

JAN 21 2022

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# A BILL FOR AN ACT

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RELATING TO THE DEPARTMENT OF HUMAN SERVICES.

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

1       SECTION 1. The legislature finds that, in fiscal year  
2   2019, of the 2,336 cases of child abuse or neglect investigated  
3   by the department of human services, only thirty-two percent  
4   were confirmed. In fiscal year 2020, of the 1,131 children who  
5   entered foster care in Hawaii, only sixteen per cent were placed  
6   as the result of court orders or voluntary consent. Eighty-four  
7   per cent of children who entered foster care were removed from  
8   their homes without judicial oversight or as part of a  
9   coordinated child or family safety plan. Many times, parents or  
10   guardians are not aware of their legal rights at the time of  
11   involuntary child removal by the State. Native Hawaiian  
12   families and children are disproportionately affected because  
13   they constitute forty-four per cent - nearly half - of children  
14   in foster care, while constituting less than one-third of the  
15   children living in the islands.

16       The legislature further finds that one of the reasons for  
17   the high rate of child removals without court order or warrant



1 is due to the overly broad and confusing language of the  
2 governing statute, which allows immediate removal when there is  
3 reasonable cause to believe that the child will suffer harm  
4 within the following ninety days. However, the ninety-day  
5 threshold provides more than sufficient time for the police or  
6 child protective services to petition and receive a court order  
7 or warrant for removal. Therefore, a distinction is required  
8 between immediate harm, in which a police officer has no time to  
9 get a warrant, and imminent harm within ninety days.

10 The legislature additionally finds that this distinction is  
11 necessary to protect parents' and families' constitutional  
12 rights as outlined by the Ninth Circuit Federal Court of Appeals  
13 in the case Rogers v. County of San Joaquin, 487 F.3d 1288, 1294  
14 (9th Cir. 2007):

15 Parents and children have a well-elaborated  
16 constitutional right to live together without  
17 governmental interference. The Fourteenth Amendment  
18 guarantees that parents will not be separated from  
19 their children without due process of law except in  
20 emergencies. Officials violate this right if they  
21 remove a child from the home absent information at



1 the time of the seizure that establishes reasonable  
2 cause to believe that the child is in imminent  
3 danger of serious bodily injury and that the scope  
4 of the intrusion is reasonably necessary to avert  
5 that specific injury. The Fourth Amendment also  
6 protects children from removal from their homes  
7 absent such a showing. Officials, including social  
8 workers, who remove a child from [their] home  
9 without a warrant must have reasonable cause to  
10 believe that the child is likely to experience  
11 serious bodily harm in the time that would be  
12 required to obtain a warrant.

13 (Internal quotation marks and citations omitted.)

14 The legislature also finds that Connecticut and Arizona  
15 have laws that require parents to be presented with a written  
16 notification of their rights when an investigation is initiated,  
17 and other states, including Idaho, Colorado, and New York, are  
18 actively considering enactment of similar law, supported by  
19 family advocates and elected officials.

20 The purpose of this Act is to require:



(1) Police officers, who have the exclusive statutory authority to remove a child from the child's family home without a court order or the family's consent, to promptly submit a police report documenting specific, articulable evidence of immediate harm to the child that warranted the immediate removal; and

(2) The State to provide written notice to a parent of the parent's rights when conducting an investigation of a reported child abuse or neglect.

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

1. By adding two new definitions to be appropriately inserted and to read:

"Immediate harm" means an active, present danger to a child that is observable and documentable, and that without instant intervention there is probable risk that continued contact with family will result in harm to the child.

"Protective custody warrant" means a written order by a judge directing a law enforcement officer to place a child into protective custody to keep the child safe from imminent harm; provided that a written order is not required when there are



1 observed circumstances or behaviors that can be documented as  
2 posing a risk of immediate harm or serious injury."

3 2. By amending the definition of "imminent harm" to read:

4 "Imminent harm" means ~~[that without intervention within~~  
5 ~~the next ninety days, there is reasonable cause to believe that~~  
6 ~~harm to the child will occur or reoccur.]~~ observed circumstances  
7 or behaviors that can be documented demonstrating that there is  
8 a substantial risk that harm to the child will occur or reoccur,  
9 but that immediate harm is not occurring to the child."

10 SECTION 3. Section 587A-8, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[+]§587A-8[+] Protective custody by police officer  
13 without court order. (a) A police officer shall assume  
14 protective custody of a child without a court order and without  
15 the consent of the child's family~~[, if in the discretion of the~~  
16 ~~police officer, the officer determines that:]~~ if there is no  
17 time to obtain a court order and the officer observes and can  
18 articulate on the initial police report that:

19 (1) The child is subject to ~~[imminent]~~ immediate harm  
20 while in the custody of the child's family;



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

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

7           (4)   The child's parent has subjected the child to harm or  
8                   threatened harm and the parent is likely to flee with  
9                   the child.

10          (b)   The department shall assume temporary foster custody  
11 of the child when a police officer has completed the transfer of  
12 protective custody of the child to the department as follows:

13          (1)   A police officer who assumes protective custody of a  
14                   child shall complete transfer of protective custody to  
15                   the department by presenting physical custody of the  
16                   child to the department; or

17          (2)   If the child is or will be admitted to a hospital or  
18                   similar institution, the police officer shall  
19                   immediately complete the transfer of protective  
20                   custody to the department by notifying the department  
21                   and receiving an acknowledgment from the hospital or



1 similar institution that it has been informed that the  
2 child is under the temporary foster custody of the  
3 department.

4 (c) The officer shall provide an initial written report  
5 containing documented observations of the behaviors and  
6 circumstances that formed the basis for immediate removal to the  
7 department within twenty-four hours or the next business day of  
8 assuming protective custody of a child."

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

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

13 (1) Assume temporary foster custody of the child if, in  
14 the discretion of the department, the department  
15 determines that the child is subject to imminent harm  
16 while in the custody of the child's family;

17 (2) Receive a copy of the initial police report within  
18 twenty-four hours or the next business day;

19 ~~[(+2)]~~ (3) Make every reasonable effort to inform the  
20 child's parents of the actions taken~~[7]~~ and provide a



1           copy of the initial police report, unless doing so  
2           would put another person at risk of harm;

3       ~~[(+3)]~~ (4) Unless the child is admitted to a hospital or  
4           similar institution, place the child in emergency  
5           foster care while the department conducts an  
6           appropriate investigation, with placement preference  
7           being given to an approved relative;

8       ~~[(+4)]~~ (5) With authorized agencies, make reasonable efforts  
9           to identify and notify all relatives within thirty  
10          days of assuming temporary foster custody of the  
11          child; and

12       ~~[(+5)]~~ (6) Within three days, excluding Saturdays, Sundays,  
13          and holidays:

14           (A) Relinquish temporary foster custody, return the  
15           child to the child's parents, and proceed  
16           pursuant to section ~~[587A-11(4)]~~, 587A-11(b)(4),  
17           and (c)(4), (5), or (6);

18           (B) Secure a voluntary placement agreement from the  
19           child's parents to place the child in foster  
20           care, and proceed pursuant to section ~~[587A-~~  
21           ~~11(6)]~~ 587A-11(c)(6) or (8); or





(C) File a petition with the court[-] that shall include a copy of the initial police report."

SECTION 5. Section 587A-11, Hawaii Revised Statutes, is amended to read as follows:

**"§587A-11 Investigation; department powers.** (a) Upon receiving a report that a child is subject to imminent harm, has been harmed, or is subject to threatened harm, and when an assessment is required by this chapter, the department shall cause such investigation to be made as it deems to be appropriate.

(b) In conducting the investigation, the department shall:

(1) At the time of the initial face-to-face contact, provide the parent with written notice of the parent's rights and legal disclosures in a document entitled "Notice of Parent Rights", which shall be developed by the department and include the following:

(A) The department is conducting an investigation of suspected child abuse or neglect according to the law;

(B) The parent must be notified of the allegations prior to an interview;



1        (C) The parent is not required to permit the  
2        department or a police officer to enter the  
3        residence of the parent unless a valid warrant is  
4        presented;

5        (D) The parent is not required to speak with the  
6        department at that time; however, failure to  
7        cooperate may have serious consequences;

8        (E) The parent has the right to record the interview;

9        (F) The parent is entitled to seek representation of  
10       an attorney and have an attorney present when the  
11       parent is questioned by the department;

12       (G) Neither the department nor the police officer is  
13       an attorney, and neither may provide legal advice  
14       to the parent;

15       (H) Any statement made by the parent or any family  
16       member may be used against the parent in a  
17       hearing initiated pursuant to this chapter; and

18       (I) The parent is not required to sign any document  
19       presented by the department or a police officer,  
20       including but not limited to a release of claims  
21       or service agreement, and is entitled to have an



1                   attorney review any document before the parent

2                   agrees to sign;

3       (2) Make reasonable efforts to ensure that the notice  
4           provided to a parent under this subsection is written  
5           in a manner that will be understood by the parent and  
6           is provided in a language understood by the parent;

7       (3) Request the parent to sign and date the notice as  
8           evidence of having received the notice. If the parent  
9           refuses to sign and date the notice upon request, the  
10          department shall specifically indicate on the notice  
11          the request to sign and the parent's refusal to do so.  
12          The department shall sign the notice as witness to the  
13          parent's refusal to sign and provide the parent with a  
14          copy of the signed notice at the time of the initial  
15          face-to-face contact with the parent; and

16       (4) Except when an initial contact with a parent results  
17          in the immediate or same-day placement of a child into  
18          emergency foster care, the notice provided under this  
19          subsection shall be implemented, retained in the  
20          child's case file, and attached to a court petition in  
21          the event of a subsequent removal to foster custody.



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



1       (5) Close the matter if the department finds, after an  
2       assessment, that the child is residing with a  
3       caregiver who is willing and able to meet the child's  
4       needs and provide a safe and appropriate placement for  
5       the child;

6       (6) Immediately enter into a service plan:

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

8       or

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

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

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

12 SECTION 6. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval.

15 INTRODUCED BY:

*Lana Acasis*  
*By Request*



**Report Title:**

Department of Human Services; Protective Custody; Parental Rights

**Description:**

Establishes definitions of "immediate harm" and "protective custody warrant" for the purpose of the Child Protective Act. Requires a police officer who assumes protective custody of a child who is subject to immediate harm to provide a written report detailing the observations justifying the immediate removal to the department within twenty-four hours of assuming custody of the child. Requires a copy of the police report to be provided to the parents of the child and to the court. Requires the Department of Human Services to provide written notice to a parent of the parent's right when conducting an investigation regarding a child who has been harmed or may be subject to imminent or threatened harm.

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

