

**FAMILY LAW SECTION
OF THE
HAWAII STATE BAR ASSOCIATION**

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February 4, 2015

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

From: Dyan K. Mitsuyama, Vice-Chair/Chair Elect
Family Law Section, Hawaii State Bar Association

Re: Testimony in Opposition of SB 643SD1
Hearing: Thursday, March 19, 2015 at 9:00 a.m.

Good Morning, Chair Morikawa, Vice Chair Kobayashi and the members of the Committee on Human Services. My name is Dyan K. Mitsuyama, a partner in Mitsuyama & Rebman, LLLC, which is a law firm concentrating in all family law matters. I have been a licensed attorney here in the State of Hawaii for about 16 ½ years now. I am the current Vice-Chair/Chair-Elect of the Family Law Section of the Hawaii State Bar Association, which is comprised of approximately 136 licensed attorneys state-wide all practicing or expressing an interest in practicing family law.

First and foremost, I recognize particularly here in Hawaii that grandparents' play a vital role in the development of children's lives. I was afforded the opportunity to be somewhat raised by my grandmother as she lived with us and provided child care when my parents were at work.

However, as a practicing Family Law attorney and representative of the Family Law Section of the Hawaii State Bar Association, we are not in support of this bill as it is an open invitation for increased litigation and it will clog the family court system as potentially each grandparent will now be a party to all family court proceedings.

Custody cases are already highly contentious between parents, and often times, the litigation may be funded or emotionally fueled by extended family members. This would allow grandparents to personally become involved in an already contentious matter and as such, grandparents could be directly at odds with their own children in litigation involving a grandchild. From a public policy perspective, this legislation seems to be encouraging or promoting the destruction of families not strengthening families.

This bill further attempts to put grandparents in a different category than other possible/probable caretakers, such as aunts, uncles, adult siblings, etc.. The court already affords the opportunity to allow all third parties to visit with children in Hawaii Revised Statutes Section 571-46(7):

“Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child”

Thank you for your time.

NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.

kobayashi2-Lynda

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 2:16 PM
To: HUS testimony
Cc: babyjean@hotmail.com
Subject: *Submitted testimony for SB643 on Mar 19, 2015 09:00AM*

Categories: duplicate

SB643

Submitted on: 3/16/2015

Testimony for HUS on Mar 19, 2015 09:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Ronnie Perry	Individual	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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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
Kailua, HI 96734 (808) 262-5223

Date: March 19, 2015

Re: SB643 – Comments

Good Morning Representatives and thank you for this opportunity to provide a few comments and a recommendation re: SB643, 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 SB643 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).

To avoid instances such as this, might I suggest that you add language to SB643 to the effect of: ***When a finding of family violence between the parents has been determined by the court, grandparents may not misuse any visitation granted to them by transferring their time to any other party and shall be bound to the same court orders maintained by the parents.***

Thank you for your time and consideration.

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

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TO: Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice-Chair
House Committee on Human Services

LATE

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE: March 19, 2015 at 9:00 a.m.

RE: Testimony in Support of SB643, SD1 Relating to Child Visitation

Good morning Representative Morikawa, Representative Kobayashi, and members of the Committee. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice solely in the area of Family Law for more than sixteen (16) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I submit this testimony in support of SB 643, SD1.

It is clear that parents have a constitutional right to determine whom their children visit with and spend time with. However, grandparents can and often do play an important role in the lives of their grandchildren. Unfortunately, sometimes parents and grandparents simply can't resolve their differences with respect to visitation. This bill provides grandparents with an opportunity, if necessary, to petition the Court for visitation rights with their grandchildren, something that has been impossible in recent years due to a Hawai'i Supreme Court decision. This bill respects the rights of parents and balances those rights with the best interests of children when it comes to visitation with grandparents. For these reasons, I support SB643, SD 1.

Thank you.



LATE

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ONLINE TESTIMONY SUBMITTAL
House Committee on Human Services
Hearing on March 19, 2015 @9:00
Conference Room #329

DATE: March 18, 2015

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

FROM: James R. "Duke" Aiona, Jr. Interim President & CEO

RE: Opposition on SB 979 Relating to Youth

My name is James R. "Duke" Aiona, Jr., and I have been an attorney in Honolulu since 1981. I have also served the people of Hawaii as a Family and Circuit Court Judge of the First Circuit (1990 – 1998) and I also served as the first Administrative Judge of the Hawaii Drug Court Program (1994-1997). Currently I am also the interim president of Hawaii Family Advocates, a 501(c)(4) independent expenditure, non-candidate organization. We are strongly opposed to this proposed bill.

In short, the proposed bill possesses more harm than good.

In its policy statement to this bill the authors' state in its closing paragraph, "The legislature finds that for the safety and wellbeing of Hawaii's Youth, youth should have access to safe places and appropriate services." A fair interpretation of this statement is that the legislature is of the position that we do not currently have a system in place that protects our children and provides appropriate services. I would submit that the current child protection system, though not perfect, protects the harms sought to be protected and provides the services sought to be provided by this proposed bill. If this is not true then this bill should be much more transparent and clearer in stating how this bill will either replace or supplement our current child protective system. Put another way the legislature should explain why this is not just another layer of bureaucracy and added costs for another child protective program.

Although the policy statement to this bill states that the creation of safe places is not to replace parents, the provisions of this bill are at odds with this statement. This bill gives a service provider of these safe places the unfettered discretion to determine - *whether they believe the youth in crisis would incur more harm or be subject to threatened harm if the youth in crisis returns immediately to the home of the parents, legal guardian, or legal custodian*. This decision in most occasions would be made by a worker with the safe place service provider who may be just a few years older than the youth in crisis. The proposed bill makes no reference that such a determination would be made by a committee, licensed social worker, family crises therapist, or anyone of similarly qualified credentials either by education, training, or experience. In short a worker's discretion with a designated service provider trumps the consent and will of child's parent.

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HAWAII FAMILY ADVOCATES

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The proposed bill is also subject to abuse by an adolescent who does not agree with a parents discipline and/or child raising philosophy. Once this proposed system is interjected into their lives, it will always be their life line to any disagreements, arguments, or blowouts that they encounter with their parents. It will truly be a place, as stated in the policy statement of this bill, where they can *have fun without the fear of being* (I would submit in their mind) *harassed, bullied, or pressured by other ... adults*.

As a former family court judge who has presided over countless cases that involved situations of intolerable home and school environments, I understand the intent of this bill. However, it is much more than caution when I state that this proposed bill take us down the wrong path. The current system that we have provides the necessary system and services for our youth whose safety and wellbeing is placed in jeopardy. The concerns raised by youth at the annual children and youth summit must be put in its proper context. First and foremost it is a gathering of selected youth. I would submit that they are not an across the board representation of Hawaii's youth. Safe places exist in our boys and girls club, local YMCA programs, youth sports, and numerous art and science clubs. Time and effort should be expended in creating and strengthening the partnerships with these clubs, organizations, and leagues. The personnel, departments, and agencies that are equipped to do this are already in existence on the county, state, and federal level.

This bill is not necessary, and will produce numerous unintended consequences that will create more harm than good.

Mahalo for the opportunity to submit our concerns.