

Testimony of the
Office of the Public Defender, to
The House Committee on Judiciary

February 24, 2009

Re: H.B. No. 441, H.D. 1: Relating to Child Care.

Rep. Karamatsu and Members of the Committee:

The Office of the Public Defender opposes the creation of a new offense, "Misrepresentation by a provider of a child care facility", as proposed in H.B. No. 331, H.D. 1. The offense sought to be created is cumulative to other offenses already in our statutes and would create unintended consequences.

In section 1 of this bill, two tragic deaths that occurred in Florida and New York are described. Based upon the circumstances described in the bill, both cases could have resulted in a charge of Manslaughter under H.R.S. § 707-702, "recklessly causing the death of another". At the very least, the child care providers in those cases could have been charged under Hawaii law with Reckless Endangering in the Second Degree, a violation of H.R.S. § 707-714, "engaging in conduct that recklessly places another person in danger of death or serious bodily injury". H.R.S. 707-714 is a misdemeanor offense, the same category of offense sought to be created by this bill. Legislation should not create duplicate statutes, i.e. laws that prohibit the same conduct. However well intended, this bill would create such a result.

This bill would also create criminal liability if a child care provider represented that he or she was licensed for so many children and then took care of more children. Many parents have faced the situation where they needed emergency care for a child because the normal routine was disrupted (school holiday, usual family care provider sick, etc.), causing the parent to call upon the child's previous provider to step in for a one day rescue in the crisis. If the provider helped out a former client by taking their child in for one day, the provider would be guilty of a misdemeanor.

There are other problems with the bill such as the reference to misrepresenting "the area of the home or facility used to provide child care". What does that mean? If a provider does not include the carport as an area where child care is provided, but takes the child with them when they go into the carport to get some item, is the provider guilty of misrepresentation? Will it make a difference if the child is injured while in the carport?

The bill makes no reference to written materials where all of this information would be disclosed. Actually, if such written material were required, some governmental office would likely be tasked with going out to inspect that everything was exactly as noted in the written materials, which would be an additional cost to taxpayers. But if there are no such written disclosures required, it becomes a war of "you said" vs. "no, I didn't say", meaning likely trials by jury to determine the outcome of criminal charges. Another expense for taxpayers.

All of these factors may have the further unintended result of reducing the number of people who want to provide child care services which would certainly negatively impact all our island parents who try so hard to find affordable child care.

Our current statutes are sufficient to deal with the problems outlined in support of this bill. For these reasons, we oppose H.B. 441, HD 1.

Thank you for the opportunity to comment on this measure.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 24, 2009

MEMORANDUM

TO: The Honorable John Riki Karamatsu, Chair
House Committee on Judiciary

FROM: Lillian B. Koller, Director

SUBJECT: **H.B. 441, H.D. 1 - RELATING TO CHILD CARE**

Hearing: Tuesday, February 24, 2009; 2:05 p.m.
Conference Room 325, State Capitol

PURPOSE: The purpose of H.B. 441, H.D. 1, is to create misdemeanor penalties for child care facility providers who misrepresent material information about their child care center operations to the guardians or parents of a prospective or active child at the center, an employee of the Department of Human Services, or any law enforcement officer.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of the measure, but has concerns.

The Department currently takes adverse actions on DHS-licensed child care providers by suspending or revoking their child care license pursuant to sections 346-164 and 346-175, Hawaii Revised Statutes (HRS) as well as through fines pursuant to section 346-156, HRS. Child care providers who are not DHS-licensed can be fined for conducting unlicensed child care if they do not meet any of the exemptions stated in section 346-152, HRS. DHS also has Administrative Rules

(Hawaii Administrative Rules, Chapters 891.1, 892.1, 895, and 896) for the denial, suspension, and revocation of licenses as well as fines for violating the rules.

Enacting this measure may deter child care providers from misrepresenting the services that they offer, which is something that Department supports. However, it may also prove to be a deterrent in starting a child care business as potential child care providers may become anxious when informed that there may be criminal charges involved when they are found in violation of specific areas of the licensing rules.

It is also unclear whether the term “misrepresentation” is only for those instances when a child care provider makes a false statement, or is it also intended to include instances when a provider cares for more children than he or she is licensed to care for (i.e., can legally care for) as there would be an implied misrepresentation.

Since a child care “provider” includes individuals, organizations, and agencies that maintain or operate a child care facility, when there is misrepresentation about any of the items listed in (a)(1) – (a)(3), it is unclear who would be charged with the misdemeanor in an organization or agency.

This bill proposes to make the “misrepresentation” a criminal misdemeanor and, as written, would require imposing the criminal penalties on the first violation. This would make it inconsistent with section 346-156, HRS, which has escalating fines for more than one violation.

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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU
801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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CHIEF

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DEPUTY CHIEFS

DMP REFERENCE LM-NTK

February 24, 2009

The Honorable Jon Riki Karamatsu, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: House Bill No. 441, H.D. 1, Relating to Child Care

I am Sean C. Naito, captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 441, H.D. 1, Relating to Child Care. The Department of Human Services currently regulates child care facility providers, licenses, permits, standards, inspections, and rules. Vigorous enforcement of the current laws pertaining to child care providers should be sufficient to provide a safe environment within these facilities.

The Honolulu Police Department urges you to oppose House Bill No. 441, H.D. 1, Relating to Child Care.

Thank you for the opportunity to testify.

Sincerely,

Handwritten signature of Sean C. Naito in cursive.

SEAN C. NAITO, Captain
Criminal Investigation Division

APPROVED:

For: Handwritten signature of Eduisse P. Correa in cursive.
BOISSE P. CORREA
Chief of Police

**Written Testimony of
Deona Ryan**

**HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009**

I want to speak on behalf of proposed HB441, HD1 for many reasons. This important bill being proposed to you would serve to protect families from the heartache in which many people have suffered across the nation because childcare providers falsely represent themselves to unsuspecting parents. The misrepresentation, no matter how small the providers think they are, can cost children their lives or cause irreparable injuries. Childcare providers should be held to higher standards. They are caring for our most precious future, our children.

Our daughter's death is like many across the country, and like many of those stories our daughter's life ended in tragedy. Through a sitter's misrepresentation, we had suffered extreme pain after our little girl, Aslyn, died on February 7th, 2004.

After years of investigation into the events, we were made painfully aware from the beginning regarding the deceit on the sitter's behalf not only in the events that occurred the day she cost our child her life, but also by her deceit from the very beginning of her employment in caring for our child.

Upon my return to work in March of 2003, I was given a list of childcare providers by the base. The sitter's name should have been removed from the list. Although they had given me the list with her name, she had obtained deficiencies for her services and was in the process of being terminated when she resigned three months prior to her name being given to me. Upon phone interview with her and upon personal interview, she kept important facts hidden and did not disclose them to us. The sitter had represented herself as a current childcare provider at Hickam Air Force Base for the base Child Development Center. She never once made it factual that she was no longer allowed to provide childcare in her home. She asked us to fill out paperwork as though she were still a licensed provider for the base. She also told us everything she was required to do to maintain her licensure and assured us she was extremely experienced. When she more then likely did not intend to maintain licensure or CPR to care for children. As time went on, she kept up the ruse and went as far as telling us that she was paying childcare insurance, etc. My family suffered because of her lack of responsibility.

Almost a year went by when on the morning of Feb 5th my husband dropped our 1 year old daughter off for child care at her sitters house. Our day went the same as it always had but at 2:30 PM we were called to come to the ER because our child was suffering from "respiratory problems" according to the sitter. Her temperature was almost 106 degrees when the ambulance arrived at the sitter's residence.

We found out later that our beautiful daughter suffered from hyperthermia after prolonged exposure to extreme environmental conditions in a car at Kapiolani Medical Center after her sitter ran errands with her.

Aslyn was gravely ill and suffered horribly with medical workers not knowing how to treat her or why she was ill. Facts that the sitter was aware of regarding leaving her in the car were never given to medical workers or to our family.

Over the next 48 hours of her life, in the Intensive Care Unit, she suffered from the trauma that this incident caused, and all these things were caused by a sitter's careless act. She suffered multiple strokes, and needed continuous blood transfusions from bleeding from her intestines, kidneys, and nose. She suffered many other hypoxic and hyperthermia related injuries. A parent's should never have to witness their child in pain,

deteriorating and suffering the way that Aslyn did. She struggled to survive but on February 7th 2004 she lost her fight for life. We laid her to rest on February 14th 2004.

Through the investigation, the sitter told multiple versions of what happened but the overlying reality and medical evidence that she allegedly left her in a car and this outweighed any other story she told. Truth never changes. Her truth should have started from the beginning. She neither has yet to be truthful nor held accountable to her actions.

The sitter was asked by the base commander not to provide childcare again, but we were told that she went out into the Hawaii community and continued to care for children even though her negligence had cost our child her life. I am certain those facts were not disclosed to the families of the children she was caring for and that pains my heart and frightens me to even think about.

We ask that the committee pass this bill and send a clear message that those who violate this law will be held accountable. Do not let what happened to Aslyn happen to any other Hawaii children and families. Help us hold sitters to higher standards and help protect children.

Sincerely,

Deona Ryan
VP, Kids and Cars
DEONAR@kidsandcars.org
229 Moon Dance Lane
Summerville, SC 29483
808-778-0851

karamatsu3-Leanne

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 22, 2009 1:27 PM
To: JUDtestimony
Cc: lpelayo@hawaii.rr.com
Subject: Testimony for HB441 on 2/24/2009 2:05:00 PM

Testimony for JUD 2/24/2009 2:05:00 PM HB441

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: lynda pelayo
Organization: Individual
Address:
Phone:
E-mail: lpelayo@hawaii.rr.com
Submitted on: 2/22/2009

Comments:

I think it is outrageous that this committee is even discussing this bill, since the majority of Hawaii's citizens have already voted to NOT support this huge change to our community culture. Shame on all the "elected" officials for going against the will of the people. Your arrogance and willful disrespect of the people won't be forgotten at the next election.

karamatsu3-Leanne

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 23, 2009 2:20 PM
To: JUDtestimony
Cc: putterm@hawaii.rr.com
Subject: Testimony for HB441 on 2/24/2009 2:05:00 PM
Attachments: B 441 is a hidden attempt to gain a foothold by the same.doc

Testimony for JUD 2/24/2009 2:05:00 PM HB441

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Kenneth C Meinken
Organization: Individual
Address: 43 Pueohala Place Kailua
Phone: 808 261 6833
E-mail: putterm@hawaii.rr.com
Submitted on: 2/23/2009

Comments: