

SB 2716



The Judiciary, State of Hawaii

**Testimony to the Twenty-Fifth State Legislature, Regular Session of 2010
Senate Committee on Human Services**

The Honorable Suzanne Chun Oakland, Chair
The Honorable Les Ihara, Jr., Vice Chair
Thursday, February 4, 2010, 4:00 p.m.
State Capitol, Conference Room 016

by

(Retired) Judge Karen Radius
District Family Judge

Bill No. and Title: Senate Bill No. 2716, Relating to Child Protective Act.

Purpose: To ensure that child protective provisions in the Hawai'i Revised Statutes are consistent with federal Title IV-E provisions.

Judiciary's Position:

The Judiciary takes no position on this bill. However, this bill is the product of a Task Force led by the Family Court (see below). The Judiciary takes no position because this is a policy decision within the authority of the Legislature. Further, 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.



Senate Bill No. 2716, Relating to Child Protective Act
Senate Committee on Human Services
Thursday, February 4, 2010
Page 2

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 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



Senate Bill No. 2716, Relating to Child Protective Act
Senate Committee on Human Services
Thursday, February 4, 2010
Page 3

forbearance as we tried to do this in time for 2010, 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 present testimony on this measure.

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

February 4, 2010

MEMORANDUM

TO: Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Lillian B. Koller, Director

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

Hearing: February 4, 2009, Thursday, 4:00 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of S.B. 2716 is to repeal Chapter 587, Hawaii Revised Statutes (HRS) and adopt a new Child Protective Act to ensure that child protective provisions in the Hawaii Revised Statutes are consistent with federal Title IV-E provisions.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this Administration-sponsored bill. 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

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with Federal Title IV-E requirements, in excess of \$50,000,000 in Federal Title IV-E funds annually will be lost.

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 an approved State Plan for Title IV-E and continue to receive 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).

The Department is in the process of completing an updated Title IV-E State Plan and this is one of the final requirements needed to ensure compliance and finalize approval of the State Plan. If the suggested changes are not made, the State Plan will not be approved and the State will be restricted from obtaining Title IV-E funds until the statute is revised.

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 AG staff, together with representation from Legal Aide, Guardians Ad Litem and Parent's 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 reorganized and clarify the statute to make it easier to understand and apply.

The proposed Child Protective Act will ensure compliance with 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



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2716, RELATING TO CHILD PROTECTIVE ACT.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 4, 2010 **TIME:** 4:00 p.m.

LOCATION: State Capitol, Room 016

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

Chair Chun-Oakland and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill brings our child abuse statute into compliance with the federal Adoptions and Safe Families Act ("ASFA") and the Child Abuse Prevention and Treatment Act ("CAPTA"). This 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.

The Department of the Attorney General supports this bill for two reasons. First, it is extremely important that our child abuse statute comply with the federal provisions of ASFA and CAPTA because compliance with those laws enables the State to receive federal funding for cases involving child abuse and neglect. Second, the committee convened by the Family Court spent considerable time rewriting the statute in an attempt to

make it more understandable to both people who practice in this area of law on a regular basis as well as those who may be new to this area of law or those who may not have legal representation.

We respectfully ask this Committee to pass this bill.

SB 2716

RELATING TO CHILD PROTECTIVE ACT

Senate Committee on Human Services

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Jr., Vice Chair

Public Hearing- February 4, 2010

4:00pm State Capitol, Conference Room 016

By

Nikki D. Suiter, University of Hawaii

Madam Chairwoman Senator Suzanne Oakland, Vice Chairman Les Ihara, and Members of the Committee,

Thank you for allowing me to testify in support of Senate Bill 2716, regarding the Child Protective Act. Throughout my studies as an MSW student at the University of Hawaii, it has come to my attention that Child Welfare Services is greatly suffering from the state's budget setbacks. Currently, many children and families are not receiving services at the level they should be. If this bill is not passed, and funds are further cut, Child Welfare Services will most definitely be unable to provide adequate services to the children and families of Hawaii.

I strongly support the passing of Senate Bill 2716, which would enable Hawaii's child protective litigation to be in accordance with federal Title IV-E requirements. Meeting these requirements is imperative. By passing this bill, the state may continue to receive over \$50,000,000 annually in Title IV-E funds, which will greatly assist Child Welfare Services in their endeavor.

Thank you for the opportunity to comment on this bill,

Nikki D. Suiter

chunOakland5 - Michael

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2010 11:45 AM
To: HMS Testimony
Cc: rderego@hawaii.edu
Subject: Testimony for SB2716 on 2/4/2010 4:00:00 PM
Attachments: Legislature testimony.doc

Categories: Yellow Category

Testimony for HMS 2/4/2010 4:00:00 PM SB2716

Conference room: 016
Testifier position: support
Testifier will be present: Yes
Submitted by: Robin De Rego
Organization: Individual
Address: 44-714 Malulani St Kaneohe, Hawaii 96744
Phone: 808-953-4394
E-mail: rderego@hawaii.edu
Submitted on: 2/3/2010

Comments:

COMMITTEE ON HUMAN SERVICES

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Jr., Vice Chair

RE: RELATING TO CHILD PROTECTIVE ACT.

To ensure that child protective provisions in the Hawaii Revised Statutes are consistent with federal Title IV-E provisions.

Madam Chairwoman Senator Suzanne Oakland & Vice Chairman Les Ihara, and Members of the Committee,

I appreciate the opportunity to speak in favor of Senate Bill SB 2716. I am a student at the University of Hawaii at Manoa studying under the title IV-E Hawaii Child Welfare Education Collaboration Program. This is a master's program in the Myron B. Thompson School of Social Work. My training in this program is educating me in the needs of the families and children in Hawaii. Child Welfare Services in Hawaii provides safety for our children. This agency also establishes services for parents to gain the needed skills to provide a safe family home for their children to return to quickly.

I feel the acceptance of SB2716, in its entirety, will solve the demands of the Federal Title IV-E required revisions. Accepting and passing of the revised Child Protective Act guarantees the improvement and the continuation of needed services that are vital for the safety of at risk families in our state.

I see the need for Child Welfare Services in my practicum. Though the Department of Human Services has had to curtail spending and make substantial personnel cuts in CWS, the need for services has not decreased but increased. Should these revisions not be accepted or passed, the Department of Human Services and Child Welfare Services will really loose funding and services will be cut completely.

Respectfully, Senators, pass these revisions!

Sincerely,

Janet Wood Farley

COMMITTEE ON HUMAN SERVICES

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Jr., Vice Chair

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