

JAN 20 2023

A BILL FOR AN ACT

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 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 unaware of their legal rights at the time of
11 involuntary child removal by the State. Native Hawaiian
12 families and children are disproportionately affected. These
13 children constitute forty-four per cent, nearly half, of
14 children in foster care while constituting less than one-third
15 of 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 orders or warrants



1 is the overly broad and confusing definition of "imminent harm",
2 which allows immediate removal when there is reasonable cause to
3 believe that, without intervention, the child will suffer harm
4 within the following ninety days. However, the ninety-day
5 threshold provides more than sufficient time for police or child
6 welfare services to petition and receive a court order or
7 warrant for removal. Therefore, the State's definition of
8 "imminent harm" should be narrowed to limit the circumstances
9 warranting the immediate removal of a child.

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), which says:

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 further finds that most citizens recognize
14 the right to a Miranda warning in criminal cases. Few citizens
15 realize that the same right applies to child welfare
16 investigations. Any concerns that notifying a parent of the
17 parent's rights would prevent the rescue of an abused child are
18 unfounded. Determining a child is in imminent danger is
19 effectively an authorization for a warrantless removal. The
20 legislature also finds that Connecticut and Arizona have laws
21 that require parents to be presented with a written notification



1 of their rights when an investigation is initiated, and other
2 states, including Idaho, Colorado, and New York, are actively
3 considering enactment of similar laws, supported by family
4 advocates and elected officials.

5 Accordingly, the purpose of this Act is to:

- 6 (1) Amend the definition of "imminent harm" to remove the
7 ninety-day provision and instead have the term mean an
8 active, present danger to a child that is visible and
9 articulable, and that without instant intervention,
10 there is probable risk that continued contact with the
11 child's family will result in physical harm to the
12 child;
- 13 (2) Require police officers, who have the exclusive
14 statutory authority to remove a child from the child's
15 family home without a court order or the family's
16 consent, to promptly submit a police report
17 documenting specific, articulable evidence of imminent
18 harm to the child that warranted the immediate
19 removal; and



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

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

7 "Imminent harm" means that ~~[without intervention within~~
8 ~~the next ninety days, there is reasonable cause to believe that~~
9 ~~harm to the child will occur or reoccur.]~~ an active, present
10 danger to a child exists that is visible and articulable, and
11 that without instant intervention, there is a probable risk that
12 continued contact with the child's family will result in
13 physical harm to the child."

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

16 "~~{}~~§587A-8~~{}~~ **Protective custody by police officer**
17 **without court order.** (a) A police officer shall assume
18 protective custody of a child without a court order and without
19 the consent of the child's family~~[, if in the discretion of the~~
20 ~~police officer, the officer determines that:]~~ if the officer



1 does not have time to obtain a court order and observes and can
2 articulate on the initial police report that:

3 (1) [The] At the point of contact with the child's family,
4 the child is subject to imminent harm while in the
5 custody of the child's family;

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

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

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

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

18 (1) A police officer who assumes protective custody of a
19 child shall complete transfer of protective custody to
20 the department by presenting physical custody of the
21 child to the department; or



1 (2) If the child is or will be admitted to a hospital or
2 similar institution, the police officer shall
3 immediately complete the transfer of protective
4 custody to the department by notifying the department
5 and receiving an acknowledgment from the hospital or
6 similar institution that it has been informed that the
7 child is under the temporary foster custody of the
8 department.

9 (c) Within twenty-four hours or the next business day of
10 assuming protective custody of a child, the police officer shall
11 provide to the department an initial written report containing
12 documented observations of the behaviors and circumstances that
13 formed the basis for the child's immediate removal."

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

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

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



- 1 (2) Obtain a copy of the initial police report within
- 2 twenty-four hours or the next business day;
- 3 [~~(2)~~] (3) Make every reasonable effort to inform the
- 4 child's parents of the actions taken~~[7]~~ unless doing
- 5 so would put another person at risk of harm;
- 6 [~~(3)~~] (4) Unless the child is admitted to a hospital or
- 7 similar institution, place the child in emergency
- 8 foster care while the department conducts an
- 9 appropriate investigation, with placement preference
- 10 being given to an approved relative;
- 11 [~~(4)~~] (5) With authorized agencies, make reasonable efforts
- 12 to identify and notify all relatives within thirty
- 13 days of assuming temporary foster custody of the
- 14 child; and
- 15 [~~(5)~~] (6) Within three days, excluding Saturdays, Sundays,
- 16 and holidays:
- 17 (A) Relinquish temporary foster custody, return the
- 18 child to the child's parents, and proceed
- 19 pursuant to section [~~587A-11(4)~~], 587A-11(b)(4)
- 20 and (c)(4), (5), or (6);



1 (B) Secure a voluntary placement agreement from the
 2 child's parents to place the child in foster
 3 care, and proceed pursuant to section
 4 ~~[587A-11(6)]~~ 587A-11(c)(6) or (8); or

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

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

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

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

16 (1) At the time of initial face-to-face contact, provide
 17 the parent with written notice of the parent's rights
 18 and legal disclosures in a document entitled "Notice
 19 of Parent Rights", which shall be prepared by the
 20 department and shall disclose the following
 21 information:



- 1 (A) The department is conducting an investigation of
2 suspected child abuse or neglect according to the
3 law;
- 4 (B) The parent shall be notified of the allegations
5 prior to an interview;
- 6 (C) The parent is not required to permit the
7 department or a police officer to enter the
8 parent's residence unless a valid warrant is
9 presented;
- 10 (D) The parent is not required to speak with the
11 department at the time; however, failure to
12 cooperate may have serious consequences;
- 13 (E) The parent has the right to record the interview;
- 14 (F) The parent is entitled to seek representation of
15 an attorney and have an attorney present when the
16 department questions the parent;
- 17 (G) Neither the department nor the police officer is
18 an attorney, and neither may provide legal advice
19 to the parent;



- 1 (H) Any statement made by the parent or any family
2 member may be used against the parent in a
3 hearing initiated pursuant to this chapter; and
- 4 (I) The parent is not required to sign any document
5 the department or police officer presents,
6 including but not limited to a release of claims
7 or service agreement, and is entitled to have an
8 attorney review any document before agreeing to
9 sign;
- 10 (2) Make reasonable efforts to ensure that the notice
11 provided to the parent pursuant to this subsection is
12 written in a manner and language that will be
13 understood by the parent;
- 14 (3) Request the parent to sign and date the notice as
15 evidence of having received the notice. If the parent
16 refuses to sign and date the notice upon request, the
17 department shall specifically indicate on the notice
18 the request to sign and the parent's refusal to do so.
19 The department shall sign the notice as a witness to
20 the parent's refusal to sign and provide the parent



1 with a copy of the signed notice at the time of the
2 initial face-to-face contact with the parent; and

3 (4) Except when an initial contact with a parent results
4 in the immediate or same-day placement of a child into
5 emergency foster care, the notice provided pursuant to
6 this subsection shall be implemented, retained in the
7 child's case file, and attached to a court petition in
8 the event of a subsequent removal to foster custody.
9 Failure to attach the Notice of Rights to a petition
10 shall result in the dismissal of evidence gathered
11 during the parent interview.

12 (c) In conducting the investigation, the department may:

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

20 (2) Conduct a criminal history record check of an alleged
21 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; provided that all child
7 interviews shall be recorded and retained in the
8 department's case files;

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

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

16 (6) Immediately enter into a service plan:

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

18 or

19 (B) To place the child in voluntary foster care

20 pursuant to a written agreement with the child's

21 parent.



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

12 (7) Assume temporary foster custody of the child and file
13 a petition with the court within three days, excluding
14 Saturdays, Sundays, and holidays, after the date on
15 which the department assumes temporary foster custody
16 of the child, with placement preference being given to
17 an approved relative; or

18 (8) File a petition or ensure that a petition is filed by
19 another appropriate authorized agency in court under
20 this chapter."



S.B. NO. 638

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

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

4

INTRODUCED BY:





S.B. NO. 638

Report Title:

Department of Human Services; Protective Custody; Imminent Harm; Parental Rights

Description:

Amends the definition of "imminent harm" for the purposes of the Child Protective Act. Requires a police officer assuming protective custody without a court order of a child to provide to the Department of Human Services a written report detailing the officer's observations justifying the immediate removal 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 child's parent of the parent's rights when conducting certain investigations.

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

