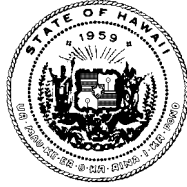


DAVID Y. IGE
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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
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February 4, 2018

TO: The Honorable Senator Josh Green, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2539 – RELATING TO CHILD CARE**

Hearing: Monday, February 5, 2018, 3:40 p.m.
Conference Room 016, State Capitol

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

- From the perspective of the organization of the Hawaii Revised Statutes (HRS), criminal penalties are addressed in the Hawaii Penal Code, and should not be in chapter 346, HRS, as DHS does not conduct criminal investigations or prosecutions;
- Existing administrative rules already include provisions to deny, suspend, and revoke a license or registration for rule violations, including injuries to a child caused by negligence of a provider; the proposed sanction would be in addition to the existing administrative sanctions, and even a misdemeanor offense, may impede and delay the completion of investigations by DHS Child Care Licensing that could result in an immediate denial, suspension, or revocation as providers may be less forthcoming, may choose to stop

providing regulated child care, and may prefer to seek legal representation for every response to a complaint made to DHS Child Care Licensing;

- DHS is very concerned that 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 may be cost-prohibitive; and
- DHS has proposed the administration measure SB2792, that addresses some of the legislature's concerns, as it will require criminal history checks of adult relatives who provide care for a child whose family receives a child care subsidy from the DHS, clarifies that DHS may take both administrative and judicial action to enforce child care licensing provisions of chapter 346, Hawaii Revised Statutes, clarifies the role and response of the child care licensing program when it receives a report of death or injury of a child in a child care setting, and addresses the release of information pending an investigation.

DHS respectfully defers to the Department of the Attorney General, County police, County Prosecutors, the Office of the Public Defender, and the Judiciary, regarding law enforcement, and criminal justice system perspectives. Existing criminal laws already exist to address actions or omissions that would lead to prosecution.

The overarching goals of DHS child care licensing is to improve the quality and access to safe, healthy, and affordable regulated child care in the state; adding criminal penalties, which may satisfy a need or concept of a deterrent, does not necessarily support improved quality, safety, or accessibility of regulated child care.

PURPOSE: The purpose of the bill is to establish a misdemeanor offense when a child under the care of a licensed child care provider is injured or killed as a result of failure to properly care for the child and requires that a child care provider's license be immediately revoked upon conviction of the new offense.

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 quality child care experiences support a child's social emotional development to be successful in school and beyond.

The State does not have institutional child care: Hawaii's regulated child care is provided by private businesses, large and small. Parents pay private providers directly for child care out of pocket, receive subsidies from DHS or scholarships from other private foundations.

Hawaii's families also use 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.

Under current DHS child care licensing administrative rules, the following violations may be punishable by a fine and may also be subject to the denial, suspension, or revocation of a license or registration:

- a) Operation of a child care facility without a license or registration;
- b) Caring for more children than allowed by the facility's license or registration;
- c) Violation of the staff-child ratios;
- d) Improperly certifying staff credentials;
- e) Failure to comply with timely request for criminal history records check;
- f) Allowing conditions to exist which constitute an imminent danger to the health, welfare, or safety of the children in care; or
- g) Injuries to children due to staff/caregiver's negligence.

Currently, when DHS receives a complaint regarding a child injury or death, the Child Care Licensing investigation includes whether the child care facility staff or child care home provider violated any regulatory requirements, and whether any individual staff or child care provider is no longer suitable to provide care to children. If an individual is not suitable to provide care to children, DHS will request the group child care center terminate the

employment of the individual, otherwise the center's license may be suspended or revoked if the individual continues working with children. If the individual operating the group child care home or family child care home is determined not suitable, the home's license or registration will be revoked.

The department's proposed administration measure SB2792 requires criminal history checks of adult relatives who provide care for a child whose family receives a child care subsidy from the DHS, clarifies that DHS may take both administrative and judicial action to enforce child care licensing provisions of chapter 346, HRS, clarifies the role and response of the Child Care Licensing program when it receives a report of death or injury of a child in a child care setting, and addresses the release of information pending an investigation.

However, under the proposed SB2539, the department's ability to conduct its current administrative investigation may be hampered as care providers may choose not to participate in the administrative process, and instead obtain legal representation if criminal penalties are also possible. This could delay the time it takes to complete the Child Care Licensing investigation, and would not be helpful or improve safety if the injury or fatality were not a result of the provider's negligence or intentional act. The current administrative rules already allow for the revocation of the license or temporary permit when violations (a) through (g) above are substantiated, and DHS is seeking additional administrative enforcement and increased fines through administration proposal SB2792.

Under the proposed SB2539, DHS requests further clarification whether the Legislature intends that *any* violation of Part VIII of chapter 346, HRS, be subject to the misdemeanor charges. As SB2539 is currently drafted, a violation of an administrative record keeping rule would fall under the criminal penalty.

Further, while the DHS Child Care Licensing currently investigates complaints and provides administrative oversight of the state's child care providers, Child Care Licensing does not make referrals to prosecutors as Child Care Licensing does not conduct criminal investigations. However, through administrative proposal SB2792, DHS seeks to clarify the role of DHS Child Care Licensing in the system of criminal, child abuse and neglect, and administrative processes.

DHS requests clarification of the definitions of “failure to properly care” violating Part VIII of chapter 346.

Furthermore, DHS notes the measure does not address negligence.

DHS suggests a technical amendment as the bill references section 346-164, Hawaii Revised Statutes (HRS), on page 1, line 14. The department's authority for registered family child care homes and revocation of registration is in section 346-175, HRS.

If the measure is passed as drafted, with the additional kind of investigation that will be required, DHS Child Care Programs Office will need to adopt additional administrative rules, additional staff to carry out the investigations, as well as acquire additional subject matter training and program development related to the elements of *mens rea* associated with the potential criminal penalties. Further clarification is required, in terms of how on a practical level, Child Care Licensing staff will also be required to provide some kind of *Miranda* warning to applicants and child care providers at all points of interaction.

DHS is concerned that establishing criminal penalties for any violation will impact those who are currently or who are willing to be child care providers, decreasing capacity of licensed and registered child care for Hawaii’s families and children. 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.



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February 4, 2018

The Honorable Josh Green, Chair
and Members on the Committee on Human Services
Hawaii State Capitol
[514 Beretania Street](#)
[Honolulu, Hawaii 96813](#)

RE: Strong Support for SB 2539

Rainbow Family 808 strongly supports SB 2539, in order to bring a new level of transparency for the children under the care of any Child Care provider, be it an individual or a Child Care agency.

It is imperative that all those with the care of children face a misdemeanor offense when a child is injured or killed as a result of failure to properly care for the child. This misdemeanor offense should by all means result in an immediate and speedy act to revoke the said Child Care provider's license when found guilty.

This Support of SB 2539 is based on protection of other children and future children under the care of individuals or Child Care agencies. Our injured or killed children can not fall through the cracks in our State of Hawaii.

Sincerely,

Carolyn Martinez Golojuch, MSW
President and Co-Founder
Rainbow Family 808

SB-2539

Submitted on: 2/4/2018 5:38:33 PM

Testimony for HMS on 2/5/2018 3:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
anne ogori		Support	No

Comments:

SB-2539

Submitted on: 2/4/2018 7:24:15 PM

Testimony for HMS on 2/5/2018 3:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bobby		Support	No

Comments:

I strongly support SB2539. This law is absolutely necessary to protect the lives and well-being of our keiki in the care of others. The bill would establish a misdemeanor charge as an option for State licensed day care providers who violate day care laws and endanger, injure or cause the death of children. We must instill accountability where there is currently none.

SB-2539

Submitted on: 2/4/2018 9:35:07 PM

Testimony for HMS on 2/5/2018 3:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments:

SB-2539

Submitted on: 2/5/2018 12:58:28 AM

Testimony for HMS on 2/5/2018 3:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tatiana Faumuina		Support	No

Comments:

I strongly support SB2539. This law is absolutely necessary to protect the lives and well-being of our keiki in the care of others. The bill would establish a misdemeanor charge as an option for State licensed day care providers who violate day care laws and endanger, injure or cause the death of children. We must instill accountability where there is currently none.

SB-2539

Submitted on: 2/5/2018 9:58:39 AM

Testimony for HMS on 2/5/2018 3:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Jani		Support	No

Comments:

I strongly support SB2539. As a working mother of two young children, I am asking you to bring accountability to child care to help ensure safe, quality care for all of our keiki. This law is absolutely necessary to protect the lives and well-being of our keiki in the care of others. The bill would establish a misdemeanor charge as an option for State licensed day care providers who violate day care laws and endanger, injure or cause the death of children. We must instill accountability where there is currently none.

SB-2539

Submitted on: 2/5/2018 10:36:24 AM

Testimony for HMS on 2/5/2018 3:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edith Adkins		Support	No

Comments:

I strongly support SB2539. This law is absolutely necessary to protect the lives and well-being of our keiki in the care of others. The bill would establish a misdemeanor charge as an option for State licensed day care providers who violate day care laws and endanger, injure or cause the death of children. We must instill accountability where there is currently none.

SB-2539

Submitted on: 2/5/2018 1:28:41 PM

Testimony for HMS on 2/5/2018 3:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jeff muir		Support	No

Comments: