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

March 8, 2010

MEMORANDUM

TO: Honorable John M. Mizuno, Chair  
House Committee on Human Services

FROM: Lillian B. Koller, Director

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

Hearing: March 8, 2009, Monday, 9:00 a.m.  
Conference Room 329, State Capitol

**PURPOSE:** The purpose of S.B. 2716, S.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 Senate Committee on Human Services.

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

AN EQUAL OPPORTUNITY AGENCY



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Human Services**

The Honorable John M. Mizuno, Chair  
The Honorable Tom Brower, Vice Chair

Monday, March 8, 2010, 9:00 a.m.  
State Capitol, Conference Room 329

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

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**Bill No. and Title:** Senate Bill No. 2716, S.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. (SD1)

**Judiciary's Position:**

This bill is the product of a Task Force lead by the Judiciary, after last year's Senate Bill No. 912 was vetoed by the Governor because it did not ensure compliance with certain federal requirements and the State was given an extension of time to draft new legislation. In our testimony below, we will explain the collaboration that went into producing this bill. However, we wish to raise an issue which was an oversight on the part of the Judiciary in our work as members of the Task Force that drafted this bill.

In the current law, the court appointment of attorneys for indigent parties is within the court's discretion. In actual practice, all family courts in the state appoint attorneys for all legal parents in foster custody cases (these are cases where the child has been placed out of the family home). On Oahu (1st Circuit), attorneys are also appointed for all legal parents in family supervision cases (where the child remains in the family home). The 2nd, 3rd, and 5th circuits (Maui/Molokai/Lanai, Big Island, Kauai) do not appoint attorneys in family supervision cases. Also, from time to time, the courts will appoint counsel for other parties in rare cases when it has been deemed in the child's best interest. Obviously, our current budget request is based on these



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current practices and we will be unable to accommodate a greater number of cases than what is based on our current practices.

This bill originally submitted creates a right to counsel (similar to the right of defendants in criminal cases) in these civil child abuse cases for a broad range of parties as defined in the bill's definition of "parent" (page 14, lines 14-19), which, in addition to legal mothers and fathers, includes "presumed, or concerned natural" fathers, "legal guardians", and "other legal custodians."

The original bill has been amended to more closely reflect the current which we believe maximizes the use of severely limited dollars. These amendments can be found on page 45, line 20 to page 46, line 16 of the proposed draft submitted by the Task Force and attached to the testimony of the Department of Human Services, as follows:

Section -17: Court-appointed attorneys. (a) The court [shall] may appoint an attorney to represent a legal parent who is indigent, based on court-established guidelines [, unless the parent retains, or waives the right to, an attorney]. The court may also appoint an attorney to represent another party who is indigent, based on court-established guidelines, if it is deemed in the child's best interest.

(b) Unless otherwise ordered by the court, the attorney for [a child or for] an incapacitated adult shall take instructions from the [child's or] incapacitated adult's guardian ad litem.

(c) Attorneys who are appointed by the court to represent indigent legal parents and parties may be paid by the court, unless the legal parent or party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate legal parents or parties to pay or reimburse the fees and costs of an attorney appointed for the child.

The Task Force, described below, has continued to work diligently during this current Legislature and has made amendments to the original bill. The Judiciary took part in these ongoing discussions and we do not oppose any of the new amendments.

Although we are proud to be in the Task Force that assisted in drafting this bill, the Judiciary takes no position on the other provisions of 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.



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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. This 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



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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.

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

M. Nalani Fujimori Kaina, Esq.  
Executive Director

**TESTIMONY S IN SUPPORT, REQUESTING AMENDMENTS**  
**SB2716 SD2 - RELATING TO CHILD PROTECTIVE ACT**

comments

March 8, 2010, at 9:00 a.m.

The Legal Aid Society of Hawaii hereby provides comments to the House Committee on Human Services in support of SB2716 SD2- Relating to Child Protective Act and requesting amendments. I apologize for not being able to be present at this hearing.

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 litem 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.

While we are in strong support this bill and are in support of the amendments submitted by the Department of Human Services which incorporated our concerns raised at the last hearing on this bill.

Thank you for this opportunity to provide testimony.

Sincerely,

/s/

M. Nalani Fujimori Kaina  
Executive Director  
527-8014



House HUS committee  
Monday, Mar 8, 2010  
9:00 am  
Room 329

National Association of Social Workers

Hawaii Chapter

March 7, 2010

TO: Rep. John Mizuno, Chair  
And members of the House Human Services Committee

FROM: Debbie Shimizu, LSW  
National Association of Social Workers, Hawaii Chapter

RE: SB 2716 SD2, Relating to Child Protective Act

Chair Mizuno and members of the House Human Services Committee, I am Debbie Shimizu, Executive Director of the National Association of Social Workers, Hawaii Chapter (NASW). I am testifying in **SUPPORT of the intent of SB-2226-SD2 Relating to Child Protective Act but would like to offer amendments.**

The intent of SB 2226 SD2 is to establish child protective provisions in HRS that are consistent with federal Title IV-E provisions. While we agree with the intent, we are concerned that there is no definition of "social worker" in the bill. We respectfully request inserting the following language to the definitions section of the bill:

Page 17 after line 3 add:  
"Social worker" means a person as defined in HRS 467E.

HRS 467E defines a social worker as a person who holds a bachelors, masters or doctoral degree in social work, has passed a national exam and is licensed as a LBSW, LSW or LCSW. A license is not required for "any person employed by a federal, state, or county government agency in a social worker position, but only at those times when that person is carrying out the duties and responsibilities as a social worker in governmental employment". As of July 1, 2010, state social workers must hold a social work degree. HRS 467E also defines the scope of practice for social workers.

Historically, social workers have been an integral part of the child welfare system. According to the Child Welfare League of America (2003) recent studies indicate that social work degrees are the most appropriate degree for child welfare. A social work-educated workforce has been directly linked to better outcomes for children and families and to lower staff turnover in child welfare settings.

NASW believes it would be appropriate to add this definition into the proposed legislation. Thank you for the opportunity to testify.



Blueprint  
FOR Change

TESTIMONY  
ON  
SB 2716 SD 2 RELATING TO CHILD PROTECTIVE ACT  
HOUSE COMMITTEE ON HUMAN SERVICES

March 8, 2010

9:00 AM

Room 329

Aloha Chair John Mizuno and members of the House Committee on Human Services. Blueprint for Change (BFC), a non-profit organization whose mission is to improve Hawai'i's Child Welfare System, **strongly supports SB 2716 SD 2**. BFC is interested in this bill because it relates to efforts to improve the State's Child Welfare System.

BFC supports SB 2716 SD 2 because by bringing Hawaii's Child Protective Act into alignment with the Federal Title IV-E statute, it will ensure that \$50 million in federal funding through Title IV continues to flow to the State of Hawaii for child welfare services funded through the Department of Human Services. If this bill is not passed, there is the danger that the federal government could terminate this funding to the State.

However, besides ensuring the flowing of federal money into DHS, BFC supports this bill because it amends the Hawaii statute in several ways that will benefit the health and welfare of children in Hawaii's foster care system who have been abused and/or neglected and prevent further abuse and neglect from taking place.

We strongly urge passage of SB 2716 SD 2. Thank you for this opportunity to provide testimony.