



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

House Committee on Judiciary

The Honorable Tommy Waters, Chair

The Honorable Blake K. Oshiro, Vice Chair

Tuesday, February 26, 2008, 2:45 p.m.

State Capitol, Conference Room 325

by

Judge Frances Q.F. Wong

Deputy Chief Judge / Senior Judge

Family Court, First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2596, H.D. 1, Relating to Children.

Purpose: To amend HRS Chapter 587, the Child Protective Act, to add new provisions to protect children who may be in a household where drugs are used.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 2596, H.D. 1, but offers the following comments.

This bill is an apparent response to recent tragedies which have saddened our community. However, this bill may cause more damage to children in the long run, particularly as it cuts off all contact between the parent and child for a 60-day period. Visitation is not a "right" of the parent or an "incentive" for parental good behavior. Courts have long recognized that children, taken away from their only known family require much more contact with their families than presently afforded to them. Also, it is respectfully noted that the Legislature must, in conjunction with this bill, provide more substance-abuse treatment services or the prolonged separations caused by this bill will remain permanent.

Lastly, please note that alcohol usage, though legal, takes a similar toll on children.

Thank you for the opportunity to provide testimony on this matter.

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In reply, please refer to:
File:

House Committee on Judiciary

H.B. 2596 HD1, Relating to Children

Testimony of Chiyome Leinaala Fukino, M.D. Director of Health

February 26, 2008, 2:45 p.m.

1 **Department's Position:** We appreciate the intent of this bill, which adds a part to Chapter 587, Hawaii
2 Revised Statutes, however, we have concerns about a parent or legal custodian being required to
3 “successfully participate in a drug treatment program for a minimum of one year” in order to regain
4 custody of a child in foster custody.

5 **Fiscal Implications:** No funds are appropriated for drug testing and substance abuse treatment for
6 parents and legal custodians required to successfully complete a minimum of one year in a drug
7 treatment program.

8 **Purpose and Justification:** Among the various purposes of this measure, the Department of Health is
9 particularly concerned about restricting visitations for at least 60 days unless the parent, guardian, or
10 legal custodian has tested negative for illegal drug use; and requiring a parent or legal custodian to
11 successfully participate in a drug treatment program for a minimum of one year before full custody can
12 be granted. Such restrictions penalize those who are actively engaged in treatment and may deter a
13 client's progress toward recovery and the goal of family reunification.

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1 Substance abuse treatment focuses on developing attitudes, motivation, knowledge and skills to
2 bring about harm reduction, abstinence and change in self and lifestyle, including physical,
3 psychological, social, familial and spiritual aspects. Services must address relapse issues and help the
4 substance dependent person develop coping skills to prevent or interrupt the dependence and relapse
5 process. Progress in treatment varies for each individual, depending on the severity of addiction,
6 motivation for change, and other variables.

7 We strongly support efforts to ensure the health and safety of our children, however, we are also
8 cognizant that “solutions” may also bear unintended consequences. Policies to be adopted therefore
9 need to take into consideration that:

- 10 ■ Drug dependency (addiction) is a chronic relapsing disease, which requires time for
11 recovery and cannot be resolved in the same manner for all individuals;
- 12 ■ Comprehensive treatment programs that do not separate mothers from their children are
13 cost effective in comparison to the financial and social costs of separating mother and
14 child;
- 15 ■ Removing a child from his or her family may cause serious psychological damage –
16 damage more serious than the harm intervention is supposed to prevent; and
- 17 ■ Drug tests are not necessarily indicative of an individual’s parenting ability, as a drug test
18 does not ascertain the degree of drug use or the amount and frequency of drugs
19 consumed.

20 The DOH and Department of Human Services (DHS) are working on implementing the Access
21 to Recovery (ATR) Grant, which was awarded by the federal Substance Abuse and Mental Health
22 Services Administration to address the needs of substance abusing parents and guardians within the
23 child welfare system. The grant will provide recovery support services to individuals within the
24 DHS-Child Welfare System (formal and voluntary cases), who are currently in treatment or recovery

1 and in need of additional support services. The ATR grant will also specifically address
2 those individuals within the DHS system who are deemed substance abuse (methamphetamine) related.
3 Under the program, recovery support services may include employment readiness and job placement
4 programs, supportive transitional drug-free housing, parenting and child education, life-skill building
5 classes, child care, transportation, as well as support and spiritual counseling.

6 Thank you for the opportunity to testify on this measure.

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February 26, 2008

MEMORANDUM

TO: Honorable Tommy Waters, Chair
House Committee on Judiciary

FROM: Lillian B. Koller, Director

SUBJECT: H.B. 2596, H.D. 1, - RELATING TO CHILDREN

Hearing: Tuesday, February 26, 2008, 2:45 p.m.
Conference Room 325, State Capitol

PURPOSE: H. B. 2596, H.D. 1, requires the Department of Human Services to investigate reports of drug use in the home of a child within 24 hours. Requires a parent, legal custodian, cohabitant, or caregiver to be drug free for at least 60 days prior to being allowed visitation with a child, and to participate in substance abuse treatment for at least one year before being awarded full custody of a child or being allowed to solely supervise the child.

DEPARTMENT'S POSITION: The Department cannot support this bill for the following reasons:

1) This bill is inconsistent with Federal Public Law 96-272 that mandates States to "make reasonable efforts to prevent removal and effect timely reunification" if States wish to access Federal funding for child welfare services. Non-compliance with

these Federal requirements would result in a loss of Federal Title IV-E revenues to the State and greatly impair the Department's ability to protect children from harm. **The current Federal IV-E reimbursement to the Department is approximately \$38 million,** which funds services to children and their families, Child Welfare Services staffing and foster board and adoption assistance payments to foster parents and adoptive parents. Without this Federal funding, the Department simply will not be able to meet our Federal and State mandates to ensure the safety, permanence and well-being of children who are harmed or at risk of being harmed.

This will also have a negative impact on the State's performance in the upcoming 2009 Federal Child and Family Services Review of Hawaii's CWS cases. The Federal review criteria include a measure that specifically requires maintenance of family connections and examines visitation between children in out-of-home care and their families.

2) The Department does not have sufficient resources that would guarantee a response within 24 hours to any reported allegation of illegal drug use for any "child", defined by Chapter 587, Hawaii Revised Statutes (HRS), as any person who is born alive and under 18 years of age, is alleged to be present in the household. To meet this requirement, the Department would have to prioritize our response to reports of substance abuse when a child is present at the expense of all other reports of

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harm, many of which can and will be more severe and require a more immediate response.

3) The Department would have to add sufficient resources to investigate every allegation of substance abuse by any person in a home with any child within 24 hours, regardless of whether the alleged perpetrator was the child's parent or some other person in the home. This bill expands our mandate to address intra-familial abuse. This would mean the addition of sufficient staff to also ensure weekend and after-hours availability or else our response would be delayed. We preliminarily estimate that this expansion beyond would require the Department to increase the resources available by at least one-third. This would be about \$ 21 million, not including the costs for foster care.

4) The Department would also be required to add sufficient resources that would allow us to provide services to the families where children are removed. The cost of foster care will greatly increase due to the minimum one-year of out-of-home placement that is required by this bill.

5) The Department will be required to file for a temporary restraining order on behalf of the child without an assessment or consideration of whether the order is necessary, whether the perpetrator has sufficient access to the child to harm or threaten them with harm, or whether the child is in foster care. This will have an adverse impact on the Family Courts, and the Department will be required to spend much more time in court than is currently necessary

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6) The proposed restriction on parent-child visitation until parents test negative for illegal drug use is ill-advised and could place children at risk. A negative drug screen is not an indication that a parent is safe, it is an indication that, for that test only, a parent tested negative for illegal substances. We currently make decisions on visitation based on a broader assessment of the parent that includes, but is not dominated by, drug testing. The psychological needs of children are considered. There is abundant and credible evidence in research findings that link a child's well-being in foster care, future development and potential for reunification to the quality and quantity of visitation between the child and their parents. Supervised visits can and are provided every day across the Nation between substance abusing parents and their children without children being harmed.

7) The definition of "illegal drug use" in subsection (a) of this bill is so specific that it essentially makes other illegal drugs that are not included in this definition, effectively "legal" for the purposes of this bill which is not the best way for us to assess and ensure child safety. Also, there no guidance on how the Department would be required to make the determination of "an extent deemed deleterious or detrimental to the user, to others, or to society" and thus will be impossible to implement.

8) The requirement that a parent participate in a treatment program for a year prior to regaining sole custody or supervision

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of the child sets an arbitrary timeframe that does not acknowledge the motivation and success of parents who do not need one year to successfully complete treatment. This bill does not take into account the recommendations of CWS social workers and substance abuse treatment providers and subverts the role of the Family Court Judges by taking away their judicial discretion to determine when a child may be safely reunified with their parents, after a review of the specific facts in each case.

In conclusion, the Department strongly supports efforts to ensure the safety, permanency and well-being of children. But this bill will not accomplish those goals and proposes an excessively restrictive, harsh and costly "quick fix" that will ultimately cause more problems in the long term because it is not based on our knowledge of best practices in the treatment of substance and child abuse.

The Department of Human Services has and will find ways to prevent children from being injured or exposed to unreasonable risk or neglect by parents who test positive for drugs.

We ask you to defer this bill and believe that our community will be better served by a course of action that we are zeroing in on right now.

Thank you for this opportunity to testify.

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To: Representative Tommy Waters, Chair, Representative Blake K. Oshiro, Vice Chair, and members of the Committee on Judiciary

From: Hawaii Foster Youth Coalition (HFYC)

Regarding: Opposing HB2596 HD1,

Hearing: Tuesday, February 26, 2008; 2:45 pm; Conference Rm. 325

HFYC is a youth-led organization for youth in and transitioning out of the foster care system, ages 14-24. It assists foster care youth in seeing the infinite pathways and possibilities of their lives through advising and advocating for opportunities that will allow youth to enjoy a productive present and a successful future. HFYC has over 200 members in Hawaii and is a Learn and Serve America project. As the Project Director, I am permitted by the Board of Directors, who are current and former foster youths, to represent them in this letter of testimony.

HFYC opposes HB2596, which requires "A parent, legal guardian, cohabitant, or caregiver to be free of drug use for at least 60 days prior to being allowed visitation rights with a child..." and requires "Substance abuse treatment for at least one year prior to a parent or legal guardian being awarded full custody of a child, or before a cohabitant or caregiver is allowed to supervise a child alone." This bill seems intended to protect children but, according to the youth who went into foster care because of parents drug use, it will actually cause foster children to suffer.

HFYC advocates for foster children to be able to see their biological family as much as possible and as soon as possible after entering care. Foster youth are clear. They love their parents and need contact with them. This bill threatens to decrease opportunities for children and parents to have contact after being removed from the home.

HFYC understands the value of a quick response to protect children when drug use in the home is confirmed. But foster youth alumni also recognize that: 1) addiction is a difficult problem; 2) visits with children are more likely to support parents' recovery; 3) children should not be punished because their parents' suffer from addictions; and 4) children desperately need to have contact with their parents and other family members.

One former foster youth remembers at age seven waiting in the doorway at night with her brothers and sisters. They held hands and prayed for their mother to come back. Their grandfather took them to see her six months later. But six months of waiting deeply wounded

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this young girl. She remembers watching from the seat of her grandfather's car as her siblings rushed to their mother with smiles and excitement at the long awaited visit. She had grown hard and cold. The wait was difficult for a little girl and had robbed her of her capacity to feel joy.


Another youth recounts being five years old when her mother moved far away to go to treatment. They couldn't see her but were allowed to talk to her over the phone and wrote letters to her. The contact helped but the young child became depressed and would suffer from it for years to come. At age ten, this youth was abandoned by her mother who relapsed. This ten year old called every treatment center looking for her. There was no contact for years this time. She explains that it was harder this time because she also lost contact with her siblings. She says, "at least the first time I had my siblings."

There are countless similar stories from foster youths. They all wanted to and longed for the day they would see their parents. Long separations caused these young people to suffer more than living with drug addicted parents. They need to see their parents. They need to hold them and tell them and hear from them, "I love you." And, their parents can benefit from hearing their children beg them to stop using drugs so they can come home. A waiting period of being drug free for sixty days will torture children and is more likely to cause parents seeking help to become hopeless and give up. The family is sacred. We must work to protect the whole family when considering safety needs of the children.

DHS, Child Welfare Services has been working hard to make improvements in the system. One of those improvements is to support children in having more frequent visits with their family members. HFYC believes family visits will instill hope in foster youth. It gives them something to look forward to and helps maintain their sense of belonging. There is concern that HB2596 will be a set-back. HFYC strongly hopes that you will vote no on HB2596. Please help Hawaii's foster children avoid more suffering. Thank you for considering the testimony of HFYC.

Sincerely yours,

Cynthia White, Project Director



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