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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
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February 2, 2022

TO: The Honorable Senator Joy San Buenaventura, Chair
Senate Committee on Human Services

FROM: Cathy Betts, Director

SUBJECT: **SB 2878 – RELATING TO CHILDREN.**

Hearing: February 3, 2022, 3:00 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) has comments and concerns about whether the approach is equitable. The department respectfully requests an amendment and defers to the Judiciary.

PURPOSE: Expands the original jurisdiction of family court to include proceedings for declaration of emancipation of minors. Expands the circumstances under which a minor shall be deemed to be emancipated to include the time when the minor is on active duty with the Armed Forces of the United States and upon issuance of a declaration of emancipation by the family court. Specifies the rights of an emancipated minor. Allows a minor who has reached the age of sixteen years to petition the family court for a declaration of emancipation. Requires the court to take certain actions regarding an investigation of the petition, appointment of a guardian ad litem and legal counsel for the petitioning minor, and the findings necessary to grant the petition. Requires the court to order the minor's parents or legal guardian to pay for any services ordered by the court for the petition. Allows certain parties to petition the family court for voidance or rescission of a declaration of emancipation. Allows parties to appeal the court's decision to the intermediate court of appeals.

This bill measure proposes significant amendments to Hawaii's emancipation law, section 577-25, Hawaii Revised Statutes. The department agrees that because of their minority, society's institutions treat minors differently than similarly situated adults. For example, minors cannot sign a rental agreement, access shelter, open a bank account, obtain a driver's license, or register themselves for school without the consent of their parents or custodians. While this proposal would allow emancipated minors to make all of the above decisions, the proposed petition for the emancipation process appears to apply to a few minors, those with the financial wherewithal. Minors from low-income households or unaccompanied minors who lack resources would have to be married or join the armed forces to make the same decisions as their wealthier emancipated counterparts. As drafted, this proposal would emancipate a few and prevent most minors from making essential and pro-social decisions such as registering themselves for school or opening a bank account.

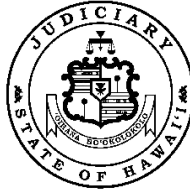
The department respectfully requests the deletion of the proposed section, page 10, lines 3-8, as follows:

~~"§577-25 (e) (5) (A) Child welfare services of the department of human services' social services division to investigate the allegations in the petition and file a report containing the results of the investigation with the court; or"~~

The Social Services Division investigates reports of abuse or neglect of children or vulnerable adults; it does not have available staff or resources to verify facts contained in the petition for a declaration of emancipation. The measure does not include an appropriation for additional staff or resources for DHS to carry out these investigations. The department would not be able to use existing staff or resources that use federal funds; there are no other federal funds available; consequently, this new responsibility would require 100% State general funds. The department also notes that the Judiciary would also require a State general fund appropriation.

However, If the petition for a declaration of emancipation leads court employees or officials to suspect child abuse or neglect, including if the minor was a victim of sex- or labor-trafficking, employees and officers of the courts are required to make a report to DHS or law enforcement. Employees and officers of the courts are mandated reporters of child abuse and neglect per section 350-1.1(a)(4), HRS.

Thank you for the opportunity to provide comments on this measure.



The Judiciary, State of Hawai‘i

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

Senate Committee on Human Services
Senator Joy A. San Buenaventura , Chair
Senator Les Ihara, Jr., Vice Chair

Thursday, February 3, 2022 at 3:00 p.m.
State Capitol, Conference Room 225 & Via Videoconference

WRITTEN TESTIMONY ONLY

by
Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2878, Relating to Children.

Purpose: Expands the original jurisdiction of family court to include proceedings for declaration of emancipation of minors. Expands the circumstances under which a minor shall be deemed to be emancipated to include the time when the minor is on active duty with the Armed Forces of the United States and upon issuance of a declaration of emancipation by the family court. Specifies the rights of an emancipated minor. Allows a minor who has reached the age of sixteen years to petition the family court for a declaration of emancipation. Requires the court to take certain actions regarding investigation of the petition, appointment of a guardian ad litem and legal counsel for the petitioning minor, and the findings necessary to grant the petition. Requires the court to order the minor's parents or legal guardian to pay for any services ordered by the court for the petition. Allows certain parties to petition the family court for voidance or rescission of a declaration of emancipation. Allows parties to appeal the court's decision to the intermediate court of appeals.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 2878, but respectfully offers the following concerns. This list of concerns, which is not all inclusive, follows the order of the text of the bill.



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1. Page 5, line 3:

“(2) Is on active duty with the armed forces of the United States; or”

In order to be eligible for enlisting in the armed forces or gain an appointment to a service academy, the youth must be 17 with parental consent or 18 without parental consent. This subsection may not be necessary.

2. Page 7, line 11:

“(c) A minor who has reached the age of sixteen years who seek to be emancipated shall file a petition for a declaration of emancipation with the family court in the circuit in which the minor resides. The petition shall be filed by the minor seeking emancipation, and a parent or guardian of a minor shall not, in their individual capacity or as a representative or agent of the minor, petition for emancipation of the minor.”

There appears to be two problems with this provision. The first is that a minor cannot file a petition or complaint in court. A “next friend” or guardian ad litem must file on the youth’s behalf. Hawaii Revised Statutes §551-2 provides that:

“Nothing in this chapter impairs or affects the power of any court to appoint a guardian to defend the interests of any minor or person not in being impleaded in such court, or interested in any matter there pending, or **its power to appoint or allow any person as next friend for a minor, to commence, prosecute, or defend any action or proceeding in the minor's behalf**; provided that in all proceedings for annulment, divorce, or separation, except in the case of annulment on the ground of nonage, either spouse, although a minor, may sue or be sued in the minor's name without a guardian or next friend.” *(emphasis added)*

The family court would not know about a youth seeking emancipation without the development of a community resource to aid youth in preparing and filing petitions. As an aside, such a resource would be much better “first step” for the youth.

The second problem is that this bill appears to prohibit parents and guardians from filing emancipation petitions. Unless a court has found that the parents or guardians are incompetent, there may be constitutional issues with this prohibition.



3. Page 9, line 14:

“(3) Appoint a guardian ad litem to represent the interest of the minor throughout the pendency of the minor's emancipation proceedings;
(4) Appoint a legal counsel to represent the interest of the minor throughout the pendency of the minor's emancipation proceedings, where the court finds that the minor requires a separate legal advocate to advise the minor regarding the rights, responsibilities, and legal consequences associated with emancipation, and the minor is unable to afford private counsel;”

In law and in practice, guardians ad litem perform the responsibilities listed in subsection (4) and the court would only appoint legal counsel upon the guardian ad litem's recommendation or in the very rare case where enmity has developed between the youth and the guardian ad litem.

The family court does not have the budget to compensate these professionals. Furthermore, as is the practice in the civil division and probate court, funds for guardians ad litem, court appointed counsel, and Kokua Kanawai are covered by the parties and/or the estate. This bill should allow that practice.

4. Page 10, line 3:

“[Upon receipt of the petition, the court shall]
5) Require:
(A) Child welfare services of the department of human services' social services division to investigate the allegations in the petition and file a report containing the results of the investigation with the court; or
(B) The minor to undergo a mental health evaluation conducted by a licensed mental health professional, as arranged for by the court or the minor's parents or guardian; and . . .”

It appears that a delay is mandated between the “receipt” of the petition and its “filing” so that the petition's allegations can be investigated or the minor can be evaluated. We defer to the department of human services regarding subsection (A). Without a finding of jurisdiction, the family court is unable to order a minor to undergo a mental health evaluation pursuant to subsection (B) or to order compensation for the mental health professional.



5. Page 10, line 13:

“(6) Provide the minor with a pamphlet written in plain language and counseling informing the minor of the rights and responsibilities of an emancipated minor and alternative options to emancipation available to the minor.”

The type of counseling in this provision is not an appropriate function for the court. In addition, for practical reasons, the information about rights and responsibilities are best conveyed face-to-face by a professional trained in such counseling and with a current focus on available community and government resources and options. The court is not in a position to counsel both the youth and the parents about alternative options concerning counseling for one or all family members or helping the family negotiate different agreements and expectations or looking at possibilities provided by extended family members.

6. Page 12, line 15:

“(h) A declaration of emancipation of a minor who has subsequently become indigent with no means of support other than public assistance is subject to rescission. A petition to rescind a declaration of emancipation on the ground that the minor has become indigent may be filed by:

- (1) The minor declared emancipated;
- (2) The minor's conservator; or
- (3) Corporation counsel or county attorney of the county

in which the minor resides, with a family court in the circuit in which the minor or the conservator resides.”

Besides developing a community resource to assist youth before (and, perhaps, after) the filing of an emancipation petition, the Legislature could assign the corporation counsel or county attorney of the county in which the minor resides to work in conjunction with the community resource and to be “next friend” to all youth desiring emancipation.

7. Page 15, line 12:

“Service of summons, process, or any notice required by this section may be made by any suitable person under the direction of the court and upon request of the court shall be made by any police officer. **The judge may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing** of a case coming



within the purview of this section. Section 621-7 shall apply to persons summoned under this section other than a parent, guardian, or other legal custodian of the child concerned.” (*emphasis added*)

H.R.S. Section 621-7 concerns fees in criminal cases:

“(a) Every witness legally required to attend a state court or grand jury in any criminal case, other than a public officer or employee, shall be entitled to \$20 for each day's attendance and a reasonable mileage fee to be established pursuant to rules adopted by the judiciary for each mile actually and necessarily traveled on the ground each way, including travel to and from the nearest airport when required to travel from another island or from outside the State.

In addition to witness' fees, every witness:

(1) Who attends a state court from outside the State shall be entitled to the actual round-trip cost of plane travel, plus \$200 per twenty-four-hour day; or

(2) Who attends a state court from any island in the State other than that on which the court holds session shall be entitled to the actual round-trip cost of plane travel, plus \$55 per twenty-four-hour day; provided that when the witness is required to stay overnight, the witness shall be entitled to an additional \$145 per twenty-four-hour day.

These per diem payments shall cover all personal expenses, such as board and lodging, and shall be computed on the basis of quarter day periods of time.

(b) Any police officer or other public officer or employee (except the county attorney, prosecuting attorney, or deputy county attorney or deputy prosecuting attorney), who attends a state court as a witness from a district other than that in which the court is holding session, shall be allowed the police officer's, public officer's, or employee's travel cost and mileage fees as provided in this section. A public officer or employee, if not salaried, shall receive witness fees.”

It appears that this bill requires payment of travel expenses by the court to persons summoned to appear except for parents, guardians, and legal custodians. It also appears that the reference to §621-7 serves as a limit of these expenses. Besides the practical problem that the court does not have the funds for these payments, this practice in civil cases is quite unusual.

8. Page 16, line 8:

“(l) Notwithstanding any other law to the contrary, the court shall order reasonable fees of counsel, experts, and the



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minor's guardian ad litem, and other costs of services required in relation to a petition for declaration of emancipation, including reasonable fees for service of process of the petition, summons, and notice of hearing, and services provided [by] mental health providers, to be paid by the minor's parents or guardian.”

This provision is similar to the practice in the civil division and the probate court. However, there are very divergent practical considerations and consequences. The judge in civil and probate cases have some idea of the financial wherewithal of the parties and/or the size of the estate. This knowledge informs the judge’s decisions whether to make appointments, whom to appoint, how much the professional will be paid, and the source(s) of that payment.

The family court is in a very different situation. Appointments will be made with no idea who will pay and how. It may be that few or no professionals will accept an appointment. If the intent is for family court to cover the “shortfall”, then appropriations must be made and made in addition to the judiciary's existing funding or budget requests.

We hope that these comments will be helpful. Thank you for the opportunity to testify on this measure.

HAWAII YOUTH SERVICES NETWORK

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Web site: <http://www.hysn.org> E-mail: info@hysn.org

Carole Gruskin, President

Judith F. Clark, Executive Director

Bay Clinic

Big Brothers Big Sisters Hawaii

Big Island Substance Abuse Council

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Collins Consulting, LLC

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children's Justice Center of Maui

Get Ready Hawai'i

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action Network

Hawaii Health & Harm

Reduction Center

Ho'ola Na Pua

Kahi Mohala

Kokua Kalihi Valley

Kokua Ohana Aloha (KOA)

Maui Youth and Family Services

Na Pu'uwai Molokai Native

Hawaiian Health Care Systems

P.A.R.E.N.T.S., Inc.

Parents and Children Together (PACT)

PHOCUSED

PFLAG – Kona Big Island

Planned Parenthood of the

Great Northwest and

Hawaiian Islands

Residential Youth Services

& Empowerment (RYSE)

Salvation Army Family

Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community Center

The Catalyst Group

January 24, 2022

To: Senator Joy San Buenaventura, Chair,
And members of the Committee on Human Services

TESTIMONY IN SUPPORT OF THE INTENT OF SB 2878 RELATING TO CHILDREN

Hawaii Youth Services Network, a statewide coalition of youth-serving organizations, support SB 2878 Relating to Children.

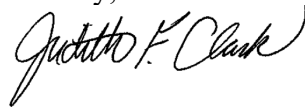
There are circumstances under which it is appropriate for a minor to emancipate from their parents.

Hawaii Youth Services Network recommends amendments to the bill to ensure that the minor:

- is not seeking emancipation due to duress or coercion by a parent or guardian. In the Hawaii Street Youth Survey, 41% of the youth reported that they were forced to leave home by their parents.
- Can continue to receive educational and other services intended for and needed by adolescents.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director

SB-2878

Submitted on: 1/28/2022 6:03:24 PM

Testimony for HMS on 2/3/2022 3:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|-------------------------------------------------------------------|---------------------------|-----------------------------------|
| Michael Golojuch Jr | Testifying for Stonewall Caucus of the Democratic Party of Hawaii | Support | Yes |

Comments:

Aloha Senators,

The Stonewall Caucus of the Democratic Party of Hawai'i (formerly the LGBT Caucus) fully supports SB 2878.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair and SCC Representative
Stonewall Caucus for the DPH

**OPPORTUNITY
YOUTH
ACTION HUI**

3 February 2022

Senate Committee on Human Services

Hearing Time: 3:00 p.m.

Location: Virtual

Re: SB 2878, Relating to Children

Aloha mai e Chair San Buenaventura, Vice-Chair Ihara and members of the Committee:

We are writing in **support** of SB 2878, relating to children. This measure allows a minor who has reached the age of sixteen years to petition the family court for a declaration of emancipation. It requires the court to take certain actions regarding investigation of the petition, appointment of a guardian ad litem and legal counsel for the petitioning minor, and the findings necessary to grant the petition. Thank you for introducing and hearing this bill.

The organizations and individuals who comprise the Opportunity Youth Action Hui work with and for youth and young adults, many of whom lack connections to stable parents or families and would benefit from emancipation so that they can seek the needed resources for food, shelter, and healthcare services. Emancipation allows a youth to be freed from the custody and control of their parents in certain appropriate circumstances, often a last resort, and to have many of the rights and responsibilities of an adult. We believe this measure is important step toward meeting the needs of some youth in our community.

The Opportunity Youth Action Hui is a collaboration of organizations and individual committed to reducing the harmful effects of a punitive incarceration system for youth, promoting equity in the justice system, and improving and increasing resources to address adolescent and young adult mental health needs.

We seek to improve the continuity of programs and services for youth and young adults transitioning from minor to adult status; eliminate youth houselessness and housing market discrimination against young adults; and promote and fund more holistic and culturally-informed approaches among public/private agencies serving youth.

Please support SB 2878.

SB-2878

Submitted on: 1/28/2022 7:37:19 PM

Testimony for HMS on 2/3/2022 3:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Mike Golojuch, Sr. | Individual | Support | No |

Comments:

I support SB2878.

Mike Golojuch, Sr.

SB-2878

Submitted on: 2/3/2022 3:40:07 PM

Testimony for HMS on 2/3/2022 3:00:00 PM



| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|----------------------|---------------------|---------------------------|-----------------------------------|
| Shana Wailana Kukila | Individual | Comments | No |

Comments:

Aloha Senators,

Regarding SB2878, there needs to be an investigation into domestic violence in the homes of these at risk youth in any assessment prior to emancipation. Parents who have teenagers are often in need of help due to the behavior issues they experience with their children, and not all are about abuse or neglect. What needs to happen is for youth to have ho'oponopono mediation services with their parents and families exhaust all avenues as such before they are emancipated.

There are teens in crisis due to their own actions and not those of their parents, so we need to make sure the parents aren't always held at fault as a rule. Many parents struggle with their unruly teens, especially single parent households. The family needs support, not more ways a child can run away from home for whatever the reason. Teens are a part of an 'ohana, and they should be treated as a whole person with many issues, not just one.

Abuse and neglect is a family issue and should be addressed as a family issue. Children need to know that reconciliation with their parents can happen, and they need to be taught the importance of 'ohana, lokahi, and unconditional love and acceptance for themselves and others, even for their parents who have struggles and challenges like they do. There are real horror stories of course, but for the majority of teens in crisis, there is a path to restoration and healing with their parents. The matrix of the DHS system as reflected in this bill doesn't lead to this, and it pits children against parents which does not lead to a healthier community, only more children in shelters.

The measure of success for the Department of Human Services should be that little to NO youth are in need of protection and emancipation, not MORE. There needs to be an effort to address the root of the problem, not just pointing the fingers of blame on parents or caregivers alone. Preventative, mitigating efforts should be where the focus is, and not relying on old methods like dividing up and destroying families in the hopes of protecting them.

Please uphold the integrity of the family at all costs, for this is the strength and foundation of any society. Removing and emancipating children away from their families should be a last resort, not a first resort.

Mahalo for your time and for allowing me to testify.

Mahalo,

Shana W. Kukila

Hilo, Hawai'i