

The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2022 Regular Session

House Committee on Health, Human Services & Homelessness

Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair

Tuesday, March 29, 2022 at 10:00 a.m.
Conference Room 329 & Videoconference

by

Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Concurrent Resolution No. 64/ House Resolution No. 58, Requesting the Judiciary conduct a study of the necessity of mandatory referrals to the Department of Human Services for investigation or intervention in all cases of alleged domestic abuse involving a family or household member who is a minor or an incapacitated person.

Judiciary's Position:

The Judiciary respectfully submits the following comments, seeking clarification of these resolutions.”

Does this requested study only apply to H.R.S. §586-10.5? The first two “whereas” clauses seem to suggest that there is a law that requires referral of all domestic abuse petitions under H.R.S. Chapter 586 (“586 cases”) “in which a child resides.” Neither H.R.S. §586-10.5 nor H.R.S. Chapter 350 (regarding mandatory reporting of child abuse and neglect) requires this.

If this study applies only to H.R.S. §586-10.5, then the 586 cases to be studied are only those with “allegations of domestic abuse **involving** a family or household member who is a minor or an incapacitated person” (emphasis added). This is different from referring all 586 cases “in which a child resides.” In the first circuit family court, for example, on average, approximately 230 new petitions for 586 cases are filed each month. Of that number, on average



fewer than 30 are referred by the judge to the Department of Human Service/Child Welfare Services (“DHS” or “CWS”).

What is the purpose of this study? The resolutions state the purpose as:

“. . . a study on **the necessity of mandatory referrals** to the Department of Human Services for investigation or intervention in all cases of alleged domestic abuse involving a family or household who is a minor or incapacitated person” (*emphasis added*).

H.R.S. §586-10.5 has been part of this statute since 1987 (although it has been amended several times). If this study is designed to study the continuing need for this requirement, then we respectfully submit that this should be referred to the Legislative Reference Bureau (“LRB”) for further study into the policy issues. They are better equipped with expertise and resources to survey a broad range of social science studies in this state and the country to determine whether mandatory referral is still needed and they are the more proper body to advise the Legislature.

Does “the necessity of mandatory referrals” refer to a distinction – if any -- between reporting child abuse and neglect under H.R.S. §586-10.5 as opposed to H.R.S. Chapter 350? H.R.S. Chapter 350-1.1 requires court employees or officers to report all instances of child abuse or neglect to DHS. Does the study require the court to inquire into whether there should be exceptions to the mandatory reporting requirements set forth in H.R.S. Chapter 350 for allegations of child abuse and neglect that arise in 586 cases? If this is the purpose, then, again, we respectfully submit that the LRB is the more appropriate body to research and then advise the Legislature.

Does this study attempt to ask a question about the longitudinal effectiveness of referrals to the DHS? If this is the case, then we respectfully submit that the study should be referred to the DHS because they would have the expertise and data to prepare the study. It simply would not be appropriate for the family court to make such a determination. We can emphatically state that DHS dispositional reports are crucial to our ability to fashion orders in 586 cases in our attempt to protect the child while balancing the interests of the parents on a high-volume calendar with stringent statutory time requirements.

There are other questions (*e.g.*, the scope of the study? length of time covered? resources to seek help from national agencies?) that could be clarified, but the four we have listed are the most crucial to first determine the entity that should conduct the study.

If this Committee decides to recommend adoption of these resolutions, we hope that you will first consider clarifying the questions raised. Thank you for the opportunity to submit testimony on this matter.

HCR-64

Submitted on: 3/25/2022 5:40:46 PM

Testimony for HHH on 3/29/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Marilyn Yamamoto	Hawaii Family Advocacy Team	Oppose	Written Testimony Only

Comments:

Representative Yamane,

Under no circumstances should a parent who files a restraining order be referred to DHS unless it's to a card carrying licensed MSW with a specialty in domestic abuse. DHS has a one-size-fits-all policy of accusing non offending parents of "failure to protect". I've seen countless cases of DV where the department decision to place children with the abuser has resulted in long term trauma.

A mandatory referral to an unqualified person would put victims of abuse at immediate risk of harm and embolden the perpetrator.

I STRONGLY OPPOSE THIS RESOLUTION as written by an individual who has no knowledge of the dynamics of domestic abuse.

HCR-64

Submitted on: 3/25/2022 5:56:13 PM

Testimony for HHH on 3/29/2022 10:00:00 AM

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

Comments:

Comments only:

As a Domestic Violence Survivor Advocate who has spent *decades* working with domestic violence/CWS "crossover" cases, I would urge EXTREME CAUTION in what this bills seeks to achieve here.

Hawaii CWS is woefully derelict in their chronic (mis)handling of domestic violence cases that have resulted in the lifelong damage of both child & adult DV-involved parties and in the untimely death of DV-related children caught up in their system, ie: Ariel Sellers, Reef Aikau, Brayden McVeigh to name a few - all *preventable* deaths **if** CWS only worked in true collaboration with domestic violence advocates & agencies, which they absolutely refuse to do.

100% of the time in any of my domestic violence cases, I have been & am shut out and excluded by CWS (from my own cases!) where I have witnessed and can prove CWS case workers, their supervisors and administration lying (perjury) to the courts, HPD & other community service providers to achieve whatever agenda it is they're pursuing (and I can assure you: it is anything but good social work).

Until CWS is thoroughly investigated, exposed for & cleansed of their wrongdoing as well as their contribution towards the deaths of children, illegal practices (specifically 4th Amendment violations) & unethical treatment towards vulnerable populations (ie: domestic violence victim-survivors) CWS should not be entrusted with any further responsibilities, roles or to be seen as a credible professional organization worthy of this legislative body's trust & respect. If you knew what they were doing with your constituents' tax dollars, you'd be more upset than I am (and the rage your constituents would have would top us all).

The children, families and people of Hawaii deserve better than this. Children exposed to domestic violence DO need help & protection but NOT from CWS who only makes matters worse because **they do not know what they are doing when it comes to domestic violence!** Domestic violence advocates would be better suited to conduct such assessments & to accurately identify what is & is not needed.

At this point, anything a study would reveal will be a wrong conclusion where CWS is involved: if mandatory referrals are found to be an "unnecessary burden" to the Department, then children will be failed but if mandatory referrals continue to an agency that clearly doesn't know what's

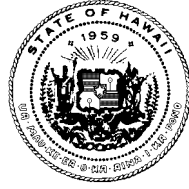
it's doing with domestic violence cases, again, the children will be failed. Domestic violence experts are who you need to consult for this issue, not CWS.

Respectfully,

Dara Carlin, M.A.
Violence Survivor Advocate

Domestic

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 28, 2022

TO: Honorable Representative Ryan I. Yamane, Chair
Committee on Health, Human Services, and Homelessness

FROM: Cathy Betts, Director

SUBJECT: HCR64/ HR58 - REQUESTING THE JUDICIARY CONDUCT A STUDY ON THE NECESSITY OF MANDATORY REFERRALS TO THE DEPARTMENT OF HUMAN SERVICES FOR INVESTIGATION OR INTERVENTION IN ALL CASES OF ALLEGED DOMESTIC ABUSE INVOLVING A FAMILY OR HOUSEHOLD MEMBER WHO IS A MINOR OR INCAPACITATED PERSON.

HEARING: Tuesday, March 29, 2022, 10:00 am
Via Videoconference, Conference Room 329

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this resolution, offers comments, and defers to the Judiciary.

PURPOSE: This resolution requests the Judiciary conduct a study on the necessity of mandatory referrals to the Department of Human Services for investigation or intervention in all cases of alleged domestic abuse involving a family or household member who is a minor or incapacitated person.

The current mandate to refer to Child Welfare Services acts as a deterrent for parents who file for a temporary restraining order (TRO), as petitioners fear their children will be taken from their care; perpetrators often use the threat of child custody against victims. Filing a TRO is a proactive step toward creating safety for children; individuals experiencing domestic violence should not be "punished" with unnecessary CWS involvement for taking this protective

step. In addition, the current automatic referral to CWS overburdens the CWS system for the already overworked staff.

DHS defers to the Judiciary as to their ability to conduct a study on the necessity of conducting mandatory referrals. However, the Department will work with the Judiciary to provide it with information to complete the study.

Thank you for the opportunity to provide testimony.

HCR-64

Submitted on: 3/28/2022 12:12:14 PM

Testimony for HHH on 3/29/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ashley Galacgac	Individual	Support	Written Testimony Only

Comments:

Please pass HCR64.