



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Scott Y. Nishimoto, Chair

Representative Joy A. San Buenaventura, Vice Chair

Wednesday, February 1, 2017 2:00 PM

State Capitol, Conference Room 325

by

Judge R. Mark Browning

Senior Family Judge and Deputy Chief Judge

First Circuit

Bill No. and Title: House Bill No. 79, Relating to Family Law.

Purpose: Temporarily requires parties in a divorce proceeding to refrain from moving a child from a county of residence, removing the child from school, interfering with custodial arrangements, or discontinuing payments on financial obligations. Expedites mediation and property disclosure.

Judiciary's Position:

The Judiciary respectfully opposes this bill. The Family Court has grave concerns about the negative effects of this bill on the welfare and safety of the children. Unlike a similar bill introduced in this Legislature designed to preserve the status quo of marital property for the benefit of the parties, this bill may disrupt the parties and their children and may lead to increased litigation. Unfortunately, the children will be vulnerable to increased harm above the trauma that is already inherent when their parents part.

This bill will encourage a parent (usually the one with greater resources and advantages) to arrange a favorable “status quo” prior to the filing of a complaint. The vast majority of parents going through a divorce will proceed in a humane manner and will recognize the need to make decisions in their children’s best interest despite the tension and bitterness between the parents. Unfortunately, in the family court’s collective experience, a significant percentage of parents are often so filled with bitterness and their own hurt that they lose sight of how best to parent during this traumatic chapter in their lives. Often, because of greater resources and/or the



dynamics of family violence, one parent is significantly more powerful than the other. This bill will encourage manipulation of a new “status quo” before the complaint is filed.

On the other end of the spectrum, the requirements in subsection (a), page 3 beginning at line 20, even the most amicable parties will find themselves in an intolerable position. These requirements have the effect of binding parents in the same living situation that led to their decision to seek a divorce. This kind of pressure cooker situation will harm children.

This bill introduces direct application of the criminal law into the breakup of families, at a critical time when parents are most likely to act badly. Once again, the parent with the greater resources will have the upper hand. The parent who is using violence and intimidation will have the upper hand. As the Judiciary has experienced with previous sentencing laws, reliance on criminal sanctions and mandatory sentences lead to inevitable delays. Because civil cases are often stayed until the related criminal cases have concluded (including the time period for appellate review, the parties and their children will be subject to an extended period of time before their lives can move on with any certainty. This bill that is designed with the honorable intention of protecting children may potentially cause them greater harm.

The Judiciary also has concerns about practical matters. References to “existing custodial rights” or an “existing custodial schedule” are vague and will be difficult to address. The decision by one or both parents to divorce is already cataclysmic for their children. Many resulting disruptions, including housing and schooling, are inevitable. Even in cases where the parents are working hard to remain amicable and cooperative, painful decisions must be made and implemented. In cases of unequal power between the parents and/or cases with family violence, the problems for the children are magnified.

Another practical matter is the common inability of a couple, faced with paying for two households, to “[c]ontinue to pay for existing financial obligations” (page 4, line 14). In our state with its very high cost of living, it is inevitable that the couple will not be able to meet this requirement at the initial phases of the divorce (and, often, longer). This common occurrence will expose many struggling parents to possible incarceration. Unless the couple is rich and treat each other fairly, most divorcing couples simply struggle along, especially during the initial stages of a divorce, without resorting to court action.

Subsection (b), from page four at line 19, is vague and does not appear to comport with the court’s current rules and practices—for example, section 580-2 does not reference a scheduled “initial appearance.” We are unable to give more specific feedback because of the nature of the vagueness.



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The “written informational statement” referred to in subsection (c), page 5, line 4, may be problematic. First, the information as stated in the bill is confusing and may not be accurate. Second, it appears to require a new hearing within 20 days of the filing of the complaint. Third, the references and requirements regarding mediation are simply not possible unless the Judiciary receives adequate funding from the Legislature to operate its own mediation services.

Subsection (e), beginning at page six, is troubling. This section creates a criminal misdemeanor based on behaviors exhibited by parents with shocking regularity when they are reeling from the reality of a divorce proceeding and their lives are in turmoil. The mandatory minimums may lead to the creation of additional circuit-level (jury) criminal courtrooms, as reflected in our experience with the mandatory minimums in criminal family violence cases. As noted above, the related civil matter will be delayed pending the disposition of the criminal case. Our concern is that, despite the intentions of this bill, the children will suffer.

We respectfully ask that this bill be held in committee.