



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:
H.B. NO. 1265, RELATING TO PARENTAGE.

LATE

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 7, 2019 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lynn K. Kashiwabara, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to clarify that evidence of an alleged parent's non-consent to an artificial insemination procedure that resulted in the birth of a child may be considered as evidence relating to paternity in an action regarding the parentage of that child.

In LC. vs. MG and Child Support Enforcement Agency, No. SCAP-16-0000837 (Oct. 4, 2018), the Hawaii Supreme Court reviewed the issue of whether section 584-4, Hawaii Revised Statutes (HRS), which presumes legal paternity in certain circumstances, applies equally to men and women. The Court unanimously agreed that the statute applies equally to men and women, but it split as to whether one of the circumstances applied.

The majority held that a spouse cannot rebut the marital presumption of parentage by demonstrating by clear and convincing evidence a lack of consent to the other spouse's artificial insemination procedure.

Both the majority and minority opinions noted that the Legislature can provide further guidance on establishing and rebutting the presumption of parentage in situations where children are born by artificial insemination. This bill would clarify the legislative intent of 584-12, HRS, as it would explicitly provide that evidence of an

alleged parent's non-consent to an artificial insemination procedure that resulted in the birth of a child may be considered as evidence relating to paternity.

The Department sees no legal issues with House Bill No. 1265 and appreciates the opportunity to provide comments.

TESTIMONY OF THOMAS D. FARRELL
Regarding HB 1265, Relating to Parentage
Committee on Judiciary
Representative Chris Lee, Chair/Representative Joy San Buenaventura, Vice Chair
Thursday, February 7, 2019 2:05 p.m.
Conference Room 325, State Capitol

Good afternoon Representative Lee and Members of the Committee:

I have two concerns about HB 1265.

First, the bill would amend §584-12, to provide that evidence of non-consent to artificial insemination may be used to establish paternity. Maybe I'm the only one who thinks that's crazy, but it seems rather unfair to allow the fact that someone objected to becoming a father to establish that he is one. If anything, non-consent should be a defense to establishment of paternity. Similarly, consent to artificial insemination would tend to indicate that someone actually intended to become a father, and it seems reasonable to be able to use that to establish paternity.

The other problem I have with HB 1265 is that, while it appears to be only prospective in application, Section 1 of the Bill, containing its findings and purpose, purports to establish legislative intent in 1973. I think forty-six years is a little late to establish "what we really meant to say is..." This is just an attempt to overturn a Supreme Court decision that some people don't like. None of you were serving in 1973, and you couldn't have a clue what the legislature intended then.

This isn't just an academic argument. While the findings and purposes are not "black letter law," they may give rise to arguments about retroactive application, which could open a real can of worms.

So, I would respectfully request that you hold the bill, or if you must pass it on, then amend it to state that evidence of consent may be used to establish and evidence of non-consent may be used as a defense, and that the bill is prospective in application only.

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