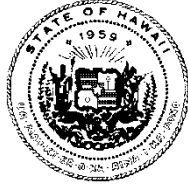


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March 21, 2019

TO: The Honorable Representative Chris Lee, Chair
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **SB1226 SD2 - RELATING TO CHILD CARE**

Hearing: March 21, 2019, 2:05 p.m.
Conference Room 325, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) is in strong support of this administrative bill that proposes different strategies that will improve the safety of Hawai'i's system of child care. We request an amendment to section 6, "to take effect upon approval."

PURPOSE: The purpose of this bill is to require criminal history checks of adult relatives who provide care for a child whose family receives a child care subsidy from the Department of Human Services, clarifies that the Department of Human Services 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. The Senate Committees on Human Services, Commerce, Consumer Protection, and Health, and Judiciary made technical amendments. House Committee on Human Services & Homelessness passed the measure as is.

The proposed amendment of section 346-152.5(a), Hawai'i Revised Statutes (HRS), improves safety provisions of children in legally exempt child care settings, by requiring adult relatives of a child whose family receives a child care subsidy from the department, to complete a criminal history record check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154, HRS, which includes fingerprint-based criminal history record checks.

DHS conducts comprehensive background checks including state and federal fingerprint and criminal history checks, state and national sex offender registry checks, child abuse and neglect registry check, and adult abuse perpetrator checks. DHS reviews a person's background checks to determine whether the person is suitable to provide care at a licensed or registered child care facility or home; background checks are also completed for legally exempt providers and household members caring for a child whose family receives a child care subsidy from DHS.

The Hawai'i Criminal Justice Data Center at the Department of Attorney General and the Federal Bureau of Investigation require fingerprint samples to release arrest record information to the department.

Second, regarding information sharing with other investigating agencies, the proposed amendments to section 346-153, HRS, clarify that the department may withhold information from the public about an investigation for not more than ten working days from the date the investigation report is completed, and until it has been determined that related legal proceedings will not be compromised with the release of information. The department's Child Care Licensing program will continue to share relevant information with Child Welfare Services (CWS) and law enforcement agencies when the Child Care Licensing program investigates a complaint or report of injury to a child in a regulated child care setting.

Third, the proposed amendments to section 346-156, HRS, will provide more tools to the department to enforce violations quickly and with increased penalties to more effectively stop, deter, and prevent a person from engaging in illegal child care. This bill will

authorize the department to take administrative action against a person who violates part VIII of chapter 346, in addition to initiating civil actions in court.

Currently, the department must pursue any fine penalties against a person engaging in illegal child care in Circuit Court which has a higher burden of proof than an administrative hearing.

Lastly, this bill changes the penalty structure so that a fine may be imposed for each day of a violation, and makes the fine higher for a person, entity, or organization who operates a child care facility without a license or registration in violation of section 346-161 or 346-171, HRS. The department will assess the severity of the violation and intent to knowingly continue to operate child care illegally to determine the amount of the fine that would be pursued.

The amendments to section 346-156, HRS, may increase the need for resources for the department's Administrative Appeals Office and the Department of the Attorney General to conduct administrative hearings and prosecute violations in court.

Thank you for the opportunity to testify on this bill.

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House Committee on Judiciary
Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair



RE: Testimony Commenting on S.B. 1226 S.D. 2, Relating to Child Care
Hearing: March 21, 2019 at 2:05 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit **comments** regarding **S.B. 1226 S.D. 2**.

The Law Center raises a concern about section three of the bill. The proposed amendment would delay public access to complaints about child care facilities for an indeterminate time while DHS conducts an investigation. Existing law already protects complainant privacy and allows the DHS Director to withhold information if it would interfere with a criminal investigation. So it is unclear what public policy is served by denying public access to complaints for a prolonged period.

Parents, guardians, and other members of the public considering options among child care facilities should know whether complaints have been filed against that facility. If unaware of complaints, individuals may place a child in a DHS-licensed facility only to learn later that the child was exposed to potential risk because DHS was still investigating the complaints.

In the companion bill H.B. 1000, this Committee addressed this concern through appropriate amendments to Section 3.

I apologize for the late testimony. We did not receive notice that this bill would be heard until 30 minutes after the hearing had started.

Thank you for the opportunity to provide comments on S.B. 1226 S.D. 2.