NEIL ABERCROMBIE
GOVERNOR

PATRICIA McMANAMAN
DIRECTOR

BARBARA A. YAMASHITA
DEPUTY DIRECTOR

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

January 17, 2014

TO: The Honorable Karl Rhoads, Chair
House Committee on Judiciary

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 400, H.D. 1 - RELATING TO CHILD PROTECTION**

Hearing: Tuesday, January 17, 2014; 2:00 pm
Conference Room 325, State Capitol

PURPOSE: The purpose of the proposed bill is to establish a preference for allowing a child who has been or is at risk of being abused to remain in the home, and requiring the perpetrator of the abuse to leave the home.

DEPARTMENT'S POSITION: The Department of Human Services appreciates the intent of this proposal to ensure continuity and consistency for a child who might otherwise need out-of-home placement.

The Department concurs with the Attorney General that provisions in sections 1,3,4,5,9, and 10 that sets up the preference for leaving a child who has been abused or at-risk of abuse in the family home if it is more likely than not that the family home is safe should be deleted. Creating two standards is not in the best interests of a child.

Additionally, section 709-906, Hawaii Revised Statutes, is referenced in this bill for the removal of an alleged perpetrator of domestic violence from his or her premises.

The Department would recommend that references to section 709-906 be deleted from this bill and that the provisions for the removal of the perpetrator from the home be further reviewed by the Department, the Judiciary, and the Attorney General for proposed language amendments to address this concern that can be submitted to the Legislature at a later date.

Thank you for the opportunity to offer testimony.

HB400
Submitted on: 1/15/2014
Testimony for JUD on Jan 17, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Yamamoto	Individual	Comments Only	No

Comments: There is no dispute that child removal to foster care, even when there has been serious abuse by a parent, is a traumatizing event with likely irreversible lifetime consequences for the child. When there has been family violence, child removal re-victimizes both the non-offending parent and child. This bill is consistent with HRS 571-46 that addresses custody decisions in abuse cases and should be passed into law.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014

ON THE FOLLOWING MEASURE:
H.B. NO. 400, H.D. 1, RELATING TO CHILD PROTECTION.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, January 17, 2014 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (the "Department") appreciates the intent of this bill, but provides the following comments and suggested amendments.

The purpose of this bill is to establish a preference for allowing a child who has been or is at risk of being abused to remain in a safe family home, and requiring the perpetrator of the abuse to leave the home rather than having the child leave the home.

In sections 1, 3, 4, 5, 9, and 10, this bill sets up a preference for leaving a child who has been abused or is at risk of abuse in the family home if it is more likely than not that the family home is safe. Under the current statutory scheme of chapter 587A, Hawaii Revised Statutes (HRS), however, there is already a test for the court to use when deciding when to leave a child in the family home.

In the current statutory scheme, a child is left in or returned to the family home if the family home is a safe family home with the assistance of a service plan. The changes proposed in sections 1, 3, 4, 5, 9, and 10 create a problem because they would set up two tests within the same statute for when a child should be left or returned to the family home. The current test for leaving a child in the home under family supervision is whether the "child's legal custodian is willing and able, with the assistance of a service plan, to provide the child with a safe family home." See, HRS § 587A-4, "Family supervision." The proposed test under this bill is whether "it is more likely than not that the child will be safe from harm in the family home." The proposed test is unclear on whether the family home can be considered safe with the assistance of a service plan or whether the home has to be safe without the benefit of services. This could

be interpreted to make it more difficult to have the child remain in, or return to, the family home because the family might have to show that they are able to provide a safe family home without the benefit of services. Because this additional wording creates two different tests for when a child should remain in, or be returned to, the family home within the same statute, it will not be clear to the family court which test should be used.

The Department prefers the wording in the current statute because it contains consistent wording for when a child is removed from the family home under foster custody, when a child remains in the family home under family supervision, or when a court terminates its jurisdiction over the family after the problems that led to court involvement are resolved. In addition, the current standard has been used for over two decades and the parties involved understand the standard and how and when it is applied. The Department recommends that the provisions that set up a preference for leaving a child who has been abused or is at risk of abuse in the family home if it is more likely than not that the family home is safe in sections 1, 3, 4, 5, 9, and 10 be deleted.

HB400
Submitted on: 1/13/2014
Testimony for JUD on Jan 17, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Todd Hairgrove	Individual	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov