



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S. C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

Wednesday, February 22, 2017, 9:15 a.m.

State Capitol, Conference Room 016

By

R. Mark Browning

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 747, Relating to Orders for Immediate Protection.

Purpose: Requires findings prior to issuance of an order for immediate protection in certain cases.

Judiciary's Position:

The Judiciary takes no position on this bill but respectfully offers these comments.

Requiring the Department of Human Services (DHS) to provide “substantial evidence” as opposed to “probable cause to believe” allegations in cases where the vulnerable adult living in his/her own residence and “has a prognosis of six months or less to live” appears to put a particularly vulnerable section of an already vulnerable population at increased risk. We are also concerned about the required prognosis. In many of the current cases, the vulnerable adult is often unable to give accurate medical information and history. Without the ability of the DHS to file a petition based on probable cause, there would not be a mechanism that would allow the DHS to investigate “substantial evidence” or to establish the required prognosis.

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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 747, RELATING TO ORDERS FOR IMMEDIATE PROTECTION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, February 22, 2017 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Erin L.S. Yamashiro, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General opposes this bill due to concerns about the application of the new standard of proof proposed by this bill.

The purpose of this bill is to change the burden of proof from probable cause to “substantial evidence” for the Department of Human Services (DHS) to seek, and for the family court to grant, an ex parte order for immediate protection under chapter 346, Hawaii Revised Statutes (HRS), and to continue the ex parte order at the show cause hearing when the vulnerable adult is living in their own residence and has a prognosis of six months or less to live.

“Substantial evidence” is not a common term used to define the standard of proof for judicial determinations in family court. If this measure passes, there will be confusion as to the meaning of “substantial evidence,” as there is no workable definition provided. “Probable cause,” however, is a recognizable legal standard.

Currently, chapter 346, HRS, provides safeguards to ensure that the DHS is not infringing upon a person’s right to self-determination by requiring judicial oversight. Section 346-231(a), HRS, allows the DHS to petition the court for an ex parte order for protection when there is probable cause that a vulnerable adult lacks capacity, or consents, and has incurred abuse or is in danger of abuse if immediate action is not taken. The court may issue the ex parte order for immediate protection upon finding the same based on probable cause. Section 346-232(a), HRS, then requires a show cause

hearing within seventy-two hours after the ex parte order is issued by the court. Under section 346-232(b), HRS, at the show cause hearing, the court may only continue the orders if it continues to find that there is probable cause to believe the allegations contained in the ex parte application are true, after allowing the alleged perpetrator an opportunity to respond. Section 346-231(f), HRS, requires the DHS to also file a petition for protection within twenty-four hours of the issuance of the ex parte orders. Pursuant to section 346-240, HRS, a return hearing must be held within thirty days of filing the petition. At this time, per section 346-240, HRS, the court may hold an evidentiary hearing or schedule a trial. Section 346-240(b), HRS, requires the court to dismiss the petition for protection and to revoke the ex parte order for immediate protection if the allegations are not shown to be true by a preponderance of the evidence. Preponderance of the evidence is a higher legal standard of proof than probable cause, which means the evidence proves that it is more likely than not that the facts presented are true. See Masaki v. General Motors Corp., 71 Hawaii 1 (1989). Probable cause requires something more than mere suspicion. See State v. Maganis 109 Hawaii 84 (2005).

This process as set forth under chapter 346, HRS, allows the DHS to respond quickly to protect a vulnerable adult, and ensures that the DHS is not acting beyond its authority by requiring judicial oversight. Therefore, it is unnecessary to raise the standard of proof for the DHS to help a vulnerable adult who has six months or less to live and is living at the vulnerable adult's residence. In addition, this measure would make it more difficult for the DHS to protect this population from abuse, which is contrary to the purpose of chapter 346, HRS.

We respectfully ask this committee to defer this measure.

From: mailinglist@capitol.hawaii.gov
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Subject: Submitted testimony for SB747 on Feb 22, 2017 09:15AM
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SB747

Submitted on: 2/16/2017

Testimony for JDL on Feb 22, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Bryn Villers	Individual	Oppose	No

Comments: I strongly oppose this bill. Why should the prognosis of 6-months or less to live diminish the value of a human life such that it no longer qualifies for protection from the state. This is both unjust and unequal.

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.

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