



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

January 29, 2013

TO: The Honorable Mele Carroll, Chair
House Committee on Human Services

FROM: Patricia McManaman, Director

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

Hearing: Tuesday, January 29, 2013; 10:00 am
Conference Room 329, 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 strongly supports the intent of this proposal as it may help to ensure continuity and consistency for a child who might otherwise need out-of-home placement. This bill offers an alternative to a child's placement in out-of-home care that may be viable in some cases.

The Department would like to refer this Committee to the time-tested procedures contained in section 709-906, Hawaii Revised Statutes, regarding the removal of an alleged perpetrator of domestic violence from his or her premises. This provision provides clear standards and procedures to effectuate removal where there are reasonable grounds to believe that harm has occurred.

Thank you for the opportunity to offer testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 400, RELATING TO CHILD PROTECTION.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, January 29, 2013

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 329

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

Chair Carroll 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, 7, and 8, 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, 7, and 8 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 is that it is more probable than not that the family home is a safe family home with the assistance of a service plan. 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. Because this creates two different, parallel tests within the same statute, it will not be clear to the 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 test has been used for over two decades and the parties involved understand the standard and how and when it is applied.

This bill also proposes that in cases where a court is deciding whether to place or keep a child in foster care, the court should consider removing the perpetrator from the family home rather than removing the child. The Department supports this concept. Under the current version of chapter 587A, HRS, in the section concerning the temporary foster custody hearing in section 587A-26(c)(2)(B), HRS, there is a provision that addresses the removal of the perpetrator from the family home, rather than the child. That section provides that “[t]he alleged or potential perpetrator of imminent harm, harm, or threatened harm should be removed from the family home rather than continuing the child’s placement in foster care. The child’s family shall have the burden of establishing that it is in the child’s best interests to remove the child, rather than the alleged or potential perpetrator, from the family home.” This wording is not present, however, in other sections in chapter 587A, specifically section 587A-28, HRS, the Return Hearing, section 587A-30, HRS, the Periodic Review Hearing, or section 587A-31, HRS, the Permanency Hearing. The Department suggests that the wording from section 587-26(c)(2)(B), HRS, be inserted in sections 587A-28, 587A-30, and 587A-31, HRS, so that there will be consistent wording throughout the statute.