



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.C.R. NO. 150/S.R. NO. 116, REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO PROPOSE LEGISLATION THAT CRIMINALIZES ANY ACTS BY ELIGIBLE PUBLIC OFFICIALS, INCLUDING LOCAL LAW ENFORCEMENT THAT VIOLATE THEIR OATHS TO UPHOLD THE UNITED STATES CONSTITUTION AND HAWAII STATE CONSTITUTION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 23, 2021 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lance Goto, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) submits these comments.

The purpose of these resolutions is to request the Department to propose legislation that would create law criminalizing acts by eligible public officials, including local law enforcement, that violate their oath to uphold the United States Constitution and Hawaii State Constitution. It is also requested that the proposed legislation include, as a penalty for conviction, the loss of any benefits to which the public official or local law enforcement may be entitled to receive as a result of their employment.

The Department is concerned that the request is vague, and the purpose or justification for the request is unclear. The resolutions do not identify a specific problem that needs to be addressed by prohibiting certain conduct through the creation of a new criminal offense. It is difficult to craft a criminal offense when it is not clear what conduct needs to be prohibited.

The resolutions do provide the following justification:

WHEREAS, neither the Hawaii State Constitution nor the Hawaii Revised Statutes provide specific penalties for an eligible public official's violation of their oath to defend the United States Constitution or Hawaii State Constitution; now, therefore;

But this justification does not identify specific conduct or acts of concern. It simply says that there are no specific penalties for public officials who violate their oath to defend the Constitution. It would appear, however, that the oaths are taken when the officials assume their positions, and are related to their employment. Therefore, it would seem that a violation of that oath would be grounds for termination or discharge, suspension, or similar employment action. If the conduct resulting in the violation of the oath also amounts to a violation of a criminal law, then the official should also be subject to criminal prosecution for that offense.

The Department appreciates this opportunity to share its concerns.

SCR-150

Submitted on: 3/19/2021 3:58:04 PM

Testimony for JDC on 3/23/2021 9:45:00 AM

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

Comments:

Stand in STRONG SUPPORT!

SCR-150

Submitted on: 3/19/2021 4:37:43 PM

Testimony for JDC on 3/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victoria Anderson	Individual	Support	No

Comments:

Please pass this important resolution.

SCR-150

Submitted on: 3/19/2021 6:49:46 PM

Testimony for JDC on 3/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Goljuch, Sr.	Individual	Support	No

Comments:

I strongly support SCR150.

SCR-150

Submitted on: 3/19/2021 7:49:03 PM

Testimony for JDC on 3/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	No

Comments:

Support. There should be consequences when acts by eligible public officials, including local law enforcement, violate their oaths to uphold the United States Constitution and Hawaii State Constitution.

SCR-150

Submitted on: 3/21/2021 11:34:00 AM

Testimony for JDC on 3/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Ruth Yamamoto	Individual	Comments	No

Comments:

WHEREAS: I have indisputable evidence that Child Welfare Services and the Hawaii Police Department have been violating the civil rights of citizens during investigation and removal of children to foster care without a warrant, parental consent or circumstances of danger when there is no time to obtain a warrant.

WHEREAS: I have submitted bills to this legislature since 2014 to hold the Department accountable to the 4th amendment rights. The AG, legal representative of CWS, had no objections to those bills, yet they were deferred without the courtesy of any kind of discussion with the HS Chair prior to a public hearing.

WHEREAS: Only 3 months ago, this legislature allowed SB822 to come before a public hearing that was clearly in violation of the 4th amendment to the Federal and State Constitution,

WHEREAS: The chair of this committee voted in favor of SB2435 on the HS committee in 2020, then refused to submit as Chair of the JDC committee. He stated that lawsuits are the best remedy to Constitutional violations. The majority of the families in the child welfare system are lower income and qualify for court appointed legal representation. They report that they are not advised of their rights to contest allegations but instead to submit to the court and, if given a copy of the caseworker report, are not advised that they have the right to rebut erroneous information. Low income families cannot afford the price tag of 100K for a civil rights lawsuit.

WHEREAS: This resolution asks the Attorney General to submit legislation that criminalizes acts by its own client, CWS. The AG itself stands behind the legal documents submitted to the court in child welfare cases that are either knowingly or not checked for accuracy and compliance with the law. One such case just revealed that the caseworker lied to the police when she called them to remove a child based upon a report that was not investigated. The officer shoved the parent aside and removed the child over threat to arrest when she simply asked for a warrant. The police report had no documentation of danger to the child.

WHEREAS: CWS has no training on 4th amendment rights as mandated by Federal Law (CAPTA). Further, the Department of Human Services was violated by Region 9 of

the federal Administration to Children and Families for failure to advise families of their right to know the allegations prior to an investigation.

WHEREAS: I have sent multiple parents to legislators for assistance. They were either denied a conference or told that there is nothing a politician can do. That is WRONG! The legislature makes the laws; it's a duty of our elected officials to assure that there is compliance with those laws. Senator Daniel Inouye did his job when he intervened to prevent the Hilo CWS unit from placing my 5-year old grandson in the custody of a chronically homeless meth addict with a long string of restraining orders. Critical facts had been intentionally left out of the court record.

WHEREAS: I support consequences for government officials/agents who fail to perform their duty, but not by assigning a government official the position of the "fox guarding the henhouse". From my perspective, the cause of civil rights violations is lack of integrity by public servants. The solution is for those who hold leadership positions to demand excellence from their workforce.