



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2435, RELATING TO THE DEPARTMENT OF HUMAN SERVICES.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Monday, February 3, 2020 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Erin L.S. Yamashiro, Deputy Attorney General

Chair Ruderman and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments.

The purpose of this bill is to require the Department of Human Services (DHS) to provide written notice to a parent of the parent's rights during the initial face-to-face contact with the DHS when it conducts an investigation pursuant to chapter 587A, Hawaii Revised Statutes (HRS). Additionally, the bill requires the recording of any interviews of a child at a school.

This bill adds a new subsection (b) to section 587A-11, HRS, designates the existing provisions of section 587A-11 as subsections (a) and (c), and amends section 587A-9(a), HRS, to reference the new subsection. However, the amendments to section 587A-9(a), HRS, appear to be incorrect because the redesignated subsection (c) is not included in the bill or the current statute.

If the Legislature intends to amend section 587A-9, HRS, to incorporate the newly created subsection (b) and to cite to the redesignated subsection (c), then section 1, page 2, lines 6-9, should be amended to read as follows:

“(A) Relinquish temporary foster custody, return the child to the child’s parents, and proceed pursuant to section [~~587A-11(4),~~] 587A-11(b)(4) and (c)(4), (5), or (6);”

Similarly, section 1, page 2, lines 10-13, should be amended to read as follows:

“(B) Secure a voluntary placement agreement from the child’s parents to place the child in foster care, and proceed pursuant to section [~~587A-11(6)~~]
587A-11(c)(6) or (8); or”

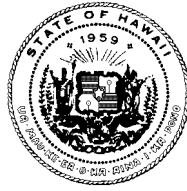
In addition, this bill would allow the recording of a child’s interview at school to be used in a subsequent court proceeding, which could include matters outside the chapter 587A case. This reading of the proposed wording would contravene the confidentiality provisions and protections of chapter 350, HRS. We recommend amending section 2, page 6, lines 15-18, as follows:

“conducting the interview; provided that when a child is interviewed at school, the interview shall be recorded and retained in the department’s case file.”

With this change, the recording itself will be included in the DHS’ records as part of its investigation and will still be protected by chapter 350, HRS.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96808

LATE

February 3, 2020

TO: The Honorable Russell E. Ruderman, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2435 - RELATING TO THE DEPARTMENT OF HUMAN SERVICES**

Hearing: February 3, 2020, 3:00 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this measure and offers comments.

PURPOSE: The purpose of this bill is to require the Department of Human Services to provide written notice to a parent of the parent's rights when conducting an investigation regarding a child who is or may be subject to imminent harm.

The Department currently provides parents with A Guide to Child Welfare Services at the time of first contact. The guide is designed to provide information for parents regarding their involvement with the Department. This document is available on the Department's website at: <https://humanservices.hawaii.gov/ssd/files/2019/10/October-15-2019-REVISED-A-GUIDE-TO-CHILD-WELFARE-SERVICES.pdf>. Interpreter services are also offered and provided to each parent or guardian when needed. Parents are not required to sign a document to state that the guide was received. This guide does not explicitly cover the role or policies of the police or law enforcement entity.

This guide provides information on various topics including those stated in the proposed bill in (b) (1) (A) the parent is not required to permit the department to enter the residence of the parent, (B) the parent must be given the allegations prior to the interview, (C)

the parent is not required to speak to the Department at that time, (E) the parent is entitled to seek representation of an attorney and have an attorney present when the parent is interviewed by the Department, (G) that the Department's staff are not attorneys and cannot provide legal advice, and generally (I) failure to meet with the Department may have severe consequences.

The guide, does not explicitly discuss the information in (b)(1)(D) the parent has the right to record the interview, (F) any statement made by the parent or family member may be used against the parent, or (H) the parent is not required to sign any documents presented by the Department.

The mission of the Child Welfare Services (CWS) is "to ensure, in partnership with families and communities, the safety, permanency and well-being of those children and families where child abuse and neglect has occurred or who are at high risk for child abuse and neglect." The CWS investigation is rooted in family engagement and partnership. CWS believes that children and families are to be engaged within the context of their own family rules, traditions and cultures; and strives to maintain children in their homes, whenever possible. The Department is required to assess the safety of children in all reports of abuse and neglect. Communication and partnership with the child's parent or guardian is critical in the assessing the child's safety, and determining if the child can safely remain in the family home. A child may face continued harm without the support and services the Department could provide to families to make the family home safe. Additionally, a parent's or guardian's refusal to communicate and work with CWS may result in the removal of the child and increase the number of children placed in foster care. In partnership with families and based on the assessment, the Department may ask the parent to jointly develop and sign an In-Home Safety Plan to manage any safety concerns and maintain the child safely in the home. This practice is designed to understand the family's strengths and challenges and address issues in partnership with parents.

In addition, the Department does not generally record interviews with children. Depending on the type and or severity of the allegations, some children may be interviewed at the Children's Justice Center where the interview may be recorded.

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

Date: January 31, 2020

HUMAN SERVICES COMMITTEE
Senator Russell Ruderman, Chair

PUBLIC HEARING
Monday, February 3, 2020
Capitol Bldg., Room 016, 3:00 PM

I strongly support SB2435

Federal law requires that child welfare caseworkers need to be trained on the rights of families and children from the outset to the conclusion of a child abuse or neglect case. CWS has conveyed to me that the new-hire training does not include the 4th amendment process and procedures and it is not included in the Policy and Procedures manual. In 2016, the department was found to have violated the 2003 amendment to federal law that requires investigators to disclose allegations prior to an investigative interview.

As an advocate for families in the child welfare system in Hawaii for the past 8 years. I have been repeatedly told that parents generally do not recognize that they have 4th amendment rights in a CWS investigation and that they have been advised that denial of entry into a home would result in an order for child removal. The public is generally unaware that a report to the state hotline does NOT require any kind of evidence of abuse or neglect. The Hawaii Family Advocacy Team received 30 responses in a survey of parent understanding of the 4th amendment search and seizure rights. When approached by a CWS investigator, 5 exercised their rights to deny entry and 25 did not because they were not aware of that right.

In the past submission of this bill, DHS argued that parent rights were included in the Parent Guide to Child Welfare booklet. Since then, the booklet has been updated to increase the list of rights from two to five items, but not all of the rights in this bill. Those rights are buried on page 5 of a 15-page booklet and they do not specify that those rights need to be read prior to an investigative interview. Further, CWS has no policy to assure that all parents being investigated receive the booklet in advance of an investigative interview.

Regarding the requirement to record minor children in school, students who are approached during school hours report that the intrusion is confusing, humiliating and frightening. One egregious example is that a 7-year old female was interviewed after her teacher overheard her say that she was spanked by her parent the night before. A male investigator forced her to remove her panties to find no marks. Should a school interview occur, a recording of what was asked of the minor child and how it was asked should be available for all parties whether a court case is opened or not. No child should be interviewed without legal representation, but this bill at least requires documentation of that interview.

See below the Notice of Parent Rights, recommended by the Attorney General to be published as a sample of the format.

CWS ADVISEMENT OF RIGHTS FOR ADULTS

1. CWS is conducting an investigation of suspected child abuse or neglect according to law. This is an investigation only, and no one is presumed to be guilty or responsible at the start of the investigation.
2. You are not required to allow CWS into your home, unless a valid warrant is presented.
3. You are not required to speak to CWS. You have the right to record the interview.
4. You are not required to sign any document submitted to you by CWS.
5. You are entitled to contact an attorney for legal advice, and the attorney may be present at all times when you are communicating with CWS or considering signing a document submitted by CWS.
6. Any statement made by you may be used in a CWS report, or in an administrative or court proceeding.
7. CWS is not your attorney, and cannot give you legal advice.
8. Failure to cooperate with CWS may have serious consequences, including the filing of a Family Court petition, and possibly the removal of a child by CWS.

It is in your best interest to speak with CWS or to immediately secure the advice of a qualified attorney.

9. A copy of this carbon—set document must be signed by CWS and given to you prior to CWS's speaking to you. You are encouraged to sign and date the CWS copy of this document. Signing the document is not an admission, but simply indicates that you have received a copy of the document.

PRINTED NAME SIGNATURE STATUS (DCF, Parent, Guardian, etc.) DATE

SB-2435

Submitted on: 2/2/2020 9:10:20 AM

Testimony for HMS on 2/3/2020 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kathryn xian	Testifying for PASS	Support	No

Comments:

SB-2435

Submitted on: 2/3/2020 12:55:57 PM

Testimony for HMS on 2/3/2020 3:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Carmen Golay	Individual	Support	No

Comments:

In my experience working with survivors of domestic violence, it is very important for protective parents to understand their rights. Clever and manipulative abusers use the system and CWS workers against victims with some frequency. I support this bill for parents to know their rights, as entanglements with family court and systems are long, costly and traumatizing for all involved.

SB-2435

Submitted on: 2/3/2020 1:19:05 PM

Testimony for HMS on 2/3/2020 3:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

STRONG SUPPORT!!!

SB-2435

Submitted on: 2/3/2020 2:19:12 PM

Testimony for HMS on 2/3/2020 3:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Guy Yatsushiro	Individual	Support	No

Comments:

LATE

02/03/2019

My name is Jennifer Chapman and I support SB2435. There needs to be oversight of the child welfare system. Cws has willfully and intentionally violated mine and my children's rights, assumed the role of police officers, given false testimony, removed my children not once but twice without a court order, warrant, and without there being imminent harm present. (therefore, violating fourth and fourteenth amendments) There was absolutely no hesitation for cws to illegally assume parent role by providing written consent for doctors to give my infant multiple surgeries, which almost took his life. I have never been Charged with any type of violent crimes, never been charged with abuse or neglect to my children and yet they are still in custody due to what they claim is the "threat of abuse" or the "threat of harm." Almost 2 years into a case and they have not been able to substantiate any actual harm or abuse.

I came to Hawaii as an Army wife, this being our first duty stations. Due to my husband's multiple arrests for domestic violence charges our family caught the Eye of CWS. After several months with no incidences we receive notification that our Cws case was closed and that the allegations were not confirmed. A short time later another incident took place and the case reopened yet I was not notified, nor Did anyone explain what a child registry was or how it would affect my case being reopened. Essentially I was being punished for being a victim and it became very obvious that I was being blamed for the abuse that was taking place.

There is no oversight for Cws or the courts other than to appeal decisions made in the Family Court which is where my keys currently sits awaiting a decision. Cws does not follow their own rules and regulations, they do not follow the laws or the state statues. They have no regard for fundamental, constitutional, or parental rights. The agencies Entrusted with the responsibility to ensure their compliance such as the ombudsman's office, cws branch administrators and supervisors, department of health, The family courts, judicial review committee, quality assurance program, all fall short. I brought this matter to the attention of multiple federal senators, the governor, is congressmen, multiple national advocacy programs, members of the House of Representatives, and not one person was able to point me in the direction of actual help.

In situations where there are accusations of any form of child abuse or neglect given the sensitive and vulnerable population that is affected, judicial oversight and speedy trials are imperative. Willing to defend their client's rights are also a necessity.

I am submitting testimony in support of this bill and to make all legislative representatives aware of the on-going abuse of authority of state DHS CWS Social Workers and to please consider how this affects the future of Hawaii families and children.

Please pass this bill and consider my testimony in doing so.

Thank you for allowing me to share my testimony,

Jennifer Chapman

808-208-3926