



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
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February 5, 2008

The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services and Housing
Twenty-Fourth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Chun Oakland and Members of the Committee:

SUBJECT: SB 3050 – 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 SB 3050**. The purpose of SB 3050 is to: 1) add a new definition for “caregiver” to Section 346-222, Hawaii Revised Statutes (HRS), and 2) 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. We defer to HDRC to ensure that this provision is in compliance with the Federal law (P.L. 106-402).

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 Living Council of Hawaii, and Hawaii Centers for Independent Living.

The term “advocacy services” is also very broad and numerous entities and agencies could fall under this category. We foresee difficulty in implementing this provision and therefore, suggest eliminating proposed Item (7).

The Honorable Suzanne Chun Oakland
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Thank you for the opportunity to submit testimony supporting the intent of SB 3050.
We appreciate the Legislature's initiatives to protect individuals with disabilities from abuse.

Sincerely,



Waynette K. Y. Cabral
Executive Administrator



HAWAII DISABILITY RIGHTS CENTER

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TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Human Services and Public Housing

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

Re: Senate Bill 3050
Relating to Adult Protective Services

Hearing: February 5, 2008 1:15 PM
Conference Room 016, State Capitol

Members of the Committee on Human Services and Public Housing :

Thank you for the opportunity to provide testimony regarding Senate Bill 3050
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 are 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 be 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 to 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.



Senate HSP Committee
For hearing on Tues, Feb 5, 2008
1:15 pm
Deliver 1 copy to Rm 226

National Association of Social Workers

Hawaii Chapter

February 3, 2008

TO: Senator Suzanne Chun Oakland, Chair
And members of the Senate Human Services and Public Housing Committee
FROM: Debbie Shimizu, LSW, Executive Director
National Association of Social Workers (NASW)
RE: SB 3050 Relating to Adult Protective Services- **SUPPORT intent with amendments**

Chair Chun Oakland and members of the Senate Human Services and Public Housing Committee, I am Debbie Shimizu, Executive Director of the National Association of Social Workers, Hawaii Chapter. I am testifying in **SUPPORT the intent of SB 3050 relating to Adult Protective Services with amendments.**

NASW prefers SB 2150 relating to Adult Protective Services, however, if you are going to pass SB 3050, 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.