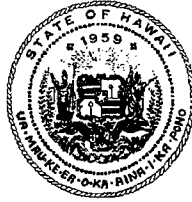


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**TESTIMONY ON HOUSE BILL 2346 HD2
RELATING TO ENDANGERING THE WELFARE OF A MINOR**
by
Clayton A. Frank, Director
Department of Public Safety

Committee on Human Services and Public Housing
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair

Thursday, March 13, 2008, 1:15 p.m.
State Capitol, Room 016

Senator Chun Oakland, Senator Ihara, and Members of the Committees:

The Department of Public Safety strongly supports House Bill 2346 HD2, which would expand the types of drugs covered under this offence. The legislature passed Act 249, 2006, Session Laws of Hawaii, that amended Sections 709-903.5 (1) and 709-904 (1), Hawaii Revised Statutes, 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, as well as an increase in the abuse of pharmaceutical Schedule III (Vicodin, Hydrocodone, etc.) and Schedule IV

(Valium, Xanax, etc.) controlled substances, which is currently not covered under these sections in the statutes.

The proposed changes made to Section 709-903.5, Hawaii Revised Statutes, through House Bill 2346 HD2 will deter any individual caring for a minor from permitting that minor to inject, ingest, inhale, or otherwise use any Schedule I through III controlled substance that has not been prescribed by a physician.

The Department would recommend that Schedule IV controlled substances (Section 329-20), which include drugs such as Valium, Xanax and other benzodiazepines that are highly abused on the Streets, be added to Section 709-903.5 (1) (b) on page 1, lines 12 through 13:

“(b) Intentionally or knowingly causes or permits the minor to inject, ingest [~~methamphetamine~~], inhale, or otherwise introduce into the minor's body any controlled substance listed in sections 329-14, 329-16, 329-18 and 329-20 that has not been prescribed by a physician for the minor, except as permitted under section 329-122.”

The Department also feels that Section 709-904, endangering the welfare of a minor in the second degree should also include Schedule III (Section 329-18) and Schedule IV (Section 329-20) controlled substances. This is due to the high possibility that a child who ingests these controlled substances may be injured or requires immediate medical care. The Department is, therefore, requesting that on page 2 line 9, Section 329-18 and Section 329-20 be added:

“(b) Recklessly causes or permits the minor to inject, ingest [methamphetamine.], inhale, or otherwise introduce into the minor's body any controlled substance listed in sections 329-14, 329-16, 329-18 and 329-20 that has not been prescribed by a physician for the minor, except as permitted under Section 329-122.”

In looking at the definition of "recklessly" as it pertains to House Bill 2346 HD2, it would require the person having custody of the minor to consciously disregard a substantial and unjustifiable risk ("recklessly") and cause or permit the minor to inject, ingest, inhale, or otherwise introduce into the minor's body any controlled substance. This offense would not affect a person who mistakenly breast fed her baby, because "substantial and unjustifiable" within the meaning of this Section considers the nature and purpose of the person's conduct and the circumstances known to her. The disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation, which does not apply to breast feeding.

Under **§702-206 Definitions of states of mind.** "Recklessly" is defined as:

(a) A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that the person's conduct is of the specified nature.

(b) A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.

(c) A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.

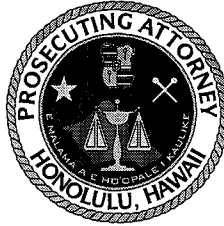
(d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

The Department feels that the passage of House Bill 2346 HD2 with the Department's proposed amendments is necessary to protect the health and safety of the children of Hawaii.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING**

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

March 13, 2008

RE: H.B. 2346, H.D. 2; RELATING TO ENDANGERING THE WELFARE OF A MINOR.

Chair Chun Oakland and members of the Senate Committee on Human Services and Public Housing, 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. 2.

The purpose of H.B. 2346, H.D. 2 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 Schedule I, II or III 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.

However, we are suggesting that Schedule IV controlled substances be included in both the endangering the welfare of a minor in the first and second degrees as it includes drugs such as rohypnol and valium which should not be given to children unless medically prescribed. We respectfully request you pass H.B. 2346, H.D. 2 with this proposed amendment and thank you for this opportunity to testify.

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Human Services and Public Housing
And Committee on Public Safety**

Hrg: Thursday, March 13, 2008, 1:15 pm
1 copy required

**H.B. No. 2346 HD2: RELATING TO ENDANGERING THE WELFARE OF A
MINOR**

Chairs Chun Oakland and Espero and Members of the Committees:

We have concerns about H.B. No. 2346 HD2 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 listed in HRS § 329-14, 329-16, and 329-18 not prescribed by a physician for the minor. This would make it a criminal act for an adult to allow a minor to ingest any of the specified controlled substances even if the adult was doing it to actually care for a minor. Although the current draft of the bill is an improvement over the original version which applied to all controlled substances, we continue to have concerns that some of the outlawed substances could be legitimate medication which a parent might be administering to a minor in order to treat a medical problem.

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 bill does not require that injury to the child result. The bill seems to ignore 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.

TESTIMONY IN SUPPORT OF
HB524 HD2 - RELATING TO CHILD WELFARE

March 13, 2008 at 1:15 p.m.

The Legal Aid Society of Hawaii hereby provides testimony to the Senate Committee on Human Services and Public Housing on HB524 HD2 – Relating to Child Welfare, 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. Further, since 1996, we have assisted over 2,000 children as guardian ad litem on Oahu, Maui, Hawai'i, Moloka'i and Lāna'i, a significant number of whom have aged out in foster custody.

Over the last several years, Legal Aid has strongly supported bills that protect the interests of foster children in child welfare proceedings. This bill would provide notice of permanent plan hearings to foster children and require the Department of Human Service to arrange for transportation to those hearings should the foster child decide to attend.

Currently, while foster children are technically allowed to participate in their child welfare hearings (i.e. the Family Court of the First Circuit has stated that it has been court policy since 2006 that a child has a presumptive right to attend their hearings), there is no statute neither prohibiting it nor specifically requiring it. As such participation can be dependent circuit by circuit, on whether the foster child is told of the hearing and whether transportation is provided.

A foster child's participation is especially crucial when they reach the age of 14. If parental rights have been terminated they are required to agree to a permanent plan which outlines the plan for the youth given their current placement. For many of these youth, really understanding the nature of the plan, the consequences of their choices and the reality that they no longer have parents is sometimes not made very clear. The opportunity and notice to appear in court can help facilitate their involvement in this process.

By providing notice of these hearings to the youth and the option for the youth to attend the hearing, youth will be more aware of court hearings and the actions being taken by the state with regard to their well-being. As children who no longer have parents, they are now living in a system where their voice has been limited to the signing of a paper with little or no contact with the court system which will ultimately decide their fate. We believe it is critical for foster youth to provided notice of this process.

For these reasons, we support HB524 HD2. Thank you for this opportunity to testify.

Sincerely,

Nalani Fujimori
Deputy Director
527-8014

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Suite 203, Honolulu, Hawai`i 96817

Phone/E-mail: (808) 533-3454/communityallianceonprisons@hotmail.com



COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

Sen. Suzanne Chun Oakland, Chair

Sen. Les Ihara, Jr., Vice Chair

Thursday, March 13, 2008

1:15 PM

Room 016

OPPOSITION TO HB 2346 HD2 - ENDANGERING THE WELFARE OF A MINOR

Aloha Chair Chun Oakland, Vice Chair Ihara 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 HD2 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...

- The difficulty of this measure to enforce
- This measure could actually harm children and even cause death
- This measure is discriminatory in that it would target those without health insurance who may use someone else's medication to help their sick child
- It could result in a person NOT seeking medical help for the child for fear of prosecution

Before such ambiguous and punitive bills are passed, policymakers need to ask for statistics on the scope of the problem in Hawai`i. After the scope of the problem is determined, then a range of solutions should be explored to find the ones that will be most effective, should such a problem exist in our communities.

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.