

**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, RELATING TO THE CHILD PROTECTIVE ACT.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 6, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 329 and Videoconference

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

Chair Marten and Members of the Committee:

The Department of the Attorney General 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 Attorney General respectfully asks the Committee to pass this bill.



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second Legislature, 2024 Regular Session

House Committee on Human Services
Representative Lisa Marten, Chair
Representative Terez Amato, Vice Chair

Tuesday, February 6, 2024 at 9:30 a.m.
State Capitol, Conference Room 329 and Videoconference

by:
Brian A. Costa
Judge, Family Court of the First Circuit

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

Description: Adds a definition for "exigent circumstances;" amends the definitions of "harm" and "imminent harm;" clarifies when the police may take protective custody of a child; clarifies when the department may assume temporary foster custody of a child; creates a judicial process for orders for protective custody.

Judiciary's Position:

The Judiciary respectfully requests the Committee defer this bill.

We refer this Committee to SB2245, considered by the Senate Committee on Health and Human Services on January 31, 2024, and passed out with amendments. The changes suggested by the Judiciary, as well as by the Attorney General, were adopted by the Senate committee. There is no House companion bill to SB2245.

Both this bill and SB2245 attempt to prevent the unnecessary removal of children from their parents. They both seek to balance child safety with the liberty interests of the child and the child's family in two major categories. In the first category, police officers are authorized to assume immediate protective custody if serious harm to the child may occur before a court order can be obtained. The second category occurs during the investigation of a case by the Department of Human Services (DHS). absent exigent circumstances, both bills allow DHS to seek court action.



However, new language at page 10, from line 14 of this bill thwarts an important policy behind this bill; that is, to obtain court review and approval before removing a child absent exigent circumstances during an investigation of a case. While SB2245 requires DHS to file a court petition for temporary foster custody before seeking a court order for removal of a child during an investigation, this bill, HB2428, does not require the filing of a petition; it merely requires an undefined “written application by the department,” which can be granted “without notice and without a hearing.” Moreover, the proposed language in HB2428 lacks any requirements about what information would be included in the application.

The Judiciary’s fundamental and serious concern with this bill is that it does not require DHS to file a court petition at the time it seeks an ex parte order from the court directing the police to remove children from their homes.

There is no cogent reason to allow such a request absent a petition during an investigation. A petition is necessary. It allows the court to invoke its jurisdiction and provides critical information to the court and parties, including the circumstances requiring the removal of a child and whether reasonable efforts were made to prevent removal. It triggers the court’s obligation to appoint counsel for indigent parents and to set a hearing within 2 days.

Furthermore, when exigent circumstances exist, the DHS can seek immediate police assistance. If exigent circumstances do not exist, DHS can file a petition and contemporaneously request protective custody. See Hawai‘i Revised Statutes (HRS) 587A-12.

Operationally, it makes sense to require the filing of a petition. Presumably, since this is during the investigation of a case, the DHS would have already gathered facts about why the child faces imminent harm and thus removal from the home is necessary. These facts would have to be provided in support of a request for the court to order the police to take a child into protective custody to allow the court to make an informed decision whether to grant the request.

Additionally, HRS §587A-9 currently requires a petition to be filed within 3 working days after the DHS assumes temporary foster custody unless the child is returned or an agreement is reached for voluntary foster placement. We note that DHS may file a petition sooner than 3 days post-removal. With at most a 3-day difference, it is therefore reasonable to require the filing of a petition at the time DHS seeks protective custody. As the Ninth Circuit noted in the *Demaree v. Pederson*: “Here, the parties agree that the juvenile court was not open on Labor Day weekend, when the events in this case occurred. We therefore consider imminence of harm in terms of days rather than hours.” 887 F.3d 870, 884 (9th Cir. 2018) (per curiam) (footnote omitted). In the face of alleged imminent harm, requiring a petition to be filed is reasonable at the time of applying for protective custody.

Finally, we note that the Honolulu Police Department testified in favor of SB2245 because it allows them to do their job.



For all the reasons stated, we respectfully ask that this Committee defer action on HB2428. If the Committee decides to refer the bill on, we respectfully recommend the following changes to its current language as follows:

Recommendation #1, page 1, from line 5:

"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. [~~pursuant to section 587A-11(9)~~]

Reasons: The police are empowered to take protective custody but not temporary foster custody.

There is no need to describe *how* a court order is obtained when *no* court order is required. This will also avoid unintended consequences should there be subsequent amendments to section 587A-11(9). In any case, referring to the new section 587A-11(9) is incorrect. The new section 587A-11(9) comes under the section regarding the DHS powers during an investigation.

Recommendation #2, page 4, from line 3, to page 5, line 2:

§587A-8 Protective custody by police officer.
(a) A police officer shall assume protective custody of a child
...
(3) Without the consent of the child's family and without a court order if, in the discretion of the police officer, the officer determines that exigent circumstances are present 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.

Reasons: As noted above, the proposed definition of "exigent circumstances" is problematic. Police officers deserve better statutory direction. We believe that inserting some of the proposed text under "exigent circumstances" into this section will provide that better statutory direction.



Recommendation #3, page 10, from line 14:

(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) ~~Court orders under this paragraph may be obtained upon written application by the department, without notice and without a hearing; 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 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 then assume temporary foster custody of the child pursuant to section 587A-8(b);

(C) 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 ~~application~~ ex parte motion and order; and

...

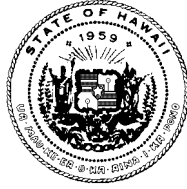
(D) ~~If the department assumes temporary foster custody of the child pursuant to an order for protective custody under this paragraph, it shall proceed in accordance with section 587A-9(b)~~ After the court rules on the ex parte motion, the case shall proceed pursuant to Section 587A-12(c).

Reasons: These changes were adopted by the Senate Committee on Health and Human Services at the recent hearing on SB2245 and would therefore make this bill consistent with the comparable section in SB2245. Further, as noted above, requiring a petition will better promote the policies of this bill. A petition must be filed if a court is asked to invoke its jurisdiction and make an extraordinary order of taking custody of a child without notice and without a hearing. And requiring an ex parte motion rather than a "written application" is more appropriate since these are judicial proceedings.

In conclusion, the Judiciary respectfully requests that this Committee defer HB2428 in favor of addressing this important issue through SB2245. If the Committee decides against this, then the Judiciary respectfully requests adoption of its recommendations.

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

TRISTA SPEER
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

February 5, 2024

To: The Honorable Representative Lisa Marten, Chair
House Committee on Human Services

FROM: Cathy Betts, Director

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

Hearing: Tuesday, February 6, 2024, 9:30 a.m.
Conference Room 329, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration measure and offers comments.

PURPOSE: The purpose of this bill adds a definition for "exigent circumstances;" amends the definitions of "harm" and "imminent harm;" clarifies when the police may take protective custody of a child; clarifies when the department may assume temporary foster custody of a child; creates a judicial process for orders for protective custody.

The bill adds the definition of "exigent circumstances" to clarify when the police may place a child in protective custody without a court order and when the Department may assume temporary foster custody of a child 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.

This bill will require the Department, police departments, the Department of the Attorney General, and Family Court time to develop new policies and procedures. These changes will require training on the new policies and procedures for all affected departments, including parents.

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The Department requests an extended effective date to develop policies and procedures and ensure all staff and the community receiving training on the new definitions and processes.

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

TO: House of Committee on Human Services and Judiciary and Hawaiian Affairs

FROM: Noelani Lommasson

DATE: February 6, 2024

RE: Testimony in support to HB 2428

LATE

To whom it may concern,

Aloha. My name is Noelani Lommasson. I am a graduate student in social work at the University of Hawaii at Manoa. As a social worker in the Child and Family specialization, with several cohort students working for the Department of Human Services, the encounters and discussions of child abuse or neglect is prominent. Child safety is just as important in these discussions and in interventions. With that being said, I am writing this testimony **in support** of HB 2428.

I find this bill favorable for several reasons. Firstly, I believe it is valuable that the process of taking protective custody provides clear instructions and duties of the Honolulu Police Department (HPD). There are often too many cases where a child is left in a home that is unsafe for them, and because of that they end up hurt even more when it could have been prevented. I find it also valuable that the HPD may work alongside the Department of Human Services (DHS) in assessing the family situation, child safety, taking custody or temporary foster custody. While the HPD and DHS may already work together in various situations, this bill is reinforcing the partnership between them in order to best assist children and family safety. This bill is also favorable because it requires the HPD to “make every reasonable effort to inform the child’s parents of the actions taken” as stated in Section 587A-9. This will allow transparency between parents/ legal guardians and the HPD. Additionally, there is accountability for the HPD to report and provide evidence as reasoning for filing temporary custody, requiring them to relinquish custody within three days. This requirement enforces HPD’s duties to provide concrete evidence of the actions taken or reasoning why they may believe the home is unsafe. If sound evidence is not found, the child can be returned to the home, just as it is DHS’s goal to reunite the family.

While I stand in support of this bill, I believe it is important to consider having HPD officers receive training about observing the signs of imminent danger in accordance with the shared definition of imminent danger between DHS and the judicial system. Additionally, they must understand the potential positive and negative consequences in taking protective custody or temporary foster care. Being taken away from their caregiver is a traumatic experience for a child. Especially if they already experience abuse, neglect, or traumatic events. Since the HPD already will be working more with DHS, this would be another opportunity for HPD to collaborate with the DHS by getting trained from DHS about removal of a child(ren), signs of child abuse, domestic violence, etc. This will also allow HPD and DHS to be on the same level of understanding about the process of taking protective custody. This training will allow the HPD

to have the knowledge, skills, and better awareness in assisting the child(ren), discuss with the parent(s), and the process in its entirety.

HB 2428 is being presented for the purpose of better clarifying the process of taking custody of a child by HPD officers. I find this bill to be valuable because of the transparency with the parent(s), requirement of evidence by police officers, clear process with the court, collaboration with DHS, and most importantly the goal of a child's safety. For these reasons, I support the passing of HB 2428.

Mahalo for your time and this opportunity to testify.

Noelani Lommasson.