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To: Senate Committee on Judiciary and Government Operations

From: Paul T. Tsukiyama, Director

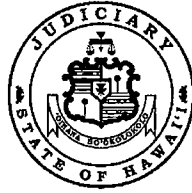
Date: Thursday, February 26, 2009, 9:00 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 112
Relating to the Children's Justice Program

Thank you for the opportunity to submit testimony on S.B. No. 112.

The Office of Information Practices ("OIP") takes no position on the purpose of this bill but recommends an amendment to the bill for purposes of clarification. Specifically, this bill requires confidentiality for the files used in providing services in the Children's Justice Program. It is OIP's understanding that this bill provides confidentiality in order to protect the privacy of the individuals in the Program and, therefore, believes confidentiality for individual treatment records, reports, and files is appropriate. However, the bill, as currently worded, is overbroad because it requires confidentiality for all the types of records covered, including records that do not reveal any information identifying the individuals in the Program. OIP recommends that the bill be amended to provide that information identifying individuals shall be confidential. This will allow the Program to provide information about their services to the public so long as no information about individuals are disclosed.

Thank you for the opportunity to testify.



The Judiciary, State of Hawaii

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

Senate Committee on Judiciary and Government Operations

The Honorable Brian T. Taniguchi, Chair

The Honorable Dwight Y. Takamine, Vice Chair

Thursday, February 26, 2009, 9:00 a.m.

State Capitol, Conference Room 016

by

Jasmine M. Mau-Mukai

Children's Justice Centers of Hawai'i Statewide Director

Bill No. and Title: Senate Bill No. 112, Relating to the Children's Justice Program.

Purpose: Establishes the confidentiality of Children's Justice Program records, subject to exceptions for program and provider staff, mental and physical health professionals, and the courts.

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 112, a Judiciary package bill which amends Hawai'i Revised Statutes (HRS) Section 588-1.5(c) by ensuring that certain information maintained by the Children's Justice Centers is considered confidential and not subject to disclosure under HRS chapter 92F, unless under specified exceptions.

Under HRS chapter 92F, government information should be disclosed to the greatest extent possible, except when significant privacy interests dictate otherwise or when the disclosure of that information may jeopardize, undermine or frustrate a legitimate government function. In recent years, the CJC has seen an increase in subpoenas and other requests for CJC records. Most of these requests for documents are sought for cases involving alleged sexual abuse/assault of children by parents or other adults who have familial relationships. Subpoenas are often issued by attorneys on behalf of defendants in these cases. Attorneys seek records of the cases and often the recorded interviews of the child victims. These recordings generally contain detailed accounts of the children's alleged abuse. The records may also include written documents and materials related to the investigative/interview process. The CJC program also



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maintains reports/records/files pertaining to child abuse and child witness to crime cases that includes information as to the identity of children, suspect(s), type of abuse or crimes and additional sensitive information.

Clearly, there are certain situations where records need to be released. The Children's Justice Centers, however, is not in the position to determine which information should be released on a case-by-case basis. That decision is best set by statute, with decision-making made by judges who are in the best position to balance the interests of the parties involved in the cases. Often, that may involve an *in camera* inspection of the record, so that certain information may be redacted if needed.

This bill, if enacted, would ensure that records are not deemed "disclosable" on a wholesale basis. The Children's Justice Centers should not be the arbiter of which records should be deemed confidential and which should be deemed disclosable on a piecemeal basis. Again, while certain information may need to be disclosed, other information should not – sometimes based on the personal nature of the information provided, and other times based on a need to ensure the integrity of the forensic interview process (e.g., to maintain a fair and neutral interview process, children and their caretakers should not be provided pre-interview information such as the questions they will be asked.)

This bill ensures that certain documents are not subject to public release under HRS chapter 92F with the exceptions that include: Information may be provided to staff employed by the program and providers of agencies and providers directly involved in the investigation, treatment, case management, and legal processing of cases under this chapter; information may be provided to medical and mental health professionals; and the court and those persons authorized by a court order.

One of the underpinnings of success for the CJC programs is the extent to which the children involved feel confident and secure in providing information candidly and completely. To do so often involves a "leap of faith" for the person providing the information. There needs to be a correlating respect for and maintenance of confidentiality for that information. This bill ensures that we maintain that confidentiality unless the balance can be shown to weigh in favor of disclosure. We believe that this best serves the interests of the program, and most importantly, the best interests of the children involved in a process that is inherently stressful.

Thank you for the opportunity to provide testimony on this measure.