

SB 134



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

February 5, 2009

MEMORANDUM

TO: Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Lillian B. Koller, Director

SUBJECT: S.B. 134, RELATING TO CHILDREN

Hearing: February 5, 2009, Thursday, 1:15 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of S.B. 134 is to extend the time the Department of Human Services may assume temporary foster custody of a child without an order of the court from three to five working days to allow more time to conduct an investigation. Requires the department to conduct an ohana conference prior to deciding what course of action to take.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this bill. We believe that with additional time for an assessment and to bring parents, extended family members and others together in an ohana conference, we can work with the family to develop an effective plan to ensure the child's safety and support for the family, we can keep more children safely in their homes and help more families resolve any risk or safety issues in their homes.

AN EQUAL OPPORTUNITY AGENCY

We would suggest the following changes to the proposed language of the bill.

"(b) [~~Upon satisfying itself as to the~~] During the assessment of the safety of a child who has been the subject of a report of abuse or neglect and a determination by the department of the most appropriate course of action that should be pursued to best accord with the purpose of this chapter, the department shall[+] make reasonable efforts to locate and invite the parents, extended family, kin, and persons identified by the parents to an ohana conference which shall be held within five working days of the assumption of temporary foster custody by the department.

c) Following the ohana conference, or upon determination that an ohana conference is not appropriate, the department shall: "

We suggest these changes because participation in an ohana conference is voluntary and the department may offer an ohana conference, but cannot make the parents, extended family, kin or other parties participate in the conference.

We also suggest deleting the references to the "best interests of the child" since there is no definition of that term nor guidance on the application of the standard as it relates to conducting an ohana conference.

Thank you for the opportunity to testify.

TESTIMONY OFFERING COMMENTS
SB134 - RELATING TO CHILDREN

February 5, 2009 at 1:15 p.m.

The Legal Aid Society of Hawaii hereby provides testimony to the Senate Committee on Human Services offering comments on SB134 – Relating to Children.

The Legal Aid Society of Hawaii is the largest non-profit provider for direct civil legal services in the State. Further, since the start of our guardian ad litem work in 1996, we have assisted over 2,700 children as guardian ad litem and have represented over 600 parents in child welfare cases. We are currently the only statewide provider of child welfare legal services and through this experience have a unique perspective on the impact legislation can have on those who are part of the system.

First of all, we want to make it clear that we believe in 'ohana conferences. It is a valuable resource in bringing families together and ensuring the protection of family and providing support to parents.

However, we do not believe this bill is necessary and as written unduly violates the due process rights of parents to raise their children. As written this bill would:

- (1) Require DHS to conduct an 'ohana conference before making its determination as to the actions it should take with regard to a child for whom it received a report that the child is subject to imminent harm, has been harmed, or is subject to threatened harm; and
- (2) Extend the period of time for filing a petition for temporary foster custody from three days to five days.

Operationally, as written, this bill has some fundamental flaws:

- (1) It could leave a child in the custody and care of a parent during the time that it would take for an 'ohana conference to be scheduled;
- (2) DHS would be providing information as to reported harm or threatened harm to the child without any finding of a court to the 'ohana conference violating a parents' right to due process;
- (3) Rather than DHS doing its job in investigation the issues around the reported harm or threatened harm, DHS would merely raise the report to the 'ohana conference and then gather "evidence" that could be used in its petition for temporary foster custody; and
- (4) A parent could be deprived up to eleven days with no opportunity to be heard by a court upon the removal of their child from their custody.

If the goal of this bill is to encourage the utilization of 'ohana conferencing early in the removal of a child for both permanency planning and to support the parent we have no opposition to that. If this is the goal, we would recommend that language only needs to be added to §587-53 as follows:

§587-53 Temporary foster custody hearing. (a) If the department has continued to assume temporary foster custody of a child pursuant to section 587-24(e)(3), the court shall set a temporary foster custody hearing within two working days, excluding Saturdays, Sundays, and holidays, after the filing of a petition to

determine whether the best interests of the child require further protection prior to an adjudicatory determination.

(b) After reviewing a petition and the report or reports submitted pursuant to section 587-40, the court, on its own motion, may order that the child immediately be released from temporary foster custody and returned to the child's family home under the terms and conditions, including, but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child; provided that upon the return the child and the child's family members who are parties shall be under the temporary family supervision of the department prior to the temporary foster custody hearing.

(c) The temporary foster custody hearing shall be continued for a period not to exceed fifteen days, if the court determines that it would be in the best interests of the child that further investigation be conducted and information concerning whether the child should remain in temporary foster custody be provided to the court by each of the parties, prior to rendering a determination as to whether the child should remain in temporary foster custody prior to an adjudication determination.

(d) During a continuance period ordered pursuant to subsection (c) or at any other time during the pendency of a child protective proceeding, the court may further order that:

- (1) Any party undergo a physical, developmental, psychological, or psychiatric evaluation and that a written or oral report be submitted to the court and all parties prior to or upon the date of the continued or next hearing;
- (2) The child's family members who are parties provide the department or other appropriate authorized agency with the names and addresses of other relatives and friends who may be potential visitation supervisors or foster parents for the child and that they arrange for the persons to appear in court upon the date of the continued or next hearing;
- (3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of the department or other appropriate authorized agency and the child's guardian ad litem;
- (4) The parties, subject to their agreement unless jurisdiction has been established, meet with appropriate expert witnesses to discuss the alleged harm to the child;
- (5) The court and the parties view a visual recording or listen to an oral recording of the child's statement at such time and in such manner as the court deems to be appropriate;
- (6) The child and the child's family members who are parties, subject to their agreement unless jurisdiction has been established, arrange and commence participation in such counseling or therapy for themselves and the child as the court deems to be appropriate and consistent with the best interests of the child;
- (7) An appropriate order of protection be entered;
- (8) A criminal history record check be conducted by the department or other appropriate authorized agency concerning a party who is an alleged perpetrator of imminent harm, harm, or threatened harm to the child, and that the results be submitted to the court and other parties in such manner as the court deems to be appropriate prior to or upon the date of the continued or next hearing;
- (9) The department or other appropriate authorized agency prepare a written or oral supplemental report pursuant to section 587-40 and submit the report to the court, the guardian ad litem, and all parties prior to or upon the date of the continued or next hearing; or
- (10) The child's guardian ad litem visit the child's family home and foster home, be present during a supervised visitation, and prepare a written or oral report, including specific recommendations concerning services and assistance, to be submitted to the court and all parties prior to or upon the date of the continued or next hearing;
- (11) An 'ohana conference be held.

(e) The court shall consider all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, prior to rendering a determination in the temporary foster custody hearing.

(f) After a temporary foster custody hearing, if the court determines that there is reasonable cause to believe that continued placement in foster care is necessary to protect the child from imminent harm, it shall order that the child continue in the temporary foster custody of the department under the terms and conditions, including, but not limited to, orders concerning services and assistance and which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child; provided that prior to ordering placement or continued placement in any proceeding under this chapter the court first shall give due consideration to whether:

- (1) The removal or continued removal of the alleged potential perpetrator of the imminent harm, harm, or threatened harm from the child's family home prior to continuing or placing the child out of the family home. The child's family shall have the burden of establishing that it is not in the best interests of the child that the alleged perpetrator be removed from the family's home rather than the child by order of the court; and
- (2) Every reasonable effort has been or is being made to place siblings or psychologically bonded children together, unless the placement is not in the best interests of the children.

(g) After a temporary foster custody hearing, if the court determines that continued placement in foster care is not necessary to protect the child from imminent harm, it may order that the child immediately be released from temporary foster custody and returned to the child's family home with the assistance of services and under the other terms and conditions, including but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child pending an adjudication or disposition hearing; provided that upon the return, the child and the child's family members who are parties shall be under the temporary family supervision of the department prior to an adjudication or dispositional determination.

(h) Any party may move for, or the court on its own motion may order, a temporary foster custody hearing or rehearing at any time after the petition is filed under this chapter in order to determine whether the best interests of the child require that the child be placed in temporary foster custody prior to an adjudication or dispositional determination. [L 1983, c 171, pt of §1; am L 1986, c 316, §24; am L 1992, c 190, §21; am L 1998, c 134, §10; am L 2008, c 199, §7]

Thank you for this opportunity to testify.

Sincerely,

Nalani Fujimori
Interim Executive Director
527-8014

I, Matthew Simmons, UH Social Work Student, support S.B. 134

In this time of social service cutbacks and economic downturn we will inevitably and contritely experience an increase in domestic violence and child abuse and neglect. As the case loads grow for front-line workers who do have jobs remaining, it is important that we allow the workers to completely assess a situation before making decisions. I believe that it is important to support the CPS and DHS by allowing five days to conduct an investigation, hold an Ohana Conference if applicable, and implement a service plan that is in best interest of the child. By doing so, we can help ensure more comprehensive services to our vulnerable Keiki here in Hawaii.

William Guzman & Raelene Tenno

February 3, 2009

The Honorable Senator Suzanne Chun Oakland, Chair
Committee on Human Services
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Testimony on SB 134 relating to children

Dear Senator Oakland and members of the Committee:

Thank you for this opportunity to testify today on Senate Bill 134.

I have recently been involved in a CWS case involving my grandchildren and am familiar with the procedures and actions taken under the current law.

To frequently children removed from their homes due to misunderstandings or the child is retaliating against their parents. But also at the same time, there are children that are being removed for the right reasons.

The current law allows CWS 3 days of temporary foster custody and then there is a family court hearing to determine the course of action for the parents and children. By extending the investigation period to 5 working days, Monday – Saturday, would allow CWS the ample to time to hire a trained investigator with the proper certification, education and training. Currently, the investigations are done by a DHS Social Worker.

SB134 will also require DHS to conduct an Ohana Conference prior to deciding what course of action to take. This is will allow families on both sides as well as the investigator to obtain DHS/CWS information at the same time and from the same person. In my experience the information was not delivered in the same context to both parents, the majority of the time it was conflicting.

Additionally, if the Ohana Conference is done early into the 5 day investigation period, it is during this time that a determination can be made as to the placement of the children to any family members.

In the case of my grandchildren, they were with strangers under foster care for several months before the Ohana Conference was ordered by the Social Worker only to have her not attend an important meeting.

I urge the Committee to require DHS/CWS to hire trained investigators and the Ohana Conference within a 5 day investigation period.

P.O. Box 283195 Honolulu, Hawaii 96828
808-368-3657

William Guzman & Raelene Tenno

Thank you again for allowing me to testify today on such an important matter.

Sincerely,

Raelene Tenno

P.O. Box 283195 Honolulu, Hawaii 96828
808-368-3657

A BILL FOR AN ACT

RELATING TO CHILDREN

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 587-40, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:

3 “(e) A person employed by the department as a social worker
4 in the area of child protective or child welfare services is
5 qualified to [~~testify as an expert in the area of social work~~
6 ~~and child protective or child welfare services~~] provide an
7 expert testimony according to the evidence being presented under
8 this chapter and within their educational experience and both
9 their professional and personal knowledge of the case.

10 SECTION 2. Section 587-2, Hawaii revised Statutes, is
11 amended to include the following:

12 “Expert” means a person with a high degree of skill in or
13 knowledge of a certain subject or having, involving, or
14 demonstrating great skill, dexterity, or knowledge as the result
15 of experience or training.

16 “Expert testimony” means an opinionated statement during a
17 hearing or trial subjected under oath be a specialist qualified
18 as an expert on a subject relevant to the case foregoing under
19 this chapter.

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken with proposed amendment underlined.

22 SECTION 4. This Act shall take effect upon its approval.