



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2409, S.D. 1, RELATING TO CHILD VISITATION.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 25, 2016

TIME: 11:00 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 Haw. 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 grandparent 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. However, the Supreme Court ruled 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 Doe, the Department recommends that any changes track the language 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 language on page 14, lines 3-8, 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 a preponderance of the evidence that denial of reasonable grandparent visitation rights would cause significant harm to the child.”

To: Representative Dee Morikawa, HUS Chair
Representative Bertrand Kobayashi, HUS Vice Chair
House Human Services Committee Members

From: Dara Carlin, M.A., Domestic Violence Survivor Advocate
881 Akiu Place
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Date: February 25, 2016

Re: SB2409 SD1 – Comments

Good Morning Representatives and thank you for this opportunity to provide a few comments and a recommendation re: SB2409 SD1, Relating to Child Visitation.

Too many people are unaware that domestic violence does not end once the victim “successfully escapes” (isn’t killed by) her abuser; this is particularly true in cases where the victim-survivor has children in-common with her abuser. In such cases, domestic violence (DV) post-separation is frequently relabeled and mislabeled as “high conflict” or as “highly contentious” because the parties keep coming back to the court over and over and over again for custody and visitation-related issues.

While SB2409 is not aimed at or intentioned for DV-related cases and situations, I must ask that you take this into consideration. In the cases I am involved with, the abuser does not re-abuse alone post-separation; with alarming frequency, abusers involve third parties – in this way the abuser can’t be held accountable for the actions of other people – and most typically, abusers will turn to their own parents and/or even co-opt the survivor’s.

In many of the cases I’ve been involved with, measures taken to keep the survivor and the children safe from the abuser only pertain to the abuser himself – NOT to those he incorporates.

For example: per court order, the abuser is not allowed to be left unsupervised with the children; his parents agree to be supervisors but they don’t believe their son ever was or truly is abusive so the grandparents violate the court’s intentions and orders with impunity AND without accountability or concern for consequence because they are not a direct party to the case. When/if the survivor and/or children report being left alone with the abuser, no one can or will do anything about it and from cursory appearances,

the survivor is identified as the contentious party which supports the erroneous "high conflict" label (and this, in part, is how survivors end up being re-victimized by the system that's supposed to be helping to protect them).

JDL Committee Chair, Senator Keith-Agaran, acknowledged the danger in how SB2409 could be misused in his Committee Report by commenting:

"Your Committee is concerned that in cases of family violence, grandparents may violate the terms and conditions of the court's order without consequence, which may result in assisting family violence perpetrators and enabling perpetuation of family violence. Your Committee further notes that violating the terms and conditions of reasonable visitation is contrary to the best interest of the child, and that court-ordered sanctions are necessary to ensure compliance."

To address this concern, in part, the Committee adopted and included the following language to SB2409 SD1:

(f) In the case where a grandparent or the grandparents of a minor child violate the terms and conditions of an order awarding reasonable visitation rights pursuant to subsection (a), the grandparent or grandparents shall be subject to sanctions as determined by the court and in accordance with section 571-81."

While this is a good first step, I would just caution and forewarn that **all legislation regarding child custody will also ultimately affect "misdiagnosed" or unidentified cases of domestic violence** so I urge you to please bear that in-mind and consult with DV experts when considering child custody and family court-related legislation.

Thank you for your time and consideration.

Most respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

Good Morning Representatives,

I hold a degree in Psychology, and with a few credits shy of a Doctorate in Clinical Psychology, I would like to strongly urge you to be extremely cautious with SB2409 for the sake of the children of Hawaii.

As a doctoral student, I would like to share a disturbing account about a case in the Family Court of Oahu where three small children were placed in Foster Care with their son's parents. Their son was found to be violent and a domestic abuser, the children's mother was granted a five year restraining order which the children were not allowed to stay on. The grandparents denied at every possible opportunity that their "good boy" had done any of these things. The grandparents refused the mother phone calls with her children and the children reported that the grandmother blacked out their mothers face in a family photo displayed on the wall for them to see. The children reported to the police at the Children's Justice Center that they were sexually abused by their father in the grandparent's bathroom and bedroom multiple times.

One of the children suffered a broken arm and recieved no medical attention by the grandparents. CASA had to make stricter guidelines due to this neglect. In this situation, the grandparents provided unproven alibis, interfered with visitation calls, could not properly care for the children and did not follow the same rules for their son as they did for the childrens mother. The father was allowed phone calls, visitation, and was left alone unsupervised in rooms in their house with the children. One of the children disclosed that "nana told me not to tell anyone anything bad about daddy".

Grandparents, like in this case, violate the court's intentions and orders without concern for consequences because they are not a direct and accountable party to the case.

To avoid instances such as this, might I suggest that you add language to SB2409 to the effect of:

"When a finding of family violence between the parents has been determined by the court, grandparents shall not misuse any visitation granted to them by transferring or relinquishing their time to any other party. Should grandparents violate the terms and conditions of the court's order they shall be subject to the court's sanction. "

Please bear in-mind that until abuse is factored in instead of out of child custody and visitation issues, legislation such as this could have the unintended consequence of assisting family violence perpetrators in circumventing court orders restraining them from access to vulnerable children.