



## DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814  
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

March 18, 2008

TESTIMONY

### TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

#### Senate Bill 2150, SD2 – Relating to Adult Protection

The Disability and Communication Access Board (DCAB) is a statewide board with seventeen (17) members appointed by the Governor, thirteen (13) of whom are persons with disabilities or family members. The Board's mission is to advocate and promote full integration, independence, equal access, and quality of life for persons with disabilities in society. This testimony represents a position voted upon by the Legislative Committee of the Board.

We support Senate Bill 2150, SD 2 which increases adult protective services available to adults in the State who are victims of abuse or neglect. Individuals with disabilities who are eighteen years of age or older function in a wide range varying from independent to those who cannot make decisions for themselves and are in need of guardianship to assist with decision-making. Some of these individuals with disabilities may fit the definition of "vulnerable adult" but may not technically be "dependent" to be protected by this statute.

When an individual cannot protect him or herself from abuse, neglect or financial exploitation by others, it is the State's responsibility to step in and do so. We also agree with Section 27 that encourages the Department of Human Services to work with interested stakeholders to develop a plan to build the capacity of community-based services to help with the provision of services under this act. Obtaining feedback from the stakeholders often generates ideas and perspectives that the State does not have.

We defer to the Department of Human Services regarding the appropriation in Section 28 of the bill.

Thank you for the opportunity to testify.

Respectfully submitted,

PATRICIA M. NIELSEN  
Chairperson  
Legislative Committee

FRANCINE WAI  
Executive Director

# LATE TESTIMONY

TO: COMMITTEE ON JUDICIARY  
Representative Tommy Waters, Chair  
Representative Blake K. Oshiro, Vice Chair

FROM: Sandy Rongitsch, Medical Social Worker  
Hale Makua Home Health and Foster Family Programs  
Wailuku, Maui

**SUBJECT: SB 2150, SD 2, RELATING TO ADULT PROTECTION**

Hearing: Tuesday, March 18, 2008, 3:45 p.m.  
Conference Room 325

Thank you for this opportunity to present testimony.

I support SB 2150, SD 2 and the proposed amendments which expand and strengthen the DHS' ability to provide protective services for vulnerable adults in a more timely and comprehensive manner.

As a former adult protective services social worker/investigator and now a referring party to APS, I believe that the following changes will result in protecting and preventing further abuse of vulnerable adults who are presently "falling through the cracks":

- Changing "dependency" to "vulnerable" recognizes that advance age alone is not sufficient reason to intervene in a person's life; rather, the person's vulnerability to abuse, neglect and exploitation should be the deciding factors.
- Changing "and" to "or" recognizes that vulnerable persons need help when abused "or" are in immediate danger of being abused; the vulnerable person no longer needs to experience abuse before APS intervenes.
- Expanding the definition of "caregiver" will explicitly include home-based, as well as care home and foster home operators and others with contractual duty. This will further expand the protection of vulnerable adults.

Realizing that the DHS/APS is charged with an enormous statewide responsibility, I urge your full support of SB 2150, SD 2. Thank you for your time and consideration.

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

March 18, 2008

**LATE TESTIMONY**

MEMORANDUM

TO: Honorable Tommy Waters, Chair  
House Committee on Judiciary

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 2150, S.D.2 - RELATING TO ADULT PROTECTION

Hearing: Tuesday, March 18, 2008, 3:45 p.m.  
Conference Room 325, State Capitol

**PURPOSE:** The purposes of S.B. 2150, S.D.2 are to expand the adult protective services law to include vulnerable adults and to appropriate funds to the Department of Human Services.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports the intent of this bill to expand adult protective services to include vulnerable adults. This bill is similar to Administration bills, S.B. 3049 and H.B. 3127, that also propose expansion of the adult protective services program.

S.B. 2150, S.D.2, appropriates State funds to DHS to implement the proposed amendments to Chapter 346, Part X, HRS, in this bill. DHS is hopeful that no appropriation of general funds would be needed to implement this bill if the Department's existing resources can be successfully redescribed and staffed.

AN EQUAL OPPORTUNITY AGENCY

We will be in a better position to evaluate this situation in April.

If DHS cannot utilize existing resources as hoped, then the Department will need a total of \$1,714,332 for the first year of implementation. This total includes \$1,589,332 in personnel costs for 24 new adult protective services positions and \$125,000 for client resources and services needed during crisis intervention. For the second year of implementation and every year thereafter, DHS will need a total of \$1,591,485, including \$1,466,485 per year for personnel costs and \$125,000 per year for client resources and services.

Therefore, DHS cannot support this bill at this time as written because it would adversely impact or replace the priorities in the Executive Supplemental Budget.

DHS was asked by staff members of the House Committee on Judiciary to comment on the following proposed changes to S.B. 2150, S.D.2:

1. HRS §§571-14 and 846-2.7: DHS is in agreement with amending these sections by deleting references to "dependent adults" and replacing them with references to "vulnerable adults."
2. Where "abuse, neglect, and exploitation" are referred to throughout S.B. 2150, S.D.2, the terms "neglect" and "exploitation" will be deleted: DHS is in agreement with this proposal since the definition of "abuse" includes abuse, neglect, and financial exploitation.

It is not necessary to repeat the terms "neglect" and "exploitation" whenever abuse is referred to.

3. DHS recommends the deletion of the terms "negligent" and "intentional" within the definition of "financial exploitation." Relevant parts of this definition should read as follows:

"Financial exploitation" means the wrongful [or negligent] taking, withholding, misappropriation, or use of a vulnerable adult's money, real property, or personal property, and includes but is not limited to:...

(4) The [intentional or negligent] failure to effectively use a vulnerable adult's income and assets for the necessities required for the vulnerable adult's support and maintenance."

4. DHS is in agreement with the deletion of references to "poor self care" within the definition of "self-neglect."
5. The definition of "self-neglect" contains several conditions that must be met, including 1) the vulnerable adult's inability or failure to perform tasks essential to caring for oneself; 2) the vulnerable adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the vulnerable adult's

person; and 3) the vulnerable adult appears to be exposed to a situation or condition that poses an immediate risk of death or serious physical harm. In keeping with the Legislature's stated purposes in section 346-221 to place the fewest possible restrictions on personal liberty and to permit the exercise of constitutional rights by adults, all three of the stated conditions in the definition for "self-neglect" must be retained.

6. DHS is in agreement with adding the term "reasonably" to paragraph (1) (B) within the definition of "self-neglect" to read as follows:

"(B) Obtaining goods and services **reasonably** necessary to maintain physical health, mental health, emotional well-being, and general safety; or..."

7. DHS is in agreement with the deletion of the word "further" and removing the phrase "from occurring or preventing" from section 346-228. This section should read as follows:

"§346-228 **Action upon investigation.** Upon investigation the department shall take action toward preventing [~~further~~] abuse and shall have the authority to do any or all of the following:..."

8. DHS is in agreement with the deletion of the word "victim" and replacing it with the term "vulnerable adult" in section 346-230, subsection (a) as follows:

"§346-230 Termination of services. (a) The department shall act only with the consent of the ~~[victim]~~ vulnerable adult..."

9. DHS is in agreement with the deletion of the semi-colons in section 346-231, subsections (a) and (c) as follows:

"(a) If the department believes that a person is a ~~[dependent]~~ vulnerable adult and it appears probable that the ~~[dependent]~~ vulnerable adult has been abused ~~[and]~~ or is ~~[threatened with imminent abuse unless]~~ in danger of being abused if immediate action is not taken~~[+]~~..." ; and

"(c) Upon finding that the person is a ~~[dependent]~~ vulnerable adult and that there is probable cause to believe that the ~~[dependent]~~ vulnerable adult has been abused ~~[and]~~ or is ~~[threatened with imminent abuse unless]~~ in danger of being abused if immediate action is not taken~~[+]~~..."

10. DHS recommends that the following changes be made to section 346-237, subsection (a):

"§346-237 **Notice of proceedings.** (a) After a petition has been filed, the matter shall be set for hearing and a notice of hearing shall be issued to all

parties to the proceeding. The parties to the proceeding shall include:

- (1) The [~~dependent~~] vulnerable adult;
- (2) Any caregiver [~~or facility in which the dependent adult resides or is a patient;~~] of the vulnerable adult;
- (3) A representative of the facility in which the vulnerable adult resides or is a patient;
- ~~[-3-]~~ (4) The spouse and adult children of the [~~dependent~~] vulnerable adult;
- ~~[-4-]~~ (5) The parents of the [~~dependent~~] vulnerable adult, unless waived by the court for good cause;
- ~~[-5-]~~ (6) Any guardian or conservator who may have been appointed; and
- ~~[-6-]~~ (7) Any other person or entity affected by the order for immediate protection."

Thank you for this opportunity to testify.



March 17, 2008

TO: Rep. Tommy Waters, Chair  
And members of the House Judiciary Committee

FROM: Debbie Shimizu, LSW, Executive Director  
National Association of Social Workers (NASW)

RE: SB 2150 SD2 Relating to Adult Protective Services- **ADDITIONAL TESTIMONY**

Chair Waters and members of the House Judiciary Committee, I am Debbie Shimizu, Executive Director of the National Association of Social Workers, Hawaii Chapter. After discussions with the Department of Human Services and concerns raised by House Judiciary staff, I am adding the following comments to our testimony on **SB 2150 SD2 relating to Adult Protective Services**.

- 1) Page 3, Reformatting of the definition of “abuse” in Section 4 and to have the definition of “abuse include abuse, neglect and financial exploitation”.
- 2) Page 7 and 9- Technical and clarifying amendments to definitions of “caregiver”, “caregiver neglect”, “financial exploitation”
- 3) Page 9- Delete the word “negligent” and “intentional” in the definition of “financial exploitation”
- 4) Page 9- Change “misappropriation” to “appropriation” in the definition of “financial exploitation”
- 5) Page 11- Delete “poor self care” in definition of “self neglect”
- 6) Page 11- Add “reasonably” to paragraph 1(b), line 12, in definition of “self neglect” – “Obtaining goods and services reasonably necessary to maintain physical health...”
- 7) Page 12 (line 15 & 16)-Delete “neglect, or financial exploitation by others” in definition of “Vulnerable adult”
- 8) Page 18, Section 10, line 13- Delete “[abuse from occurring or preventing further]”
- 9) Page 20, Section 12, (a)-Amend “victim” to “vulnerable adult”
- 10) Page 21, Delete semi-colons in line 5, (a) “immediate action is not taken [;] and the...”  
And line 17 c) “immediate action is not taken [;] and the....”
- 11) Page 28, line 4- Delete (2) Any caregiver [or facility in which the dependent adult resides or is a patient;]
- 12) Page 28, Add new number- “A representative of the facility in which the vulnerable adult resides or is a patient”
- 13) Add new section to amend HRS 571-14 Jurisdiction, adults to change “dependent adult” to “vulnerable adult”
- 14) Adding necessary changes to HRS 846-2.7 Criminal history record checks to be consistent with changes in this bill
- 15) Technical amendments throughout the bill so that the word “abuse” is used as a noun

Thank you for the opportunity to testify.