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No. _____

TESTIMONY ON HOUSE BILL 2346 HD1
A BILL FOR AN ACT RELATING TO
ENDANGERING THE WELFARE OF A MINOR
Clayton A. Frank, Director
Department of Public Safety

House Committee on Judiciary
Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice Chair

Tuesday, February 19, 2008, 3:30 p.m.
State Capitol, Room 325

Representative Waters, Representative Oshiro, and Members of the Committee:

The Department of Public Safety strongly supports House Bill 2346 HD1, which would expand the types of drugs covered under this offense. The legislature passed Act 249, 2006, Session Laws of Hawaii that amended Hawaii Revised Statutes Sections 709-903.5(1) and 709-904(1) to expand the crimes of endangering a minor in the first and second degrees to include individuals who cause or permit a minor to ingest methamphetamine. This is limited in scope as it only covers one illicit substance "methamphetamine". Since the last legislative session, Hawaii has seen an increase in the use of the Schedule II dangerous drug, cocaine, which would not be covered under these Sections.

The language being proposed in this House Bill 2346 HD1 will be a deterrent for any individual caring for or having custody of a minor, to permit that

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minor to inject, ingest, inhale, or otherwise use any controlled substance that has not been prescribed by a physician for that minor.

During the last legislative session some concerns were brought by a testifier (HB 1406 HD1 SD1) indicated that he was fearful that the language being proposed in House Bill 2346 HD1 would criminalize the act of a parent sharing controlled substance medications with their children. Under existing Hawaii law this is already a Felony and should not be done, not only because it is a violation of law but because it would be a tragedy for a parent to give a controlled substance prescribed for an adult to a child and that child have a adverse reaction to the medication causing respiratory arrest or death. Parents should never give a child a prescription controlled substance that is not specifically prescribed for that minor.

The Department feels that the passage of House Bill 2346 is necessary to protect the health and safety of the children of Hawaii.

Thank you for the opportunity to testify on this matter.

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary**

Hrg: February 19, 2008, 3:30 p.m.
5 copies required

**H.B. No. 2346 HD1: RELATING TO ENDANGERING THE WELFARE OF A
MINOR**

Chair Waters and Members of the Committee:

We oppose H.B. No. 2346 HD1 which extends the endangering welfare of a minor statutes to include the intentional or knowing causation of a minor to ingest, inject or inhale any controlled substance not prescribed by a physician. This would make it a criminal act for an adult to allow a minor to ingest any controlled substance even if the adult was doing it to actually care for a minor. For example, a parent who has no health insurance and who cannot afford to visit a doctor might administer another person's prescription cough syrup or other medication to his/her child who is ill and needs help. The measure does not require that injury to the child result. The bill ignores the stark reality that health care is unavailable to a sizable segment of our community and that in desperation, many persons use medication for which they have no valid prescription.

Thank you for the opportunity to comment on this bill.

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DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY**

Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

February 19, 2008

RE: H.B. 2346, H.D. 1; RELATING TO ENDANGERING THE WELFARE OF A MINOR.

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of House Bill 2346, H.D. 1.

The purpose of H.B. 2346, H.D. 1 is to amend the offenses of endangering the welfare of a minor in the first and second degrees to include circumstances when a person having care or custody of a minor causes or permits the minor to inject, inhale or otherwise use any controlled substance that has not been prescribed by a physician except as permitted under section 329-122.

In 2006, the legislature passed Act 249 which provided that persons having care or custody of minors who caused or permitted the minor to ingest methamphetamine would be guilty of endangering the welfare of a minor. However, the ingestion of other dangerous drugs such as cocaine and heroin is not covered by the amendments passed in Act 249. Given the problems that drug addiction and drug abuse can cause and the state's interest in ensuring the health and safety of our keiki, we support the expansion of Act 249 to include all controlled substances that have not been prescribed with the exception of medical marijuana used pursuant to Hawaii Revised Statute section 329-122.

For this reason, we respectfully request you pass H.B. 2346, H.D. 1 and thank you for this opportunity to testify.

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PART V. PUBLIC HOUSING; EVICTIONS

§356D-91 Definitions. As used in this part unless the context otherwise requires:

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

"Public housing project" or "complex" means a low-income federally assisted housing project as established by the United States Housing Act of 1937, as amended, and controlled, owned, developed, or managed by the authority pursuant to the federal low-rent public housing program.

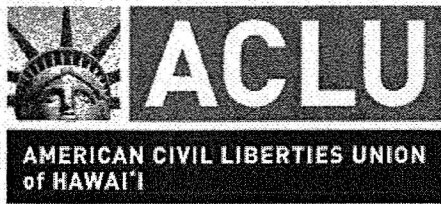
"Tenant" means any person occupying a dwelling accommodation or living quarters in any public housing project, under or by virtue of any tenancy, lease, or rental agreement under or from the authority. [L 2006, c 180, pt of §2; am L 2007, c 249, §36]

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BY FAX 586-9450; email JUDtestimony@capitol.hawaii.gov

Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, February 19, 2008, 3:30 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 2346, HD1,
Relating to Endangering the Welfare of a Minor

Dear Chair Waters and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 2346, HD1.

This bill reaches far too broadly in that it may criminalize a parent for legitimately trying to care for her or his child. Many adults in Hawaii do not have access to healthcare and are forced to find alternate ways to care for their children's health needs. Criminalizing this activity, without even requiring any injury to the child, will not deter users of methamphetamine or other illegal drugs from endangering children.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
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COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair
Rep. Blake Oshiro, Vice Chair
Tuesday, February 19, 2008
3:30 PM
Room 325

OPPOSITION TO HB 2346 HD1 – ENDANGERING THE WELFARE OF A MINOR

Aloha Chair Waters, Vice Chair Oshiro and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai'i for a decade. I respectfully offer our testimony always being mindful that Hawai'i has more than 6,000 people behind bars with more than 2,000 individuals serving their sentences abroad, thousands of miles away from their homes and their loved ones.

HB 2346 HD1 expands the crimes of endangering the welfare of a minor in the first and second degrees to include situations in which an adult causes or permits a minor to inject, ingest, or inhale any controlled substance that was not prescribed for the minor by a physician.

Community Alliance on Prisons opposes this measure because of the many unintended consequences that could arise.

We believe this bill would be difficult to enforce and that this measure could actually harm children and even cause death in the following scenario:

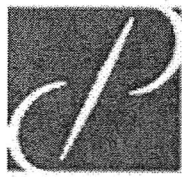
A caregiver to a minor child is prescribed pain medication by a doctor. As the caregiver is about to take the pill the phone rings and the open pill bottle is left on the counter. The child grabs the bottle and ingests some pill(s).

- If the caregiver brings the child to the hospital, would that person be charged if this bill passes?
- Would a caregiver NOT seek medical help for the child for fear of prosecution?

Community Alliance on Prisons respectfully asks that this bill be HELD because of the potential harm to minor children created by the unintended consequences of this bill.

Mahalo for this opportunity to testify.

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the
**Drug Policy
Forum**
of hawaii

February 19, 2008

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To: Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice Chair

From: Jeanne Ohta, Executive Director

Re: HB 2346 HD1 Relating to Endangering the Welfare of a Minor
Hearing: February 19, 2008, 3:30 p.m., Room 325

Position: CONCERNS

The Drug Policy Forum of Hawaii expresses concern with this measure. In other states, similar measures have been used to prosecute mothers of newborn babies if their infants test positive for an illegal substance. The problem is in the broad language of the measure.

One of the barriers to women seeking prenatal care is fear of prosecution. Good public health policy is to encourage women to seek the medical care that they need when they are pregnant.

We urge the committee to ensure that this measure could not be used to prosecute new mothers.

Hawaii currently has a perinatal clinic which provides prenatal care and other services for pregnant, substance-using women. This type of program recognizes the importance of a public health approach to the issue of pregnant drug-using women rather than a criminal justice approach.

The clinic's programs provide both substance abuse treatment, prenatal care, and follow up services in a supportive environment rather than a punitive one. The clinic has been successful in caring for mothers and having babies born drug-free.

We encourage the committee to hold this measure until it can be redrafted to avoid unintended consequences. Thank you for the opportunity to testify.