H.B. NO. 3137

A BILL FOR AN ACT

RELATING TO INVESTIGATORS OF THE DEPARTMENT OF HUMAN SERVICES.

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

SECTION 1. The legislature finds that for the State to comply with the settlement agreement between the State and the United States Department of Justice concerning conditions at the Hawaii youth correctional facility, the State must be able to administratively investigate incidents of use of force, staff-on-youth violence, serious youth-on-youth violence, inappropriate staff relationships with youth, sexual misconduct between youth, and abusive institutional practices at the Hawaii youth correctional facility.

Although pursuant to section 346-4.5, Hawaii Revised Statutes, the director of human services has broad authority to appoint and commission investigators and those investigators are authorized to access information maintained by any state or county entity, the statute is not clear that such investigators have the authority to access information necessary to investigate incidents at the Hawaii youth correctional facility. Some records that may be necessary to a particular investigation

may be maintained and in the custody of agencies such as the department of education and the department of health.

The purpose of this Act is to authorize investigators appointed and commissioned by the director of human services to access all information necessary to investigate incidents at the Hawaii youth correctional facility.

SECTION 2. Section 346-4.5, Hawaii Revised Statutes, is amended to read as follows:

"**§346-4.5 Investigators; authority and access to records.** (a) The director shall appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section shall have and may exercise all the powers and authority of a police officer or of a deputy sheriff, provided that the persons so appointed and commissioned shall not carry any firearms.

(b) Information necessary to investigate fraud and other crimes relating to public assistance, to locate absent parents, to establish paternity, [~~and~~] to obtain and enforce court orders of support, and to investigate incidents at the Hawaii youth correctional facility, and contained within the records of any agency, board,

commission, authority, or committee of the State or its political subdivisions shall be made available to any commissioned investigator of the department of human services, notwithstanding any provision for confidentiality."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

Report Title:
Office of Youth Services; Administrative investigators

Description:
Allows the Department of Human Services to appoint and commission an administrative investigator for the Office of Youth Services, pursuant to a memorandum of agreement with the U.S. Department of Justice.

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JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO INVESTIGATORS OF THE DEPARTMENT OF HUMAN SERVICES.

PURPOSE: To allow the Director to appoint and commission an administrative investigator for the Office of Youth Services.

MEANS: Amend section 346-4.5, Hawaii Revised Statutes.

JUSTIFICATION: The Office of Youth Services (OYS) established an administrative investigator position to respond to a requirement of the Memorandum of Agreement between the United States Department of Justice and the State of Hawaii concerning conditions at the Hawaii Youth Correctional Facility (HYCF). In order to carry out the duties of the position and to ensure credibility as a witness in official proceedings, it is important to have the investigator commissioned to have the powers and authority of a law enforcement officer, except to carry firearms.

Section 346-4.5, Hawaii Revised Statutes (HRS), authorizes the Director of the Department of Human Services (DHS) to appoint and commission investigators for the purposes of investigating crime relating to public assistance, locating absent parents, and obtaining and enforcing court orders of support. It is unclear, though, whether that authority can be extended to investigating incidents at HYCF. To avoid any potential legal challenge to the law enforcement powers of the OYS investigator, it is recommended the law be amended so that it is explicit that the DHS Director may appoint and commission investigators as law enforcement personnel for HYCF investigations.

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Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS 904.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.