

JAN 20 2012

A BILL FOR AN ACT

RELATING TO CHILD PROTECTION.

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

SECTION 1. Chapter 587A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§587A- Child to remain in family home; circumstance.

(a) If a report regarding child abuse or neglect, or suspected child abuse or neglect, is filed pursuant to section 350-1.1, the child subject of the report shall be allowed to remain in the family home if it is more likely than not that the child will be safe from harm in the family home. To make the family home safe for the child so that the child may remain in the family home, the perpetrator of the abuse on the child shall be ordered by the department or the court, as applicable, to leave the home and to seek treatment services.

(b) This section shall not serve as a basis for any civil action or criminal proceeding against the State or its employees or agents for any physical harm to the child from the perpetrator of the abuse which occurs in the family home if the child remains in the family home."



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

"[~~§~~587A-2(~~1~~)] Purpose; construction. This chapter creates within the jurisdiction of the family court a child protective act to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm. Furthermore, this chapter makes provisions for the service, treatment, and permanent plans for these children and their families.

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



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

6 The policy and purpose of this chapter is to provide
7 children with prompt and ample protection from the harms
8 detailed herein, with an opportunity for timely reconciliation
9 with their families if the families can provide safe family
10 homes, and with timely and appropriate service or permanent
11 plans to ensure the safety of the child so they may develop and
12 mature into responsible, self-sufficient, law-abiding citizens.

13 The service plan shall effectuate the child's remaining in
14 the family home, when the family home can be immediately made
15 safe with services, ~~[or]~~ the child's returning to a safe family
16 home[-], or, when appropriate, removing a perpetrator of abuse
17 or harm from an otherwise safe family home. The service plan
18 shall be carefully formulated with the family in a timely
19 manner. Every reasonable opportunity should be provided to help
20 the child's legal custodian to succeed in remedying the problems
21 that put the child at substantial risk of being harmed in the
22 family home. Each appropriate resource, public and private,



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

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

- 12 (1) Providing assistance to families to address the causes
13 for abuse and neglect;
- 14 (2) Respecting and using each family's strengths,
15 resources, culture, and customs;
- 16 (3) Ensuring that families are meaningfully engaged and
17 children are consulted in an age-appropriate manner in
18 case planning;
- 19 (4) Enlisting the early and appropriate participation of
20 family and the family's support networks;
- 21 (5) Respecting and encouraging the input and views of
22 caregivers; [and]



- 1 (6) Ensuring a permanent home through timely adoption or
2 other permanent living arrangement, if safe
3 reunification with the family is not possible[-]; and
4 (7) Requiring the perpetrator of abuse of a child, rather
5 than the abused child, to leave an otherwise safe
6 family home in certain cases.

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

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

15 SECTION 3. Section 587A-7, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

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

- 20 (1) Facts relating to the child's current situation, which
21 shall include:



- 1 (A) The child's age, vulnerability, and special needs
2 that affect the child's attachment, growth, and
3 development;
- 4 (B) The child's developmental, psychological,
5 medical, and dental health status and needs,
6 including the names of assessment and treatment
7 providers;
- 8 (C) The child's peer and family relationships and
9 bonding abilities;
- 10 (D) The child's educational status and setting, and
11 the department's efforts to maintain educational
12 stability for the child in out-of-home placement;
- 13 (E) The child's living situation;
- 14 (F) The child's fear of being in the family home;
- 15 (G) The impact of out-of-home placement on the child;
16 provided that preference shall be given to
17 allowing the child to remain in the family home
18 if it is more likely than not that the child will
19 be safe from harm in the family home;
- 20 (H) Services provided to the child and family; and



(I) The department's efforts to maintain connections between the child and the child's siblings, if they are living in different homes;

(2) The initial and any subsequent reports of harm and threatened harm to the child;

(3) Dates and reasons for the child's out-of-home placement; description, appropriateness, and location of the placement; and who has placement responsibility;

(4) Facts regarding the alleged perpetrators of harm to the child, the child's parents, and other family members who are parties to the court proceedings, which facts shall include:

(A) Birthplace and family of origin;

(B) Manner in which the alleged perpetrator of harm was parented;

(C) Marital and relationship history; and

(D) Prior involvement in services;

(5) Results of psychiatric, psychological, or developmental evaluations of the child, the alleged perpetrators, and other family members who are parties;



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

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

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

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

(10) Whether there is a support system available to the child's family, including adoptive and hanai relatives, friends, and faith-based or other community networks;

(11) Attempts to locate and involve extended family, friends, and faith-based or other community networks;

(12) Whether the child's family has demonstrated an understanding of and involvement in services that have



1 been recommended by the department or court-ordered as
2 necessary to provide a safe family home for the child;

3 (13) Whether the child's family has resolved identified
4 safety issues in the family home within a reasonable
5 period of time; and

6 (14) The department's assessment, which shall include the
7 demonstrated ability of the child's family to provide
8 a safe family home for the child, and
9 recommendations[-]; provided that preference shall be
10 given to allowing the child to remain in the family
11 home if it is more likely than not that the child will
12 be safe from harm in the family home."

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

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

21 (1) Enlist the cooperation and assistance of appropriate
22 state and federal law enforcement authorities, who may



1 conduct an investigation and, if an investigation is
2 conducted, shall provide the department with all
3 preliminary findings, including the results of a
4 criminal history record check of an alleged
5 perpetrator of harm or threatened harm to the child;

6 (2) Interview the child without the presence or prior
7 approval of the child's family and temporarily assume
8 protective custody of the child for the purpose of
9 conducting the interview;

10 (3) Resolve the matter in an informal fashion that it
11 deems appropriate under the circumstances;

12 (4) Close the matter if the department finds, after an
13 assessment, that the child is residing with a
14 caregiver who is willing and able to meet the child's
15 needs and provide a safe and appropriate placement for
16 the child; provided that preference shall be given to
17 allowing the child to remain in the family home if it
18 is more likely than not that the child will be safe
19 from harm in the family home;

20 (5) Immediately enter into a service plan:

21 (A) To safely maintain the child in the family home;

22 or



1 (B) To place the child in voluntary foster care
2 pursuant to a written agreement with the child's
3 parent[-];

4 provided that preference shall be given to allowing
5 the child to remain in the family home if it is more
6 likely than not that the child will be safe from harm
7 in the family home.

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

19 (6) Assume temporary foster custody of the child and file
20 a petition with the court within three days, excluding
21 Saturdays, Sundays, and holidays, after the date on
22 which the department assumes temporary foster custody



1 of the child, with placement preference being given to
2 an approved relative; or

3 (7) File a petition or ensure that a petition is filed by
4 another appropriate authorized agency in court under
5 this chapter."

6 SECTION 5. Section 587A-15, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsections (a) and (b) to read:

9 "(a) If an authorized agency has family supervision, it
10 has the following duties and rights, subject to such conditions
11 or restrictions as the court deems to be in the best interests
12 of a child:

13 (1) Monitoring and supervising the child and the child's
14 family members who are parties. Monitoring and
15 supervision shall include reasonable access to each of
16 the family members who are parties and reasonable
17 access into the child's family home; and

18 (2) Placement of the child in foster care and thereby
19 assuming temporary foster custody or foster custody of
20 the child[-]; provided that preference shall be given
21 to allowing the child to remain in the family home if
22 it is more likely than not that the child will be safe



1 from harm in the family home. The authorized agency
2 shall immediately notify the court when [~~such~~] foster
3 care placement occurs. Upon notification, the court
4 shall set the case for:

5 (A) A temporary foster custody hearing within three
6 days, excluding Saturdays, Sundays, and holidays;

7 or

8 (B) If jurisdiction has been established, a periodic
9 review hearing within ten days of the child's
10 placement.

11 The temporary foster custody hearing or the periodic
12 review hearing may be held at a later date, only if
13 the court finds it to be in the best interests of the
14 child.

15 (b) If an authorized agency has foster custody it has the
16 following duties and rights:

17 (1) Determining where and with whom the child shall be
18 placed in foster care; provided that the child shall
19 not be placed in foster care outside the State without
20 prior order of the court; provided that preference
21 shall be given to allowing the child to remain in the



1 family home if it is more likely than not that the
2 child will be safe from harm in the family home;

3 (2) Permitting the child to return to the family from
4 which the child was removed, unless otherwise ordered
5 by the court[-]; provided that preference shall be
6 given to allowing the child to remain in the family
7 home if it is more likely than not that the child will
8 be safe from harm in the family home. The child's
9 return may occur only if no party objects to such
10 placement and prior written notice is given to the
11 court and to all parties stating that there is no
12 objection of any party to the child's return. Upon
13 the child's return to the family, temporary foster
14 custody or foster custody shall be automatically
15 revoked, and the child and the child's family members
16 who are parties shall be placed under temporary family
17 supervision or the family supervision of the
18 authorized agency;

19 (3) Ensuring that the child is provided with adequate
20 food, clothing, shelter, psychological care, physical
21 care, medical care, supervision, and other necessities
22 in a timely manner;



- 1 (4) Monitoring whether the child is being provided with an
2 appropriate education;
- 3 (5) Providing required consents for the child's physical
4 or psychological health or welfare, including ordinary
5 medical, dental, psychiatric, psychological,
6 educational, employment, recreational, or social
7 needs;
- 8 (6) Providing consents for any other medical or
9 psychological care or treatment, including surgery, if
10 the persons who are otherwise authorized to provide
11 consent are unable or unwilling to consent. Before
12 being provided to the child, this care or treatment
13 shall be deemed necessary for the child's physical or
14 psychological health or welfare by two physicians or
15 two psychologists, as appropriate, who are licensed or
16 authorized to practice in the State;
- 17 (7) Providing consent for the child's application for a
18 driver's instructional permit, provisional driver's
19 license, or driver's license;
- 20 (8) Providing consent to the recording of a statement
21 pursuant to section 587A-21; and



1 (9) Providing the court with information concerning the
2 child.

3 The court, in its discretion, may vest foster custody of a
4 child in any authorized agency or subsequently authorized
5 agencies, if the court finds that it is in the child's best
6 interests to do so[-]; provided that preference shall be given
7 to allowing the child to remain in the family home if it is more
8 likely than not that the child will be safe from harm in the
9 family home. The rights and duties that are so assumed by an
10 authorized agency shall supersede the rights and duties of any
11 legal or permanent custodian of the child."

12 2. By amending subsection (d) to read:

13 "(d) If an authorized agency has permanent custody, it has
14 the following duties and rights:

15 (1) Assuming the parental and custodial duties and rights
16 of a legal custodian and family member;

17 (2) Determining where and with whom the child shall live;
18 provided that the child shall not be placed outside
19 the State without prior order of the court; provided
20 further that preference shall be given to allowing the
21 child to remain in the family home if it is more



1 likely than not that the child will be safe from harm
2 in the family home;

3 (3) Ensuring that the child is provided with adequate
4 food, clothing, shelter, psychological care, physical
5 care, medical care, supervision, and other necessities
6 in a timely manner;

7 (4) Monitoring whether the child is being provided with an
8 appropriate education;

9 (5) Providing all required consents for the child's
10 physical or psychological health or welfare, including
11 medical, dental, psychiatric, psychological,
12 educational, employment, recreational, and social
13 needs;

14 (6) Providing consent for the child's application for a
15 driver's instructional permit, provisional driver's
16 license, or driver's license;

17 (7) Providing consent to adoption, change of name, and
18 marriage; and

19 (8) Submitting a written report to the court if the child
20 leaves the home of the permanent custodian for a
21 period of seven consecutive days or more. The report
22 shall state the child's current situation and shall be



1 submitted on or before the tenth day, excluding
2 Saturdays, Sundays, and holidays, after the child
3 leaves the home."

4 SECTION 6. Section 587A-27, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) The service plan shall provide:

7 (1) The specific steps necessary to facilitate the return
8 of the child to a safe family home, if the proposed
9 placement of the child is in foster care under foster
10 custody. These specific steps shall include treatment
11 and services that will be provided~~[7]~~ to the child and
12 to the perpetrator of the abuse, as necessary, actions
13 completed, specific measurable and behavioral changes
14 that must be achieved, and responsibilities assumed;

15 (2) Whether an ohana conference will be conducted for
16 family finding and family group decision making;

17 (3) The respective responsibilities of the child, the
18 parents, legal guardian or custodian, the department,
19 other family members, and treatment providers, and a
20 description and expected outcomes of the services
21 required to achieve the permanency goal;



- 1 (4) The required frequency and types of contact between
2 the assigned social worker, the child, and the family;
- 3 (5) The time frames during which services will be
4 provided, actions must be completed, and
5 responsibilities must be discharged;
- 6 (6) Notice to the parents that their failure to
7 substantially achieve the objectives described in the
8 service plan within the time frames established may
9 result in termination of their parental rights;
- 10 (7) Notice to the parents that if the child has been in
11 foster care under the responsibility of the department
12 for an aggregate of fifteen out of the most recent
13 twenty-two months from the child's date of entry into
14 foster care, the department is required to file a
15 motion to set a termination of parental rights
16 hearing, and the parents' failure to provide a safe
17 family home within two years from the date when the
18 child was first placed under foster custody by the
19 court, may result in the parents' parental rights
20 being terminated; and



1 (8) Any other terms and conditions that the court or the
2 authorized agency deem necessary to the success of the
3 service plan."

4 SECTION 7. Section 587A-31, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) At each permanency hearing, the court shall make
7 written findings pertaining to:

8 (1) The extent to which each party has complied with the
9 service plan and progressed in making the home safe;

10 (2) Whether the current placement of the child continues
11 to be appropriate and in the best interests of the
12 child or if another in-state or out-of-state placement
13 should be considered; provided that preference shall
14 be given to allowing the child to remain in the family
15 home if it is more likely than not that the child will
16 be safe from harm in the family home;

17 (3) The court's projected timetable for reunification or,
18 if the current placement is not expected to be
19 permanent, placement in an adoptive home, with a legal
20 guardian, or under the permanent custody of the
21 department or an authorized agency;



(4) Whether the department has made reasonable efforts, in accordance with the safety and well-being of the child, to:

(A) Place siblings who have been removed from the family home with the same resource family, adoptive placement, or legal guardians; and

(B) Provide for frequent visitation or other on-going interactions with siblings who are not living in the same household;

(5) The appropriate permanency goal for the child, including whether a change in goal is necessary;

(6) Whether the department has made reasonable efforts to finalize the permanency goal in effect for the child and a summary of those efforts;

(7) The date by which the permanency goal for the child is to be achieved;

(8) In the case of a child who has attained sixteen years of age, the services needed to assist the child with the transition from foster care to independent living; and



(9) Consultations with the child in an age-appropriate manner about the proposed plan for permanency or transition from foster care to independent living."

SECTION 8. Section 587A-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The permanent plan shall:

(1) State whether the permanency goal for the child will be achieved through adoption, legal guardianship, or permanent custody; provided that preference shall be given to allowing the child to remain in the family home if it is more likely than not that the child will be safe from harm in the family home in the absence of the perpetrator of the abuse on the child;

(2) Establish a reasonable period of time by which the adoption or legal guardianship shall be finalized;

(3) Document:

(A) A compelling reason why legal guardianship or permanent custody is in the child's best interests if adoption is not the goal; or

(B) A compelling reason why permanent custody is in the child's best interests if adoption or legal guardianship is not the goal;



(4) Establish other related goals, including those pertaining to the stability of the child's placement; education; health; therapy; counseling; relationship with the child's birth family, including visits, if any; cultural connections; and preparation for independent living;

(5) If a child has reached the age of sixteen, describe the services needed to assist the child with the transition from foster care to independent living; and

(6) Describe the methods for achieving the goals and objectives set forth in paragraphs (4) and (5)."

SECTION 9. Section 587A-38, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The protective order may require a party to leave the party's dwelling or residence during the period of time in which the protective order is in effect[-]; provided that the protective order shall require a party to leave the party's dwelling or residence during the period of time in which the protective order is in effect if the protective order restrains that party from contacting, threatening, or physically abusing a child and it is more likely than not that the child will be safe from harm in the family home in the absence of that party."



1 SECTION 10. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect upon its approval.

4

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Report Title:

Child Abuse; Child Protection

Description:

Establishes a preference for allowing a child who has been or is at risk of being abused to remain in a safe family home, and requiring the perpetrator of the abuse to leave the home, in certain cases of reported or suspected child abuse or neglect. Requires the abused child and the perpetrator of the abuse to receive treatment and services as part of the service plan to return a child in foster care back to the family home.

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

