

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2428, H.D. 1, RELATING TO THE CHILD PROTECTIVE ACT.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, February 15, 2024 **TIME:** 2:02 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lynne M. Youmans, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and provides the following comments.

Section 1 of this bill amends section 587A-4, Hawaii Revised Statutes (HRS), to add a new definition for the term "exigent circumstances" and to modify the definitions of "harm" and "imminent harm." Section 2 of this bill amends section 587A-8, HRS, to clarify the authority of a police officer to take protective custody of a minor both with and without an order from Family Court. Section 3 of this bill amends section 587A-9, HRS, to clarify the authority of staff of the Department of Human Services (DHS) to take temporary foster custody of a child without a prior order from Family Court. Section 4 of this bill amends section 587A-11, HRS, to add authority for DHS investigators to obtain an emergency court order for removal of a child from an unsafe home, and provides a procedure to do so. Section 5 of this bill amends section 587A-21, HRS, to clarify the Family Court's authority to issue emergency orders based on relevant hearsay evidence.

The DHS, in cooperation with the federal government, has pursued several new and innovative approaches to keep children with their families and work with families more through voluntary service plans and diversionary programs rather than through court intervention. Despite the success in maintaining children in their family homes

while providing services to address safety risks, the DHS still needs a way to remove children from dangerous situations in some circumstances.

This bill updates and clarifies the procedures for removing children from unsafe homes, with and without court orders. It does so in a way that acknowledges concerns for maintaining family integrity, due process rights of parents in raising their children, and federal case law regarding removal of children from their homes, balanced with the best interests of children in need of protection from abuse. Additionally, the bill creates a process for DHS workers to engage the Family Court early in the investigation of difficult cases and obtain emergency orders from the Family Court for removal of children from their home when necessary for the children's safety. The oversight and input of the Family Court judges in the removal process would better protect the rights of the families involved while still providing for the safety of children.

The Department respectfully requests the following amendments be made to the current draft of the bill. First, the new definition of "exigent circumstances" to be added to section 587A-4 in section 1 of the bill does not contemplate exigent circumstances where temporary foster custody may be necessary to protect children. See page 1, lines 5 to 9. This omission would prevent the DHS from performing its duties as described in chapter 587A, HRS. The DHS, like the police, must make an independent analysis that exigent circumstances exist to warrant the DHS assuming temporary foster custody without a court order. To remedy this issue, we recommend that the definition of "exigent circumstances" be revised on page 1, line 7, in section 1 of the bill to add the phrase "and temporary foster custody" so that the definition would read as follows:

"Exigent circumstances" means that based on specific and articulable evidence, there is reasonable cause to believe that immediately assuming protective custody **and temporary foster custody** of a child is necessary to protect the child from serious harm that is likely to occur before a court order can be obtained.

Second, the following wording added to section 587A-8(a)(3) on page 5, lines 6-11, in section 2 of the bill--"and that based on specific and articulable evidence, there is reasonable cause to believe that immediately assuming protective custody of a child is necessary to protect the child from serious harm that is likely to occur before a court

order can be obtained"--appears to repeat the definition of "exigent circumstances" in section 1 of the bill. For that reason, we recommend deleting the wording on page 5, lines 6-11.

Finally, the amendments to 587A-11(9) in section 4 of the bill, on page 10, line 15, require the DHS to "[f]ile a petition pursuant to section 587A-12" for securing a court order to assume protective custody of a child subject to imminent harm. When a petition is filed pursuant to section 587A-12, HRS, a report is also required to be filed consistent with section 587A-18, HRS. Due to the time limits imposed in the process for this new expedited court order, it may not be possible for DHS to file, contemporaneously with the petition, a report that is consistent with the requirements of section 587A-18, HRS. To clarify the procedure for seeking a court order, we request that section 587A-11(9)(A) be revised to delete the word "immediate" on page 10, line 20, for consistency with other uses of the term "protective custody," and to add an additional new subparagraph (B) to section 587A-11(9) to read as follows (with changes in bold):

- "(9) File a petition pursuant to section 587A-12 and seek an order for protective custody if there is reasonable cause to believe that the child is subject to imminent harm, as follows:
- (A) The department may contemporaneously file an ex parte motion for **immediate** protective custody and the court may issue an order of protective custody without notice and without a hearing;
 - (B) **If a petition is filed contemporaneously with an ex parte motion for protective custody pursuant to this paragraph, the initial reports pursuant to section 587A-18(b)(1) and (2) are not required; provided that the petition and ex parte motion shall be accompanied by a written declaration setting forth the essential facts establishing reasonable cause to believe that a child is subject to imminent harm. The court order regarding the ex parte motion for protective custody shall state the deadline for the department to file reports that comply with section 587A-18(b)(1) and (2);**
 - (C) If the court finds reasonable cause to believe that the child is subject to imminent harm, the court shall issue a written order

that a police officer immediately take the child into protective custody and transfer custody of the child to the department, which will assume temporary foster custody of the child pursuant to section 587A-8(b);

(D) If an order for protective custody is issued under this paragraph, the court shall order that a police officer make every reasonable effort to personally serve the child's parents and any person who has physical custody of the child with copies of the ex parte motion and order; and

(E) After the court rules on the ex parte motion, the case shall proceed pursuant to section 587A-12(c)."

The Attorney General respectfully asks the Committee to pass this bill with the amendments recommended above.



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second Legislature, 2024 Regular Session

House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Thursday, February 15, 2024 at 2:02 p.m.
State Capitol, Conference Room 325 and Videoconference

by:

Matthew J. Viola
Senior Judge, Family Court of the First Circuit

Bill No. and Title: House Bill No. 2428, H.D. 1, Relating to the Child Protective Act

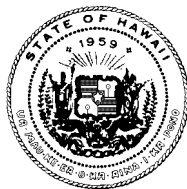
Description: Adds a definition for "exigent circumstances" and amends the definitions of "harm" and "imminent harm." Clarifies when the police may take protective custody of a child and when the department may assume temporary foster custody of a child when exigent circumstances are present. Creates a judicial process for filing a petition for an order for protective custody, including the circumstances where such an order may be issued without notice and without a hearing. Effective 7/1/3000. (HD1)

Judiciary's Position:

The Judiciary supports House Bill No. 2428, H.D. 1. We are grateful to the House Committee on Human Services for incorporating many of our recommendations into H.D. 1. We believe the current version of the bill requires no further amendments.

We thank you for the opportunity to offer testimony on this bill.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'ŌKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'ŌKELE

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

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'ŌKELE

February 15, 2024

TO: The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **HB 2428 HD1 - RELATING TO THE CHILD PROTECTIVE ACT.**

Hearing: February 15, 2024, Time 2:02 p.m.
Conference Room 325, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration measure, offers comments, and defers to the Department of the Attorney General's suggested technical amendments and proposed amendment to section 587A-11(9), Hawaii Revised Statutes, clarifying the information to be submitted with the petition and *ex parte* motion for protective custody. DHS requests the effective date of July 1, 2025, to give the Department, the Judiciary, and law enforcement agencies time to work out processes and procedures to implement these changes and to train staff and providers.

PURPOSE: This measure adds a definition for "exigent circumstances" and amends the definitions of "harm" and "imminent harm." Clarifies when the police may take protective custody of a child and when the department may assume temporary foster custody of a child when exigent circumstances are present. Creates a judicial process for filing a petition for an order for protective custody, including the circumstances where such an order may be issued without notice and without a hearing. Effective 7/1/3000. (HD1)

The Committee on Human Services amended the measure by:

- (1) Removing language concerning the necessity of temporary foster custody in the definition of "exigent circumstances";
- (2) Clarifying that a police officer must have reasonable cause based on certain factors to assume protective custody of a child without a court order in cases of exigent circumstances;
- (3) Amending the circumstances for the Department of Human Services to seek an order for protective custody in cases of a child who is subject to imminent harm by:
 - (A) Requiring the Department to file a petition, rather than a written application, with the court;
 - (B) Authorizing the Department to contemporaneously file an ex parte motion for immediate protective custody along with the petition and giving the court discretion to issue an order for protective custody without notice and a hearing; and
 - (C) Specifying that the applicable custody hearing will proceed after the court rules on the ex parte motion;
- (4) Changing the effective date to July 1, 3000, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

The Department appreciates the Committee on Human Services' amendments incorporating the Judiciary's proposed amendments.

The HD1 adds the definition of "exigent circumstances" to clarify when the police may place a child in protective custody without a court order. The Department requests that this committee reinsert after "custody" (page 1, line 7) "and temporary foster custody" so that the Department may assume temporary foster custody of a child from the police without a court order.

This measure amends the definition of "harm" in section 587A-4, Hawaii Revised Statutes (HRS), to have the same meaning as "child abuse and neglect" defined in section 350-1, HRS. Currently, the two sections are not consistent, and the amendment will provide more clarity that "harm" and "child abuse and neglect" are the same. What is missing from the definition of "harm" in section 587A-4, HRS, is the definition of sex trafficking or severe forms of trafficking in persons listed in section 350-1(2), HRS, as follows:

"The acts or omissions of any person that have resulted in sex trafficking or severe forms of trafficking in persons; provided that no finding by the department pursuant to this chapter shall

be used as conclusive evidence that a person has committed an offense under part VIII of chapter 707 or section 712-1202."

By referring the definition of "harm" in section 587A-4, HRS, to the definition of "child abuse and neglect" in section 350-1, HRS, will ensure that future updates of the definition of "child abuse and neglect" will automatically update in chapter 587A, HRS.

Currently, section 587A-4, HRS, defines "imminent harm" as something that may occur within the next 90 days. That standard may result in children being removed from their homes without a court order more often than is necessary. Removing reference to the next 90 days clarifies the term imminent to its plain meaning of something that is "about to happen." It aims to reduce the intervention of removal unless "no reasonable efforts other than removal of the child from the family home will adequately prevent the harm."

Sections 2 and 3 revise the conditions when a police officer shall assume protective custody of a child and when the department shall assume temporary foster custody of a child and incorporate the determination "that exigent circumstances are present."

Section 4 describes a new process when the department is to seek an order for protective custody when the child is subject to imminent harm. This addition will provide judicial oversight over the Department's decisions to assume temporary foster custody of a child, clarify when the Department may seek an order for protective custody from the court without notice or a hearing, and authorize the family court to review and issue written orders to the police to place a child in protective custody. The Department agrees with the Department of the Attorney General's proposed amendment of section 587A-11(9), HRS, clarifying the information to be submitted with the petition and *ex parte* motion for protective custody.

This bill once passed, will require the Department, police departments, the Department of the Attorney General, and the Judiciary time to develop new policies and procedures. These changes will require training of all impacted agencies and stakeholders. For these reasons, the Department requests an extended effective date of July 1, 2025.

Thank you for this opportunity to provide testimony on this measure.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 • WEBSITE: honolulu.gov

RICK BLANGIARDI
MAYOR
MEIA



ARTHUR J. LOGAN
CHIEF
KAHU MĀKA'I

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE **AP-BT**

February 15, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
The Honorable Mark M. Nakashima, Chair
and Members
Committee on Consumer Protection
and Commerce
House of Representatives
415 South Beretania Street, Room 329
Honolulu, Hawai'i 96813

Dear Chairs Tarnas and Nakashima and Members:

SUBJECT: House Bill No. 2428, H.D. 1, Relating to the Child Protective Act

I am Andre Peters, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 2428, H.D. 1, Relating to the Child Protective Act.

This bill gives the authority and clear direction to police officers when a child should be taken into protective custody based on the readily available facts and circumstances given.

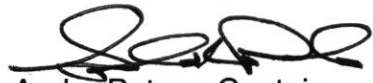
The definition of exigent circumstances encompasses all observable evidence including previous injuries and/or incidents. The officer would be better able to articulate why the immediate removal of the child is necessary based on the totality of the circumstances and not just what is observed at the scene.

The Honorable David A. Tarnas, Chair
and Members
The Honorable Mark M. Nakashima, Chair
and Members
February 15, 2024
Page 2

The HPD urges you to support House Bill No. 2428, H.D. 1, Relating to the Child Protective Act.

Thank you for the opportunity to testify.

Sincerely,



Andre Peters, Captain
Criminal Investigation Division

APPROVED:

For 

Arthur J. Logan
Chief of Police

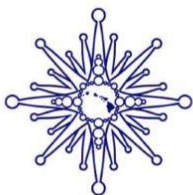
Representative Tarnas and committee members,

The language in this bill does not meet standards of the 9th circuit court rulings on removal of children without a court order. The language cited by the 9th circuit is as follows: visible, specific and articulable evidence occurring at the point of contact with the family that a child is at risk of serious injury or death AND there is no less restrictive alternative that would reasonably and sufficiently protect the child's health or safety. This definition from the 9th circuit court has been placed into state law in Arizona and the Nevada Procedures Manual after successful lawsuits against the state.

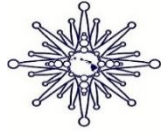
“Reasonable cause to believe” that has no requirement for substantiated specific evidence will not pass muster if a lawsuit is filed against the state.

Reasonable cause to believe is vague and ambiguous, subject to bias and opinion by a single investigator who has not been trained to know 4th and 14th amendment standards. Currently DHS does not implement this training that has been available in California for the last 15 years.

The HCCPR strongly opposes this bill for reasons cited by Honolulu Civil Beat reporter John Hill on the September 25, 2022 piece called “You Need a Warrant” and multiple pieces since then on the same topic.



HAWAII COALITION
FOR
CHILD PROTECTIVE REFORM



HAWAII COALITION
FOR
CHILD PROTECTIVE REFORM

TO: Committee on Judiciary & Hawaiian Affairs
Committee on Consumer Protection & Commerce

DATE: Thursday, February 15, 2024

RE: SB2428

Aloha my name is Nonohe Botelho. I am a member of the Hawaii Coalition for Child Protective Reform. The Hawaii Coalition for Child Protective Reform OPPOSES SB2428 on its merit.

DHS sent the Coalition a draft of this bill in late November and again in January. We were specific that "**reasonable cause to believe**" does not satisfy the protections against seizure under the 4th amendment and it violates the 14th Amendment, the right to due process under the law. It assumes that all social workers are "reasonable," and all reports are truthful and accurate. Within the last year and a half, the Coalition has vetted approximately 20 cases. Of those 20 cases we found 15 that were biased based on gender, national origin and specifically among the Native Hawaiian population. These cases were not given a complete investigation prior to or after removal.

SB2428 will allow the police department to continue to aid CWS to remove children based on "reasonable cause to believe," guesswork, prediction, and implicit bias. It will also aid in furthering trauma to children who are taken from their families based on inaccurate and false reporting.

The Coalition submitted SB2643 and HB2749 for this session (2024). It is accurate and complies with both the 4th, and 14th Constitutional Amendments and adheres to Ninth Circuit Court of Appeals rulings. DHS has been out of compliance with constitutional rights of citizens since 1968. Please do not relent to the DHS and AG version until you have justifiable feedback from civil rights litigators. We received feedback from civil rights litigators and researchers nationwide. Their findings have been published by Mr. John Hill, an investigative reporter for Civil Beat. You can read his reports under his series, "Hawaii vs. Parental Rights."

In closing, the Coalition OPPOSES SB2428 on its merit. We ask that this measure be deferred pending further discussion.

Mahalo,

Nonohe Botelho, MSCP
Independent Consultant/ Victim Advocate

TO: Rep. David A. Tarnas, Judiciary & Hawaiian Affairs Chair
Rep. Gregg Takayama, Vice Chair
Rep. Mark M. Nakashima, Consumer Protection & Commerce Chair
Rep. Jackson D. Sayama, Vice Chair
The honorable members of the JHA-CPC committees

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

DATE: February 15, 2024

RE: Strong OPPOSITION to HB2428

Good afternoon, Chairs Tarnas & Nakashima, Vice Chairs Takayama & Sayama, and all members of the JHA & CPC committees,

Please be made aware that the term “*reasonable cause to believe*” as cited in Page 1 Line 6 does not conform with the last 15 years of 9th circuit court rulings against the state.

“Reasonable cause to believe” means that in light of all the surrounding facts and circumstances which are known, a reasonable person would believe - under those facts and circumstances - that an act, transaction, event, situation or condition exists, is occurring or has occurred.

“Reasonable cause to believe” with known facts is a standard to obtain a court order to remove a child, NOT to remove a child on an emergency basis.

“Reasonable cause to believe” is vague, subjective and *allows for opinion, bias and omission of known facts* to make the decision.

When I used to issue Emergency Detention Orders in an after-hours capacity in the state of Virginia in the 1990s in “harm to self and/or others” circumstances, my supervisor stressed the critical importance of scrutinizing and weighing heavily my determinations before taking the decisive action to ask a judge to hospitalize an individual for his/her own good for 48 hours as this action would temporarily restrain and suspend the individual’s civil rights. 30 years later and still I remember his insistence that an individual’s civil rights in this country was sacrosanct – a concept that’s been completely lost in the child protection work industry which appears more concerned about definitions in the light of lawsuit and litigation containment/prevention.

HB2428 does nothing to protect rights, only interests, and genuine child protection work does not require a dictionary or a glossary of terms. There is a way to achieve a win-win but unfortunately, HB2428 is not the vehicle to bring that about.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate