



GOV. MSG. NO. 794

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 6, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB912 SD2 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB912 SD2 HD2 CD1

A BILL FOR AN ACT  
RELATING TO PERMANENCY HEARINGS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 15, 2009

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 912

Honorable Members  
Twenty-Fifth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 912, entitled "A Bill for an Act Relating to Permanency Hearings."

The purpose of this bill is to ensure compliance with federal Title IV-E hearing requirements to be consistent with the federal case review system in section 475(5) of the Social Security Act.

This bill is objectionable because it does not ensure compliance with the federal Title IV-E hearing requirements and it is not consistent with the federal case review system in section 475(5) of the Social Security Act.

The federal Department of Health and Human Services, recognizing this bill is defective, has granted the State an extension of time to draft new legislation that complies with federal requirements which will be introduced in the 2010 legislative session.

For the foregoing reasons, I am returning Senate Bill No. 912 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", is written over the printed name.

LINDA LINGLE  
Governor of Hawaii

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## A BILL FOR AN ACT

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RELATING TO PERMANENCY HEARINGS.

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

1       SECTION 1. Section 587-2, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4       "Entry into foster care date" means:

- 5       (1) The first date on which the court has ordered foster  
6       custody or temporary foster custody; or  
7       (2) The date protective custody was assumed by the police  
8       pursuant to section 587-22; or  
9       (3) The date the child was removed from the family home  
10       pursuant to a signed voluntary foster custody  
11       agreement with the department,  
12 whichever date is earlier."

13       SECTION 2. Section 587-27, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15       "(a) [~~Permanent~~] A permanent plan is a specific written  
16 plan, prepared by an appropriate authorized agency, which, after



1 considering both in-state and out-of-state placement options,  
2 should set forth:

3 (1) A position as to whether the court should order an  
4 adoption, guardianship, or permanent custody of the  
5 child and specify:

6 (A) A reasonable period of time during which the  
7 adoption or guardianship may be finalized;  
8 provided that the identity of the proposed  
9 adoptive parent or parents shall be provided to  
10 the court in a separate report which shall be  
11 sealed and shall not be released to the parties  
12 unless the court deems such release to be in the  
13 best interests of the child;

14 (B) If adoption is not the plan, a clear and  
15 convincing explanation why guardianship is  
16 preferable to adoption; or

17 (C) If adoption or guardianship is not the plan, a  
18 clear and convincing explanation why permanent  
19 custody is preferable to guardianship;

20 (2) A specific written plan including:

21 (A) The goal, as being: adoption, guardianship, or  
22 permanent custody;



1 (B) The objectives concerning the child, including,  
2 but not limited to, stable placement, education,  
3 health, therapy, counseling, birth family  
4 (including visitation, if any), culture, and  
5 adoption, guardianship, or preparation for  
6 independent living; [and]

7 (C) If the child has reached the age of sixteen, the  
8 services needed to assist the child to make the  
9 transition from foster care to independent  
10 living; and

11 [~~(C)~~] (D) The method or methods for achieving the goal  
12 and objectives set forth in subparagraphs (A) and  
13 (B);

14 (3) All supporting exhibits and written consents or an  
15 explanation as to why the exhibits or consents are not  
16 available[~~—Upon~~], and upon good cause shown, the  
17 court may waive submission of any supporting exhibit  
18 or written consent; and

19 (4) Any other information or materials which are necessary  
20 to the expeditious facilitation of the permanent  
21 plan."



1 SECTION 3. Section 587-71, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsections (d) and (e) to read:

4 "(d) If the court determines that the child's family home  
5 is not a safe family home, even with the assistance of a service  
6 plan, the court shall vest foster custody of the child in an  
7 authorized agency and enter [such] further orders as the court  
8 deems to be in the best interests of the child.

9 Further, the court shall make a finding establishing the  
10 entry into foster care date, and enter it into the written order  
11 resulting from the hearing.

12 (e) If the child's family home is determined not to be  
13 safe, even with the assistance of a service plan pursuant to  
14 subsection (d), the court may [~~and if the child has been~~  
15 ~~residing without the family home for a period of twelve~~  
16 ~~consecutive months shall,~~] set the case for a show cause hearing  
17 as deemed appropriate by the court at which the child's family  
18 shall have the burden of presenting evidence to the court  
19 regarding such reasons and considerations as the family has to  
20 offer as to why the case should not be set for a permanent plan  
21 hearing. Upon such show cause hearing as the court deems to be



1 appropriate, the court shall consider the criteria set forth in  
2 section 587-73(a)(1), (2), and (4), and:

3 (1) Set the case for a permanent plan hearing and order  
4 that the authorized agency submit a report pursuant to  
5 section 587-40; or

6 (2) Proceed pursuant to this section."

7 2. By amending subsection (j) to read:

8 "(j) If the court makes a determination that aggravated  
9 circumstances are present under this section, the court shall  
10 ~~[set the case for a show cause hearing as deemed appropriate by~~  
11 ~~the court within thirty days. At the show cause hearing, the~~  
12 ~~child's family shall have the burden of presenting evidence to~~  
13 ~~the court regarding the reasons and considerations as to why the~~  
14 ~~case should not be set for a permanent plan hearing.]~~ conduct a  
15 review hearing within thirty days."

16 SECTION 4. Section 587-72, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§587-72 Review hearings. (a) ~~[Except for good cause~~  
19 ~~shown, the]~~ The court shall ~~[set each case for]~~ conduct a review  
20 hearing not later than six months after the date that a service  
21 plan is ordered by the court and~~[7]~~ no later than thirty days  
22 after any finding of aggravated circumstances; thereafter, the



1 court shall [~~set subsequent~~] conduct review hearings at  
2 intervals of no longer than six months until the court's  
3 jurisdiction has been terminated or the court has ordered a  
4 permanent plan and has set the case for a permanent plan review  
5 hearing. The court may set a case for a review hearing upon the  
6 motion of a party at any time if the hearing is deemed by the  
7 court to be in the best interests of the child.

8 (b) [~~Upon~~] At each review hearing, the court shall  
9 consider [~~fully~~] all relevant prior and current information  
10 pertaining to the safe family home guidelines, as set forth in  
11 section 587-25, including but not limited to the report  
12 submitted pursuant to section 587-40, and age appropriate  
13 consultations with the child, and:

- 14 (1) Determine whether the child's family is presently  
15 willing and able to provide the child with a safe  
16 family home without the assistance of a service plan  
17 and, if so, the court shall terminate jurisdiction;
- 18 (2) Determine whether the child's family is presently  
19 willing and able to provide the child with a safe  
20 family home with the assistance of a service plan and,  
21 if so, the court shall return the child or continue  
22 the placement of the child in the child's family home





1 under the family supervision of the appropriate  
2 authorized agency;

3 (3) If the child's family home is determined, pursuant to  
4 paragraph (2) not to be safe, even with the assistance  
5 of a service plan, order that the child remain or be  
6 placed under the foster custody of the appropriate  
7 authorized agency; if the child was not previously in  
8 foster custody, the court shall make a finding  
9 establishing the entry into foster care date and  
10 include the date in the written order for the hearing;  
11 and if the child is in out-of-state placement, the  
12 court shall determine whether out-of-state placement  
13 continues to be appropriate and in the best interests  
14 of the child;

15 (4) Determine whether the parties have complied with,  
16 performed, and completed every term and condition of  
17 the service plan that was previously court ordered[+],  
18 and determine if the most appropriate plan continues  
19 to be reunification of the child in a family home and  
20 the projected date for that to occur;



1        (5) If it is asserted by a party or guardian ad litem that  
2        reunification is not the most appropriate plan, the  
3        court shall set:

4        (A) A permanent plan hearing; or

5        (B) The date by which the department must file a  
6        motion to set the matter for a permanent plan  
7        hearing, or

8        (C) The date by which the department must file a  
9        petition for guardianship,

10       whichever is most appropriate;

11       (6) If reunification is determined not to be the most  
12       appropriate plan, determine whether adoption,  
13       guardianship, or other permanent placement is the most  
14       appropriate plan for the child, and the projected date  
15       for that to occur after consideration of both in-state  
16       and out-of-state placement options. If the most  
17       appropriate option is not adoption or guardianship,  
18       the court shall document the compelling reasons why  
19       adoption or guardianship is not in the child's best  
20       interests;

21       ~~[-(5)] (7) [Order revisions to the existing service plan,~~  
22       ~~after] After satisfying the provisions of section 587-~~



1 71(h), [~~as the court, upon a hearing~~] order revisions  
2 to the existing service plan that the court deems [~~to~~  
3 ~~be appropriate, determines~~] to be in the best  
4 interests of the child[~~7~~], including the projected  
5 date for reunification, if that is determined to be  
6 the most appropriate plan or, for a child who has  
7 reached the age of sixteen and for whom reunification  
8 is not planned, the services needed to help that child  
9 transition from foster care to independent living;  
10 provided that a copy of the revised service plan shall  
11 be incorporated as part of the order;

12 [~~6~~] ~~Enter further orders as the court deems to be in the~~  
13 ~~best interests of the child;~~

14 ~~(7)]~~ (8) Determine whether aggravated circumstances are  
15 present [~~and, if so, the court shall set the case for~~  
16 ~~a show cause hearing as the court deems appropriate~~  
17 ~~within thirty days. At the show cause hearing, the~~  
18 ~~child's family shall have the burden of presenting~~  
19 ~~evidence to the court regarding the reasons and~~  
20 ~~considerations as to why the case should not be set~~  
21 ~~for a permanent plan hearing, and~~]; provided that if a  
22 court determination of aggravated circumstances is



1 made, the department shall file a petition for  
2 permanent custody of the child and the court shall  
3 conduct a permanent plan hearing within sixty days of  
4 the initial determination of aggravated circumstances;

5 ~~[-(8)-]~~ (9) If the child has been residing outside the family  
6 home ~~[for twelve consecutive months from the initial~~  
7 ~~date of entry into out-of-home care,]~~ the court may  
8 set the case for a show cause hearing as deemed  
9 appropriate by the court ~~[. At]~~, and at the show cause  
10 hearing, the child's family shall have the burden of  
11 presenting evidence to the court regarding the reasons  
12 and considerations as to why the case should not be  
13 set for a permanent plan hearing ~~[-]~~; and

14 (10) Enter further orders as the court deems to be in the  
15 best interests of the child.

16 (c) In any case ~~[that a permanent plan hearing is not~~  
17 ~~deemed to be appropriate,]~~ where reunification is determined to  
18 be the appropriate goal, the court shall:

19 (1) Make a finding that the parties understand that unless  
20 the family is willing and able to provide the child  
21 with a safe family home, even with the assistance of a  
22 service plan, within the reasonable period of time



1 specified in the service plan, their respective  
2 parental and custodial duties and rights shall be  
3 subject to termination; and

4 (2) Set the case for a review hearing within six months.

5 (d) If the child has been [~~residing outside of the family~~  
6 ~~home~~] in foster care for an aggregate of fifteen out of the most  
7 recent twenty-two months from the [~~initial date of~~] entry into  
8 [~~out of home care,~~] foster care date, the department shall file  
9 a motion to set the matter for a permanent plan hearing, or the  
10 court shall set a permanent plan hearing, unless:

11 (1) The department has documented in the safe family home  
12 guidelines prepared pursuant to section 587-25(a), a  
13 compelling reason why it would not be in the best  
14 interests of the child to file a motion; or

15 (2) The State has not provided to the family of the child,  
16 consistent with the time period in the service plan,  
17 such services as the department deems necessary for  
18 the safe return of the child to the family home;

19 provided that nothing in this section shall prevent the  
20 department from filing such a motion to set a permanent plan  
21 hearing if the department has determined that the criteria in  
22 section 587-73(a) are present."



1       SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3       SECTION 6. This Act shall take effect on July 1, 2010.

