



**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. 2555, 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
Erin K. S. Torres or Julio C. Herrera, Deputy Attorneys General

Chair Marten and Members of the Committee:

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

This bill amends the definition of "aggravated circumstances" to include when a parent has committed family violence, and it adds a requirement for a primary aggressor assessment in service plans under the Child Protective Act (CPA).

The Department has concerns about the amended definition of "aggravated circumstances" in section 587A-4, Hawaii Revised Statutes (HRS), on page 2, lines 5 through 7. This amendment would make many, if not most, CPA cases fall under "aggravated circumstances." Pursuant to 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. Thus, the amendment would effectively circumvent the goal of addressing safety issues and reunifying children with their families in many 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, and with timely and appropriate service or permanent plans to ensure the safety of the child" See section 587A-2, HRS.

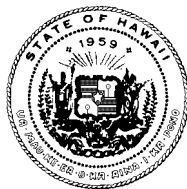
This amendment may also be subject to constitutional challenge as violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution or article 1, section 5, of the Hawaii State Constitution. Parents have a fundamental right to make decisions about the "care, custody, and 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 Haw. 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 Haw. 323, 335, 172 P.3d 1067, 1079 (2007) (citing *Conaway v. Deane*, 401 Md. 219, 932 A.2d 571, 603 (2007)). Immediately moving to terminate parental rights in all cases in which a parent has committed family violence may not be found to be the "least restrictive means" for accomplishing the State's compelling interest in ensuring child safety because it prevents the families from having any opportunity to address their identified safety concerns. Therefore, the Department recommends deleting the amendment to the definition of "aggravated circumstances" on page 2, lines 5 through 7.

The Department also requests clarification regarding the intent of the amendment to section 587A-27(a), HRS, to add a new paragraph (8), on page 4, lines 3 through 9. The amendment appears to focus on prioritizing the identification of the primary aggressor in cases of family violence, but it is unclear why such an assessment is needed or how it is intended to impact the services that are provided to a family. Section 587A-27(a)(1), HRS, already requires that service plans "shall include treatment and services that will be provided, actions completed, specific measurable and behavioral changes that must be achieved, and responsibilities assumed." Thus, service plans are already required to include treatment and services for all perpetrators of family violence, regardless of whether they are the primary aggressor or not. The Department recommends that the amendment on page 4, lines 3 through 9, be amended so that it clearly states its intended purpose.

If this Committee chooses to pass this bill, we ask that it make 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'ŌKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'ŌKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
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TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'ŌKELE

February 4, 2024

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

FROM: Cathy Betts, Director

SUBJECT: **HB 2555 – RELATING TO THE CHILD PROTECTIVE ACT.**

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

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

PURPOSE: The bill amends the definition of "aggravated circumstances" under the Child Protection Act. It requires a service plan to include an evaluation or assessment of parents, including a primary aggressor assessment, by a professional with domestic violence training in cases of family violence.

DHS appreciates that the Legislature is concerned with the environment that children experience in homes when their families are experiencing domestic violence. The amendment on page 2, lines 5-7, proposes to include "family violence" as an "aggravated circumstance" in a child protective case. Section 571-2, HRS, defines "family violence" as follows:

"Family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

- (1) Attempting to cause or causing physical harm to another family or household member;
- (2) Placing a family or household member in fear of physical harm; or

- (3) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress."

Including this definition in child protective cases may have unintended consequences of resulting in the termination of parental rights without first offering families services and an opportunity to attempt rehabilitation.

In Child Protective Act cases, when a court makes a finding of "aggravated circumstances," pursuant to section 587A-28(e)(4)(A), HRS, "the court shall:

- (i) Conduct a permanency hearing within thirty days, and the department shall not be required to provide the child's parents with an interim service plan or interim visitation; and
- (ii) Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to terminate parental rights unless the department has documented in the safe family home factors or other written report submitted to the court a compelling reason why it is not in the best interest of the child to file a motion."

In some instances, when the Court makes findings of "aggravated circumstances" against one or both parents, DHS may still provide the family with a service plan so parents can begin to address the underlying issues that brought them to the attention of child welfare services.

The policy and purpose of the Child Protective Act as stated in section 587A-2, HRS, in part as:

"The policy and purpose of this chapter includes the protection of children who have been harmed or are threatened with harm by:

- (1) Providing assistance to families to address the causes for abuse and neglect;
- (2) Respecting and using each family's strengths, resources, culture, and customs;
- (3) Ensuring that families are meaningfully engaged and children are consulted in an age-appropriate manner in case planning;
- (4) Enlisting the early and appropriate participation of family and the family's support networks;
- (5) Respecting and encouraging the input and views of caregivers; and
- (6) Ensuring a permanent home through timely adoption or other permanent living arrangement, if safe reunification with the family is not possible."

The amendment on page 4, lines 3-10, proposes to require a determination of who the primary aggressor is in cases involving "family violence" as defined by section 571-2, HRS.

February 4, 2024

Page 3

However, if "aggravated circumstances" is amended as proposed in Section 1, DHS may not necessarily have to include a service plan or an assessment of the parent or parents' needs if they are the primary or secondary aggressor since DHS is not required to make reasonable efforts to reunify in cases involving "aggravated circumstances." However, currently, in cases that involve family violence – whether there is a judicial finding or not, a referral for an assessment and identified services are provided to parents regardless of the aggressor.

Thank you for the opportunity to provide additional comments.

HB-2555

Submitted on: 2/3/2024 10:41:24 AM

Testimony for HUS on 2/6/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Marilyn Yamamoto | Individual | Support | Written Testimony Only |

Comments:

Representative Marten and committee,

I support this Bill.

LATE

HB-2555

Submitted on: 2/5/2024 2:25:33 PM

Testimony for HUS on 2/6/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|--------------------------|--------------|--------------------|------------------------|
| Dr. Nicole Kau'i Merritt | Individual | Support | Written Testimony Only |

Comments:

Aloha Committee Members,

I am writing in strong support of HB2555 as the cousin of a domestic violence victim and her twin children who were left in the care of their homeless, abusive, drug-addicted father for a year and a half due to the negligence and incompetence of the Child Welfare System as well as an epidemiologist with nearly 20 yeas of specific expertise in the historical and cultural determinants of Native Hawaiian health disparities.

Following years of horrific abuse, my cousin died by suicide in April 2021. Over the course of the following two months her twin children began to reveal just how awful their lives had been at the hands of their father over the previous two years when he isolated my cousin and the children during the height of the COVID-19 pandemic. Multiple family members collected and organized evidence of abuse against the children and all reported this evidence directly to CWS during the summer of 2021. CWS repeatedly said that we didn't have enough evidence to have the children removed from their father until August 2021 when the children both reported suicidal ideation at the thought of going back to their father. At this point, CWS removed the children and placed them into temporary foster care before returning them to their father 60 days later. During this time CWS did not respond to calls or emails from concerned family members (as we did not even know where the children were) and did not contact the multiple family members who were interested in becoming resouce caregivers for the children. A few weeks ago I told one of the children that I had written them once a week during those 60 days and asked if he had received any of them. He answered in the negative and, in fact, had overheard the CWS worker telling the children's father that he had thrown away multiple letters addressed to the children from family members and that the CWS worker "laughed about it."

The children were returned to their father in October 2021 and endured nearly 18 more months of physical, verbal, and emotional abuse and medical and educational neglect along with periods of homelessness. Children such as my cousin's twins and countless others have suffered excess abuse and even death while Director Cathy Betts and CWS stonewall any efforts at accountability. Although the children have been safely placed with their grandparents since May of this year, our family is anxiously awaiting a decision about the fate of guardianship of the children and the status of their father's parental rights. This anxiety is heightened by the near total lack of transparency, accountability, and communication from CWS.

The absolute incompetence and indifference that Ms. Betts and her staff have towards Native Hawaiian children is steeped in institutional racism by upholding policies that do not protect these most vulnerable of individuals. In addition to perpetuating generations of historical trauma, the lack of strong laws demanding accountability from CWS sends a message directly to these children that their lives do not matter when they are sent back to unsafe environments. The trauma experienced by these children will not only impact them throughout the course of their lives through physical, emotional, and behavioral mechanisms, but also impacts the wider community that they belong to. My own son and three other cousins have been deprived of years of relationships and potentially many more if the children are returned to their father. This is a pain that will remain with my family, not just for years or decades, but for generations. When this pain is multiplied time and time again with each family that has been torn apart by violence, abuse, and CWS' incompetence, our community now has a gaping wound that needs to be healed. HB2555 will add a layer of extra protection to some of the most vulnerable members of our community, but also has the potential to mitigate at least a proportion of the historical and generational trauma that burdens the Native Hawaiian community.

Me ka 'oia i'o,

Nicole Kau'i Merritt, ScD, MPH, MA

LATE

HB-2555

Submitted on: 2/5/2024 2:37:28 PM

Testimony for HUS on 2/6/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Jackie Hong | Individual | Support | Written Testimony Only |

Comments:

I support House Bill 2555: As a Retired social worker of 40+ years I have witnessed the devastation of domestic violence on many families. But, until it happened in my personal family and resulted in the suicide of my niece who left behind two beautiful children, did I personally experience the emotional and psychological effects of domestic violence. Workers in child welfare need to be trained to evaluate and assess whether a family has been exposed to this personal violence. Treatment plans should note this and services planned accordingly. No children should be returned to the abusive parent, like my minor niece and nephew were. The abuse plummeted on their mother, continued on these children who suffer deep emotional and physical abuse all their lives. Child welfare workers and supervisors didn't pay attention to family members and did not check police reports. The CW social worker returned children back to abusive, drug addicted father, This in spite of pleas from multiple family members, including myself in written and verbal correspondence. Children had to run away from the father and look for help. The system failed these children. How many more time will these children get victimized by their father and the system, Chikd Welfare needs to clean up their department and management. The Legislature needs to approach this in a more serious manner,

Arent the lives of our children worth something to our community? If so, the please support this bill.