TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:
S.B. NO. 643, RELATING TO CHILD VISITATION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, February 3, 2015 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
JAY K. GOSS, Deputy Attorney General

Chair Keith-Agaran 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 a grandparent, 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 the changes to section 571-46.3, HRS, 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 grandparent visitation rights would cause significant harm to the child."

In addition, we suggest that the language on page 14, lines1-6, 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: Senator Keith-Agaran, JDL Chair
Senator Shimabukuro, JDL Vice Chair
Judiciary & Labor Committee Members

From: Dara Carlin, M.A., Domestic Violence Survivor Advocate
881 Akiu Place Kailua, HI 96734 (808) 262-5223

Date: February 3, 2015

Re: SB643 – Comments

Good Morning Senators 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