



**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:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Thursday, February 24, 2022      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 308, Via 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 Luke 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.

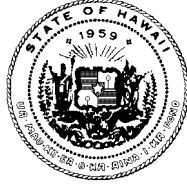
Sections 2 and 3 can be modified to specifically reference DHS's authority pursuant to existing law and to clarify that the existing law covers families receiving permanency assistance or adoption assistance. In section 2 we advise striking the phrase: "provided that this review or investigation shall 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

February 23, 2022

TO: The Honorable Representative Sylvia Luke, Chair  
House Committee on Finance

FROM: Cathy Betts, Director

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

Hearing: Thursday, February 24, 2022, 2:00 p.m.  
Via Videoconference, State Capitol

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

**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, nonsubstantive amendments for the purposes of clarity, consistency, and style.

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 mechanisms the bill proposes may not achieve this goal. Instead, the resulting law would be duplicative in restating who may be considered a perpetrator of child abuse or neglect, could complicate investigations of reports received "at any time," and would infringe upon the privacy rights of adoptive parents and legal guardians. Additional interventions may also be a disincentive for interested families in becoming resource caregivers.

After a child is legally adopted, the adoptive parents have all legal rights and responsibilities for that child and become the natural permanent parents of the child. Legal guardianship grants similar rights and responsibilities for the care and custody of the child. After adoption or legal guardianship becomes final, DHS no longer has the legal authority to monitor the placement.

If 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 will be investigated within timelines specified in HRS 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.

Section 5 of this measure bill proposes that CWS staff be authorized to visit children under legal guardianship or adoption annually or semi-annually if the families receive adoption assistance or legal guardianship assistance. DHS seeks clarification as to this section, as previous sections outline a protocol to investigate only after a complaint is received. Should this language remain intact, CWS projects it will need 80 new FTE or equivalent funds to contract the services to manage the additional visits that the bill proposes. The new program will require administrative and operational resources to support 80 new positions or contracted services. However, CWS can project if new FTE positions become available experienced CWS staff may move to the new positions as these monitoring cases may be less crisis-riddled and will not involve Family Court. Losing experienced staff from child protection will leave the most vulnerable families with staff who have the least experience. Additionally, CWS will need time to develop protocols and rules regarding these visits, including how to accommodate families that move out of State. Finally, the State of Hawaii may not have the authority to send CWS workers to inspect a home in another state when families relocate unless by agreement with that State.

Currently, there are three times as many children receiving adoption assistance or legal guardianship assistance payments from the department as there are children in foster care in the State. Federal law (Title 42 United States Code 673b) provides adoption subsidy payments for families. These are incentive-based to increase the number of permanent homes for children in foster care and to provide support for families so children can live in a safe and nurturing home.

Realistically, an annual visit to the family home is unlikely to provide an accurate picture of the family home, risks, safety, and well-being of the child. 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.

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.

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**  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

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 HOUSE COMMITTEE ON FINANCE  
ON  
HOUSE BILL NO. 2424, H.D. 1

**February 24, 2022**  
**2:00 p.m.**  
**Room 308 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.

**HB-2424-HD-1**

Submitted on: 2/22/2022 9:35:46 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Marilyn Yamamoto	Hawaii Family Advocacy Team	Oppose	No

Comments:

This bill is redundant in that the Child Protective Act is clear that all reports of suspected abuse or neglect shall be investigated.

**HB-2424-HD-1**

Submitted on: 2/22/2022 3:51:40 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Sherry Pollack	Individual	Support	No

Comments:

Please pass this important measure. Mahalo!

**HB-2424-HD-1**

Submitted on: 2/22/2022 5:46:39 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Patricia Blair	Individual	Support	No

Comments:

Children must be protected.

**HB-2424-HD-1**

Submitted on: 2/23/2022 4:11:41 AM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kaylene Sheldon	Individual	Support	No

Comments:

Aloha kākou:

My name is Kaylene Sheldon and I am writing to support HB2424. I am writing from a kūpuna's perspective, I am a grandmother of two beautiful grandsons and it is my kuleana that they receive a quality life. A child's welfare is everybody's kuleana, not just the parents. Their safety, well being, physical and mental needs is all of our responsibility. I feel that HB2424 with the support can at least prevent harmful cases like in the Ariel Sellers case, Peter Boy case and Alexis Lehman-Cabanting case and the list goes on and on and on. I ask the State legislatures, how in the world did the so called "Aloha State," allow this to happen? How in the world did we fail in showing aloha to our keiki? Hawaii seems to fail in protecting children. How can we resolve these short comings? We need to protect the Nā Mamo of Hawai'i Nei. Please ask yourself what haven't I done to protect our precious children of Hawai'i? And what can I do now to prevent child abuse and neglect that is covered up?

Mahalo nui loa,

Kaylene Kauwila Sheldon

**HB-2424-HD-1**

Submitted on: 2/23/2022 10:01:36 AM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Maria Tijerina	Individual	Comments	Yes

Comments:

I am very torn about this bill. Children do need better protection, however this bill is not good enough to be called Ariel's bill. We should not reward failures with more authority and a raise in regards to the system that failed her. We should also hold legislators responsible because they created an unbalanced judicial system which severely lacks in victims rights which has made our state a safe haven for predators!

**HB-2424-HD-1**

Submitted on: 2/23/2022 1:54:25 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kanoë Lani	Individual	Support	No

Comments:

Aloha Sentators and Represtatives,

Mahallo for giving me the oppurtunity to say I strongly SUPPORT HB2424 HD1 . Because of the recent tradegy of Ariel Sellers laws need to change for the rest of the keiki of HAWAII



**HB-2424-HD-1**

Submitted on: 2/23/2022 2:01:11 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jennifer Ruiz	Individual	Support	No

Comments:

Aloha,

Writing as a concerned constituent and someone who has helped with the biological Ohana in their efforts to help Ariel "Isabella" Kalua aka Ariel Pililoha Sellers when she was missing in orde to bring her home alive. Changes need to be made effectively to prevent child abuse and murders for those under the care of CPS/CWS to not happen at all. This crime should set precedent on the extreme urgency of this bill neededing to be passed immediately.

**HB-2424-HD-1**

Submitted on: 2/23/2022 2:57:09 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kapua Medeiros	Individual	Support	Yes

Comments:

Aloha House Finance Chair,

I Support HB2424 HD1. I am looking forward to see the improvements that will take place at the very flawed current Child Welfare System. I am hopeful that by funding these programs and added positions the current troubling issues will be remedied.

I along with my Waimānalo Community takes this matter very seriously. We intend to stay watchful as to insure that there will never be another Ariel Sellers, named Isabella Kalua by her murderers, situation ever again in our community.

Mahalo nui me ke aloha,

Kapua Medeiros

Waimānalo Raised Resident

and

Waimānalo Neighborhood Board #32 member

**HB-2424-HD-1**

Submitted on: 2/23/2022 4:46:40 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jenna Oda	Individual	Support	Yes

Comments:

I support this bill.

**HB-2424-HD-1**

Submitted on: 2/23/2022 10:41:19 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Cindy Evans	Individual	Support	No

Comments:

I support; and offer a suggestion for your consideration. The department contracts out the care of foster children, I believe mostly to Child and Family Services, and the training and certification of foster families contracted primarily to Catholic Charities. It seems there needs to be a 911 type of team trained to respond to calls of concern, and response should be immediately.

Crises reponse is crisis response and the Legisalture should consider how to stand up a 911 type of response for children. Police respond to domestic violence calls. Maybe the pilot could consider County police department (911) taking the calls and responding.

Thank you for your work on this important issue that needs to be addressed.

**HB-2424-HD-1**

Submitted on: 2/23/2022 11:30:26 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kimeona Kane	Individual	Support	No

Comments:

Aloha Kākou,

I strongly support this step forward as it will assist in the safeguarding of our keiki and communities. Ariel Sellers should still be alive, and we must do more to ensure that she and those before her, are honored in safety measures and resources towards their safety. There is more that must be done, and this is a good first step. Please support this bill.

Mahalo, Kimeona Kane

**HB-2424-HD-1**

Submitted on: 2/23/2022 11:33:14 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Makanoe Hufana	Individual	Support	No

Comments:

Aloha House Finance Chair, I support HB2424 HD1. I am looking forward to seeing the improvements that will be taking place at the very flawed Child Welfare System. I am hopeful that by funding these programs and added positions the current troubling issues will be remedied. Mahalo Nui!

Makanoe

Kaulana nā Pua o Hawai'i

**HB-2424-HD-1**

Submitted on: 2/23/2022 11:41:15 PM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kimeona Kane, Chair Waimanalo Neighborhood Board	Individual	Support	Yes

Comments:

Aloha mai kākou,

As the Chair of the Waimānalo Neighborhood Board, someone who has fielded many community questions, participate in the search for Ariel Sellers as well as one who continues to grieve with the community at large and all who have been impacted by the tragedy of Ariel Sellers and many other irreplaceable keiki of Hawai‘i, I am proud to share that our Waimānalo Neighborhood Board stands in support of measures that will address the flawed systems that fail our communities. While we do believe that more must be done, the bill addresses some of the pieces that we know need improvement. No more innocent lives should be allowed to fall through the system. Our Board did pass a resolution addressing additional recommendations that we felt would be worth considering and hope more will come in the future.

Mahalo nui,

Kimeona Kane, Chair Waimānalo Neighborhood Board

**HB-2424-HD-1**

Submitted on: 2/24/2022 10:50:13 AM

Testimony for FIN on 2/24/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kapohuolahaina Moniz Pa	Individual	Support	Yes

Comments:

The system needs to be improved with better safeguards and staffing so this never happens again. A check and balance is needed by doing safety home inspections and safe child one on one conferences and completed parenting workshops certification to be a foster or temporary home.