

# SB 2811

**Measure Title:** RELATING TO PARENTAL RIGHTS.

**Report Title:** Involuntary Termination of Parental Rights

**Description:** 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.

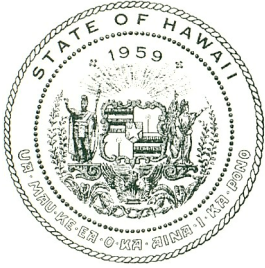
**Companion:** [HB2282](#)

**Package:** Governor

**Current Referral:** HMS, JDL

**Introducer(s):** KOUCHI (Introduced by request of another party)

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

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February 2, 2016

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

**To:** Senator Suzanne Chun Oakland, Chair  
Senator Gil Riviere, Vice-Chair  
Members of the Senate Committee on Human Services

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

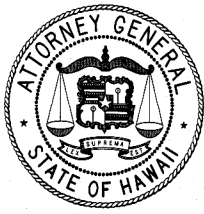
**Re:** Testimony in Support of SB 2811

The Hawai'i State Commission on the Status of Women is in strong support of SB 2811. Several states have already enacted legislation that prevents convicted rapists from attempting to obtain visitation and/or custody of the child borne from a sexual assault.

Rape is a crime of power and control. It is estimated that 1 out of 4 women will become a victim of a completed rape within her lifetime. 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 offender. Given that only 2% of rapes actually result in a conviction, terminating a perpetrator's parental rights becomes extremely difficult.

SB 2811 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.



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

SENATE COMMITTEE ON HUMAN SERVICES

**DATE:** Tuesday, February 2, 2016

**TIME:** 1:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Julie Ebato, Crime Prevention and Justice Assistance Administrator

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Chair Chun Oakland 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.



# THE SEX ABUSE TREATMENT CENTER

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

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Robert H. Pantell, MD

Gidget Ruscetta

Joshua A. Wisch

DATE: February 2, 2016

TO: The Honorable Suzanne Chun Oakland, Chair  
The Honorable Gil Riviere, Vice Chair  
Senate Committee on Human Services

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

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

Good afternoon Chair Chun Oakland, Vice Chair Riviere, and members of the Senate Committee on Human Services.

The Sex Abuse Treatment Center (SATC) strongly supports S.B. 2811, 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 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, some survivors of

sexual assault are unable to avail themselves of the criminal justice system at all due to 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 sends a profound message that the State of Hawai'i cares about protecting its citizens from the lasting aftereffects of sexual violence.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HMS Testimony](#)  
**Cc:** [laurie.field@ppvnh.org](mailto:laurie.field@ppvnh.org)  
**Subject:** \*Submitted testimony for SB2811 on Feb 2, 2016 13:15PM\*  
**Date:** Friday, January 29, 2016 5:25:36 PM

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**SB2811**

Submitted on: 1/29/2016

Testimony for HMS on Feb 2, 2016 13:15PM in Conference Room 016

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

**Comments:**

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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February 1, 2016

To: Senate Committee on Human Services  
Senator Suzanne Chun Oakland, Chair  
Senator Gil Riviere, Vice Chair

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

**Re: Testimony in Support of SB 2811**

Good afternoon Chair Chun Oakland, Vice Chair Riviere, 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 SB 2811** relating to parental rights. SB 2811 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.







## National Association of Social Workers

Date: February 1, 2016

**To: Senate Committee on Human Services**  
The Honorable Suzanne Chun Oakland, Chair  
The Honorable Gil Riviere, Vice Chair

**From:** The National Association of Social Workers, Hawai'i Chapter

The National Association of Social Workers, Hawaii Chapter (NASW) strongly supports Senate Bill 2811, which allows for a parent's right to be terminated if the court determines that the child was conceived during an act of rape or sexual assault, thus creating a presumption that termination of parental rights is in the best interest of the child.

Rape and sexual assault continue to be serious issues in Hawai'i. Sexual violence causes not only serious emotional and mental health issues for survivors, but also the very physical health consequence of pregnancy. Approximately 5% of rapes result in pregnancy.

This bill addresses the current problem of requiring a criminal conviction before terminating parental rights. Only an approximate 2% of rapes result in conviction. Facing a rapist in court causes reexperiencing of trauma in many rape survivors, as well as fear of reprisal, stigma or distrust of the system.

Under the current law, if a conviction cannot be obtained, a sexual assault survivor may be forced to endure her rapist's involvement in the upbringing of the child, which causes risk for both mother and child.

SB 2811 calls for a clear and convincing standard of evidence, which is the appropriate evidentiary standard that is applied in most determinations of parental rights, both nationally and in the state of Hawai'i. In May 2015, the US Congress adopted the Rape Survivor Child Custody Act, which allows states that adopt the clear and convincing standard eligible to receive a substantial increase in Violence Against Women Act (VAWA) funds each year, to address sexual violence.



National Association of Social Workers

This funding is needed in Hawaii to support sexual assault survivors and their families. The current demand for services has outstripped the state of Hawaii's ability to provide services.

*Sonja Bigalke-Bannan, MSW, LSW*

Sonja Bigalke-Bannan, MSW, LSW  
Executive Director  
National Association of Social Workers, Hawaii Chapter



## Hawaii Women's Coalition

COMMITTEE ON HUMAN SERVICES  
Senator Suzanne Chun Oakland, Chair  
Senator Gil Riviere, Vice Chair

DATE: Tuesday, February 02, 2016  
TIME: 1:15pm  
PLACE: Conference Room 016

Good afternoon Chair Chun Oakland, Vice Chair Riviere, and members,

The Hawaii Women's Coalition strongly supports SB2811, 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, SB2811 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

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HMS Testimony](#)  
**Cc:** [burgharc@gmail.com](mailto:burgharc@gmail.com)  
**Subject:** Submitted testimony for SB2811 on Feb 2, 2016 13:15PM  
**Date:** Monday, February 01, 2016 11:06:19 AM

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**SB2811**

Submitted on: 2/1/2016

Testimony for HMS on Feb 2, 2016 13:15PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl	Individual	Support	No

Comments: We always need to look at what is best for the child.

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