

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

February 5, 2008

MEMORANDUM

TO: Honorable Maile S.L. Shimabukuro, Chair
House Committee on Human Services and Housing

FROM: Lillian B. Koller, Director

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

Hearing: Tuesday, February 5, 2008, 9:00 a.m.
Conference Room 329, State Capitol

PURPOSE: H. B. 2596, H.D. 1, requires the Department of Human Services to investigate reports of drug use by a parent or legal custodian in the home of a child within 24 hours. Requires a parent or legal custodian 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.

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

First, the passage of this bill will require statutory amendments to chapter 587-25, Hawaii Revised Statutes (HRS), the Child Protective Act, which specifies a set of 14 safe family home guidelines that must be considered by the Department and/or the Family Court when determining whether the child's family is

willing and able to provide the child with a safe family home. The safe family home guidelines require an individual assessment of the safety of a family home based on factors, including and not limited to, the age of a child, the harm to the child, the parent's history of substance abuse, whether the alleged perpetrator(s) has acknowledged and apologized for the harm, whether the non-perpetrator(s) who resides in the family home has demonstrated the ability to protect the child from further harm, whether there is a support system of extended family and/or friends available to the child's family that is available to the family, and whether the parents will participate in services to resolve the safety issues in the home in a reasonable period of time. Therefore, chapter 587 would have to be amended to provide a "one-size-fits-all" exception to the safe home family guidelines to automatically remove children whenever any parent or legal guardian is confirmed of using illegal drugs.

Second, the proposed bill, if enacted, would be inconsistent with the 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 bill 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 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.

Third, the bill proposes to restrict parent-child visitation until parents can demonstrate they are drug-free for at least 60 days. We believe this restriction would be harmful to children and contrary to their well-being. There is abundant 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.

Fourth, this bill's definition of "abuse" in subsection (a) is vague because broad enough to cover both illegal substances and legal substances that are abused, such as alcohol or prescription drugs, while subsection (b) requires 60 day testing "negative for illegal drug use" for visitation to commence

between parent and child. The term could be applied capriciously or arbitrarily since there is 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" which will be impossible to implement.

Fifth, this bill proposes in subsection (a) that the Department take custody of a child if there is a finding that the parent tested positive for illegal substance abuse, among other things. Pursuant to chapter 587, the Department is not authorized to take a child into protective custody, but rather to receive custody of a child from a police officer who must make a determination that the child continuing in the custody of the child's family presents a situation of imminent harm to the child prior to taking the child into custody.

Sixth, the requirement that a parent participate in a treatment program for a year prior to being reunified with a child is punitive for the child if the parent is able to successfully complete treatment earlier than one year. It 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 facts in the case.

We strongly support efforts to ensure the safety, permanency and well-being of children. But those efforts cannot be made based on the assumption that "one size fits all".

The Department of Human Services will find ways to prevent children from being injured or exposed to unreasonable risk or neglect by parents who test positive for drugs. This is a course of action that we are zeroing in on right now.

Thank you for this opportunity to testify.