

A Bill for an Act Relating to the Child Protective Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER CHILD PROTECTIVE ACT

PART I. PURPOSE, CONSTRUCTION, DEFINITIONS

§ -1 **Purpose; construction.** This chapter creates within the jurisdiction of the family court a child protective act in order to safeguard, treat, and provide permanent planning for children who have been harmed or threatened with harm.

The legislature finds that children deserve and require competent and responsible parenting and safe and secure homes. The legislature finds that children who have been harmed or threatened with harm are less likely than other children to realize their full educational, vocational, and emotional potential, and become law-abiding, productive, self-sufficient citizens, and are more likely to become involved with the mental health system, the juvenile justice system, or the criminal justice system, as well as become an economic burden on the State. The legislature finds that prompt identification, reporting, investigation, adjudication, treatment, and disposition of cases involving children who are harmed or threatened with harm are in both the children's and society's best interests because such children are defenseless, exploitable, and vulnerable.

The policy and purpose of this chapter is to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families where practicable, and with timely and permanent planning so they may develop and mature into responsible, self-sufficient, law-abiding citizens. This permanent planning should effectuate placement with a child's own family when possible and should be conducted in an expeditious fashion so that where return to the child's family is not possible as provided in this chapter,

such children will be promptly and permanently placed with responsible, competent, substitute parents and families, and their place in such families secured by termination of parental rights, adoption, guardianship, long-term foster custody orders, if no other option is available, by other order of the court, or arrangement as best provides for permanency.

This chapter shall be liberally construed to serve the best interests of the children and the purposes set out in this chapter.

§ -2 Definitions. When used in this chapter, unless the context otherwise requires:

“Adjudicatory hearing” means a fact-finding hearing to determine the truth of the allegations stated in a petition filed under this chapter.

“Authorized agency” means the department or other public or private agency, a person, organization, corporation, and benevolent society or association which is licensed or approved by the department or the court to receive children for control, care, maintenance, or placement.

“Child” means a person less than eighteen years of age.

“Child protective proceedings” means any action, hearing, or other civil proceeding before the court under this chapter.

“Court” means one of the family courts established pursuant to the family court act.

“Department” means the department of social services and housing and its authorized representatives.

“Disposition hearing” means a hearing to determine, in the best interests of the child, the orders of disposition, including an appropriate service plan.

“Emergency foster care” means a residence designated as suitable by the department or the court for the temporary care of a child pending final orders of disposition.

“Family” means each legal, adjudicated, or presumed parent, the natural mother, a concerned natural father as defined under section 578-2, each parent’s spouse, or former spouses, each sibling or person related by consanguinity or marriage, each person residing in the same dwelling unit, and any other person who or legal entity which is a child’s legal or physical custodian, or guardian, or who is otherwise responsible for the child’s care, other than an authorized agency which assumes such a legal status or relationship with the child under this chapter.

“Family supervision” means the legal status created pursuant to section - 21(a)(2) or by an order of court after the court has determined that the child is presently in the legal custody of a family which is willing and able to properly exercise the duties and rights of a legal custodian with the assistance of a service plan. Family supervision vests in an authorized agency the following duties and rights, subject to such restriction as the court deems to be in the best interest of the child:

- (1) To monitor and supervise the child and the child’s family members who are parties, including but not limited to, reasonable access to each of the family members who are parties, and into the child’s family home; and

- (2) To have authority to determine whether, and if so, where and with whom the child may be placed in foster care; provided that the child shall not be placed in foster care outside the State without prior approval of the court.

If the child is placed in foster care, the authorized agency shall thereby assume foster custody of the child.

An authorized agency shall not be liable to third persons for acts of the child solely by reason of its possessing the status of family supervision in relation to the child.

"Foster care" means a residence designated as suitable by the department or the court for the appropriate care of a child upon final orders of disposition.

"Foster custody" means the legal status created pursuant to section 21(a)(2) or by an order of court after the court has determined that the child is presently without family or that the child's family is not presently willing and able to properly exercise the duties and rights of a legal custodian.

- (1) Foster custody vests in a foster custodian the following duties and rights:

- (A) To determine where and with whom the child shall be placed in foster care; provided that the child shall not be placed in foster care outside the State without prior approval of the court; and provided further that the foster custodian may permit the child to resume residence with the family from which the child was removed after providing prior written notice to the court and to all parties, which notice shall state that there is no objection of any party to such a return; and upon the return of the child to the family, foster custody automatically shall be revoked and the child and the child's family who are parties shall be under the family supervision of the former foster custodian.
- (B) To assure that the child is provided with food, clothing, shelter, and incidental necessities.
- (C) To monitor the provision to the child of appropriate care, education, and discipline.
- (D) To provide all consents which are required for the child's physical or psychological health or welfare, including but not limited to, ordinary medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs; and to provide all consents for any other medical care or treatment, including but not limited to surgery, if such care or treatment is deemed by two physicians licensed or authorized to practice in this State to be necessary for the child's physical or psychological health or welfare, and the persons who are otherwise authorized to provide such consent are unable or have refused to consent to such care or treatment.
- (E) To provide the court with information concerning the child that the court may require at any time, and to file written reports to the court stating the then-current situation of a child under its foster

custody at intervals not to exceed six months, unless otherwise ordered by the court.

- (2) The court, in its discretion, may vest foster custody of a child in any authorized agency in the child's best interest; provided that such rights and duties which are so assumed by an authorized agency shall supersede the rights and duties of any legal custodian of the child, other than as is provided in paragraph (4).
- (3) An authorized agency shall not be liable to third persons for the acts of the child solely by reason of the agency's status as temporary foster custodian or foster custodian of the child.
- (4) Unless otherwise ordered by the court, a child's family member shall retain the following rights and responsibilities after a transfer of foster custody, to the extent that such family member possessed such rights and responsibilities prior to the transfer of foster custody, to wit: the right of reasonable visitation at the discretion of the authorized agency; the right to consent to adoption, to marriage, or to major medical care or treatment, except as provided in paragraph (1)(D); and the continuing responsibility for support of the child, including but not limited to repayment for the cost of any and all care, treatment, or any other service supplied or provided by the temporary foster custodian, the foster custodian, or the court for the child's benefit.

"Guidelines for determining whether the child's family is willing and able to exercise or to provide the child with a safe home" means that the following criteria shall be fully considered:

- (1) The magnitude of the harm suffered by the child;
- (2) The frequency of the harm suffered by the child;
- (3) Whether the child has been the victim of repeated harm after initial report and intervention by a social agency;
- (4) The age of the child;
- (5) The physical and mental vulnerability of the child;
- (6) Whether the child is fearful of living in the child's family home;
- (7) Whether the child is willing to return to the child's family home;
- (8) The results of psychiatric/psychological evaluations of the child and of the potential long-term caretakers;
- (9) Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's family home;
- (10) Whether there is a history of substance abuse by the child's family or others who have access to the child's family home;
- (11) Whether the nonperpetrators in the child's family home are willing and able to protect the child;
- (12) Whether the perpetrator of the harm to the child is identified;
- (13) Whether the perpetrator has admitted and acknowledged the perpetrator's responsibility for the harm;
- (14) Whether the perpetrator has apologized to the child for the harm;
- (15) The motive of the perpetrator;

- (16) Whether the perpetrator has been removed from the child's family home and will not return for any reason without the prior permission of the court;
- (17) The willingness and ability of the child's family to seek out, accept, and complete counseling services, to cooperate with and facilitate close supervision by an appropriate social agency;
- (18) The willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;
- (19) Whether the child's family demonstrates adequate parenting skills, such as providing the child and other children under their care with:
 - (A) Minimally adequate health and nutritional care;
 - (B) Stimulation, care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;
 - (C) Guidance and supervision consistent with the child's safety;
 - (D) Safe home environment; and
 - (E) Protection from repeated exposure to violence even though not directed at the child;
- (20) Whether the child's family has an understanding of the child's needs and capabilities;
- (21) Whether the child's family perceives the child as being "different";
- (22) The child's family's psychological attachment to the child;
- (23) Whether the child's family problems relating to the safety of their home are sufficiently resolved;
- (24) Whether the obstacles to getting assistance are minimal, such as, whether telephone, transportation, and carfare are available;
- (25) Whether a competent person knows the child's family well enough to have sufficient contact and knowledge to recognize both immediate and pending problems;
- (26) Whether the competent person in paragraph (25) can and will intervene and help, as well as, report when a problem is recognized;
- (27) Whether there is available a social support system consisting of an extended family and friends; and
- (28) Whether there are other professionals, agencies, or relatives, who have provided evidence that the child's family home is safe.

The court shall consider the likelihood that compliance with the guidelines will continue in the future and the likelihood that the court will receive timely notice of any change in such compliance.

"Harm" to a child's physical or psychological health or welfare occurs in:

- (1) Any case where the child exhibits evidence of injury including, but not limited to:
 - (A) Substantial or multiple skin bruising or any other internal bleeding,
 - (B) Any injury to skin causing substantial bleeding,
 - (C) Malnutrition,
 - (D) Failure to thrive,

- (E) Burn or burns,
- (F) Poisoning,
- (G) Fracture of any bone,
- (H) Subdural hematoma,
- (I) Soft tissue swelling,
- (J) Extreme pain,
- (K) Extreme mental distress,
- (L) Gross degradation, or
- (M) Death, and

such injury is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

- (2) Any case where the child has been the victim of sexual contact or conduct, including but not limited to rape, sodomy, molestation, or genital fondling, incest, prostitution, obscene or pornographic photographing, filming or depiction, or other similar forms of sexual exploitation; or
- (3) Any case where there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child's ability to function; or
- (4) Any case where the child is not provided with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; or
- (5) Any case where the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240, however, this paragraph shall not apply to a child's family who provide such drugs to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240.

"Imminent harm" means that there exists reasonable cause to believe that harm to the child's physical or psychological health or welfare will occur or reoccur within the next ninety days; provided that the finding of reasonable cause may be based in whole or in part upon hearsay evidence when direct testimony is unavailable or when it is demonstrably inconvenient to summon witnesses who will be able to testify to facts from personal knowledge.

"Party" means an authorized agency, the child, the child's family member or members who are required to be summoned pursuant to section -32(a), any other member of the child's family, or any other person who is alleged in the petition filed under this chapter or who is subsequently determined at any child protective proceedings to be encouraging, causing, or contributing to the acts or conditions which bring the child within this chapter, and who has been duly served with a summons and a copy of the petition filed under this chapter.

"Police officer" means a person employed by any county in this State to enforce the laws and ordinances for preserving the peace, safety, and good order of the community.

"Protective custody" means the legal status of a child whose physical custody is retained by a police officer under this chapter in order to protect such child from imminent harm.

"Review hearing" means any subsequent hearing to the disposition hearing wherein the court shall review existing orders of disposition and specifically determine the issue of the parties' compliance with the terms and conditions of the service plan by court order and enter such further orders of disposition as are deemed to be in the best interests of the child.

"Service plan" means a specific written plan, prepared by the department or other appropriate authorized agency and presented to such members of the child's family as the department or other appropriate authorized agency deems to be necessary to the success of the plan, including but not limited to, the member or members of the child's family who have legal custody of the child at the time that a petition is filed under this chapter. The service plan should set forth:

- (1) Whether placement of the child is required and the steps that will be necessary to facilitate the return of the child to the child's family, if the proposed placement of the child is in foster care;
- (2) The steps that will be necessary for the child to remain with the child's family;
- (3) The steps that will be necessary to terminate the department's or other appropriate authorized agency's intervention into the family and eliminate, if possible, the necessity for the filing of a petition with the court under this chapter;
- (4) The service plan should also include, but not necessarily be limited to:
 - (A) The specific services or treatment that the parties will be provided and what specific actions the parties must take or specific responsibilities that the parties must assume; the time frames during which such services will be provided and such actions must be completed and responsibilities must be assumed;
 - (B) The specific consequences that may be reasonably anticipated to result from the parties' compliance or noncompliance with the terms and conditions set forth in the service plan; and
 - (C) Such other terms and conditions as the department or other appropriate authorized agency deems to be appropriate under the circumstances.

After each term and condition of the service plan has been thoroughly explained to and is understood by each member of the child's family which the department or other appropriate authorized agency deems to be necessary to the success of the service plan, the service plan shall be agreed to and signed by each such family member. Thereafter, a copy of the service plan shall be provided to each family member who signed the service plan.

If a member of a child's family whom the department or other appropriate authorized agency deems to be necessary to the success of the service plan cannot or does not understand or agree to the terms and conditions set forth in the service plan, the department shall proceed pursuant to section -21(a).

"Service plan by court order" means:

- (1) A service plan prepared by the department or other appropriate authorized agency which is presented to the court and to each of the parties to a child protective proceeding and, after:
 - (A) Each term and condition of the service plan has been thoroughly explained to and is understood by each party or a party's guardian ad litem;
 - (B) It has been signed by each party including the child, if appropriate, and their respective counsel, if any, and guardian ad litem, if any; and
 - (C) Each term and condition of the service plan has been reviewed by the court; is, thereupon, ordered by the court to constitute the service plan for the child if the court deems such terms and conditions to be in the child's best interests; or
- (2) If a party or the court cannot or does not accept the terms and conditions set forth in the service plan, the court shall set a hearing on the service plan and after such hearing as the court deems to be appropriate, such terms and conditions shall be ordered by the court to constitute a service plan by court order for the child as the court deems to be in the best interests of the child.

A copy of the service plan by court order shall be entered into evidence and made a part of the record of the case.

"Temporary foster custody" means a legal status created under this chapter with or without order of the court whereby the department may assume the duties and rights of a foster custodian over a child.

"Threatened harm" means any reasonably foreseeable substantial risk of harm to a child with due consideration being given to the age of the child and to the guidelines for determining whether the child's family is willing and able to exercise or to provide the child with a safe home, as defined in this section.

PART II. JURISDICTION

§ -11 **Jurisdiction.** The court shall have exclusive original jurisdiction in child protective proceedings concerning any child who was or is found within the circuit at the time such facts and circumstances occurred, are discovered, or are reported to the department, which facts and circumstances constitute the basis for the finding that the child is a child whose physical or psychological health or welfare is harmed, or is subject to imminent harm or threatened harm by the acts or omissions of the child's family.

§ -12 **Retention of jurisdiction.** Except as otherwise provided in this chapter, jurisdiction invoked by the court under this chapter may be retained by it, for the purposes of this chapter, after the child becomes eighteen years of age until the full term for which any order entered expires or until the child becomes nineteen years of age.

§ -13 **Venue.** Child protective proceedings under this chapter may be originated in the county in which the child is found or resides at the time of the filing of the petition, or in the county in which a member of the child's family having legal custody of the child resides or is domiciled at the time of the filing of the petition.

PART III. PRELIMINARY PROCEDURE PRIOR TO FILING OF THE PETITION

§ -21 **Authorization for department to act.** (a) Upon receiving a report that a child has been harmed, is subject to imminent harm, or is threatened harm, the department shall cause such investigation to be made in accordance with this chapter as it deems to be appropriate. In conducting the investigation the department may enlist the cooperation of police officers for phases of the investigation for which they are better equipped. Upon satisfying itself as to the course of action which should be pursued to best accord with the purpose of this chapter, the department shall:

- (1) Resolve the matter in such informal fashion, as is appropriate under the circumstances; or
- (2) Seek to enter into a service plan, without filing a petition in court, with such members of the child's family as the department deems to be necessary to the success of the service plan, including but not limited to, the member or members of the child's family who have legal custody of the child. The service plan may include an agreement with the child's family to voluntarily place the child in the foster custody of the department or other authorized agency, or to place the child and the necessary members of the child's family under the family supervision of the department or other authorized agency; provided that if a service plan is not successfully completed within one year, a petition shall be filed in court under this chapter; or
- (3) Assume temporary foster custody of the child pursuant to section 24(a) and file a petition in the court under this chapter within two working days, excluding Saturdays, Sundays, and holidays, of the department's assumption of temporary foster custody of the child; or
- (4) File a petition with the court under this chapter.

§ -22 **Protective custody by police officer without court order.** (a) A police officer shall assume protective custody of a child without a court order and without the consent of the child's family regardless of whether the child's family is absent, if in the discretion of such police officer, the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child.

(b) A police officer who assumes protective custody of a child immediately shall complete transfer of protective custody to the department by presenting physical custody of the child to the department unless the child is or presently will be admitted to a hospital or similar institution, in which case the police officer immediately shall complete transfer of protective custody to the department by so informing the department and receiving an acknowledgment from the hospital or similar institution that it has been informed that the child is under the temporary foster custody of the department.

(c) Upon the completion of the transfer of protective custody of a child by a police officer to the department, the department immediately shall assume temporary foster custody of the child.

§ -23 Authorization for color photographs, x-rays, and radiological examination. (a) Any child health professional or paraprofessional, physician licensed or authorized to practice medicine in this State, registered nurse or licensed practical nurse, hospital or similar institution's personnel engaged in the admission, examination, care, or treatment of patients, medical examiner, coroner, social worker, or police officer who has before the person a child whom the person reasonably believes has been harmed shall make every good faith effort to take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken x-rays of the child or cause a radiological examination to be performed on the child.

(b) Color photographs, x-rays, or radiological examination reports which show evidence of harm, imminent harm, or threatened harm to a child immediately shall be forwarded to the department.

§ -24 Temporary foster custody without court order. (a) When the department receives physical custody of a child from the police pursuant to section -22(b), the department may assume temporary foster custody of a child without an order of the court and without the consent of the child's family regardless of whether the child's family is absent, if in the discretion of the department the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child; provided that the department shall proceed in such a reasonable manner as does not jeopardize the personal safety of department personnel or any other person.

(b) Upon assuming temporary foster custody of a child under this chapter, the department promptly shall make every reasonable effort to inform a member of the child's family who has legal custody of the child of the actions taken concerning the child; provided that the department may withhold such information from the child's family concerning the child as, in its discretion, is deemed to be in the best interests of the child.

(c) Upon assuming temporary foster custody of a child under this chapter, the department shall place the child in emergency foster care, unless the child is admitted to a hospital or similar institution, while it conducts an appropriate investigation.

(d) Any physician licensed or authorized to practice medicine in this State presented with a child who is under the temporary foster custody of the department shall perform such an examination of the child, with or without the consent of the child's family, as is required in order to determine the nature and extent of any harm, imminent harm, or threatened harm to the child.

(e) Within two working days, excluding Saturdays, Sundays, or holidays, from the date of its assumption of temporary foster custody, the department shall:

- (1) Relinquish its temporary foster custody and return the child to the child's family and proceed pursuant to section -21(a)(1), (2), or (4);
- (2) Continue its assumption of temporary foster custody of the child with the child being voluntarily placed in foster care by the child's family and proceed pursuant to section -21(a)(2) or (4); or
- (3) Continue its assumption of temporary foster custody of the child and proceed pursuant to section -21(a)(3).

PART IV. PROCEDURE UPON FILING OF THE PETITION

§ -31 **Petition.** A petition invoking the jurisdiction of the court under this chapter shall be filed in the manner provided in this section:

- (1) Petitions shall be entitled "In the Interest of _____, a child under the age of eighteen years" and shall be verified and shall set forth with specificity:
 - (A) The facts which bring the child within this chapter;
 - (B) The name, birthdate, sex, and residence address of the child;
 - (C) The names and last known residence addresses of the member or members of the child's family required to be notified pursuant to section -32(a), and other persons who are to be made parties to the child protective proceedings at the time of the filing of the petition pursuant to section -32(a).
 - (D) Whether the child is under the temporary foster custody of the department in emergency foster care, and, if so, the type and nature of the emergency foster care, the circumstances necessitating such care and the date the child was placed in such temporary foster custody.
 - (E) When any of the facts required by this section cannot be determined, the petition so shall state. The petition may be based on information and belief but in such case the petition shall state the basis of such information and belief.
- (2) The court may provide rules concerning the titles, filing, investigation, and the form and content of petitions and other pleadings and proceedings in cases under this chapter, or any other matter arising in child protective proceedings.

§ -32 **Summons.** (a) After a petition has been filed, the court shall issue a summons requiring a child's family member or members who have legal or physical custody of the child at the time of the filing of the petition to bring the child before the court at the temporary foster custody hearing or on the return date set forth in the summons. In addition, any legal, adjudicated, or presumed parent of the child, the natural mother of the child, the concerned natural father of the child as defined under section 578-2, other persons who are to be parties to the child protective proceedings at the time of the filing of the petition also shall be summoned, in the manner provided in this section. A summons may be issued requiring the appearance of any other person whose presence is required by the parties or any other person whose presence, in the discretion of the court, is necessary.

(b) A certified copy of the petition shall be attached to each summons.

(c) The summons shall notify the parties of their right to retain and be represented by counsel.

(d) The court preliminarily shall review each petition under this chapter at the time of the filing of the petition, and if, in the discretion of the court, the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child, the court

shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody.

§ -33 Service of summons; necessary witnesses, guardian ad litem-counsel. (a) Service of summons shall be made personally by delivery of an attested copy thereof to the person or legal entity summoned; provided that if the court is satisfied that it is impracticable to serve personally the summons provided for in the preceding section, the court may order service by registered mail addressed to the last known address, or by publication thereof, or both. Service shall be effected at least twenty-four hours prior to the time fixed in the summons for a temporary foster custody hearing or at least forty-eight hours prior to the time fixed in the summons for a return date, an adjudicatory, a disposition, a service plan, or a review hearing unless such party otherwise was ordered by the court to appear at such hearing. When publication is used the summons shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county. The newspaper shall be designated by the court in the order for publication of the summons, and such publication shall have the same force and effect as though such person had been personally served with the summons. Service of summons required under this chapter shall be made by the sheriff or other person appointed by the court, and a return must be made on the summons showing to whom, the date, and time service was made. The court may summon the appearance of any person whose presence is deemed necessary as a witness.

(b) If any person summoned as provided in this section, without reasonable cause, shall fail to appear, the court may proceed in such person's absence or such person may be proceeded against for contempt of court pursuant to section -75. Where the summons cannot be served, or where a person served fails to obey the summons, or in any case when it shall be made to appear to the court that the service will be ineffectual, or that the best interests of the child require that the child be brought forthwith into the custody of the court, the court may issue a warrant for such person or child, as well as, issuing an order pursuant to section -32(d).

(c) The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceedings under this chapter. The court may appoint additional counsel for the child pursuant to subsection (e) or independent counsel for any other party if such party is an indigent, the child protective proceedings are complex, counsel is necessary to protect the party's interests adequately, and the interests are not represented adequately by another party who is represented by counsel.

(d) In any case, where the court has reason to believe that a party is not fully competent to comprehend the nature of the child protective proceedings, after such hearing as the court deems to be appropriate, the court may appoint a guardian ad litem to represent the interests of that party.

(e) A guardian ad litem appointed pursuant to subsection (c) shall report to the court in writing at six month intervals, or as is otherwise ordered by the court, regarding such guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interests of the child; provided that such guardian ad litem shall also inform the court of the child's perceived interests if they differ from those being advocated by

the child's guardian ad litem. If the child and the child's guardian ad litem are not in agreement, the court shall evaluate the necessity for appointing special counsel for the child to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child.

(f) A guardian ad litem or counsel appointed pursuant to this section for the child or other party shall be paid for by the court unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. The court may order the appropriate parties to pay reimbursement to the court for the costs and fees of the guardian ad litem and other counsel appointed for the child.

PART V. BURDEN OF PROOF

§ -41 Burden of proof. (a) In an adjudicatory hearing, any determination that the child has been harmed or is subject to threatened harm shall be based on a preponderance of the evidence; and, except as otherwise provided under this chapter, only competent, material, and relevant evidence may be admitted; provided that such competent, material, and relevant evidence which is contained in a written report, study, or examination, shall be admissible, and may be relied upon to the extent of its probative value; provided further that the maker of the written report, study, or examination may be subject to direct and cross-examination upon demand and when the maker reasonably is available.

(b) In a disposition, a service plan, a review, or any other hearing in a child protective proceeding, other than a temporary foster custody hearing, any determination shall be based on a preponderance of the evidence; and any relevant evidence shall be admitted, including such evidence as is contained in a written report, study, or examination and may be relied upon to the extent of its probative value; provided that the maker of the written report, study, or examination may be subject to direct and cross-examination upon demand and when the maker reasonably is available.

(c) Within a reasonable period of time prior to each hearing in a child protective proceeding, the department or other appropriate authorized agency shall submit a written report to the court with copies to all parties or their counsel or guardian ad litem setting forth the then-current situation of the child and the recommendations as to the orders or further orders as are deemed to be in the best interests of the child and the basis for each of such recommendations, including but not limited to, a consideration of the guidelines for determining whether the child's family is willing and able to exercise or provide the child with a safe home set forth in section -2, if the child's placement may be in issue at such hearing.

(d) A social worker employed by the department in the area of child protective services shall be presumed to be qualified to testify as an expert in the area of child protective services.

§ -42 Evidence may be inadmissible in other actions or proceedings and testimony by a child. (a) Any testimony by or other evidence produced by a party in a child protective proceeding under this chapter may be ordered by the court to be inadmissible as evidence in any other civil or criminal action or proceeding if the court deems such an order to be in the best interests of the child.

(b) The court may direct that a child testify under such circumstances as the court deems to be in the best interests of the child and the furtherance of justice, which may include or be limited to, an interview on the record in chambers with only those parties present as the court deems to be in the best interests of the child.

(c) Any statement made by the child to any person relating to any allegation of harm, imminent harm, or threatened harm shall be admissible in evidence.

PART VI.¹ PRELIMINARY FINDINGS, HEARINGS AND ORDERS

§ -51 Required findings concerning notice prior to a hearing in a child protective proceeding. No hearing may commence under this chapter unless the court enters a finding:

- (1) That each of the parties is present at the hearing and has been served with a copy of the petition; or
- (2) If the member or members of the child's family required to be notified pursuant to section -32(a) are not present, that every reasonable effort has been made to effect service under this chapter and that it would be detrimental to the child to postpone the proceedings until service can be effectuated.

If a member or members of the child's family required to be notified pursuant to section -32 are not present, the court may proceed to hear any child protective proceedings under this chapter only if the child is represented by a guardian ad litem or counsel. If the member or members of the child's family required to be notified pursuant to section -32(a) thereafter move the court that a resulting order of a temporary foster custody, an adjudication, a disposition, or a review hearing be vacated and ask for a rehearing, the court may grant the motion on an affidavit of such relationship or responsibility, unless the court finds that the party refused or failed to appear at the temporary foster custody, an adjudicatory, a disposition, or a review hearing without good cause, or that it would not otherwise be in the best interests of the child, in which case the court may deny the motion.

§ -52 Order of protection. (a) After a petition has been filed with the court under this chapter the court, upon such hearing as the court deems to be appropriate, may make an order of protection in assistance or as a condition of any other order made under this part. The order of protection may set forth reasonable conditions to be complied with for a specified time by any party other than an authorized agency. Such an order may require the party:

- (1) To stay away from the child's family home, or any party or person; or
- (2) To abstain from offensive conduct against any party or person.

(b) A petition filed with the court under this chapter also may serve as a petition for an order for protection as provided by section 586-3.

§ -53 Temporary foster custody hearing. (a) In any case where the department has assumed temporary foster custody of a child with or without an order of the court, the court shall hold a temporary foster custody hearing, within two working days, excluding Saturdays, Sundays, and holidays, after the filing of a petition to determine whether the best interests of the child require further protection pending an adjudicatory hearing.

(b) After reviewing a petition the court, on its own motion and without a temporary foster custody hearing, may order that the child immediately be released from temporary foster custody and returned to the child's family under such terms and conditions as are deemed by the court to be in the best interests of the child.

(c) The temporary foster custody hearing shall be continued upon the court's own motion or upon the motion of a party if the court determines that it requires further investigation, information, a physical examination, or a psychiatric or a psychological evaluation of a party prior to rendering a determination as to whether the child should remain in temporary foster custody pending an adjudicatory hearing.

(d) At the temporary foster custody hearing, any relevant evidence, whatsoever, shall be admitted, including such evidence as is contained in a written report, study, or examination and may be relied upon to the extent of its probative value; provided that the maker of the written report, study, or examination may be subject to direct and cross-examination upon demand and when the maker reasonably is available.

(e) The court shall consider the guidelines for determining whether the child's family is willing and able to exercise or to provide the child with a safe home set forth in section -2 prior to rendering a determination in the temporary foster custody hearing.

(f) After a temporary foster custody hearing, if the court determines that there is reasonable cause to believe that continued placement in emergency foster care is necessary to protect the child from imminent harm, it shall order that the child continue in the temporary foster custody of the department.

(g) After a temporary foster custody hearing, if the court determines that continued placement in emergency foster care is not necessary to protect the child from imminent harm, it may order that the child immediately be released from temporary foster custody and returned to the child's family under such terms and conditions as are deemed by the court to be in the best interests of the child pending an adjudicatory hearing.

(h) Any party may move for, or the court on its own motion may order, a temporary foster custody hearing or rehearing at any time after the petition is filed under this chapter in order to determine whether the best interests of the child require that the child be placed in temporary foster custody pending an adjudicatory hearing or a final order of disposition.

PART VII.¹ ADJUDICATORY HEARING AND ORDERS

§ -61 **Continuance in contemplation of dismissal.** (a) Prior to or upon an adjudicatory hearing, the court, upon a motion by the department with the consent of the other parties or upon its own motion with the consent of the parties, may order that the proceeding be continued in contemplation of dismissal. The court may make such order only after the court has informed the parties of the provisions of this section, and is satisfied that each of the parties and guardian ad litem understand the effect of such provisions.

(b) A continuance in contemplation of dismissal shall continue the child protective proceedings for a period not to exceed one year with a view to ultimate

dismissal of the petition in furtherance of justice. Upon the consent of the parties, the court may issue an order extending such period for such time and upon such conditions as may be agreeable to the parties.

(c) Such order may be based upon a report by an authorized agency or other evidence deemed by the court to constitute an adequate basis for the court's invoking its jurisdiction which report or evidence may be admitted into evidence subject to reservation by the parties of their right to cross-examination, and may include terms and conditions agreeable to the parties and to the court; provided that such terms and conditions shall include but not necessarily be limited to an appropriate service plan and a provision that the child and the child's family be under family supervision of the department or other authorized agency during the continuance period. The authorized agency shall report to the court in such manner and at such times as the court may direct during the duration of the order.

(d) Upon the written motion of a party, or upon the court's own motion, made at any time before the order expires, the court may restore the matter to the calendar, if the court finds after such hearing as the court deems to be appropriate that the child's family has failed to comply with the terms and conditions of the order including but not limited to the service plan. In that event, circumstances of harm or threatened harm to the child shall be deemed to exist, and the court shall proceed to a disposition hearing under this chapter and, at the conclusion of such hearing, may enter a final order of disposition with the same force and effect as if an adjudicatory hearing had been held and the child had been found to have been harmed or subject to threatened harm.

(e) If the proceedings are not restored to the calendar, at the expiration of the continuance period, the petition shall be dismissed by the court without a hearing or order in furtherance of justice.

§ -62 Adjudicatory hearing. (a) When a petition has been filed, the court shall set a return date to be held within fifteen days of (1) the filing of the petition or (2) the date of the issuance of a verbal decision in a temporary foster custody hearing.

(b) On the return date, the parties may stipulate to the entry of such orders as the court deems to be in the best interests of the child or the court may set the case for an adjudicatory hearing as soon as is practicable; provided that if the child is to remain in emergency foster care subsequent to the return date, the court shall set the case for an adjudicatory hearing within ten days of the return date unless the court deems a later date for an adjudicatory hearing to be in the best interests of the child, or such later date is agreed to by all parties and the child's guardian ad litem and is approved by the court.

(c) The court shall hear child protective proceedings under this chapter at a hearing separate from those for adults and without a jury. The hearing shall be conducted in an informal manner and may be adjourned from time to time. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case. The child may be excluded from the hearing at any time at the discretion of the court. If a party is without counsel, or a guardian ad litem, the court shall inform the party of the right to be represented by counsel and to appeal from any order of the court.

(d) At the conclusion of an adjudicatory hearing and after it has made findings required before a disposition hearing may commence, the court may adjourn the proceedings to make or order an inquiry into the surroundings, conditions, and capacities of the parties involved in the proceedings.

§ -63 Sustaining or dismissing petition and interim orders. (a) If facts sufficient to sustain the petition are established in accord with this chapter, or if all parties consent, the court, subject to the provisions of subsection (c), shall enter an order finding that the child has been harmed or subjected to threatened harm and shall state the grounds for the finding. Upon the completion of the adjudicatory hearing, the disposition hearing may commence immediately after the required findings are made or the court may set the disposition hearing for such time as it deems appropriate.

(b) If facts sufficient to sustain the petition under this chapter are not established, the court shall dismiss the petition and shall state the grounds for dismissal.

(c) If the court sustains the petition and does not commence immediately the disposition hearing, it shall determine, based upon the facts adduced during the adjudicatory hearing and any other additional facts presented to it, whether a temporary foster custody order should be continued or should be entered pending a final order of disposition. The court shall consider the guidelines for determining whether the child's family is willing and able to exercise or to provide the child with a safe home set forth in section -2 prior to rendering a determination.

(d) If at any stage of the child protective proceedings, the court determines that the child's family will not or cannot provide the child with a safe home, the court shall either continue or enter a temporary foster custody order pending a final order of disposition; provided that the court first shall give due consideration to ordering the removal from the child's family home of the perpetrator of harm or threatened harm to the child prior to continuing or placing the child in emergency foster care. The child's family shall have the burden of establishing by a preponderance of the evidence that it is not in the best interests of the child that the perpetrator be removed from the family's home by order of the court.

(e) If siblings or psychologically bonded children are removed from their family home, the court may order that every reasonable effort be made to place them together.

(f) Pending a final order of disposition, the court shall make such orders regarding visitation and the provision of services to the child and the child's family and their acceptance and cooperation with such services as the court deems to be appropriate and consistent with the best interests of the child.

(g) Orders verbally stated by the court on the record in a proceeding under this chapter shall have full force and effect upon the date of the hearing until further order of the court; provided that all verbal orders shall be reduced into writing as soon as convenient.

PART VIII.¹ DISPOSITION AND REVIEW HEARINGS AND ORDERS

§ -71 Disposition hearing. (a) The court may consider any information relevant to a disposition which is in the best interests of the child; provided that the court shall determine initially whether the child's family home is a safe home. The court shall consider fully the guidelines for determining whether the child's family is willing and able to exercise or to provide the child with a safe home set forth in section -2 in rendering such a determination.

(b) If the court determines that the child's family home is a safe home, the court shall:

- (1) Place the child and the child's family under the family supervision of the department or other appropriate authorized agency, return the child to the child's family home, and enter such further orders, including but not limited to, restrictions upon the rights and duties of the department or other appropriate authorized agency as the court deems to be in the best interests of the child; or

- (2) Terminate jurisdiction.

(c) If the court determines that the child's family home is not a safe home, the court shall vest foster custody of the child in an authorized agency and enter such further orders as the court deems to be in the best interests of the child.

(d) If the court does not terminate the court's jurisdiction, the court shall order in every case that the department or other authorized agency prepare a written service plan and submit copies to the court and to each of the parties within thirty days from the date of the hearing unless the court deems an extension of time for submittal of the service plan to be in the best interests of the child.

(e) The court shall set a hearing concerning the terms and conditions set forth in the service plan unless the court is convinced that each of the parties have signed and fully understand and accept the service plan, in which event, the court may order that the service plan shall constitute the service plan by court order and that the service plan shall be entered into evidence without a hearing.

(f) The court may order that any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and are deemed to be in the best interests of the child.

(g) The court may order that a child shall be examined by a physician, surgeon, psychiatrist, or psychologist, and it may order treatment by them, of a child as is authorized by law, and is deemed to be in the best interests of the child. For either the examination or treatment, the court may place the child in a hospital or other suitable facility.

(h) The court may order reasonable supervised or unsupervised visitation rights to the child's family and to any person interested in the welfare of the child and that such visitation shall be in the discretion of an authorized agency, unless it is shown that such rights of visitation may be detrimental to the best interests of the child.

§ -72 Review hearings. (a) Except for good cause shown, the court shall set each case for review hearing not later than six months after the date that a

service plan is ordered by the court and thereafter, the court shall set subsequent review hearings at intervals of no longer than six months, until the court's jurisdiction has been terminated.

(b) Notice of review hearings shall be served upon the parties and upon the present foster parent or parents, each of whom shall be a party entitled to participate in the proceedings.

(c) The department or other appropriate authorized agency shall make every reasonable effort to submit a written report, pursuant to section 41(c), or a written explanation regarding why the report is not being submitted timely to the court with copies to the parties or their counsel or guardian ad litem at least fifteen days before the date set for each review hearing.

(d) The report pursuant to subsection (c) specifically shall:

- (1) Evaluate as to whether the parties have complied with, performed, and completed, if possible, each and every term and condition of the service plan which was ordered for the child;
- (2) Recommend as to whether the court should enforce the consequences set forth in the service plan pertaining to compliance or noncompliance by the parties with the terms and conditions of the service plan;
- (3) Recommend as to whether the court should order revisions to the existing service plan, and if so, set forth the proposed revisions and the basis for recommending such revisions; and
- (4) Set forth recommendations as to such further orders as are deemed to be appropriate and state the basis for recommending that such orders be entered.

(e) Upon each review hearing the court shall:

- (1) Determine whether the parties have complied with, performed and completed, if possible, each and every term and condition of the service plan which was previously court ordered;
- (2) Enforce the consequences set forth in the service plan pertaining to compliance or noncompliance by the parties with any of the terms and conditions of the service plan;
- (3) Order such revisions to the existing service plan as the court, upon such hearing as the court deems to be appropriate, determines to be in the best interests of the child; and
- (4) Enter such further orders as the court deems to be in the best interests of the child.

(f) The court shall consider the need for permanency planning for the child at each review hearing and at the twelve-month review hearing, if the child is not returned to the child's family, the court shall proceed to enter orders consistent with the following:

- (1) If the child was under the age of three at the time of placement in foster care, the court shall order permanency planning be commenced for the child if the court determines that the child's family has failed to comply substantially with the terms and conditions of the service plan and that both the recommendations of the child's guardian ad litem and of the

department or other authorized agency support the initiation of permanency planning; or

- (2) If a child was over the age of three at the time of placement, the court shall order permanency planning if the court determines that the child's family has failed to comply substantially with the terms and conditions of the service plan and such parties have not provided the court with an adequate excuse or explanation for such noncompliance and that both the recommendations of the child's guardian ad litem and the department or other appropriate authorized agency support the initiation of permanency planning; or
- (3) If siblings or psychologically bonded children are placed together in foster care, the court shall enter orders concerning permanency planning for each of such children consistent with paragraph (1) or (2), depending upon the age of the youngest child at the time of the children's placement in foster care, unless it is not in each of the children's best interests to proceed in such manner; and
- (4) Enter such further orders as the court deems to be in the best interests of the child.

(g)¹ The court shall order permanency planning for the child at the eighteen-month review hearing, if the child cannot be returned to the child's family home at that time.

(h)¹ The court may order permanency planning for the child as follows:

- (1) That a petition for termination of parental rights pursuant to section 571-61 be commenced as soon as practicable and that such petition be consolidated with the child protective proceedings;
- (2) That a petition for guardianship pursuant to section 560:5-201 be commenced as soon as practicable, and that such petition be consolidated with the child protective proceedings;
- (3) That if the child is sixteen years of age, and is of sufficient physical and psychological maturity, the court may order that the child be deemed to be emancipated and shall be regarded as though the child were of legal age and shall have all the rights, duties, privileges, and responsibilities provided by the civil law to a person who has reached the age of majority under civil law; provided that:
 - (A) Nothing in this section shall be deemed to confer upon such person the right to vote in any federal, state, or county election or the right to purchase, possess, or sell alcoholic beverages; and
 - (B) Nothing in this section shall change the status of such persons as a child in connection with any criminal law, nor affect the exclusive original jurisdiction of the family court over such persons under section 571-11(1); or
- (4) That the child shall remain in long-term foster care until the age of majority pursuant to a long-term foster care contract unless the child is emancipated prior thereto pursuant to paragraph (3) and that such status shall not be subject to modification or to revocation except upon a showing of extraordinary circumstances to the court.

§ -73 **Modification or revocation.** (a) A motion for revocation or modification of an order issued under this chapter may be filed by a party; provided that no motion may be filed under this section within three months of a prior hearing on custody, care, or placement of the child, except for good cause shown or as is otherwise provided under this chapter.

(b) If the motion filed pursuant to subsection (a) alleges that the best interests of the child are no longer served by an order issued under this chapter or that an authorized agency has failed to provide adequate care for the child, the court shall hold a hearing on the motion.

(c) At a hearing to consider the motion filed pursuant to subsection (a), the court may dismiss the motion or the court may revoke or modify the order as required by the best interests of the child.

(d) An authorized agency may petition the court by motion at any time to vacate any order placing a child in its foster custody or under its family supervision.

§ -74 **Payment for service or treatment provided to a party or for a child's care, support, or treatment.** Whenever a service or treatment is provided to a party, or whenever care, support, or treatment of a child is provided under this chapter, after due notice to the persons or legal entities legally obligated to pay for such service, treatment, care, or support of the child, and after a hearing, the court may order that such a legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the cost of the service or treatment provided to a party, or the cost of the care, support, or treatment provided for the child. The provisions of section 571-52 and all other remedies available under the law shall be applicable to enforce such orders.

§ -75 **Failure to comply with terms or conditions of an order of the court.** If a party, other than an authorized agency, fails to comply with the terms and conditions of an order issued under this chapter and if, after a hearing, the court is satisfied by the appropriate proof that such party did so wilfully and without just cause, the court may apply the provisions of section 710-1077 and all other provisions available under the law.

§ -76 **Appeal.** An interested party aggrieved by any order or decree of the court may appeal as provided by section 571-54.

Part IX.¹ MISCELLANEOUS

§ -81 **Court records.** The court shall keep a record of all child protective proceedings under this chapter. The written reports, photographs, x-rays, or other information of any nature which are submitted to the court may be made available to parties and to other persons only upon an order of the court showing that such access is in the best interests of the child or serves some other legitimate purpose. Any party or person receiving records shall not disclose any information included in the records to third persons without a prior court order.

§ -82 **Fiscal responsibility.** The court, the department, or other authorized agency shall provide only the care, service, treatment, or support, or the payment for care, service, treatment, or support, as is set forth in the budget of the court, the department, or authorized agency and is authorized by law.

§ -83 **Short title.** This chapter shall be known and cited as the "Child Protective Act".

§ -84 **Cooperation.** Every public official or department shall render all assistance and cooperation within such person's or its jurisdictional power which may further the purpose and objectives of this chapter. The department and the court may seek the cooperation of organizations whose objective is to protect or aid children and family life."

SECTION 2. Section 571-11, Hawaii Revised Statutes, is amended to read:

"§571-11 **Jurisdiction; children.** Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age which would constitute a violation or attempted violation of any federal, state, or local law or municipal ordinance. Regardless of where the violation occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred.
- (2) Concerning any child living or found within the circuit:
 - [(A)] (A) Who is neglected as to proper or necessary support, or as to medical or other care necessary for the child's well-being, or who is abandoned by the child's parent or other custodian; or
 - (B) Who is subjected to physical or emotional deprivation or abuse as a result of the failure of any person or agency to exercise that degree of care for which the person or agency is legally responsible; or
 - [(C)] (A) Who is neglected as to or deprived of educational services because of the failure of any person or agency to exercise that degree of care for which it is legally responsible[; or];
 - [(D)] (B) Who is beyond the control of the child's parent or other custodian or whose behavior is injurious to the child's own or others' welfare; [or
 - (E)] (C) Who is neither attending school nor receiving educational services required by law whether through the child's own misbehavior or nonattendance or otherwise; or
 - [(F)] (D) Who is in violation of curfew.
- (3) To determine the custody of any child or appoint a guardian of the person of any child.
- (4) For the adoption of a person under chapter 578.
- (5) For the termination of parental rights under sections 571-61 to 571-63.
- (6) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law.
- (7) For the treatment or commitment of a mentally defective, mentally retarded, or mentally ill child.
- (8) Under the Interstate Compact on Juveniles under chapter 582.
- (9) For the protection of any child under chapter ."

SECTION 3. Section 571-54, Hawaii Revised Statutes, is amended to read as follows:

"§571-54 Appeal. An interested party aggrieved by any order or decree of the court may appeal to the supreme court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court and review shall be governed by chapter 602, except as hereinafter provided. Where the decree or order affects the custody of a child or minor the appeal shall be heard at the earliest practicable time. In cases under section 571-11 the record on appeal shall be given a fictitious title, to safeguard against publication of the names of the children or minors involved.

The stay of enforcement of an order or decree, or the pendency of an appeal, shall not suspend the order or decree of the court regarding a child or minor or discharge the child or minor from the custody of the court or of the person, institution, or agency to whose care he has been committed, unless otherwise ordered by the family court, or by the supreme or intermediate appellate court after an appeal is taken. Pending final disposition of the case the family court, or the supreme or the intermediate appellate court after an appeal is taken, may make such order for temporary custody as is appropriate in the circumstances. If the supreme or the intermediate appellate court does not dismiss the proceedings and discharge the child or minor, it shall affirm or modify the order of the family court and remand the child or minor to the jurisdiction of the court for disposition not inconsistent with the supreme or the intermediate appellate court's finding on the appeal.

An order or decree entered in a proceeding based upon section 571-11(1), (2), [or] (6), or (9) shall be subject to appeal to the supreme court only as follows:

Within ten days from the date of the entry of any such order or decree, any party directly affected thereby, including a parent or legal custodian of any child or minor involved, may petition the judge for a rehearing and reconsideration of the facts involved. The petition shall set forth the grounds on which a rehearing is requested and shall be sworn to by the petitioner. A copy thereof shall be served upon the attorney general, who shall represent the interests of the State at the rehearing and in connection with any subsequent appeal. As soon thereafter as may be practicable, the judge shall proceed with the rehearing of the case, affording to all parties concerned the full right of representation by counsel and presentation of relevant evidence. The findings of the judge upon the rehearing and his determination and disposition of the case thereafter, and any decision, judgment, order, or decree affecting the child and entered as a result of the rehearing shall be set forth in writing and signed by the judge. Any party deeming himself aggrieved by any such judgment, order, or decree, entered following a rehearing as in this section provided, shall have the right to appeal therefrom to the supreme court upon the same terms and conditions as in other cases in the circuit court and review shall be governed by chapter 602; provided that no such petition for rehearing shall operate as a stay of any such judgment, order, or decree unless the judge of the family court so orders; provided further that no informality or technical irregularity in the proceedings prior to the rehearing hereinabove provided for shall constitute grounds for the reversal of any such judgment, order, or decree by the appellate court."

SECTION 4. Section 571-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Involuntary termination.

- (1) [the] The family courts may terminate the parental rights in respect to any child as to any legal parent:
 - (A) Who has deserted the child without affording means of identification for a period of at least ninety days;
 - (B) Who has voluntarily surrendered the care and custody of the child to another for a period of at least two years;
 - (C) Who, when the child is in the custody of another, has failed to communicate with the child when able to do so for a period of at least one year;
 - (D) Who, when the child is in the custody of another, has failed to provide for care and support of the child when able to do so for a period of at least one year;
 - (E) Whose child has been removed from the parent's physical custody pursuant to legally authorized judicial action under section [571-11(2)(A) or (B)] 571-11(9), and who is found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the child;
 - (F) Who is found by the court to be mentally ill or mentally retarded and incapacitated from giving consent to the adoption of or from providing now and in the foreseeable future the care necessary for the well-being of the child;
 - (G) Who is found not to be the child's natural or adoptive father.
- (2) The family courts may terminate the parental rights in respect to any minor of any natural but not legal father who is an adjudicated, presumed or concerned father under [the provisions of]chapter 578 [relating to adoption], or who is named as the father on the child's birth certificate;
 - (A) Who falls within [subparagraphs] subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1) [above];
 - (B) Whose child is sought to be adopted by the child's stepfather and [said] the stepfather has lived with [said] the child and [said] the child's legal mother for a period of a least one year;
 - (C) Who has failed to file a petition for the adoption of [said] the child or whose petition for the adoption of [said] the child has been denied;
 - (D) Who is found to be an unfit or improper parent or to be financially or otherwise unable to give the child a proper home and education.
- (3) In respect to any proceedings under paragraphs (1) and (2) [herein], the authority to terminate parental rights may be exercised by the court only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born and the court has conducted a hearing of the petition. A copy of the petition, together with notice of the time and place of the hearing thereof, shall be personally served at least

twenty days prior to the hearing upon the parent whose rights are sought to be terminated. [In the event that] If personal service cannot be effected within the State, service of the notice may be made as provided in section 634-23 or 634-24.

- (4) The family courts may terminate the parental rights in respect to any child as to any natural father who is not the child's legal, adjudicated, presumed or concerned father under [the provisions of] chapter 578 [relating to adoption].

Such authority may be exercised under this chapter only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born, and the court has conducted a hearing of the petition.

If the mother of the child files with the petition an affidavit representing that the identity or whereabouts of the child's father is unknown to her or not ascertainable by her or that other good cause exists why notice cannot or should not be given to [said] the father, the court shall conduct a hearing to determine whether notice [must be given.] is required.

[In the event] If the court finds that good cause exists why notice cannot or should not be given to the child's father, and that [said] the father is neither the legal nor adjudicated nor presumed father of the child, nor has he demonstrated a reasonable degree of interest, concern, or responsibility as to the existence or welfare of the child, the court may enter an order authorizing the termination of [said] the father's parental rights and the subsequent adoption of [said] the child without notice to [said] the father."

SECTION 5. Section 350-1, Hawaii Revised Statutes, is amended to read as follows:

"§350-1 [[NEW]] Definitions. For the purposes of this chapter, unless the context specifically indicates otherwise:

- (1) "Child abuse and neglect" means physical injury, psychological abuse and neglect, sexual abuse, negligent treatment, or maltreatment of a child under eighteen years of age by a parent, legal guardian, or person responsible for that child's care under circumstances which indicate that the minor's health or welfare has been or is harmed or threatened with harm.
- (2) "Department" means the department of social services and housing.
- (3) "Harm" or "threatened with harm" means harm or threatened harm as defined in chapter.
- [(3)] (4) "Professional" means a person engaged in a specific occupation who examines, treats, attends, or otherwise provides specialized services to children.
- [(4)] (5) "Report" means the oral or written disclosure, to the department of social services and housing, that a minor is believed to have been

harmed or threatened with harm by a parent, legal guardian, or person responsible for that child's care."

SECTION 6. The provisions of this Act are hereby declared to be severable and if any provision of this Act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Act.

It is the intent of this Act not to jeopardize the receipt of any federal aid, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature.

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored.

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

(Approved June 4, 1983.)

Note

1. Redesignated to correct obvious error.