



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Health and Human Services

Representative John Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair

Tuesday, February 6, 2018 at 8:30 AM
State Capitol, Conference Room 329

By

Catherine H. Remigio
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1928, Relating to a Right to Parent for Blind Persons

Purpose: Establishes parental rights for blind parents or prospective blind parents in the context of child welfare, foster care, family law, and adoption

Judiciary's Position:

The Judiciary takes no position on this bill but would like to comment that we are unaware of any case wherein foster custody was granted or visitation denied, due to a parent's blindness.

Thank you for the opportunity to submit testimony on this measure.



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96808

February 2, 2018

TO: The Honorable John M. Mizuno, Chair
House Committee on Health and Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 1928 - RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS**

Hearing: Tuesday, February 6, 2018, 8:30 PM
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill and offers the following comments.

PURPOSE: This measure establishes parental rights for blind parents or prospective blind parents in the context of child welfare, foster care, family law, and adoption.

DHS is an equal opportunity service provider and follows all federal and state laws, regulations, and rules that prohibit discrimination on the basis of disability.

DHS agrees that blindness shall not be the basis for denial or restriction of custody, visitation, adoption, or guardianship of children. DHS is also aware of national reports that parents who are deaf or blind report high rates of child removal and loss of parental rights.

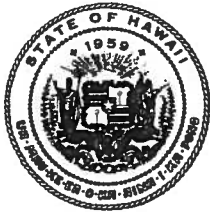
However, DHS Child Welfare Services (CWS) Branch is not aware of instances of discrimination against blind individuals within our programs and services. Additionally, the DHS Civil Rights Office reports no discrimination complaints have ever been filed by blind parents or on behalf of blind parents with the department. Clear information on how to file a complaint is available on the DHS website or is provided upon request.

DHS is fully committed to the intent of the measure and to improve our service delivery model. We will examine our staff training curriculum to include more information about

working with parents with disabilities and blind parents, specifically, and will consult with our Division of Vocational Rehabilitation to improve the way we engage with parents who are blind.

At this time without more information or evidence of any systemic problems that require an amendment, as there are already applicable federal and state laws in place, this is bill is not necessary and may potentially result in creating unintended inequities.

Thank you for the opportunity to testify.



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • TTY (808) 586-8162

February 6, 2018

TESTIMONY TO THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

House Bill 1928 - Relating to A Right to Parent for Blind Persons

The Disability and Communication Access Board (DCAB) wishes to provide comments on House Bill 1928 which establishes parental rights for blind parents or prospective blind parents in the context of child welfare, foster care, family law and adoption.

We support the fact that blindness should not predispose a judgment of incapacity because a person is blind. We appreciate the purpose of the bill, but there are currently other provisions in Hawaii law that are related to child welfare and parental rights that protect children. Protection of children is assessed with criteria that are not related to disability. This bill singles out a group of people needing extra protection.

If the Legislature believes that current laws do not offer adequate protection then other individuals with disabilities may also face the same form of discrimination where they are deemed unfit parents solely based upon their disability. If this is the case, we recommend the bill be expanded to include and protect the rights of all parents with disabilities to make this a more comprehensive law.

Thank you for the opportunity to provide comments.

Respectfully submitted,

FRANCINE WAI
Executive Director



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 1928, RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Tuesday, February 6, 2018 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Erin LS Yamashiro, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but opposes the bill, as written, because of the following concerns.

The purpose of this bill is to afford additional protections to parents, or prospective parents, who are blind, as defined in the bill, in cases under chapter 587A, Hawaii Revised Statutes (HRS). These protections would apply when assessing whether a blind parent can provide a safe family home for their child in a chapter 587A matter, or an appropriate home for a child in an adoption or in a legal guardianship matter. These protections seemingly would also apply in other family court matters involving custody and visitation, such as in paternity, divorce, and domestic abuse cases.

This bill, as written, violates the Equal Protection Clause, as stated in the Fourteenth Amendment of the United States Constitution, as well as article I, section 5, of the Hawaii State Constitution, in that it creates special protections for blind persons to the exclusion of persons with other disabilities. Parents with other disabilities who also face preconceived biases and attitudes in society, including but not limited to the deaf and hearing impaired, and the physically impaired would be excluded from protection. The Hawaii Supreme Court has concluded that being a parent is a liberty interest that is

protected by due process and equal protection under the Hawaii State Constitution. Therefore, every parent or prospective parent, regardless of the nature of his ability or disability, must be afforded the same protections under the law.

Under chapter 587A, all parents are treated equally by the Department of Human Services (DHS) in assessing the safety of the child in accordance with federal law, which requires a court to find that continuation in the family home is contrary to the child's welfare to justify the removal of a child from their home. See, 42 U.S.C. § 672(a)(1) and (2). Additionally, a court must find that reasonable efforts were made to prevent or eliminate the need for removal prior to the placement of a child in foster care. See, 42 U.S.C. § 671(a)(15). The Court has upheld the constitutionality of chapter 587A because it promotes and protects the public welfare, which is within the state's general police power, even though the state is interfering with a parent's fundamental right to care for their child. See, *In re Doe*, 99 Hawaii 522 (2002). Additionally, the Court has held that when the best interests of the child and the rights of the parents are in conflict, all other factors being equal, the best interests of the child must prevail. See, *In re Doe*, 85 Hawaii 119 (App. 1997). Clearly, our legislature and the courts have recognized that a child's safety and welfare is of paramount concern.

This bill would fundamentally change how DHS is to assess the safety of a child with blind parents, and would hinder DHS's ability to protect that child from abuse and neglect, which is contrary to the purposes of chapter 587A. Specifically, this bill requires a finding by clear and convincing evidence that the parent or prospective parent's behaviors are endangering or will likely endanger the safety of the child whenever a child is removed from the home of a blind parent or caregiver. "Clear and convincing evidence" is defined as "the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction that the fact sought to be proved is true." HRS § 587A-4. In contrast, the burden of proof for temporary foster custody is "reasonable cause" which is defined as "the degree of proof that would cause a person of average caution to believe the evidence is reasonably trustworthy." HRS §§ 587A-4 and 587A-26(c)(2). If passed, this bill would severely impede the DHS's ability to protect children

from harm by increasing the burden of proof for removal of a child when the parent or caregiver is blind.

Furthermore, the bill prohibits the court from considering a person's blindness in determining visitation or custody, and in determining whether a proposed placement is appropriate for adoption, legal guardianship, or foster care unless it is in the best interest of the child. Notwithstanding the unconstitutionality of this bill, these proposed protections are misplaced, because chapter 587A only relates to child welfare services. The standard for visitation and custody in the context of family law cases is set forth in section 571-46, HRS, adoptions are governed by chapter 578, HRS, and minor legal guardianships fall under chapter 560, HRS. Likewise, paternity cases are governed by chapter 584, divorce cases are governed by chapter 580, and domestic abuse cases are governed by chapter 586. In addition, the decision to license a foster home, although related, is outside of the purview of chapter 587A. Therefore, by limiting these protections to chapter 587A, this bill does not meet its stated goal and purpose.

Also, chapter 587A, HRS, and the Hawaii Family Court Rules provide judicial safeguards and a judicial appeal process to ensure that every parent is afforded due process when a child is removed from his or her home and when parental rights are terminated. Pursuant to section 587A-7, the DHS is required to consider numerous factors when assessing the safety of a home. The risk factors do not include the disability of a parent. In addition, the DHS has an administrative appeal process for a parent or a prospective parent who believes the DHS's decision regarding placement is erroneous. See, section 17-1625-15, Hawaii Administrative Rules. Ultimately, this bill is unnecessary because chapter 587A, the judicial process, and the administrative process sufficiently protect a person's liberty interest as a parent, regardless of whether that parent has a disability.

If the Legislature is inclined to pass a law that provides reassurance to the blind community that children will not be removed from their home under chapter 587A, unless there are legitimate safety concerns, then we suggest amending section 587A-7, HRS, to add that the disability of a parent or caregiver shall not be the sole basis for determining whether the parent or caregiver is able to provide a safe family home.

However, under article III, section 14, of the Hawaii State Constitution, “[e]ach law shall embrace but one subject, which shall be expressed in its title.” Additionally, the Court has previously held that an act is void if its subject is neither suggested by the title, nor germane to the subject expressed in the act. See, *Schwab v. Ariyoshi*, 58 Haw. 25 (1977). The title of this bill states that it relates to blind parents. Our suggestion broadens the subject of the bill to include parents with any disability and, if passed, is void. Unfortunately, this suggestion cannot be implemented in this bill as the subject and title limit this bill to rights for blind persons.

We respectfully ask this Committee to hold this bill.

PUBLIC HEARING TESTIMONY
SUPPORTING HOUSE BILL 1928 - RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS

COMMITTEE ON HEALTH & HUMAN SERVICES
Representative John M. Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair

Tuesday, February 6, 2018
8:30 AM
Conference Room 329
State Capitol
415 South Beretania Street

To the House Committee on Health & Human Services:

Mahalo for taking the time to hear this bill, which addresses one of the most pressing civil rights issues of today in Hawaii. In our state, blind people do not currently have the right to parent children, and I respectfully request that this right be established. I am extremely grateful to Chair Mizuno for introducing this bill, demonstrating a commitment to civil rights and protecting families in Hawaii.

When new parents meet their new baby in the delivery room, it is always a powerful emotional experience. For blind parents, there are extra emotions, which are not inherent consequences of blindness. Blind parents in Hawaii face the reality that their child can legally be taken away from them at birth and placed in the care of the state, simply because they are blind.

When parents take their children to a doctor's office for a regular checkup or maybe a sick visit, the results of the visit can always create emotions. For blind parents in Hawaii, these visits often entail interrogation from allied health professionals and social workers, who often do not believe that a blind parent can raise a child safely and effectively. A sighted parent has the privilege of being able to leave when it's time to go, but a blind parent must face the gatekeeper, who might not let them leave.

Adoption and foster care programs are also potential ways of building a family. For blind prospective parents in Hawaii, blindness can be used to deny them the opportunity to serve as foster parents or adopt a child. The parents and children alike can benefit from having an ohana if we let them.

In family law proceedings, for blind parents in Hawaii, courts can determine that a blind parent is unfit for custody rights without proving anything beyond blindness. A sighted parent has an unfair and baseless advantage over a blind parent in a process which is supposed to be fair. This judgment is flawed. Custody decisions should be carefully examined in many dimensions, but eyesight is irrelevant.

Daily lives of sighted people do not require them to understand how blind people function, but this should not lead to prejudiced assumptions about what blind people can and cannot do. Blind people have been raising children forever, and I respectfully ask you to give us the right to continue.

Sincerely,

Tammy Robar

91-1045 Maka'ike St
Ewa Beach, HI 96706

HB-1928

Submitted on: 2/3/2018 3:51:28 PM

Testimony for HHS on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Casandra Certeza	National Federation of the Blind of Hawaii	Support	No

Comments:

PUBLIC HEARING TESTIMONY

SUPPORTING HOUSE BILL 1928 - RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS

COMMITTEE ON HEALTH & HUMAN SERVICES

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Daily lives of sighted people do not require them to understand how blind people function, but this should not lead to prejudiced assumptions about what blind people can and cannot do. Blind people have been raising children forever, and I respectfully ask you to give them/us the right to continue.

I am a blind parent and I support this bill. I experienced this firsthand when my own mother told me that I need somebody cited to raise my son. Yes, I need a cited doctor to do a medical check up on my son and a cited driver to take my groceries home but I don't need a cited partner or a cited caretaker to help me take care of my son. If I was able to graduate with a masters degree and was able to work at a lot of different competitive jobs, I am definitely qualified to raise my son.

In addition to my own mother, the Filipino culture, one cook at a restaurant in particular believes the same way. For instance, I overheard one of the cooks at Richie's Drive Inn made a very demeaning comment that really bothered me. She said in Tagalog, that she felt sorry for my son because both of his parents are blind. I wanted to say something to her the minute I heard her say this things but I decided to just let her go and possibly educate her and the public in the future. Lack of education and ignorance

really does lead to misguided judgments. We love our son unconditionally and make extra efforts to make sure that he is healthy, happy and safe.

When we took our son for a routine medical check up, our son's pediatrician transferred to a different clinic. So we were seen by a different pediatrician. He decided to call a social worker after he asked us some questions. He claimed that it was a normal procedure for doctors to call in a social worker after a medical check up. But in my opinion that wasn't normal. He had lots of doubts about us because he saw that we were blind. We allowed the social worker to come in and talk to us. It was an awkward conversation. We felt like the conversation was unnecessary. Because I guarantee they wouldn't do this

to a sighted parent.

These incidents and probably other upcoming incidents are the reason why I support this bill.

Sincerely,

Casandra Certeza, MS, CRC

1250 Richard Ln, Apt 203

Honolulu, HI 96819

[\(808\) 797-7495](tel:(808)797-7495)

**Chair Mizuno
Vice Chair Kobayashi
House Committee on Health & Human Services**

**Tuesday February 6, 2018
8:30 AM**

TESTIMONY IN STRONG SUPPORT OF HB1928 RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS

Aloha Chair Mizuno, Vice Chair Kobayashi, Members of the House Committee on Health & Human Services,

My name is Jun Shin and I am a board member at-large for Young Progressives Demanding Action – Hawaii (YPDA Hawaii). I am testifying in strong support of HB1928, which will fight for the parental rights of those individuals who are currently blind or who may be blind at a later time in the context of and I quote from the measure itself, “child welfare, foster care, family law, and adoption”. I want to ask you to advance it through this committee.

This is a serious issue that is not really well addressed and it was only through meeting and talking with a blind man who has become a friend that I realized that despite all we have done for equality, there are these hidden layers of inequality that we have yet to have addressed.

From the birth of their children, blind parents already have to deal with the thought the institutions that are supposed to be supporting them, may decide to take their newborn baby away from them. This is just because the parents cannot see. As many of us already know, blind people are able to function just like the rest of us in society and are able to watch movies, be our instructors, walk around wherever they want, take the bus, testify at the legislature, and do so much more, yet we have archaic standards when it comes time for a blind individual to fall in love, get married, and have babies.

Why is it, that society accepts these individuals in so many aspects, with people like David Paterson of New York even becoming the Governor of New York but their civil rights as parents have to be infringed upon? They are actually interrogated like criminals in hospital visits for their children, and even when they want to adopt, blindness becomes a liability. Family courts will more than likely rule against parents who are blind when it comes to custody. In 2018, where we have finally reached a point in which much of society thinks discriminating against race, gender, or sexual identity is wrong, discrimination on the account of blindness still has yet to join the list of things society accepts as wrong. That is why I strongly support HB1928, and how it will help parents and potential parents who are facing this struggle in their lives, by fixing up these contradictions in institutions like the court and adoption places, and giving them the protection they need to take this issue head on. It is my hope that by fixing up all these loopholes that hurt blind people, that we can just let them enjoy the benefits of having a family. Blind people have been raising kids for centuries now, let’s not let that stop. Thank you Chair Mizuno for being the introducer of this bill.

Thank you for your hard work and deliberation on this issue,

Jun Shin,
Board Member At-Large
Young Progressives Demanding Action – Hawaii
1561 Kanunu St. #2106 Honolulu, HI 96814
Cell: 808-255-6663
Email: junshinbusiness729@gmail.com



Oahu Intertribal Council

501(c)(3)

P.O. Box 29002, Honolulu, HI. 96820

honolulupowwow@gmail.com

Phone: (801) 896-4487

Aloha Legislators:

29 January 2018

The Oahu Intertribal Council works to perpetuate the cultures of American Indians and Alaska Natives in Hawaii. For many years, American Indians and Alaska Natives experienced our children being removed from our custody due to prejudiced beliefs about our parental fitness. Whether by forced adoptions or by compulsory enrollment in Indian boarding schools, our families were disrupted by the removal of our children. All family members were negatively impacted. Though there exist variations in beliefs from one American Indian or Alaska Native nation to another, the belief that families should not be separated because of prejudiced beliefs is consistent and pervasive in our peoples.

It has come to our attention that blind people do not have the right to raise their own children here in the State of Hawaii. Just as it is wrong to make assumptions about how effectively a person can raise children based on race, it is also wrong to make assumptions about how effectively a person can raise children based on disability.

We understand that bills have been introduced in the 2018 Hawaii State Legislature to address this issue by creating procedural safeguards to protect families where blind people are the parents: Senate Bill 2208 and House Bill 1928.

We encourage all relevant parties to support the rights of blind people to raise children by supporting these bills.

American Indians and Alaska Natives know the damage caused by removing children from their parents' loving homes. Nobody should ever have to experience that again.

Mahalo,

Jacob Wruck

President, Oahu Intertribal Council

kobayashi2 - Kevin

From: Jo Elizabeth Pinto <jopinto@msn.com>
Sent: Saturday, February 3, 2018 9:17 PM
To: hhstestimony
Subject: In Support of the Rights of Blind Parents

PUBLIC HEARING TESTIMONY
SUPPORTING HOUSE BILL 1928 - RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS

COMMITTEE ON HEALTH & HUMAN SERVICES
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I am the blind mother of a bright, beautiful ten-year-old girl. Before she was born, there were those who worried that I could not raise her successfully. In spite of the doubters, I used ingenuity, common sense, and a bit of advice from other blind moms along the way, and my daughter and I are happy and thriving today. Yet I understand the fear of visiting the doctor or having a conference with a teacher for a common issue and wondering if the mundane event will trigger some well-meaning person to involve Child Protective Services, just to be helpful. Once CPS gets involved, disability suddenly becomes a factor when it hasn't been before, and fear and suspicion rule the day. Please make Hawaii a state where disability is no longer a deciding factor in right-to-parent cases. Make Hawaii a secure place for a wide variety of different kinds of families to live and thrive.

Sincerely,
Jo Elizabeth Pinto
65 South 10th Avenue
Brighton, CO 80601
(303) 655-8319
jopinto@msn.com

Jo Elizabeth Pinto

“The Bright Side of Darkness”
Is my award-winning novel,
Available in Kindle, audio, and paperback formats.
<http://www.amazon.com/author/jepinto>

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When new parents meet their new baby in the delivery room, it is always a powerful emotional experience. For blind parents, there are extra emotions, which are not inherent consequences of blindness. Blind parents in Hawaii face the reality that their child can legally be taken away from them at birth and placed in the care of the state, simply because they are blind.

When parents take their children to a doctor's office for a regular checkup or maybe a sick visit, the results of the visit can always create emotions. For blind parents in Hawaii, these visits often entail interrogation from allied health professionals and social workers, who often do not believe that a blind parent can raise a child safely and effectively. A sighted parent has the privilege of being able to leave when it's time to go, but a blind parent must face the gatekeeper, who might not let them leave.

Adoption and foster care programs are also potential ways of building a family. For blind prospective parents in Hawaii, blindness can be used to deny them the opportunity to serve as foster parents or adopt a child. The parents and children alike can benefit from having an ohana if we let them.

In family law proceedings, for blind parents in Hawaii, courts can determine that a blind parent is unfit for custody rights without proving anything beyond blindness. A sighted parent has an unfair and baseless advantage over a blind parent in a process which is supposed to be fair. This judgment is flawed. Custody decisions should be carefully examined in many dimensions, but eyesight is irrelevant.

Daily lives of sighted people do not require them to understand how blind people function, but this should not lead to prejudiced assumptions about what blind people can and cannot do. Blind people have been raising children forever, and I respectfully ask you to give us the right to continue.

Sincerely,

Tammy Robar

91-1045 Maka'ike St
Ewa Beach, HI 96706

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Sincerely,

Khamtoun Porter
45-577 Waikalua Place
Kaneohe, HI 96744

LATE

HB-1928

Submitted on: 2/5/2018 7:08:29 PM

Testimony for HHS on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez		Support	No

Comments:

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415 South Beretania Street

To the House Committee on Health & Human Services:

Mahalo for taking the time to hear this bill, which addresses one of the most pressing civil rights issues of today in Hawaii. In our state, blind people do not currently have the right to parent children, and I respectfully request that this right be established. I am extremely grateful to Chair Mizuno for introducing this bill, demonstrating a commitment to civil rights and protecting families in Hawaii.

When new parents meet their new baby in the delivery room, it is always a powerful emotional experience. For blind parents, there are extra emotions, which are not inherent consequences of blindness. Blind parents in Hawaii face the reality that their child can legally be taken away from them at birth and placed in the care of the state, simply because they are blind.

When parents take their children to a doctor's office for a regular checkup or maybe a sick visit, the results of the visit can always create emotions. For blind parents in Hawaii, these visits often entail interrogation from allied health professionals and social workers, who often do not believe that a blind parent can raise a child safely and effectively. A sighted parent has the privilege of being able to leave when it's time to go, but a blind parent must face the gatekeeper, who might not let them leave.

Adoption and foster care programs are also potential ways of building a family. For blind prospective parents in Hawaii, blindness can be used to deny them the opportunity to serve as foster parents or adopt a child. The parents and children alike can benefit from having an ohana if we let them.

In family law proceedings, for blind parents in Hawaii, courts can determine that a blind parent is unfit for custody rights without proving anything beyond blindness. A sighted parent has an unfair and baseless advantage over a blind parent in a process which is supposed to be fair. This judgment is flawed. Custody decisions should be carefully examined in many dimensions, but eyesight is irrelevant.

Daily lives of sighted people do not require them to understand how blind people function, but this should not lead to prejudiced assumptions about what blind people can and cannot do. Blind people have been raising children forever, and I respectfully ask you to give them the right to continue.

Sincerely,

Rita Porter
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