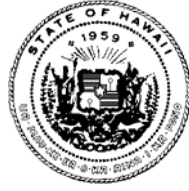


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

January 29, 2023

TO: The Honorable Senator Joy A. San Buenaventura, Chair
Senate Committee on Health & Human Services

FROM: Cathy Betts, Director

SUBJECT: [SB 407](#) – RELATING TO CHILD PROTECTION.

Hearing: January 30, 2023, 1:00 p.m.
Conference Room 225 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments and agrees with the Department of the Attorney General's (ATG) recommendations to formulate a work group to discuss the proposed changes. DHS further defers to the Judiciary and county police departments.

PURPOSE: This bill establishes a definition of "immediate harm" and amends the definition of "imminent harm" for the purpose of the Child Protective Act. Requires a police officer who assumes protective custody of a child who is subject to immediate harm while in the custody of the child's family to provide a written report detailing the observations justifying the immediate removal to the Department of Human Services within twenty-four hours of assuming custody of the child.

DHS is concerned that the proposed changes and additional processes may increase safety risks for children who are subjects of a report of child abuse and neglect. We agree with the ATG's recommendation to form a cross-system workgroup to answer the questions posed

and determine the best processes to maintain children's safety and address parental concerns. We also envision that the proposed Malama 'Ohana working group (SB294/SB295/SB398) will address increased prevention efforts to reduce child abuse and neglect reports. The Malama 'Ohana working group's work to engage the community may provide input from families and communities to improve communication and the process when removal is necessary so that families have the necessary support and can quickly begin to address the safety concerns that caused the removal.

Hawaii's child protective law has long made the child's safety a priority which included the police authority to assume protective custody without a court order in cases of imminent harm. For example, Hawaii's first Child Protective Act, Act 171, Session Laws of Hawaii (SLH) 1983, provided:

"The policy and purpose of this chapter is [sic] to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families where practicable, and with timely and permanent planning so they may develop and mature into responsible, self-sufficient, law abiding citizens."

Act 171, codified as Chapter 587, HRS, included the authority of the police to assume protective custody to remove a child without a court order in situations of imminent harm.

The Adoption and Safe Families Act (ASFA, P.L. 105-89), enacted in 1997, significantly reformed federal child welfare law and federally codified the core child welfare system values of safety, permanency, and child well-being. Importantly, ASFA articulated that the paramount concern of the State's foster care and adoption assistance shall be the health and safety of the child. The primary purpose of ASFA was to reduce the time children spent in foster care and set time frames by which states made "reasonable efforts" to reunify children with their families.

Act 271, SLH 1999, amended Chapter 587, HRS, adopting recommendations by a legislatively led child protection work group and added provisions to strengthen collaboration between entities. In addition, Act 271 further clarified the police authority to assume protective custody without a court order in cases of imminent harm.

In 2010, Act 135 enacted Chapter 587A, HRS, aligning Hawaii's law to ASFA and repealing Chapter 587, HRS. Amongst other things, Act 135 reiterated that the child's needs are paramount. Act 135 maintained the police authority to assume protective custody without

a warrant. A cross-sector work group led by the Family Court did the work to align Hawaii's law with ASFA.

Section 587A-8, HRS, remains in its 2010 original form, and this may be the first significant revisit of the police's authority to assume protective custody without a warrant. In addition, Act 96, SLH 2016, made technical amendments to section 587A-9, HRS, to align it with other substantive amendments. Thus, DHS agrees that a working group is convened to thoroughly vet and address these sections and identify processes and resources required to ensure children's safety remains paramount while considering parents' concerns.

The ATG's testimony described some issues with preparing the necessary documentation to obtain a court order on Hawaii island. Of note is how to improve real-time information-sharing amongst agencies to gather relevant information to support timely decisions to protect a child's safety. DHS is currently working to modernize its child welfare information system so that its internal data systems are comprehensive, can collect and share data, and are easier to navigate and use. However, the Family Court still requires paper filing and wet signatures in child welfare cases.

DHS has budget requests for appropriations to support its IT effort to develop a comprehensive child welfare information system (CCWIS). However, the interagency processes and information-sharing agreements are also necessary work that requires time, funding, and human resources.

A working group that includes legislators, the Judiciary, local law enforcement agencies, ATG, DHS, and a community component will be beneficial to develop an efficient and consistent statewide process to obtain court orders when necessary. The working group will likely require an appropriation to facilitate the work.

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



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

Committee on Health and Human Services

Senator Joy A. Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair

Monday, January 30, 2023 at 1:00 p.m.
State Capitol, Conference Room 225 & Videoconference

by:

Jessi L.K. Hall
Judge, District Family Court
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 407, Relating to Child Protection.

Purpose: Establishes a definition for "immediate harm" and amends the definition of "imminent harm" for the purpose of the Child Protective Act. Requires a police officer who assumes protective custody of a child who is subject to immediate harm while in the custody of the child's family to provide a written report detailing the observations justifying the immediate removal to the Department of Human Services within twenty-four hours of assuming custody of the child.

Judiciary's Position:

The Judiciary takes no position on this bill. We offer these observations that may assist the committee in its deliberations.

The law evolves with time and with emerging constitutional considerations. There are a number of bills in this session, like this bill, taking forward steps to bring otherwise good laws in closer alignment with emerging and equally important trends.

This bill seeks to balance constitutional requirements with child safety. Its approach is



sound. Basically, it allows the police to fulfill one of their primary civic responsibilities—to protect a person in danger. The bill also provides good guidance to the considerations of constitutional privacy interests and due process.

This is an important first step to minimizing what could be unnecessary abrupt removals of children from their homes. Research is clear that removals, including necessary ones, are harmful to children. The psychological and emotional harm is real and must always be considered throughout the children’s contact with a system meant to protect them.

We also offer more specific observations.

The amendment on page 1, from line 5, could be clarified. It now reads:

""Immediate harm" means an active, present danger to a child that is observable **and documentable**, and that, without **instant** intervention, there is **probable** cause to believe that **continued contact with the child's family** will result in serious harm to the child in the time it would take **to obtain a court order.**" (bold added)

The word “documentable” may not be necessary and could be deleted without detracting from the definition. Police work requires a lot of documentation, but it is not the ability to document a fact that affects their actions. Further, “documentable” is ambiguous. It may not be relevant. Police are trained to deal with observable facts and evidence in the field. We must avoid requiring any unnecessary consideration of whether what they see/hear/smell/touch is “documentable.”

“Instant” could be another confusing word and adds an unnecessary burden on the police. A more practical (and, therefore, safer) word might be “immediate.”

“Probable” cause is a criminal law concept. In a situation when we expect the police to act protectively, “reasonable” may be a better measure. Furthermore, “reasonable cause to believe” is already defined in §587A-4 (“Reasonable cause to believe” means the degree of proof that would cause a person of average caution to believe the evidence is reasonably trustworthy.”).

“Continued contact with the child's family” can be deceptively simple. In fact, it may require much more “investigation” than is necessary or possible at the time. For example, how (and who) would define “family” in a specific confusing situation? Deleting the phrase will add clarity.

“Obtain[ing] a court order” is confusing (e.g., what kind of court order and how would it be obtained). The existing statute already allows a quick remedy. A petition filed by the Department of Human Services (“DHS”) requires a temporary foster custody hearing to be held



“within two days after the petition is filed, excluding Saturdays, Sundays, and holidays.”
H.R.S. §587A-12(c)(1).

The redacted version of this definition would read:

""Immediate harm" means an active, present danger to a child that is observable [~~and documentable~~], and that, without [~~instant~~] immediate intervention, there is ~~probable~~ reasonable cause to believe that [~~continued contact with the child's family will result in~~] serious harm to the child will result in the time it would take to obtain a court order pursuant to §587A-12."

Without the Ramseyer format, it would read:

""Immediate harm" means an active, present danger to a child that is observable, and that, without immediate intervention, there is reasonable cause to believe that serious harm to the child will result in the time it would take to obtain a court order pursuant to §587A-12."

To accommodate the purposes of this bill, the following changes are necessary.

§587A-12(b) currently states:

(b) If the court determines that the child is subject to imminent harm while in the custody of the child's family, the court shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody of the child.

but should read:

(b) If the court determines that the child is subject to [~~imminent~~] immediate harm while in the custody of the child's family, the court shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody of the child.

§587A-26 currently states:

[§587A-26] Temporary foster custody hearing. (a) When the department assumes temporary foster custody of a child and files a petition pursuant to this chapter, the court shall conduct a temporary foster custody hearing within two days after the petition is filed, excluding Saturdays, Sundays, and holidays. The purpose of a temporary foster custody hearing is to determine whether a child's safety continues to require protection prior to



Senate Bill No. 407, Relating to Child Protection
Senate Committee on Health and Human Services
Monday, January 30, 2023 at 1:00 p.m.
Page 4

an adjudicatory determination at a return hearing.

but should read:

[§587A-26] Temporary foster custody hearing. (a) When the department assumes temporary foster custody of a child or seeks to assume temporary foster custody and files a petition pursuant to this chapter, the court shall conduct a temporary foster custody hearing within two days after the petition is filed, excluding Saturdays, Sundays, and holidays. The purpose of a temporary foster custody hearing is to determine whether a child's safety continues to require protection prior to an adjudicatory determination at a return hearing.

This bill is slated to take effect upon approval. We respectfully suggest that the committee inquire of the police departments whether there is a need for a later effective date of a few months to enable adequate initial training on this change.

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



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

ON THE FOLLOWING MEASURE:

S.B. NO. 407, RELATING TO CHILD PROTECTION.

BEFORE THE:

SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Monday, January 30, 2023 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 225

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

Chair San Buenaventura and Members of the Committee:

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

The purpose of the bill is to amend the Child Protective Act (CPA) to (1) establish a definition for "immediate harm"; (2) amend the definition of "imminent harm"; (3) limit a police officer's ability to assume protective custody of a child to situations where there is no time to obtain a court order and other criteria are present; and (4) establish requirements for the initial police report.

The Department has concerns with the bill and recommends that it be amended to establish a task force to design and implement a process for obtaining court orders for protective custody, as well as to propose coordinating legislation for future consideration. The reasons for our concerns follow.

The Third Circuit, Hawai'i County, is the only judicial circuit in the State where there is a process in place to obtain a court order for protective custody. In the Third Circuit, the Department of Human Services (DHS) can file an ex parte request for an order for temporary foster custody and an order for the Hawai'i County Police Department to secure protective custody of a child. Unfortunately, this process can be quite lengthy, and involves paperwork at many levels within the DHS and the family court before a court order is obtained, and during that time, a child who has been

assessed by the DHS to be subject to imminent harm must remain in the care of his or her parents.

The lengthy steps in the Third Circuit process and the absence of an existing process in all other parts of the State lead to many unanswered questions about what the process should be and what resources would be necessary for implementation. Questions include: Will the police or the DHS initiate the request for an order for protective custody? What are the standards of proof and requisite findings for the family court to issue an order? What evidence is necessary to support those findings? Can a request be made verbally, or must it be made in writing? Will a judge and court staff be on call to receive a request outside of regular business hours? If so, is it necessary to appropriate funds for staffing? Will the court order be available via a paperless system, or will the order have to be signed and delivered to the police in hardcopy?

Because there are multiple agencies that will have to work in concert to design and implement an efficient statewide process to obtain court orders for protective custody, the Department recommends the formation of a task force to include all essential agencies, including but not limited to, the Department, the Judiciary, the DHS, and each county police department. The consequence of an inefficient or inconsistent process may be a negative impact on the safety of abused children.

If this Committee is not inclined to establish the recommended task force, the Department recommends specific amendments to the bill as follows.

In section 1, on page 1, line 7, "probable" should be replaced with "reasonable." The wording "probable cause to believe" is not used in the CPA. "Reasonable cause to believe" is used in the CPA and is already defined in section 587A-4, Hawaii Revised Statutes (HRS). "Reasonable cause to believe" is also the standard used in *Rogers*.¹

Section 1, on page 1, line 11, through page 2, line 2, provides an amendment to the definition of "imminent harm." However, the use of "imminent harm" is not limited to the taking of protective custody without a court order, which is the focus of this bill.

¹The United States Court of Appeals for the Ninth Circuit has held that the government cannot remove children from the care of their parents without a court order unless there is "reasonable cause to believe that the child is likely to experience serious bodily harm in the time that would be required to obtain a warrant." *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007).

"Imminent harm" is used in multiple other parts of the CPA, including as a basis for the DHS to conduct an investigation under section 587A-11, HRS, and as the basis for the court to order a child to remain in temporary foster custody pursuant to section 587A-26(c)(2), HRS. Amending the definition of "imminent harm" may have unintended consequences in other parts of the CPA. Therefore, the amendment to the definition of "imminent harm" should be deleted from the bill. If this Committee decides to move forward with the amended definition, the Department recommends that a specific timeframe be added to the amended definition. As it is written, the amended definition could include harm that will occur well beyond the ninety days that is specified in the current definition of "imminent harm."

We respectfully ask this Committee to amend this bill to establish the recommended task force. If this Committee chooses to pass this bill as written, we ask that it do so with the recommended amendments.

Thank you for the opportunity to present our comments.

SB-407

Submitted on: 1/28/2023 12:05:57 PM

Testimony for HHS on 1/30/2023 1:00:00 PM

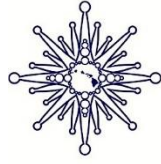
Submitted By	Organization	Testifier Position	Testify
Marilyn Yamamoto	Testifying for Hawaii Coalition for Child Protective Reform	Oppose	Written Testimony Only

Comments:

Committee members,

The Hawaii Coalition for Child Protective Reform opposes this bill.

The amendments in the definitions section are from last year's SB2416 which would have caused confusion for the department or the police on a decision to remove a child without a court order in HRS587A-8. Both Black Law and Webster's dictionaries define Imminent and Immediate in nearly the same way. A bill that has been introduced to the legislature clearly defines Imminent Harm with the specific requirements for warrantless removals that comport with 4th amendment case law in the 9th Circuit.



HAWAII COALITION
FOR
CHILD PROTECTIVE REFORM

Date: Jan 29, 2023

To: Senate Committee on Human Services

Chair: Senator Joy San Buenaventura

Vice Chair: Senator Henry Aquino

RE: OPPOSE SB407

SB407 is unclear and imprecise in its attempt to separate the definition of “Immediate” and “imminent,” harm. It is imprecise in that it doesn’t accurately use the language in the context of an event. In most events involving, “immediate” and “imminent,” danger the two **co-exists**, in that an event can happen at the same time and in the same place, **simultaneously**.

Police policies and procedures are already well established regarding “immediate” removal of any persons who are in “imminent,” danger or harm. Equally, police policies and procedures also determine that any person in “imminent” harm or danger will be “immediately” removed.

The intent of SB407, to separate this wording of “immediate” and “imminent,” harm is unclear. The need to separate this wording is unrealistic and impractical since “immediate” and “imminent” harm often **co-exists** and can happen **simultaneously**.

SB407 is needless. Please Oppose SB407

Thank you for your time and consideration.

Nonohe Botelho, MSCP

Independent Consultant/ Victim Advocate

Hawaii Coalition for Child protective Reform

SB-407

Submitted on: 1/28/2023 5:48:40 PM

Testimony for HHS on 1/30/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
cheryl B.	Individual	Support	Written Testimony Only

Comments:

SUPPORT

And police officers **MUST** be trained on how to respond, given practice understanding these situations and be ready to protect the child as well as everyone else involved. The level of trust for police officers needs to increase for this to work as you are writing.

SB-407

Submitted on: 1/29/2023 12:58:17 PM

Testimony for HHS on 1/30/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michelle Lelle	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha, I am one of the founding members of Hawaii Coalition For Child Protective Reform. I am also a victim of a grab and go that illegally occurred in 2021. The governor, Cathy Betts, Joseph, Campos, and 100% of the administrative team and child welfare services is familiar with the case that involves my special needs child and all of the abuses that occurred while under their illegal custody. My child was taken from my home while I was partially nude changing in my bedroom. The child welfare services agent, Charles Chacon did not have a court order, he did not have police, he did not have a warrant, and I did not voluntarily submit to the removal. Less than two weeks later, I was granted a temporary guardianship of another child by the same supervisor at child welfare services named Leslie Armstrong, who had approved the removal of my child, despite the constitution, being violated, and despite their being an overabundance of fraud, that I pointed out that they were legally required to change and didn't. To this day, they have not corrected all of the false allegations, perjury and fraud that has occurred in my case that is now closed. Sadly, my son will never return home and it's permanently traumatized by their and grab and go. This opened my eyes to the fact that over 800 children a year are viciously removed in this manner from innocent families. Sadly, once they are in the system, no politician cares enough to investigate. I found this to be true with Josh Green and 100% of the department of health. Therefore laws do need to change so that innocent parents have protections that support the constitution. I care deeply about child welfare reform, but this bill falls short. it is a duplicate bill that also leaves out vital parts to provide protection for families and children that are victimized by the broken system of child welfare services. Cws needs to start following the constitution, but this bill is incomplete. Therefore I oppose it. Instead of this bill, I support everyone hearing and voting for SB 1042 as it more thoroughly addresses the violations against the fourth and 14th amendment of the constitution by the department of health and child welfare services of Hawaii. Please consider that bill instead and provide protections for the 85% of innocent families that have the rights violated every year with illegal searches and seizures.

I urge everyone to go to Hawaii, Civil Beat, and look up John Hill's articles that give actual data to support the facts that prove that child welfare services has become a cash cow for federal funding due to the exploitation of family court powers over families. The of Cws violate the fourth and 14th amendments of the constitution and continue to fill the system traumatized children, and innocent families with, needless warrantless removals. There is an artificial over abundance of children in the system and parents (often poor) that are forced into services by companies for profit that only further extend the needless separation of children from their families.

SB-407

Submitted on: 1/28/2023 8:22:05 PM

Testimony for HHS on 1/30/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Oppose	Written Testimony Only

Comments:

STRONGLY OPPOSE! The situation is bad enough as it is - no one working in or with the child welfare system needs any further confusion or obscurification between the words & definitions of "imminent" & "immediate".