

**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2424, H.D. 1, RELATING TO CHILD WELFARE SERVICES.

**BEFORE THE:**

SENATE COMMITTEE ON HUMAN SERVICES

**DATE:** Thursday, March 17, 2022      **TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Room 225 and Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General,  
Lynne M. Youmans, Deputy Attorney General, or  
James W. Walther, Deputy Attorney General

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Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General supports the intent of this bill and provides the following comments:

This bill seeks to expand the power of the Department of Human Services (DHS) to conduct investigations of families who have adopted or been granted legal guardianship of children who were previously in foster care. To that end, the bill would (1) create a mandate that a family adopting a child or becoming a child's legal guardian would be subject to review or investigation "at any time and in any manner, place, and form" as a condition of receiving financial assistance payments to support the permanent placement of the child in that home (permanency assistance); (2) require the DHS to report on the impact of expanding home visits to families receiving financial assistance following adoption or guardianship; and (3) appropriate funds for DHS to provide home-visits to families receiving permanency assistance and to recruit and retain social workers.

Section 2 of the bill, page 2, lines 13-19, conditions receipt of permanency assistance on a recipient family being "subject to review or investigation at any time and in a manner, place, and form as may be prescribed by the department or its authorized agents; provided this review or investigation shall be limited only to families against whom a complaint has been lodged with the department at any time." Section 3 of the

bill, at page 3, lines 7-10, includes a similar condition, specific to recipients of adoption assistance. These sections appear to grant additional authority for DHS to conduct investigations and may conflict with parents' constitutional rights to raise their children. The United States Supreme Court has recognized parents' rights to raise their children as a fundamental right under the United States Constitution. The protections of the United States Constitution, specifically the Fourth and Fourteenth Amendments, have been held to apply to child abuse and neglect investigations.

As a preliminary matter, the bill limits DHS's additional investigative authority to families that DHS has received a "complaint" about at any time in the past. See page 2, lines 16-18, and page 3, lines 7-8. The term "complaint" is vague and is not defined by the bill. Sections 350-1.1 and 587A-11, Hawaii Revised Statutes (HRS), currently use and define the term "reports." Additionally, the Department of the Attorney General does not believe that this limitation of investigative authority to families against whom a complaint has been lodged addresses the constitutional protections of a family. The protections limit investigators' ability to interview children without the consent of their parents and to enter a family home without consent to situations where there is reasonable cause to believe a child has been abused. Reasonable cause would have to be based on something more immediate and concrete than a "complaint" about the family lodged at any time in the past. For that reason, the expansion of the investigatory powers of DHS to investigate families without reasonable cause may be subject to constitutional challenge.

For instance, if the investigation initiated by DHS includes entry into the family home, entry without a search warrant must be justified by a constitutional principal like consent or exigent circumstances. Exigent circumstances allow warrantless entry into a home if there are "immediate safety risks" or the need "to protect an occupant from imminent injury." See Gates v. Texas Dep't of Child & Fam. Servs., 537 F.3d 404 (5th Cir. 2008). An old report that was investigated and did not lead to any current action would not support a finding of an immediate safety risk supporting a warrantless entry into the home.

If the investigation does not build on the institutional knowledge gained in the investigation of the original complaint, namely that the complainant may not be credible, then additional investigative measures based on an old complaint may be considered an infringement on the rights of the adoptive parents. See Wallis v. Spencer, 202 F.3d 1126 (9th Cir. 2000).

If the investigation includes interviewing children at school, then social workers must have "some definite and articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse" before taking the child from the classroom without a court order or parental permission. See Schulkers v. Kammer, 955 F.3d 520 (6<sup>th</sup> Cir. 2020). A complaint that has already been investigated likely does not rise to the level of a "reasonable suspicion" that would give the DHS ongoing authority to investigate the family at any time.

Applying the reasoning of these cases, the bill as currently drafted may be challenged as unconstitutional if the DHS were to conduct an investigation of a family without reasonable cause to suspect that a child has been harmed or is subject to threatened harm.

Sections 2 and 3 of the bill can be revised to avoid constitutional challenge. DHS has investigative authority over families receiving permanency assistance or adoption assistance and the children in their care pursuant to chapters 350 and 587A, HRS. DHS, upon the receipt of a report, can conduct an investigation pursuant to their authority under both of these chapters, regardless of the legal relationship between the child and their caretaker. DHS is also obligated to share reports of child abuse and neglect with the appropriate police department, so a criminal investigation can be commenced if warranted. See section 350-2, HRS.

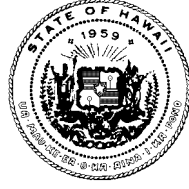
Sections 2 and 3 can be modified to specifically reference DHS's authority pursuant to existing law and to clarify that the existing law covers families receiving permanency assistance or adoption assistance. In section 2 we advise striking the phrase: "provided that this review or investigation shall be limited only to families against whom a complaint has been lodged with the department at any time, including any time prior to the issuance of any adoption decree or granting of legal guardianship."

In section 3 we advise striking the phrase: "against whom a complaint has been lodged with the department of human services at any time." Finally, we recommend that the following be inserted in both sections as appropriate (new material underscored):

". . . at any time and in a manner, place, and form as may be prescribed by the department or its authorized agents in accordance with chapters 350 and 587A."

Thank you for the opportunity to provide comments.

DAVID Y. IGE  
GOVERNOR



CATHY BETTS  
DIRECTOR

JOSEPH CAMPOS II  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 16, 2022

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

FROM: Cathy Betts, Director

SUBJECT: **HB 2424 HD1 – RELATING TO CHILD WELFARE SERVICES.**

Hearing: Thursday, March 17, 2022, 3:00 p.m.  
Conference Room 225, State Capitol  
and Via Videoconference

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

**PURPOSE:** Expands the investigative authority of the department of human services to include families with foster children with a pending adoption decree, foster children where an adoption decree has been issued but adoption has not yet taken place, children who are placed into legal guardianship and who receive permanency assistance payments, and adopted children who receive adoption assistance payments and against whom a complaint has been filed with the department of human services at any time, including any time prior to adoption or granting of legal guardianship. Requires the department of human services to analyze and report on the impact of expanding home visits to families receiving adoption assistance or legal guardianship assistance and make a report to the legislature five years after the start of the program. Appropriates funds for additional case worker and support staff positions and increased compensation for existing child welfare services case worker positions. Effective July 1, 2060. (HD1) The HD1 amended the measure by:

- (1) Deleting a portion of the preamble to narrow the scope of the legislative intent;
- (2) Limiting the review or investigation of adoptive families and legal guardians to families where a complaint has been lodged with the Department of Human Services at any time, including any time prior to adoption or awarding of legal guardianship;
- (3) Deleting the crisis mobile outreach team pilot program and associated appropriation;
- (4) Changing the effective date to July 1, 2060, to encourage further discussion; and
- (5) Making technical, non-substantive amendments for the purposes of clarity, consistency, and style.

The underlying purpose of the bill aims to ensure safety for children who had previously been in foster care and are adopted or under legal guardianship. However, as drafted, the bill refers to current law and does not expand the investigative authority of DHS. If the measure passes as drafted, the resulting law would be confusing as it would appear that there is additional authority when DHS will only have the same authority it currently has.

When DHS receives a report of suspected child abuse or neglect involving any child at the hands of "any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care," section 350-1, Hawaii Revised Statutes (HRS), and section 587A-11, HRS, the department is mandated to investigate. Reports may include resource caregivers, pre-adoptive caregivers, adoptive caregivers, and legal guardians. Reports received are immediately assessed for validity and safety of the child and are investigated within timelines specified in federal and state laws and departmental procedures.

Legal guardians and adoptive parents go through an extensive vetting process to initially become resource caregivers. This process includes criminal background checks, child abuse and neglect history checks, a multi-phased home study, monthly visits from a CWS caseworker, training certification, and Family Court approval as permanent caregivers. CWS determines that these families can provide a safe and nurturing home for the child with all the available information.

When a child exits foster care and is reunited with their biological parents, the Family Court closes the child protection case, and the jurisdiction of the Court terminates. Similarly, when a child exits foster care to adoption or legal guardianship, CWS ceases its monitoring and only becomes involved with the family again if new concerns are reported. Adoptive parents

have all legal rights, and responsibilities for the child adopted and become the permanent parents of the child. Legal guardianship grants similar rights and responsibilities for the care and custody of a child.

CWS has been addressing the concerns raised in the bill with the following efforts:

- CWS is fortifying its recruitment, assessment, and training of resource caregivers. The Child Welfare Services Branch (CWSB) began new contracts on July 1, 2021, for resource caregiver (aka foster parents) recruitment, home study assessments, licensing recommendations, and all initial and ongoing support services to assess the family's abilities to nurture children safely.
- CWS Permanency Strengthening Services (PSS), available on all islands statewide, are offered to families moving toward adoption or legal guardianship before finalization and after the award of legal guardianship or adoption. The goal of PSS is to provide support services so that the child's placement with their family remains safe, nurturing, stable, and permanent through the provision of in-home crisis intervention services, counseling, and parenting education. Any family that has adopted or become a legal guardian of a former foster child is eligible for this voluntary strengthening service.

CWS is open to discussions on other ways to address concerns and continues to rely on and encourage the community members to support families and make reports of alleged abuse neglect of children.

Alternatively, if positions and funding for positions are not forthcoming, DHS suggests a direct appropriation for DHS to procure new or enhance existing permanency services.

Thank you for the opportunity to provide testimony on this bill.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

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EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**

TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON HUMAN SERVICES  
ON  
HOUSE BILL NO. 2424, H.D. 1

**March 17, 2022  
3:00 p.m.  
Room 225 and Videoconference**

RELATING TO CHILD WELFARE SERVICES

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 2424, H.D. 1, amends Chapter 346, HRS, to authorize the Department of Human Services (DHS) to review or investigate families that have adopted, have received legal guardianship of, or are in the process of adopting a child; are receiving benefits for foster care maintenance, adoption assistance, or permanency assistance through the State; and have a complaint lodged with DHS against them.

The bill also sets reporting requirements for DHS on the impact of the new authority; appropriates an unspecified amount of general funds for DHS in FY 23 to hire an unspecified number of case workers and an unspecified number of support staff positions to support the new investigative authority; and appropriates an unspecified amount of general funds for DHS in FY 23 to increase compensation for child welfare services case worker positions.

B&F defers to the Department of Human Resources Development on the possibility of providing compensation increases specifically for vacant and filled child welfare services case worker positions.



B&F notes that, with respect to the general fund appropriations in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

DAVID Y. IGE  
GOVERNOR



RYKER WADA  
CHIEF NEGOTIATOR

**STATE OF HAWAII**  
**OFFICE OF COLLECTIVE BARGAINING**  
**EXECUTIVE OFFICE OF THE GOVERNOR**  
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TESTIMONY TO THE  
SENATE COMMITTEE ON HUMAN SERVICES

For Hearing on Thursday, March 17, 2022  
3:00 p.m., Conference Room 225 Via Video Conference

By

RYKER WADA  
CHIEF NEGOTIATOR

**House Bill No. 2424 HD1**  
**Relating to Child Welfare Services**

**(WRITTEN TESTIMONY ONLY)**

CHAIRPERSON SAN BUENAVENTURA, VICE-CHAIR IHARA, AND MEMBERS OF THE  
SENATE COMMITTEE ON HUMAN SERVICES:

The purpose of House Bill No. 2424 HD1 is to: (1) Expand the investigative power of the department of human services to include inspections of families who have adopted or been granted legal guardianship of a child; are receiving financial assistance through the State; have a guardianship of a child for whom there is a pending adoption petition and the child is pendente lite; or for whom an adoption decree has been issued but the child has not yet been placed in the custody of the adoption petitioner, and against whom have had a complaint filed against them with the department of human services; (2) Appropriate funds for additional case workers and support staff; and (3) Appropriate funds to increase compensation for existing child welfare services case worker positions.

The Office of Collective Bargaining (OCB) respectfully **opposes** H.B. 2424 HD1 only to the extent that appropriating funds to increase compensation of public sector employees in existing child welfare services case worker positions is inappropriate and premature as compensation for these positions is subject to collective bargaining pursuant to Chapter 89, HRS.

The OCB is concerned that appropriating funds for compensation increases yet to be negotiated may significantly diminish the Employer's ability to collectively bargain on the compensation of not only child welfare services case workers, but all public sector employees. The OCB notes that historically, and in accordance with 89-10 HRS, cost items including wages, are submitted to the Legislature after agreement between the Employer and Union is reached and ratification by the concerned employees is complete. The OCB is extremely concerned about the unintended consequences this legislation may have on current and future negotiations affecting all public sector employees.

Based on the above, the OCB respectfully requests that this measure be **amended** to remove appropriations that would fund compensation increases that have not been negotiated under Chapter 89. Thank you for considering our concerns and for the opportunity to testify on this measure.

**HB-2424-HD-1**

Submitted on: 3/14/2022 5:05:10 PM

Testimony for HMS on 3/17/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Marilyn Yamamoto	Testifying for Hawaii Family Advocacy Team	Oppose	Written Testimony Only

Comments:

Senator SanBuenaventura,

The original bill introduced to the legislature was unconstitutional. Amendments were made in Sections 2 and 3 to clarify that a report of abuse or neglect must be made for CWS to investigate an adoptive or guardianship family. Even if there is a report of suspected abuse or neglect, an investigator still needs consent or a court order to enter a home.

Section 5 asks to add staff to CWS for twice yearly home visits to families who receive funding for special needs children. A report of abuse or neglect is still required to authorize a home visit and 4th amendment rights still require consent or a court order.

Ariel Sellers was not murdered because she was adopted. CWS failed to make simple safety checks along the way that could have prevented her death. **I strongly oppose this bill from its inception to the present.**

**HB-2424-HD-1**

Submitted on: 3/14/2022 4:40:13 PM

Testimony for HMS on 3/17/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Cindy Evans	Individual	Support	Written Testimony Only

Comments:

I support with a few recommendations. Thank you for addressing this important issue that impacts lives of children.

It has been brought to my attention that the Department responsible for Child Welfare (foster care and adoption of foster children) has been under federal scrutiny and subject to reviews by the Federal Government which provides funding to the state for each child. Senator Rhoads pointed out to me that the Department is working on recommendations from the Federal Government, so Department wants Legislature to wait. From the ;people who I know who have worked with the Department regarding foster care and adoption of foster care children (in particular by blood relatives) the lack of evaluating the court appointed legal guardian can lead to isolation from family, behavior problems and learning disabilities. If there is no accountability or oversight by the state, the legal guardian will get paid for the child no matter what; if the child is not cared for from a place of love you may have a recipe for abuse.

Please add annual report to legislature on federal reviews, audits, financial reports that make sure the Legislature is aware of how funds given to the state for adopted foster care children are being spent and justified.

Why recommendations in 2027? Please consider change to 2025.

Thank you for your consideration.

Cindy Evans

TO: Senator Joy A. San Buenaventura, Chair  
Senator Les Ihara Jr., Vice Chair  
Senate Committee on Human Services

FROM: Tiffany Pollister

SUBJECT: HB2424 HD1- Relating to Child Welfare Services

Hearing: Thursday, March 17, 2022, 3:00 p.m.  
Via Videoconference  
Conference Room 225, State Capitol



POSITION: I support the proposed bill, **HB2424 HD1**, Relating to Child Welfare Services

Aloha Chair Joy A. San Buenaventura, Vice Chair Les Ihara Jr., and Honorable Members,

My name is Tiffany Pollister and I am a Master of Social Work student at the University of Hawaii at Manoa. I am testifying in favor of the House Bill 2424 HD1 relating to child welfare services. Through my research and education, I've learned that there are far too many children in the foster care system who have been abused or neglected in the same exact homes that we order them to stay in. They trust us to keep them safe, and we've let them down.

Additional measures are needed to save our kids from further abuse and ensure that no other children fall through the cracks. It is our kuleana to care for these children and make sure that they are in good hands. Unfortunately, the demand for Social Workers far exceeds the amount of children who are in need of one. By having more funds, we would be able to hire more workers, provide more training, conduct more home visits and give the children the safety and protection that they rightfully deserve. With more funds, we can prevent further tragedies. We can make sure that no other child gets overlooked. Thank you for taking the time to read my testimony in support of House Bill 2424 relating to child welfare services.

Thank you, Tiffany Pollister.

**HB-2424-HD-1**

Submitted on: 3/15/2022 12:29:36 PM

Testimony for HMS on 3/17/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Julie Tinsman	Individual	Oppose	Written Testimony Only

Comments:

I absolutely oppose this bill

**HB-2424-HD-1**

Submitted on: 3/16/2022 10:26:52 AM

Testimony for HMS on 3/17/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Oppose	Written Testimony Only

Comments:

Standing in **STRONG & VEHEMENT OPPOSITION** of this proposed measure until a thorough investigation is conducted into Child Welfare Services’ illegal and unconstitutional practices, specifically relating to 4th Amendment violations and the falsification of reports to HPD to enact illegal child removals.

The vast majority of constituents have NO IDEA what CWS is doing under guise of “confidentiality” – a right that ALWAYS belongs to the client/patient/consumer to invoke (or waive!) but NEVER a “professional privilege” to be proclaimed in order to avoid the exposure of wrongdoing & illegal activity.

You, the legislative body, have the trust of the people and your constituents to do what’s right by them – for this purpose, they elected you in to office to look out for THEIR best interests – to care for them, their families, their children, their communities, NOT organizations who are profiting off of their personal pain, challenges & dilemmas. Even worse is the demise of Ariel Sellers (aka, Isabella Kalua) being pointed to as an impetus for HB2424 – so you want the people who are in part *responsible* for her abuse & death to be give *more* power, authority & funds to do more of the same?!

For years (almost going on *decades* in a few more) I have come before you, both in and out of session, with parents and family members of children in the system wrongfully & in the grave thanks to the illegal, unconstitutional & unethical practices of CWS begging for oversight and investigation because it’s the same abuse of power & authority issues over and over and over again.

Your constituents would be LIVID if they saw how their hard-earned taxpayer dollars are being wasted by the ignorance & arrogance of CWS professionals desperate to prove how right & justified they are in their actions in wrongful removal cases, esp pertaining to domestic violence cases, so this proposal (HB2424) is insult to injury for those parents, children & families who have not survived CWS’s procedures, both literally & figuratively.

Investigate CWS’s illegal and unconstitutional practices, specifically relating to 4th Amendment violations and the falsification of reports to HPD to enact illegal child removals first, *clean house* & then I will happily endorse & support the passage of this bill.