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February 9, 2025

TO: The Honorable Representative Lisa Marten, Chair
House Committee on Human Services & Homelessness

FROM: Ryan I. Yamane, Director

SUBJECT: **HB 640 – RELATING TO CHILD WELFARE.**

Hearing: February 5, 2025, 2:00 p.m.
Conference Room 430 & Videoconference, State Capitol

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

PURPOSE: This bill requires the Office of the Ombudsman to publish a quarterly report on its website that identifies the number and nature of complaints that it receives regarding the Child Welfare Services Branch of the Department of Human Services. Requires the Child Welfare Services Branch to provide notification that complaints can also be filed with the Office of the Ombudsman. (HD1)

DHS appreciates the amendments by the Committee on Legislative Management that amended the measure by:

- (1) Deleting language that would have required and appropriated funds for specialized training for all employees of the Office of the Ombudsman to develop relevant expertise;
- (2) Clarifying the nature of complaints that must be published on the Office of the Ombudsman's website; and

- (3) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

DHS appreciates the work of the Ombudsman's office as a neutral resource for individuals and families to seek further assistance to address complaints that arise in the course of involvement with the child welfare system.

Regarding the bill's provision requiring the Child Welfare Services Branch (CWS) to notify families of their right to file a complaint with the Office of the Ombudsman, CWS agrees as it currently provides the information in the *Guide to Child Welfare Services* that is provided to all families. The Guide includes an outline of the CWS process for parents to express any concerns that they may have about their caseworkers' behavior. The Guide also provides information to contact the Office of the Ombudsman, including the Office of the Ombudsman's email address, phone number for each island, fax number, TTY number, and mailing address.

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



Robin K. Matsunaga
Ombudsman

Yvonne M.F. Jinbo
First Assistant

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STATE OF HAWAII**

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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON H.B. NO. 640, H.D. 1, A BILL FOR AN ACT
RELATING TO CHILD WELFARE**

HOUSE COMMITTEE ON HUMAN SERVICES & HOMELESSNESS

FEBRUARY 11, 2025

Chair Marten and Members of the Committee on Human Services & Homelessness:

Thank you for the opportunity to present testimony on H.B. No. 640, H.D. 1. The purpose of this bill is to address some of the concerns identified by the Mālama ‘Ohana Working Group with regard to Hawaii’s child welfare system. The bill appears to focus on raising awareness of the Office of the Ombudsman as a resource for persons who have complaints related to the Child Welfare Services Branch (CWS), Social Services Division, Department of Human Services, as a means to improve the accountability of the child welfare system. My testimony is limited to Section 2 of this bill.

To provide context to my testimony, please allow me to provide a brief background on my office. As you may know, the Office of the Ombudsman was created under Chapter 96, Hawaii Revised Statutes, to investigate the administrative acts of all state executive branch and county government agencies of the State of Hawaii, except for the Governor, Lieutenant Governor, and the mayors of each county. My office has 14 employees: the Ombudsman, a First Assistant (Deputy Ombudsman), an Administrative Services Officer, 8 Analysts (who conduct the investigations), and 3 administrative support staff.

We learn of possible erroneous administrative actions and decisions primarily through the complaints that are filed with our office by residents and nonresidents who are impacted by these agencies. We conduct our investigations independently and impartially, and not as an advocate of either the complainant or the agency. We do not have authority to overturn an agency’s decision or to compel an agency to take corrective action, but if we find that an agency has acted erroneously, unfairly, or unreasonably, we can make recommendations for corrective action to the agency. In addition, we are required under Chapter 96 to “maintain secrecy in respect to all matters and the identities of the complainants or witnesses coming before the ombudsman” and are prohibited from testifying in any court about our investigations.

Although we do not substantiate every complaint that we investigate, by independently and impartially investigating, we level the playing field for citizens who have complaints about their government and ensure that they are being treated lawfully, fairly, and reasonably. We believe that in doing so, we help to ensure accountability of these agencies and improve the level of trust that citizens have in their government.

During calendar year 2024, we received 78 complaints against the Child Welfare Services Branch (CWS), Social Services Division, Department of Human Services. Of the 78 complaints, we declined to investigate 64 cases: 41 because the complainant had not yet attempted to resolve the matter directly with CWS; 9 because the complaint involved an act by CWS that had occurred too long ago; 5 because the matter was before the court or had already been addressed by the court; 4 because the complaint was filed by a third party; 3 because the matter had already been resolved by CWS prior to the complainant contacting our office; 1 because the complainant refused to identify himself; and 1 because the complaint alleged a criminal act. Of the remaining 14 complaints: 2 were fully investigated but found to be not substantiated; 5 were discontinued before the investigation was completed because the complainant did not provide needed information that we requested; 2 were discontinued because the complainant withdrew the complaint; and 5 are still being investigated.

Based on the foregoing, I offer the following comments on H.B. No 640, H.D. 1.

Section 2 of this bill requires my office to publish on our website a quarterly report of the number and nature of complaints we receive against CWS and the disposition of those complaints. The bill defines “nature of complaint” to mean the relationship of the complainant with CWS and the service provided by CWS that is the subject of the complaint.

The definition of “nature of complaint” will not, in my opinion, cause the publishing of the required reports to violate the requirement of my office to keep confidential the matters related to our investigations. That said, while publishing the reports will not violate Chapter 96, I am concerned about how useful the quarterly reports will be for the Legislature, CWS, and the public, for the reasons that follow.

It should be recognized that the reports will only reflect the complaints that we received against CWS and, as such, may not provide an accurate picture of the actual state of CWS and Hawaii’s child welfare system. Even if there is 100 percent awareness of my office as a resource for those who have complaints against CWS, the complaints we receive will likely represent only a portion of the total number of complaints. Thus, using the reports to draw conclusions about the services being provided by CWS may cause the Legislature or CWS to take actions that are not actually necessary or warranted.

In addition, reporting the nature of the complaints in a manner that does not violate the requirements of Chapter 96 will require reporting by categories, since we cannot disclose the identities of the complainants or the persons against whom the complaints are filed, nor the specific administrative act that is the subject of the complaint. The disposition of the complaints will be similar to the information I provided above regarding the complaints against CWS that we received in 2024.

It is for these reasons that I do not believe the reports will provide necessary, relevant, and useful information to help improve CWS and Hawaii's child welfare system. And if so, there would be little, if any, benefit to redirecting the time and resources that could otherwise be directed towards investigating the complaints we receive, just to prepare and post the reports. If this committee shares my concern about how useful the reports may be, I request that consideration be given to deleting Section 2 of this bill until a determination can be made about the value of the reports.

I would like to take this opportunity, based on the knowledge I have gained as a member of the Board of Directors of the United States Ombudsman Association, to suggest that this committee consider amending this bill to add language to create a child advocate office, as recommended in the final report of the Mālama 'Ohana Working Group. The structure, responsibilities, and powers recommended are generally consistent with child advocate offices in other states, many of which have successfully improved their child welfare systems. I believe establishing a properly structured child advocate office would be a significant step toward improving the accountability and overall functioning of Hawaii's child welfare system, and I would be happy to assist in any effort to pursue this.

Thank you for your consideration of this testimony.



HAWAII COALITION FOR CHILD PROTECTIVE REFORM

February 7, 2025

SUBJECT: HB640 – relating to complaints against CWS to the Ombudsman
Hearing: February 11, 2025

Chair Marten and committee members:

HCCPR supports the intent of this bill with amendments.

In 2018, I submitted a complaint to the Ombudsman with indisputable evidence of noncompliance by the Department of Human Services (DHS). The Ombudsman concluded that my complaint was unsubstantiated. I submitted the same complaint to the federal Administration for Children and Families (ACF). They immediately flagged violations within the department and worked for the next four months to ensure compliance and corrected official documents. Since then, I have become aware of at least half a dozen other well-documented complaints that were similarly unsubstantiated or, in some cases, never even received a response.

For the past five years, "A Guide to Child Welfare" has included the Ombudsman for grievance resolution. However, parents report that they do not receive this guide and are not told that the document is online. DHS has been advised of this for the last decade. This lack of notifications from CWS represents a significant oversight of critical information for parents who reported to the Malama Ohana groups. **The bill should require parents to sign and receive a copy of a notification of their grievance option. Amend Section 3 to read that written notification via carbonless copy receipt is required.**

The Ombudsman testimony on February 5 reported that of 78 complaints received in 2024, 41 were dismissed because the reporter had not tried to resolve the issue at the CWS level first. The notice on the Ombudsman website does not require previous attempts to resolve issues. Instead, it specifically states that if the person is afraid to contact the agency, the Ombudsman will contact on their behalf. The testimony reports that there are no substantiated complaints in 2024 and no recommendations for CWS improvement. Kansas created an independent Ombudsman office for child welfare one year ago. They reported having received over 200 grievances. One-third of them were substantiated. 22 others resulted in recommendations to the child welfare division. **The department webpage should clarify the requirements for filing a complaint.**

February 6, 2025

To: Representative Marten, Chair, and Representative Olds, Vice Chair
House Committee on Human Services & Homelessness

From: Karen Worthington, Private Citizen

Re: **HB 640 HD1: Relating to Child Welfare**
Hawai'i State Capitol, Room 329 Via Videoconference, February 11, 2025, 9:45am

Position: COMMENTS ONLY

Dear Representative Marten, Representative Olds, and Committee Members:

Thank you for the opportunity to provide testimony regarding HB 640 HD1, which raises awareness about the ombudsman office as an avenue to resolve complaints regarding the Child Welfare Services Branch of the Department of Human Services (CWS) and requires the Ombudsman Office to publish reports about the number, nature, and disposition of such complaints.

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 and policy advocate 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. I have worked extensively with Hawai'i state departments and nonprofit organizations that support children and families who exist at the margins of our society.

Based on the testimony presented for the Feb. 5 hearing of the House Committee on Legislative Management by the Ombudsman Office and DHS, I must revise my earlier support for this bill to provide comments only. The Ombudsman Office testimony on HB 640 indicates that the quarterly reports that would be required by HB 640 are unlikely to provide necessary, relevant, and useful information to the Legislature because of limitations on information the Ombudsman Office is authorized to share about complaints. Additionally, preparing such reports would take time that would be better spent investigating complaints. DHS testified that CWS already provides notice to families how to report complaints to the Ombudsman Office; DHS asked for clarification regarding what additional information the bill requires them to include in such notice.

Nevertheless, the findings of the Mālama 'Ohana Working Group and the State Auditor's Report (No. 24-05) compellingly demonstrate the urgent need for systematic oversight and transformation of our child welfare system. Such oversight will not come from the Ombudsman Office, as their testimony about HB 640 clarifies that the Ombudsman Office is not able to provide such oversight because it can only "make recommendations for corrective action" and has no "authority to overturn an agency's decision or to compel an agency to take corrective action."

I urge this committee to take the courageous step of creating an avenue for sustained, comprehensive oversight of the child welfare system. There are two potential paths to achieve this comprehensive oversight. One path would be to start with the appointment of a person with deep knowledge about the child welfare system who would have immediate oversight over the system and be responsible for

leading development of a plan for sustained oversight and redress of individual concerns. In some contexts, this person might be a special master, a czar, or a compliance monitor, and this person would have the authority to compel action by state agencies. Another path to achieving the level of oversight that would be appropriate, given the Mālama 'Ohana Working Group and the State Auditor's Reports, would be to create an Office of the Child Advocate by executive order or statute.

Most states have recognized that child welfare oversight requires a dedicated Child Advocate Office with broader powers and responsibilities (Child Protection Ombuds: A 50 State Review, <https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r2400.pdf>). Such an office would:

- Provide independent system oversight
- Investigate critical incidents
- Accept and investigate individual concerns and complaints
- Address systemic issues identified through individual complaints
- Drive implementation of recommendations from the Mālama 'Ohana Working Group and State Auditor's Report
- Ensure accountability for system transformation.

Hawai'i needs a separate Child Advocate Office that has the following powers:

- *Investigative Powers:*
 - The authority to review and investigate critical incidents and agency responses to critical incidents, such as:
 - Child fatalities
 - Near fatalities
 - Serious bodily injury
 - Cases where there is reasonable belief that a state agency failed in its duty to protect a child.
 - The authority to review all records and files of agencies related to the duties assigned to the Child Advocate and the ability to subpoena records and individuals when needed.
 - The right to enter and inspect any place where a child has been placed by a court or CWS and is currently residing.
 - The ability to communicate privately with any child who is involved with CWS or is the subject of an individual complaint, and with each child's parent, guardian, legal custodian, or family member.
- *Accountability Powers:*
 - Issue public reports with recommended improvement activities and require state agencies to publicly respond to the reports and provide periodic progress reports until the issues are successfully addressed.
 - The authority to take actions to secure and ensure the legal, civil, and special rights of children through such activities as conducting programs of public education, undertaking legislative advocacy, making proposals for systemic reform, and formal legal action.
- *Collaborative powers:*
 - Convene regular meetings with organizations, agencies, and individuals who work in the area of child protection to seek opportunities to collaborate and improve the status of children in Hawai'i.
 - Work with stakeholders to implement the recommendations shared through the Mālama 'Ohana Working Group Report and the State Auditor's Report.

Hawai'i needs an independent state official with the ability to address systemic concerns about the child welfare system. No one currently has the responsibility to ensure that the system as a whole (not just CWS) is operating optimally, maximizing the drawdown and use of federal dollars (which could provide additional resources for needed services), protecting the rights and well-being of children, and supporting and strengthening families and caregivers. No state official is charged with ensuring the recommendations of the Mālama 'Ohana Working Group and the State Auditor are implemented. This critical element was missing from the implementation of the "blueprint for reform in child protective services" developed by the legislatively created Child Welfare Services Reform Task Force 30 years ago. The absence of sustainable implementation mechanisms contributed greatly to Hawai'i's failure to achieve sustainable improvements after that enormous effort. A 2000 evaluation of progress to implement the Blueprint for Change stated, "The progress has been slow over the years, in part because of uncertain and inadequate funding, problems in staffing the [coordinating] committee, and uncertainties about strategies and objectives."

While HB 640 HD1 attempts to address important concerns about accountability in the child welfare system, the testimony on this bill has made clear that a more comprehensive approach is needed. The limitations of the Ombudsman Office's authority, combined with the existing notification procedures by CWS, suggest that this bill in its current form may not achieve its intended goals. Therefore, I urge you to consider a broader vision such as that presented in the Mālama 'Ohana Working Group's Report because our keiki deserve bold, visionary action to create a child welfare system that protects and nurtures them.

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 dark ink that reads "Karen Worthington". The script is cursive and fluid, with the first name "Karen" and last name "Worthington" clearly legible.

Karen Worthington