



*The Judiciary, State of Hawai'i*

**Testimony to the Thirty-First Legislature  
Regular Session of 2022**

**Senate Committee on Judiciary**  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Monday, February 28, 2022, 10:30 AM  
State Capitol  
VIA VIDEOCONFERENCE

**WRITTEN TESTIMONY ONLY**

by:

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**Bill No. and Title:** Senate Bill No. 2343, SD1, Relating to the Family Court.

**Purpose:** Allows cases within the jurisdiction of the Intermediate Court of Appeals involving a judgment, order, or decree of a family court that affects the custody of a child or minor, including involuntary termination of parental rights, to be transferred to the Supreme Court. Effective 12/31/2050.

**Judiciary's Position:**

The Judiciary recognizes that appeals involving the custody of children must be decided in a timely fashion. To this end, the Supreme Court has adopted an expedited process for handling family court termination of parental rights cases, which allows for accelerated appeal deadlines and advancement of the appeals for disposition. See Rules Expediting Child Protective Appeals. 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 2020-2021, there were fifty-two Family Court appeals terminated by the ICA. Of the fifty-two final dispositions in the ICA, only nine litigants filed an application for writ of certiorari in the Supreme Court (and only three of those concerned the custody of a child). Thus, the majority of Family Court appeals are resolved by the ICA and do not come before the Supreme Court.

SB2343, SD1 cites three cases as examples of delays in child custody matters. Two of those appeals did not involve the custody of children. Cox v. Cox, 138 Hawai'i 476, 382 P.3d 288 (2016), involved the award of appellate attorney fees arising out of a divorce action. Brutsch v. Brutsch, 139 Hawai'i 373, 390 P.3d. 1260 (2017), involved division of the husband's inheritance in a divorce action, and the opinion was clear that the issue of child custody was resolved and was not the subject of the application for writ of certiorari before the Supreme Court.

Tumaneng v. Tumaneng 138 Hawai'i 468, 382 P.3d 280 (2016), did involve the custody of a child in a divorce action. 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 in the briefing schedule filed by both parties to the appeal. Once briefing was complete, the ICA issued its decision quickly. Within seven months of accepting the application for writ of certiorari, the Supreme Court issued its published opinion.

The Judiciary firmly supports the Family Court's mission "to provide a fair, speedy, economical, and accessible forum for the resolution of matters involving families and children." While the Judiciary believes there are already procedures in place to ensure Family Court appeals involving the custody of children are timely and expeditiously resolved, the Judiciary appreciates the Senate Committee on Human Services' incorporation of the suggested process to allow for transfers from the ICA to the Supreme Court of Family Court matters that affect the custody of children by way of an amendment to HRS section 602-58(b). The Judiciary believes the amendment would address the concerns raised in SB2343, SD1, while ensuring the Supreme Court will still have the ability to timely resolve other types of cases, apart from child custody cases, that are also given priority status by statute.<sup>1</sup>

Thank you for the opportunity to comment on this measure.

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<sup>1</sup> At present, there are over twenty types of appeals that are given priority by statute or case law. Some of those appeals include: HRS section 641-13(7) (appeals by the state in criminal cases involving pretrial orders granting motions to suppress evidence, to suppress confessions, or for return of property); HRS section 11-52 (appeals from election registration decisions made by the board of registration); HRS section 232-19 (appeals from the Tax Appeal Court); HRS section 92F-15(f) (appeals from actions to compel disclosure of government records under the Uniform Information Practices Act); HRS section 101-34 (interlocutory appeals from eminent domain decisions involving the issue of public use or superior use of the property to be condemned); HRS section 37D-10 (appeals from a first circuit decision on the validity of a financing agreement); HRS section 201B-15(e) (appeals from circuit court decisions on the validity of HRS ch. 201B or actions of the Hawai'i Tourism Authority), and all contested case hearing direct appeals to this court.