

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

**WRITTEN COMMENTS ON HOUSE BILL 2346 HD2 SD1
RELATING TO ENDANGERING THE WELFARE OF A MINOR**

by
Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Tuesday, April 1, 2008, 10:00 a.m.
State Capitol, Conference Room 016

Senator Taniguchi, Senator Hee, and Members of the Committee:

The Department of Public Safety strongly supports House Bill 2346 HD2 SD1, 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 (H.R.S.) 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 as well as an increase in the abuse of pharmaceutical Schedule III (Vicodin, Hydrocodone, etc) and Schedule IV (Valium, Xanax, etc.) controlled substances, which would not be covered under these sections.

The language being proposed in this House Bill 2346 HD2 SD1, H.R.S. Section 709-903.5 will be a deterrent for any individual caring for or having custody of a minor, to permit that minor to inject, ingest, inhale, or otherwise use any Schedule I through III controlled substance that has not been prescribed by a physician for that minor.

The proposed language in House Bill 2346 HD2 SD1 would also amend H.R.S. Section 709-904, endangering the welfare of a minor in the second degree which states that a person would have to "recklessly" causes or permits the minor to inject, ingest, inhale, or otherwise introduce into the minor's body any controlled substance listed in H.R.S. 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 H.R.S. Section 329-122. In looking at the definition of "recklessly" as it pertains to HB2346 HD2 SD1, it would require the person having custody of the minor to consciously disregard a substantial and unjustifiable risk ("recklessly") when causing or permitting 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, as pointed out by another testifier in earlier hearings, 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 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.

Under H.R.S. **§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.

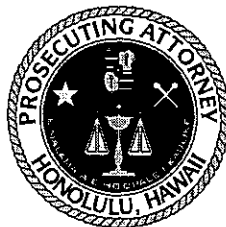
The Department of Public Safety feels that the passage of House Bill 2346 HD2 SD1 is necessary to protect the health and safety of the children of Hawaii.

Thank you for the opportunity to provide written comments on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

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

April 1, 2008

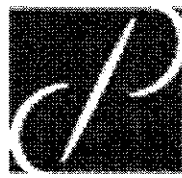
**RE: H.B. 2346, H.D. 2, S.D. 1; RELATING TO ENDANGERING THE WELFARE OF A
MINOR.**

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, 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, S.D. 1.

The purpose of H.B. 2346, H.D. 2, S.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 Schedule I, II, III or IV 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 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 support the passage of H.B. 2346, H.D. 2, S.D. 1 and thank you for this opportunity to testify.



the
**Drug Policy
Forum**
of hawaii

LATE

Board of Directors

Pamela Lichty, M.P.H.
President

Kat Brady
Vice President

Heather Lusk
Treasurer

Katherine Irwin, Ph.D.
Secretary

Michael Kelley, D.Phil.

Richard S. Miller, Prof. of
Law Emer.

Robert Perkinson, Ph.D.

*Donald Topping, Ph.D.
Founder 1929-2003*

P.O. Box 61233
Honolulu, HI 96839

Phone: (808)-988-4386
Fax: (808) 373-7064

Email: info@dpfhi.org
Website: www.dpfhi.org

April 1, 2008

To: Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair and
Members of the Committee on Judiciary and Labor

From: Jeanne Ohta, Executive Director

Re: HB 2346 HD2 SD1 Relating to Endangering the Welfare of a Minor
Decision Making: April 1, 2008, 10:00 a.m., Room 016

Position: Opposed

The Drug Policy Forum of Hawaii opposes this measure. The problem is in the broad language of the measure which may also allow the prosecution of breastfeeding mothers. The measure also does not require injury to the child. Passage of this measure may have many unintended consequences.

Although the committee report says that this measure "should not apply to mothers who breastfeed and unwittingly introduce Schedule I, II, III, and IV controlled substances into their babies' systems because this offense requires a 'reckless' state of mind..." There is nothing in the text to prevent such prosecution. The language of the text allows for any method of introduction: "otherwise introduce into the minor's body."

Other states have prosecuted breastfeeding women under the "knowing" state of mind. This measure applies to all Schedule I, II, III, and IV drugs, not just drugs normally thought of as "illicit" or illegal.

We respectfully request that if the committee intends to pass this bill, specific language be added that would protect breastfeeding mothers from prosecution.

One of the barriers to women seeking prenatal care is fear of prosecution. Good public health policy encourages women to seek the medical care that they need when they are pregnant. Measures like these may be used to arrest women and thereby scare others from seeking medical care.

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. It also recognizes the value of providing services in a supportive environment rather than a punitive one. The clinic has been successful caring for mothers who then deliver babies who are drug-free.

We encourage the committee to hold this measure to avoid unintended consequences. Thank you for the opportunity to testify.