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March 13, 2019

TO: The Honorable Representative Joy A. San Buenaventura, Chair
House Committee on Human Services & Homelessness

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 947 SD1 - RELATING TO FAMILIES**

Hearing: March 15, 2019, 9:00 a.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill, and offers the following comments. DHS clarifies the statement in the committee report of the Committee on Human Services that,

"there is no express prohibition against considering the disability of a parent or caregiver as the sole factor in determining fitness[,]" (STAND.COM.REP. NO. 234).

Considering the disability of a parent or caregiver as the sole factor in determining fitness is already prohibited by federal law. Title II of the Americans With Disabilities Act (ADA) applies to child welfare services as well as the family court and provides, "...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. DHS would caution against making prohibitions in specific contexts when a broad prohibition already exists.

Unfortunately, as evidenced by cases around the country, what the ADA and the proposed law do not prohibit is raising of the issue of the individual's ability to provide a safe environment or whether the individual poses a significant risk to the health or safety of the child that cannot be eliminated by a reasonable modification. See 28 C.F.R. § 35.139(a)-(b). In fact, it is child welfare's obligation in every case to assess the safety of the family home, and to develop a safety plan to reduce the risks of harm.

PURPOSE: This bill would prohibit the disability of a parent or caregiver from being the sole factor in determining fitness as a foster parent, adoptive parent, guardian, parent seeking custody or visitation, or provider of a safe family home.

DHS 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 (ADA), and the Rehabilitation Act (Section 504).

The first Department-internal memo issued each calendar year by the Director reaffirms the Department's "commitment to ensure that access to services, programs, activities, and employment is available and provided to all eligible individuals, as well as to the prevention of discriminatory and retaliatory practices in employment and services." (Director's Memorandum No. 19-01) Furthermore, all DHS employees are required to complete a civil rights awareness training annually, which addresses discrimination on the basis of disability and how to put the relevant laws and policies into practice. DHS agrees that disability shall not be the basis for denial or restriction of custody, visitation, adoption, or guardianship of children.

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: no decisions are made by one individual and there are checks and balances, which help minimize potential discrimination. Child welfare workers, supervisors, and administrators, along with Family Court judges and guardian ad litem (GAL) 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 written evidence to the court that there is risk of imminent harm to the child, and the court makes a determination and written findings to that effect.

Regarding denial of applications/petitions of disabled parents to be foster parents (also known as a resource caregivers,) the grounds for potential denial and the requirement for written notification to the applicants of the reasons for the denial are found in Hawaii Administrative Rule (HAR) §17-1625-13.

Thank you for the opportunity to testify.



DISABILITY AND COMMUNICATION ACCESS BOARD

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March 15, 2019

TESTIMONY TO THE HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS

Senate Bill 947, SD1 - Relating to Families

The Disability and Communication Access Board (DCAB) supports Senate Bill 947, SD1 - Relating to Families, that prohibits the disability of a parent or caregiver from being the sole factor in determining fitness as a foster parent, adoptive parent, guardian, parent seeking custody or visitation, or provider of a safe family home.

Although we understand the Judiciary and the Attorney General's position as stated in last year's bill, SB 2208 and HB 1928 - Relating to a Right to Parent for Blind Persons, this bill's scope is much broader because it protects the right to parent for all individuals with disabilities. The Judiciary's testimony stated that they were unaware of any foster custody or visitation denied, based on a parent's blindness. Lack of a case being brought forward does not indicate that it may not happen in the future.

The Attorney General's position on the bill was that it was unnecessary "because chapter 587A, HRS, the judicial process, and the administrative process sufficiently protect a person's liberty interest to parent, which includes the liberty interest of a blind person." We are aware that the court makes a decision based on the welfare of the child; however, we believe that passing this bill would allow the court to review not only the child's best interest, but that of the family as a whole unit. We feel this bill will offer protection to the family unit as a whole and request that the bill be considered and moved on for further discussion and consideration.

This bill could be the impetus to prevent children being removed from their families based solely on the parent's disability.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

FRANCINE WAI
Executive Director

SB-947-SD-1

Submitted on: 3/13/2019 8:45:19 PM

Testimony for HSH on 3/15/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Darlene Ewan	Aloha State Association of the Deaf	Support	No

Comments:

SB-947-SD-1

Submitted on: 3/13/2019 8:07:39 AM

Testimony for HSH on 3/15/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James Logue	Individual	Support	No

Comments:

I am wriging in STRONG support for this bill to protect disabled parents. The disability of a person should not be a factor when deciding if that person is a good parent. There are plenty of non-disabled parents who are far worse at raising their children. Taking away someone's children because the State deems them unable to properly care of a child based on the standards of non-disbaled parents is ridiculous. Many parents who are disabled are able to properly raise their children to be healthy and successful, they just have to take extra steps due to their disabilities. I hope that the committee sees how unfair and prejudice current practices are. I thank the Chair and the committee for hearing this measure and hope that you will vote in favor. Mahalo.

SB-947-SD-1

Submitted on: 3/14/2019 12:54:44 AM

Testimony for HSH on 3/15/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Natalie Landis	Individual	Support	No

Comments:

Aloha chair and committee members.

My name is Natalie Landis and I am a social work student at the University of Hawaii at MÄ• noa, Myron B. Thompson School of Social Work. I am testifying in support of SB947 SD1 because I believe it is important to look out for the best interest of Hawaii's children as well as parents.

It is discriminatory to delay or terminate parental rights based solely on a parent's disability without proof that the disability is a factor in the alleged parental deficiency.

Due to my knowledge base relating to child welfare and social work, I know that it is harmful to a child's health and development to be removed from their family environment. Therefore, removal should only occur in extreme circumstances wherein children are being harmed or neglected. There is no reason for a parent's disability to be the sole factor in deciding to remove a child from a loving and supportive home without proof of harm or neglect.

As an aspiring Social Worker and an individual citizen, I request that you pass this measure to ensure the protection of parents with disabilities and their children.

Mahalo,

Natalie Landis

SB-947-SD-1

Submitted on: 3/14/2019 6:37:53 PM

Testimony for HSH on 3/15/2019 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Tada	Individual	Support	No

Comments: