



**WRITTEN 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. 3114, S.D. 1, RELATING TO THE CHILD ABUSE AND NEGLECT CENTRAL REGISTRY.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, February 23, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Lynne M. Youmans,
Deputy Attorney General, at (808) 587-3050)

Chair Rhoads and Members of the Committee:

The Attorney General supports this bill in the interest of greater government transparency and efficiency.

Section 1 of this bill adds a new section to chapter 350, Hawaii Revised Statutes (HRS), to clarify when a person's name should be included in the central registry of people confirmed to be perpetrators of child abuse or neglect as defined in section 350-1, or "harm" or "threatened harm" as defined in section 587A-4, HRS¹, and establishes a process for a person to request that their name be expunged from the central registry.

Section 2 of this bill eliminates the brief description of the central registry expungement process currently in section 350-2(d), HRS, in favor of the new section.

The new section added to chapter 350 in section 1 of the bill does five things. First, it clarifies that a person cannot be placed on the central registry unless the Department of Human Services (DHS), after investigation, confirms by a preponderance of evidence that the person has perpetrated abuse to a child. Second, it details the methods for challenging the initial confirmation by DHS through the administrative appeal process or through Family Court. Third, it creates a mechanism for people who

¹ For brevity, we use the term "abuse" in this testimony to be inclusive of "child abuse or neglect" as defined in section 350-1, HRS, as well as "harm" or "threatened harm" as defined in section 587A-4, HRS.

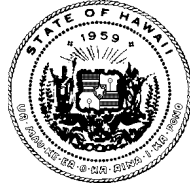
were added to the central registry to have their names removed from the registry, or expunged, upon a showing of certain criteria that suggest that the behavior that led them to be placed on the registry is unlikely to reoccur. Fourth, it clarifies the details of the process for review of requests for expungement. Fifth, it authorizes DHS to review its records and expunge names from the registry on its own, without a request, based on criteria established by rules.

Being listed on the central registry can have serious consequences, including being barred from employment, volunteer opportunities, and adoption. Despite the seriousness of the consequences, the details of the process for people's names being added to the registry, and how that addition to the registry can be challenged, are not commonly understood. The Attorney General supports this bill because it will clarify the process and better inform people about the existence of the registry and the process to challenge the results of a DHS investigation.

Additionally, the Attorney General supports adding the new process that allows the expungement from the central registry based on positive changes people were able to make to their life and family relationships. The current central registry keeps people listed indefinitely in most cases. Although this may be appropriate for very serious abuse cases, including sexual abuse, it may not be appropriate for all cases of confirmed abuse. This amendment recognizes that people can mature and grow and, through hard work, perseverance, and dedication, change things in their lives that were at one time harming themselves and their families.

We respectfully request that the Committee 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

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TRISTA SPEER
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February 21, 2024

TO: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: **SB 3114 SD1 – RELATING TO THE CHILD ABUSE AND NEGLECT CENTRAL REGISTRY.**

Hearing: February 23, 2024, 9:30 a.m.
Conference Room 016, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration bill and offers comments.

PURPOSE: Clarifies that a confirmed report of harm or threatened harm, as defined in chapter 587A, HRS, or child abuse and neglect, as defined in chapter 350, HRS, will result in the perpetrator's name being maintained in the central registry. Clarifies when a confirmed report may be expunged from the central registry, and establishes a process for expungement upon request. Takes effect 12/31/2050. (SD1)

The Committee on Health and Human Services amended this measure by:

- (1) Inserting an effective date of December 31, 2050, to encourage further discussion;
and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

This bill provides an administrative process for identified perpetrators of confirmed reports of harm or threatened harm other than those involving "aggravated circumstances," as defined in section 587A-4, Hawaii Revised Statutes (HRS), to request that a record, five years or older, be expunged from the central registry. The Department will review the request for

expungement based on factors such as the age of the report, the age of the child at the time the confirmed harm occurred, and the severity of the harm, among other things.

This amendment recognizes that an individual can make positive changes in their circumstances and supports an individual to be successful by allowing them to pursue employment, educational opportunities, licensures, or other personal matters.

The measure also allows the agency to expunge reports pursuant to administrative rules and DHS procedures. The measure will require additional resources from DHS and the Department of the Attorney General to respond to requests for expungements of central registry information and possible appeals of those decisions.

In response to questions in previous hearings on the issue of notice provided to individuals that their name has been added to the central registry, CWS sends a written Notice of Disposition to caregivers who are identified as potential perpetrators upon completion of the CWS assessment of allegations of child abuse or neglect. The notice informs the person that:

- (1) The Department's investigation has confirmed or did not confirm child abuse or neglect, or harm or threatened harm, and
- (2) If the allegations are confirmed,
 - (a) The person's name is being added to the central registry;
 - (b) The potential impact of being added to the central registry may limit the person's ability to be employed in work involving children or vulnerable adults or the person's ability to adopt minor children, and
 - (c) The person has the right to challenge the results of the Department's investigation either through the Family Court or a DHS administrative process.

The Notice of Disposition also includes a form to request a DHS administrative hearing. Currently, court appointed counsel is only available when a child welfare case is in the Family Court pursuant to chapter 587A, HRS, and if a parent meets the Judiciary's eligibility requirements. For the administrative appeals process, parents can seek legal representation from legal services agencies or retain counsel.

The Department requests an effective date of July 1, 2025, which will allow time to draft and pass administrative rules and to develop and implement an expungement process.

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

Senator Rhoads and committee members,

The HCCPR suggests that the following paragraph is confusing and that this bill does not address the issues in Courtney Bird's lawsuit filed in 2015 and ruled in 2019 that the department actions omitted due process.

- (a) The department shall maintain a central registry of reported child abuse or neglect cases. When the department confirms a report by a preponderance of the evidence that a person is the perpetrator of child abuse or neglect as defined in section 350-1, or harm or threatened harm as defined in section 587A-4, the person's name shall be included in the central registry."

We claim that the states are required to maintain a Child Abuse Registry by order of CAPTA, but there is no requirement to enter those names at the time of a report that is not yet investigated. The department has amended the statute to place a name "after" a confirmation of abuse has been done. However, there is no clarification that the court has to agree with the confirmation and rule for jurisdiction. This bill suggests that the disposition by CWS is automatically confirmed by a judge. Other states handle the Registry with flexibility and fairness. South Carolina makes the judge responsible to determine if a name goes onto the Registry or not and some states determine the length of time that a name remains dependent upon the circumstances of the case. HC

The HCCPR opposes this bill for the above reasons alone. There still remains the issue of how parents can be timely informed of the existence of a Registry that was the issue in the Bird lawsuit or how an indigent parent, most of whom are in the system, could afford to retain a lawyer for a future request for expungement.



HAWAII COALITION
FOR
CHILD PROTECTIVE REFORM

SB-3114-SD-1

Submitted on: 2/21/2024 9:53:53 PM

Testimony for JDC on 2/23/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Shana Wailana Kukila	Individual	Support	Written Testimony Only

Comments:

RE: SB3114 Relating to the Child Abuse and Neglect Registry

Position: Support with Amendments

My testimony is already in file for this bill, but I would like to add:

1. Child abuse and sexual assault are crimes, and thus, should be investigated by the police, who have special investigative tools and authority. When the police act in concert with the state child welfare services, they should investigate the allegations themselves. If no abuse or sexual assault is involved, children should go back home to receive continued support services.

No abuse charges, no removal. Period.

2. Abuse of a child is a heinous crime, and should be treated as such. In this case, under the 6th Amendment of the Constitution, a trial by jury with legal counsel is required. It is not lawful under the Constitution to "confiscate" anything or anyone from a home without due process.

3. Confirmations of abuse do not come from qualified assessors with appropriate assessments. These confirmations are done by government bureaucrats who have not done a thorough investigation, just a "preponderance of the evidence," which is quite a low standard when using it to justify removing a child from their home and traumatizing them for life.

4. HRS587-A should align with federal regulations and protections for vulnerable populations such as domestic violence victims and the disabled. Should anyone have their names on that list who is federally protected and the state violated their rights, the state should immediately take their names off the list without hesitation. If the state uncovers cases where social workers violated their own rules and regulations, those names should be removed as well, without hesitation.

The State of Hawai'i's Department of Human Services would never be qualified, under a preponderance of the evidence:

The State has failed to keep children in their care and custody safe from harm.

The State has allowed children in their care to be placed in foster and adoptive homes that have histories of abuse, neglect, and assault.

The State is non compliant with their own rules and regulations, as well as best practices and federal laws.

Children have been missing, murdered, and severely abused in State foster and adoptive custody, including guardianships, all sanctioned by the State DHS, the State Attorney General, and the Hawai'i State Judiciary.

How can an agency so inept at keeping children safe, determine that a parent's home isn't safe?

By these standards, the State of Hawai'i Department of Human Services Child Welfare Services should be placed on the Child Abuse and Neglect Registry themselves for their failures, because when a child is placed in State foster custody, they are likely in "imminent harm," especially our Hawaiian children, who make up half of all children in foster care, which means that half of all names on the Registry are Hawaiian parents as well.

Thank you for considering my testimony.

Mahalo,

Shana W. Kukila

Hilo, Hawai'i