



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 745, RELATING TO CHILD PROTECTION.

**BEFORE THE:**

SENATE COMMITTEE ON HUMAN SERVICES

**DATE:** Friday, January 27, 2017

**TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Jay K. Goss, Deputy Attorney General

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Chair Green and Members of the Committee:

The Department of the Attorney General 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 of the Attorney General 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? This is the type of question that would arise if the language of the bill is silent.

Second, this bill applies the notification requirements to law enforcement as well as Child Welfare Services. Under this bill, law enforcement officers would have to determine whether an alleged crime that they were investigating was a potential child abuse case under chapter 587A, Hawaii Revised Statutes. If so, they would be required to give the warning provided in this bill in addition to the current warnings that they already give in a potential criminal case. 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 does not specify the wording that must be used in this warning. This creates another issue to cloud the issue of protecting children, which is the goal of cases brought under chapter 587A, because a parent would always be able to argue that the warning that the parent received was not adequate or the parent did not understand the notice that the parent was given.

If this Committee is inclined to pass this bill, the Department of the Attorney General recommends that (1) the bill specify the remedy for failure to follow the procedures outlined in this bill, (2) the provisions that require law enforcement to provide a warning to the parents or guardians be deleted, and (3) the bill clearly identify the warning that must be given.

**From:** [Mailing List](#)  
**To:** [HMS Testimony](#)  
**Cc:** [jusbecuz@hotmail.com](mailto:jusbecuz@hotmail.com)  
**Subject:** Submitted testimony for SB745 on Jan 27, 2017 14:45PM  
**Date:** Wednesday, January 25, 2017 12:08:43 PM  
**Attachments:** [Hawaii 2017 testimony for SB 745.docx](#)

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**SB745**

Submitted on: 1/25/2017

Testimony for HMS on Jan 27, 2017 14:45PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marilyn Yamamoto	on behalf of Hawaii families who have contacted me for support	Support	No

Comments:

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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Senator Green  
Testimony for SB745 to the HMS Committee  
January 27, 2017

Thank you for the opportunity to testify in support of a bill to provide notification of parent rights prior to a child welfare investigation of an abuse or neglect report to the department.

I have been advocating for families in the CWS system in Hawaii since 2012 and represent 50 families and their concerns today. One of the statements that I hear most often is that “we had nothing to hide so we let the investigator into the home” OR “we were threatened with removal of our children if we didn’t open the door”. In May of 2014, members of National Advocacy Team developed a parent survey to determine the level of communication between the department and families in all states. Hawaii has 30 responses. 75% of those responses were that they had no idea that they had a choice to exercise the 4<sup>th</sup> amendment in the Bill of Rights. In October of 2016 the federal oversight agency called the Administration for Children and Families found that Hawaii was in noncompliance of federal funding law called CAPTA that mandates notification of allegations prior to a face to face interview. CWS admitted to having sent 1500 letters per year, minus the allegations, to families in Hawaii, a violation of due process from the 14<sup>th</sup> amendment. Due to confidentiality law, the public is generally unaware of child protective law and procedures, but parents who are accused of child abuse or neglect are entitled to same rights as in criminal proceedings, namely the right to know the allegations and the right to legal advice. Minor children have those same rights to be free from warrantless search and seizure in the absence of imminent danger. It may also help the public to realize that the parameters for making a call to the child abuse hotline are such that in investigation from those calls does not mean that all accused families are guilty of child abuse or neglect.

Attorney Mike Agranoff wrote and testified for the Miranda bill in Connecticut that passed in 2011. Please note an excerpt from his testimony regarding concerns that DCF expressed then. The very same concerns were brought up to me when we introduced this legislation in Hawaii in 2014 and I concur with the same experiences with parents in Hawaii regarding the Parent Guide.

“ 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.

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 the 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. "

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 25, 2017 1:59 PM  
**To:** HMS Testimony  
**Cc:** breaking-the-silence@hotmail.com  
**Subject:** \*Submitted testimony for SB745 on Jan 27, 2017 14:45PM\*

**SB745**

Submitted on: 1/25/2017

Testimony for HMS on Jan 27, 2017 14:45PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments:

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Testimony IN SUPPORT of SB745 to be heard on January 27, 2017

Aloha Senator Green,

I want to thank you for allowing testimony concerning Hawai'i Department of Human Services/Child Welfare Services. (DHS/CWS) This department is corrupt and has been for some time now. I have had several issues with this department but I will only talk about the most recent.

On May 22, 2013 there was an incident between me and my then 13 year-old grandson and who although young was already much taller than myself. Police came to the house and spoke to everyone who were present which included an older grandson and their aunt. After speaking to the 13 year-old, the police did not find any reason to remove him from my home or even to file a police report. I did however send him to his biological mother's house for a few months but he has since returned to my home. No DHS/CWS investigator came to the house that day or contacted me at any time regarding this incident.

On February 19, 2014, almost nine months later, I call the Kapolei DHS/CWS office in Honolulu to inquire about a niece of mine and am told for the first time that I have a "confirmed perpetrator" status on my record from that May 22, 2013 incident! After questioning the supervisor about that, she tells me "it was the Wai'akamilo DHS/CWS office" who confirmed it. From Honolulu without speaking to myself or my grandson?! There was no investigation, no notice, no hearing, no appeal, nothing, but it was confirmed and submitted into the registry. It was only after I made a complaint that the proper procedures began, although they just followed through the motions to cover themselves.

This department does the same thing over and over violating Hawai'i citizens of their "Constitutional Rights" without a second thought. Several of Hawai'i's children have been adversely hurt by the methods they use. They DO NOT follow their own "Procedures Manual" but they expect the public to trust them? The State of Hawai'i DHS/CWS needs to be "Held Accountable" for all the decisions they make in handling our keiki. It is no wonder to this grandmother why so many Hawai'i children have died on their watch. This state department is just a gigantic law suit waiting to happen. They need an oversight group to monitor if they are in fact following the law in their "Procedure Manual. I would like to thank-you for your time and I hope some much needed changes can result from this email.

Aloha Pumehana,

PK

Pahoa, HI 96778

From "Parent A" in Support of SB745

I would like to address the issue of CWS and their accountability to the State of Hawaii and the families of the same. I support the Oversight Bill being submitted.

To date our son with special needs, my husband and myself suffer from the trauma of Illegal kidnapping of our son. Our family was subjected to a series of civil rights violations and abuse of power under the "investigative" practices of our local CWS. We were falsely accused externally for allegations which after a year and many court hearings ended in no findings. The false accusations had nothing to do with our son. During this time our special needs child was removed twice and almost a third time illegally per HRS 587A section 8. There was no warrant for removal by court order for removal by CWS or the Police department; no exigency circumstances; and no evidence that warranted my son's removal. My son was returned home during a court hearing the 2nd time. There was a third attempt for removal by CWS and Police with no warrant from either. My husband and myself refused to allow the removal for the third time. Our specific case was in the preliminary investigation stage. We complied in good faith with CWS to proceed with the process and what was asked of us to maintain stability in our household with our special needs child. We stood on the porch of our home and cited the law HRS 587A-8; Section 587A-8 of the HRS states, in relevant part:

(a) A police officer shall assume protective custody of a child without a court order and without the consent of the child's family if, in the discretion of the police officer, the officer determines that:

(1) The child is subject to imminent harm while in the custody of the child's family;

(2) The child has no parent, as defined in this chapter, who is willing and able to provide a safe family home for the child;

(3) The child has no caregiver, as defined in this chapter, who is willing and able to provide a safe and appropriate placement for the child; or

(4) The child's parent has subjected the child to harm or threatened harm and the parent is likely to flee with the child. Haw. Rev. Stat. § 587A-8(a). 8/

There was nothing that warranted any of the removals. Police officers spoke to our son called their supervisor to say they observed no harm or threatened harm. No evidence that any wrong doing occurred just the "judgement" or feelings of the CWS worker who investigated. This situation in our area is more the rule than the exception. Many of us are reluctant to take issue with the department on this matter due to retaliations which occur. We are afraid to speak up as our son can be removed at the will of the department who can "choose" by their interpretation of the law and to do so without accountability. Please consider this Oversight bill. It provides an accountability which is a balanced approach to protecting our Children.



Anonymous, in Support of SB745

As a family Advocate and a member of the National Family Advocacy Team. I am concerned for the wellbeing of the children within jurisdiction of the state of Hawaii.

As Hawaii has not performed a State audit of CWS since 2003, followed by a review in 2009 that resulted in a 3 year program to bring the state into compliance. There has been no published audit or review of this program.

All agencies of the Government should have oversight or checks and balances. I propose that we begin local and frequent oversight to assure that all laws and policies are being followed.

This will protect our children and our funding.

From Parent C in Support of SB745

To Whom it Should Concern,

I am a parent who, due to leaving a domestic abuse relationship to gain safety for myself and my children, caught the eye of Department of Human Services Child Welfare Services. My children disclosed abuse by the other parent, who the court ordered to have shared custody, regardless of Domestic Violence. I reported the abuse to the police, and the children's doctor, school and police reported this to the CWS. I cooperated with CWS, thinking that they were there to help protect us and keep the children safe.

Instead, they denied the abuse occurred and did a preplanned quick trigger removal with no warrant or court order. There was no exigent circumstance in my home, no imminent danger, as the kids were home with me and we had had a TRO against the abuser. They came with several police officers and an aid and forcefully took my children, traumatizing them, and gave them to CWS who had planned already where they were to hidden from me. I had no contact with my children for over 100 days. I have no record of abuse or neglect, I have never been in a fight, I have no criminal record of any violence or crimes.

At the time of removal I asked repeatedly what the allegations were, why they were taking the kids from ME. The worker refused to tell me, she looked at the ceiling and would not say a word every time I asked, and every time I asked to see a court order or document showing that she had any authority to do what she was doing. She did not have any documents, she had no prior authority. They threatened to arrest me if I did not cooperate and give the children to them. I begged and asked them what I could do. I offered to do services, to take a psychological evaluation, that I would see a counselor, Anything. They refused to tell me why, or give me any options to prevent removal of my healthy, uninjured children.

They have been collecting money for foster services, court costs and who knows what else from the Federal Government for a year now. They still have not proved

or shown evidence that I did anything wrong or hurt or neglected my kids in any way. Yet they have not been returned to me.

My children are suffering, have reported abuse in their placements, and are showing many psychological signs of trauma like wetting the beds nightly and acting strange when they want to tell me something but know they aren't allowed to disclose abuse to me, for if they do, our visitation will be terminated.

The reform bill would provide people like me, and several people I know that are going through this too that I am friends with. We have reported these things to CWS, the Ombudsman, the ADA, the FBI, and nobody will investigate CWS child removals. I have tried to hire lawyers, get help from DVAC, all to no avail.

We are in DIRE need of help, some oversight that cannot be manipulated, hidden, or corrupted just to keep the Agency safe from litigation. This Bill could give us that. And for virtually no cost. Many people would be willing to volunteer, including educated in law folks in the common law grand jury community of Hawaii. Advocates, law students, psychology students. We have many willing, the kokua is out there, it's all around us. Our priority as adults is to keep the keiki safe, healthy and happy to grow to be the contributing successful next generation to care for the aina, the kapuna (which will be us), and so on...

This will NOT happen if we are to look the other way, to hide, to be fearful, to be greedy of our own security, to be complacent and allow our children to suffer, to be exploited, to be traumatized and have life-long problems, mental illness, substance abuse, suicide, become abusers and perpetuate the cycle. This system is not functioning, it is not normal, it is **NOT IN THE BEST INTEREST OF ANY CHILD!**

Please be the bold, the strong, wise enough to see what is, and courageous enough to help create a solution. A way to collect data, a way to help those who need, and eventually reform what so desperately is hurting the most vulnerable innocent ones.

## Anonymous II in Support of SB745

I support oversight to monitor the actions of child welfare services. There should be oversight when a government agency's mission is to investigate a family and especially when that involves entry into a home. The workers must know the law and be accountable to it.

I have a family member who was mistreated by CWS because she was not aware of her rights. The proposed committee should be free from any bias about child protection in order to determine if the court records indicate that there was enough evidence to remove children to foster care. Oversight is necessary to prevent overreach of power of any government agency.

I have better peace of mind knowing that someone or some group is overseeing the actions of individuals that are able to enter a home on suspicion and take someone's child away.

Anonymous

## Grandma in Support of SB745

I've been a nurse for 25 years. I was fit and willing to take my grandchildren but I was denied.

My grandchildren went in to foster care in 2008. The CWS agency had a multitude of excuses to keep them from me. Visits were denied, delayed, changed and the workers did everything possible to destroy every visit. We had to endure their systematic destruction of all family relationships the children had. Caseworkers taught the children that I am a liar, told them that I didn't love and didn't want them. They were so brazen a caseworker even put her arms around them and said, "You don't love them" in front of me when I was picking them up. At one visit a case worker on the orders of her supervisor chased my grandson, tackled him to the ground, held him there and pried family pictures from his hands while he was crying "No no! They're mine!"

The kids came to visits telling me they had family meetings at their foster home where they were told bad things about me. The foster father would say during phone calls you still want to talk to her and hang up the phone. The children were even told they would go to hell if they lived with me. They were no longer able to see their cousins, Aunts Uncles, grandparents or even great-grandparents whom they loved all their lives.

Our whole family has suffered tremendously. CPS has turned into a system used to abuse children and families rather than protect them. There is no oversight of this agency and they routinely violate families' rights. They have no boundaries in their attempts to keep control of a case and the children no matter what harm they cause. It was hard for me to fathom what was happening to me and the children. I never would have believed it if I hadn't gone through it myself.

I urge you to establish a committee dedicated to following up with family concerns and make sure DHS is following the law.

## Parent D in Support of SB745

Aloha Senator Green,

I am the father of a beautiful four and a half year old boy, DD.

On January 13, 2012, DD was removed by the Honolulu Police Department from the mother and placed in the custody of Child Welfare Services. The mother is of African-American origin and was preparing to leave a woman's shelter on Oahu after being constantly harassed by the residents and staff there. I was in a residential program on the Big Island at the time. Our child has never been neglected or abused by neither the mother or me.

The mother was taken to Queen's Hospital for a psych eval and released the same day. She called the CWS number she was given to retrieve our son and there was no answer. Meanwhile CWS took possession of our boy by filing a Temporary Custody Motion in court and placed him in foster care. There was no neglect or abuse of any kind to warrant long-term removal of the child. He suffered neglect and abuse in foster care, delaying his development as well as severe first-degree burns leaving permanent scarring and scrapes all over his face which were all overlooked by CWS.

The case dragged on over three years in which I was in compliance with CWS services, going above and beyond what was required. My parental rights still have been terminated, even though the judge in court acknowledged that the father made great changes and improvements, based on future predictions of bias CWS contracted psychologists and social worker.

If there was an outside independent panel assessing and regulating CWS removals, placements, conduct, and allowed parents to participate, share information, and file complaints, it would create a great transparency that would prevent many of these removals. It should be the priority of the department to keep children and parents together, not divide and destroy families. It will also create a platform to assess CWS effectiveness and allow for data to improve the program and bring about any legislative change.

Thank you for your time,

DD's Dad

## Anonymous - In Support for SB745

There should be an oversight committee that is completely separate and apart from cps because there are too many caseworkers that do opposite of another caseworker on the same case. There is too much confusion over who HAS done what or who WILL do what. If a parent calls in for information they inevitably end up talking to the caseworker that has the 'wrong' information. I believe that that is a convenience shared among caseworkers to thwart owning responsibility in any wrongdoing. I know that every time I call wanting information that should be rightfully mine I am told that that isn't true and that another caseworker must have given me wrong information. An oversight committee can make sure all t's are crossed.

There needs to be a set of checks and balances that the oversight committee handles to ensure there is no bias is taking place. Going through files is one way but there could also be a committee that cps must hand files over to in any case and that committee builds a file and makes sure all documents are there and approved by that committee. That committee should, in my opinion, be made up of law enforcement officials, court officials, diverse community members, all who do not have ties in any way to cps. I also believe those members should change periodically.

With the Title IV funding that has been in place since the 1990's giving so much incentive for adoptions to stranger families, there needs to be safety measures and power stops put into place. Our young generation deserves to be protected from cps workers who only see dollar signs as motivation for 'child protection'.

It is a God-given right for children to know, love, and BE loved by their parents. Depriving a child of that unnecessarily is child abuse in itself and, in my opinion, should be punishable in the eyes of the law.

## Parent E in Support of SB745

When my son and daughter were younger my son told his therapist that his mother disciplines him. The therapist told me he had to report this to CPS. I was never told what this all meant and the saga with CPS began.

There was never indication of physical or any other abuse as reported by my children's physician. And, my son's therapist stated in court records he did not believe my son's comments. I was told both of my children were to be taken from me.

I taped meetings and many things told to me were false which were addressed in court. I was never told what specifically I had done wrong as their mother. The CPS worker was reprimanded by the judge and the case was eventually dropped. My children have never recovered from the trauma from this case.