



HAWAII DISABILITY RIGHTS CENTER

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TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Judiciary and Labor

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

Re: Senate Bill 3050, SD 1
 Relating to Adult Protective Services

Hearing: February 25, 2008 10:00 AM
 Conference Room 016, State Capitol

Members of the Committee on Judiciary and Labor:

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 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 be desired at the same time that it prevents the protection and advocacy system from being out of compliance with federal law. This is the approach taken by the Committees in the Senate Draft 1 version and we are in support of that measure. We understand that the Department of Human Services or the Department of the Attorney General may feel that there are fewer barriers under federal law to our releasing confidential information. If that is so, we would be happy to discuss this with them and collaborate on further language. We want the legislature to know that we are certainly in support of the attempt to protect vulnerable individuals and we want to be able to report these incidents to the appropriate agencies to the extent the law will permit.

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

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

LATE

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

February 25, 2008

MEMORANDUM

TO: Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Labor

FROM: Lillian B. Koller, Director

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

Hearing: Monday, February 25, 2008, 10:00 a.m.
Conference Room 016, 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 (DHS) 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.

In SECTION 1 of this bill, DHS would like to suggest the following friendly amendment to this bill's definition for "caregiver" in section 346-222, HRS:

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."

As to the amendments in SECTION 2 of this bill regarding mandatory reporters, DHS defers to the Department of the Attorney General on the appropriate language that will be required to amend section 346-224(a), to meet the purpose of subsection (a).

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. 3049, which is another Administration bill that requests amendments to the

entire Chapter 346, Part X, HRS, pertaining to adult protective services (APS). The language in S.B. 3049 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.

LATE



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
February 25, 2008

The Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Labor
Twenty-Fourth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Taniguchi and Members of the Committee:

SUBJECT: SB 3050 SD1 – 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 SB 3050 SD1**. The purpose of SB 3050 SD1 is 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.

We support the provision on Page 2, (6), lines 19-22, and Page 3, lines 1-2. This section 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). Additionally, we endorse the addition of social workers to the list of persons mandated to report known or suspected abuse and the clarification of the definition of a caregiver. Social workers are the front line to interacting with vulnerable adults and are integral to the service delivery system.

The Council applauds the Legislature's initiatives to protect vulnerable adults that include persons with DD from abuse. Thank you for the opportunity to submit testimony supporting SB 3050 SD1.

Sincerely,


Wyanette K.Y. Cabral
Executive Administrator



Senate JDL Committee
For hearing on Mon Feb 25, 2008
10:00 am

LATE

National Association of Social Workers

Hawaii Chapter

February 23, 2008

TO: Senator Brian Taniguchi, Chair
And members of the Senate Judiciary and Labor 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 Taniguchi and members of the Senate Judiciary and Labor 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 that this committee and the Senate Human Services and Housing Committee passed with amendments on February 5th and the Senate Ways and Means Committee passed with amendments on February 22nd.

SB 2150 SD2 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 respectfully request that you support SB 2150 SD2 rather than SB 3050 SD1.

Thank you for the opportunity to testify.