



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 1101, H.D. 1, S.D. 1, RELATING TO INVESTIGATORS OF THE DEPARTMENT OF HUMAN SERVICES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Monday, April 6, 2009 **TIME:** 10:00 AM

LOCATION: State Capitol, Room 016
Deliver to: e-mail: JGOTestimony@Capitol.hawaii.gov, 1 copy

TESTIFIER(S): WRITTEN TESTIMONY ONLY
(For more information, call Blair Goto, Deputy Attorney General, at 587-3050.)

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General supports this bill.

This measure will allow investigators appointed and commissioned by the Director of Human Services to have access to necessary information when investigating incidents at the Hawaii youth correctional facilities.

The memorandum of agreement between the U.S. Department of Justice and the State of Hawaii requires that the State initiate investigations of incidents of use of force, staff-on-youth violence, serious youth-on-youth violence, inappropriate staff relationships with youth, and sexual misconduct between youth. In addition, the memorandum provides that where there is evidence of staff misconduct, the State initiate appropriate personnel actions. In order for the investigator to be able to investigate thoroughly incidents at the Hawaii youth correctional facilities, the investigator may need access to the records of, among others, providers of services to youth at the facility. These providers include contracted providers as well as state agencies such as the Department of Health. Various state

confidentiality laws, such as section 334-5, Hawaii Revised Statutes, may prevent or hinder access by the investigator to relevant records.

Accordingly, by allowing information necessary to investigate incidents at the Hawaii youth correctional facilities to be made available to a duly appointed and commissioned investigator, this bill will assist the State in meeting its commitments under the memorandum of agreement to improve conditions at the Hawaii youth correctional facilities. Also, it is a good facility practice to conduct administrative investigations of these types of incidents, and such investigations should continue even beyond the life of the memorandum of agreement.

We respectfully ask the Committee to pass this bill.



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April 6, 2009

TO: The Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Government Operations

FROM: Martha T. Torney, Executive Director

**SUBJECT: HB 1101, SD1, RELATING TO INVESTIGATORS OF THE
DEPARTMENT OF HUMAN SERVICES.**

Hearing: Monday, April 6, 2009; 10:00 a.m.
State Capitol, Conference Room 016

The Office of Youth Services (OYS) strongly supports House Bill 1101, SD1, an Administration proposal relating to Investigators of the Department of Human Services (DHS), which furthers the requirements of Provisions 19 through 21 of the Memorandum of Agreement (MOA) between the U.S. Department of Justice and the State of Hawaii concerning conditions at the Hawaii Youth Correctional Facility (HYCF). These provisions require timely and effective investigations of serious incidents, some of which may result in disciplinary actions against employees.

The Office of Youth Services (OYS) established an administrative investigator position in response to the requirements of the MOA. 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 so that they have the powers and authority of a law enforcement officer, except to carry firearm.

Section 346-4.5, Hawaii Revised Statutes (HRS), authorizes the Director of Human Services 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.

Thank you for the opportunity to present this testimony.