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# A BILL FOR AN ACT

RELATING TO THE CHILD PROTECTIVE ACT.

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

1           SECTION 1. Section 587A-4, Hawaii Revised Statutes, is  
2 amended as follows:

3           1. By adding a new definition to be appropriately inserted  
4 and to read:

5           "Exigent circumstances" means that based on specific and  
6 articulable evidence, there is reasonable cause to believe that  
7 immediately assuming protective custody and temporary foster  
8 custody of a child is necessary to protect the child from  
9 serious harm that is likely to occur before a court order can be  
10 obtained."

11           2. By amending the definitions of "harm" and "imminent  
12 harm" to read:

13           ~~"Harm" [means damage or injury to a child's physical or~~  
14 ~~psychological health or welfare, where:~~

15           ~~(1) The child exhibits evidence of injury, including, but~~  
16           ~~not limited to:~~

17           ~~(A) Substantial or multiple skin bruising;~~



- 1           ~~(B) Substantial external or internal bleeding;~~
- 2           ~~(C) Burn or burns;~~
- 3           ~~(D) Malnutrition;~~
- 4           ~~(E) Failure to thrive;~~
- 5           ~~(F) Soft tissue swelling;~~
- 6           ~~(G) Extreme pain;~~
- 7           ~~(H) Extreme mental distress;~~
- 8           ~~(I) Gross degradation;~~
- 9           ~~(J) Poisoning;~~
- 10           ~~(K) Fracture of any bone;~~
- 11           ~~(L) Subdural hematoma; or~~
- 12           ~~(M) Death;~~
- 13           ~~and the injury is not justifiably explained, or the~~
- 14           ~~history given concerning the condition or death is not~~
- 15           ~~consistent with the degree or type of the condition or~~
- 16           ~~death, or there is evidence that the condition or~~
- 17           ~~death may not be the result of an accident;~~
- 18           ~~(2) The child has been the victim of sexual contact or~~
- 19           ~~conduct, including sexual assault; sodomy;~~
- 20           ~~molestation; sexual fondling; incest; prostitution;~~
- 21           ~~obscene or pornographic photographing, filming, or~~



1           ~~depiction; or other similar forms of sexual~~  
2           ~~exploitation, including but not limited to acts that~~  
3           ~~constitute an offense pursuant to section 712-~~  
4           ~~1202(1)(b);~~  
5       ~~(3) The child's psychological well-being has been injured~~  
6           ~~as evidenced by a substantial impairment in the~~  
7           ~~child's ability to function;~~  
8       ~~(4) The child is not provided in a timely manner with~~  
9           ~~adequate food; clothing; shelter; supervision; or~~  
10           ~~psychological, physical, or medical care;~~  
11       ~~(5) The child is provided with dangerous, harmful, or~~  
12           ~~detrimental drugs as defined in section 712-1240,~~  
13           ~~except when a child's family administers drugs to the~~  
14           ~~child as directed or prescribed by a practitioner as~~  
15           ~~defined in section 712-1240; or~~  
16       ~~(6) The child has been the victim of labor trafficking~~  
17           ~~under chapter 707.] has the same meaning as "child~~  
18           ~~abuse or neglect" as defined in section 350-1.~~

19           "Imminent harm" means that [~~without intervention within the~~  
20       ~~next ninety days,~~] there is reasonable cause to believe that  
21       harm to the child will occur or reoccur[~~;~~] and no reasonable



1 efforts other than removal of the child from the family home  
2 will adequately prevent the harm."

3 SECTION 2. Section 587A-8, Hawaii Revised Statutes, is  
4 amended by amending its title and subsection (a) to read as  
5 follows:

6 "[~~+~~]~~§587A-8~~[~~+~~] **Protective custody by police officer**  
7 [~~without court order~~]. (a) A police officer shall assume  
8 protective custody of a child [~~without a court order and without~~  
9 ~~the consent of the child's family, if in the discretion of the~~  
10 ~~police officer, the officer determines that:~~

- 11 ~~(1) The child is subject to imminent harm while in the~~  
12 ~~eustody of the child's family;~~
- 13 ~~(2) The child has no parent, as defined in this chapter,~~  
14 ~~who is willing and able to provide a safe family home~~  
15 ~~for the child;~~
- 16 ~~(3) The child has no caregiver, as defined in this~~  
17 ~~chapter, who is willing and able to provide a safe and~~  
18 ~~appropriate placement for the child; or~~
- 19 ~~(4) The child's parent has subjected the child to harm or~~  
20 ~~threatened harm and the parent is likely to flee with~~  
21 ~~the child.];~~



- 1        (1) With the consent of the child's family;
- 2        (2) Upon order of the court; or
- 3        (3) Without the consent of the child's family and without
- 4                a court order if, in the discretion of the police
- 5                officer, the officer determines that exigent
- 6                circumstances are present."

7                SECTION 3. Section 587A-9, Hawaii Revised Statutes, is  
 8 amended to read as follows:

9                "**§587A-9 Temporary foster custody** [~~without court order~~].

10        (a) [~~When the department receives protective custody of a child~~  
 11 ~~from the police, the department shall:]~~ The department shall  
 12 assume temporary foster custody of a child:

- 13                (1) [~~Assume temporary foster custody of the child if, in~~  
 14 ~~the discretion of the department, the department~~  
 15 ~~determines that the child is subject to imminent harm~~  
 16 ~~while in the custody of the child's family;]~~ With the  
 17 consent of the child's family;
- 18                (2) Upon order of the court; or
- 19                (3) Without the consent of the child's family and without  
 20 a court order, upon the transfer of protective custody  
 21 from a police officer if, in the discretion of the



1           department, the department determines that exigent  
2           circumstances are present.

3           (b) When the department assumes temporary foster custody  
4 of a child, the department shall:

5           ~~[(2)]~~ (1) Make every reasonable effort to inform the  
6           child's parents of the actions taken, unless doing so  
7           would put another person at risk of harm;

8           ~~[(3)]~~ (2) Unless the child is admitted to a hospital or  
9           similar institution, place the child in emergency  
10           foster care while the department conducts an  
11           appropriate investigation, with placement preference  
12           being given to an approved relative;

13           ~~[(4)]~~ (3) With authorized agencies, make reasonable efforts  
14           to identify and notify all relatives within thirty  
15           days of assuming temporary foster custody of the  
16           child; and

17           ~~[(5)]~~ (4) Within three days, excluding Saturdays, Sundays,  
18           and holidays:

19           (A) Relinquish temporary foster custody, return the  
20           child to the child's parents, and proceed  
21           pursuant to section 587A-11(4), (5), or (6);



1 (B) Secure a voluntary placement agreement from the  
2 child's parents to place the child in foster  
3 care, and proceed pursuant to section 587A-11(6)  
4 or (8); or

5 (C) File a temporary foster custody petition with the  
6 court.

7 [~~b~~] (c) Upon the request of the department and without  
8 regard to parental consent, any physician licensed or authorized  
9 to practice medicine in the State shall perform an examination  
10 to determine the nature and extent of harm or threatened harm to  
11 the child under the department's temporary foster custody."

12 SECTION 4. Section 587A-11, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§587A-11 Investigation; department powers.** Upon  
15 receiving a report that a child is subject to imminent harm, has  
16 been harmed, or is subject to threatened harm, and when an  
17 assessment is required by this chapter, the department shall  
18 cause [~~such~~] an investigation to be made as it deems to be  
19 appropriate. In conducting the investigation, the department  
20 may:



- 1           (1) Enlist the cooperation and assistance of appropriate  
2           state and federal law enforcement authorities, who may  
3           conduct an investigation and, if an investigation is  
4           conducted, shall provide the department with all  
5           preliminary findings, including the results of a  
6           criminal history record check of an alleged  
7           perpetrator of harm or threatened harm to the child;
- 8           (2) Conduct a criminal history record check of an alleged  
9           perpetrator and all adults living in the family home,  
10          with or without consent, to ensure the safety of the  
11          child;
- 12          (3) Interview the child without the presence or prior  
13          approval of the child's family and temporarily assume  
14          protective custody of the child for the purpose of  
15          conducting the interview;
- 16          (4) Resolve the matter in an informal fashion that it  
17          deems appropriate under the circumstances;
- 18          (5) Close the matter if the department finds, after an  
19          assessment, that the child is residing with a  
20          caregiver who is willing and able to meet the child's



1 needs and provide a safe and appropriate placement for  
2 the child;

3 (6) Immediately enter into a service plan[+] to:

4 (A) [~~To safely~~] Safely maintain the child in the  
5 family home; or

6 (B) [~~To place~~] Place the child in voluntary foster  
7 care pursuant to a written agreement with the  
8 child's parent.

9 If the child is placed in voluntary foster care and  
10 the family does not successfully complete the service  
11 plan within three months after the date on which the  
12 department assumed physical custody of the child, the  
13 department shall file a petition. The department [~~is~~]  
14 shall not be required to file a petition if the  
15 parents agree to adoption or legal guardianship of the  
16 child and the child's safety is ensured; provided that  
17 the adoption or legal guardianship hearing is  
18 conducted within six months of the date on which the  
19 department assumed physical custody of the child;

20 (7) Assume temporary foster custody of the child and file  
21 a petition with the court within three days, excluding



1 Saturdays, Sundays, and holidays, after the date on  
2 which the department assumes temporary foster custody  
3 of the child, with placement preference being given to  
4 an approved relative; [~~or~~]

5 (8) File a petition or ensure that a petition is filed by  
6 another appropriate authorized agency in court under  
7 this chapter[~~-~~]; or

8 (9) File a petition pursuant to section 587A-12 and seek  
9 an order for protective custody if there is reasonable  
10 cause to believe that the child is subject to imminent  
11 harm, as follows:

12 (A) The department may contemporaneously file an ex  
13 parte motion for protective custody and the court  
14 may issue an order of protective custody without  
15 notice and without a hearing;

16 (B) If a petition is filed contemporaneously with an  
17 ex parte motion for protective custody pursuant  
18 to this paragraph, the initial reports pursuant  
19 to section 587A-18(b)(1) and (2) shall not be  
20 required; provided that the petition and ex parte  
21 motion shall be accompanied by a written



1           declaration setting forth the essential facts  
2           establishing reasonable cause to believe that a  
3           child is subject to imminent harm. The court  
4           order regarding the ex parte motion for  
5           protective custody shall state the deadline for  
6           the department to file reports that comply with  
7           section 587A-18(b)(1) and (2);

8           (C) If the court finds reasonable cause to believe  
9           that the child is subject to imminent harm, the  
10           court shall issue a written order that a police  
11           officer immediately take the child into  
12           protective custody and transfer custody of the  
13           child to the department, which will then assume  
14           temporary foster custody of the child pursuant to  
15           section 587A-9(a);

16           (D) If an order for protective custody is issued  
17           under this paragraph, the court shall order that  
18           a police officer make every reasonable effort to  
19           personally serve the child's parents and any  
20           person who has physical custody of the child with  
21           copies of the ex parte motion and order; and



1           (E) After the court rules on the ex parte motion, the  
2           case shall proceed pursuant to section 587A-  
3           12(c)."

4           SECTION 5. Section 587A-21, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6           "(b) [~~In~~] For orders for protective custody or in  
7 temporary foster custody hearings, in deciding [in temporary  
8 foster custody hearings] whether there is reasonable cause to  
9 believe that a child is subject to imminent harm, the court may  
10 consider relevant hearsay evidence when direct testimony is  
11 unavailable or when it is impractical to subpoena witnesses who  
12 will be able to testify to facts based on personal knowledge."

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

15           "**§588-2 Definitions of child abuse.** For purposes of this  
16 chapter:

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

21 injure a child's physical or psychological health or welfare,



1 where the child has been the victim of sexual contact or  
2 conduct, including sexual assault; sodomy; molestation; sexual  
3 fondling; incest; prostitution; obscene or pornographic  
4 photographing, filming, or depiction; or other similar forms of  
5 sexual exploitation, including but not limited to acts that  
6 constitute an offense pursuant to section 712-1202(1)(b).

7 "Serious physical child abuse" means any of the offenses  
8 ~~[described in paragraph (1) of the definition of "harm" set~~  
9 ~~forth in section 587A-4]~~ that damage or injure a child's  
10 physical or psychological health or welfare, where the child  
11 exhibits evidence of injury, including but not limited to:

- 12 (1) Substantial or multiple skin bruising;
- 13 (2) Substantial external or internal bleeding;
- 14 (3) Burn or burns;
- 15 (4) Malnutrition;
- 16 (5) Failure to thrive;
- 17 (6) Soft tissue swelling;
- 18 (7) Extreme pain;
- 19 (8) Extreme mental distress;
- 20 (9) Gross degradation;
- 21 (10) Poisoning;



1        (11) Fracture of any bone;

2        (12) Subdural hematoma; or

3        (13) Death; and

4 the injury is not justifiably explained, the history given  
5 concerning the condition or death is not consistent with the  
6 degree or type of the condition or death, or there is evidence  
7 that the condition or death may not be the result of an  
8 accident; when the offense rises to the degree of a felony as  
9 defined in section 701-107."

10        SECTION 7. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12        SECTION 8. This Act shall take effect on July 1, 3000.



**Report Title:**

DHS; Child Protective Act; Exigent Circumstances; Harm; Imminent Harm; Protective Custody; Temporary Foster Custody

**Description:**

Adds a definition for "exigent circumstances" and amends the definitions of "harm" and "imminent harm" under the Child Protective Act. Clarifies when the police may take protective custody of a child and when the Department of Human Services may assume temporary foster custody of a child when exigent circumstances are present. Creates a judicial process for filing a petition for an order for protective custody, including the circumstances where such an order may be issued without notice and without a hearing. Effective 7/1/3000. (HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

