



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

February 8, 2018

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

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2056 – RELATING TO CHILD CARE**

Hearing: Friday, February 9, 2018, 8:30 a.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the efforts of the Legislature and community advocates to ensure the health and safety of children in child care. DHS offers the following concerns:

- Enacting child care specific criminal penalties, will further discourage current child care providers from remaining, or individuals interested in becoming, regulated child care providers, opting instead to become unregulated providers; this would leave parents with less choices for regulated care, particularly for infants and toddlers since center-based regulated infant and toddler care can be cost-prohibitive; and
- DHS Child Care Licensing investigations that carry potential penalties of denial, suspension, or revocation of licenses, may be impeded or delayed by the presence of potential criminal sanctions as child care providers will likely seek legal representation in any situation where a child is injured in child care.

DHS defers to criminal justice community regarding law enforcement issues.

PURPOSE: The purpose of the bill is to establish a criminal offense of assault against a child in a child care facility.

The primary focus of the DHS Child Care Licensing program is on the health and safety of all children in child care. Having enough safeguards in place to ensure children's health and safety in different child care settings, while maintaining a sufficient statewide inventory of quality affordable child care is a difficult balance. Access to affordable, quality child care supports parents' and caregivers' ability to work and increase family resources, and quality child care provides children with positive experiences that support a child's social emotional development to be successful in school and in life.

The State does not have institutional child care: Hawai'i's regulated child care is provided by private businesses, large and small. Hawai'i's families rely on unregulated child care, friends, family, or neighbors caring for children, as the regulated market does not have the capacity to meet the needs of all working families with young children.

DHS is concerned that the definition of "injury" is so broad, that potentially a scrape on the knee with some broken skin could fit this definition of "injury." Establishing criminal penalties for "at least ___ incidents of injury to any child or children occur while in the care of the person" may likely impact those who are currently or who are willing to be child care providers, further decreasing the state's capacity of licensed and registered child care for Hawai'i's families and children.

DHS respectfully requests the Committee consider providing more specificity in the definition of "injury," including specific criteria for the types and severity of injuries sustained (such as fractured or broken bones, critical head trauma, etc.) to provide clarity for parents and child care providers, since the bill proposes the crime be charged as a class C felony.

As of the end of December 2017, Hawaii has about 350 independent home-based child care providers which is a decrease of 12% of the number of homes that were regulated at the end of December 2016. This is a national trend as well.

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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2056, RELATING TO ASSAULT AGAINST A CHILD IN A CHILD CARE FACILITY.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Friday, February 9, 2018

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Lance Goto, Deputy Attorney General.

Chair Mizuno and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of this bill and submits comments.

The purpose of this bill is to create the offense of assault against a child in a child care facility.

The proposed offense has significant issues. It does not prohibit specific conduct, but instead appears to create an offense that punishes someone for being in a certain situation or status. A person commits the offense if multiple incidents of injury to any child or children occur while they are in the care of the person. So the person can commit the offense without committing any act and without having any culpable state of mind. "Injury" is defined to include just physical pain. One child could fall off a tricycle and be injured. Another child could be hit with a toy thrown by another child and suffer some injury. If John was in charge of the child care facility when these two children were injured, he could be charged with the felony offense.

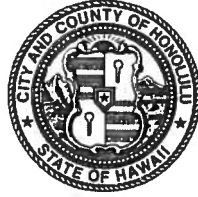
The requirement for multiple incidents of injury could create enforcement issues. We should consider who would be responsible for tracking the "incidents of injury" at each child care facility and the person or persons caring for the children at the time. Most likely, the responsible person would be someone at the facility. There may be a problem tracking incidents of injury, when such records could be used against the person maintaining them.

The Department appreciates the opportunity to submit comments.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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February 9, 2018

The Honorable John M. Mizuno, Chair
and Members
Committee on Health and Human Services
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 329
Honolulu, Hawaii 96813

Dear Chair Mizuno and Members:

SUBJECT: House Bill No. 2056, Relating to Assault Against a Child in a Child Care Facility

I am Walter Ozeki, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the intent of House Bill No. 2056, Relating to Assault Against a Child in a Child Care Facility, and submits the following comments and recommendations.

While the HPD supports the idea of holding the person(s) charged with operating or maintaining a child care facility accountable for the wellbeing of a child while in their care, this bill (as currently written) is unenforceable and contrary to the rule of law. The basic intent of an assault prosecution is that the infliction of injuries must be tied to a specific person or persons with a state of mind of "reckless" at a minimum. As written, this bill would attempt to assess criminal responsibility at the felony level to a child care facility operator or someone who maintains a child care facility for a child who suffers illness, pain, or physical impairment while in their care irrespective of who caused the condition. This would be more consistent with the lesser state of mind of "negligent," which is currently not associated with the offense of assault.

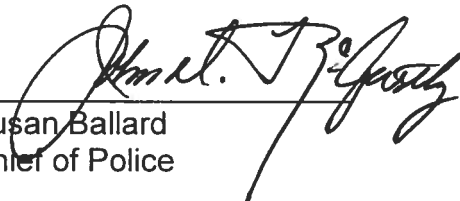
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We appreciate the committee's consideration of these comments, and thank you for the opportunity to testify.

Sincerely,


Walter Ozeki, Captain
Criminal Investigation Division

APPROVED:


Susan Ballard
Chief of Police

LATE

HB-2056

Submitted on: 2/9/2018 4:17:41 AM

Testimony for HHS on 2/9/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	Yes

Comments: