

JAN 25 2023

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. Chapter 587A, Hawaii Revised Statutes, is
2 amended by adding a new section to part IV to be appropriately
3 designated and to read as follows:

4 "§587A- Independent evaluation; requirement. (a)
5 Within days after any return hearing, periodic review
6 hearing, or permanency hearing where the court finds that
7 aggravated circumstances are present or that the child's
8 physical or psychological health or welfare has been harmed or
9 is subject to threatened harm by the acts or omissions of the
10 child's family, an independent evaluation of the child's parents
11 shall be conducted by a clinical psychologist prior to the
12 issuance of an order returning the child to the family home.

13 (b) As used in this section, "clinical psychologist" means
14 a psychologist licensed under chapter 465 who has specialized
15 training in the treatment of the effects of physical, mental,
16 and emotional abuse."



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

3 "[~~§~~587A-2~~§~~] **Purpose; construction.** This chapter
4 creates within the jurisdiction of the family court a child
5 protective act to make paramount the safety [~~and~~], health, and
6 physical, mental, and emotional well-being of children who have
7 been harmed or are in life circumstances that threaten harm.
8 Furthermore, this chapter makes provisions for the service,
9 treatment, and permanent plans for these children and their
10 families.

11 The legislature finds that children deserve and require
12 competent, responsible parenting and safe, secure, loving, and
13 nurturing homes. The legislature finds that children who have
14 been harmed or are threatened with harm are less likely than
15 other children to realize their full educational, vocational,
16 and emotional potential, and become law-abiding, productive,
17 self-sufficient citizens, and are more likely to become involved
18 with the mental health system, the juvenile justice system, or
19 the criminal justice system, as well as become an economic
20 burden on the State. The legislature finds that prompt
21 identification, reporting, investigation, services, treatment,



1 adjudication, and disposition of cases involving children who
2 have been harmed or are threatened with harm are in the
3 children's, their families', and society's best interests
4 because the children are defenseless, exploitable, and
5 vulnerable. The legislature recognizes that many relatives are
6 willing and able to provide a nurturing and safe placement for
7 children who have been harmed or are threatened with harm.

8 The policy and purpose of this chapter is to provide
9 children with prompt and ample protection from the harms
10 detailed herein, with an opportunity for timely reconciliation
11 with their families if the families can provide safe family
12 homes, and with timely and appropriate service or permanent
13 plans to ensure the safety of the child so they may develop and
14 mature into responsible, self-sufficient, law-abiding citizens.
15 The service plan shall effectuate the child's remaining in the
16 family home, when the family home can be immediately made safe
17 with services, or the child's returning to a safe family home.
18 The service plan shall be carefully formulated with the family
19 in a timely manner. Every reasonable opportunity should be
20 provided to help the child's legal custodian to succeed in
21 remedying the problems that put the child at substantial risk of



1 being harmed in the family home. Each appropriate resource,
2 public and private, family and friend, should be considered and
3 used to maximize the legal custodian's potential for providing a
4 safe family home for the child. Full and careful consideration
5 shall be given to the religious, cultural, and ethnic values of
6 the child's legal custodian when service plans are being
7 discussed and formulated. Where the court has determined, by
8 clear and convincing evidence, that the child cannot be returned
9 to a safe family home, the child shall be permanently placed in
10 a timely manner.

11 The policy and purpose of this chapter includes the
12 protection of children who have been harmed or are threatened
13 with harm by:

- 14 (1) Providing assistance to families to address the causes
15 for abuse and neglect;
- 16 (2) Respecting and using each family's strengths,
17 resources, culture, and customs;
- 18 (3) Ensuring that families are meaningfully engaged and
19 children are consulted in an age-appropriate manner in
20 case planning;



- 1 (4) Enlisting the early and appropriate participation of
- 2 family and the family's support networks;
- 3 (5) Respecting and encouraging the input and views of
- 4 caregivers; and
- 5 (6) Ensuring a permanent home through timely adoption or
- 6 other permanent living arrangement, if safe
- 7 reunification with the family is not possible.

8 The child protective services under this chapter shall be
9 provided with every reasonable effort to be open, accessible,
10 and communicative to the persons affected by a child protective
11 proceeding without endangering the safety and best interests of
12 the child under this chapter.

13 This chapter shall be liberally construed to serve the best
14 interests of the children affected and the purpose and policies
15 set forth herein."

16 SECTION 3. Section 587A-3.1, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The department or an authorized agency shall ensure,
19 whenever possible, that a child in foster care will:

- 20 (1) Live in a home, free from physical, psychological,
- 21 sexual, and other abuse;



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- 1 (2) Receive food, shelter, and clothing;
- 2 (3) Receive medical care, dental services, corrective
3 vision care, and mental health services;
- 4 (4) Be enrolled in a health insurance plan and, within
5 forty-five days of out-of-home placement, be provided
6 with a health assessment and recommended treatment;
- 7 (5) Have regular, supervised or unsupervised, in-person,
8 telephone, or other forms of contact with the child's
9 parents, grandparents, and siblings while the child is
10 in foster care, unless the contact is either
11 prohibited by court order or is deemed to be unsafe by
12 the child's child welfare services worker, therapist,
13 guardian ad litem, or court appointed special
14 advocate[-]; provided that if a child's biological
15 parents are deceased, the child's biological
16 grandparents shall be vested with the rights and
17 duties of the biological parents under this paragraph.
18 Withholding visitation shall not be used as
19 punishment. If the department or authorized agency
20 denies supervised or unsupervised visits with the
21 child's parents, grandparents, or siblings:



- 1 (A) If all parties, including the child, agree to the
2 denial of the visits, the department or
3 authorized agency shall submit a written report
4 to the court within five working days to document
5 the reasons why the visits are being denied; or
6 (B) If any party, including the child, disagrees with
7 the denial of the visits, the department or
8 authorized agency shall file a motion for
9 immediate review within five working days that
10 shall include the specific reasons why visits are
11 being denied;
- 12 (6) Receive notice of court hearings, and if the child
13 wishes to attend the hearings, the department or
14 authorized agency shall ensure that the child is
15 transported to the court hearings;
- 16 (7) Have in-person contact with the child's assigned child
17 welfare services worker;
- 18 (8) Have the ability to exercise the child's own religious
19 beliefs, including the refusal to attend any religious
20 activities and services;



- 1 (9) Have a personal bank account if requested and
2 assistance in managing the child's personal income
3 consistent with the child's age and development,
4 unless safety or other concerns require otherwise;
- 5 (10) Be able to participate in extracurricular, enrichment,
6 cultural, and social activities; provided that if a
7 child caring institution or resource caregiver
8 authorizes the participation, the authorization shall
9 be in accordance with the reasonable and prudent
10 parent standard, as defined in title 42 United States
11 Code section 675(10)(A);
- 12 (11) Beginning at age twelve, be provided with age-
13 appropriate life skills training and a transition plan
14 for appropriately moving out of the foster care
15 system, which shall include reunification or other
16 permanency, and written information concerning
17 independent living programs, foster youth
18 organizations, and transitional planning services that
19 are available to all children in foster care who are
20 twelve years of age or older and their resource
21 families;



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- 1 (12) If the child is fourteen years of age or older, have
2 the right to be involved in developing a case plan and
3 planning for the child's future;
- 4 (13) If the child is fourteen years of age or older,
5 receive the child's credit report, free of charge,
6 annually during the child's time in foster care and
7 receive assistance with interpreting the report and
8 resolving inaccuracies, including, when feasible,
9 assistance from the child's guardian ad litem; and
- 10 (14) If the child is seventeen years of age, receive prior
11 to aging out of care certain personal records, such as
12 an official or certified copy of the child's United
13 States birth certificate, a Social Security card
14 issued by the Commissioner of Social Security, health
15 insurance information, a copy of the child's medical
16 records or information to access the child's medical
17 records free of charge, immigration documents, and a
18 driver's license or civil identification card issued
19 by the State; provided that the department or
20 authorized agency shall obtain the personal records
21 for the child."



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

3 1. By amending the definition of "aggravated
4 circumstances" to read:

5 ""Aggravated circumstances" means that:

- 6 (1) The parent has murdered, or has solicited, aided,
7 abetted, attempted, or conspired to commit the murder
8 or voluntary manslaughter of, another child of the
9 parent;
- 10 (2) The parent has committed a felony assault that results
11 in serious bodily injury to the child or another child
12 of the parent;
- 13 (3) The parent's rights regarding a sibling of the child
14 have been judicially terminated or divested;
- 15 (4) The parent has tortured the child;
- 16 (5) The child is an abandoned infant;
- 17 (6) The parent has committed sexual abuse against another
18 child of the parent; [~~or~~]
- 19 (7) The parent is required to register with a sex offender
20 registry under section 113(a) of the Adam Walsh Child



1 Protection and Safety Act of 2006, title 42 United
2 States Code section 16913(a) [-]; or
3 (8) An independent evaluation determines that the child is
4 experiencing physical, mental, or emotional harm."

5 2. By amending the definition of "family" to read:
6 ""Family" means each legal parent of a child; the birth
7 mother, unless the child has been legally adopted; the concerned
8 birth father as provided in section 578-2(a)(5), unless the
9 child has been legally adopted; each parent's spouse or former
10 spouse; each grandparent; each biological grandparent, in the
11 case where a child's biological parents are deceased; each
12 sibling or person related by blood or marriage; each person
13 residing in the dwelling unit; and any other person or legal
14 entity with:

15 (1) Legal or physical custody or guardianship of the
16 child, or

17 (2) Responsibility for the child's care.

18 For purposes of this chapter, the term "family" does not apply
19 to an authorized agency that assumes the foregoing legal status
20 or relationship with a child."



1 3. By amending the definition of "incapacitated person" to
2 read:

3 ""Incapacitated person" means [a]:

- 4 (1) A person who, even with appropriate and reasonably
5 available assistance, is unable to substantially:
6 ~~[-1-]~~ (A) Comprehend the legal significance of the
7 issues or nature of the proceedings under this
8 chapter;
9 ~~[-2-]~~ (B) Consult with counsel; and
10 ~~[-3-]~~ (C) Assist in preparing the person's case or
11 strategy~~[-]~~; or
12 (2) A child who has been emotionally, physically,
13 psychologically, or mentally abused or has been
14 witness to the aforementioned abuse in the family
15 situation, as determined by a clinical psychologist
16 with training and experience in domestic violence and
17 abuse.

18 Incapacity shall not be based solely on a person's status
19 as a minor."

20 SECTION 5. Section 587A-7, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) The following factors shall be fully considered when
2 determining whether a child's family is willing and able to
3 provide the child with a safe family home:

4 (1) Facts relating to the child's current situation, which
5 shall include:

6 (A) The child's age, vulnerability, and special needs
7 that affect the child's attachment, growth, and
8 development;

9 (B) The child's developmental, psychological,
10 medical, and dental health status and needs,
11 including the names of assessment and treatment
12 providers;

13 (C) The child's peer and family relationships and
14 bonding abilities;

15 (D) The child's educational status and setting, and
16 the department's efforts to maintain educational
17 stability for the child in out-of-home placement;

18 (E) The child's living situation;

19 (F) The child's fear of being in the family home;

20 (G) The impact of out-of-home placement on the child;

21 (H) Services provided to the child and family; and



- 1 (I) The department's efforts to maintain connections
2 between the child and the child's siblings, if
3 they are living in different homes;
- 4 (2) The initial and any subsequent reports of harm and
5 threatened harm to the child;
- 6 (3) Dates and reasons for the child's out-of-home
7 placement; description, appropriateness, and location
8 of the placement; and who has placement
9 responsibility;
- 10 (4) Facts regarding the alleged perpetrators of harm to
11 the child, the child's parents, and other family
12 members who are parties to the court proceedings,
13 which facts shall include:
- 14 (A) Birthplace and family of origin;
- 15 (B) Manner in which the alleged perpetrator of harm
16 was parented;
- 17 (C) Marital and relationship history; and
- 18 (D) Prior involvement in services;
- 19 (5) Results of psychiatric, psychological, or
20 developmental evaluations of the child, the alleged
21 perpetrators, and other family members who are



1 parties; provided that the evaluations under this
2 paragraph shall be performed by an independent
3 provider with specialized training in the treatment of
4 the effects of physical, mental, and emotional abuse;

5 (6) Whether there is a history of abusive or assaultive
6 conduct by the child's family members and others who
7 have access to the family home;

8 (7) Whether there is a history of substance abuse by the
9 child's family or others who have access to the family
10 home;

11 (8) Whether any alleged perpetrator has completed services
12 in relation to any history identified in paragraphs
13 (6) and (7), and acknowledged and accepted
14 responsibility for the harm to the child;

15 (9) Whether any non-perpetrator who resides in the family
16 home has demonstrated an ability to protect the child
17 from further harm and to ensure that any current
18 protective orders are enforced;

19 (10) Whether there is a support system available to the
20 child's family, including adoptive and hanai



- 1 relatives, friends, and faith-based or other community
2 networks;
- 3 (11) Attempts to locate and involve extended family,
4 friends, and faith-based or other community networks;
- 5 (12) Whether the child's family has demonstrated an
6 understanding of and involvement in services that have
7 been recommended by the department or court-ordered as
8 necessary to provide a safe family home for the child;
- 9 (13) Whether the child's family has resolved identified
10 safety issues in the family home within a reasonable
11 period of time; ~~and~~
- 12 (14) Interviews and documentation provided by family
13 members to the department; provided that the
14 department shall follow-up with interviewees and
15 documentation provided by family members and shall
16 include this follow-up information in the written
17 report filed with the court; and
- 18 ~~(14)~~ (15) The department's assessment, which shall include
19 the demonstrated ability of the child's family to
20 provide a safe family home for the child~~,~~ and full



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1 investigation report of all people in the child's
2 life, and recommendations."

3 SECTION 6. Section 587A-10, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The department shall provide the child's relative an
6 application to be the child's resource family within fifteen
7 days of the relative's request to provide foster placement for
8 the child. Foster placement preference shall be given to an
9 approved relative; provided that such preference is in the best
10 interest of the child. If the application is submitted and
11 denied, the department shall provide the applicant with the
12 specific reasons for the denial and an explanation of the
13 procedures for an administrative appeal[-]; provided that the
14 department's denial of application shall be made without bias or
15 prejudice, subject to investigation and disciplinary action, as
16 appropriate."

17 SECTION 7. Section 587A-11, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§587A-11 Investigation; department powers.** (a) Upon
20 receiving a report that a child is subject to imminent harm, has
21 been harmed, or is subject to threatened harm, and when an



1 assessment is required by this chapter, the department shall
2 cause such investigation to be made [~~as it deems to be~~
3 ~~appropriate~~]. In conducting the investigation, the department
4 [~~may~~] shall:

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



1 (5) Close the matter if the department finds, after an
2 assessment, family input, and independent evaluation
3 of the child's parents pursuant to section 587A- ,
4 that the child is residing with a caregiver who is
5 willing and able to meet the child's needs and provide
6 a safe and appropriate placement for the child;

7 (6) Immediately enter into a service plan:
8 (A) To safely maintain the child in the family home;
9 or
10 (B) To place the child in voluntary foster care
11 pursuant to a written agreement with the child's
12 parent.

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



1 months of the date on which the department assumed
2 physical custody of the child;

3 (7) Assume temporary foster custody of the child and file
4 a petition with the court within three days, excluding
5 Saturdays, Sundays, and holidays, after the date on
6 which the department assumes temporary foster custody
7 of the child, with placement preference being given to
8 an approved relative[+] without prejudice or bias by
9 the department; or

10 (8) File a petition or ensure that a petition is filed by
11 another appropriate authorized agency in court under
12 this chapter.

13 (b) The department shall provide a written response
14 regarding the disposition of the investigation to the
15 complainant within forty-five days of completing the
16 investigation; provided that any information provided under this
17 subsection shall be disclosed in a manner that safeguards the
18 confidentiality of records as required by federal law."

19 SECTION 8. Section 587A-19, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "[+]§587A-19[+] **Testimony by department social worker.** A
2 person employed by the department as a social worker in the area
3 of child protective services or child welfare services shall be
4 presumed to be qualified to testify as an expert on child
5 protective or child welfare services[-]; provided that the
6 social worker shall be unbiased and reflect no prejudice in the
7 social worker's professional assessments, subject to
8 disciplinary action. Any party may move the court to qualify a
9 person employed by the department as a social worker in the area
10 of child protective services or child welfare services called to
11 testify as an expert on child protective or child welfare
12 services."

13 SECTION 9. Section 587A-28, Hawaii Revised Statutes, is
14 amended by amending subsection (e) to read as follows:

15 "(e) If the court finds that the child's physical or
16 psychological health or welfare has been harmed or is subject to
17 threatened harm by the acts or omissions of the child's family,
18 the court:

19 (1) Shall enter a finding that the court has jurisdiction
20 pursuant to section 587A-5;



- 1 (2) Shall enter a finding regarding whether, before the
2 child was placed in foster care, the department made
3 reasonable efforts to prevent or eliminate the need to
4 remove the child from the child's family home;
- 5 (3) Shall enter orders:
- 6 (A) That the child be placed in foster custody if the
7 court finds that the child's remaining in the
8 family home is contrary to the welfare of the
9 child and the child's parents are not willing and
10 able to provide a safe family home for the child,
11 even with the assistance of a service plan; or
- 12 (B) That the child be placed in family supervision if
13 the court finds that the child's parents are
14 willing and able to provide the child with a safe
15 family home with the assistance of a service
16 plan;
- 17 (4) Shall determine whether aggravated circumstances are
18 present.
- 19 (A) If aggravated circumstances are present, the
20 court shall:



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- 1 (i) Conduct a permanency hearing within thirty
2 days, and the department shall not be
3 required to provide the child's parents with
4 an interim service plan or interim
5 visitation; and
- 6 (ii) Order the department to file, within sixty
7 days after the court's finding that
8 aggravated circumstances are present, a
9 motion to terminate parental rights unless
10 the department has documented in the safe
11 family home factors or other written report
12 submitted to the court a compelling reason
13 why it is not in the best interest of the
14 child to file a motion~~(-)~~; and
- 15 (B) If aggravated circumstances are not present or
16 there is a compelling reason why it is not in the
17 best interest of the child to file a motion to
18 terminate parental rights, the court shall order
19 that the department make reasonable efforts to
20 reunify the child with the child's parents and
21 order an appropriate service plan;



- 1 (5) Shall order reasonable supervised or unsupervised
2 visits for the child and the child's family, including
3 with the child's siblings^[7] and grandparents, unless
4 such visits are determined to be unsafe or detrimental
5 to, and not in the best interests of, the child;
- 6 (6) Shall order each of the child's birth parents to
7 complete the medical information forms and release the
8 medical information required under section 578-14.5,
9 to the department. If the child's birth parents
10 refuse to complete the forms or to release the
11 information, the court may order the release of the
12 information over the parents' objections;
- 13 (7) Shall determine whether each party understands that
14 unless the family is willing and able to provide the
15 child with a safe family home, even with the
16 assistance of a service plan, within the reasonable
17 period of time specified in the service plan, their
18 respective parental and custodial duties and rights
19 shall be subject to termination;
- 20 (8) Shall determine the child's date of entry into foster
21 care as defined in this chapter;



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- 1 (9) Shall set a periodic review hearing to be conducted no
2 later than six months after the date of entry into
3 foster care and a permanency hearing to be held no
4 later than twelve months after the date of entry into
5 foster care;
- 6 (10) Shall set a status conference, as the court deems
7 appropriate, to be conducted no later than ninety days
8 after the return hearing; and
- 9 (11) May order that:
- 10 (A) Any party participate in, complete, be liable
11 for, and make every good faith effort to arrange
12 payment for such services or treatment as are
13 authorized by law and that are determined to be
14 in the child's best interests;
- 15 (B) The child be examined by a physician, surgeon,
16 psychiatrist, or psychologist; and
- 17 (C) The child receive treatment, including
18 hospitalization or placement in other suitable
19 facilities, as is determined to be in the child's
20 best interests."



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1 SECTION 10. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 11. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 12. This Act shall take effect upon its approval.

7

INTRODUCED BY: *Anna Mercedes Kim*



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Report Title:

Child Protective Act; Foster Care; Independent Evaluation; Grandparents; Safe Family Home; Relative Placement Preference; Written Response

Description:

Requires an independent evaluation of a child's parents before a child is returned to the child's family home, under certain conditions. Clarifies the purpose of the child protective act. Allows certain contact between grandparents and a child in foster care. Provides a child's biological grandparents with certain rights and duties. Amends the definition of "aggravated circumstances". Includes grandparents under the definition of "family". Amends definition of "incapacitated person". Expands the factors to be considered when providing a child with a safe family home to include evaluations conducted by an independent provider with certain specialized training. Establishes certain requirements for interviewees, documentation, and assessments by DHS. Requires foster placement preference to be given to relatives, if it is in the best interest of the child. Establishes certain requirements for DHS when conducting investigations. Establishes written response requirements for DHS to a complainant after child abuse or neglect investigation. Specifies that a department social worker shall be unbiased and reflect no prejudice in their professional assessments.

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

