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

March 29, 2010

MEMORANDUM

TO: Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Lillian B. Koller, Director

SUBJECT: S. B. 2716, S.D. 2, H.D. 2, RELATING TO CHILD PROTECTIVE ACT

Hearing: March 29, 2009, Monday, 2:30 p.m.
Conference Room 308, State Capitol

PURPOSE: The purpose of S.B. 2716, S.D. 2, H.D. 2, is to establish child protective provisions in the Hawaii Revised Statutes that are consistent with federal Title IV-E provisions.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this bill **which is necessary to ensure the receipt of approximately $50,000,000 in federal Title IV-E funds annually** which is used to support everything we do - from staffing to services - to protect abused and neglected children. We also appreciate and support the amendments made to the bill by the House Committee on Human Services.

Based on the information and instructions given to the Department, the U.S. Administration for Children and Families has

indicated that the State does not have any other viable option besides this legislation to ensure compliance with the requirements of Title IV-E.

The rewritten Child Protective Act has been updated, simplified, and incorporates all necessary federal Title IV-E requirements. The bill was drafted by a committee convened by the Judiciary composed of Judiciary, DHS and Attorney General staff, together with representation from the Legal Aid Society of Hawaii, Guardians Ad Litem and Parents' attorneys. Technical assistance was provided through the Administration for Children and Families by the National Center for Legal and Judicial Issues by former Judge Joanne Brown.

The committee was tasked with ensuring that the Child Protective Act complies with all necessary Federal Title IV-E requirements and revising Chapter 587 to reorganize and clarify the statute to make it easier to understand and implement.

This legislation is necessary to ensure that Hawaii's law is consistent with federal Title IV-E provisions. If the legislation is not passed the State will not be able to finalize a federally approved State Plan for Title IV-E to continue receiving Title IV-E funds.

Legislation was submitted in the 2009 Legislature which passed, but did not meet, the Federal Title IV-E requirements. The bill was vetoed, but the State still has to pass the necessary legislation.

This legislation is necessary to ensure that chapter 587, Hawaii Revised Statutes, is compliant with federal Title IV-E

provisions related to periodic and permanency hearings and required timelines for hearings and Court findings.

For example, Chapter 587 does not specifically address the Federal requirement for periodic review hearings at six-month intervals to determine the safety of the child and case progress and permanency hearings at twelve-month intervals to determine the permanency plan for a child in accordance with Section 475(5) (C) (1) of the Social Security Act and 45 CFR 1356.21(h). Instead, chapter 587 continues to require eighteen-month dispositional hearings along with requirements that were made obsolete by the amendments in the Adoption and Safe Families Act of 1997 (P.L. 105-89).

DHS cannot over-emphasize the importance of the passage of this bill, especially during the fiscal crisis facing the State at this time. If the proposed statute change is not adopted with the specific language proposed by the Department to ensure compliance with Federal Title IV-E requirements, **approximately $50,000,000 in Federal Title IV-E funds annually will be lost.**

The proposed Child Protective Act will ensure compliance with federal Title IV-E requirements, while providing our community with improvements to the current Child Protective Act that will promote child safety, permanency and well-being.

Thank you for the opportunity to testify.

The Judiciary, State of Hawaii

Testimony to the House Committee on Finance
The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair

Monday, March 29, 2010, 2:30 p.m.
State Capitol, Conference Room 308

by
Frances Wong
Senior Family Court Judge (Retired)
Family Court, First Circuit

Bill No. and Title: Senate Bill No. 2716, S.D. 2, H.D. 2, Relating to Child Protective Act

Purpose: Establishes child protective provisions in the Hawaii Revised Statutes that are consistent with federal Title IV-E provisions. Effective July 1, 2050.

Judiciary's Position:

House Draft 2 of Senate Bill No. 2716, S.D. 2, contains many improvements to this bill. There are, however, a few sections that require amendment in order to ensure long-term protection of the children we are seeking to protect. The Judiciary's involvement with this bill is described in the attachment to this testimony.

We respectfully and strongly suggest the following changes to House Draft 2.

1. **Section -4, "Definitions", definition of "Party", page 16, line 18,** should be amended to insert the word, "current," and to read as:

"current foster parents or resource families;"

Rationale: Adding the word "current" renders this section consistent with the H.D. 2 amendment found in subsection (b) of Section 14, "Notice of hearings; participation of resource family", page 35, from line 17, which adds "...child's current resource family" as parties requiring notice. Furthermore, automatic involvement of multiple former foster parents would generally be against the child's best interest. In those rare cases where a court decides that it is

important to have a former foster parent involved, the court has the authority under this section to make that former foster parent a party.

2. **Section -4, "Definitions", definition of "Party", page 17, line 8**, should be:
"to section [-15] -13,"

Rationale: This is probably a typographical error. Section -15 (page 37, from line 5) refers to "Duties, rights, and liability of authorized agencies". Section -13 (page 32, from line 16) refers to "Summons and service of summons".

3. **Section -7, "Safe family home factors", subsection (a)(8), page 23, lines 1-3**, the original language (underlined) , which was deleted by HD2, should be reinstated as follows:
"Whether any alleged perpetrator has completed services in relation to any history identified in paragraphs (6) and (7), **and acknowledged and accepted responsibility for the harm to the child;**"

Rationale: As adults, when we have been wronged by another, that other's acknowledgment and acceptance of responsibility would be good but we can survive without it. For children who have been abused (particularly sexually abused), maltreated, and/or neglected, the parent's acknowledgment and taking responsibility are often crucial to the child's and family's healing and eventual reunification. The Family Court judges believe that inclusion of this phrase will give important direction to the parents. Inclusion of the word "alleged" is not illogical. These are not "open and shut" cases. These cases evolve over time. Some parents will agree at the beginning of the case that a child has been harmed in their care but will nevertheless vehemently deny any direct responsibility. This is a common "defense mechanism". As the case and services progress, many parents will take the courageous and healing step of taking responsibility. However, it would be acceptable to merely delete the word "alleged" so long as the underlined clause is retained.

4. **Section -14, "Notice of hearings; participation of resource family", new subsection (f), page 37, line 4**, should be:
"shall include the current foster parents **or resource families**"

Rationale: Including "resource families" will make this new section consistent with H.D. 2's new language in Section -4, definition of party, page 16, line 18 (see above), as well as the rest of this bill.

5. **Section -16, "Guardian ad litem", subsection (e), page 47, lines 10-13**, the original language (underlined), which was deleted by H.D. 2, should be reinstated as follows:

"**Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad litem.** The guardian ad litem for an incapacitated adult shall inform the court of the incapacitated adult's opinions and requests and may recommend how the court should proceed in the best interest of the incapacitated adult."

Rationale: A court can appoint a guardian ad litem for an adult only after determining that the adult is incompetent or incapacitated. These cases happen rarely and only after the court has applied the higher standard of proof of "clear and convincing evidence" in finding "incapacity;" thus, requiring an attorney to take instructions from the incapacitated adult does not make sense in these times. From time to time, an adult may be incapacitated for some decisions but not for other decisions. In these cases, the court would have the ability under this bill to tailor something less "black and white" in order to ensure that the incapacitated adult retains as much autonomy as possible..

6. **Section -17, "Court-appointed attorneys", page 47, from line 20,** the original language in Section -17, subsection (b) in H.D. 1(underlined below) , which was deleted by HD2, should be reinstated as follows:

"Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad litem."

Rationale: Same as above regarding Section -16.

7. **Section -17, "Court-appointed attorneys, page 48, line 5,** should be:

"... Attorneys who are appointed by the court to represent indigent legal parents and other indigent qualifying parties may . . . "

Rationale: It should be clear that court appointments occur only for the indigent.

8. **Section -18, subsection (a)(2), "Reports to be submitted by the department and authorized agencies", page 49, line 4,** should be:

"... (2) No less than fifteen days before a scheduled return hearing, periodic review hearing, permanency hearing, or termination of parental rights hearing; provided that additional information may be submitted to the court up to the date of the hearing; provided that the department or other authorized agencies make a good cause showing that such additional information was not available to the department or other authorized agency [after] **before** the fifteen day deadline."

Rationale: This is probably a typographical error. H.D. 2 seeks to enforce a 15 days deadline for social worker reports while allowing for additional information up to the date of the hearing so long as the new information was not available before the 15 day deadline.

9. **Section -26, "Temporary foster custody hearing", subsection (e)(4), page 56, line 11,** the original language should be reinstated as follows:

"The **[child]** **court** and the parties view a video or listen to an audio recording of the child's statements at such time and in such manner as the court deems appropriate;"

Rationale: There is usually no legal or therapeutic need for a child to hear/view his/her own recorded statement about the abusive incident(s) at this point in the proceedings. In fact, such a viewing may further harm the child at such a vulnerable time. The temporary foster custody hearing occurs after a child has been removed from the family home and before the adjudication of the petition. This hearing is designed to try to minimize harm to the child and honor the child's and the parents' rights to due process. In this exigent context, this section gives the court the authority to obtain such recordings and allow access to all parties as the court deems appropriate.

10. **Section -27, "Service plan", subsection (a)(7), page 58, line 17,** should be:

"(7) Notice to the parents that if the child has been in foster care under the responsibility of the department for an aggregate of fifteen out of the most recent twenty-two months from the child's date of entry into foster care, the department is required to file a motion to set a termination of parental rights hearing, and the parents' failure to provide a safe family home within two years from the date when the child was first placed under foster custody by the court, **[shall]** **may** result in the parents' parental rights being terminated; and "

Rationale: Inserting the word "may" for "shall" is more accurate since there are so many factors to be considered in such an important decision.

11. **Section -34, "Reinstatement of parental rights", subsection (a), page 80, starting from line 9,** the newly inserted language, in H.D. 2 (bracketed [ ]), should be deleted and the original language in H.D. 1 should be reinstated as follows:

" A child who is subject to an active proceeding under this chapter, the child's guardian ad litem, the child's attorney, if any, **[any parent whose parental rights have been terminated,]** or the department, may file a motion to reinstate the terminated parental rights of the child's parents in a proceeding under this chapters, where the following circumstances exist: . . . "

Rationale: This section contains a concept new to the currently existing Chapter 587. It is based on the voices and experiences of older foster youth who have raised many cogent reasons under certain circumstances to turn back the "legal clock". This is especially true as the court, the

youth, and other parties attempt to make realistic plans for youth who will turn 18 in foster care. This new section is all about a system "listening" to the very people we are seeking to protect and nurture and it has been carefully crafted for this purpose. The needs of the parents are not the focus of this section. Parents who believe that their parental rights were wrongly terminated are able to seek redress through the appellate courts. The important principle of finality of court decisions is important throughout the judicial system but it is particularly important in these cases. Children and youth must be able to rely on this finality. They have enough chaos in so many other aspects of their lives. The Family Court judges see clearly the negative impact on the lives of children and youth when their cases are being appealed. To put it simply, their lives are "on hold" and are often in turmoil. Similarly, we have also experienced cases where the children are in a permanent home but parental rights were not terminated. When the parents seek to re-enter their children's lives in these cases, we observe children becoming fearful and devastated, even though they have no direct contact with the parents. To use this section to allow parents, whose rights have been terminated, to have an unlimited number of "bites of the apple" will hurt children. We strongly urge the Committee to reinstate the original language in H.D. 1 and delete the bracketed language.

Thank you for your consideration of these recommendations.

ATTACHMENT

The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary
The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair

Tuesday, March 16, 2010, 2:15 p.m.
State Capitol, Conference Room 325

by
Karen M. Radius
District Family Judge (Retired)
Family Court, First Circuit

Bill No. and Title: Senate Bill No. 2716, S.D. 2, H.D. 1, Relating to Child Protective Act

Purpose: Establishes child protective provisions in the Hawaii Revised Statutes that are consistent with federal Title IV-E provisions

Judiciary's Position:

This bill is the product of a Task Force (described below) lead by the Judiciary. The Legislature should be aware that certain provisions of this bill are critical to ensure continuing compliance with federal requirements attached to this state's receipt of federal funds. The Task Force, which began work in mid-2009, has continued to work diligently during this current Legislature and has proffered amendments to the original bill during previous committee hearings. The Judiciary took part in these ongoing discussions and drafting amendments, which are best reflected in House Draft 1 of this bill.

While we are proud to be in the Task Force that assisted in drafting this bill, the Judiciary must take no position on this bill because this is a policy decision within the authority of the Legislature. If this bill is passed, the Judiciary will have the responsibility of applying the law. As with all new laws, a party may decide to challenge the legality of all or a portion of the statute, either as written or as applied to a specific fact pattern. Although this bill results from very close collaboration of all Task Force members, any future rulings by the court must be specific to the case and the issues raised and the court cannot be bound by any appearance of predisposition.

Just prior to the 2009 Legislature, the Department of Human Services (DHS), at the insistence of the federal representatives who assist in oversight of Title IV-E funding, proffered a bill seeking limited amendments to HRS Chapter 587. Although the Family Court and the parents' counsel and guardians ad litem were concerned about the language of the bill, there was, nevertheless, a concerted effort to draft a coherent bill. That effort simply ran out of time. However, the Family Court pledged to provide the leadership to continue work on HRS Chapter 587 so that a bill could be presented to the 2010 Legislature. Our leadership began immediately after the 2009 Legislature adjourned. We sought, through the use of federal Court Improvement Funds, technical assistance through the American Bar Association, Center on Children and the Law. We were able to secure the expert help of Joanne Brown (a retired judge who is now a consultant in the area of state child welfare legislation and compliance with federal laws). Our goal was to avoid a piecemeal band-aid approach. In fact, the "charge" to this Task Force was to review the entire HRS Chapter 587 and to revamp it according to what we have learned from our work through the years, what we know to be the current best practices, and what the current federal law and rules require. Our overarching job was to craft a bill that would protect abused and neglected children and to foster both family healing as well as timely permanency for these children.

Under the Family Court's leadership, a Task Force was formed comprised of DHS, parents' counsel, guardians ad litem, representatives from the Department of the Attorney General, and Family Court Judges and staff. Besides the extraordinary assistance of Joanne Brown, we also received critical assistance from various Fellows of the William S. Richardson School of Law and Faye Kimura, our Court Improvement Liaison. All of these people have worked tirelessly since the late Spring of 2009.

This bill is the product of hard work and close collaboration. This bill fulfills the charge to the Task Force to bring HRS Chapter 587 to the threshold of the 21st Century and to do so in compliance with federal requirements while always focusing on the needs of the children.

The Family Court is grateful for the work of the Task Force members, our consultant, Joanne Brown, the UH Law School Fellows, and Faye Kimura. As noted above, because of the role that we play in applying the law and our responsibility in determining issues of legality and constitutionality, we are unable to take a categorical position of favoring this bill and all of its components. For example, the Family Court has been very concerned about the types of information that the DHS has chosen to disclose pursuant to its rules. We have been concerned that their public disclosures appear inconsistent with the current statute's strict confidentiality requirements and, even more importantly, that the public disclosures have not been in the children's best interests. The section of this bill that addresses this issue is neutrally worded. However, a party could still challenge this section's legality and/or a specific public disclosure

by DHS under both the language of this bill and the DHS' rules. The court would then apply an independent review of the law.

This bill is a fine example of the good faith efforts and hard work of DHS, the Attorney General's office, the private bar, UH Law School Fellows, our federal and CIP consultants, and the court. We are grateful to the Legislature for their interest in all of these issues, its forbearance as we tried to do this in time for the 2010 Legislative Session, and its trust in all of us by giving us the additional year to present a good work product.

Thank you for the opportunity to submit testimony on this matter.

TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2010

ON THE FOLLOWING MEASURE:
S.B. NO. 2716, S.D. 2, H.D. 2, RELATING TO CHILD PROTECTIVE ACT.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Monday, March 29, 2010 **TIME:** 2:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Jay K. Goss, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General supports this bill with some changes.

The intent of this bill was to bring our child abuse statute into compliance with the federal Adoptions and Safe Families Act ("ASFA") and the Child Abuse Prevention and Treatment Act ("CAPTA"). The original legislation was drafted by a committee convened by the Family Court that included representatives of the Family Court, the Department of Human Services, the Legal Aid Society of Hawaii, and the Department of the Attorney General, as well as members who have practiced as attorneys representing parents and guardians ad litem for children. The committee also worked closely with Joanne Brown, from the National Resource Committee on Legal and Judicial Issues, to ensure compliance with ASFA and CAPTA.

While we support this bill, we propose the following changes to H.D. 2. First we oppose the amendment in H.D. 2 to the definition of "party" to automatically give foster parents, who are temporary caretakers of foster children, the same standing as parents who are trying to get their children back. While federal law requires that foster parents be given notice

of hearings and an opportunity to provide the court with information (see, 42 U.S.C. 475(5)(G)), this requirement is fulfilled by the language in section 14 of this bill which contains the provisions for giving notice to foster parents and allows them to participate as required by federal law. The language in 42 U.S.C. 475(5)(G) was never intended to confer upon foster parents, automatic standing as parties. Congress made it clear in passing the legislation that,

> In this paragraph, we implement the new requirement for the case review system at section 475(5)(G) of the Act that mandates giving notice to foster parents, preadoptive parents and relative caregivers of hearings and reviews and provides them an opportunity to be heard. While Congress recognizes foster parents, preadoptive parents and relative caregivers as a valuable resource in obtaining information regarding the progress of a case and in permanency planning, it intended only to provide these individuals an opportunity to provide input regarding the children in their care. Congress did not intend giving notice of and an opportunity to be heard to be construed as providing these individuals standing as a party to the case, as stated in the statute and proposed regulations. This provision does not, however, preclude the court from awarding foster parents, preadoptive parents and relative caregivers standing. [Emphasis added.] [see, Title IV-E, Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, 63 Fed. Reg. 50079 (September 18, 1998)].

Deleting the addition of foster parents from the definition of a "party" does not preclude the court from awarding foster parents standing as a party. Under the definition of "party" the court can make anyone a party if the court determines that they should be. Thus, a foster parent may ask the court for full party status at any time and the court would have the discretion to grant or deny such a request depending on the facts of that particular case. We request that the definition

of "party" in section -4 in H.D. 2 be amended on page 16, line 18, to delete the phrase "foster parents or resource families."

Second, in H.D. 2 the provision in section -28(e)(4)(A)(ii) was modified, however, in discussions with the federal representatives, we were informed that the original wording must be in this bill in order to bring our statute into compliance with federal law. Therefore, we request that H.D. 2 be amended at section -28(e)(4)(A)(ii), page 63, lines 15 to 18, to restore the original language so that it reads as follows, "Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to set the case for a termination of parental rights hearing;. . . ."

Third, we request that section -34 in H.D. 2 be amended on page 80, lines 11 and 12, to to delete the wording "any parent whose parental rights have been terminated." Currently, parents who have had their parental rights terminated can seek to have their rights reinstated by filing an appeal to the Intermediate Court of Appeals. If this wording is left in this bill, a parent could perpetuate an endless cycle of requests to reinstate parental rights and appeals until a child turns eighteen and becomes an adult.

We believe these changes are necessary to make our child abuse statute comply with the language and intent of the federal provisions of ASFA and CAPTA. We respectfully ask this Committee to pass this bill with the amendments suggested in this testimony.

LEGAL AID
SOCIETY OF HAWAI'I

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George J. Zweibel, Esq.
President, Board of Directors

M. Nalani Fujimori Kaina, Esq.
Executive Director

TESTIMONY IN SUPPORT, REQUESTING AMENDMENTS
SB2716 HD2 - RELATING TO CHILD PROTECTIVE ACT
March 29, 2010 at 2:30 p.m.

The Legal Aid Society of Hawaii hereby provides comments to the House Committee on Finance in support of SB2716– Relating to Child Protective Act and requesting amendments.

The Legal Aid Society of Hawaii is the largest non-profit provider for direct civil legal services in the State. Further, since the start of our guardian ad litem work in 1996, we have assisted over 2,700 children as guardian ad litem and have represented over 600 parents in child welfare cases. We are currently the only statewide provider of child welfare legal services and through this experience have a unique perspective on the impact legislation can have on those who are part of the system.

We were asked along with the Department of Human Services, Department of the Attorney General, parent counsel and guardian ad litems to work with the Judiciary to review and relook at the Child Protective Act for compliance with federal Title IVE provisions and to improve the act.

At the last hearing on this measure, substantial changes were made to the bill. While we prefer SB2716 HD1, we are requesting the following amendments be made based on concerns in six areas: (1) adding foster parents as parties; (2) inserting a best interest of the child standard; (3) requiring a child to view a recording of the child made testifying to the abuse; (4) requiring GALs for incapacitated adults to file reports with the court; (5) changing the time frame for the filing of a motion to set the case for termination of parental rights; and (6) allowing parents to seek reinstatement of parental rights.

Foster Parents as Parities

HD2 adds foster parents as parties to a child welfare case and in doing so, places them as full parties equal to that of parents who are facing the termination of their parental rights. While the existing law currently provides for this, this step is beyond what is required by federal law (federal law only requires notice and the ability of current foster parents to attend hearings) and has caused unintended consequences for foster parents, relatives and parents involved in child welfare case.

Foster parents play a critical role in the child welfare system, they provide temporary care for a child who has been abused or neglected and if and only if, a parent is unable to provide a safe family home, foster parents may become the permanent caregivers for that child. By making foster parents parties to a case before the termination of parental rights, foster parents are allowed to act as full parties in the case who can bring motions and ultimately file for the termination of parental rights. There are no requirements on them to ensure that a parent is provided the opportunity to provide a safe family home, just their own desire to protect and care for a child who has come into their home.

In our work as guardian ad litems and in representing parents, we have been part of cases where foster parents have made motions and argued against the return of a child to their parents. While we know this is done out of love and care for the child, the ultimate result is not in line with a system designed to assist parents to provide a safe family home for their child.

Further, allowing foster parents to proceed as parties has also created unintended consequences in the weighing of interests between foster parents and relatives. The presumptive right of foster parents to be parties has placed the interests of foster parents above those of relatives who seek to become engaged and involved in the life of their family member who has become part of the child welfare system. For a relative to become a party in a child welfare case they must file a motion to intervene to become a party and do not have an inherent right to do so as a foster parent does under HD2.

To ensure these unintended consequences and inequities do not exist, we ask that foster parents be removed as parties by right and that they are allowed along with relatives to become parties upon a motion to intervene. Specifically, we recommend the following changes:

- Page 18, line 3: delete "foster parents or resource families"
- Page 18, lines 9-14: delete "provided that the court may limit a party's right to participate in any child protective proceeding if the court deems such limitation of such party's participation to be consistent with the best interests of the child and such party is not a family member who is required to be summoned pursuant to section -15, except as otherwise provided in this chapter."
- Page 39, lines 10-11: delete: "(f) For purposes of ths section, "party" or "parties" shall include the current foster parents."

Best Interest of the Child

The best interest of the child is a standard that is utilized in custody cases and only when weighing the interests of two parents or only after a parent is determined to be unfit and unable to care for his or her child. The insertion of the best interest of the child standard into temporary foster custody hearings, return hearings and periodic review hearings, raises the standard from safety of the child to the best interest standard. Combined with other proposed changes to this bill to include foster parents as parties, the law unconstitutionally requires the court to follow a best interest standard which is in conflict with the safety of the child standards which exist in child welfare cases.

To this end, we recommend that all "best interest of the child" language that was inserted in HD2 be removed as follows:

- Page 60, line 2: delete "and in the best interests of the child"
- Page 67, lines 6-7: delete "and not in the best interests of,"
- Page 71, lines 7-9: replace with "(7) Issue any other appropriate orders."

Requiring a Child to Review a Recording of Child's Statement

A child should not be subjected to reviewing his or her recorded statement of the abuse suffered as indicated on page 59, line 6. It is not therapeutic nor appropriate given the experience of the child and this section should aim to require the parties to view the recordings. As such, we recommend that the following amendment be made:

- Page 59, line 6: delete "child and the"

Duties of an Guardian ad Litem for an Incapacitated Person

We believe that requiring a guardian ad litem for an incapacitated person to file a report with the court intrudes into right of the incapacitated person for privacy. While language was added to ensure that nothing was done to interfere with attorney-client privilege, we still believe that the following changes should be made:

- **Page 48, line 16:** delete "or incapacitated adult's"
- **Page 48, line 18:** delete "or incapacitated adult"

Filing for Termination of Parental Rights at Return Hearing

In HD2, changes were made which would order the Department of Human Services to file a motion to set the case for a termination of parent rights hearing at the initial permanency hearing. However, federal law requires that if aggravated circumstances are present, that a motion must be filed to set the case for a termination of parental rights hearing. To follow the current proposed language would change this time period. As such, we request that the language be amended as follows:

- **Page 66, lines 13-18:** replace with "Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to set the case for a termination of parent rights hearing."

Reinstatement of Parental Rights

The purpose of this added section was to allow a child or the department to file for the reinstatement of parental rights. To allow parents to do so would create a never ending circle which would circumvent the child welfare process. To this end, we recommend that the following amendment be made:

- **Page 83, lines 13-14:** delete "any parent whose parental rights have been terminated,"

The work on this bill was the work of a committee who represented the broad interests of all those involved in the child welfare system. It included the Judiciary, the Department of Human Services, attorneys who represent parents and foster parents, guardian ad litems and also a foster parent. Despite our differences of opinion and heated discussions, this bill was the result of compromises and hours and hours of work by a committed group of people who were interested in ensuring that the keiki of Hawaii are protected. While we have made the proposed amendments as presented above to deal with the major detrimental changes proposed by HD2, we still believe strongly that SB2716 HD1 should be the version ultimately adopted by this legislature.

Thank you for this opportunity to provide testimony.

Sincerely,

\s\

M. Nalani Fujimori Kaina
Executive Director
527-8014

Re: Testimony on SB 2716

Lawyers for Equal Justice (LEJ) is a nonprofit legal aid program that primarily focuses on systemic advocacy. On behalf of LRJ, I want to thank the House Judiciary Chair and committee members for an opportunity to testifying on SB 2716.

Unfortunately SB 2716, as currently written, violates the specific requirements of federal law as it relates to **the mandated requirements that their case plan provide guarantees that their educational stability not be disturbed while they are in foster care.** Foster care children often have a hard time finding important forms of stability in their lives. Remaining in their home schools offers one form of critical stability for children in foster care helping them by helping them maintain contact with respected teachers, friends and confidants. In addition to providing stability for important relationship, staying in their home schools can also reduce the risk that children will experience a significant lapse in their educational development. Studies show that changing schools during the school year can cause educational setbacks of 5 months or more. Because they change schools so frequently, youth in foster care are more likely than their peers to underachieve academically, repeat grades and eventually drop out of school. Youth who do not graduate are more likely to be unemployed, have drug addictions, be single parents and on public assistance. Indeed, Hawaii federal courts recognized the importance of education stability when the court ruled that Hawaii needed to comply with federal McKinney-Vento Act and keep homeless children in their original schools.

The federal Fostering Connections to Success and Increasing Adoptions Act (FCSIAA), effective October 2008, has very specific requirements for the Hawaii Department of Human Services (DHS) and Department of Education (DOE) to guarantee that children who change placements are provided with **educational stability** in their lives:

- First, the Act **requires** that a case plan for each child placed in foster care **include assurances** that the proximity to the school in which the child is enrolled at the time of placement is a factor in placement.

- Second, if foster placement within the school district is not possible, the FCSIAA also **requires that the state DHS coordinate with the DOE to keep foster children in their original schools** unless it is not in the child's best interests.

- Thirdly, under the FCSIAA, a Hawaii's foster care maintenance payments must include reimbursement for reasonable travel costs for the child to remain in his or her home school.

A bipartisan Congress signed the FCSIAA on October 7, 2008. It amended parts B and E of Title IV of the Social Security Act, and took effect in October 2008. The amendments **apply starting with the first quarterly payments** made to states under the Social Security Act after

the date of enactment,[i] unless the Secretary of the U.S. Department of Health & Human Services determines that state legislation is required.

Section 3 of SB2716 which is entitled " Guiding principles contains language in Section (a) 9 which states a foster children "Has the right to attend school and participate in appropriate extracurricular activities and, **if the child is moved during a school year**, has the right to complete the school year at the same school, if practicable". This limit on one year clearly violates the requirements of the FSCIIA Act by limiting the child's participation home school to at most one year.

In addition, Section 27 of SB2716 covering the components of the child's service plan does not contain the specific requirements of the FSCIAA that the plan contain assurances should be amended to require the child's case plan to include these assurances that the proximity to the school in which the child is enrolled at the time of placement is a factor in placement.

Nor does the SB 2716 require that. if foster placement within the school district is not possible, the **state DHS coordinate with the DOE to keep foster children in their original schools** unless it is not in the child's best interests.

LEJ believes that these two modifications are clearly required for SB2716 to conform to the requirements of federal law.

Thank you for an opportunity to testify.

Victor Geminiani

Executive Director

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TO: Committee on Finance
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

FROM: Judith Wilhoite
Resource Caregiver – *formerly referred to as a "foster parent"*

RE: SB2716—Relating to CHILD PROTECTIVE ACT

HEARING: Monday, March 29, 2010
2:30 p.m.
Conference Room 309

My husband and I became foster parents, now referred to as resource caregivers, in 1997. We strongly support this bill with 1 exception. But first, let me explain why we support it.

It brings Hawai'i law in line with FASFA, the 1997 federal law that came to be to stop "foster drift" – that is, children in foster care moving from home to home to home. That is the way that the foster care system was originally designed, "we" didn't want the children to become attached. Now that science proves how important it is for children to be able attach to others, we are trying to fix our system.

I came today to ask you to make one very simple change. There are several places in this bill that refer to the biological mother and fathers as "natural" parents. I suggest that you change the word natural to either "biological" or "birth". This helps both the birth parents and their children by making them feel their situation is not "un-natural".
Changing this terminology will also help the caregivers, especially those "caregivers" who turn into permanent parents, those who adopt children who are not able to return to their biological parents. The last thing they need is for their children to think of the bio-mom as "natural" and their adoptive mom as "un-natural". What does that make the child – "natural" or "un-natural"?

I also want to commend the House on changing this bill to include resource caregivers as parties to the case. This has been in effect for several years now and it is a very useful tool that helps protect children.

This bill is attempting to legislate and mandate best practices. We believe it achieves this goal.

Thank you for this opportunity to testify.

Judith and Norman Wilhoite

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March 25, 2010

The Honorable Marcus R. Oshiro
Chair
House Committee on Finance
415 South Beretania Street, Room 306
Honolulu, HI 96813

Re: S.B. No. 2716, SD2, HD2, Relating to Child Protective Act

Dear Representative Oshiro:

I am a private attorney who has been actively engaged in Chapter 587 cases for the last 25 years. In these proceedings I have represented, parents, relatives, foster parents and children. I have submitted testimony with regard to the entire act to the House Judiciary Committee. In this testimony I will address some of the comments that have been submitted to your committee with regard to House Draft 2 of SB2716, SD2.

§ -4 Definitions

"Foster Care". In the present statute it says:

"Foster care" means a residence designated as suitable by an authorized agency or the court to provide twenty-four hour out of family home, substitute care for the child.

Comment:

The concern about the current language in the proposed statute is that it does not make reference to the fact that a foster home/resource home may be designated by the court as well as the DHS. In the Interest of Jane Doe, Born on June 16, 1994, 101 Haw. 220, 65 P.3d 167 (2003) held that a family court judge exercising the further orders power could order the DHS to exercise its discretion to license a home that the DHS otherwise did not want to license. The problem could be cured by amending the proposed legislation to read as follows:

"Foster care" means continuous twenty-four hour care and supportive services provided by an authorized agency, including the care, supervision, guidance, and rearing of a child by a resource family designated by the authorized agency or by the court.

"Party"

The DHS proposes that current foster parents be parties if the court finds that the participation is in the child's best interest.

Comment: When a foster parent claims that they are a party to the action pursuant to the notice provisions of the current statute (proposed section 14) the opposition from the DHS is always based upon the fact that the foster parents are not listed in the section defining parties. If they are listed in that section then it removes all questions.

In addition, the proposed amendment it would make it extremely awkward for foster parents to advocate for the child's best interests because their party status would change from hearing to hearing depending upon the court's views of a child's best interests. The court would have to make a determination whether the foster parent was a party each time they tried to argue for services or other matters that were in the child's best interests. This would simply create unnecessary litigation and potentially harmful delays.

Likewise the suggested changes run into the language of Rule 24, Family Court Rules, which grants intervention as of right to someone who "claims an interest relating to ... the custody or visitation of a minor child..." There is nothing in there about best interest of the child being the criterion for permitting intervention. It would seem that it is more workable to allow foster parents to be parties but to give the court the authority to limit their participation in the best interests of the child (the way that the statute is presently drafted).

With regard to comments about attending hearings and bench warrants, the court has the authority to excuse parties from hearings and does so all the time. The authority for the court to do so is the same language that allows the court to limit participation in the best interests of the child.

I support the suggestion from the Office of the Administrative Director that the definition should refer to "current foster parents or resource families."

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§ -14 Notice of hearings; participation or resource family

Comment: If the statute is modified as suggested by the DHS foster parents revert to the "quasi-party" status that has been a problem throughout the time that the statute has been on the books. It should be noted that it was the DHS that proposed the amendment that resulted in foster parents being recognized as parties, citing the important information that a foster parent could provide.

The question that should be asked is whether children are safer or less safe if foster parents are not permitted to be parties. It appears that they are less safe. It also appears that they are less likely to get all the services or treatment that they need. How can it be a bad thing to make the person a party to the proceeding who knows more about the day-to-day functioning of the child than anyone else in the case? Remember that the GAL is not the attorney for the child. There is no attorney-client relationship. So the fact that there is a guardian ad litem does not mean that the child's interests are represented in the hearing. Issues relating to the day-to-day well being of a child are more likely to be raised by a foster parent than anyone else in the case.

Another circumstance that favors foster parents being parties is that the DHS often removes children from foster homes on short or no notice for any number of reasons that may have nothing to do with the welfare of the child. If foster parents are not already parties, their ability to prevent these removals by motions on shortened time will be inhibited. If the DHS is successful in moving children before the court has been alerted to the fact that something not in the child's interests is happening, it is often very difficult to get the child returned, and the DHS uses that to its advantage.

§ -19 Testimony by department social worker. The language that they want deleted is confusing. It should be noted that the effect of the "presumption" that is created by this revision has not been spelled out. Is it a Rule 303 presumption or a Rule 304 presumption under the HRE?

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§ -28 Return hearing. It is correct that the CFR says that the motion must be filed within 60 days.

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§ -34 Reinstatement of parental rights. If parents are not to be given the right to file such motions, then it appears that this is a provision that permits the DHS to dump unwanted or problem children back on their parents. If you look at the language, it provides that parents are to be contacted after the DHS has made the decision to send the children back. Otherwise why would you have a provision that says that if you

cannot find the parents the motion will be denied? While the statute says that a child can file the motion, children in care are minors and do not have the capacity or legal ability to hire an attorney, so how could that come about? It seems that if children are going to be returned to a parent's home that was determined to be unsafe by clear and convincing evidence at a permanent plan hearing, the question of whether the parent has remedied the conditions that caused the termination should be a threshold issue rather than something that the court considers at the final hearing on the motion.

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§ -7 Safe Family Home Factors. The DHS wants perpetrators to acknowledge and accept responsibility for harm. Acknowledge how and to whom? Accept responsibility how? Suppose that you have someone who is alleged to have sexually molested a child but on the advice of counsel will not discuss the facts other than denying them because of the possibility of criminal prosecution (the statute of limitations does not run until two years after a child becomes an adult). Suppose also that the person goes through services successfully and the service provider reports to the court that the parent should be considered safe around the children and can provide them with a safe family home. What is the effect? If the home is safe, do we care if the parent has not acknowledged and accepted? The difficulty also arises when the DHS wants to put a child back with someone who has not acknowledged. Then they will go through all sorts of verbal gymnastics to say that the participation in services constitutes an acknowledgement and acceptance. There have been instances where the DHS demanded of a relative seeking to be a foster parent that they acknowledge and agree that their son/daughter/relative was the perpetrator of harm when that person is denying being a perpetrator in order to get a child placed with them. It does not add anything to whether the home is safe and sometimes can be used to prevent reunification with a parent who otherwise would be able to provide a safe family home. Finally, if it is therapeutically appropriate, it is likely that the therapist involved in the case will suggest that some appropriate acknowledgement be made in order to facilitate the healing process.

Thank you for your consideration of these comments and recommendations.

Very truly yours,

FRANCIS T. O'BRIEN

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 26, 2010 3:15 PM
To: FINTestimony
Cc: navyleague@hawaiibiz.rr.com
Subject: Testimony for SB2716 on 3/29/2010 2:30:00 PM

Testimony for FIN 3/29/2010 2:30:00 PM SB2716

Conference room: 308
Testifier position: support
Testifier will be present: Yes
Submitted by: Bob McDermott
Organization: Individual
Address: 91-982 Ololani Street Ewa Beach, HI
Phone: (808) 371-4605
E-mail: navyleague@hawaiibiz.rr.com
Submitted on: 3/26/2010

Comments:
Testimony in Support of SB2716

TO: Committee on Finance
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

FROM: Judith Wilhoite
Resource Caregiver – *formerly referred to as a "foster parent"*

RE: SB2716—Relating to CHILD PROTECTIVE ACT

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Judith and Norman Wilhoite