



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Human Services

Senator Russell E. Ruderman, Chair

Senator Karl Rhoads, Vice Chair

Wednesday, January 30, 2019, 2:45 PM

State Capitol, Conference Room 016

By

Christine E. Kuriyama

Deputy Chief Judge, Senior Family Judge

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 210, Relating to Parental Rights.

Purpose: Requires the family court to terminate parental rights if the court determines, by clear and convincing evidence, that a natural parent committed sexual assault of the other natural parent; the child was conceived as a result of the sexual assault by the parent; and termination of parental rights is in the best interests of the child, under certain conditions. Requires the family court to suspend custody and visitation, after proper filing of a petition and a hearing, to any child whose parent or legal guardian is charged for a sexual assault or other offense, under certain conditions.

Judiciary's Position:

The Judiciary takes no position on this Bill but provides the following considerations:

1. The amendments being proposed to Hawaii Revised Statutes (H.R.S.) § 571 may be in conflict with Federal laws including the Uniform Child Custody Jurisdictional Enforcement Act (UCCJEA) and the Indian Child Welfare Act (ICWA). The mandatory provisions of this proposed Bill may be preempted by federal law, which would take precedence over state law, such as in ICWA cases.
2. In a custody case (i.e. divorce, paternity, or guardianship) in which there are already custody orders in place, it would be more appropriate to file a motion in the prior court action involving the minor child(ren). Amending the bill to address "motions" in existing



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cases rather than a "petition" for a newly created and independent cause of action would provide greater clarity and less confusion with related cases. Thus, a custodial parent would just be required to file a motion.

Further, by applying the above recommendations, sub-sections (b) and (c) would not be necessary, as these sections could be very problematic in its application as written-- particularly vis-a-vis the UCCJEA and other issues of jurisdiction. Without these sections, existing court rules would apply to motions filed under these provisions.

If there are no existing court actions or court orders regarding the minor child(ren) at issue, the petitioner would have other avenues for fast action, such as via H.R.S. § 586 (domestic abuse restraining orders) and/or filing a divorce or paternity action with an Order to Show Cause for immediate protection pending resolution of the case in chief.

3. The proposed language of the Bill does not seem to allow the Court to make a determination based on the best interest of the child. The Court must be given the discretion to address transitional periods and details of the prohibition as required by the minor child and the child's age, needs, and characteristics. For example, a teenager may handle an abrupt cessation of contact better than a younger child. The Family Court is confronted by so many considerations with the families that come before it as well as different children within the same family.

Thank you for the opportunity to testify on this measure.



O`ahu County Committee on Legislative Priorities (OCCLP)

COMMITTEE ON HUMAN SERVICES
Senator Russell E. Ruderman, Chair
Senator Karl Rhoads, Vice Chair

DATE: Wednesday, January 30, 2019
TIME: 2:45 p.m.
PLACE: Conference Room 016 State Capitol

RE: SB 210 Relating to Parental Rights

Aloha mai kakou Chair Ruderman, Vice Chair Rhoads, and Members of the Senate Committee on Human Services:

The O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawai`i (DPH) hereby submits its testimony in **SUPPORT of SB 210 relating to Parental Rights**.

SB 210 requires the family court to terminate parental rights if the court determines, by clear and convincing evidence, that a natural parent committed sexual assault of the other natural parent; the child was conceived as a result of the sexual assault by the parent; and termination of parental rights is in the best interests of the child, under certain conditions. SB 210 requires the family court to suspend custody and visitation, after proper filing of a petition and a hearing, to any child whose parent or legal guardian is charged for a sexual assault or other offense, under certain conditions.

DPH is committed to ending the scourge of violence against women - wherever it occurs – whether in our homes, streets, schools, military, workplace, or elsewhere. DPH will support comprehensive services for survivors and increase prevention efforts in our communities and on our school campuses. DPH will fight to bring an end to sexual assault – wherever it occurs, including on campuses – because everyone deserves a safe environment where they can learn and thrive, not live in fear. We will provide comprehensive support to survivors and ensure a fair process of all . . . in the criminal justice system. We will increase violence prevention education programs that cover issues like consent and bystander intervention . . . *Democratic Party of Hawai`i Platform (2018), p. 15, ln. 21-28.*

For the foregoing reasons, OCCLP supports SB 210 and urges its passage out of the Committee on Human Services.

Mahalo nui loa

Me ka `oia`i`o

/s/ *Melodie Aduja*

Melodie Aduja

Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i

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SB-210

Submitted on: 1/29/2019 1:13:55 PM

Testimony for HMS on 1/30/2019 2:45:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dara Carlin, M.A. | Individual | Support | No |

Comments:

Please pass SB210 in STRONG SUPPORT to curtail the ongoing damage and harm done to victims by rape and sexual assault. Thank you.

SB-210

Submitted on: 1/29/2019 1:40:42 PM

Testimony for HMS on 1/30/2019 2:45:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Joy Kaopuiki, M.S. | Individual | Support | Yes |

Comments:

LATE

SB-210

Submitted on: 1/29/2019 3:08:14 PM

Testimony for HMS on 1/30/2019 2:45:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|---------------------------|---------------------------|
| Ann S Freed | Testifying for Hawaii Women's Coalition | Comments | No |

Comments:

Aloha, Chair Ruderman, Chair, and Vice Chair Rhoads,

The Coalition is grateful that you are hearing this bill this session. We have had this bill in our package in past years, but did not include this year. We are waiting on our member organizations to provide guidance for testimony.

We certainly support the intent of this bill and will provide fuller testimony at a later date.

Mahalo again,

Ann S. Freed, Co-Chair, Hawaii Women's Coalition