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## A BILL FOR AN ACT

RELATING TO CHILD PROTECTION.

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

12 (Internal quotation marks and citations omitted.)

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

19 The purpose of this Act is to require:

- 20 (1) Police officers, who have the exclusive statutory  
21 authority to remove a child from the child's family



1 home without a court order or the family's consent, to  
2 promptly submit a police report documenting specific,  
3 articulable evidence of immediate harm to the child  
4 that warranted the immediate removal; and

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

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

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

12 "Immediate harm" means an active, present danger to a  
13 child that is observable, is documentable, and has a probable  
14 risk of occurring due to continued contact with family without  
15 instant intervention.

16 "Protective custody warrant" means a written order by a  
17 judge directing a law enforcement officer to place a child into  
18 protective custody to keep the child safe from imminent harm;  
19 provided that a written order is not required when there are  
20 observed circumstances or behaviors that can be documented as  
21 posing a risk of imminent harm or serious injury."



1           2. By amending the definition of "imminent harm" to read:  
 2            "Imminent harm" means [~~that without intervention within~~  
 3 ~~the next ninety days, there is reasonable cause to believe that~~  
 4 ~~harm to the child will occur or reoccur.~~] observed circumstances  
 5 or behaviors that can be documented demonstrating that there is  
 6 a substantial risk that harm to the child will occur or reoccur,  
 7 but that immediate harm is not occurring."

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

10           "~~{}~~**\$587A-8**~~{}~~ **Protective custody by police officer**  
 11 **without court order.** (a) A police officer shall assume  
 12 protective custody of a child without a court order and without  
 13 the consent of the child's family[~~, if in the discretion of the~~  
 14 ~~police officer, the officer determines that:~~] if there is no  
 15 time to obtain a court order and the officer observes and can  
 16 articulate on the initial police report that:

- 17           (1) The child is subject to [~~imminent~~] immediate harm
- 18                           while in the custody of the child's family;
- 19           (2) The child has no parent, as defined in this chapter,
- 20                           who is willing and able to provide a safe family home
- 21                           for the child;



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

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

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

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

14 (2) If the child is or will be admitted to a hospital or  
15 similar institution, the police officer shall  
16 immediately complete the transfer of protective  
17 custody to the department by notifying the department  
18 and receiving an acknowledgment from the hospital or  
19 similar institution that it has been informed that the  
20 child is under the temporary foster custody of the  
21 department.



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

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

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

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

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

16                [~~2~~] (3) Make every reasonable effort to inform the  
17                child's parents of the actions taken~~[7]~~ and provide a  
18                copy of the initial police report, unless doing so  
19                would put another person at risk of harm;

20                [~~3~~] (4) Unless the child is admitted to a hospital or  
21                similar institution, place the child in emergency



1 foster care while the department conducts an  
2 appropriate investigation, with placement preference  
3 being given to an approved relative;

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

8 ~~[(5)]~~ (6) Within three days, excluding Saturdays, Sundays,  
9 and holidays:

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

14 (B) Secure a voluntary placement agreement from the  
15 child's parents to place the child in foster  
16 care, and proceed pursuant to section ~~[587A-~~  
17 ~~11(6)]~~ 587A-11(c)(6) or (8); or

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

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



1           "**§587A-11 Investigation; department powers.** (a) Upon  
2 receiving a report that a child is subject to imminent harm, has  
3 been harmed, or is subject to threatened harm, and when an  
4 assessment is required by this chapter, the department shall  
5 cause such investigation to be made as it deems to be  
6 appropriate.

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

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

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

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

18           (C) The parent is not required to permit the  
19           department or a police officer to enter the  
20           residence of the parent unless a valid warrant is  
21           presented;



- 1           (D) The parent is not required to speak with the
- 2           department at that time;
- 3           (E) The parent has the right to record the interview;
- 4           (F) The parent is entitled to seek representation of
- 5           an attorney and have an attorney present when the
- 6           parent is questioned by the department;
- 7           (G) Neither the department nor the police officer may
- 8           provide legal advice to the parent;
- 9           (H) Any statement made by the parent or any family
- 10          member may be used against the parent in a
- 11          hearing initiated pursuant to this chapter; and
- 12          (I) The parent is not required to sign any document
- 13          presented by the department or a police officer,
- 14          including but not limited to a release of claims
- 15          or service agreement, and is entitled to have an
- 16          attorney review any document before the parent
- 17          agrees to sign;
- 18          (2) Make reasonable efforts to ensure that the notice
- 19          provided to a parent under this subsection is written
- 20          in a manner that will be understood by the parent and
- 21          is provided in a language understood by the parent;



- 1       (3) Request the parent to sign and date the notice as  
2       evidence of having received the notice. If the parent  
3       refuses to sign and date the notice upon request, the  
4       department shall specifically indicate on the notice  
5       the request to sign and the parent's refusal to do so.  
6       The department shall sign the notice as witness to the  
7       parent's refusal to sign and provide the parent with a  
8       copy of the signed notice at the time of the initial  
9       face-to-face contact with the parent; and
- 10       (4) Except when an initial contact with a parent results  
11       in the immediate or same-day placement of a child into  
12       emergency foster care, the notice provided under this  
13       subsection shall be implemented, retained in the  
14       child's case file, and attached to a court petition in  
15       the event of a subsequent removal to foster custody.
- 16       (c) In conducting the investigation, the department may:
- 17       (1) Enlist the cooperation and assistance of appropriate  
18       state and federal law enforcement authorities, who may  
19       conduct an investigation and, if an investigation is  
20       conducted, shall provide the department with all  
21       preliminary findings, including the results of a



- 1 criminal history record check of an alleged  
2 perpetrator of harm or threatened harm to the child;
- 3 (2) Conduct a criminal history record check of an alleged  
4 perpetrator and all adults living in the family home,  
5 with or without consent, to ensure the safety of the  
6 child;
- 7 (3) Interview the child without the presence or prior  
8 approval of the child's family and temporarily assume  
9 protective custody of the child for the purpose of  
10 conducting the interview; provided that when a child  
11 is interviewed while at school, the interview shall be  
12 recorded and retained in the department's case file;
- 13 (4) Resolve the matter in an informal fashion that it  
14 deems appropriate under the circumstances;
- 15 (5) Close the matter if the department finds, after an  
16 assessment, that the child is residing with a  
17 caregiver who is willing and able to meet the child's  
18 needs and provide a safe and appropriate placement for  
19 the child;
- 20 (6) Immediately enter into a service plan:



- 1 (A) To safely maintain the child in the family home;
- 2 or
- 3 (B) To place the child in voluntary foster care
- 4 pursuant to a written agreement with the child's
- 5 parent.

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

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



1 of the child, with placement preference being given to  
2 an approved relative; or  
3 (8) File a petition or ensure that a petition is filed by  
4 another appropriate authorized agency in court under  
5 this chapter."

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

8 SECTION 7. This Act shall take effect upon its approval.  
9

INTRODUCED BY:

*John M. Berg*  
JAN 20 2023



# H.B. NO. 449

**Report Title:**

Department of Human Services; Protective Custody; Parental Rights; Immediate Harm to Child

**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 parental rights 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.*

