



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, 2021 Regular Session

House Committee on Health, Human Services, & Homelessness

Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair

Thursday, February 11, 2021, 9:30 AM
State Capitol, Conference Room 329
VIA VIDEOCONFERENCE

by:

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Supreme Court Staff Attorney

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 339, Relating to the Family Court.

Purpose: Makes decisions of the family court appealable to the supreme court instead of the intermediate court of appeals.

Judiciary's Position:

The Judiciary respectfully opposes this bill, but offers suggestions to address the concerns raised.

The reason stated for this bill is the length of time families, including children, must wait for decisions related to children and families. The Judiciary recognizes that appeals involving the custody of children must be decided in a timely fashion. To that end, the Supreme Court has adopted an expedited process for handling family court termination of parental rights cases. In addition, both the Supreme Court and the Intermediate Court of Appeals (ICA) give priority to termination of parental rights cases, and family court matters involving the custody of children.

For fiscal year 2019-2020, there were fifty family court appeals terminated by the ICA. Of the fifty final dispositions in the ICA, only fourteen litigants filed an application for certiorari in the Supreme Court. Thus, the majority of family court appeals are resolved by the ICA and do not move to the Supreme Court.

Of the three cases cited in HB339 as evidence of the delay in child custody matters, two appeals did not involve the custody of children. Cox v. Cox, 138 Hawai'i 476, 382 P.3d 288 (2016), involved the award of attorneys' fees. Brutsch v. Brutsch, 139 Hawai'i 373, 390 P.3d. 1260 (2017), involved the division of the husband's inheritance. The opinion in Brutsch v. Brutsch, stated specifically that the issue of child custody was resolved and was not the subject of the appeal.

Tumaneng v. Tumaneng 138 Hawai'i 468, 382 P.3d 280 (2016) did involve the custody of a child. Review of the record shows, however, that a portion of the time the case was pending in the appellate courts was the result of requests for extensions filed by both parties to the appeal. Once briefing was complete, the ICA issued its decision quickly. The Supreme Court issued its published opinion within seven months after the application for a writ of certiorari was accepted. Further, either party could have filed an application for transfer to the Supreme Court pursuant to HRS§ 602-58 and Rule 40.2 of the Hawai'i Rules of Appellate Procedure.

Inasmuch as there are already procedures in place to ensure family court appeals, particularly appeals involving the custody of children, are resolved in a timely fashion, the change proposed by HB339 is unnecessary. The Judiciary is open, however, to considering changes that may further expedite appeals from final decisions entered in family court matters. One possibility is specifically adding child custody matters to the grounds for discretionary transfer of cases from the ICA to the Supreme Court pursuant to HRS§ 602-58(b).

Thank you for the opportunity to testify on this measure.

Aloha Representative and Chair Yamane and Vice Chair Tam and Committee Members:

My name is Kenichi Yabusaki of Kaneohe, Hawaii. I strongly support HB339 as it supports due process in both the State and Federally. Due Process is guaranteed by the Constitution and with respect to matters involving Family Court and our Children (Keiki), HB339 will facilitate and process to fullest extent of the Law. I hope the Health and Human Services Committee will see The passage of HB339 vital to helping the families of Hawaii.

Sincerely,

Kenichi K. Yabusaki, Ph.D.
Kaneohe, HI