



## *The Judiciary, State of Hawai'i*

### **Testimony to the House Committee on Judiciary**

Representative Chris Lee, Chair

Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 7, 2019, 2:05 p.m.

State Capitol, Conference Room 325

Jasmine Mau-Mukai

Statewide Director, Children's Justice Centers of Hawaii

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**Bill No. and Title:** House Bill No. 512, Relating to the Children's Justice Program.

**Purpose:** Establishes the confidentiality of Children's Justice Program documents and information and clarifies program responsibilities.

#### **Judiciary's Position:**

The Judiciary supports this bill which is part of its legislative package and requests amendments to the measure. The primary purpose of this bill is to protect the integrity of the child abuse investigation process.

The Judiciary's Children's Justice Program administers the Children's Justice Centers of Hawaii (CJC). The Program's main mission is to ensure a fair and neutral process for investigating complaints of alleged child abuse --- with a focus on child sex abuse cases --- that protects the rights of both alleged victims and their alleged perpetrators; CJC does not act as an advocate for either party in legal proceedings related to an investigation.

CJC staff and select law enforcement and child welfare services investigators receive special training to conduct forensic interviews of alleged child abuse victims and child witnesses to crime. Training resources include child forensic interview guidelines. These guidelines are not strict interview protocols, but provide a framework for interviewing child victims. To preserve the integrity of the interview process, the guidelines have been maintained as confidential documents.

Recently, CJC has been subpoenaed in several cases to produce the guidelines by attorneys representing alleged child abuse perpetrators. CJC has opposed the subpoenas on the



grounds that release of the guidelines would disclose techniques and procedures for law enforcement and child welfare services investigations, and potentially enable an individual to use that information to coach or confuse a child prior to the interview. As most sexual abuse/assault cases lack physical or medical evidence, and their outcomes depend on other evidence, including the child forensic interview, maintaining the integrity of the interview process is critical to ensuring that the court has the necessary evidence to conduct a fair adjudication of the case.

This bill would establish the confidentiality of the guidelines and other training and interview-related materials, as well as CJC documents and materials that pertain to specifically-identified cases or clients. Disclosure would be permitted for those involved in the investigation and processing of a case, such as law enforcement officials, prosecutors, child welfare officials, and treatment providers. Other persons would be required to apply to the court for an order allowing access to the documents, under a process that requires the judge to conduct a private in-chamber review of the materials, (in camera), and the moving party to establish good cause.

The bill's confidentiality provisions are consistent with confidentiality requirements in other jurisdictions. For instance, in the District of Columbia, information and records in possession of the Children's Advocacy Center are not subject to discovery, inspection, or disclosure in any court proceeding, except by court order, and a subpoena may not be served on the Center. Under Kentucky law, the files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by the Children's Advocacy Center are confidential and disclosure requires a court order.

This bill also clarifies the scope of the Children's Justice Program. With a focus on child sexual abuse, CJC handles cases of child abuse and neglect, generally, with priorities for cases involving sexual exploitation of a child, serious physical child abuse, and child trafficking. The program also serves children who have been witnesses to a crime.

After a further review of the bill, the Judiciary requests the following amendments:

SECTION 1, HRS § 588- (b): Regarding the CJC partners to whom confidential information may be disclosed:

- In paragraph (1), replace "law enforcement, prosecuting attorneys, health care providers, education officials, and child welfare officials" with "law enforcement, child welfare, prosecuting attorneys, and medical and mental health professionals." The latter language is a more accurate description of the professionals that partner with CJC in child abuse investigations.



- In paragraph (1), delete "provided that access to confidential information shall be permitted on a need-to-know basis and limited to the minimal amount of confidential information necessary to accomplish the intended purpose of the use, disclosure, or request." This language is unnecessary as CJC and its partners already employ confidentiality agreements that govern the partners' management of confidential information.
- In paragraph (2), add language to provide that a court order for disclosure of confidential information shall include a protective order. Protective provisions may, among other things, restrict re-disclosure, copying, or retention of confidential materials.
- Establish an additional exception to the disclosure prohibition for disclosures permitted under federal or other state law. The safeguards proposed in this bill are not intended to contravene federal or state laws that may authorize the disclosure of child abuse-related confidential information in particular situations or in legal proceedings. For instance, in a child abuse criminal case, the alleged perpetrator may obtain a copy of the child forensic interview pursuant to procedures established in court rule.

SECTION 2, HRS § 588-1: In subsection (b)(1)(A)(i), change "Sexual exploitation of a child" to "Sexual abuse/sexual exploitation of a child." In addition, replace the language in clause (iii), "Child trafficking," with the more correct terminology, "Human trafficking of children."

SECTION 3, HRS § 588-1.5(b): Delete the proposed new language on page 5, lines 11 to 14, "provided that further disclosure of shared information shall be permitted only to the extent reasonably necessary to carry out the purposes for which the information was provided, and subject to section 588-A," and make a conforming technical amendment. As noted above regarding requested amendments to Section 1 of the bill, CJC and its partners are already subject to confidentiality agreements that govern partners' management of confidential agreement; thus, the new provision is unnecessary and potentially confusing.

A proposed House Draft 1 that incorporates the above-requested amendments is attached.

Thank you for the opportunity to testify in support of this measure.

**ATTACHMENT**

**Report Title:**

Judiciary Package; Children's Justice Program; Purpose;  
Confidentiality

**Description:**

Clarifies the purpose of the Children's Justice Program. Limits  
disclosure of confidential information.

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# A BILL FOR AN ACT

RELATING TO THE CHILDREN'S JUSTICE PROGRAM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 588, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§588- Confidentiality. (a) The following documents and  
5 materials shall be confidential and shall not be disclosed,  
6 subject to the exceptions established in subsection (b):

7           (1) Documents and materials that pertain to  
8 specifically-identified cases or clients, including  
9 files, reports, notes, photographs, records,  
10 electronic and other communications, working papers,  
11 and recordings; and

12           (2) Documents and materials that comprise client interview  
13 guidelines and other interview-related material, as  
14 well as all materials used in training forensic  
15 interviewers.

16           (b) Confidential documents and materials may be disclosed  
17 only as follows:

- 1       (1) To persons employed by the program, or by agencies or  
2       providers, who are directly involved in the treatment  
3       of the child, or in the investigation, case  
4       management, or legal processing of cases under this  
5       chapter, including but not limited to law enforcement,  
6       child welfare, prosecuting attorneys, and medical and  
7       mental health professionals;
- 8       (2) Pursuant to a court order that includes a protective  
9       order, after an in camera review of the documents or  
10       materials by the court, and upon a showing of good  
11       cause by the party seeking the release of the  
12       documents or materials; or
- 13       (3) Pursuant to federal or state law that authorizes  
14       disclosure of the confidential information."

15       SECTION 2. Section 588-1, Hawaii Revised Statutes, is  
16 amended by amending subsection (b) to read as follows:

17       "(b) The purpose of the program shall be to:

- 18       (1) Develop, achieve, and maintain interagency and  
19       interprofessional cooperation and coordination in the  
20       investigation of and case management of [~~intrafamilial~~  
21       ~~and extrafamilial child sex abuse and serious physical~~  
22       ~~child abuse cases~~];

- 1           (A) Child abuse or neglect cases, with a priority for  
2                 cases involving:
- 3                 (i) Sexual abuse/sexual exploitation of a child;  
4                 (ii) Serious physical child abuse; or  
5                 (iii) Human trafficking of children; and
- 6           (B) Cases involving child witnesses;
- 7           (2) Facilitate in an impartial manner the professional  
8                 gathering of information by public and private  
9                 agencies and their providers for court proceedings  
10                involving child abuse or neglect victims and child  
11                witnesses;
- 12           (3) [~~Reduce to the absolute minimum~~] Minimize the number  
13                of interviews of child [~~sex~~] abuse or neglect victims  
14                [~~so as~~] and child witnesses, to [~~minimize~~] avoid  
15                revictimization of the child;
- 16           (4) Coordinate [~~the~~] therapeutic and treatment [~~program~~]  
17                programs for child [~~sex~~] abuse or neglect victims and  
18                child witnesses, and their families;
- 19           (5) Provide for a multidisciplinary team and case  
20                management approach [~~which is focused~~] that focuses  
21                first, on the alleged or suspected child [~~sex~~] abuse  
22                or neglect victim's and child witness' needs and

1 conditions; second, on the family members who are  
2 supportive of the child and whose interests are  
3 consistent with the best interests of the child; and  
4 third, on law enforcement and prosecutorial needs;  
5 (6) Provide for the training and continuing education of  
6 skilled professional interviewers of child ~~[sex]~~ abuse  
7 or neglect victims[+] and child witnesses; and  
8 (7) ~~[Serve as the focus of]~~ Provide information and  
9 referral for child ~~[sex]~~ abuse or neglect and child  
10 witness programs."

11 SECTION 3. Section 588-1.5, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "[+]§588-1.5[+] **Coordination function.** (a) The program  
14 shall promote the mutual sharing of information among the  
15 program and agencies providing services to the child and family,  
16 for purposes of implementing this chapter.

17 (b) ~~[All]~~ The program and all agencies and [their]  
18 providers that have information regarding the ~~[mental,]~~ physical  
19 or mental health[7] of the child, or other information relating  
20 to the best ~~[interest]~~ interests of the child, shall share ~~[the]~~  
21 this information ~~[among the agencies working with the child]~~  
22 with each other, unless otherwise prohibited by federal or state



1 statute or rule. [~~No agency shall further disclose any~~  
2 ~~confidential information received unless written consent~~  
3 ~~expressly authorizing further disclosure is obtained from the~~  
4 ~~person who is the subject thereof, or disclosure is permitted by~~  
5 ~~law.]"~~

6 SECTION 4. Section 588-2, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 1. By adding three new definitions to be appropriately  
9 inserted and to read:

10 "Child abuse or neglect" means an act or omission that  
11 results in "harm," as defined in section 587A-4, to a person  
12 under the age of eighteen years.

13 "Child witness" means a child who is a witness to a crime.

14 "Program" means the children's justice program."

15 2. By amending the title to read:

16 **"§588-2 Definitions [~~of child abuse~~]."**

17 3. By repealing the definition of "child sexual abuse."

18 [~~"Child sexual abuse" means any of the offenses described~~  
19 ~~under chapter 707, part V, when committed against a person under~~  
20 ~~the age of eighteen years or as set forth in paragraph (2) of~~  
21 ~~the definition of "harm" in section 587A-4."]~~

1 SECTION 5. Section 588-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§588-4 Duties of the director.** The director shall:

4 (1) Enter into agreements with police departments,  
5 departments of the prosecuting attorneys and county corporation  
6 counsels, the departments of the attorney general, health, and  
7 human services, and other public and private agencies, including  
8 agreements for the temporary assignment of appropriate personnel  
9 from each agency to the program;

10 (2) Enter into contracts for the provision of specialized  
11 training and continuing education for interviewers of child  
12 [~~sex~~] abuse or neglect victims and child witnesses from both  
13 public and private agencies and providers;

14 (3) Arrange for interviews of child [~~sex~~] abuse or neglect  
15 victims and child witnesses in an appropriate setting;

16 (4) Promote interagency cooperation and coordination,  
17 including information sharing and gathering, among the public  
18 and private agencies and their providers that deliver  
19 investigative, case management, and therapeutic services;

20 (5) Coordinate the flow of information between the  
21 agencies responsible for criminal prosecution and the agencies  
22 responsible for protective action in civil proceedings,

1 including those professionals providing services to children and  
2 their families;

3 (6) Arrange for the exchange of information, to include  
4 statistical data from public and private agencies involved in  
5 child [~~sex~~] abuse or neglect and child witness programs and  
6 issues;

7 (7) Develop recommendations and plans for action to assist  
8 [~~the~~] public and private agencies involved in cases of child  
9 [~~sex~~] abuse or neglect and [~~serious physical~~] child [~~abuse;~~]  
10 witnesses; and

11 (8) Prepare and maintain records and reports for the  
12 program."

13 SECTION 6. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect upon its approval.