victim to be required to further engage with an offender in the context of shared parental rights.

Thank you for your consideration and for the opportunity to provide testimony on this matter.

