

DAVID Y. IGE  
GOVERNOR



CATHY BETTS  
DIRECTOR

JOSEPH CAMPOS II  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 14, 2021

TO: The Honorable Senator Joy San Buenaventura, Chair  
Senate Committee on Human Services

FROM: Cathy Betts, Director

SUBJECT: **HB 975 HD1 – RELATING TO REPORTS OF CHILD ABUSE.**

Hearing: March 16, 2021, 3:00 p.m.  
Via Videoconference, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports this administration measure. DHS respectfully requests that the effective date of this measure be on or before June 30, 2021 to avoid the loss of federal funds.

The House Committee on Health, Human Services, and Homelessness amended the measure by defecting the effective date and making technical amendments. The House Committee on Judiciary & Hawaiian Affairs passed the measure unamended.

This Committee passed the Senate companion SB1129 by defecting the effective date and making technical amendments. The Senate Committee on the Judiciary did not hear the measure; as such, this is the only remaining vehicle to make the necessary amendments to Hawaii law.

**PURPOSE:** The purpose of this bill adds immunity from civil and criminal liability for individuals who provide information or assistance in child abuse investigations. Effective 7/1/2060. (HD1)

On January 7, 2019, the federal Victims of Child Abuse Act Reauthorization Act of 2018 (P.L. 115-24) was enacted, further amending the Child Abuse and Prevention Act (CAPTA). The

amendment grants immunity from civil and criminal prosecution to people who provide information or assistance to a good faith report of child abuse and or neglect. This includes medical evaluations and professional consultations. Clarifying this extension of immunity is aimed to reduce the fear of liability for providing information, consultation, or other evaluation that assists with a good faith report of child abuse and or neglect. The proposed language does not provide immunity for individuals who provide information and assistance in bad faith.

The U.S. Department of Health and Human Services, Administration for Children and Families (ACF) requires that this CAPTA provision be embodied in state law to be compliant with CAPTA and to receive federal funds. This bill adds language to section 350-3(a), HRS, that will conform Hawaii's law.

Congressional legislative history for this CAPTA amendment is found in the report of the Congressional Senate Committee on Judiciary, dated December 12, 2018:

"This bill will also provide protections for people who in good faith report suspected child abuse, including professionals who are called upon to consult in a child abuse case, or provide a medical diagnosis. Under current law, individuals who report suspected child abuse in good faith are protected from lawsuits. However, it is unclear whether such protection also extends to secondary reporters, such as professionals who consult on a child abuse case. For example, a pediatrician may be asked for their opinion by a colleague regarding a child's injury resulting from possible neglect or abuse. Providing this opinion is not currently protected in the same way as primary reporters of child abuse, and some pediatricians are now being sued in civil court for assisting in abuse cases. The lack of protection may deter pediatricians from assisting with child abuse cases."<sup>1</sup> (Highlighted emphasis added.)

As part of the approval of the State's CAPTA Program Improvement Plan (PIP), in November 2019, ACF informed the State that failure to amend State law to become compliant with the amended section of CAPTA by June 30, 2020, would result in withholding of FY 2021 CAPTA State Grant funding.

Last session, DHS submitted administrative proposals SB2892 (2020) and HB2336 (2020) requesting the same amendments to State law. However, due to the pandemic and suspension of the 2020 legislative session, the measures were stalled in respective Senate and House subject matter committees. In May 2020, Hawaii submitted a request to ACF for a one-year extension to June 30, 2021 to implement this provision. ACF granted Hawaii an extension to

March 14, 2021

Page 3

June 2021 to conform Hawaii's law. ACF again warned the State that failure to come into compliance with the amended section of CAPTA by June 30, 2021, may result in withholding approval of the State's CAPTA State Grant funding for federal fiscal year 2022 until such time as the State comes into compliance. As such, to avoid the loss of federal funds, the effective date of this measure must be on or before June 30, 2021.

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



# Hawai'i Psychological Association

*For a Healthy Hawai'i*

P.O. Box 833  
Honolulu, HI 96808

www.hawaiipsychology.org

Phone: (808) 521-8995

COMMITTEE ON HUMAN SERVICES  
Senator Joy A. San Buenaventura, Chair  
Senator Les Ihara, Jr., Vice Chair

Tuesday, March 16, 2021 - 3:00pm - Conference Room 225 - videoconference

## **Support of HB975 HD1 RELATING TO REPORTS OF CHILD ABUSE**

The Hawai'i Psychological Association (HPA) strongly supports HB975 HD1, which would protect mental health care professionals, among others, from civil and criminal liability for providing information or assistance in a child abuse investigation.

This bill is very important – not only because it would bring Hawaii into compliance with federal law – a requirement to draw down much-needed federal funds for state programming; it will also protect service providers, who are dutifully performing their professional duties. Ensuring such immunity will reduce the chilling effect that is created by a practitioner's fear of liability - lowering barriers so individuals can provide needed services and come forward with essential information to better protect and treat these children.

Accordingly, HPA would like to highlight the legislative history of the 2018 amendment to the federal Child Abuse and Prevention Act, shared by the Department of Human Services in their earlier testimony, which recognized that:

*"it is unclear whether such protection also extends to secondary reporters, such as professionals who consult on a child abuse case. For example, a pediatrician may be asked for their opinion by a colleague regarding a child's injury resulting from possible neglect or abuse. Providing this opinion is not currently protected in the same way as primary reporters of child abuse, and some pediatricians are now being sued in civil court for assisting in abuse cases. The lack of protection may deter pediatricians from assisting with child abuse cases."*  
(From the December 12, 2018 Report of the Congressional Senate Committee on Judiciary.)

Thank you for the opportunity to provide input into this important bill.

Sincerely,

Alex Lichton, Ph.D.

Chair, HPA Legislative Action Committee

**HB-975-HD-1**

Submitted on: 3/12/2021 4:54:03 PM

Testimony for HMS on 3/16/2021 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Oppose	No

Comments:

Good Afternoon Chair SanBuenaventura, Vice Chair Ihara & Senate Human Services Committee Members & thank you for this opportunity to provide testimony in Opposition to HB975 for the sole reason of how this bill will bring substantial harm to domestic violence victim-survivors and their children.

While I agree that legitimate professionals could/would/should benefit from such protection, no one appears to have given any thought to how this measure would be completely MISUSED by domestic violence perpetrators and their supporters/agents & those individuals deserve prosecution, NOT immunity.

I have several cases right now where both CWS social workers & other individuals have provided HPD with false information (illegal!) to effect child removals with NO CONSEQUENCES for falsely reporting.

I also have cases where friends & family members of the perpetrtrs have called CWS to falsely report & when proven to have falsely reported to CWS, again, absolutely NO CONSEQUENCES for what IS a criminal act - this must not be allowed to stand!

Until adequate safety measures to protect domestic violence victim-survivors and their children from such harm & exploitation can be put in-place with equally adequate consequences for violating such safety measures, proposals such as HB975 are woefully premature and will only exacerbate an existing costly problem. Perhaps if you changed the word "individuals" to "professionals" and added a clause for the consequences of falsely reporting HB975 could be successful but if not, it needs to be entirely scrapped.

Thank you for this opportunity to provide testimony in OPPOSITION to HB975.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate