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

January 29, 2019

TO: The Honorable Russell E. Ruderman, Chair, and  
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: Legislative Testimony

**SB 715 - RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS**

Hearing: Wednesday, January 30, 2019, 2:45 p.m.  
Conference Room 016, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of the bill, and offers comments.

**PURPOSE:** This bill would establish parental rights for parents and prospective parents who are blind in the context of child welfare, foster care, family law, and adoption.

The Department is an equal opportunity service provider, and prioritizes its compliance with all federal and State laws and policies, which prevent discrimination based on disability, including the United States Department of Agriculture policy, the United States Department of Health and Human Services policy, the Americans with Disabilities Act Amendments Acts (ADAAA), and the Rehabilitation Act (Section 504). The very first Department-internal memo that is issued each calendar year by the Director reaffirms the Department's commitment to assure "that program benefits and services are made available to all eligible individuals," and to "prohibit discrimination in the provision of services . . ."

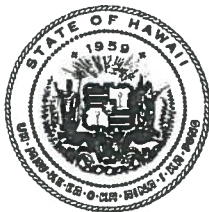
(Director's Memorandum No. 18-01). Furthermore, all department employees are required to complete a civil rights awareness training annually, which addresses discrimination based on disability and how to put the relevant laws and policies into practice.

The department agrees that blindness shall not be the basis for denial or restriction of custody, visitation, adoption, or guardianship of children. The department is not aware of instances of discrimination against blind individuals within our programs and services. Additionally, according to the department's Civil Rights' Office, no discrimination complaints have ever been filed by blind parents or on behalf of blind parents with the department. Clear information on how to file a complaint is available on the DHS website and has been for many years.

For all families, decisions regarding children entering foster care, parental visitation, and adoptive parent or legal guardian candidacy are made through comprehensive, formal assessments, which focus on the safety and best interests of the child. Assessment outcomes and case decisions within child welfare are made cooperatively with the assigned worker and his/her supervisor, i.e. no decisions are made by one individual; there are checks and balances, which help minimize potential discrimination. Child welfare workers, supervisors, and administrators, along with Family Court judges and guardians ad litem (GALs) work to ensure that all efforts have been made to keep children safely with their parents whenever possible (these efforts include providing supportive parenting services, if needed), and to promote on-going safe contact and connection with parents, when children are placed outside the home. Currently, for a child to be in foster care, Child Welfare Services must present evidence to the court that there is risk of imminent harm to the child, and the court makes written findings to that effect.

As the department is already fully committed to the contents of the bill, there is no evidence of any systemic problems regarding blind parents, and there is no clear argument for separating out this group from other individuals with potential limitations or disabilities, the department believes that this bill is unnecessary.

Thank you for the opportunity to testify.



## DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813  
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • TTY (808) 586-8162

January 30, 2019

### TESTIMONY TO THE SENATE COMMITTEE ON HUMAN SERVICE

#### Senate Bill 715 - Relating to A Right to Parent for Blind Persons

The Disability and Communication Access Board (DCAB) offers comment on Senate Bill 715 that establishes parental rights for blind parents or prospective blind parents in the context of child welfare, foster care, family law and adoption.

While we realize that blindness should not predispose a judgment of incapacity to parent because a person is blind, but there are currently other provisions in Hawaii law that are related to child welfare and parental rights that protect children. Protection of children is assessed with criteria that are not related to disability. This bill singles out a group of people needing extra protection.

There is a similar broader bill, Senate Bill 333 Relating to Families that prohibits child custody determinations from being based solely on a disability of a parent. It expands the protection of this measure to include all people with disabilities, as a protected class, who could also face similar preconceived attitudes and biases relating to parenting.

We urge you to hear and consider Senate Bill 333, and hold Senate Bill 715 in committee.

Thank you for the opportunity to provide comment.

Respectfully submitted,

FRANCINE WAI  
Executive Director

**SB-715**

Submitted on: 1/27/2019 2:30:37 PM

Testimony for HMS on 1/30/2019 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hawaii Association of the Blind	Testifying for Hawaii Association of the Blind	Comments	No

Comments:

Don Thomson

First Vice President of the Hawaii Association of the Blind

The Hawaii Association of the blind feels that the intent is fine, but unnecessary. A provision has already been made into law back in the 1970s eliminating discrimination against the blind in the process of adoption of children. We can easily assume that if one can adopt they should be allowed to keep their own children without interference. It is very important when a real issue comes along that necessitates legislation that we support it. But you at the Legislature and the Hawaii Association of the Blind have better things to do.



## O`ahu County Committee on Legislative Priorities (OCCLP)

January 28, 2019

TO: Honorable Chair Ruderman & HMS Committee Members  
RE: SB 715 RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS.  
Support for hearing on Jan. 30

Aloha mai kakou:

The O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawai`i (DPH) hereby submits its testimony in **SUPPORT of SB 715 relating to the Right to Parent for Blind Persons.**

OCCLP supports SB 715 as it believes that blind parents can also be good parents. Child welfare and foster care should recognize the value that visually disabled people have in parenting children. OCCLP opposes discrimination and supports SB 715.

Mahalo for your kind consideration on this measure.

Mahalo nui loa  
Me ka `oia`i`o

/s/ Melodie Aduja

Melodie Aduja  
Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i  
Ph. (808) 258-8889  
Email: legislativepriorities@gmail.com



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Jan 28, 2018

TO: Honorable Chair Ruderman & HMS Committee Members

RE: SB 715 RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS.

Support for hearing on Jan. 30

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB 715 as we believe blind parents can be good parents too. Child welfare and foster care should recognize the right visually disabled people have to parent their own children. We therefore oppose discrimination and support this bill.

Thank you for your favorable consideration.

Sincerely,

John Bickel President



Brandon Young

980 Maunawili Rd.

Phone: 808-351-6676

Email address: young.brandon4@gmail.com

1/29/2019

Testimony for S.B. 715

Senate Human Services Chair and Vice Chair,

My name is Brandon Young and I am submitting testimony in support of the Senate Bill 715. I am submitting testimony as a member of the National Federation of the Blind of Hawaii. I am in support of adding protections to blind persons who have the desire to parent. Currently, blind people who wish to parent must go through many layers of criticism and possible discrimination in our society. I would wish that we either add the term all persons with disabilities in this bill or take out the areas where it states blind persons and replace it with the term all persons with disabilities. I will be there tomorrow to testify in person. Have a wonderful day.

Brandon Young

980 Maunawili Rd.

Phone: 808-351-6676

Email address: young.brandon4@gmail.com

**SB-715**

Submitted on: 1/29/2019 2:36:21 PM

Testimony for HMS on 1/30/2019 2:45:00 PM

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

Comments:



**SB-715**

Submitted on: 1/29/2019 2:56:37 AM

Testimony for HMS on 1/30/2019 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Randy Gonce	Individual	Support	No

Comments:

**SB-715**

Submitted on: 1/29/2019 2:23:18 PM

Testimony for HMS on 1/30/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
boram shin	Individual	Support	No

Comments:

I am in support of SB 715. I believe blind persons should have the right to raise their kids and that their ability to provide emotional and physical support to their kids would not in any way be hindered because of their blindness. Being blind is not a black and white issue and I believe this bill is the opportunity to begin discussing the issue at hand and to realize that sometimes the first hand judgments made by people who don't fully understand blindness can lead to unnecessary heartache like the heartache of having your newborn baby taken away from you without your consent. Again, I am in support of SB 715,

Thank you



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 715, RELATING TO A RIGHT TO PARENT FOR BLIND PERSONS.

**BEFORE THE:**

SENATE COMMITTEE ON HUMAN SERVICES

**DATE:** Wednesday, January 30, 2019 **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Erin LS Yamashiro, Deputy Attorney General

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Chair Ruderman and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, and provides the following comments.

The purpose of this bill is to afford protections within chapter 587A, Hawaii Revised Statutes (HRS), to blind parents or prospective blind parents in the context of child welfare, foster care, family law, and adoption. These protections would apply to prevent a parent's or prospective parent's blindness from serving as a basis to deny or restrict visitation, custody, adoption, or other matters pertaining to their children or prospective children.

Under chapter 587A, HRS, also known as the Child Protective Act, all parents are treated equally by the Department of Human Services (DHS) in assessing the safety of the child in accordance with federal law, which requires a court to find that continuation in the family home is contrary to the child's welfare, to justify the removal of a child from the family home. See, 42 U.S.C. § 672(a)(1) and (2). Additionally, a court must find that reasonable efforts were made to prevent or eliminate the need for removal prior to the placement of a child in foster care. See, 42 U.S.C. § 671(a)(15). The Hawaii Supreme Court has upheld the constitutionality of chapter 587A, HRS, because it promotes and protects the public welfare, which is within the State's general police power, even though the State is interfering with a parent's fundamental right to care for their child. See, *In re Doe*, 99 Hawaii 522 (2002). The Hawaii Intermediate

Court of Appeals also has held that when the best interest of the child and the rights of the parents are in conflict, all other factors being equal, the best interests of the child must prevail. *In re Doe*, 85 Hawaii 119 (App. 1997). Clearly, our Legislature and the courts have recognized that a child's safety and welfare are of paramount concern.

In addition, chapter 587A, HRS, and the Hawaii Family Court Rules provide judicial safeguards and a judicial appeal process to ensure that every parent is afforded due process when a child is removed from his or her home and when parental rights are terminated. Pursuant to section 587A-7, HRS, the DHS is required to consider numerous factors when assessing the safety of a home. The risk factors do not include the disability of a parent. In addition, the DHS has an administrative appeal process for a parent or prospective parent who believes the DHS's decision regarding placement is erroneous. See, § 17-1625-15, Hawaii Administrative Rules. Ultimately, this bill is unnecessary because chapter 587A, HRS, the judicial process, and the administrative process sufficiently protect a person's liberty interest as a parent, regardless of whether that parent has a disability.

This bill would raise the burden of proof to "clear and convincing evidence" when there are allegations that a parent's or prospective parent's behaviors are endangering or will likely endanger the safety of the child, before a child can be removed from the home of a blind parent, or before denying or limiting a blind parent's right to custody, visitation, foster care, guardianship, or adoption. "Clear and convincing evidence" is defined as "the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction that the fact sought to be proved is true." § 587-4, HRS. In contrast, the burden of proof for temporary foster custody is "reasonable cause," which is defined as "the degree of proof that would cause a person of average caution to believe the evidence is reasonably trustworthy." §§ 587A-4 and 587A-26(c)(2), HRS. If passed, this bill would restrict the DHS's ability to protect children from harm by increasing the burden of proof for removing a child from the family home when the parent is blind, which is contrary to the purposes of chapter 587A, HRS.

Furthermore, the bill prohibits the court from considering a person's blindness in determining visitation or custody, and in determining whether a proposed placement is

appropriate for adoption, legal guardianship, or foster care unless it is in the best interest of the child. These proposed protections are misplaced, because chapter 587A, HRS, only relates to child welfare services.

This bill, as written, may be subject to constitutional challenge pursuant to the Equal Protection Clause, as stated in the Fourteenth Amendment of the United States Constitution, as well as article I, section 5, of the Hawaii State Constitution, in that it creates special protections for blind persons to the exclusion of persons with other disabilities. Parents with other disabilities who also face preconceived biases and attitudes in society, including, but not limited to the deaf and hearing impaired, and the physically impaired would be excluded from the protection. The Hawaii Supreme Court has concluded that being a parent is a liberty interest that is protected by due process and equal protection under the Hawaii State Constitution. Therefore, every parent or prospective parent, regardless of the nature of his or her ability or disability, must be afforded the same protections under the law.

If the Legislature is inclined to pass a law that provides reassurance to the blind community that children will not be removed from their home under chapter 587A, HRS, unless there are legitimate safety concerns, then we suggest amending section 587A-7(a), HRS, to add that the disability of a parent or caregiver shall not be the sole basis for determining whether the parent or caregiver is able to provide a safe family home.

However, under article III, section 14, of the Hawaii State Constitution, “[e]ach law shall embrace but one subject, which shall be expressed in its title.” Additionally, the Hawaii Supreme Court has previously held that an act is void if its subject is neither suggested by the title, nor germane to the subject expressed in the act. *Schwab v. Ariyoshi*, 58 Haw. 25 (1977). The title of this bill states that it relates to a right to parent for blind persons. Our suggestion would broaden the subject of the bill to include parents with any disability. If the Committee implements this suggestion, then the bill would still be subject to a constitutional challenge pursuant to article III, section 14, of the Hawaii State Constitution, because the subject and title limit this bill to a right to parent for blind persons. Unfortunately, as stated earlier, leaving the bill as is, creating

special protections for blind persons to the exclusions of persons with other disabilities raises the possibility of a court challenge on equal protection grounds.