

JAN 22 2021

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



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



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;



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



- 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;



- 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



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



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



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



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;



- 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



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



S.B. NO. 822

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;



S.B. NO. 822

- 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: 



S.B. NO. 822

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.

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