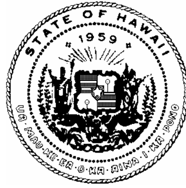
SB 2003

Measure Title:	RELATING TO CHILD ABUSE.
Report Title:	Child Abuse or Neglect; Parents and Guardians; Reports; Notice; Rights; Department of Human Services
Description:	Specifies certain rights of a parent or guardian after the department of human services receives a report concerning child abuse or neglect. Requires written notice to be provided to a parent or guardian at the time of any initial face-to-face-contact with a child's parent or guardian regarding reported child abuse or neglect.
Companion:	
Package:	None
Current Referral:	HMS, JDL
Introducer(s):	CHUN OAKLAND

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

February 4, 2014

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 2003 – RELATING TO CHILD ABUSE**

Hearing: Tuesday, February 4, 2014; 1:00 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of S.B. 2003, is to amend Section 587A, Hawaii Revised Statutes, of the Child Protective Act, to specify certain rights of a parent or guardian after the Department of Human Services (DHS) receives a report concerning child abuse or neglect and requires the DHS and the law enforcement authority to notify a child's parent or guardian of their rights related to DHS' child abuse or neglect investigation.

DEPARTMENT'S POSITION: The Department of Human Services strongly opposes this bill.

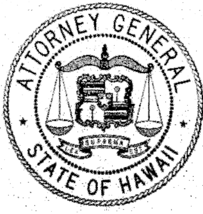
The DHS currently provides specific notice to a child's parent or guardian of their rights in a child abuse or neglect investigation. The Department is required to assess the safety of children in all reports of abuse and neglect. Communication and partnership with the child's parent or guardian is critical in the assessing the child's safety, and determining if the child can safely remain in the family home. A child may

face continued harm without the support and services the Department could provide to families to make the family home safe. Additionally, a parent's or guardian's refusal to communicate and work with CWS may result in the removal of the child and increase the number of children placed in foster care.

The mission of the Child Welfare Services (CWS) is "to ensure, in partnership with families and communities, the safety, permanency and well-being of those children and families where child abuse and neglect has occurred or who are at high risk for child abuse and neglect." The CWS investigation is rooted in family engagement and partnership. CWS believes that children and families are to be engaged within the context of their own family rules, traditions and cultures; and strives to maintain children in their homes, whenever possible.

The DHS provides a child's parent or guardian with A Guide to Child Welfare Services which details CWS's responsibility: 1) to conduct an investigation of child abuse or neglect, 2) ability to interview a child without the consent of the parent or guardian, 3) forward all reports to the police to determine if they will conduct a criminal investigation, and 4) inform a parent or guardian of their right to obtain an attorney and/or advocate. Interpreter services are also offered and provided to each parent or guardian when needed.

Thank you for the opportunity to testify.



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

ON THE FOLLOWING MEASURE:
S.B. NO. 2003, RELATING TO CHILD ABUSE.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 4, 2014 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 016

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

Chair Chun-Oakland and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments to this bill.

The purpose of this bill is to specify certain rights of a parent or guardian after the Department of Human Services receives a report concerning child abuse or neglect and to require Child Welfare Services or law enforcement to provide notice of those rights at the time of any initial face-to-face contact with the parent or guardian.

The Department has concerns about this bill. First, there are no provisions in this bill that set forth the procedures if the notice is not followed and the parent or guardian's remedy if the procedures are not followed. For example, could the parent or guardian ask that the court dismiss the child abuse case and have the child victim returned back to the home of the alleged perpetrator? Second, unlike similar legislation that was passed in the State of Connecticut, this bill applies the notification requirements to law enforcement as well as Child Welfare Services. Under this bill, a law enforcement officer would have to determine whether the alleged crime that is being investigated was a potential child abuse case and, if so, the law enforcement officer would be required to give the warning provided in this bill in addition to the current warnings that are already given. This would be confusing for law enforcement and a failure to provide this additional warning could result in the dismissal of a child abuse case. Third, this bill provides that Child Welfare Services or law enforcement shall make reasonable efforts to ensure that the notice provided to a parent or guardian pursuant to this section is written in a manner that will be understood by the parent or guardian. This creates another issue to cloud the issue of protecting

children, which is the goal of cases brought under chapter 587A, Hawaii Revised Statutes, because a parent would always be able to argue that the parent did not understand the notice even if the parent were given notice and they signed an acknowledgment that the parent received notice.

If this Committee is inclined to pass this bill, the Department recommends that (1) the bill clearly identify the warning that must be given rather than leaving it up to Child Welfare Services or law enforcement to determine what is reasonable, (2) the bill specify the remedy for failure to follow the procedures outlined in this bill, and (3) that the provisions that require law enforcement to provide a warning to the parents be deleted.

SB2003
Submitted on: 1/28/2014
Testimony for HMS on Feb 4, 2014 13:15PM in Conference Room 016

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

Comments:

I am an advocate for parents who are involved in child welfare cases. I have a concern that parents do not understand their rights at the outset of a CWS investigation and inadvertently cause those investigations to wrongfully incriminate them. Warrantless child removals have been the subject of many civil rights litigations in this country. I, therefore, submit the testimony of an attorney with whom I have contacted and discussed his advocacy for understanding of 4th amendment rights of citizens in the context of child welfare investigations. Further, he has offered his input to legislators who would wish to contact him. I fully support the “mini-Miranda” notification of parent rights per SB 2003.

REMARKS OF ATTY. MICHAEL H. AGRANOFF
Law Offices of M.H. Agranoff
99 Stafford Road
Ellington, CT 06029
Tel: 860-872-1024
Fax: 860-871-1015
EM: AttyMikeA@agranofflaw.com
Web Site: www.agranofflaw.com

Thank you for the opportunity to testify. I have been a DCF defense lawyer since 1991. At present, ours is the only law firm in the State of Connecticut providing full-service DCF defense to private-paying adults on a full-time basis.

Our office drafted this bill, which was modified by the Committee on Human Services, as its most important legislative priority of the past ten years: to preserve family integrity by ensuring that persons involved with DCF are advised of their rights before it is too late. This bill is, in my opinion, the Magna Charta of parents’ rights in Connecticut.

There is one technical correction needed in the bill. Section l refers to the "Department of Social Services", but should instead refer to the "Department of Children and Families."

The bill requires DCF to plainly, clearly, and openly advise family members and guardians of a child that they have the right to counsel before speaking to DCF in an investigation concerning a child.

In my 19 years as a DCF defense lawyer, which included state-paid representation of children in the past, I have seen hundreds of parents, other relatives, and guardians pressured into making damaging statements that came back to haunt them for years, and which in no way protected the children. DCF has a habit of knocking on doors, unannounced, and implying that if people do not let them in or talk to

them, they will seize the child. Sometimes DCF convinces a police officer that the parent is dangerous, and asks the police officer to stand beside them at the door. This further intimidates the parent into thinking that he or she must talk to DCF and let them in the house.

Parents in these situations are naturally anxious, confused, and defensive. invariably they make damaging statements, or make statements that are used in unintended ways. It must be remembered that the social worker does not tape the conversation, but makes her notes and may rewrite them at the office. In a dispute over what was actually said, the Court invariably believes the worker. That is a why a lawyer must be present: to protect the parent's rights.

An unrepresented client is bad enough; but one who is nervous and frightened is a disaster. It is strange how many people know that the police, even the FBI, need a warrant, absent exigent circumstances; but believe that they must talk to DCF and let them in the house upon request.

DCF also frequently coerces parents into signing service agreements, safety plans, and releases. While there is nothing wrong with these documents in general, the parent seldom fully understands what he or she is signing, and virtually never understands the legal implications. In most cases, the parent never gets a copy of what he or she signs, even though the parent is supposed to. A lawyer, of course, not only reads and explains the document, but may offer corrections if there is a problem. The end result is better cooperation; not less.

DCF, at present, does not have to advise parents of their rights, since DCF is not a police force. Lost in this is the reality that DCF investigations are generally more serious than police investigations. Nearly all of my clients would rather face a year in jail than face permanent loss of their children, or DCF involvement in their lives for 3-5 years or more.

DCF invariably maintains that it gives parents a booklet explaining their rights, called the "Parents Right to Know" brochure, at the start of every investigation. That may be what the DCF policy manual says, but it does not generally happen. Usually parents get the booklet after the interview. Sometimes they may get it not at all; the worker may have forgotten, or the office may have run out of its supply. I have never, even once, heard of a case in which the social worker gave the parent the booklet at the start of an interview, and invited the parent to read it thoroughly and call a lawyer if he or she had any questions, before speaking to DCF or letting them in the door. Regardless of what the DCF policy manual may say, that simply does not happen in practice.

Furthermore, the booklet is actually a DCF pamphlet, hardly independent legal advice. It is lengthy and complicated. DCF knows that most parents will not read it; and that if they do, they will not understand it. DCF usually offers to explain it to the parent, but that is unsatisfactory. However well—meaning a particular social worker may be, social workers are not lawyers, are certainly not the parent's lawyer, and are under pressures that create a rather obvious conflict of interest if giving legal advice to the very person that they are investigating.

The Bill sets a very reasonable standard. It requires that a plain and simple statement be given to the person before the interview. Furthermore, the person may sign it and get a copy back before speaking.

If these rules are not followed, then nothing that the parent or his or her child says may be used in court or in an administrative proceeding. The Bill, in other words, would give parents the same rights that criminals have. Just as Miranda did not decimate the police, this Bill would not decimate DCF.

In addition, I volunteer to work with DCF, free of charge, in the design of any plain- language form to satisfy this Bill. I will gladly give of my time to help the parents of Connecticut. In anticipation of a possible problem, I have taken the liberty of including a draft of an English—language DCF Advisement of Rights for Adults Form. The form should be printed as a carbon-set.

The State has translators available for approximately two dozen languages. These translators, who already regularly appear in courts, may be engaged to prepare Advisement of Rights forms in those languages.

DCF has traditionally had two standard objections to this Bill, which has been proposed in one form or another for many years.

First, DCF claims that no other state requires it. That may or may not be true, but it is beside the point. Every single right started somewhere, and was once considered radical and outrageous. Rights taken for granted today — women may attend school, blacks may be taught how to read, Catholics may work in banks, Jews may work in insurance companies, criminal defendants are entitled to exculpatory evidence in the possession of the police, and countless others — all were "not done" at one time. Connecticut loves to claim a proud tradition of protecting individual rights, even more than the Federal constitution requires; this is a good opportunity to show that.

Second, and more importantly, DCF claims that it needs extraordinary powers in order to protect innocent and defenseless children. It implies that children will be abused or killed if it has to comply with this procedure.

The problem with this claim is that it is not true.

If DCF sees an immediate problem, it can easily get a 96-hour-hold to seize the child. This requires nothing more than the verbal authorization of a DCF program supervisor, and no supporting affidavit.

Before returning the child, DCF can, and usually does, obtain an OTC (order of temporary custody) signed by a Judge. The OTC requires a sworn affidavit, but that is not difficult if the proper conditions are present. In other words, a child can and will be taken immediately if the child is truly in imminent danger.

There was a case, years ago, in which a social worker saw a distraught woman holding her baby over the Suffield Bridge, which ties Enfield and Suffield over the Connecticut River. The social worker seized the child herself and no one objected.

In short, children in imminent danger can always be taken, and no advisement of rights will prevent this.

Actual experience shows that if the parent calls a DCF defense lawyer, better cooperation is likely to result. Better and more accurate information flows, and there is normally better compliance with meaningful services provided. Stating that compliance with this Bill will harm children is, plainly and simply, a scare tactic reminiscent of McCarthyism.

I began by saying that this bill is the Magna Charta of parents' rights in Connecticut. Let me amplify by saying that DCF is a fine organization that does a difficult and thankless job, and one which is often dangerous. Most social workers are good to very good, and several are positively outstanding. I have been privileged to write commendation letters to the Commissioner on many workers.

However, as in all large organizations, sometimes individual quirks and the desire to please a manager get in the way of the larger mission. This Bill is not radical. It is not anti-DCF. It does absolutely nothing more than to give parents the same rights that, as citizens, they should already have.

And it will harm no child, If it did, I would be totally opposed to it.

This Bill does not stop DCF from removing a child on a 96-hour—hold, if the child is in immediate danger. But it will protect the rights of Connecticut parents against unreasonable actions.

Respectfully Submitted,
MICHAEL H. AGRANOFF
Attorney At Law

Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place
Kailua, Hawaii 96734
(808) 218-3457

February 4, 2014

Good Afternoon Senators and thank you for this opportunity to provide testimony IN STRONG SUPPORT of SB 2003.

When I was trained as a young professional in New York by Child Protective Services decades ago, I was taught to emphasize the "Services" or social work aspect of the job. Although there was a legal part to every case, that wasn't the social worker's concern. Sure, social workers had to know the laws but *enforcement and oversight was not our role*; addressing and preventing abuse was – and we never exploited the trust our clientele placed in us.

Perhaps that became an outdated approach because something's happened nationwide that's changed. In December 2012, CWS sponsored a conference where a trainer from national came and much to my delight, spoke to the audience about the very things I had heard back in the day in New York – problem is, that's only half the story of what's actually happening in some CWS cases.

Optimistically I would guess that in the movement towards being "multi-disciplinary" the role of the CPS Worker changed from 100% social worker to **50% social worker, 50% legal officer of the court** that is a dual and often a contradictory role to play. For example, a client revealing facts of his/her history used to be used exclusively for therapeutic purposes – now a client revealing facts of his/her history can and will be used against him/her in a court of law.

If CWS Workers are going to play such a role in cases, then **the clients should and must be aware of their rights and their legal options**. Too often I've seen clients who have been tricked into legal situations they had no idea they were walking into because they trusted the worker they were speaking to. Walking in as a social worker to establish a bond with a client then betraying that trust as "an officer of the court" is exploitative and unethical (and should also be illegal for malpractice's sake) but until such time, informing and providing clients with their legal rights and responsibilities should only be considered best practice.

Thank you once again for this opportunity to provide testimony in support of SB 2003.