



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2245, RELATING TO THE CHILD PROTECTIVE ACT.

BEFORE THE:

SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Wednesday, January 31, 2024 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 225 and Videoconference

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

Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill and offers the following comments.

This bill amends the Child Protective Act (CPA) to (1) add a definition for “exigent circumstances”; (2) amend the definition of “imminent harm”; (3) clarify when the police may take protective custody of a child and when the Department of Human Services (DHS) may assume temporary custody of a child; (4) create a judicial process for the DHS to seek an order for protective custody; and (5) clarify the court’s authority to consider hearsay evidence when making a decision about an order for protective custody.

The Department notes that sections 2 and 3 of the bill do not provide for cases in which a child’s family consents to protective custody and temporary foster custody of a child. To include these circumstances, we recommend the following amendments to the bill:

- (1) In section 587A-8(a), at page 2, lines 7 through 9:
 - (1) Upon order of the court; [øf]
 - (2) With the consent of the child’s family; or
 - (3) Without a court order and without the consent of the child’s family, if in the discretion of the police officer

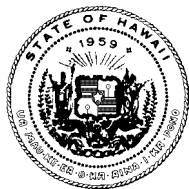
- (2) In section 587A-9(a), at page 3, lines 8 through 10:
 - (1) Upon order of the court; [~~or~~]
 - (2) With the consent of the child's family; or
 - (3) Without a court order and without the consent of the child's family, upon the transfer of protective custody from a police officer if, in the discretion of

Additionally, section 587A-11(9)(B) regarding the judicial process for orders for protective custody on page 8, lines 5 through 11, does not specify that the court must issue a *written* order for protective custody. Written rather than oral orders are crucial because pursuant to section 587A-11(9)(C), copies of the order must be served upon the child's parents and physical custodians. Accordingly, we recommend amending the provision on page 8, line 7, as follows: ". . . court shall [~~order~~] issue a written order that a police officer"

If the Committee chooses to pass this bill, we respectfully ask it to make the suggested amendments. Alternatively, the Department requests that the Committee consider passing S.B. No. 3117, Relating to the Child Protective Act, which is substantially similar and does not require the amendments above.

Thank you for the opportunity to present our comments.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

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

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

January 30, 2024

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

FROM: Cathy Betts, Director

SUBJECT: **SB 2245 – RELATING TO THE CHILD PROTECTIVE ACT.**

Hearing: January 31, 2024, 1:00 p.m.
Conference Room 225, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates this measure, provides comments, and suggests amendments. DHS proposed similar amendments in the executive measure [SB3114](#).

PURPOSE: This bill adds a definition for "exigent circumstances" and amends the definition of "imminent harm" under the Child Protective Act. 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. Allows for the Department of Human Services to file a petition and seek an order for protective custody if there is reasonable cause to believe that a child is subject to imminent harm. Effective 7/1/2025.

DHS proposes the following amendments.

Section 1. DHS requests a housekeeping amendment to section 1 to 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. DHS proposes the following amendment (in courier new):

~~""Harm" [means damage or injury to a child's physical or psychological health or welfare, where:~~

~~(1) The child exhibits evidence of injury, including, but not limited to:~~

~~(A) Substantial or multiple skin bruising;~~

~~(B) Substantial external or internal bleeding;~~

~~(C) Burn or burns;~~

~~(D) Malnutrition;~~

~~(E) Failure to thrive;~~

~~(F) Soft tissue swelling;~~

~~(G) Extreme pain;~~

~~(H) Extreme mental distress;~~

~~(I) Gross degradation;~~

~~(J) Poisoning;~~

~~(K) Fracture of any bone;~~

~~(L) Subdural hematoma; or~~

~~(M) Death;~~

~~and the injury is not justifiably explained, or the history given concerning the condition or death is not consistent with the degree or type of the condition or death, or there is evidence that the condition or death may not be the result of an accident;~~

~~(2) The child has been the victim of sexual contact or conduct, including sexual assault; sodomy; molestation; sexual fondling; incest; prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1) (b);~~

- ~~(3) The child's psychological well-being has been injured as evidenced by a substantial impairment in the child's ability to function;~~
- ~~(4) The child is not provided in a timely manner with adequate food; clothing; shelter; supervision; or psychological, physical, or medical care;~~
- ~~(5) The child is provided with dangerous, harmful, or detrimental drugs as defined in section 712-1240, except when a child's family administers drugs to the child as directed or prescribed by a practitioner as defined in section 712-1240; or~~
- ~~(6) The child has been the victim of labor trafficking under chapter 707.] has the same meaning as "child abuse or neglect" as defined in section 350-1."~~

Section 2. DHS requests the following amendment to proposed section 587A-(8), HRS, and add a third option to place a child in protective custody:

"(3) With the consent of the child's family."

Section 3. DHS requests the following amendment to the proposed section 587A-9, HRS, and adds a third option to place a child in temporary foster custody:

"(3) With the consent of the child's family."

We appreciate the extended effective date to give the department more time to work on updating staff training and working with the Judiciary, Department of the Attorney General, law enforcement agencies, parents' counsel, and other providers regarding these changes.

Thank you for the opportunity to request amendments to the measure.



The Judiciary, State of Hawai'i

**Testimony to the Thirty-Second State Legislature
2024 Regular Session**

Committee on Health and Human Services

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

Wednesday, January 31, 2024 at 1:00 p.m.
State Capitol, Conference Room 225 & Videoconference

by:

Brian A. Costa

Judge, District Family Court

Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2245 – 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. 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. Allows for the Department of Human Services to file a petition and seek an order for protective custody if there is reasonable cause to believe that a child is subject to imminent harm. Effective 7/1/2025.

Judiciary's Position:

The Judiciary takes no position on SB 2245 and shares the following comments and recommendations.

This bill appears to adequately balance the need for immediate police action to protect a child from serious harm and the need for due process protections for the parents/legal custodians of the child. Similarly, when the Department of Human Services (DHS) has begun to exercise its duty to investigate, a procedure is set forth balancing the child's safety and the parents'/legal custodians' constitutional rights.



The family court is concerned that the use of an undefined “written application” is unnecessary and will be confusing. We respectfully suggest the following modification of the language from page 7, line 19, to page 8, line 4, so that this bill will follow normal civil law processes:

(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 ~~submit a written application to the court~~ 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;

For consistency, this modification would require that “application” be replaced with “ex parte motion” at page 8, line 17 (“order and the department’s ~~application~~ ex parte motion submitted”).

We also respectfully request new language to be inserted on page 8, after line 18.

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

Thank you for the opportunity to testify on this matter.

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

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DEPUTY CHIEFS
HOPE LUNA NUI MĀKA'I

OUR REFERENCE **AP-BT**

January 31, 2024

The Honorable Joy A. San Buenaventura, Chair
and Members
Committee on Health and
Human Services
House of Representatives
415 South Beretania Street, Room 225
Honolulu, Hawai'i 96813

Dear Chair San Buenaventura and Members:

SUBJECT: Senate Bill No. 2245, 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 Senate Bill No. 2245, Relating to the Child Protective Act.


This bill gives the officer the discretion to determine if a child should be taken into temporary custody. Exigent and imminent harm is clear language that differentiates the scenarios that a patrol officer would face.

The HPD urges you to support Senate Bill No. 2245, Relating to the Child Protective Act.


Thank you for the opportunity to testify.

APPROVED:

Sincerely,



Arthur J. Logan
Chief of Police



Andre Peters, Captain
Criminal Investigation Division

LATE

SB-2245

Submitted on: 1/31/2024 6:09:55 AM

Testimony for HHS on 1/31/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Angela Melody Young	Testifying for CARES	Support	In Person

Comments:

CARES tesifies in strong support.

Senator San Buenaventura and committee,

The HCCPR stands in strong opposition to SB2245 due to the phrase reasonable cause to believe to define Exigency, also known as Imminent Harm. DHS sent us this bill that they and the Attorney General constructed and asked for our comments. We made it clear that “reasonable cause to believe” does not comport with the last 15 years of 9th circuit court rulings in 1983 lawsuits against the state.

Imminent Harm and Exigency are two words with the same dictionary meaning. The department has attempted to separate those two words unnecessarily and at risk of confusion as occurred last year when Imminent and Immediate Harm were defined separately in SB407. The language of this bill will change nothing to promote a requirement to get a court order prior to removing a child from his parents or to protect citizens from violation of the 4th and 14th amendments on a warrantless/emergency removal.

Reasonable cause to believe. means, 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.

The distinction between a warrantless removal in 9th Circuit caselaw and “reasonable cause to believe” used to obtain a court order is that imminent harm is 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 is ruled in many 9th circuit decisions and has even been placed into state law in Arizona and the Nevada Procedures Manual after successful lawsuits against the state.



HAWAII COALITION
FOR
CHILD PROTECTIVE REFORM

The Hawaii Coalition for Child Protective Reform vehemently OPPOSES SB2245 on its merit and challenges its intention.

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.

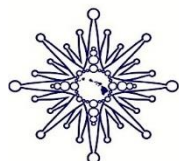
SB2245 will allow the police department to continue to aid CWS to remove children based on "reasonable cause to believe," guesswork, prediction and implicit bias. It will also aid in furthering trauma to children who are taken from their families.

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 on its merits and intention.

Mahalo,

Nonohe Botelho, MSCP
Independent Consultant/ Victim Advocate



HAWAII COALITION
FOR
CHILD PROTECTIVE REFORM

LATE

SB-2245

Submitted on: 1/31/2024 8:53:50 AM

Testimony for HHS on 1/31/2024 1:00:00 PM

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

Comments:

Honorable Members of the Hawaii Legislative Committee,

I address you today not only as a family advocate with a decade of service but as a vigilant defender of constitutional rights. The bill before us represents a blatant breach of these fundamental rights and appears to be a concerted effort by the state to encroach upon the liberties of its citizens under the guise of child welfare. This is not merely a policy disagreement; it is a legal and moral crisis.

Current federal law, specifically under the Social Security Act Title IV Section 471 and the Child Abuse Prevention and Treatment Act (CAPTA), clearly states that "serious bodily injury" must have occurred for law enforcement to intervene and remove children from their homes. The bill at hand dangerously sidesteps this requirement, providing avenues for children to be taken from their families without adherence to these strict legal standards, seemingly to secure federal funding under false pretenses.

Such a course of action is not only unconstitutional, it is an affront to the very fabric of our democracy. Legislators who craft and support laws that so brazenly violate constitutional protections should be held accountable for their actions. This is not an issue of safety; it is one of legality and fundamental rights.

To suggest that children can be removed from their homes without concrete evidence of "serious bodily injury," as mandated by federal law, is to undermine the protections afforded to our citizens. This bill misleads the public into believing it is a measure for safety, while in reality, it contravenes the principles of justice and due process.

I urge you, as respected legislators, to reject this bill and uphold the Constitution. We must not allow the shadow of federal funding to lead us into the darkness of unconstitutional practices. Our children's safety is paramount, but it must not be secured at the expense of our civil rights and liberties.

With the utmost gravity and concern for our state's fidelity to the Constitution,

Joshua Franklin

Family Advocate

SB-2245

Submitted on: 1/29/2024 8:37:52 PM

Testimony for HHS on 1/31/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shana Wailana Kukila	Individual	Oppose	Remotely Via Zoom

Comments:

JANUARY 29, 2024

TO: SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

FROM: SHANA KUKILA

RE: SB2245 RELATING TO THE CHILD PROTECTIVE ACT

POSITION: OPPOSE

ALOHA MEMBERS OF THE COMMITTEE ON HEALTH AND HUMAN SERVICES,

THIS TESTIMONY IS IN OPPOSITION OF SB2245.

PLEASE HOLD OFF ON ALL BILLS RELATED TO HRS587 CHILD PROTECTIVE ACT UNTIL THE MĀLAMA 'OHANA WORKING GROUP (UNDER ACT 86) PROVIDES THEIR REPORT AND RECOMMENDATIONS IN 2025. IT WOULD NOT BE WISE TO TINKER WITH THE LAW UNTIL THEN, SINCE MORE AMENDMENTS MAY NEED TO BE MADE AFTER THE REPORT IS DONE.

UNTIL THEN, PLEASE DEFER THIS BILL. IT DOES NOTHING TO IMPROVE THE SYSTEM.

MAHALO FOR THE OPPORTUNITY TO SHARE MY TESTIMONY

SHANA KUKILA

HILO, HI

SB-2245

Submitted on: 1/28/2024 9:07:41 PM

Testimony for HHS on 1/31/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laura Miller	Individual	Oppose	Written Testimony Only

Comments:

I am a parent, a business owner, and a law abiding citizen living here on Oahu. In 2019 my family was ripped apart when someone made a false report to police that my daughter was at risk of neglect due to “illegal activity and a police raid” at our home two days prior. Rather than checking their own records to confirm the report, my daughter was taken into protective custody and turned over to CWS who also failed to investigate the validity of the report. By the time the HPD custodian of records testified on my behalf, that the report was completely fabricated, my daughter had already been in foster care for 6 months and the damage was done.

SB 2245 does nothing to clarify the language and in fact makes the potential for problems even greater. We must focus and refine our statutes not make them unnecessarily ambiguous. Language for this bill must be amended to include the language used by the 9th circuit Supreme Court in regard to separating families. “Visible and articulable evidence” is the necessary language for our statutes when it comes to protecting our children from overaction by the state.

LATE

SB-2245

Submitted on: 1/30/2024 4:08:07 PM

Testimony for HHS on 1/31/2024 1:00:00 PM

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

Comments:

Standing in **STRONG OPPOSITION!** You can't pass something that's UNCONSTITUTIONAL like SB2245!

"Reasonable cause to believe" cannot and **MUST NOT** be used to (re)define exigency or imminent harm!

COURT ORDERS are the requirement to remove a child from his/her parent/s **NOT** someone's "reasonable cause to believe".

I recommend checking with *The Constitution* before proposing legislation like this to avoid wasting time and embarrassment.