



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 1064, RELATING TO CHILD PROTECTIVE ACT COURT
PROCEEDINGS.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Monday, January 31, 2011 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Jay K. Goss, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General supports this bill. This version of the Child Protective Act, chapter 587A, Hawaii Revised Statutes, was drafted last year 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 the Adoption and Safe Families Act (ASFA) and the Child Abuse Prevention and Treatment Act (CAPTA). After the statute was passed last year, the committee continued to meet and discuss possible changes that needed to be made to make the statute work more efficiently, to clarify certain issues, and to ensure continued compliance with federal laws.

This bill brings section 587A-28(e)(4)(A)(ii), Hawaii Revised Statutes, into compliance with federal law to make it clear that even if there is a finding that "aggravated

circumstances" apply, the Department of Human Services is not required to file a motion to terminate parental rights if there are "compelling reasons" why such a motion would not be in the best interests of the child.

This bill amends section 587A-5 to clarify that open cases that were previously filed under the former Child Protective Act, chapter 587, are governed by the provisions chapter 587A.

This bill also makes clear that should a party decide that termination of parental rights is an appropriate goal, it is not a requirement that it be a two-step process and that if termination of parental rights is appropriate, a party can file a motion to terminate parental rights without first having to file a motion to set a hearing for the motion to terminate parental rights.

Finally, the bill makes clear that if the court orders a trial home placement prior to a full reinstatement of parental rights under section 587A-34, either the Department of Human Services or some other authorized agency continues to maintain the status of permanent custody until the parental rights are fully reinstated.

We respectfully ask this Committee to pass this bill.



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Human Services

The Honorable John M. Mizuno, Chair

The Honorable Jo Jordan, Vice Chair

Monday, January 31, 2011, 9:00 a.m.

State Capitol, Conference Room 329

by

Sabrina S. McKenna

Deputy Chief Judge/Senior Family Court Judge

Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1064, Relating to Child Protective Act Court Proceedings

Purpose: To ensure that the child protective act hearings in HRS Chapter 587A are consistent with federal Title IV-E provisions.

Judiciary's Position:

The Judiciary respectfully supports this bill. Although it is the Judiciary's usual practice to refrain from taking a position on policy or substantive bills, family court was instrumental in organizing the task force whose work resulted in the major overhaul of HRS Chapter 587 by the 2010 Legislature. In fact, after the passage of last year's bill, the task force decided to remain together for the purpose of evaluating the new law and to work together on the inevitable oversights and omissions.

This bill clarifies certain existing language. It also clears up an unintended ambiguity regarding the effect of the new law on existing cases, that is, cases that were filed and adjudicated under last year's law (see page 2, subsection (2), lines 10 to 11).

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

NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
INTERIM DIRECTOR

PANKAJ BHANOT
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
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January 31, 2011

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

FROM: Patricia McManaman, Interim Director

SUBJECT: **H.B. 1064 - RELATING TO CHILD PROTECTIVE ACT COURT
PROCEEDINGS**

Hearing: Monday, January 31, 2011; 9:00 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of H.B. 1064 is to ensure that child protective act hearings in chapter 587A, Hawaii Revised Statutes, are consistent with federal Title IV-E provisions.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this Administration bill. This legislation is necessary to ensure that Hawaii's laws relating to child protective proceedings are consistent with federal Title IV-E provisions.

The 2010 Hawaii State Legislature passed S.B. 2716, S.D. 2, H.D. 2, C.D. 1, which was enacted as Act 135, Session Laws of Hawaii 2010, and codified as chapter 587A, Child Protective Act, Hawaii Revised Statutes. Act 135 was a comprehensive update of chapter 587, the former Child Protective Act, Hawaii Revised Statutes, which was repealed. The provisions of Act 135 ensured the State's compliance with federal

Title IV-E requirements so that Hawaii remains eligible for approximately \$40,000,000 in annual federal funding.

However, subsequent to the enactment of the statute, it was discovered that some of the language in the statute is not clear or consistent with federal requirements...

Accordingly, it is necessary to make technical, clarifying changes to the statute to further ensure consistency in practice and compliance with federal Title IV-E requirements.

The statutory changes being proposed are in collaboration with the Department of the Attorney General and the Judiciary.

Thank you for the opportunity to testify.