



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • TTY (808) 586-8162

March 29, 2019

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

Senate Bill 947, SD1, HD1 - Relating to Families

The Disability and Communication Access Board (DCAB) supports Senate Bill 947, SD1, HD1 - Relating to Families, that prohibits the disability of a parent or caregiver from being the sole factor in determining fitness as a foster parent, adoptive parent, guardian, parent seeking custody or visitation, or provider of a safe family home.

Although we understand the Judiciary and the Attorney General's position as stated in last year's bill, SB 2208 and HB 1928 - Relating to a Right to Parent for Blind Persons, this bill's scope is much broader because it protects the right to parent for all individuals with disabilities. The Judiciary's testimony stated that they were unaware of any foster custody or visitation denied, based on a parent's blindness. Lack of a case being brought forward does not indicate that it may not happen in the future.

The Attorney General's position on the bill was that it was unnecessary "because chapter 587A, HRS, the judicial process, and the administrative process sufficiently protect a person's liberty interest to parent, which includes the liberty interest of a blind person." We are aware that the court makes a decision based on the welfare of the child; however, we believe that passing this bill would allow the court to review not only the child's best interest, but that of the family as a whole unit. We feel this bill will offer protection to the family unit as a whole and request that the bill be considered and moved on for further discussion and consideration.

This bill could be the impetus to prevent children being removed from their families based solely on the parent's disability.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

FRANCINE WAI
Executive Director

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 28, 2019

TO: The Honorable Representative Chris Lee, Chair
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 947 SD1 HD1 - RELATING TO FAMILIES**

Hearing: March 29, 2019, 2:05 p.m.
Conference Room 325, State Capitol

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

DHS agrees that disability shall not be the sole basis for denial or restriction of custody, visitation, adoption, or guardianship of children. Considering the disability of a parent or caregiver as the sole factor in determining fitness is already prohibited by long standing federal and state laws that prohibit discrimination. Further, existing laws provide remedies for individuals when discriminatory actions take place.

Title II of the Americans With Disabilities Act (ADA) applies to child welfare services as well as the family court and provides, "...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

The Hawaii State Legislature declared discrimination based on disability, and other protected classes, to be against public policy. Section 368-1, Hawaii Revised Statutes,

AN EQUAL OPPORTUNITY AGENCY

"The legislature finds and declares that the practice of discrimination because of race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability in employment, housing, public accommodations, or access to services receiving state financial assistance is against public policy. It is the purpose of this chapter to provide a mechanism that provides for a uniform procedure for the enforcement of the State's discrimination laws. It is the legislature's intent to preserve all existing rights and remedies under such laws."

Section 368-1.5, HRS, further provides,

- (a) No otherwise qualified individual in the State shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by state agencies, or under any program or activity receiving state financial assistance.
- (b) As used in this section, the term "disability" means the state of having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment.
- (c) As used in this section, "state financial assistance" means grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to an entity for the purpose of rendering services on behalf of the State. It does not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

DHS Child Welfare Services is funded by both the federal and state governments; and the ADA and Hawaii's civil rights laws already prohibit the discriminatory actions based on an individual's disability. DHS cautions against making further regulation regarding only one protected class when robust laws exist to protect a broader number of individuals from unlawful discrimination.

However, and unfortunately, as evidenced by cases around the country, what the ADA, existing state law, and the proposed law, will not prevent and will not prohibit is raising of the issue of the individual's ability to provide a safe environment or whether the individual poses a significant risk to the health or safety of the child that cannot be eliminated by a reasonable modification. See 28 C.F.R. § 35.139(a)-(b). In fact, it is child welfare's obligation in

every case to assess the safety of the family home, and to develop a safety plan to reduce the risks of harm.

PURPOSE: This bill would prohibit the disability of a parent or caregiver from being the sole factor in determining fitness as a foster parent, adoptive parent, guardian, parent seeking custody or visitation, or provider of a safe family home.

DHS is an equal opportunity service provider, and prioritizes its compliance with all federal and State laws and policies, which prevent discrimination based on disability, including the United States Department of Agriculture policy, the United States Department of Health and Human Services policy, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (Section 504). Hawaii's law found at Chapter 368, HRS, also to DHS programs and activities receiving state funds.

The first Department-internal memo issued each calendar year by the Director reaffirms the Department's "commitment to ensure that access to services, programs, activities, and employment is available and provided to all eligible individuals, as well as to the prevention of discriminatory and retaliatory practices in employment and services." (Director's Memorandum No. 19-01)

Furthermore, all DHS employees are required to complete a civil rights awareness training annually, which addresses federal and state laws prohibiting discrimination and how to put the relevant laws and policies into practice.

Decisions regarding children entering foster care, parental visitation, and adoptive parent or legal guardian candidacy are made through comprehensive, formal assessments, which focus on the safety and best interests of the child. Assessment outcomes and case decisions within child welfare are made cooperatively with the assigned worker and his/her supervisor: no decisions are made by one individual and there are checks and balances, which help minimize potential discrimination. Child welfare workers, supervisors, and administrators, along with Family Court judges and guardian ad litem (GAL) work to ensure that all efforts have been made to keep children safely with their parents whenever possible (these efforts include providing supportive parenting services, if needed), and to promote on-going safe contact and connection with parents, when children are placed outside the home. Currently, for a child to be in foster

care, Child Welfare Services must present written evidence to the court that there is risk of imminent harm to the child, and the court decides and makes written findings to that effect.

Regarding denial of applications/petitions of disabled parents to be foster parents (also known as a resource caregivers,) the grounds for potential denial and the requirement for written notification to the applicants of the reasons for the denial are found in Hawaii Administrative Rule (HAR) §17-1625-13.

Thank you for the opportunity to testify.

LATE



O`ahu County Democrats Legislative Priorities Committee

COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

DATE: Friday, March 29, 2019

TIME: 2:05 p.m.

PLACE: Conference Room 325 State Capitol

RE: SB 947, SD1, HD1, Relating to Families

To the Honorable Chris Lee, Chair; the Honorable Joy A. San Buenaventura, Vice Chair; and Members of the Committee on Judiciary:

My name is Melodie Aduja and I serve as Chair of the O`ahu County Democrats Legislative Priorities Committee of the Democratic Party of Hawai`i (“DPH”). Mahalo for this opportunity to submit testimony on SB 947, SD1, HD1. The O`ahu County Democrats Legislative Priorities Committee (“OCDLPC”) hereby submits its testimony in **SUPPORT of SB 947, SD1, HD1, Relating to Families.**

SB 947, SD1, HD1 prohibits the disability of a parent or caregiver from being the sole factor in determining fitness as a foster parent, adoptive parent, guardian, parent seeking custody or visitation, or provider of a safe family home. (SB947 HD1).

The inherent dignity and equal and inalienable rights of all human beings are the foundations of freedom, justice, and peace. We support affirmative action, the full implementation of the Civil Rights Acts of 1964 and 1990 and the Americans with Disabilities Act of 1990. *Democratic Party of Hawai`i Platform (2018), p. 14, ln. 21-23.*

For the foregoing reasons, to wit, to support affirmative action, the full implementation of the Civil Rights Acts of 1964 and 1990 and the Americans with Disabilities Act of 1990, OCDLPC supports SB 947, SD1, HD1, and urges that it passes out of the Committee on Judiciary.

Mahalo nui loa
Me ka `oia`i`o

/s/ Melodie Aduja

Melodie Aduja
Chair, O`ahu County Democrats Legislative Priorities Committee
Ph. (808) 258-8889
Email: legislativepriorities@gmail.com

LATE

SB-947-HD-1

Submitted on: 3/28/2019 6:11:47 PM

Testimony for JUD on 3/29/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Tada	Individual	Support	Yes

Comments:

I wholeheartedly support this bill. People with disabilities can, and in most cases are good parents. With a good, strong, and solid support system, which some may or may not need, their children can grow up in a safe, loving environment. Thanks to various disability rights laws already on the books, I, as a person with Cerebral Palsy strongly urge you to pass this measure!

Mahalo for your time.