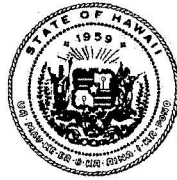


LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

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

March 11, 2008

MEMORANDUM

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

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 3050, S.D.1 - RELATING TO ADULT PROTECTIVE
SERVICES

Hearing: Tuesday, March 11, 2008, 8:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purposes of S.B. 3050, S.D.1 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 will add additional mandatory reporters of adult abuse or neglect. These amendments to sections 346-222 and 346-224, Hawaii Revised Statutes (HRS), will increase DHS' opportunity to investigate and provide protective services, as deemed necessary, for vulnerable adults.

DHS would like to suggest the following friendly amendments to this bill's definition for "caregiver" in section 346-222, HRS, and the mandated reporter section 346-224, HRS:

1. **Section 346-222, Definitions:** In the definition for "caregiver", delete the word "undertaken" and replace it with the phrase "knowingly and willingly assumed, on a part-time or full-time basis," as follows:

"Caregiver" means any person who has knowingly and willingly assumed, on a part-time or full-time basis, the care, custody, or physical control of, or who has a legal or contractual duty to care for the health, safety, and welfare of a dependent adult."

2. **Section 346-224, Reports:** In subsection (a), delete the phrase "to the maximum extent permitted by federal law" and replace it with the following terminology:

"§346-224, Reports. (a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a dependent adult has been abused and is threatened with imminent abuse shall promptly report the matter orally to the department of human services which is designated as an

authorized agency to receive such information, pursuant to Titles 42 and 45, Code of Federal Regulations, with or without the consent of the dependent adult or his or her guardian."

We also recommend that language pertaining to "dependent adult" and persons knowing or have reason to believe that a "dependent adult" has been abused and is threatened with "imminent abuse" be changed to mirror the language used in S.B. 2150, that requests amendments to the entire Chapter 346, Part X, pertaining to adult protective services (APS). The language in S.B. 2150 refers to "vulnerable adults" and changes the criteria for accepting reports for APS investigation to "vulnerable adults" who have been abused or are "in danger of being abused if immediate action is not taken".

Thank you for this opportunity to testify.



OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony
SB 3050 RELATING TO ADULT PROTECTIVE SERVICES
Senate Committee on Human Services & Housing

Date: March 11, 2008 Time: 8:30am
Room: 329

The Office of Hawaiian Affairs supports SB 3050 to expand the list of persons who will be mandated to report adult abuse in Hawaii.

In the Hawaiian culture, our kupuna are treated with deepest respect for their life, knowledge, beliefs, and values. However, due to their fragility, individuals with ill-intentions may take advantage of their economic, social and spiritual well-being, disabling kupuna even more.

According to the Adult Protective Services Report 2005, vulnerable adults and elders for all ages nationwide had an almost 20% increase since the year 2000. Hawai`i has an elder abuse reporting rate of 4.87 per 1,000 individuals.

Our current state law mandates that persons working directly with children must report to authorities if there is suspected child abuse and neglect involvement. It seems natural to give the same attention to kupuna whose lives and well-being are hindered in its ability to live, sustain, and thrive due to abuse and neglect.

The Office of Hawaiian Affairs supports SB 3050. Mahalo nui loa for the opportunity to present testimony.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 3050, S.D. 1, RELATING TO ADULT PROTECTIVE SERVICES

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING

DATE: Tuesday, March 11, 2008 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 329

Deliver to: , Room 326, 3 Copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Kris S. Murakami, Deputy Attorney General

Chair Shimabukuro and Members of the Committee:

The Attorney General supports this bill but recommends the following amendments: Two proposed amendments are recommended to alleviate potential application problems, especially as they relate to those individuals that fall under the category of employees or officers of the entity or agency designated by the Governor to provide advocacy services to persons with developmental disabilities and mental illness in order to receive federal funds authorized by 42 U.S.C. sections 10801 and 15001.

The first proposed amendment would be to change the definition of "caregiver" in section 1 of the bill by replacing it with the definition contained in S.B. No. 2150, S.D. 1. In S.B. No. 2150 "caregiver" means "any person who has knowingly and willingly assumed, on a part-time or full-time basis, the care, custody, or physical control of, or who has a legal or contractual duty to care for the health, safety, and welfare of a dependent adult."

The second proposed amendment would be to include the additional wording in section 346-224(a), Hawaii Revised Statutes:

"(a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a dependent adult has been abused and is threatened with

imminent abuse shall promptly report the matter orally to the department of human services, which is designated as an authorized agency to receive such information, pursuant to Titles 42 and 45, Code of Federal Regulations, with or without the consent of the dependent adult or the dependent adult's guardian or legal representative."

With the addition of this wording, it would obviate the need of the individuals listed above to obtain the dependent person's consent, or the consent of the dependent person's guardian or legal representative if the dependent person is not competent to consent, prior to reporting cases of abuse or neglect to the Department of Human Services as is currently required under 42 C.F.R. 51.45(b)(2) and 45 C.F.R. 1386.22(a)(3).

Thank you for this 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: Senate Bill 3050, SD 1
Relating to Adult Protective Services

Hearing: March 11, 2008 8:30 AM
Conference Room 329, State Capitol

Members of the Committee on Human Services and Housing:

Thank you for the opportunity to provide testimony regarding Senate Bill 3050, SD1 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 that may be governed by federal law. Certainly, if the legislature feels that this is good public policy, we are supportive of these efforts. In prior testimony, we pointed out there are provisions in federal law which may impact our ability to release certain information which is acquired in the course of an investigation, without appropriate consents. This current version addresses that by providing that information would be released to the maximum extent permitted by federal law.

In some contexts, we may be not constrained by any provision in federal law. In those cases, we can simply report it. In either event, the language of this SD1 version encompasses all situations and we are in support of it. We understand that the Department of The Attorney General may have additional language to suggest and we would be happy to work with them as well as the Committee. The important point is that this agency is in support of attempts to protect vulnerable individuals and we want to work collaboratively with various agencies in that regard.



Tues, March 11, 2008
House HSH
8:30 am

National Association of Social Workers

Hawaii Chapter

March 9, 2008

TO: Rep. Maile Shimabukuro, Chair
And members of the House Human Services and Housing Committee

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

RE: SB 3050 SD1 Relating to Adult Protective Services- **SUPPORT intent but prefer**
SB 2150 SD2

Chair Shimabukuro and members of the House Human Services and 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 SD1 relating to Adult Protective Services but prefer SB 2150 SD2**

NASW prefers SB 2150 SD2 relating to Adult Protective Services because it **represents a compromise between community advocates and the Department of Human Services**. SB 2150 SD2 also has wide support from the Kupuna Caucus. I believe agencies who provide advocacy for persons with developmental disabilities and mental illness have problems with the wording of SB 3050 SD1 but **we are all in agreement with SB 2150 SD2.**

We believe that SB 3050 SD1 is unnecessary and respectfully request your support SB 2150 SD2 instead.

Thank you for the opportunity to testify.

COMMITTEE ON HUMAN SERVICES & HOUSING
Rep. Maile S. L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair

March 11, 2008, 8:30AM, Conference Room 329

SB 3050, SD1 RELATING TO ADULT PROTECTIVE SERVICES. 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 to persons with developmental disabilities and mental illness.

Testifier: Laura G. Manis

COMMENTS

This testimony is being submitted on behalf Kokua Council whose mission includes advocating for the health of the elderly and those vulnerable populations who can not advocate for themselves.

We would respectfully point out that the description of this bill on the title page refers to 'vulnerable' adults but in the body of the bill the term 'dependent' adult is used through out.

The present law is too restrictive requiring an adult be 'dependent' (not living alone), and there be evidence of physical injury, psychological, sexual abuse, financial exploitation or neglect or maltreatment and in danger of imminent abuse. The result has been under-reporting of abuse since many cases cannot provide evidence of all 3 criteria of eligibility.

Kokua Council does believe that vulnerable adults of all ages who are mentally or physically disabled are particularly subject to risk of abuse, neglect and exploitation no matter where they live. Vulnerable means any adult who because of physical or mental impairment, is unable to make reasonable decisions to manage one's own resources, to carry out or arrange for essential activities of daily living or to protect oneself from abuse, neglect or financial exploitation without assistance from others.

We also support the addition of Social Workers as reporters of abuse.

Laura G. Manis, Legislative Chair, Kokua Council
597-8838