



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2811, S.D. 1, RELATING TO PARENTAL RIGHTS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, February 25, 2016 **TIME:** 9:01 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call Julie Ebato, Crime Prevention and Justice Assistance Administrator at 586-1150.

Chair Keith-Agaran 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 respectfully ask the Committee to pass this bill.



THE SEX ABUSE TREATMENT CENTER

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

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DATE: February 25, 2016

TO: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

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

RE: Testimony in Strong Support of S.B. 2811 S.D. 1
Relating to Parental Rights

Good morning Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor.

The Sex Abuse Treatment Center (SATC) strongly supports S.B. 2811 S.D. 1, 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.

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 estimated, 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, some 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, or distrust of the criminal justice system.

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.

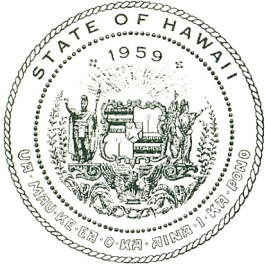
A 'clear and convincing' standard – which is a lower threshold for fact finding than 'beyond a reasonable doubt' and the appropriate evidentiary standard that is applied in most determinations regarding the termination of parental rights, both nationally and here in Hawai'i – would allow for the family 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 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, S.B. 2811 S.D. 1 sends a profound message that the State of Hawai'i cares about protecting its citizens from the lasting aftereffects of sexual violence.

HAWAII
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STATUS
OF
WOMEN



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February 25, 2016

Testimony in Support of SB 2811, SD1, Relating to Parental Rights

To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice-Chair
Members of the Senate Committee on Judiciary and Labor

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

Re: Testimony in Support of SB 2811, SD1

The Hawai'i State Commission on the Status of Women is in strong support of SB 2811, SD1. 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. SB 2811, SD1 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. Additionally, requiring the parent to petition ensures that the termination is the parent's choice (for example, courts could not *sua sponte* terminate without an existing petition by a parent).

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.



February 25, 2016

To: Senator Gilbert Keith Agaran, Chair
Senator Maile Shimabukuro, Vice Chair and
Members of the Committee on Judiciary and Labor

From: Jeanne Y. Ohta, Co-Chair

RE: SB 2811 SD1 Relating to Parental Rights
Hearing: Thursday, February 25, 2016, 9:01 a.m., Room 016

POSITION: Strong Support

The Hawai'i State Democratic Women's Caucus writes in strong support of SB 2811 SD1 Relating to Parental Rights 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.

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.

Those 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.

Sexual assault is a serious crime. 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.

Because of the trauma that is experienced and other issues involved in surviving a horrific attack, including cultural and societal pressures that stigmatize survivors; 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.

SB 2811 would ensure that survivor mothers will be able to protect themselves and their children without needing to first obtain a criminal conviction, and would allow Hawai'i to access federal funds to support sexual assault services for survivors and their families.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. Thank you for the opportunity to provide testimony.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB2811 on Feb 25, 2016 09:01AM*
Date: Tuesday, February 23, 2016 5:36:26 PM

SB2811

Submitted on: 2/23/2016

Testimony for JDL on Feb 25, 2016 09:01AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

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Date: Tuesday, February 23, 2016 10:22:59 AM

SB2811

Submitted on: 2/23/2016

Testimony for JDL on Feb 25, 2016 09:01AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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SB2811

Submitted on: 2/23/2016

Testimony for JDL on Feb 25, 2016 09:01AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Support	No

Comments:

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