WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024

ON THE FOLLOWING MEASURE:
S.B. NO. 2245, S.D. 1, RELATING TO THE CHILD PROTECTIVE ACT.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 28, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Lynne M. Youmans,
Deputy Attorney General, at 587-3050)

Chair Rhoads 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 definition of "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, 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. The amendments to section 587A-11(9) in section 4 of the bill, on page 8, line 4, 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 8, line 9, for consistency with other uses of the term "protective custody;" to add the phrase "and the court may issue an order of protective custody" to clarify the effect of the ex parte motion; 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 Chair of the Senate Committee on Health and Human Services requested that we comment in this testimony on a provision in a similar bill, Senate Bill No. 3117, an administration measure, to amend the definition of "harm" in section 587A-4, HRS, to have the same meaning as "child abuse or neglect" as defined in section 350-1, HRS. We do not believe there is a constitutional or other legal problem with that amendment, but we also do not believe it is necessary to refer to section 350-1, HRS, to define the term "harm." We understand that DHS may instead seek limited amendments to the definition of "harm" in section 587A-4, HRS, without referring to section 350-1, HRS, to include sex trafficking. The Department supports DHS's decision regarding that proposed change.

The Department respectfully asks the Committee to pass this bill with the amendments recommended above. Thank you for the opportunity to provide testimony in support.

The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second State Legislature
2024 Regular Session

Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Wednesday, February 28, 2024 at 10:00 a.m.
State Capitol, Conference Room 016 & Videoconference

by:
Andrew T. Park
District Family Court Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2245, S.D. 1, Relating to the Child Protective Act.

Purpose: Adds a definition for "exigent circumstances" and amends the definition of "imminent harm" under the Child Protective Act. Authorizes the child's family to consent to protective custody or temporary foster custody of a child. Clarifies the circumstances when police officers shall assume protective custody of a child and when the Department of Human Services shall assume temporary foster custody of a child. Authorizes the Department of Human Services to file a petition and seek an ex parte motion for protective custody if there is reasonable cause to believe that a child is subject to imminent harm. Takes effect 7/1/2025.

Judiciary's Position:

The Judiciary is supportive of the intent of this bill: “This measure adequately balances the need for immediate government action to ensure safety of the child and the due process rights of the child's parents and legal guardians.” Senate Standing Committee Report #2470. We appreciate that S.D. 1 of this bill incorporated the suggested amendments in our testimony to the Committee on Health and Human Services at its February 15, 2024, hearing.

The Judiciary respectfully offers the following recommendations for the consideration by this Committee.

At page 2, from line 9, section 587A-8(a)(3) sets forth the authority of the police to take custody of a child without a court order and without parental consent:

> (3) Without a court order and without the consent of the child's family, if in the discretion of the police officer, the officer determines that [÷
> . . .
> exigent circumstances are present. [page 3, line 3]

We respectfully recommend inserting the following underlined language at the end of the quoted sub-section. Although there is some overlap with the language defining "exigent circumstances", more specificity in this section may be helpful to the police by providing clearer guidance.

> (3) Without a court order and without the consent of the child's family, 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.

The Department of the Attorney General, in their testimony before the House Committee on Judiciary and Hawaiian Affairs on February 15, 2024, asked for the inclusion of the following language in HB 2428 HD1 (a similar bill to SB 2245 but not a companion) for section 587A-11(9) :

> (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);

The Judiciary recognizes the difficulty for the Department of Human Services to generate statutorily required reports in the format they prefer. However, for the reasons stated below, we suggest this alternative to be inserted on page 8, as a new sub-section (B) after line 10.

(B) If an ex parte motion for protective custody is filed contemporaneously with a petition pursuant to this paragraph, the initial reports in section 587A-18(b)(1) and (2) are not required at the time the petition is filed; provided that the ex parte motion shall be accompanied by a written declaration setting forth the facts establishing reasonable cause to believe that a child is subject to imminent harm. The initial reports required by section 587A-18(b)(1) and (2) shall be filed on or before the next hearing date unless required sooner by the court.

Reasons that support our alternative. (1) A motion is filed contemporaneously with a petition and not the other way around since a case is initiated by the petition. (2) The ex parte motion must be supported by a written declaration. The petition itself must be later supported independently with the initial reports required by statute. Conflating the two filings will cause confusion in the record of the case. (3) Rather than ad hoc requests for future report due dates, reports are simply required to be filed on or before the next hearing date or sooner if required by the court.

Thank you for the opportunity to testify on this measure.

Senator Rhoads and committee members,

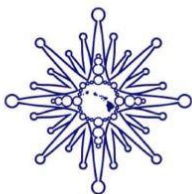
The language in SB2245 does not meet the standards of the 9th circuit court rulings on removal of children without a court order. The language cited by the 9th circuit is as follows: **visible, specific and articulable evidence occurring at the point of contact with the family that a child is at risk 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 was placed into the child protective statute in Arizona and the Nevada Procedures Manual after successful lawsuits against the state.

"Reasonable cause to believe" in this bill has no requirement for substantiated specific evidence that would be dissected in a 4th amendment lawsuit against the state such as RAM v. RUBIN (Hawaii 1997). Reasonable cause to believe by itself is subject to bias and opinion by an investigator who has not been trained to know 4th and 14th amendment standards as is the case in Hawaii.

Note the testimony from the Hawaii Attorney General on SB822 in 2021. "[T]he rights of parents and children to familial association under the Fourteenth, First, and Fourth Amendments are violated if a state official removes children from their parents without their consent, and without a court order, unless information at the time of the seizure, after reasonable investigation, establishes reasonable cause to believe that the child is in imminent danger of serious bodily injury, and the scope, degree, and duration of the intrusion are reasonably necessary to avert the specific injury at issue."

The definition of imminent is "happening right now". The definition of Exigency is "urgent or pressing". To define two similar terms for use by the police and CWS in the context of a child removal is likely to cause unnecessary confusion.

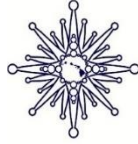
The HCCPR strongly opposes this bill. Honolulu Civil Beat reporter John Hill has pointed out the necessity of bringing Hawaii into compliance with 4th amendment rights in his September 25, 2022 piece called "You Need a Warrant" and multiple pieces since then on the same topic.



HAWAII COALITION

FOR

CHILD PROTECTIVE REFORM



HAWAII COALITION
FOR
CHILD PROTECTIVE REFORM

To: Committee on Judiciary
Chair: Senator Karl Rhoads
Vice Chair: Senator Mike Gabbard

Re: SB2245, SD1
Date: Wednesday, Feb 28, 2024

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 vehemently OPPOSES SB2245 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 search and seizure under the 4th amendment and 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, specifically among the Native Hawaiian population, and false allegations. These cases were not given a complete investigation prior to or after removal.

SB2245,SD1, 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.

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 SB2245,SD1 on its merit. Please defer for further discussion.

Mahalo,

Nonohe Botelho, MSCP
Independent Consultant/ Victim Advocate

SB-2245-SD-1
Submitted on: 2/26/2024 9:05:28 PM
Testimony for JDC on 2/28/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Joshua Franklin	Testifying for Hawaii Family Advocacy Group	Oppose	Written Testimony Only

Comments:

Aloha Honorable Members of the Hawaii Legislative Committee,

As a Family Advocate with over ten years of dedicated service to the families of Hawai'i in the realm of Child Welfare, I have been a firsthand witness to the profound and often devastating impact warrantless removals have on children and their families. I Highly oppose SB 2245 due to its unconstitutionality as "reasonable cause to believe" is subjective and violates basic 4th and 14th Amendment rights. My experience compels me to voice my opposition to practices that not only infringe upon constitutional rights but also inflict deep psychological harm on those they aim to protect.

Throughout my tenure, I have observed a troubling pattern where the specter of bias and prejudicial conduct within Child Welfare leads to negligence, resulting in children being unnecessarily traumatized, and in the worst cases such as Ariel Sellers, Geanna Bradley and others in losing their lives. A significant portion of the cases that come across my desk are, regrettably, custodial disputes that do not justify the removal of children from their homes. Yet, these disputes are often escalated by the department into full-blown interventions, under the guise of protecting children, when in reality, they serve as a form of psychological warfare against families.

Alarmingly, many families find themselves entangled in the Child Welfare system due to baseless claims and the misuse of restraining orders, which are wielded to gain leverage in custodial battles rather than to protect against genuine threats. This manipulation of the system not only diverts resources from children who are truly in need of intervention but also exacerbates the trauma and instability experienced by families caught in the crossfire.

We stand at a crossroads where the need for robust laws to safeguard our children is undeniable. However, this should not come at the cost of dismantling the very foundation of our constitutional rights. The current approach, characterized by warrantless removals and a presumption of guilt against families, is not only unconstitutional but also counterproductive to the welfare of the children it seeks to protect.

It is imperative that we strive for a Child Welfare system that prioritizes the preservation of families, supports due process, and employs removal as a last resort, based on clear and substantiated evidence of harm. We must advocate for practices that empower families, provide

them with the necessary resources to address their challenges, and ensure that children grow up in a safe, loving, and stable environment.

As we move forward, I urge the committee to consider these insights and experiences in shaping legislation that upholds the rights and dignity of our families while effectively safeguarding the well-being of our children. Together, we can forge a path toward a more just, compassionate, and effective Child Welfare system.

Sincerely,

Joshua Franklin
Family Advocate

SB-2245-SD-1
Submitted on: 2/24/2024 2:26:02 PM
Testimony for JDC on 2/28/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dr. Sarah Coultas	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I Oppose SB2245
and hereby submit my Written Testimony:

As a parent and an American citizen, I strongly oppose SB2245 on the grounds that it is unconstitutional. SB2245 is not compliant with findings of the 9th circuit and leaves the State open to more lawsuits from families destroyed and children harmed by this lawless agency.

Warrantless seizure of children without exigent circumstances is a violation of children's 4th amendment rights and parent's 14th amendment rights.

"Reasonable cause to believe" cannot and MUST NOT be used to "redefine" exigency or imminent harm!

Once a child is illegally seized DHS is immediately in an adversarial position against the family in order to support their illegal seizure. Meanwhile the vast agency that is the Child Welfare System, Judiciary, "Service Provider" agencies and attorneys all grow fat from the proceeds while children are harmed (and killed) in the foster system and loving families are destroyed.

Police routinely conduct warrantless seizures on "orders" from DHS employees and the DHS employees point to the police as the investigative authority and likewise DHS points to HPD (police) as the investigative authority. Thereby no proper investigation is ever conducted on the merits of the allegations because DHS and the Judiciary are already positioned against the parents. As it stands a citizen accused of a crime has vastly more protection of their constitutional rights than parents who have lost that which is most precious - their children and the right to protect and care for their ohana without government interference.

Obtaining a WARRANT or COURT ORDER is a constitutional requirement for the seizure of a child from their parents, NOT mere allegations or someone's "reasonable cause to believe." Please review the Constitution before proposing legislation that clearly violates the rights of our citizens.

The Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this nation's history, and even more so in Hawaiian culture and tradition. It is through ohana that we pass down many of our most cherished values, morals and culture, family is the cornerstone of our society. To disrupt the sanctity of ohana without the presence of exigent circumstances, is unconscionable.

To the Honorable Members of the Hawaii Legislative Committee:

I am writing this letter to **OPPOSE** Hawaii SB 2245 and hereby submit my written testimony. I am glad to see that the senate is trying to update these child protection laws. Especially since they admitted in Hawaii SB 1042 (2023) that they are in violation of the 14th amendment. And they admitted in the original Senate memos from the DHS, Judiciary, and Attorney General office in 2010 and 2011 creation of HRS 587A that they did it, in order to gain $50,000,000 in federal funding. And it is wonderful that they are doing this so they come into compliance with Social Security Act Title IV-E funding requirement which clearly state that a State must use federal guidelines in its child protective acts in order to obtain federal funding otherwise that states federal funding is in jeopardy of being cut until the state comes into compliance with federal funding requirements. Because we do need to protect children that actually need protecting. And I am grateful that the Hawaii State Legislature is continuing to try and protect the children of this great state from abuse as do I as a Registered Nurse and mandated reporter Under HRS 350.

However, I believe that this bill is still a violation of the 4th amendment right to not have our children seized without a warrant and before a crime has been committed. And I believe that this bill is also a violation of the 14th Amendment right to both procedural due process and substantive due process. The 14th Amendment clearly states in section 1 that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws."

And the Hawaii State Constitution Article 1, Section 5 clearly states that "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, no be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

I believe that it would be a violation of the procedural due process of the 14th amendment and Hawaii State Constitution Section 1, Article 5, because Social Security Act Title IV-E Section 472 (SSA 472) per Social Security Act Title IV-E Section 471 (SSA 471) as well as the Child Abuse Prevention and Treatment Act 42 U.S.C. Section 5101 – Definitions (CAPTA), all clearly state that before a child can be removed from a home and the 4th and 14th amendment rights as well as the Hawaii State Constitution Section 1, Article 5 rights of a child, a parent, and a household can be justifiably violated that a crime that involves "Serious Bodily Injury" must FIRST occur.

I also believe that it is a violation of the Hawaii State Constitution Article 1, Section 5 and 14th amendment right to substantive due process for violating a child's, a parent, and a household right to "life, liberty, or property" by allowing government overreach and unnecessary governmental intrusion before any actual crime has been committed.

I believe that Hawaii SB 2245 is also in violation of Hawaii Constitution Article 1 Section 5 as well as the 14th amendment right to both procedural and substantive due process because nowhere in the bill does it protect or even mention a child's, a parent's, or a household's rights, and automatically assumes that a police officer, the DHS, the Attorney Generals Office, and the Judiciary have the right to remove a parent's right and illegally take jurisdiction over a family before a crime has been committed per SSA 472, SSA 471, and CAPTA in violation of the above constitutional rights and federal statutes. In doing so I believe that it again violates the above rights because when it places a family within the family court system, that families rights are illegally removed without the ability to be represented by a lawyer in violation of the 5th and 6th amendments, as well as a right to a jury trial in violation of the the 6th amendment which again is a violation of the Hawaii Constitution Article 1 Section 5 and 14th amendment right to procedural due process.

I believe that while the State of Hawaii may try to use "exigent circumstances" as a reason to remove a child, I believe that "exigent circumstances" still falls short of the required justification for the violation of a child's, a parent, or a households Hawaii State Constitution Article 1, Section 5, and 14th amendment right to both procedural and substantive due process. I believe this because "exigent circumstances" are SUBJECTIVE and unless a crime has been committed per the above stated laws then "exigent circumstances" is still not enough to destroy a family without evidence of a crime being committed.

I believe that "Imminent Harm" is a reason to remove a child from a family if and only if that "Imminent Harm" is accompanied by EVIDENCE and or violations of the law other than a subjective "exigent circumstances" in which case then both "Imminent Harm" and "exigent circumstances" both violate a child's, a parent's, and a households right to both procedural and substantive due process unless they are accompanied by EVIDENCE that those conditions are in fact reality and not an opinion which matters not in a court of law and is again a violation of all the above mentioned laws.

I believe that a police officer taking "protective custody" of a minor before a crime has been committed or before any evidence has been presented is an outright violation of all of the above stated laws including the Hawaii State Constitution Article 1 Section 5, 4th, 5th, 6th, and 14th, amendments, SSA 472, SSA 471, and CAPTA.

I believe that the fact that this law then subjects a child, a parent, or a household to investigation by doctor's, state and federal law enforcement authorities, or anyone else without a lawyer, without a jury, and without any evidence that a crime has been committed or that any evidence that "imminent harm" or "exigent circumstances" has occurred is again a violation of the Hawaii State Article 1, Section 4, right to both procedural or substantive due process, the 4th amendment to unlawful seizure of a child, the 5th and 6th amendment right to be represent by an attorney and have a jury trial, the 14th amendment right to "life, liberty, and property" as well as procedural and substantive due process, as well as the state usurping a parent's right to act in the "best interest" of their child before a crime has been committed per SSA 472, SSA 471, and CAPTA, before evidence has been provided, and before the state itself has even followed the law by acting within federal guidelines is pure madness.

Article VI, Paragraph 2 of the U.S. Constitution (Supremacy Clause) clearly states that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. The State of Hawaii will try to explain away what I believe is its violation of the U.S. Constitution as it did on February 7th, 2024, in the State of Hawaii v. Wilson that Public Health and Welfare override the constitution. But I believe the Hawaii State Supreme Court misunderstood that it is the Public Health and Welfare of the entire United States and not just the State of Hawaii that is at stake. While the State of Hawaii will argue that the 10th and 11th amendment gives it the right to enact whatever laws it chooses, Article VI, Paragraph 2 of the U.S. Constitution clearly states that it can only do so if those laws do not override constitutional law. And the 14th amendment clearly states that a state cannot override the U.S. constitution.

In conclusion. I Daniel Robinson believe that the Hawaii State Legislature is trying to do the best it can and "trying" to come into compliance with federal law. And I beg and plead with the Hawaii State Legislature to stop taking our children away under false pretenses and what I believe are illegal, subjective state laws. Our families are more important than federal funding. Instead, become a leader in the country in protecting families and children. Instead, invest in educational resources and counseling for families. Give families daycare and early childhood education so they can work and learn. Give families time to be together by providing strong family and medical leave act laws. Educate families on the need for proper family strengthening mentalities by providing families that do not understand the laws with family advocates. Give those accused of crimes the ability and strength to fight back if they are wrongly accused and or need assistance.

Thank you for your time.

Sincerely,

Daniel Robinson

Karen Worthington, Kula, HI 96790

February 26, 2024

To: Senator Karl Rhoads, Chair, and Senator Mike Gabbard, Vice Chair
Senate Committee on Judiciary

From: Karen Worthington, Private Citizen

Re: **SB2245 SD1:** Relating to the Child Protective Act
Hawaii State Capitol, Room 016 and Videoconference, February 28, 2024, 10:00am

Position: SUPPORT

Dear Senator Rhoads, Senator Gabbard, and Committee Members:

Thank you for the opportunity to provide testimony in support of SB2245 SD1, which amends and clarifies the Child Protective Act to give more precise guidance to law enforcement officers and child welfare services workers regarding when intervention is allowable in a family when a child is alleged to be at risk of harm or has been harmed.

My name is Karen Worthington, and I am a children's law and policy attorney with a consulting business on Maui, Karen Worthington Consulting. I have worked as a lawyer in and around state systems affecting children and families throughout my 30-year career. I am certified as a Child Welfare Law Specialist by the National Association of Counsel for Children.

Please pass SB2245 SD1. While this bill does not go as far as many people would like in clarifying when and how the state can intervene in families, it does make some significant progress.

Many states wrestle with the use of terms like "exigent circumstances," "imminent harm," and "immediate harm" in providing guidance to parents, child welfare services workers, law enforcement officers, attorneys, and the courts about the parameters of state intervention when a child is at risk of or has been harmed. The proposed language in this bill is consistent with the language of many other states' statutes related to emergency removals of children and is more exact than the current language in the Hawaiʻi Child Protective Act.

The changes proposed in SB2245 SD1 provide more exact guidance than our current statutes. The new definition of "exigent circumstances" clarifies that protective custody is allowed when serious harm is likely to occur before a court order could be obtained using the typical court process. The definition therefore provides a clear timeframe during which harm must be likely to occur or else the typical process must be followed. Furthermore, law enforcement agencies are already familiar with the term "exigent circumstances" in other areas of the law, so this wording provides consistent guidance to them.

The change to the definition of "imminent harm" is long overdue in Hawai'i, and the bill includes a practical definition for this. The proposed definition uses the reasonable efforts language from federal law, which is familiar to and understood by CWS, lawyers, and the courts. One item missing from the proposed language is a timeframe for decision-making and intervention. I applaud the removal of "90 days" because that timeframe is inconsistent with the word "imminent." I do not, however, have a suggestion of what timeframe to suggest and would defer to CWS and the judiciary to determine a

timeframe that is consistent with “imminent.” I believe that amending this definition without including a timeframe is an incomplete revision.

While the proposed change is adequate, and I support passage of this bill, I humbly suggest considering the following change, which is consistent with statutes in other states and provides even more guidance to child welfare services workers than the proposed language in SB2245 SD1:

> "Imminent harm" means that [~~without intervention within the next ninety days,~~] there is visible, specific, and articulable evidence ~~reasonable cause to believe~~ that without intervention, harm to the child will occur or reoccur[~~.~~], and no reasonable efforts other than removal of the child from the family home will adequately prevent the harm.”

I do not have specific changes to the remaining provisions in the bill. I urge you to pass SB2245 SD1.

If you would like additional information related to my testimony, please do not hesitate to contact me at karen@karenworthington.com.

Best regards,

Karen Worthington

SB-2245-SD-1
Submitted on: 2/27/2024 9:01:01 AM
Testimony for JDC on 2/28/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
kimberlyn scott	Individual	Oppose	Written Testimony Only

Comments:

Senator Rhoads and Committee Members-
This Bill gives too much power to those who have shown themselves inept at wielding what power they already have (said in reference to the many children that have been abused or died while in the custody of the state or under their supervision).

I do not believe that granting failure less restriction is going to produce success.

The verbiage in the Bill is ambiguous - "... Reasonable cause to believe" will be abused and it will not help the keiki of our state, which is what I believe we are all here to do.

A warrant is the standard and that standard should remain.

Mahalo for your time -

Kimberlyn Scott - Victim Advocate, Maui County

TO: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
The honorable members of the Senate Judiciary Committee

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

DATE: February 28, 2024

RE: **Strong OPPOSITION to SB2245 SD1**

Good morning, Chair Rhoads, Vice Chair Gabbard, and JDC committee members,

A main concern with SB2245 SD1 is the term "*reasonable cause to believe*" which has been expounded upon by other testifiers here today.

As a Domestic Violence (DV) Survivor Advocate, I have approached many in the legislature for assistance throughout the years with some of my more egregious cases which typically involve a DV survivor mom who has faithfully and successfully followed all of the instructions provided to her by the DV service providers, only to have her children removed from her care by a CWS social worker who doesn't have a documented clue (total ignorance) about what DV is all about, which is called ***malpractice***.

I know that my cases aren't the only ones that fall under the malpractice category, as the state gets continually sued for them, and am aware that everyone generally wants to avoid more of the same so I feel compelled to tell you that SB2245 SD1 is not going to achieve that end – in fact, passing SB2245 SD1 may well lead to *more* lawsuits against the state as a review of 9th circuit court rulings will illustrate.

A past supervisor of mine used to stress the critical importance of scrutinizing and weighing heavily my determinations (the opposite of "reasonable cause to believe") before taking any decisive action that would restrict, restrain or suspend an individual's civil rights. 30 years later and still I remember his insistence that *an individual's civil rights in this country is 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. **SB2245 SD1 does nothing to protect children or individual's rights, only professional interests.** Good and genuine child protection work does *not* require a dictionary or a glossary of terms to get the job properly done but *does* require adequate training since lives are actually at-stake. There is a way to achieve a win-win but unfortunately, SB2245 SD1 is not the vehicle to bring that about.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate