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# A BILL FOR AN ACT

RELATING TO CHILD WELFARE.

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

1           SECTION 1. The legislature finds that the tragic  
2 occurrence of the revictimization of children within the child  
3 welfare system must be addressed. When making assessments,  
4 child welfare services investigators and individual social  
5 workers can sometimes demonstrate a bias against single mothers  
6 of color, who consequently lack any meaningful recourse. In  
7 those instances, it is their children who suffer the most.

8           The legislature further finds that children often lack a  
9 voice in the custody process, which increases the likelihood  
10 they will be exploited. When taken into protective custody,  
11 children often do not fully understand their rights.

12           In recognition of these problems, the legislature finds  
13 that the constitutional rights of children must be upheld.  
14 Accordingly, the purpose of this Act is to:

15           (1) Define and recognize rights in trust for children  
16           within the Child Protective Act;



- 1           (2) Require the appointment of a guardian ad litem in  
2           family court custody proceedings; and
- 3           (3) Lower the threshold determination of level of harm  
4           needed for a police officer to take a child into  
5           protective custody, for the department of human  
6           services to assume temporary foster custody of a  
7           child, and for the department of human services to  
8           conduct an investigation under the Child Protective  
9           Act.

10           SECTION 2. Chapter 587A, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13           "§587A- Children; rights in trust. (a) The  
14 constitutional rights of a child are "rights in trust" which  
15 shall not be disrupted or postponed and shall remain  
16 unrestricted; provided that a child's exercise of any of their  
17 rights in trust may be postponed if there is evidence that  
18 exercise of the right will damage the child's future autonomy.

19           (b) For purposes of this section, "rights in trust" are a  
20 child's constitutional rights in totality, afforded to all  
21 persons at birth, held in trust by their custodian, which may



1 not yet be enjoyed because of the child's lack of capacity to  
2 exercise these rights until the child reaches the age of  
3 majority."

4 SECTION 3. Section 571-46, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) In actions for divorce, separation, annulment,  
7 separate maintenance, or any other proceeding where there is at  
8 issue a dispute as to the custody of a minor child, the court,  
9 during the pendency of the action, at the final hearing, or any  
10 time during the minority of the child, may make an order for the  
11 custody of the minor child as may seem necessary or proper. In  
12 awarding the custody, the court shall be guided by the following  
13 standards, considerations, and procedures:

14 (1) Custody should be awarded to either parent or to both  
15 parents according to the best interests of the child,  
16 and the court also may consider frequent, continuing,  
17 and meaningful contact of each parent with the child  
18 unless the court finds that a parent is unable to act  
19 in the best interest of the child;

20 (2) Custody may be awarded to persons other than the  
21 father or mother whenever the award serves the best



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1 interest of the child. Any person who has had de  
2 facto custody of the child in a stable and wholesome  
3 home and is a fit and proper person shall be entitled  
4 prima facie to an award of custody;

5 (3) If a child is of sufficient age and capacity to  
6 reason, so as to form an intelligent preference, the  
7 child's wishes as to custody shall be considered and  
8 be given due weight by the court;

9 (4) Whenever good cause appears therefor, the court may  
10 require an investigation and report concerning the  
11 care, welfare, and custody of any minor child of the  
12 parties. When so directed by the court, investigators  
13 or professional personnel attached to or assisting the  
14 court, hereinafter referred to as child custody  
15 evaluators, shall make investigations and reports that  
16 shall be made available to all interested parties and  
17 counsel before hearing, and the reports may be  
18 received in evidence if no objection is made and, if  
19 objection is made, may be received in evidence;  
20 provided the person or persons responsible for the  
21 report are available for cross-examination as to any



1 matter that has been investigated; and provided  
2 further that the court shall define, in accordance  
3 with section 571-46.4, the requirements to be a court-  
4 appointed child custody evaluator, the standards of  
5 practice, ethics, policies, and procedures required of  
6 court-appointed child custody evaluators in the  
7 performance of their duties for all courts, and the  
8 powers of the courts over child custody evaluators to  
9 effectuate the best interests of a child in a  
10 contested custody dispute pursuant to this section.

11 Where there is no child custody evaluator available  
12 that meets the requirements and standards, or any  
13 child custody evaluator to serve indigent parties, the  
14 court may appoint a person otherwise willing and  
15 available in accordance with section 571-46.4;

- 16 (5) The court may hear the testimony of any person or  
17 expert, produced by any party or upon the court's own  
18 motion, whose skill, insight, knowledge, or experience  
19 is such that the person's or expert's testimony is  
20 relevant to a just and reasonable determination of  
21 what is for the best physical, mental, moral, and



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1 spiritual well-being of the child whose custody is at  
2 issue;

3 (6) Any custody award shall be subject to modification or  
4 change whenever the best interests of the child  
5 require or justify the modification or change and,  
6 wherever practicable, the same person who made the  
7 original order shall hear the motion or petition for  
8 modification of the prior award;

9 (7) Reasonable visitation rights shall be awarded to  
10 parents, grandparents, siblings, and any person  
11 interested in the welfare of the child in the  
12 discretion of the court, unless it is shown that  
13 rights of visitation are detrimental to the best  
14 interests of the child;

15 (8) The court [~~may~~] shall appoint a guardian ad litem to  
16 represent the interests of the child and may assess  
17 the reasonable fees and expenses of the guardian ad  
18 litem as costs of the action, payable in whole or in  
19 part by either or both parties as the circumstances  
20 may justify;



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1           (9) In every proceeding where there is at issue a dispute  
2           as to the custody of a child, a determination by the  
3           court that family violence has been committed by a  
4           parent raises a rebuttable presumption that it is  
5           detrimental to the child and not in the best interest  
6           of the child to be placed in sole custody, joint legal  
7           custody, or joint physical custody with the  
8           perpetrator of family violence. In addition to other  
9           factors that a court shall consider in a proceeding in  
10          which the custody of a child or visitation by a parent  
11          is at issue, and in which the court has made a finding  
12          of family violence by a parent:

13           (A) The court shall consider as the primary factor  
14           the safety and well-being of the child and of the  
15           parent who is the victim of family violence;

16           (B) The court shall consider the perpetrator's  
17           history of causing physical harm, bodily injury,  
18           or assault or causing reasonable fear of physical  
19           harm, bodily injury, or assault to another  
20           person; and



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1 (C) If a parent is absent or relocates because of an  
2 act of family violence by the other parent, the  
3 absence or relocation shall not be a factor that  
4 weighs against the parent in determining custody  
5 or visitation;

6 (10) A court may award visitation to a parent who has  
7 committed family violence only if the court finds that  
8 adequate provision can be made for the physical safety  
9 and psychological well-being of the child and for the  
10 safety of the parent who is a victim of family  
11 violence;

12 (11) In a visitation order, a court may:

13 (A) Order an exchange of a child to occur in a  
14 protected setting;

15 (B) Order visitation supervised by another person or  
16 agency;

17 (C) Order the perpetrator of family violence to  
18 attend and complete, to the satisfaction of the  
19 court, a program of intervention for perpetrators  
20 or other designated counseling as a condition of  
21 the visitation;



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- 1 (D) Order the perpetrator of family violence to  
2 abstain from possession or consumption of alcohol  
3 or controlled substances during the visitation  
4 and for twenty-four hours preceding the  
5 visitation;
- 6 (E) Order the perpetrator of family violence to pay a  
7 fee to defray the costs of supervised visitation;
- 8 (F) Prohibit overnight visitation;
- 9 (G) Require a bond from the perpetrator of family  
10 violence for the return and safety of the child.  
11 In determining the amount of the bond, the court  
12 shall consider the financial circumstances of the  
13 perpetrator of family violence;
- 14 (H) Impose any other condition that is deemed  
15 necessary to provide for the safety of the child,  
16 the victim of family violence, or other family or  
17 household member; and
- 18 (I) Order the address of the child and the victim to  
19 be kept confidential;
- 20 (12) The court may refer but shall not order an adult who  
21 is a victim of family violence to attend, either



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1 individually or with the perpetrator of the family  
2 violence, counseling relating to the victim's status  
3 or behavior as a victim as a condition of receiving  
4 custody of a child or as a condition of visitation;

5 (13) If a court allows a family or household member to  
6 supervise visitation, the court shall establish  
7 conditions to be followed during visitation;

8 (14) A supervised visitation center shall provide a secure  
9 setting and specialized procedures for supervised  
10 visitation and the transfer of children for visitation  
11 and supervision by a person trained in security and  
12 the avoidance of family violence;

13 (15) The court may include in visitation awarded pursuant  
14 to this section visitation by electronic communication  
15 provided that the court shall additionally consider  
16 the potential for abuse or misuse of the electronic  
17 communication, including the equipment used for the  
18 communication, by the person seeking visitation or by  
19 persons who may be present during the visitation or  
20 have access to the communication or equipment; whether  
21 the person seeking visitation has previously violated



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1 a temporary restraining order or protective order; and  
2 whether adequate provision can be made for the  
3 physical safety and psychological well-being of the  
4 child and for the safety of the custodial parent;

5 (16) The court may set conditions for visitation by  
6 electronic communication under paragraph (15),  
7 including visitation supervised by another person or  
8 occurring in a protected setting. Visitation by  
9 electronic communication shall not be used to:

10 (A) Replace or substitute an award of custody or  
11 physical visitation except where:

12 (i) Circumstances exist that make a parent  
13 seeking visitation unable to participate in  
14 physical visitation, including military  
15 deployment; or

16 (ii) Physical visitation may subject the child to  
17 physical or extreme psychological harm; or

18 (B) Justify or support the relocation of a custodial  
19 parent; and

20 (17) Notwithstanding any provision to the contrary, no  
21 natural parent shall be granted custody of or



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1           visitation with a child if the natural parent has been  
2           convicted in a court of competent jurisdiction in any  
3           state of rape or sexual assault and the child was  
4           conceived as a result of that offense; provided that:

5           (A) A denial of custody or visitation under this  
6           paragraph shall not affect the obligation of the  
7           convicted natural parent to support the child;

8           (B) The court may order the convicted natural parent  
9           to pay child support;

10          (C) This paragraph shall not apply if subsequent to  
11          the date of conviction, the convicted natural  
12          parent and custodial natural parent cohabituate  
13          and establish a mutual custodial environment for  
14          the child; and

15          (D) A custodial natural parent may petition the court  
16          to grant the convicted natural parent custody and  
17          visitation denied pursuant to this paragraph, and  
18          upon such petition the court may grant custody  
19          and visitation to the convicted natural parent  
20          where it is in the best interest of the child."



1 SECTION 4. Section 587A-4, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4 "Probable harm" means that without intervention there is  
5 reasonable cause to believe that harm to the child is more  
6 likely than not to occur."

7 SECTION 5. Section 587A-8, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) A police officer shall assume protective custody of a  
10 child without a court order and without the consent of the  
11 child's family, if in the discretion of the police officer, the  
12 officer determines that:

13 (1) The child is subject to harm or imminent harm, has  
14 been harmed, or may suffer probable harm while in the  
15 custody of the child's family;

16 (2) The child has no parent, as defined in this chapter,  
17 who is willing and able to provide a safe family home  
18 for the child;

19 (3) The child has no caregiver, as defined in this  
20 chapter, who is willing and able to provide a safe and  
21 appropriate placement for the child; or



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1           (4) The child's parent has subjected the child to harm or  
2           threatened harm and the parent is likely to flee with  
3           the child."

4           SECTION 6. Section 587A-9, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6           "(a) When the department receives protective custody of a  
7 child from the police, the department shall:

8           (1) Assume temporary foster custody of the child if, in  
9           the discretion of the department, the department  
10           determines that the child is subject to harm or  
11           imminent harm, has been harmed, or may suffer probable  
12           harm while in the custody of the child's family;

13           (2) Make every reasonable effort to inform the child's  
14           parents of the actions taken, unless doing so would  
15           put another person at risk of harm;

16           (3) Unless the child is admitted to a hospital or similar  
17           institution, place the child in emergency foster care  
18           while the department conducts an appropriate  
19           investigation, with placement preference being given  
20           to an approved relative;



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- 1           (4) With authorized agencies, make reasonable efforts to  
2           identify and notify all relatives within thirty days  
3           of assuming temporary foster custody of the child; and  
4           (5) Within three days, excluding Saturdays, Sundays, and  
5           holidays:  
6           (A) Relinquish temporary foster custody, return the  
7           child to the child's parents, and proceed  
8           pursuant to section 587A-11(4), (5), or (6);  
9           (B) Secure a voluntary placement agreement from the  
10          child's parents to place the child in foster  
11          care, and proceed pursuant to section 587A-11(6)  
12          or (8); or  
13          (C) File a petition with the court."

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

16           "**§587A-11 Investigation; department powers.** Upon  
17 receiving a report that a child is subject to harm or imminent  
18 harm, has been harmed, may suffer probable harm, or is subject  
19 to threatened harm, and when an assessment is required by this  
20 chapter, the department shall cause such investigation to be



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1 made as it deems to be appropriate. In conducting the  
2 investigation, the department may:

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



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1            caregiver who is willing and able to meet the child's  
2            needs and provide a safe and appropriate placement for  
3            the child;

4            (6) Immediately enter into a service plan:

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

6                       or

7            (B) To place the child in voluntary foster care  
8                       pursuant to a written agreement with the child's  
9                       parent.

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



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1           (7) Assume temporary foster custody of the child and file  
2           a petition with the court within three days, excluding  
3           Saturdays, Sundays, and holidays, after the date on  
4           which the department assumes temporary foster custody  
5           of the child, with placement preference being given to  
6           an approved relative; or

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

10          SECTION 8. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12          SECTION 9. This Act shall take effect upon its approval.

13

INTRODUCED BY: Tim Winger  
JAN 22 2021



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**Report Title:**

Child Welfare; Child Protective Act; Rights in Trust; Protective Custody; Department of Human Services; Imminent Harm; Probable Harm

**Description:**

Defines and recognizes rights in trust for children within the Child Protective Act. Requires family court to appoint guardian ad litem in custody cases. Provides that when a child is subject to harm or imminent harm, has been harmed, or may suffer probable harm is sufficient for police officer to take child into protective custody without court order, for department of human services to assume temporary foster custody of child, and for the department of human services to conduct an investigation.

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

