



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 2, 2012

MEMORANDUM

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

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2329 - RELATING TO TEMPORARY ASSISTANCE FOR
OTHER NEEDY FAMILIES**

Hearing: Thursday, February 2, 2012; 8:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of this bill is to require that applicants for Temporary Assistance for Other Needy Families (TAONF) benefits reside in the State for at least six consecutive months immediately preceding their application to receive such benefits.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) respectfully opposes this bill, and would like to offer the following clarification. The Department would like to clarify that the example provided in this bill, Garza County, Texas, offers emergency assistance with rent, utilities, or food through the Garza County Public Assistance Program. This is not a benefit program that provides assistance for basic needs as Temporary Assistance For Needy Families (TANF) or TAONF, but rather a program that addresses specific emergency needs. The Garza County emergency assistance program application provides, "[i]f the applicant appears to be eligible for any State, Federal, or other program, they shall make application for

such program and take necessary steps to qualify. Financial assistance may be given while those cases are pending.” Funding for this program is through local county funding that is neither federal, nor state, funds. Because this program is local county funded, the Garza County has the ability to impose a more stringent residency requirement to limit the assistance to only residents of that county or state.

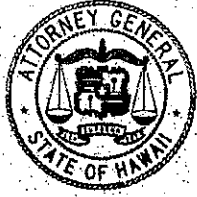
The Department opposes this bill because TAONF is the state-funded counterpart of the federally funded TANF assistance program. Any changes such as residency requirements for TAONF eligibility would also need to apply to the TANF program in order to ensure we are treating similarly situated applicants equally.

Hawaii Administrative Rules (HAR) §17-655-25 details residency requirements that applicants for TANF/TAONF must meet in order to be eligible for such benefits. This provision specifies that an individual meets the residency requirement if he/she demonstrates an intent to remain in the State permanently or for an indefinite time. Hawaii’s administrative rules regarding residency requirements for TANF do not differ from those stated in Texas Administrative Code, §372.251 regarding residency requirements in the state of Texas. The Hawaii Administrative Rules and Texas Administrative Code provisions do not specify that an applicant be a resident in the State for at least six consecutive months immediately preceding their application to receive such benefits.

The Department believes that such a provision may violate the U.S. Constitution. In *Saenz v. Roe*, 526 U.S. 489 (1999), the United States Supreme Court ruled that states were not free to condition receipt of financial assistance through the imposition of residency tests that limited benefits for newly arrived residents. At this time, DHS is unaware of any decisions that have modified or overturned the *Saenz* decision. In addition, in light of Judge Seabright’s decision in the Medicaid case involving residents

from the states of the Compact of Free Association (COFA), it is not advisable to deny eligibility, on the basis of legal status, to COFA residents or legal permanent resident aliens. Pending decision by the Ninth Circuit Court of Appeals, such a tactic would only invite costly litigation with the strong likelihood that the same would be enjoined by the Hawai'i Federal District Court.

Thank you for the opportunity to provide comments on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 2329, RELATING TO TEMPORARY ASSISTANCE FOR OTHER NEEDY FAMILIES.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 2, 2012 **TIME:** 8:30 a.m.
LOCATION: State Capitol, Room 329
TESTIFIER(S): David M. Louie, Attorney General, or
Candace J. Park, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Department of the Attorney General has serious concerns regarding this bill, as it appears to be unconstitutional.

This bill requires that recipients of temporary assistance for other needy families (TAONF) benefits administered by the Department of Human Services reside in the State for at least six consecutive months immediately preceding their application to receive such benefits.

The Attorney General believes that this bill presents significant constitutional concerns under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The impetus for this bill appears to be the concern that state resources are being strained by "other indigent individuals from out-of-state." Page 1, line 12. To address this concern, this bill creates two classes of needy families indistinguishable from each other except that one class is composed of needy families who have resided in the State for six months or more and the other class is composed of needy families who have not resided in the State for at least six months. Applicants who would otherwise be eligible for TAONF benefits would be denied such benefits based solely on the fact that they have lived in our State for less than six months.

This six-month residency requirement creates a classification that likely constitutes an invidious discrimination and touches upon the fundamental right to

interstate travel. An invidious classification that infringes upon the right to travel is unconstitutional unless justified by a compelling state interest. Shapiro v. Thompson, 394 U.S. 618 (1969). Although the State has a legitimate interest in preserving its resources, neither (i) the desire to preserve state funds, (ii) the deterrence of the needy from moving to our State to obtain a higher benefit amount, (iii) the attempt to classify between residents based on their tax contribution to the State, (iv) the facilitation of planning the welfare budget, (v) the provision of an objective test of a person's intent to remain a resident, (vi) the attempt to minimize welfare fraud, or (vii) the attempt to encourage the entry of new residents into the labor force, justifies discrimination among equally eligible needy families. Id.

If the bill were amended to provide reduced benefits to needy families who have resided in the State for less than six months, it would still present significant constitutional concerns. Saenz v. Roe, 526 U.S. 489 (1999) (California law that limited the amount of public assistance benefits for new residents to the amount they would have received in the state of their prior residence was unconstitutional).

The six-month eligibility requirement of Garza County, Texas, raises similar constitutional concerns and may not pass constitutional scrutiny if challenged. Also, according to the Garza County public assistance website, the six-month residency requirement applies only to emergency assistance for rent, utilities, or food. These emergency benefits are separate from the TAONF type benefits issued by the State of Texas.

Due to these constitutional concerns we respectfully request that this bill be held.

HB2329

HUS; Chair, Rep. Mizuno

PLEASE MAKE THIS BILL MAKE DIE DEAD!!

This bill is outrageous! It is written as though needy people are only here for vacations to enjoy our weather; their needs are dismissed as virtually non-existent; our appeal as an island community so great that we are practically inundated with folks who come here for a free ride.

Almost worse, the bill uses a little city in TEXAS, of all places, to justify its persecution of the poor and needy. Come on, folks. Texas is one of the most heartless states in the country, infamous for its high rate of execution, discrimination against minorities, and the ability for every crazed resident to carry concealed weapons! Texas is our role model now?!!

I recognize that times are tough and money is short. But discriminating against non-residents and ignoring the needy is hardly the way to go about restoring fiscal soundness.

Please kill this bill.

Thank you,

joel

Dr. Joel Fischer, ACSW
Professor (Ret.)
University of Hawai'i, School of Social Work
Henke Hall
Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."
Dr. Martin Luther King, Jr.

"Never, never, never quit."
Winston Churchill

It is better to be "over the hill" than under it.
Anonymous

UNIVERSITY OF HAWAII

Bridge to Hope
Serving UH Welfare Recipient Students

TO: Committee on Human Services
Rep. John Mizuno Chair
Rep. Jo Jordan Vice-Chair

FROM: Teresa Bill, Bridge to Hope Coordinator (956-8059)

RE: Testimony **Strongly OPPOSING HB2329**, Relating to TAONF
Thurs. Feb 2, 2012
8:30 a.m. Conference Room 329

I am Teresa Bill, testifying in strong opposition to HB2329 establishing a 6-month residency requirement for certain families to receive Temporary Assistance to Other Needy Families (TAONF), otherwise known as welfare cash assistance.

I am the coordinator of a UH program called Bridge to Hope that supports low-income parents in their pursuit of higher education as a means of economic self-sufficiency, some of whom are TAONF recipients. However my testimony is not the official testimony of the University.

This bill seeks to rescind Hawaii's long-standing tradition of treating all our families equally – whether immigrant or native-born, single-parent or 2-parent households. Be clear, TAONF is a program that assists FAMILIES with children. The household must include children to receive assistance. Any waiting period, especially 6 months, would mean that children are not receiving the assistance their families need. Additionally, I remind the committee that TAONF benefits are available only to our most vulnerable families; those who do not have savings to "tide them over;" those who earn less than the federal poverty level of 2006 (\$ 1590/month for family of 3); those whose situation has become so dire that they subject themselves to the often humiliating act of asking for assistance from a state bureaucracy, which they do for their children.

The text of this bill includes a discussion of warm weather and generous public benefits as a draw for homeless and others to our beautiful State. It further mentions Garza, Texas as a community that has instituted such a residency requirement.

I am certain that as a resident of the State of Hawaii, I am not interested in mimicking the political decisions of the State of Texas, most certainly not in welfare policy (nor educational policy). Furthermore, it is not my experience that if such homeless and indigent persons were to receive public benefits, that it would be TAONF funds.

I urge you to **kill this bill (HB2329)** and consider other ways to balance the State budget rather than on the backs of families with children.

Thank You
Teresa Bill

Dr Thomas W. Pollard
98-1079 Moanalua Rd Suite 570
Aiea, Hi 96701

Testimony for report titled: Temporary assistance for other needy families; six month residency requirement. H.B no 2329

I would like to say for the record that I have noticed more and more patient coming to my office that have recently come to Hawaii that are already getting state of Hawaii benefits. Patients have told me personally that they were told that Hawaii is the one of the easiest places to apply and get State benefits. Some people applied for benefits prior to even coming to Hawaii using a friend or relatives address. I have other patients that have lived here in Hawaii their whole life that have lost their jobs and are having difficulties getting benefits. I don't think that it is fair to the tax payers of Hawaii to support residents of other States. I understand that the 14th amendment to the constitution allows all people to move from state to state unrestricted. Most legal language states that the person needs only to say that their intent is to become a resident of that state. The proof of that intent with someone traveling so far to get to Hawaii is a unique situation and the proof that they intend to become residents would be to reside here for some period of time. Below are a few of article of other states having the same thoughts?

October 10, 2010

MAINE COMPASS: Welfare reform would benefit the welfare of entire state

We need welfare reform now to preserve the welfare of our entire state. Though there are many factors which I feel contribute to our state's welfare woes, I believe one issue needs to be addressed immediately.

House Research Department December 2009

Minnesota Family Assistance A Guide to Public Programs Providing Assistance to Minnesota Families. Eligible families must be residents of Minnesota.

A resident is defined as an individual who has been domiciled in Minnesota for at least 30 days, with the intent to remain here. As long as one member of an MFIP assistance unit meets this 30-day residency requirement, the entire unit is considered to have met it. Time spent in a battered women's shelter counts towards this requirement.

Eligible families must be citizens of the United States

March 24, 1992

Senator John B. Larson
President Pro Tempore
State of Connecticut Senate
Room 3300
Legislative Office Building
Hartford, Connecticut 06106

Representative Edward C. Krawiecki, Jr.
Minority Leader
State of Connecticut House of Representatives
State Capitol
Hartford, Connecticut 06106

Dear Sen. Larson and Rep. Krawiecki:

We are writing in response to your February 25, 1992, and February 27, 1992, requests for an Opinion on the constitutionality of proposed measures before the General Assembly which would impose durational residency requirements upon persons seeking General Assistance welfare benefits in the State of Connecticut. Specifically, you ask: 1) whether the State may deny General Assistance benefits to persons not satisfying a durational residency requirement; 2) whether the State may restrict General Assistance benefits for newcomers to a lower level of support than is available to longer term residents of Connecticut; and 3) whether any such restriction tied to the level of welfare support available in newcomers' previous states of domicile, is permissible. Under each scenario presented, new residents to the state would be ineligible for public welfare benefits which longer term residents could obtain.

It is unquestionably valid for States to guard against the depletion of resources by limiting their availability to only "bona fide" residents. A determination of bona fide residency generally depends on an individual's place of residence in a state, plus the intent to remain, as may be evidenced by one's voter registration, driver's license, and similar criteria. See 72 Conn.Op.Atty.Gen. (9/6/72).¹ As observed in Attorney General of New York v. Soto-Lopez, 476 U.S. at 903 (n. 3):

"A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents. Such a requirement ... [generally] does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a State and to establish residence there. A bona fide residence requirement simply requires that the person does establish residence before demanding the services that are restricted to residents." 461 U.S., at 328-329, 103 S.Ct., at 1842-1843."

Electronically signed
Thomas W. Pollard