

JAN 19 2024

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 children, parents,
2 and child protective services suffer when children are removed
3 unnecessarily from their homes. Unnecessary child removals
4 contribute to heavy caseloads in the child welfare system that
5 make it difficult for case managers to exercise due diligence.

6 Accordingly, the purpose of this Act is to reduce the
7 number of unnecessary child removals in the State by:

8 (1) Amending the definition of "imminent harm" in the
9 Child Protective Act to comport with case law from the
10 Ninth Circuit Court of Appeals; and

11 (2) Clarifying the due process required for child
12 removals, including removals by a police officer
13 without a court order.

14 SECTION 2. Section 587A-4, Hawaii Revised Statutes, is
15 amended by amending the definition of "imminent harm" to read as
16 follows:



1 "Imminent harm" means that [~~without intervention within~~
2 ~~the next ninety days, there is reasonable cause to believe that~~
3 ~~harm to the child will occur or reoccur.~~];

4 (1) There is visible, specific, and articulable evidence
5 at the time of contacting the family that a child is
6 at risk of serious bodily injury or death; and

7 (2) There is no less restrictive alternative that would
8 reasonably and sufficiently protect the child's health
9 or safety."

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

12 "(a) A police officer, as a first responder, shall assume
13 protective custody of a child without a court order and without
14 the consent of the child's family, if in the sole discretion of
15 the police officer, the officer determines that:

16 (1) The child is subject to imminent harm while in the
17 custody of the child's family;

18 (2) The child has no parent, as defined in this chapter,
19 who is willing and able to provide a safe family home
20 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) A police officer who assumed protective custody of a
2 child pursuant to subsection (a) shall, within twenty-four hours
3 of assuming protective custody, submit to the department an
4 initial written report articulating the imminent harm that the
5 officer observed that caused the officer to reasonably believe
6 that immediate removal of the child was necessary."

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

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

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

15 (2) Obtain from the police officer who assumed protective
16 custody of the child the initial police report
17 required pursuant to section 587A-8(c);

18 [+2+] (3) Make every reasonable effort to inform the
19 child's parents of the actions taken, including
20 providing the parents with a copy of the initial



1 police report, unless doing so would put another
2 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), (5), or (6);

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



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

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

5 "**§587A-11 Investigation; department powers.** Upon
 6 receiving a report that a child is subject to imminent harm, has
 7 been harmed, or is subject to threatened harm, and when an
 8 assessment is required by this chapter, the department shall
 9 cause [~~such~~] an investigation to be made as it deems [~~to be~~]
 10 appropriate. In conducting the investigation, the department
 11 may:

12 (1) Enlist the cooperation and assistance of appropriate
 13 state and federal law enforcement authorities, who may
 14 conduct an investigation and, if an investigation is
 15 conducted, shall provide the department with all
 16 preliminary findings, including the results of a
 17 criminal history record check of an alleged
 18 perpetrator of harm or threatened harm to the child;

19 (2) Conduct a criminal history record check of an alleged
 20 perpetrator and all adults living in the family home,



1 with or without consent, to ensure the safety of the
2 child;

3 (3) Interview the child without the presence or prior
4 approval of the child's family and temporarily assume
5 protective custody of the child for the purpose of
6 conducting the interview;

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

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

14 (6) Immediately enter into a service plan:

15 (A) To safely maintain the child in the family home;
16 or

17 (B) To place the child in voluntary foster care
18 pursuant to a written agreement with the child's
19 parent.

20 If the child is placed in voluntary foster care and
21 the family does not successfully complete the service



1 plan within three months after the date on which the
2 department assumed physical custody of the child, the
3 department shall file a petition. The department is
4 not required to file a petition if the parents agree
5 to adoption or legal guardianship of the child and the
6 child's safety is ensured; provided that the adoption
7 or legal guardianship hearing is conducted within six
8 months of the date on which the department assumed
9 physical custody of the child;

10 (7) Assume temporary foster custody of the child [~~and file~~
11 ~~a petition with the court within three days, excluding~~
12 ~~Saturdays, Sundays, and holidays, after the date on~~
13 ~~which the department assumes temporary foster custody~~
14 ~~of the child, with placement preference being given to~~
15 ~~an approved relative, or] only if one of the following
16 conditions is met:~~

17 (A) There is parental consent; or

18 (B) A court order has been issued for police to
19 remove the child pursuant to section 587A-12(b);

20 (8) Call for police assistance to remove the child if
21 there is evidence of imminent harm; or



1 [~~8~~] (9) File a petition or ensure that a petition is
2 filed by another appropriate authorized agency in
3 court under this chapter."

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

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

7

INTRODUCED BY: 



S.B. NO. 26A3

Report Title:

Child Welfare Services; Child Removal; Child Protective Act;
Imminent Harm

Description:

Amends the definition of "imminent harm" in the Child Protective Act. Clarifies the due process required for child removals, including removals by a police officer without a court order.

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