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

January 31, 2008

MEMORANDUM

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

FROM: Lillian B. Koller, Director

SUBJECT: H.B. 3128, RELATING TO ADULT PROTECTIVE SERVICES

Hearing: Thursday, January 31, 2008, 8:40 a.m.
Conference Room 329, State Capitol

PURPOSE: The purposes of H.B. 3128 are to add a new definition for "caregiver" to section 346-222, HRS; to require persons meeting the definition of a caregiver to promptly report to the Department of Human Services (DHS) when the caregiver knows or has reason to believe a dependent adult has been abused or is threatened with imminent abuse; and to require employees or officers of any entity or agency that provides advocacy services to persons with developmental disabilities to promptly report to DHS when those persons know of or have reason to believe a dependent adult has been abused or is threatened with imminent abuse.

DEPARTMENT'S POSITION: The Department of Human Services strongly supports this Administration bill. The provisions of this bill add two new categories of individuals who will be

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required to report to DHS incidents of dependent adult abuse or neglect when there is reason to believe that abuse has occurred or will occur imminently. These amendments to sections 346-222 and 346-224, HRS, will increase DHS' opportunity to investigate and provide protective services, as deemed necessary, for vulnerable adults.

Thank you for this opportunity to testify.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
HONOLULU, HAWAII 96814
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
January 31, 2008

The Honorable Maile Shimabukuro, Chair
House Committee on Human Services and Housing
Twenty-Fourth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Shimabukuro and Members of the Committee:

SUBJECT: HB 3128 – RELATING TO ADULT PROTECTIVE SERVICES

The position and views expressed in this testimony do not represent nor reflect the position and views of the Departments of Health and Human Services.

The State Council on Developmental Disabilities (DD) **SUPPORTS THE INTENT OF HB 3128**. The purpose of HB 3128 is to add a new definition for “caregiver” to Section 346-222, Hawaii Revised Statutes (HRS), and to expand the list of persons mandated to report known or suspected abuse of vulnerable adults to include caregivers and the entity or agency designated by the Governor to provide advocacy services to persons with DD and mental illness.

The provision on Page 2, (6), lines 18-21, and Page 3, lines 1-2, is specific to the Hawaii Disability Rights Center (HDRC). HDRC is the advocacy agency designated by the Governor pursuant to Section 333F-8.5, HRS.

With respect to Page 3, (7), lines 3-5, the Council feels the language is very broad in terms of “any entity or agency that provides advocacy services to persons with disabilities.” This language is open to varying interpretations. It is not clear if entity or agency applies to public and private entities or agencies. This provision could apply to State agencies, such as the Council, Disability and Communication Access Board; and private non-profit agencies, such as Learning Disabilities Association of Hawaii, Statewide Independent Council of Hawaii, and Hawaii Centers for Independent Living.

The Council suggests the following for your consideration; add “advocacy services” to existing language of the list of services stated in Item (2) on Page 2, lines 6-9. We feel it is not necessary to include persons with disabilities. Section 346-224 already includes “dependent adult,” and this would include persons with disabilities.

The Honorable Maile Shimabukuro

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The revised language would reflect the following, “(2) Employees or officers of any public or private agency or institution providing social, medical, hospital, [or] mental health services, or advocacy services, including financial assistance;”

Should the Legislature decide to keep Item (7), we suggest adding “public or private” before “entity or agency.” The revised language would state, “(7) Employees or officers of any public or private entity or agency that provides advocacy services to persons with disabilities.”

Thank you for the opportunity to submit testimony supporting the intent of HB 3128. We appreciate the Legislature’s initiatives to protect individuals with disabilities from abuse.

Sincerely,

A handwritten signature in black ink, appearing to read "Waynette K. Y. Cabral". The signature is fluid and cursive, with a long horizontal stroke at the end.

Waynette K. Y. Cabral
Executive Administrator



HB 3128 RELATING TO ADULT PROTECTIVE SERVICES
House Committee on Public Safety & Military Affairs

January 31, 2008
309

8:30 a.m.

Room

The Office of Hawaiian Affairs is providing testimony in support of HB 3128. Our interest in this issue is primarily based on our concerns that there are approximately 26,000 elderly Hawaiians residing in Hawaii, many whom are confronted with a myriad of challenges that may prevent them from living out the rest of their lives in safety, comfort, and dignity. More troubling is that in three years, when many of the post World War II "baby boomers" reach the age of 65, the population of elderly Hawaiians will likely triple in size, as will the elderly numbers within the general populace.

OHA strongly supports this measure because it partly addresses fundamental concerns about the health and safety of our kupuna, who, as they age and become more vulnerable, become victimized by the greed or insensitivity of others, sometimes those who are entrusted with their care. We believe that expanding the list of persons mandated to report known or suspected abuse of kupuna and other vulnerable adults will help identify abusive situations, stop further abuse, and ultimately prevent it from occurring at all.

Ensuring that our elderly are properly cared for is of utmost importance to OHA, and we urge your passage of this bill.

Mahalo nui loa for the opportunity to present testimony.



HSH Committee
For hearing on Thurs, Jan 31, 2008
8:40 am
Deliver 3 copies to Rm 326

National Association of Social Workers

Hawaii Chapter

January 29, 2008

TO: Rep. Maile Shimabukuro, Chair
And members of the House Human Services Committee
FROM: Debbie Shimizu, LSW, Executive Director
National Association of Social Workers (NASW)
RE: HB 3128 Relating to Adult Protective Services- **SUPPORT intent with amendments**

Chair Shimabukuro and members of the House Human Services Committee, I am Debbie Shimizu, Executive Director of the National Association of Social Workers, Hawaii Chapter. I am testifying in **SUPPORT the intent of HB 3128 relating to Adult Protective Services with amendments.**

NASW prefers HB 3127 relating to Adult Protective Services, however, if you are going to pass HB 3128, we would like to add "social workers" to the list of mandated reporters.

Social workers are an integral part of providing services to the elderly and disabled. They should be mandated to report cases of abuse or neglect when they have reason to believe a dependent adult has been abused and is threatened with imminent abuse.

Thank you for the opportunity to testify.

TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: House Committee on Human Services and Housing

From: Gary L. Smith, President
Hawaii Disability Rights Center

Re: House Bill 3128
Relating to Adult Protective Services

Hearing: January 31, 2008 8:40AM
Conference Room 329, State Capitol

Members of the Committee on Human Services and Housing :

Thank you for the opportunity to provide testimony regarding House Bill 3128, Relating to Adult Protective Services.

I am Gary L. Smith, President of the Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A). As you may know, we are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We would like to offer the following comments on this bill. The Hawaii Disability Rights center receives numerous reports in the course of a year of possible abuse or neglect of individuals. We engage in accepted standards of best practices and conduct investigations accordingly. Many times we do not confirm the occurrence of abuse or neglect. Where we do issue a finding, our practice is to notify the appropriate regulatory or enforcement authorities.

Whether we should be included as a mandated reporter to the Department of Human Services in the event we confirm that abuse has occurred and is imminently likely to reoccur is a policy decision for the legislature as well as a matter is governed by federal law. Certainly, if the legislature feels that this is good public policy, we are supportive of these efforts. However, we do need to point out that there are provisions in federal which make this issue more complex.

Federal law contains very stringent requirements for a protection and advocacy system to maintain the confidentiality of information in its possession. Specifically, while we can report the results of an investigation to a responsible enforcement or investigative

agency, we are required to maintain the confidentiality of the individual involved. As applied to this bill, this means that federal law will permit us to become a mandated reporter only at the conclusion of an investigation and will not permit us to release the name of the abused victim in the absence of appropriate consent.

Federal law becomes even more complex when applied to the language in Section 2 which references "having reason to believe that a dependent adult has been abused." In terms of the phrase "knowing" that a dependent adult has been abused, that would occur at the conclusion of the investigation. At that point, as noted, we could release the results of the investigation. However, we might have "reason to believe" that abuse has occurred at a much earlier phase of an investigation. In fact, under federal law, a protection and advocacy system can trigger its authority to access records of an individual in the course of an abuse or neglect investigation if it has "probable cause" to believe that abuse or neglect has occurred. The federal definition of "probable cause" overlaps completely with this state requirement of "reason to believe". In order for a protection and advocacy system to make a determination of "probable cause" ,it must have "reason to believe" that abuse has occurred. Therefore, in the context of many investigations we are likely to be in the untenable position where at the moment we going to be required to report under this bill, we will be prohibited from doing so under federal law.

If the legislature still feels this bill represents sound public policy, then the remedy for this would be to amend the bill to add language that would mandate the reporting "to the extent permitted under federal law and where appropriate consents to release information have been obtained." This will provide the reporting that would desired at the same time that it prevents the protection and advocacy system from being out of compliance with federal law.

We offer three additional observations. The current definition of abuse is somewhat vague. We understand that there is another administration bill (HB 3127) which seeks to expand upon the definition and clarify the different types of abuse which may occur. We think this is a sensible idea and should provide useful guidance to whichever entities will ultimately be mandated reporters. Additionally, the inclusion in this bill of any entity that provides advocacy services to persons with disabilities is such a broad term that it could apply to so many agencies and create confusion as to who is or who is not a mandated reporter. That language ought to be clarified. Finally, since there are potentially so many entities that could have knowledge of the occurrence of abuse and since there are so many overlapping jurisdictions of authority in this area, it might be useful for the legislature to consider convening a Task Force composed of these stakeholders to discuss ways in which reporting could be better coordinated so as eliminate gaps in the current system of regulation and provide better overall protection for our citizens against the incidence of abuse.

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



Hawaii's Voice for a Better Future

To: Representative Maile SL Shimabukuro, Chair
 Representative Karl Rhoads, Vice Chair
 COMMITTEE ON HUMAN SERVICES & HOUSING

From: Lyn Moku, Board Member Phone: 532-0806

Date: Thursday, January 31, 2008

Subject: **SUPPORT OF HB 3128 RELATING TO ADULT PROTECTIVE SERVICES**

Kokua Council, one of Hawaii's oldest advocacy groups, is comprised of individuals and private and non-profit organizations. We advocate and seek to empower seniors and other concerned citizens to be effective advocates in shaping the future and well-being of our community, with particular attention to those needing help in advocating for themselves. Kokua Council supports HB 3128, which expands the list of persons mandated to report known or suspected abuse of vulnerable adults to include caregivers and the entity or agency designated by the governor to provide advocacy services.

We trust that by broadening the definition caregiver and including the advocacy entity or agency, the responsibility for reporting suspected abuse will result in prompt investigations and immediate protective services for vulnerable adults.

We usually hear about "abuse" after a death has occurred, when in fact, the abusive situation has been allowed to exist for a period of time. We need to something to prevent these types of tragedies from occurring. We need to place the responsibility on those whose duty it is to ensure the care and well being, and on the entities or agency providing advocacy services to dependent adults. Shared responsibility by all of us should ensure that those most in need – those who are not able to advocate for themselves – are cared for properly. This Bill is a step in the right direction.

Please support HB 3128. Thank you for the opportunity to testify.

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Kokua Council
 c/o Harris United Methodist Church
 20 S. Vineyard Boulevard – Honolulu, Hawaii 96813