

NEIL ABERCROMBIE
GOVERNOR



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March 31, 2011

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

FROM: Patricia McManaman, Director

SUBJECT: **SB 1291, S.D.2, H.D. 2 - RELATING TO CHILD PROTECTIVE ACT
COURT PROCEEDINGS**

Hearing: Thursday, March 31, 2011; 4:00 p.m.
Conference Room 308, State Capitol

PURPOSE: The purpose of S.B. 1291, S.D.2, H.D.2, 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) supports this bill and wishes to thank the members of the Legislature for their continuing support on this important issue.

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Act 135 was a comprehensive update of chapter 587, the former Child Protective Act, Hawaii Revised Statutes, which was repealed.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.

We concur with the October 1, 2011 effective date for this bill.

Thank you for the opportunity to testify.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1291, S.D. 2, H.D. 2, RELATING TO CHILD PROTECTIVE ACT COURT PROCEEDINGS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, March 31, 2011 TIME: 4:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, 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. These changes to the Child Protective Act, chapter 587A, Hawaii Revised Statutes, were 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 enacted last year, the committee continued to meet and discuss possible changes that should be made to make the statute work more efficiently, clarify certain issues, and ensure continued compliance with federal laws.

Section 2 of this bill amends section 587A-5, Hawaii Revised Statutes, to clarify that open cases that were previously filed under the former Child Protective Act, chapter 587, are governed by the provisions of chapter 587A.

Section 3 amends section 587A-27(a)(2), Hawaii Revised Statutes, to clarify that the reference to an ohana conference in a service plan is to facilitate family finding and family group decision making, not fact finding. The ohana conference program is a program to engage the family in providing solutions and recommendations in a chapter 587A proceeding, and the program does not engage in fact finding.

Section 4 amends section 587A-28(e)(4)(A)(ii), Hawaii Revised Statutes, to make the court process consistent with federal law after a finding of "aggravated circumstances." This section makes it clear that even if there is a finding of "aggravated circumstances," 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.

Section 5 amends section 587A-30, Hawaii Revised Statutes, to clarify the procedures to take place during periodic review hearings. Section 587-30(a), Hawaii Revised Statutes, is amended to clarify that if a child is under the permanent custody of the Department of Human Services, or another authorized agency, the appropriate hearing to take place is a permanency hearing pursuant to section 587A-31, Hawaii Revised Statutes, and not a periodic review hearing. Section 587-30(b)(1) is amended to clarify the criteria the court must use in determining whether a child should be placed out of the home under foster custody, whether a child should be left in the home with court supervision under family supervision, or whether the court should terminate jurisdiction and close the case. Finally, section 587A-30(c) and (d) are amended to make 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 the 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.

Section 6 amends section 587A-31(a) to provide that if a child is under the permanent custody of the Department of Human Services or another authorized agency, a permanency hearing must be held at least once every six months. Like the previous section, section 587A-31(g) and (h) is amended to make clear that 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.

Section 7 also amends section 587A-33(i) to make clear that 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.

Section 8 amends section 587A-34(e) to clarify that if the court orders a "trial home placement" prior to a full reinstatement of parental rights, either the Department of Human Services or 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 Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Thursday, March 31, 2011, 4:00 p.m. – Agenda No. 3
State Capitol, Conference Room 308

by
R. Mark Browning
Deputy Chief Judge / Senior Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1291, S.D.2, H.D. 2, 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, the 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 11 to 12).

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