



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

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

S.B. NO. 2345, RELATING TO CHILDREN.

BEFORE THE:

SENATE COMMITTEES ON HUMAN SERVICES AND PUBLIC HOUSING AND ON
PUBLIC SAFETY

DATE: Tuesday, February 12, 2008 **TIME:** 2:45 PM

LOCATION: State Capitol, Room 225
Deliver to: Committee Clerk, Room 207, 1 copy

TESTIFIER(S): Mark J. Bennett, Attorney General
Or Diane K. Taira

Chairs Chun Oakland and Espero and Members of the Committees:

The Attorney General opposes this bill in its present form.

The bill aims to create a "bill of rights" for the children of incarcerated parents, including the right: (1) "to be heard" when decisions are made about the child; (2) "to be considered when decisions are made about the child's incarcerated parent"; (3) to be "well cared for" and "supported" during the parent's incarceration; and (4) "[t]o have a lifelong relationship with the parent." While the intent of the bill is laudable, the bill in its present form nonetheless presents a number of problems that should be remedied.

This bill is extremely vague regarding the rights provided under the bill. Vague rights may be interpreted in any number of ways, leading to misunderstanding and, consequently, increased litigation when those rights are perceived as being violated. For example, as written, the child's right to be "heard" and "considered" with regard to decisions made about the child or the incarcerated parent is virtually unlimited in scope, and does not include a limitation on the child's age. In its present form, the bill gives infants the right to be heard even though they obviously are too young to express themselves. If the bill passes, the State may be required to pay for

guardians for children who are not yet mature enough to represent themselves.

A useful analogy is found in the divorce context, where the Family Court typically makes custody decisions without hearing from the minor children involved. While it is true that in certain cases the Court needs to consider a "child's wishes" in custody matters, that requirement is limited to children "of sufficient age and capacity to reason, so as to form an intelligent preference," as stated in section 571-46(3), Hawaii Revised Statutes. The lack of such a limitation in this bill is problematic.

The right for the child to be "well cared for" and "supported" during the parent's incarceration is also very vague. For instance, it is not clear whether the care or support is intended to be monetary in nature, psychological, or both. In any event, the bill does not specify exactly who is responsible for providing such care and support for the child.

Lastly, it is unclear what it means to have the right to have "a lifelong relationship with the parent." Again turning to the divorce context, child custody orders cease when the child reaches the age of majority (i.e., there are no "lifelong" custody orders). Once children covered by a custody order become adults, they are free to see as much or as little of their parents as they wish. Similarly, once children of incarcerated parents become adults, they are presumably able to freely access that parent in prison without the need for the protections afforded by this bill.

Care must be taken to review all of the rights provided in this measure, keeping in mind the liabilities that may occur as a consequence. In its present form, the breadth of the provisions of this bill and its vagueness are of deep concern, leaving open the question of who is liable for what. For the foregoing reasons, we ask that this measure be held.

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

LATE TESTIMONY

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

February 12, 2008

MEMORANDUM

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

Honorable Will Espero, Chair
Senate Committee on Public Safety

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 2345 - RELATING TO CHILDREN
Hearing: Tuesday, February 12, 2008, 2:45 p.m.
Conference Room 225, State Capitol

PURPOSE: The purpose of S.B. 2345, is to make amendments to chapter 346, Hawaii Revised Statutes, relating to a "Bill of Rights" for children of incarcerated parents.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this bill but cannot support this bill for the following reasons:

This bill:

- 1) Does not provide the resources that will be needed to comply with the requirements of the bill.
- 2) Requires DHS to guarantee the "bill of rights" listed, and other unspecified rights that are included, but not listed.

- 3) Will result in State liability if DHS is unable to provide a child the listed or unspecified rights included in this bill since the bill specifies "shall" and not "may" and includes other rights that are not specified.
- 4) Includes all children of incarcerated parents, regardless of whether or not they are under the jurisdiction of DHS and the Family Court pursuant to chapter 587, Hawaii Revised Statutes (HRS) or not. We are not the appropriate or best agency to coordinate or promote the provisions of this bill due to the small percentage of children of incarcerated parents who are under the jurisdiction of the Department compared to the much larger number of children who are not known to DHS.
- 5) As written, attempts to address too many issues under one umbrella by inappropriately expanding the DHS mandate and responsibility for compliance of the statute beyond our authority to ensure compliance by other agencies with oversight of incarcerated parents, such as the Department of Public Safety, the Hawaii Paroling Authority, the Department of Labor and the Family Court.
- 6) Does not place responsibility for ensuring compliance with the provisions of the bill with any agency or entity besides DHS.

We agree that children of incarcerated parents have needs that should be met, but the Department is not the "best fit" for

this bill and, absent the proper authority and resources, we cannot meet the requirements of this bill.

Thank you for the opportunity to testify.