



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Government Operations

The Honorable Brian T. Taniguchi, Chair
The Honorable Dwight Y. Takamine, Vice Chair
Friday, February 6, 2009, 9:00 a.m.
State Capitol, Conference Room 016

by

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District Family Judge
Family Court, First Circuit

Bill No. and Title: Senate Bill No. 108, Relating to Family Court.

Purpose: To authorize the Family Court to increase the maximum term of a temporary guardianship of a minor from six months to twelve months.

Judiciary's Position:

The Judiciary strongly supports the passage of this bill which is part of the Judiciary's legislative package. Presently, a plain reading of the guardianship law appears to restrict the duration of a temporary guardianship order over a minor, under age 18, to a maximum of 6 months. The purpose of this bill is to authorize the Family Court to grant temporary guardianships of minors for a term of 12 months. For the purposes of this bill, a guardianship is a type of custody order issued by a Court. There are two types of guardianships: 1) for a minor child; and 2) for an incapacitated person. The guardian of a minor has the powers of a parent regarding the minor's support, care, education, health and welfare (HRS Section 560:5-208(a)). A guardianship differs from an adoption because the rights of the minor's birth parents are not terminated before a guardian is appointed. During the pendency of the more permanent guardianship proceedings, the Court is authorized to appoint a temporary guardian for the minor if there is an immediate need.

A guardianship action is initiated by the filing of a petition for guardianship. Notice of this pending action must be given to the minor's birth parents. The Court may issue a permanent guardianship order which is in effect until the minor reaches age 18. There are situations where



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the caretaker, who is initiating the guardianship action, needs a temporary custody order in the interim period before a permanent guardianship order is issued.

The critical current need and the primary reason for introduction of this bill is that temporary caretakers who are in the military and who initiate guardianship actions are currently unable to obtain medical benefits for the children already in their care because federal law requires that the guardian have a custody order for at least 12 consecutive months*. In fact, these caretakers are unable to receive *any* benefits unless they have such a custody order. This bill proposes to amend existing law to permit the Court to issue a temporary guardianship order for a term of 12 months.

Thank you for the opportunity to submit testimony in support of this legislation.

*See definition of "dependent" in 10 USCA Section 1072 (Armed Forces: Medical and Dental Care, Definitions), as follows:

- "(2) The term, "dependent," with respect to a member ... of a uniformed service, means...
- (I) an unmarried person who is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States ... for a period of at least 12 consecutive months;

10 USCA Section 1097a. TRICARE Prime: automatic enrollments; payment options: (a) Automatic enrollment of certain dependents. Each dependent of a member of the uniformed services shall be automatically enrolled in TRICARE PRIME at the facility...

- e) No copayment for immediate family. B No copayment shall be charged a member for care provided under TRICARE Prime to a dependent or a member of the uniformed services described in subparagraph (A), (D), or (I), of section 1072(2) of this title.

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), 73 Fed. Reg. 30478 (May 28, 2008) (amending 32 C.F.R. ' 199.3), codified at 32 C.F.R.'199.3(b)(2)(iv) (2008) provides as follows: The Department of Defense published a final rule in the *Federal Register* on May 28, 2008, regarding TRICARE benefits. This final rule implemented two provisions of the National Defense Authorization Act for Fiscal Year 2006 (NDAA FY06), Public Law 109-163. Of note is the second provision, Section 592 of the NDAA FY06, which modified the requirement for those intermediaries who provide adoption placements. This final rule clarified administratively the following two eligibility provisions: 1) legal custody; and 2) adoption. The rule distinguished between those children placed in the legal custody of a member or former member; and those placed in the home of a member or former member in anticipation of adoption. It specified that for placement into legal custody by court order, the court order must be for a period of 12 consecutive months. This rule was effective as of June 27, 2008.

Accordingly, 32 C.F.R.' 199.3(b)(2)(iv) (2008) provides that the following is eligible for CHAMPUS benefits:
(iv) unmarried person who is placed in the legal custody of a member or former member by a court of competent jurisdiction in the United States for a period of at least 12 consecutive months.

TESTIMONY IN SUPPORT OF
SB108 - RELATING TO FAMILY COURT

February 6, 2009 at 9:00 a.m.

The Legal Aid Society of Hawaii hereby provides testimony to the Senate Committee on Judiciary and Government Operations on SB108 – Relating to Family Court, in strong support of the bill.

The Legal Aid Society of Hawaii is the largest non-profit provider for direct civil legal services in the State. We often assist family members take guardianship over children who no longer have parents to care for them and have seen up close the impact of the limit of six months for a temporary guardianship.

We believe that the twelve month limit could assist those children for whom it is difficult to locate their biological parents for notice or there are other problems affecting the ability to move toward a permanent guardianship. In a number of recent cases, we've encountered situations where a mother has passed away and the child or children have not seen their father in a significant amount of time making service difficult.

In one of these cases, it was the belief of the aunt who had taken the children in that the father moved to another country, but had passed away there. With no authorized caregiver, a temporary guardianship was the only way in which she could provide immediately for the children without having them enter the child welfare system. Because of time factors and other concerns, the aunt had to spend over \$500 to publish notice for this father in this case. However, an extension in the period of a temporary guardianship could be helpful especially for low-income petitioners to work to locate those needing notice or to determine with certainty (as was believed in this case) that the father had also passed on at a much lesser cost.

Thank you for this opportunity to testify.

Sincerely,

Nalani Fujimori
Interim Executive Director
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