

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2245, S.D. 1, H.D. 1, RELATING TO THE CHILD PROTECTIVE ACT.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, April 3, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lynne M. Youmans, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and provides the following comments.

Section 1 of this bill amends section 587A-4, Hawaii Revised Statutes (HRS), to add a new definition for the term "exigent circumstances" and to modify the definitions of "harm" and "imminent harm." Section 2 of this bill amends section 587A-8, HRS, to clarify the authority of a police officer to take protective custody of a minor both with and without an order from Family Court. Section 3 of this bill amends section 587A-9, HRS, to clarify the authority of staff of the Department of Human Services (DHS) to take temporary foster custody of a child without a prior order from Family Court. Section 4 of this bill amends section 587A-11, HRS, to add authority for DHS investigators to obtain an emergency court order for removal of a child from an unsafe home and provide a procedure to do so. Section 5 of this bill amends section 587A-21, HRS, to clarify the Family Court's authority to issue emergency orders based on relevant hearsay evidence. Section 6 of this bill conforms the definitions of "child sexual abuse" and "serious physical child abuse" in the authorizing statute for the Children's Justice Center program to reflect the language in the definition of "child abuse and neglect" from section 350-1.1, HRS.

The DHS, in cooperation with the federal government, has pursued several new and innovative approaches to keep children with their families and work with families

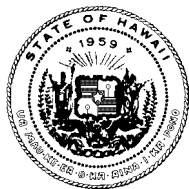
more through voluntary service plans and diversionary programs rather than through court intervention. Despite the success in maintaining children in their family homes while providing services to address safety risks, the DHS still needs a way to remove children from dangerous situations in some circumstances.

This bill updates and clarifies the procedures for removing children from unsafe homes, with and without court orders. It does so in a way that acknowledges concerns for maintaining family integrity, due process rights of parents in raising their children, and federal case law regarding removal of children from their homes, balanced with the best interests of children in need of protection from abuse. Additionally, the bill creates a process for DHS workers to engage the Family Court early in the investigation of difficult cases and obtain emergency orders from the Family Court for removal of children from their home when necessary for the children's safety. The oversight and input of the Family Court judges in the removal process would better protect the rights of the families involved while still providing for the safety of children.

The Chair of the Senate Committee on Health and Human Services requested that we comment in future testimony on the provision in section 2 of this bill which amends the definition of "harm" in section 587A-4, HRS, to have the same meaning as "child abuse or neglect" as defined in section 350-1, HRS. We do not believe there is a constitutional or other legal problem with that amendment, but we also do not believe it is necessary to refer to section 350-1, HRS, to define the term "harm." We understand that DHS may instead seek limited amendments to the definition of "harm" in section 587A-4, HRS, without referring to section 350-1, HRS, to include sex trafficking. The Department supports DHS's decision regarding that proposed change.

The Department respectfully asks the Committee to pass this bill.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

April 2, 2024

TO: The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **SB 2245 SD1 HD1 – RELATING TO THE CHILD PROTECTIVE ACT.**

Hearing: April 3, 2024, 2:00 p.m.
Conference Room 325, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this HD1 and appreciates the amendments that incorporate the amendments from the Judiciary and the Department of the Attorney General. We defer to the Children's Justice Center regarding amendments in Section 6 though these amendments appear to be technical and maintain the substantive meaning of section 588-2, Hawaii Revised Statutes (HRS).

DHS respectfully requests an extended effective date of July 1, 2025, to implement the proposed changes.

PURPOSE: This bill adds a definition for "exigent circumstances" and amends the definitions of "harm" and "imminent harm" under the Child Protective Act. Clarifies when the police may take protective custody of a child and when the Department of Human Services may assume temporary foster custody of a child when exigent circumstances are present. Creates a judicial process for filing a petition for an order for protective custody, including the circumstances where such an order may be issued without notice and without a hearing. Effective 7/1/3000. (HD1)

The Committee on Health and Human Services (SD1) amended the measure by

- (1) Inserting language that addresses circumstances in which a child's family consents to a police officer assuming protective custody or the Department of Human Services assuming temporary foster custody of the child;
- (2) Allowing the Department of Human Services to obtain an immediate protective custody order by filing an ex parte motion with the court, and upon issuance of the order, allowing the case to proceed pursuant to normal civil law proceedings under section 587A-12(c), Hawaii Revised Statutes;
- (3) Clarifying that the court order required for police officers or the Department of Human Services to take immediate custody of a child shall be in writing; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The Committee on Human Services (HD1) amended this measure by:

- (1) Deleting its contents and inserting the contents of H.B. No. 2428, H.D. 2, a measure that:
 - (A) Adds a definition for "exigent circumstances" and amends the definitions of "harm" and "imminent harm" under the Child Protective Act;
 - (B) Clarifies when the police may take protective custody of a child and when the Department of Human Services may assume temporary foster custody of a child when exigent circumstances are present;
 - (C) Creates a judicial process for filing a petition for an order for protective custody, including the circumstances where such an order may be issued without notice and without a hearing; and
 - (D) Contains an effective date of July 1, 3000;
- (2) Clarifying the time frame for the filing of initial reports associated with an ex parte motion for protective custody; and
- (3) Making a technical, nonsubstantive amendment for the purposes of clarity, consistency and style.

Section 1, amends section 587A-4, Hawaii Revised Statutes (HRS):

- Paragraph 1 adds the definition of "exigent circumstances" to clarify when the police may place a child in protective custody without a court order and
- Paragraph 2 aligns the definition of "harm" to have the same meaning as "child abuse or neglect" as defined in section 350-1, HRS, and clarifies the definition of "imminent harm."

Section 2 amends section 587A-8, HRS, by simplifying when a police officer shall assume protective custody of a child.

Section 3 amends section 587A-9, HRS, clarifying when the department shall assume temporary foster custody and clarifying the process.

Section 4 amends section 587A-11, HRS, describing a new process when the department is to seek an order for protective custody when the child is subject to imminent harm. This addition will provide judicial oversight over the Department's decisions to assume temporary foster custody of a child, clarify when the Department may seek an order for protective custody from the court without notice or a hearing, and authorize the family court to review and issue written orders to the police to place a child in protective custody.

Section 5 amends section 587A-21, HRS, to conform to amendments of Sections 3 and 4.

Section 6 amends section 588-2, HRS, to conform to amendments to the definition of "Harm" in Section 1.

Lastly, we request an extended effective date of July 1, 2025, to give DHS more time to update its processes, conduct staff training, and consult with the Judiciary, the Department of the Attorney General, law enforcement agencies, parents' counsel, and other providers regarding these changes.

Thank you for the opportunity to testify in support of this measure.



The Judiciary, State of Hawai'i

**Testimony to the Thirty-Second State Legislature
2024 Regular Session**

Committee on Judiciary and Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, April 3, 2024 at 2:00 p.m.
State Capitol, Conference Room 325 & Videoconference

WRITTEN TESTIMONY ONLY

by:

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

Bill No. and Title: Senate Bill No. 2245, S.D. 1, H.D. 1, Relating to the Child Protective Act.

Purpose: Adds a definition for "exigent circumstances" and amends the definitions of "harm" and "imminent harm" under the Child Protective Act. Clarifies when the police may take protective custody of a child and when the Department of Human Services may assume temporary foster custody of a child when exigent circumstances are present. Creates a judicial process for filing a petition for an order for protective custody, including the circumstances where such an order may be issued without notice and without a hearing.

Judiciary's Position:

The Judiciary supports the intent of this bill: "This measure adequately balances the need for immediate government action to ensure safety of the child and the due process rights of the child's parents and legal guardians." Senate Standing Committee Report #2470.

We respectfully request an effective date of January 1, 2025. While the family courts do not have to draft new forms or establish new procedures to implement the amendments to HRS Chapter 587A, it would be wise to have time to ensure a coordinated training effort among all the circuits' judges and their staff.

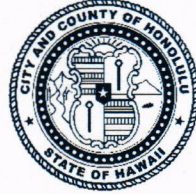
Thank you for the opportunity to testify on this measure.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 • WEBSITE: www.honolulu.gov

RICK BLANGIARDI
MAYOR
MEIA



ARTHUR J. LOGAN
CHIEF
KAHU MĀKA'I

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE VL-KK

April 3, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

Dear Chair Tarnas and Members:

SUBJECT: Senate Bill No. 2245, S.D. 1, H.D. 1, Relating to the Child Protective Act

I am Vince Legaspi, Acting Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.


The HPD supports Senate Bill No. 2245, S.D. 1, H.D. 1, Relating to the Child Protective Act.

This bill gives the officer the discretion to determine if a child should be taken into temporary custody. Exigent and imminent harm is clear language that differentiates the scenarios that a patrol officer would face.


The HPD urges you to support Senate Bill No. 2245, S.D. 1, H.D. 1, Relating to the Child Protective Act.

Thank you for the opportunity to testify.

APPROVED:


Arthur J. Logan
Chief of Police

Sincerely,


Vince Legaspi, Acting Captain
Criminal Investigation Division



HAWAII COALITION
FOR
CHILD PROTECTIVE REFORM

DATE: Monday, April 1, 2024

TO: Committee on Judiciary & Hawaiian Affairs
Chair, Representative David Tarnas, Vice Chair, Representative Gregg Takayama,
And Committee Members

NAME: Nonohe Botelho, HCCPR

RE: SB2245, Relating to the Child Protective Act

POSITION: SUPPORT

As a member of the Hawaii Coalition for Child Protective Reform (HCCPR) we strongly SUPPORT the intention of SB2245. HCCPR has worked in collaboration with the Attorney General's Office to draft this measure to add language that would significantly improve the standard for warrantless child removals. We are also in agreement with the Judiciary's recommendations to include language that defines "exigent circumstances that means, *"based on specific and articulable evidence, there is reasonable cause to believe..."*" The inclusion of *"specific and articulable evidence,"* is critical when determining the standard for warrantless child removals in the State of Hawaii.

Currently, several states under the Ninth Circuit have already codified similar language into law. The proposed language in this Bill is consistent with other states statutes related to exigent removals of children and is more exact than the current language in the Hawaii Child Protective Act. In addition, SB2245 allows for some relief under the 14th Amendment of United States Constitution and Section 5, Due Process and Equal Protection, under the Hawaii State Constitution.

Finally, it is important to note that according to Child Welfare Services report 2022, the highest rate of removals by ethnicity, occurred within the Native Hawaiian community. The highest rate of removals by age, were children less than 1 years old. These removals have occurred **without** *"specific and articulable evidence,"* and have been subjected to incomplete investigations by CWS and HPD. SB2245 will help narrow the overly broad scope of warrantless child removals among Native Hawaiians as well as the general population.

In closing, I urge your committee to PASS SB2245 with the effective date of July 31, 2024. Thank you for your time and consideration.

Mahalo,
Nonohe Botelho, MSCP
Independent Consultant/ Victim Advocate

Joshua Franklin
Hawaii Family Advocacy Group
hifamilyadvocacy@gmail.com
(808)365-8773

To: Hawaii Committee Chair and Members

Re: Support for **SB 2245**

As a dedicated family advocate with over a decade of experience, I am writing to express my strong support for SB 2245, a bill that represents a significant step forward in the protection of children and the preservation of families in Hawaii, especially native Hawaiian Families whom are the majority that is impacted by CWS. My support for this bill is rooted in my professional observations and the witnessing of family cases I have encountered, where children were unnecessarily taken from their homes due to warrantless removals or biased investigations. These actions often lead to long-term psychological harm to the children and immense strain on families. The necessity for SB 2245 is supported by many cases that I have encountered, two cases I was involved in had situations, where Child Welfare Services initially misjudged the accused, labeling these parents as abusers, only to later reverse these decisions. These cases, highlighted by Civil Beat, underscore the fallibility of the current system and the urgent need for reform to prevent such detrimental errors. SB 2245 introduces critical amendments that ensure children's safety while upholding the integrity of families. By defining "exigent circumstances" and refining the definition of "imminent harm," the bill provides a clearer framework that respects the rights of families and children, ensuring that removal is truly a last resort. The requirement for clear, articulable evidence before assuming protective custody is a fundamental improvement that promises to reduce unwarranted separations. Moreover, the amendments proposed in sections such as §587A-8 and §587A-9, emphasizing court orders and the efforts to inform and involve parents, are pivotal. They not only ensure a more transparent and just process but also prioritize the welfare of the child by considering placement with approved relatives and expediting the process to either return the child home or secure a foster care home. The comprehensive approach of SB 2245, including the procedural safeguards in §587A-11 for investigations and the emphasis on family preservation, reflects a balanced and thoughtful strategy to child welfare. It aligns with the principles of ensuring child safety, family integrity, and the judicious use of state power. Child Welfare is far from where it needs to be; yet SB 2245 is a necessary and commendable improvement to Hawaii's approach to child welfare. It is a bill that seeks to correct past injustices and prevent future ones by ensuring that every action taken in the name of child protection is backed by clear evidence and is genuinely in the best interest of the child. I urge all the committee to pass and support this bill, for it represents a path toward a more just, effective, and compassionate child welfare system.

Sincerely,

Joshua Franklin

Karen Worthington, Kula, HI 96790

March 9, 2024

To: Representative David Tarnas, Chair, and Representative Gregg Takayama, Vice Chair,
House Committee on Human Services

From: Karen Worthington, Private Citizen

Re: **SB2245 SD1 HD1: Relating to the Child Protective Act**
Hawaii State Capitol, Room 325 and Videoconference, April 3, 2024, 2:00pm

Position: SUPPORT

Dear Representative Tarnas, Representative Takayama, and Committee Members:

Thank you for the opportunity to provide testimony in support of SB2245 SD1 HD1, which amends and clarifies the Child Protective Act to give more precise guidance to law enforcement officers and child welfare services workers regarding when intervention is allowable in a family when a child is alleged to be at risk of harm or has been harmed.

My name is Karen Worthington, and I am a children's law and policy attorney with a consulting business on Maui, Karen Worthington Consulting. I have worked as a lawyer in and around state systems affecting children and families throughout my 30-year career. I am certified as a Child Welfare Law Specialist by the National Association of Counsel for Children.

Please pass SB2245 SD1 HD1. While this bill does not go as far as many people would like in clarifying when and how the state can intervene in families, it does make some significant progress.

Many states wrestle with the use of terms like "exigent circumstances," "imminent harm," and "immediate harm" in providing guidance to parents, child welfare services workers, law enforcement officers, attorneys, and the courts about the parameters of state intervention when a child is at risk of or has been harmed. The proposed language in this bill is consistent with the language of many other states' statutes related to emergency removals of children and is more exact than the current language in the Hawai'i Child Protective Act.

The changes proposed in SB2245 SD1 HD1 provide more exact guidance than our current statutes. The new definition of "exigent circumstances" clarifies that protective custody is allowed when serious harm is likely to occur before a court order could be obtained using the typical court process. The definition therefore provides a clear timeframe during which harm must be likely to occur or else the typical process must be followed. Furthermore, law enforcement agencies are already familiar with the term "exigent circumstances" in other areas of the law, so this wording provides consistent guidance to them.

The change to the definition of "imminent harm" is long overdue in Hawai'i, and the bill includes a practical definition for this. The proposed definition uses the reasonable efforts language from federal law, which is familiar to and understood by CWS, lawyers, and the courts. One item missing from the proposed language is a timeframe for decision-making and intervention. I applaud the removal of "90 days" because that timeframe is inconsistent with the word "imminent." The definition, however,

Karen Worthington, Kula, HI 96790

should include a timeframe that is consistent with “imminent.” I believe that amending this definition without including a timeframe is an incomplete revision.

I appreciate all the work that has gone into refining this legislation to address the many questions and concerns that have been raised. I believe that SB2245 SD1 HD1 makes some very positive changes for keiki in Hawai‘i and I urge you to pass this bill.

If you would like additional information related to my testimony, please do not hesitate to contact me at karen@karenworthington.com.

Best regards,

A handwritten signature in black ink that reads "Karen Worthington". The signature is written in a cursive, slightly slanted style.

Karen Worthington

Kapalama Neighborhood Security Watch

Dear Chair, Vice Chair & The Committee

Testifying in strong support of the child protective act on behalf of Kapalama Neighborhood Security Watch as a volunteer safety coordinator. Neighborhood security watches.

The responsibility of the law is to distinguish the difference of an exigent circumstance versus imminent harm in an enforceable way because the police officer has to interpret the situation live in action based on the way the law define these terms. And there can be consideration a training bill or resolution to go along with the new definition. There are technicalities in the law in which it becomes unenforceable for police officers.

§587A-8 Protective custody by police officer without court order. (a) A police officer shall assume and determine if this child is subject to imminent harm. This means the police officer is making the decisions.

pg 1 line 5 definition of "Exigent circumstances"

This is about when a police officer has to take away a child based on exigent circumstances versus imminent harm. Imminent harm did not require an action, now there is a new level of extreme & serious level of harm and it requires action, "exigent circumstances". And based on the new statutory definition, the child must be taken away. Is there training for police to recognize this harm and to distinguish it out in the field and to be able to make this decision? What is the criteria to classify exigent harm?

There has to be consideration of the training of the police, and if they are trained to act, if they've got a strategy to recognize how to implement the law.

For example imminent harm may mean screaming & yelling at the park and an exigent circumstance is when the screaming & yelling escalades to domestic violence.

Thank you for improving safety in our community with this law.

Blessings,
Angela Melody Young
Kaplama NSW
Safety Coorindator

Representative Tarnas and committee members,

I fully support this bill as a significant improvement in the standard for a warrantless child removal and respectfully make the following suggestion: Add the word “visible” to the terms specific and articulable evidence to more closely conform with the 9th circuit rulings.

I respectfully suggest that the effective date for this Act be 7/31/2024. DHS has provided data that 900 children per year are removed without a court order. DHS and the AG testified to the Senate one year ago that collaboration with the Judiciary would be needed to make speedy court orders more available. Since DHS and the AG submitted a bill similar to SB2245, there has been ample time to work out necessary procedures to implement this bill.

Marilyn Yamamoto

SB-2245-HD-1

Submitted on: 4/2/2024 5:35:38 AM

Testimony for JHA on 4/3/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jonathan Stremel	Individual	Support	Written Testimony Only

Comments:

As a resource caregiver, I have seen firsthand the detrimental effects of excessive removals on children within the child welfare system. SB2245 is a crucial step in safeguarding the well-being of these vulnerable individuals by ensuring that removals are justified and conducted with the child's best interests at heart.

Excessive removals can disrupt the stability and continuity that children need to thrive. It can lead to trauma, loss of attachment, and further emotional distress. By implementing measures to prevent unnecessary removals, SB2245 not only protects children from harm but also promotes their overall welfare.

Furthermore, excessive removals can strain already burdened foster care systems, leading to overcrowding and inadequate resources for children in need. SB2245 addresses this issue by promoting alternative interventions and supports that aim to keep families together whenever possible. In conclusion, SB2245 is a crucial piece of legislation that prioritizes the well-being and stability of children within the child welfare system. I urge all stakeholders to support this bill to ensure that every child receives the care and protection they deserve.

SB-2245-HD-1

Submitted on: 4/2/2024 8:49:12 AM

Testimony for JHA on 4/3/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ellen Awai	Individual	Support	Written Testimony Only

Comments:

Please support SB2245 SD1.HD1. This law is needed to protect children, but also extend to adults, in eminent danger by their own family members or caregivers. It also helps the police be effective in being able to take the child or adult away to a safe place, whether it be a hospital, or some other agency, even without a warrant, family approval, or court order.

Sadly most families are affected by this and police are sent out in 911 calls, but they are unsupported by laws and cannot help the person being abused. Further abuse whether mental or physical can happen to the person, especially if they reported the event or drug use at home to anyone else in school, church, or elsewhere in the community. Law enforcement should have the legal authority or any government worker whether federal, state, or county who sees abuse occurring in the family. Many caregivers or guardians are driven by the incentive of financial gain and could even affect inheritance of a person's wealth after death. Program like McGruff and seeking the help or HawaiianTel or HawaiianElectric is helpful, but are they effective in actually helping an individual?

I am assuming that Department of Human Services is being referred to as "the department," but they have also been overburdened by the system, as well as the police and others in the community. Waiting for medical professionals to report is also too late to protect a person from any further mental or physical abuse. Thus many children, as well as adults, end up homeless here because they are not protected by the government or law enforcement. Mahalo for this bill along with HSCR1236-24!

SB-2245-HD-1

Submitted on: 4/2/2024 11:06:01 AM

Testimony for JHA on 4/3/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
M. Honda	Individual	Support	Written Testimony Only

Comments:

Testifying in support. Thank you.

SB-2245-HD-1

Submitted on: 4/3/2024 7:24:03 AM

Testimony for JHA on 4/3/2024 2:00:00 PM

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

Comments:

Good Afternoon and apologies for this submission of Late Testimony IN SUPPORT of SB2245 SD1 HD1.

If you look at my previously submitted testimony on SB2245, you'll see that I was standing in firm opposition to this measure, however, when "**specific and articulable evidence**" was added as supported by the Judiciary, *that's* what I was hoping to see and that changes everything. So as long as "specific and articulable evidence" remains, I now stand in STRONG SUPPORT of SB2245 SD1 HD1.

SB-2245-HD-1

Submitted on: 4/3/2024 9:12:26 AM

Testimony for JHA on 4/3/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laura Miller	Individual	Support	Written Testimony Only

Comments:

Aloha,

As a family advocate I see first hand the wreckage caused when CWS removes children for anticipatory harm. This bill represent efforts made by the AG, DHS and Community Advocates who appreciate th progress and support this bill with its specific language. This is a necessary first step in the efforts to correct the issues that lead to the brutal torture and murder of Geanna Bradley and Ariel Sellers. This progress is necessary because the status quo is killing kids. We have to do better and this bill is a good start.

Thank you,

Laura J. Miller