



**LATE**

**BY EMAIL:** [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

Committee: Committees on Human Services and Public Housing and Public Safety  
Hearing Date/Time: Thursday, March 13, 2008, 1:15 p.m.  
Place: Room 016  
Re: *Testimony of the ACLU of Hawaii in Opposition to HB 2596, HD2*

Dear Chairs Chun Oakland and Espero:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to HB 2596, HD2 because it unjustifiably intrudes on parents’ fundamental rights and fails to improve the well-being of Hawaii’s children. We echo the extensive testimony already submitted in opposition to this bill; among other reasons, the ACLU of Hawaii opposes the bill because:

- the one-year restriction on a parent’s right to supervise her/his child is arbitrary and bears no relationship to the parent’s fitness to parent;
- a positive drug test does not necessarily mean that the parent is unfit or that the child is in any danger;
- rushing to place a child in foster care – rather than maintaining the child with her or his family – is rarely (if ever) in the best interest of a child; and
- there are insufficient procedural safeguards to protect families’ constitutional rights.

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,

Daniel M. Gluck  
Senior Staff Attorney  
ACLU of Hawaii

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the  
**Drug Policy  
Forum**  
of hawaii

**LATE**

March 13, 2008

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To: The Committee on Human Services and Public Housing  
The Committee on Public Safety

From: Jeanne Y. Ohta, Executive Director

Re: HB2596 HD2 Relating to Children  
Hearing: Thursday, March 13, 2008, 1:15 p.m.

Position: Opposed

The Drug Policy Forum of Hawaii writes in opposition to HB2596 HD2 Relating to Children, which establishes certain requirements on the Department of Human Services should there be a report of drug use in the home of a child.

DPFH opposes this measure for the following reasons:

- Drug testing merely measures whether a drug is present at the time of the test. It does not determine if there has been any impairment or if the parent has neglected the child.
- Testing positive on a drug test does not automatically mean that a person needs drug treatment. An assessment needs to be made by trained personnel to determine if there is an addiction. We cannot use our limited treatment resources for people who do not need them.
- The measure requires that the parent must participate in a drug treatment program for a minimum of one year. The appropriate length of treatment must be determined by a physician or medical professional, not by statutory mandates.
- Requiring that children be removed from their homes creates harm to the children and their families. Instead, the state should provide appropriate programs where parents can receive treatment without being separated from their children.
- It is concerning that the Department of Human Services has testified that \$38 million in federal funds would be lost should this measure be enacted.

While this bill was proposed to address tragic circumstances that occurred in our community, we do not believe that it would provide additional protection for children; and in fact, may inadvertently create more harm. We urge the committee to defer this bill.

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

**LATE**

March 13, 2008

MEMORANDUM

TO: Honorable Suzanne Chun Oakland, Chair  
Senate Committee on Human Services and Public Housing

FROM: Lillian B. Koller, Director

SUBJECT: H.B. 2596, H.D. 2, - RELATING TO CHILDREN  
Hearing: Thursday, March 13, 2008, 1:15 p.m.  
Conference Room 016, 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 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. Establishes a system for the Department to allow children to continue to reside in pre-existing caregivers' safe homes rather than enter into foster care, subject to certain conditions.

**DEPARTMENT'S POSITIONS:** The Department of Human Services supports Section 2 of this bill. The Department cannot support and respectfully recommends the deletion of Section 1 of this bill.

We cannot support Section 1 of 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 per year**, 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

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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 Federal review criteria include reviewing the number of children reunified with their parents within 12 months. It would be unacceptable to the Federal government to make decisions on the reunification of a child with a safe parent, based on the arbitrary passage of time (one year per the bill), rather than based on an assessment of the safety of the home and the progress of the parent.

2) Meeting the requirements of Section 1 would have an adverse impact on the Executive Supplemental Budget. There is no provision for funding in the bill for the increase of staffing, services and resources that will be required to implement this bill.

We preliminarily estimate that providing sufficient resources to meet the requirements of this bill would require an increase in resources by at least one-third. This would be about \$21 million, not including the costs for foster care. Clearly, the cost of foster care will also greatly increase due to the minimum one-year of out-of-home placement that is required by this bill.

If this bill is enacted into statute, the Department will not be able to absorb the cost of implementing this bill without adversely affecting other programmatic needs and funding will have to be diverted from other sources, at the expense of programs.

3) 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, who is alleged to be present in the household being reported.

4) The Department will have to prioritize our response to reports of substance abuse when a child is present at the expense of all other reports of harm, many of which can and will be more severe and require a more immediate response. Also, the Department does not have sufficient staff to ensure the required weekend and after-hours availability.

5) The Department will also have to investigate and assess every allegation of substance abuse, by any person in a

home, with any child present, within 24 hours regardless of whether the alleged perpetrator was the child's parent or another other person in the home, without additional resources. This bill expands our mandate to address intra-familial abuse by adding persons who may not be responsible for the care and safety of the child, but are present in the home.

6) The bill requires that the Department determine whether the parent, guardian, cohabitant, caregiver, or legal custodian has tested positive for illegal drug use within an unspecified timeframe, but the bill provides the Department no resources to accomplish the testing, or the means to ensure that the persons listed above comply with substance abuse testing.

7) This bill requires the Department 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 the child with harm, or whether the child is in foster care. This will increase the number of children in foster care, have an adverse impact on the Family Courts, and the Department will be required to spend much more time filing motions and testifying in Court than is currently necessary.

8) The Department would also be required to provide sufficient resources that would allow us to provide services to the families where children are removed, including persons other than the parents or legal guardians in the home.

9) The requirement that a parent participate in a treatment program for a year prior to regaining sole custody or supervision of the child sets an arbitrary timeframe that is not supported by best practices and cannot 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.

The Department strongly supports efforts to ensure the safety, permanency and well-being of children. 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.

The Department fully supports Section 2 of this bill for the following reasons:

1) The proposed changes to chapter 587, HRS, will clarify that the Department may consider alternate care arrangements made by a legal and physical custodian of a child if a determination is made that the alternate care arrangement is safe and appropriate for the child. This will ensure that local customs of caring for children outside the home by friends and relatives are an available alternative when considering the custody of children.

2) The Department will not be required to petition for jurisdiction, or remove a child from a safe home, if it has been established that the child has been living in the caretaker's home with the legal and physical custodian's written or verbal consent for more than 6 months. This will ensure that no child is taken into custody unnecessarily and will preserve the relationships that are important to the child's well-being.

3) Chapter 587, HRS, currently requires that the Department assess the safety of the home of the legal and physical custodians of a child who has been reported to the Department as abused or neglected and assigned for investigation. This means, paradoxically, that the Department must base its determination of the safety of the child on our assessment of the home of the child's legal and physical custodians, even if they have made safe and appropriate arrangements with family members, or others, to care for and supervise the child outside of the family home.

4) The proposed changes align our foster care system with previous legislation that provided eligible caregivers the ability to sign consents to meet a child's educational needs (Act 99, Session Laws of Hawaii (SLH) 2003) and medical care (Act 208, SLH 2005).

5) Clearly, the Legislature has recognized and sanctioned appropriate care arrangements, either formal or informal, made by the legal and physical custodians of a child that are safe and appropriate. Most often, these care arrangements are with a member of the child's extended family (hanai caregivers), helping children develop and maintain positive and lasting relationships with their siblings and other family.

6) We acknowledge the concerns voiced by the Judiciary in their comments on the bill. We offer the following clarifications:

Regarding the concern about the benefits that a "hanai" family would be entitled to receive and assistance to secure those benefits: We will inform the "hanai"

caregiver of resources that may be available to them through the Department or other agencies as well. We suggest the following clarifying language be inserted in Section 4, (b)(1)(F):

"That the caregiver of the child has been informed of benefits and services that are available including, but not limited to, financial assistance, legal services such as information on obtaining an adoption or guardianship; and other services provided by the Department and other agencies that may be of assistance to the caregiver and child."

Regarding the concern about the monitoring of the notification of the return of the child to parents who are deemed harmful: The criteria for the Department approving the placement will include safety planning for the child and notification requirements if there is a change in placement.

If legal parents cannot be located, absent a report that the legal parents abused or neglected the child, the caretakers already are able to obtain educational and health services pursuant to Act 99, Session Laws of Hawaii (SLH) 2003) and (Act 208, SLH 2005).

If there is a need for services, the Department will work with the family at the time we assess the appropriateness of the placement and either link the family to community resources or refer the family to one of the voluntary services we provide to facilitate additional services that may be helpful to the family.

We acknowledge the comments submitted by the Family Court regarding this bill. However, we believe that Section 2 of the bill, as written, is sufficient as it requires us to determine eligibility and link the caregiver with appropriate services, develop a safety plan for the child in the event an unsafe parent wants to reclaim custody of the child, and provide services through the Departments Family Strengthening or other services that can be offered to the family.

We encourage you to re-affirm the Legislature's commitment to families who are willing and able to provide safe and appropriate homes for children without the unnecessary intervention of the Department's Child Protective Services.

Thank you for this opportunity to testify.

Representative Susan Chun Oakland, Chair  
Representative Les Ihara Jr., Vice-chair  
Committee on Human Services and Public Housing  
Renee Bailey  
Thursday, March 13, 2008

**LATE**

Support of HB2596 H.D. 2, Relating to Children

I support HB2596, H.D.2, relating to children because it would help to increase efforts to ensure that every child resides in a safe and stable home.

Children are extremely vulnerable so conducting an investigation within 24 hours of an alleged drug use by a parent, guardian, cohabitant, caregiver, or legal guardian is crucial for their safety.

I have been working in the Waianae community as a case manager for about eight years. I have witnessed first-hand the emotional trauma a child lives through with each new foster placement. Unfortunately, many non-relative foster homes are not long-term placements for children so they inevitably bounce from one temporary "house" to another. The numerous affects of moving a child from one foster placement to the next is not visible to the eye. Research has shown that children who do not bond with a caregiver are highly at risk for attachment issues and emotional disorders. Allowing children to reside in pre-existing caregivers' safe homes would help to ensure some stability in a child's life.

In working towards having all children residing in a safe and stable home, I urge the committee to pass HB2596, H.D.2. Thank you for this opportunity to testify.



**TESTIMONY OFFERING COMMENTS TO  
HB2596 HD2 - RELATING TO CHILDREN**

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

The Legal Aid Society of Hawaii hereby provides comments to the Senate Committee on Human Services and Housing on HB2596 HD2 – Relating to Children.

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, Kauai, Maui, Hawai'i, Moloka'i and Lāna'i. We also represent parents in these actions and have many times successfully worked toward the reunification with their children.

Drug addiction is one of the leading causes of children entering the child welfare system. Threatened harm and neglect due to a parents drug abuse leaves many children without their parents. As a state, it is in our interest to intervene to ensure that these children are no longer hurt. However, it is also in our interest to be sure that laws allow for flexibility in ensuring the return of these children to their parents when their parents are ready and able to provide a safe family home with the assistance of a safety plan.

The current provisions of this bill, however, go far beyond the parameters of best practices in assisting a parent struggling with drug addiction in regaining custody of their child. To place a time frame of one year for successful participation in a drug treatment program before allowing a child to be placed in the custody of a parent fails to take into consideration, the success of family treatment and other programs designed to integrate a child into the treatment process. It also puts into play a harsh punishment for parents who may not require one year of treatment – downplaying the role of substance treatment professionals and social workers in making individual and clinically based recommendations for reunification.

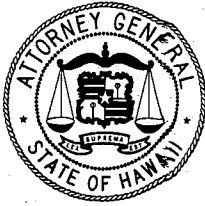
As an attorney who represented parents in child welfare cases, one of my most memorable and touching cases was watching a long abused mother recover from drug addiction to care for her child. She did so with the help of the Family Treatment Program at the Salvation Army and was motivated because of the access and the ability she would have to care for her daughter while in treatment. If such an arbitrary date was in place, it is unlikely that she would have gained reunification. To put into place an arbitrary one year dates will likely lead to more children without parents. As such, we ask that the section mandating a year of drug treatment be deleted from this measure.

While we are unable to speak to the specifics of the cost of some of the other provisions in this bill, we do ask the Committee to seriously consider the possible ramifications of losing federal funds and the necessity of increasing state funding to meet the mandates of the investigation requirements of this bill.

Thank you for this opportunity to testify.

Sincerely,

Nalani Fujimori  
Deputy Director  
527-8014



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

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**LATE**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 2596, H.D. 2, RELATING TO CHILDREN.

**BEFORE THE:**

SENATE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

**DATE:** Thursday, March 13, 2008 **TIME:** 1:15 PM

**LOCATION:** State Capitol, Room 016

*Deliver to: State Capitol, Room 226, 1 Copy*

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Jay K. Goss, Deputy Attorney General

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Chair Chun Oakland and Members of the Committee:

~~Chair~~  
The Attorney General believes that section 1 of this bill presents some serious constitutional concerns. The bill sets an arbitrary time frame for reunification rather than focusing on a parent's ability to provide that child with a safe family home. Under this bill, a parent who successfully completes a drug treatment program in less than a year and who is able to provide a safe family home as determined by a family court judge according to the criteria set forth in section 587-25, Hawaii Revised Statutes, must wait at least a year before the parent can regain custody of the parent's child.

The United States Supreme Court has recognized that "freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment" and that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394 (1982). Chapter 587, Hawaii Revised Statutes, currently recognizes these constitutional provisions by requiring that a child be returned to a parent if there is a judicial determination that a parent can provide a safe family home (under the criteria set forth in section 587-25, Hawaii Revised Statutes) with the assistance of a service plan.

Under those circumstances, the child is returned home under the status of "family supervision" and the family court continues to monitor the case to ensure the safety of the child.

We would suggest the new section set forth at lines 10 to 18 on page 2 of this bill be amended to read as follows:

**§587- Substance abuse treatment.** The court shall require a parent, guardian, or legal custodian who was investigated and found to have tested positive for illegal drug use to successfully participate in and complete a drug treatment program and the parent, guardian, or legal custodian may not regain custody of the child until a court has determined that the parent can provide a safe family home for the child.

We believe that with these changes, the safety of a child can be ensured without possible violation of the constitutional right to family integrity.

- If you are talking about bringing every case into court and providing services in every case it could be very expensive
- don't know exact numbers but probably over 75% of all cases in family court have some type of drug use by parents.