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# A BILL FOR AN ACT

RELATING TO AGGRAVATED CIRCUMSTANCES IN CHILD PROTECTIVE  
PROCEEDINGS.

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

1           SECTION 1. Chapter 587A, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§587A-           Aggravated circumstances. (a) At the return  
5 hearing conducted pursuant to section 587A-28, the court shall  
6 determine whether aggravated circumstances are present.

7           (1) If aggravated circumstances are present, the court  
8           shall:

9           (A) Conduct a permanency hearing within thirty days,  
10           and the department shall not be required to  
11           provide the child's parents with an interim  
12           service plan or interim visitation; and

13           (B) Order the department to file, within sixty days  
14           after the court's finding that aggravated  
15           circumstances are present, a motion to terminate  
16           parental rights unless the department has



1                   documented in the safe family home factors or  
2                   other written report submitted to the court a  
3                   compelling reason why it is not in the best  
4                   interest of the child to file a motion; or

5       (2) If aggravated circumstances are not present or there  
6           is a compelling reason why it is not in the best  
7           interest of the child to file a motion to terminate  
8           parental rights, the court shall order that the  
9           department make reasonable efforts to reunify the  
10          child with the child's parents and order an  
11          appropriate service plan.

12       (b) Regardless of whether the court finds that aggravated  
13          circumstances are present during the return hearing, at any  
14          other time during the case before the termination of parental  
15          rights, the court may, on its own motion or upon the motion of  
16          any party, order an evidentiary hearing to determine whether  
17          aggravated circumstances are present. If the court finds that  
18          aggravated circumstances are present under this subsection, then  
19          all applicable portions of subsection (a) shall apply.



1        (c) The court may consolidate an aggravated circumstances  
2 hearing with a termination of parental rights hearing pursuant  
3 to section 587A-33 at any time during the case.

4        (d) Any party shall inform the court within a reasonable  
5 time upon receipt of evidence of aggravated circumstances."

6        SECTION 2. Section 587A-4, Hawaii Revised Statutes, is  
7 amended by amending the definition of "aggravated circumstances"  
8 to read as follows:

9        "'Aggravated circumstances" means that:

10        (1) The parent has murdered, or has solicited, aided,  
11        abetted, attempted, or conspired to commit the murder  
12        or voluntary manslaughter of, another child of the  
13        parent;

14        (2) The parent has committed a felony assault that results  
15        in serious bodily injury to the child or another child  
16        of the parent;

17        (3) The parent's rights regarding a sibling of the child  
18        have been judicially terminated or divested;

19        (4) The family court, or another court of competent  
20 jurisdiction, has found that the parent has tortured  
21 the child[+], as described in the offense of torture



1           under section 707-718; provided that a conviction for  
2           that offense shall not be required for a court to make  
3           a finding under this paragraph;

4           (5) The child is an abandoned infant;

5           (6) The parent has committed sexual abuse against another  
6           child of the parent; or

7           (7) The parent is required to register with a sex offender  
8           registry under [~~section 113(a) of the Adam Walsh Child~~  
9           ~~Protection and Safety Act of 2006,~~] title [42] 34  
10           United States Code section [~~16913(a).~~] 20913."

11           SECTION 3. Section 587A-28, Hawaii Revised Statutes, is  
12           amended by amending subsection (e) to read as follows:

13           "(e) If the court finds that the child's physical or  
14           psychological health or welfare has been harmed or is subject to  
15           threatened harm by the acts or omissions of the child's family,  
16           the court:

17           (1) Shall enter a finding that the court has jurisdiction  
18           pursuant to section 587A-5;

19           (2) Shall enter a finding regarding whether, before the  
20           child was placed in foster care, the department made



1 reasonable efforts to prevent or eliminate the need to  
2 remove the child from the child's family home;

3 (3) Shall enter orders:

4 (A) That the child be placed in foster custody if the  
5 court finds that the child's remaining in the  
6 family home is contrary to the welfare of the  
7 child and the child's parents are not willing and  
8 able to provide a safe family home for the child,  
9 even with the assistance of a service plan; or

10 (B) That the child be placed in family supervision if  
11 the court finds that the child's parents are  
12 willing and able to provide the child with a safe  
13 family home with the assistance of a service  
14 plan;

15 (4) Shall ~~[determine whether aggravated circumstances are~~  
16 ~~present.~~

17 ~~(A) If aggravated circumstances are present, the~~  
18 ~~court shall:~~

19 ~~(i) Conduct a permanency hearing within thirty~~  
20 ~~days, and the department shall not be~~  
21 ~~required to provide the child's parents with~~



1                   ~~an interim service plan or interim~~  
2                   ~~visitation; and~~

3           ~~(ii) Order the department to file, within sixty~~  
4                   ~~days after the court's finding that~~  
5                   ~~aggravated circumstances are present, a~~  
6                   ~~motion to terminate parental rights unless~~  
7                   ~~the department has documented in the safe~~  
8                   ~~family home factors or other written report~~  
9                   ~~submitted to the court a compelling reason~~  
10                  ~~why it is not in the best interest of the~~  
11                  ~~child to file a motion.~~

12           ~~(B) If aggravated circumstances are not present or~~  
13                   ~~there is a compelling reason why it is not in the~~  
14                   ~~best interest of the child to file a motion to~~  
15                   ~~terminate parental rights, the court shall order~~  
16                   ~~that the department make reasonable efforts to~~  
17                   ~~reunify the child with the child's parents and~~  
18                   ~~order an appropriate service plan;] make a~~  
19                   ~~determination of aggravated circumstances~~  
20                   ~~pursuant to section 587A- ;~~



- 1           (5) Shall order reasonable supervised or unsupervised  
2           visits for the child and the child's family, including  
3           with the child's siblings, unless such visits are  
4           determined to be unsafe or detrimental to, and not in  
5           the best interests of, the child;
- 6           (6) Shall order each of the child's birth parents to  
7           complete the medical information forms and release the  
8           medical information required under section 578-14.5,  
9           to the department. If the child's birth parents  
10          refuse to complete the forms or to release the  
11          information, the court may order the release of the  
12          information over the parents' objections;
- 13          (7) Shall determine whether each party understands that  
14          unless the family is willing and able to provide the  
15          child with a safe family home, even with the  
16          assistance of a service plan, within the reasonable  
17          period of time specified in the service plan, their  
18          respective parental and custodial duties and rights  
19          shall be subject to termination;
- 20          (8) Shall determine the child's date of entry into foster  
21          care as defined in this chapter;



- 1           (9) Shall set a periodic review hearing to be conducted no  
2           later than six months after the date of entry into  
3           foster care and a permanency hearing to be held no  
4           later than twelve months after the date of entry into  
5           foster care;
- 6           (10) Shall set a status conference, as the court deems  
7           appropriate, to be conducted no later than ninety days  
8           after the return hearing; and
- 9           (11) May order that:
- 10           (A) Any party participate in, complete, be liable  
11           for, and make every good faith effort to arrange  
12           payment for such services or treatment as are  
13           authorized by law and that are determined to be  
14           in the child's best interests;
- 15           (B) The child be examined by a physician, surgeon,  
16           psychiatrist, or psychologist; and
- 17           (C) The child receive treatment, including  
18           hospitalization or placement in other suitable  
19           facilities, as is determined to be in the child's  
20           best interests."



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 3000.



**Report Title:**

Judiciary Package; Family Courts; Child Protective Proceedings;  
Aggravated Circumstances Hearings

**Description:**

Clarifies and expands procedures for aggravated circumstances determinations in Child Protective Act proceedings. Authorizes the Family Court to make a finding of aggravated circumstances at any stage of a Child Protective Act proceeding before the termination of parental rights, rather than limiting these findings to the return hearing. Incorporates the definition of torture under the Penal Code for purposes of defining aggravated circumstances involving child torture under the Child Protective Act. Effective 7/1/3000. (HD2)

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

