



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 879, RELATING TO THE CHILD PROTECTIVE ACT.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 2, 2023 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Erin K. S. Torres, Deputy Attorney General

Chair Mizuno and Members of the Committee:

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

The purpose of this bill is to amend the Child Protective Act (CPA) to (1) require an independent evaluation of parents before a child is returned to the family home, under certain conditions; (2) clarify the purpose of the CPA; (3) provide grandparents with certain rights and duties; (4) amend the definition of "aggravated circumstances;" (5) include grandparents under the definition of "family;" (6) expand the factors to be considered when determining whether a family home is safe; (7) give foster placement preference to relatives, if it is in the best interests of the child; (8) establish certain requirements for the Department of Human Services (DHS) when conducting investigations; (9) specify that DHS social workers shall be unbiased and reflect no prejudice in their professional assessments; and (10) clarify the procedures for return hearings. We have several comments.

First, the additional requirement for an independent evaluation of parents proposed in section 2 may be subject to constitutional challenge as violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution or article 1, section 5, of the Hawaii State Constitution. Parents have a fundamental right to make decisions about the "care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). "If a fundamental right is implicated, the statute is

subject to strict scrutiny." *State v. Mallan*, 86 Hawai'i 440, 451, 950 P.2d 178, 189 (1998). "In order to survive strict scrutiny, 'the statute must be justified by a compelling state interest, and drawn sufficiently narrowly that it is the least restrictive means for accomplishing that end.'" *Doe v. Doe*, 116 Hawai'i 323, 335, 172 P.3d 1067, 1079 (2007), citing *Conaway v. Deane*, 401 Md. 219, 932 A.2d 571, 603 (2007). The additional requirement may not be found to be the "least restrictive means" for accomplishing the State's compelling interest in ensuring child safety because it adds an extra condition that must be met prior to returning a child to the family home. To avoid this constitutional problem, we recommend that section 2 be deleted from the bill.

Additionally, the proposed new section is inconsistent with sections 587A-28(e)(3)(B) and 587A-30(b)(1)(B), Hawaii Revised Statutes (HRS), which require a child to be reunified with the child's parents if the court finds at a return hearing or a periodic review hearing that the parents are willing and able to provide a safe family home. It also is inconsistent with section 587A-31(d)(1), HRS, which states that at a permanency hearing, a child will be reunified with his or her parents unless the reunification is expected to occur within a certain timeframe, or the court orders a permanent plan with a goal of adoption, legal guardianship, or permanent custody.

The Department recommends deleting the proposed amendment to section 587A-3.1 on page 9, lines 2 through 5. Section 587A-15(b) provides that when it has foster custody of a child, the DHS has many of the same duties and rights that normally belong to a parent who has custody of his or her own child. This amendment would strip the DHS of its rights and duties to provide care for a child in foster custody and give those rights and duties to a grandparent, effectively ending foster custody and placing the child in the care of the child's grandparents without any consideration for the safety or best interests of the child.

We also recommend amendments to section 4 and 10 of the bill to satisfy a decision of the Supreme Court of the State of Hawaii. In *Doe v. Doe*, 116 Hawai'i 323, 172 P.3d 1067 (2007), the Hawaii Supreme Court ruled that the current version of section 571-46.3, HRS, was unconstitutional because it did not require the petitioner to show that denial of visitation by a grandparent would cause significant harm to the child.

The court stated that "proper recognition of parental autonomy in child-rearing decisions requires that the party petitioning for visitation demonstrate that the child will suffer significant harm in the absence of visitation before the family court may consider what degree of visitation is in the child's best interests." *Id.*, at 335, 172 P.3d at 1079. To ensure this bill satisfies the requirements of *Doe*, the Department recommends in the amendments to sections 587A-3.1 and 587A-28(e)(5), HRS, the following provisions be added to read as follows:

- (1) Page 9, line 2:
. . . advocate; provided that visitations by grandparents may be granted only if denial of reasonable grandparent visitation rights would cause significant harm to the child.
- (2) Page 26, lines 1-3:
. . . with the child's siblings and grandparents unless such visits are determined to be unsafe or detrimental to, and not in the best interests of, the child; provided that visitations by grandparents may be granted only if denial of reasonable grandparent visitation rights would cause significant harm to the child;

The Department further recommends deleting the proposed amendments to the definition of "aggravated circumstances" in section 587A-4. On page 13, lines 14-21, the amendments propose for the definition to include children who are experiencing harm, have been abused, or have witnessed abuse in the family home. This amendment would make nearly all cases under the CPA fall under "aggravated circumstances." Under section 587A-28(e)(4)(A), HRS, if the court finds that aggravated circumstances are present, there is no requirement for parents to be provided with a service plan or visitation with the child, and a motion to terminate parental rights must be filed within sixty days unless there is a compelling reason why it is not in the best interests of the child to do so. Section 5 of the bill effectively circumvents the requirement to attempt to reunify the child with his or her parents in most cases. This contravenes the purpose of the CPA, to provide children "with an

opportunity for timely reconciliation with their families if the families can provide safe family homes."

The Department notes that addition of grandparents to the definition of "family" at page 14, lines 6 to 7, appears to be unnecessary because grandparents already fall under the existing definition, which includes each "person related by blood or marriage." To avoid confusion, we recommend not amending the definition of "family."

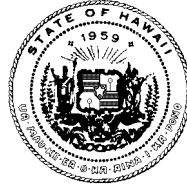
We also recommend that the amendment to page 19, lines 6 through 7, be moved from section 587A-10(a) as proposed in section 7 and instead be added to section 587A-15(b)(1). This would move the proposed foster placement preference from the section of the CPA concerning the administrative process of applications for foster licensing and put it in the more appropriate section of the CPA concerning the duties and rights of the DHS in determining where a child shall be placed in foster care.

Finally, the Department suggests the addition of definitions for "bias," "unbiased," and "prejudice" as mentioned in the amendments to section 587A-4, HRS, at page 19, lines 12 to 13; page 22, line 6; and page 23, line 3, to provide clarity.

The Department respectfully asks the Committee to pass this bill with the recommended amendments.

Thank you for the opportunity to present our comments.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
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February 1, 2023

TO: The Honorable Representative John M. Mizuno, Chair
House Committee on Human Services

FROM: Cathy Betts, Director

SUBJECT: [HB 879](#) – RELATING TO THE CHILD PROTECTIVE ACT

Hearing: February 2, 2023, 9:30 a.m.
Conference Room 329 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments and respectfully requests amendments.

PURPOSE: Requires an independent evaluation of a child's parents before a child is returned to the child's family home, under certain conditions. Clarifies the purpose of the child protective act. Allows certain contact between grandparents and a child in foster care. Provides a child's biological grandparents with certain rights and duties. Amends the definition of "aggravated circumstances." Includes grandparents under the definition of "family." Expands the factors to be considered when providing a child with a safe family home to include evaluations conducted by an independent provider with certain specialized training. Establishes certain requirements for interviewees, documentation, and assessments by DHS. Requires foster placement preference to be given to relatives, if it is in the best interest of the child. Establishes certain requirements for DHS when conducting investigations. Establishes written response requirements for DHS to a complainant after child abuse or neglect

investigation. Specifies that a department social worker shall be unbiased and reflect no prejudice in their professional assessments.

The Department appreciates the Legislature's commitment to prioritizing children's safety, health, and well-being and strengthening the State and communities' response to child abuse and neglect.

Regarding Section 2 requiring an independent evaluation by a clinical psychologist to be conducted before a child is returned to the custody of a parent, this requirement may be redundant. DHS requests clarification of "independent" and if the intent is to have an additional psychological evaluation or review in addition to the other evaluations routinely done in child welfare cases. DHS is concerned that the time needed to secure and complete an additional evaluation will further delay reunification or other permanency decision, such as adoption or guardianship, and result in lengthening a child's stay in foster care. When permanency decisions are made, a considerable amount of information is collected throughout a case that would need to be considered. Notably, the Family Court holds the decision-making authority whether or not to return a child based on the evidence before the Court, which includes psychological and other evaluations. Notably, the Family Court, at any time, may also request additional evaluations.

For the Committee's information, there are several independent evaluations from the outset to the closure of a case. Child Welfare Services (CWS) has birth parent evaluations conducted by licensed psychologists or psychiatrists. CWS social workers also have access to consultation and receive case recommendations through a multi-disciplinary team comprised of a psychologist, clinical social worker, pediatrician, and pediatric nurse. The Family Court also appoints an independent Guardian Ad Litem or Court Appointed Special Advocate who represents the child or children and assesses and makes recommendations to the Court. We respectfully request this section be deleted from the proposal as the additional requirement of another independent evaluation would present another hurdle and impede timely permanency for a child.

Regarding section 4, which adds grandparents to the list of family members to be provided regular contact with the children in foster care, Hawaii child welfare practices have long placed a high value on family and relative placements to maintain connections to a child's

‘ohana or family. Hawaii consistently has the highest percentage of relative placement in the nation.

Current practice includes immediate and extensive Family Finding and notification of family members and relatives upon the child or children going into foster care placement. Federal law and section 587A-10 (b), Hawaii Revised Statutes (HRS), provides that the Department and authorized agencies shall make reasonable efforts to identify and notify all relatives within thirty days after assuming foster custody of a child. Simultaneously, there is the engagement of family members, relatives, and friends to participate in ‘Ohana Conferencing - Family Decision-Making Model—to provide support to the child and family, to possibly be a temporary or permanent placement, to maintain connections, to assist in visitations, and to provide family input into the family service planning. Mandating visits with grandparents would require additional staff time to coordinate and may require more visitation services to observe the interactions. Therefore, we respectfully request this section be deleted.

DHS is concerned with the language in Section 4, page 9, at lines 2 – 5, providing that grandparents shall be vested with the legal rights and duties of biological parents if biological parents are deceased. As noted above, Family Finding is conducted to inform family members of the child's situation and to request a relative's interest in becoming involved in the child's case. There are many reasons family members decide to become involved, and to vest, the rights and responsibilities upon grandparents automatically may cause unintended burden upon grandparents. Interested family members are assessed on a case-by-case basis by the Department.

Regarding Section 5, which adds additional meaning to “aggravated circumstances,” DHS would like to inform the Committee that based on a determination of "aggravated circumstances," federal and State law provide the State to move to terminate parental rights without needing to make "reasonable efforts" to reunify the child with their family. Section [350-1](#), HRS, contains a long list of conditions and abuses that define child abuse and neglect. Allowing the State to terminate parental rights based on the proposed "aggravated circumstances" may result in unintended consequences and would eliminate reunification efforts in nearly all circumstances.

Regarding Section 6, DHS requests clarification of the term "independent" on page 16, line 20. As described above, numerous professionals, most of whom are not employed by DHS though some have contracts with DHS, conduct evaluations and reports to the Court throughout a case.

Regarding Section 6, paragraph (15), lines 16 - 20, DHS requests clarification of the "full investigation report of all people in the child's life." This additional investigation of all people would take time away from the work needed to attend to the child's needs and family home. DHS acknowledges that families involved in child welfare cases often have extensive trauma histories. However, subjecting all of the child's family members to an investigation would be beyond the scope of child welfare's purpose. It would not necessarily assist involved parents in addressing the factors that brought their family to the attention of the child welfare system. In addition, the additional investigation would likely increase a child's time in foster care – something to avoid, and would likely be the source of additional trauma. CWS can check the criminal history of all household members for the Committee's information.

Regarding Section 7, on foster placement preference, as section 587A-10, HRS, currently provides, interested relatives are provided with an application to become a foster placement candidate. As noted above, Hawaii is already recognized nationally as one of the states with the highest foster placement with kin. Therefore, we respectfully request that this section be deleted.

Regarding Section 8, mandating how CWS performs initial investigations, DHS is concerned that mandating these conditions will delay the investigation, potentially exposing the subject child to additional abuse or neglect. As currently drafted, section 587A-11, HRS, gives CWS broad authority to do different things depending upon the report and case. Mandating all provisions would not necessarily improve the quality of investigations or lead to better case outcomes.

Regarding Section 8, paragraph (b), on page 22, lines 11-16, if a report of abuse or neglect is confirmed, the investigation forms the basis of the petition presented to the Court, copies of which are provided to all parties. If the report of abuse or neglect is not confirmed, no report is distributed. However, subjects of the investigation may request information that the Department has gathered about them with a signed consent form. However, the identities

of individuals who reported suspected abuse are confidential, and disclosing the reporter's information is a misdemeanor. Therefore, DHS respectfully requests Section 8 be deleted from the measure.

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

HB-879

Submitted on: 1/30/2023 7:57:06 PM

Testimony for HUS on 2/2/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Peggy Hong	Individual	Support	In Person

Comments:

I am Laurie Arial Tochiki, and I am the Executive Director of EPIC ‘Ohana. I am writing to comment on HB 879, in order to give some context to some of the parts of the bill. There are many changes proposed in the bill, and I am not in a position to comment on the efficacy or the legality of any part of the bill. But I do want to voice my support for the intent of the bill. EPIC ‘Ohana is the backbone organization for Nā Kama a Hāloa, a network of more than 30 organizations and individuals with lived experience working to improve outcomes for native Hawaiian children in child welfare in Hawai‘i. We are requesting the legislature to establish Mālama ‘Ohana working group in order to thoughtfully and inclusively resolve some of the issues reflected in this legislation. HB 330 and SB 295 would establish the working group.

EPIC ‘Ohana has been providing ‘Ohana Conferences statewide since 1998. In our conferences we bring in extended family in order to discuss and share decision making to protect the children and look out for their well being. It is a strengths based, solution focused process. ‘Ohana Conferences are offered to every family in the child welfare system, but parents can decline the opportunity, and they can also limit which extended family members are invited to the conference. It isn’t unusual for families to have difficult and conflicted relationships within the family. In particular, when a parent has died, the remaining parent may not have a good relationship with the deceased parent’s family. The birth parents in child welfare have sometimes isolated themselves from extended family, exacerbating the safety concerns that bring the family into the child welfare system.

At the same time, we work hard to maintain family connections and to help to reweave the family safety network. EPIC is also the lead agency for the HI HOPES initiative, a leadership board of current and former foster youth. In a recent leadership retreat, our young leaders were asked to share about the kupuna that guided and inspired them. So many of them tearfully described their grandparents, and how important these grandparents were in their lives. The HI HOPES board led the passage of changes to Section 587A-3.1 which we called the “Bill of Rights” for foster children. HB 879 proposed that Section 587A-3.1 (5) include the right to visitation with grandparents. Other parts of the proposal would give the parents of a deceased parent a place at the table when decisions are made about the children.

These provisions will raise concerns about the rights of grand parents in relation to the rights of the remaining parents. And these are complicated issues.

TO: Representative John Mizuno, Chair
Representative Terez Amato, Vice-Chair
Members of the House Human Services Committee Members

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate

DATE: February 2, 2023

RE: Comments on HB879

Good Morning, Representatives, and apologies for this late testimony. While the preamble to HB879 rings true, I cannot support nor oppose it for the following reasons:

The purpose of this Act is to:

(1) Clarify that physical, emotional, and psychological safety is ensured before a child in the foster care system is returned to the custody of a parent;

These factors should already be the standard of care being currently employed in all CWS foster care system cases (and *should be* the standard of care used in all contested family court custody cases as well!) so I'm unclear as to how adding further clarification is helpful. Additionally, no *professional* can "ensure" any of these things; they can only assess & act to the best of their capabilities but ultimately these are responsibilities *the parents* are supposed to ensure.

(2) Require an independent evaluation by a clinical psychologist to be conducted before a child is returned to the custody of a parent;

As with the above (and pending the available pool of clinical psychologists willing and able to perform such evaluations) I do believe **these are already taking place to the best of the Department's ability** in some cases of high or particular concern, but *requiring* such evaluations *before* a child is returned to the parent in *all* cases will likely have the unintended (& very expensive) consequence of delaying reunifications that may not require such scrutiny because provided services have alleviated CWS concerns.

(3) Ensure that grandparents and other family members are included in foster care interviews to give a whole view;

I do believe that **EPIC Ohana Conferencing continues to fulfill this role** but "ensuring" such conferences take place is contingent upon CWS case referral by the CWS social worker. The problem I've observed is not so much including grandparents & other family members in *interviews* but in grandparents & other family members having an *active & meaningful role* in the CWS foster care cases themselves. Although the support system for the child/ren is identified it's not *utilized* and that's where grandparents & other family members feel excluded and are being excluded.

(4) Clarify that the physical, emotional, and psychological well-being of a child is the primary determination in custody assessment and not family unification, unless all of the safety parameters are met;

This wouldn't even be an issue had the *Safe Child Act* introduced by Representative John Mizuno in 2016 & 2017 (if memory serves) been passed as it has now in several other states!

The Safe Child Act is the culmination & combination of wisdom gained from the longitudinal studies resulting from the CDC's Adverse Childhood Experiences Study (aka A.C.E.S.) and the DOJ "Saunders Study" which basically put forth that the **health & safety** of a child (to encompass physical, emotional & psychological aspects) are really the only two factors that must be assured for children to avoid deleterious outcomes. Getting bogged down in all the "best interests of a child" factors only distracts & harms children if their health & safety aren't secured first, whether they're in an intact home, a separated & divorcing situation or in an out-of-home foster placement.

Unfortunately, **domestic violence is regularly missed, overlooked, disregarded or ignored in both CWS and custody court jurisdictions and you can't get any more dangerous to the health & safety of children than that.**

(5) Clarify the definition of "aggravated circumstances"; No objections to this.

(6) Require department of human services' social workers to be unbiased and reflect no prejudice in their professional assessments.

Unless the Department, the Ombudsman, HPD, the courts, this legislature and *all others* to include all oversight agencies **start holding biased & prejudiced social workers to account for their crimes against children & families** (because that's what they are when social workers behave in unethical, illegal & unholy ways!) this requirement is not even worth the ink on the paper its being written on.

There are some truly amazing, decent, honest, hard-working, ethical, self-sacrificing, salt-of-the-earth angels from Heaven working as CWS social workers out there (who I do believe are in the majority) BUT there are also a few who willfully ruin innocent lives, futures & families who then bring disgrace, dishonor & distrust to the institutions they're supposed to be representing! The latter are the ones who need to be held to account NOT the majority, which is no different than domestic violence: those who are guilty of it need to be held to account BUT the majority who are innocent should not be roped in with the guilty.

The situation that we've had going on without disruption is NO screening or consequences for domestic violence or any biased, prejudiced social workers so who do you think's going to ultimately pay the price for that? Yes, the children – *our* children, *your* children – if not directly, then indirectly or consequentially, as A.C.E.S. so clearly illustrates.

No one likes to be "the bad guy" and impose corrections but when you allow unethical professional behavior to be overlooked and go unpunished, we're only heaping coals upon our own heads. I have no power or authority to do anything, but *you do*. PLEASE do something to right the wrongs, but I just don't think HB879 is going to be one of those venues.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate