
A BILL FOR AN ACT

RELATING TO THE CHILD PROTECTIVE ACT.

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

1 SECTION 1. Section 587A-4, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Exigent circumstances" means that based on specific and
6 articulable evidence, there is reasonable cause to believe that
7 immediately assuming protective custody of a child is necessary
8 to protect the child from serious harm that is likely to occur
9 before a court order can be obtained."

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

11 ~~""Harm" [means damage or injury to a child's physical or~~
12 ~~psychological health or welfare, where:~~

13 ~~(1) The child exhibits evidence of injury, including, but~~
14 ~~not limited to:~~

15 ~~(A) Substantial or multiple skin bruising;~~

16 ~~(B) Substantial external or internal bleeding;~~

17 ~~(C) Burn or burns;~~



- 1 ~~(D) Malnutrition;~~
- 2 ~~(E) Failure to thrive;~~
- 3 ~~(F) Soft tissue swelling;~~
- 4 ~~(G) Extreme pain;~~
- 5 ~~(H) Extreme mental distress;~~
- 6 ~~(I) Gross degradation;~~
- 7 ~~(J) Poisoning;~~
- 8 ~~(K) Fracture of any bone;~~
- 9 ~~(L) Subdural hematoma; or~~
- 10 ~~(M) Death;~~
- 11 ~~and the injury is not justifiably explained, or the~~
- 12 ~~history given concerning the condition or death is not~~
- 13 ~~consistent with the degree or type of the condition or~~
- 14 ~~death, or there is evidence that the condition or~~
- 15 ~~death may not be the result of an accident;~~
- 16 ~~(2) The child has been the victim of sexual contact or~~
- 17 ~~conduct, including sexual assault; sodomy;~~
- 18 ~~molestation; sexual fondling; incest; prostitution;~~
- 19 ~~obscene or pornographic photographing, filming, or~~
- 20 ~~depiction; or other similar forms of sexual~~
- 21 ~~exploitation, including but not limited to acts that~~



- 1 ~~constitute an offense pursuant to section 712-~~
2 ~~1202(1)(b);~~
- 3 ~~(3) The child's psychological well-being has been injured~~
4 ~~as evidenced by a substantial impairment in the~~
5 ~~child's ability to function;~~
- 6 ~~(4) The child is not provided in a timely manner with~~
7 ~~adequate food; clothing; shelter; supervision; or~~
8 ~~psychological, physical, or medical care;~~
- 9 ~~(5) The child is provided with dangerous, harmful, or~~
10 ~~detrimental drugs as defined in section 712-1240,~~
11 ~~except when a child's family administers drugs to the~~
12 ~~child as directed or prescribed by a practitioner as~~
13 ~~defined in section 712-1240; or~~
- 14 ~~(6) The child has been the victim of labor trafficking~~
15 ~~under chapter 707.] has the same meaning as "child~~
16 ~~abuse or neglect" as defined in section 350-1."~~
- 17 3. By amending the definition of "imminent harm" to read:
18 "Imminent harm" means that [~~without intervention within~~
19 ~~the next ninety days,~~] there is reasonable cause to believe that
20 harm to the child will occur or reoccur[-] and no reasonable



1 efforts other than removal of the child from the family home
2 will adequately prevent the harm."

3 SECTION 2. Section 587A-8, Hawaii Revised Statutes, is
4 amended by amending its title and subsection (a) to read as
5 follows:

6 "~~[+]§587A-8[+]~~ **Protective custody by police officer**
7 ~~[without court order]~~. (a) A police officer shall assume
8 protective custody of a child ~~[without a court order and without~~
9 ~~the consent of the child's family, if in the discretion of the~~
10 ~~police officer, the officer determines that:~~

- 11 ~~(1) The child is subject to imminent harm while in the~~
12 ~~custody of the child's family;~~
- 13 ~~(2) The child has no parent, as defined in this chapter,~~
14 ~~who is willing and able to provide a safe family home~~
15 ~~for the child;~~
- 16 ~~(3) The child has no caregiver, as defined in this~~
17 ~~chapter, who is willing and able to provide a safe and~~
18 ~~appropriate placement for the child; or~~
- 19 ~~(4) The child's parent has subjected the child to harm or~~
20 ~~threatened harm and the parent is likely to flee with~~
21 ~~the child.]:~~



- 1 (1) With the consent of the child's family;
- 2 (2) Upon order of the court; or
- 3 (3) Without the consent of the child's family and without
- 4 a court order if, in the discretion of the police
- 5 officer, the officer determines that exigent
- 6 circumstances are present and that based on specific
- 7 and articulable evidence, there is reasonable cause to
- 8 believe that immediately assuming protective custody
- 9 of a child is necessary to protect the child from
- 10 serious harm that is likely to occur before a court
- 11 order can be obtained."

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

14 **"§587A-9 Temporary foster custody [~~without court order~~].**

15 (a) [~~When the department receives protective custody of a child~~
 16 ~~from the police, the department shall:~~

- 17 ~~(1) Assume temporary foster custody of the child if, in~~
- 18 ~~the discretion of the department, the department~~
- 19 ~~determines that the child is subject to imminent harm~~
- 20 ~~while in the custody of the child's family;] The~~



1 department shall assume temporary foster custody of a
2 child:

3 (1) With the consent of the child's family;

4 (2) Upon order of the court; or

5 (3) Without the consent of the child's family and without
6 a court order, upon the transfer of protective custody
7 from a police officer if, in the discretion of the
8 department, the department determines that exigent
9 circumstances are present.

10 (b) When the department assumes temporary foster custody
11 of a child, the department shall:

12 ~~[-2-]~~ (1) Make every reasonable effort to inform the
13 child's parents of the actions taken, unless doing so
14 would put another person at risk of harm;

15 ~~[-3-]~~ (2) Unless the child is admitted to a hospital or
16 similar institution, place the child in emergency
17 foster care while the department conducts an
18 appropriate investigation, with placement preference
19 being given to an approved relative;

20 ~~[-4-]~~ (3) With authorized agencies, make reasonable efforts
21 to identify and notify all relatives within thirty



1 days of assuming temporary foster custody of the
2 child; and

3 [~~(5)~~] (4) Within three days, excluding Saturdays, Sundays,
4 and holidays:

5 (A) Relinquish temporary foster custody, return the
6 child to the child's parents, and proceed
7 pursuant to section 587A-11(4), (5), or (6);

8 (B) Secure a voluntary placement agreement from the
9 child's parents to place the child in foster
10 care, and proceed pursuant to section 587A-11(6)
11 or (8); or

12 (C) File a temporary foster custody petition with the
13 court.

14 [~~(b)~~] (c) Upon the request of the department and without
15 regard to parental consent, any physician licensed or authorized
16 to practice medicine in the State shall perform an examination
17 to determine the nature and extent of harm or threatened harm to
18 the child under the department's temporary foster custody."

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



1 **"§587A-11 Investigation; department powers.** 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. In conducting the investigation, the department
7 may:

- 8 (1) Enlist the cooperation and assistance of appropriate
9 state and federal law enforcement authorities, who may
10 conduct an investigation and, if an investigation is
11 conducted, shall provide the department with all
12 preliminary findings, including the results of a
13 criminal history record check of an alleged
14 perpetrator of harm or threatened harm to the child;
- 15 (2) Conduct a criminal history record check of an alleged
16 perpetrator and all adults living in the family home,
17 with or without consent, to ensure the safety of the
18 child;
- 19 (3) Interview the child without the presence or prior
20 approval of the child's family and temporarily assume



1 protective custody of the child for the purpose of
2 conducting the interview;

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

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

10 (6) Immediately enter into a service plan:

11 (A) To safely maintain the child in the family home;
12 or

13 (B) To place the child in voluntary foster care
14 pursuant to a written agreement with the child's
15 parent.

16 If the child is placed in voluntary foster care and
17 the family does not successfully complete the service
18 plan within three months after the date on which the
19 department assumed physical custody of the child, the
20 department shall file a petition. The department is
21 not required to file a petition if the parents agree



1 to adoption or legal guardianship of the child and the
2 child's safety is ensured; provided that the adoption
3 or legal guardianship hearing is conducted within six
4 months of the date on which the department assumed
5 physical custody of the child;

6 (7) Assume temporary foster custody of the child and file
7 a petition with the court within three days, excluding
8 Saturdays, Sundays, and holidays, after the date on
9 which the department assumes temporary foster custody
10 of the child, with placement preference being given to
11 an approved relative; [~~or~~]

12 (8) File a petition or ensure that a petition is filed by
13 another appropriate authorized agency in court under
14 this chapter[~~-~~]; or

15 (9) File a petition pursuant to section 587A-12 and seek
16 an order for protective custody if there is reasonable
17 cause to believe that the child is subject to imminent
18 harm, as follows:

19 (A) The department may contemporaneously file an ex
20 parte motion for immediate protective custody and



1 the court may issue an order of protective
2 custody without notice and without a hearing;
3 (B) If the court finds reasonable cause to believe
4 that the child is subject to imminent harm, the
5 court shall issue a written order that a police
6 officer immediately take the child into
7 protective custody and transfer custody of the
8 child to the department, which will then assume
9 temporary foster custody of the child pursuant to
10 section 587A-8(b);
11 (C) If an order for protective custody is issued
12 under this paragraph, the court shall order that
13 a police officer make every reasonable effort to
14 personally serve the child's parents and any
15 person who has physical custody of the child with
16 copies of the ex parte motion and order; and
17 (D) After the court rules on the ex parte motion, the
18 case shall proceed pursuant to section 587A-
19 12(c)."

20 SECTION 5. Section 587A-21, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) In deciding [~~in temporary foster custody hearings~~]
2 whether there is reasonable cause to believe that a child is
3 subject to imminent harm for orders for protective custody or in
4 temporary foster custody hearings, the court may consider
5 relevant hearsay evidence when direct testimony is unavailable
6 or when it is impractical to subpoena witnesses who will be able
7 to testify to facts based on personal knowledge."

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

10 SECTION 7. This Act shall take effect on July 1, 3000.



Report Title:

Child Protective Act; Exigent Circumstances; Harm; Imminent Harm; Order for Protective Custody; Protective Custody; Temporary Foster Custody

Description:

Adds a definition for "exigent circumstances" and amends the definitions of "harm" and "imminent harm". Clarifies when the police may take protective custody of a child and when the department may assume temporary foster custody of a child when exigent circumstances are present. Creates a judicial process for filing a petition for an order for protective custody, including the circumstances where such an order may be issued without notice and without a hearing. Effective 7/1/3000.
(HD1)

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