

## ACT 316

H.B. NO. 2221-86

A Bill for an Act Relating to Child Protective Act.

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

SECTION 1. Section 587-1, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§587-1[ ] 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, loving, and nurturing 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 [a] 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] or permanent 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.”

SECTION 2. Section 587-2, Hawaii Revised Statutes, is amended to read as follows:

“[[§587-2]] **Definitions.** When used in this chapter, unless the context otherwise requires:

“Adjudicatory hearing” means a [fact-finding] hearing held pursuant to [determine the truth of the allegations stated in a petition filed under this chapter.] section 587-62.

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

“Clear and convincing evidence” means that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. This measure falls between the preponderance standard of typical civil cases and the beyond-a-reasonable-doubt standard of criminal cases.

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

“Criminal history record check” means an examination of an individual’s criminal history record through fingerprint analysis or name inquiry into state and national criminal history record files, including, but not limited to, the files of the Hawaii criminal justice data center; provided that the information obtained shall be used exclusively for purposes under this chapter and shall be subject to applicable federal laws and regulations.

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

“Disposition hearing” means a hearing held pursuant to [determine, in the best interests of the child, the orders of disposition, including an appropriate service plan.] section 587-71.

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

“Family” means each legal[,] parent, the natural mother, the natural father, the adjudicated, [or] presumed [parent, the natural mother, a], or 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 home” means the home of the child’s legal custodian where there is the provision of care for the child’s physical and psychological health and welfare.

“Family supervision” means the legal status created pursuant to this section, section 587-21[(a)](b)(2), or by an order of court after the court has determined that the child is presently in the legal or permanent custody of a family which is willing and able, with the assistance of a service plan, to provide the child with a safe family home. [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 interests 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] place the child [is placed] in emergency foster care or foster care[, the authorized agency shall] and thereby automatically assume temporary foster custody or foster custody of the child. Upon such placement, the authorized agency shall immediately notify the court. Upon such notification, the court shall set the case for a temporary foster custody hearing within three working days or, if jurisdiction has been established, a disposition or a review hearing within ten working days of the child's placement, unless the court deems a later date to be in the best interests 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 temporary family supervision or family supervision in relation to the child.

"Foster care" means a residence designated as suitable by [the department] an authorized agency or the court for the appropriate care of a child upon [final] orders of disposition[.] or permanent custody.

"Foster custody" means the legal status created pursuant to this section, section 587-21[(a)](b)(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.] provide the child with a safe family home.

- (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 emergency foster care or foster care; provided that the child shall not be placed in emergency foster care or foster care outside the State without prior approval of the court; [and] provided further that, subsequent to the temporary foster custody hearing, unless otherwise ordered by the court, the temporary foster custodian or 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, temporary foster custody, or foster custody automatically shall be revoked and the child and the child's family members who are parties shall be under the temporary family supervision or the family supervision of the former temporary foster custodian or foster custodian[.];
  - (B) To assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and [incidental] other 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.] To provide consent to the recording of a statement pursuant to section 587-43;
  - (F)<sup>1</sup> To provide the court with information concerning the child that the court may require at any time.
- (2) The court, in its discretion, may vest foster custody of a child in any authorized agency in the child's best [interest;] interests; provided that such rights and duties which are so assumed by an authorized agency shall supersede the rights and duties of any legal or permanent 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 temporary foster custody or foster custody, to the extent that such family member possessed such rights and responsibilities prior to the transfer of temporary foster custody or foster custody, to wit: the right of reasonable supervised or unsupervised 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.

"Guardian ad litem" means a person appointed by the court under section 587-34 whose role is to protect and promote the needs and interests of the child or ward.

"Guidelines for determining whether the child's family is willing and able to [exercise or to] provide the child with a safe family home" means [that] the [following criteria shall be fully considered:] guidelines set forth in section 587-25.

- (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] a case where there exists [the child exhibits] evidence of injury, including, but not limited to:
- (1) Any case where the child exhibits evidence of:
  - (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] sexual 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 in a timely manner 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] child 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.] 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 provide the child with a safe family home, as set forth in section 587-25.

"Party" means an authorized agency, the child, the child's family member or members who are required to be summoned pursuant to section 587-32(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] proceeding 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[.]; provided that the court may limit a party's right to participate in any child protective proceeding if the court deems such limitation of such party's participation to be consistent with the best interests of the child and such party is not a family member who is required to be summoned pursuant to section 587-32(a), except as is provided in section 587-73(b)(4).

"Permanent custody" means the legal status created by order of the court after the court has considered the criteria set forth in section 587-73(a) or (c) and determined by clear and convincing evidence that it is in the best interests of the child to order an appropriate permanent plan concerning the child.

- (1) Permanent custody divests from each legal custodian and family member who has been summoned pursuant to section 587-32(a), and vests in a permanent custodian, each of the parental and custodial duties and rights of a legal custodian and family member, including, but not limited to, the following:
  - (A) To determine where and with whom the child shall live; provided that the child shall not be placed outside the State without prior approval of the court;
  - (B) To assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities;
  - (C) To monitor the provision to the child of appropriate education;
  - (D) To provide all consents that are required for the child's physical or psychological health or welfare, including, but not limited to, 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;
  - (E) To provide consent to adoption or to marriage;
  - (F) To provide the court with information concerning the child that the court may require at any time, and to submit written reports to the court stating the then-current situation and other significant information concerning the child at intervals not to exceed one year, unless otherwise ordered by the court; and
  - (G) If the child resides without the home of the permanent custodian for a period of seven consecutive days, to submit a written report to the court stating the then-current situation of the child on or before the tenth consecutive day or the next working day after such date.
- (2) Unless otherwise ordered by the court, a child's family member shall retain, to the extent that such family member possessed such responsibility prior to the transfer of permanent custody, 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 permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the child's benefit;

- (3) A family member may be permitted visitation with the child at the discretion of the permanent custodian; provided that the exercise of such discretion may be reviewed by the court and the court may order that a family member be permitted such visitation as is in the best interests of the child;
- (4) An order of permanent custody entered under this chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, unless and until the child has been legally adopted;
- (5) The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequent authorized agencies as is deemed to be in the best interests of the child;
- (6) If the department receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the permanent custodian or custodians of the child, the department may automatically assume either family supervision over the child and the child's permanent custodian or foster custody of the child; provided that, in any event, the department shall immediately notify the court and the court shall set the case for a permanent plan review hearing within ten working days, unless the court deems a later date to be in the best interests of the child; and
- (7) 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 permanent custodian of the child.

"Permanent plan" means a specific written plan prepared pursuant to section 587-27.

"Permanent plan hearing" means a hearing held pursuant to section 587-73.

"Permanent plan review hearing" means any hearing, subsequent to a court ordered permanent plan, held pursuant to section 587-73(b).

"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.

"Preponderance of evidence" means evidence which as a whole shows that the fact sought to be proved is more probable than not.

"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.

"Reasonable cause to believe" means reasonably trustworthy evidence which would cause a reasonable person of average caution to believe.

"Review hearing" means any [subsequent] hearing held pursuant 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.] section 587-72.

"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 587-21(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.] pursuant to section 587-26.

“Temporary family supervision” means a legal status created under this chapter pursuant to an order of the court whereby the department assumes the duties and rights of family supervision over a child and the child’s family members who are parties prior to a dispositional determination.

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

“Temporary foster custody hearing” means a hearing held pursuant to section 587-53.

“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 family home, as [defined] set forth in [this] section[.] 587-25.”

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

“[ ]§587-11[ ] Jurisdiction. The court shall have exclusive original jurisdiction in a child protective [proceedings] proceeding concerning any child who was or is found within the [circuit] State 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], has been harmed, or is subject to threatened harm by the acts or omissions of the child’s family.”

SECTION 4. Section 587-12, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§587-12[ ] 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.”

SECTION 5. Section 587-13, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§587-13[ ] Venue. [Child] A child protective [proceedings] proceeding 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.”

SECTION 6. Section 587-21, Hawaii Revised Statutes, is amended to read as follows:

[ ]§587-21[ ] Authorization for department to act. (a) Upon receiving a report that a child [has been harmed,] is subject to imminent harm, has been harmed [or is subject to 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 or other appropriate law enforcement authorities for phases of the investigation for which they are better equipped[.] and the department may conduct a criminal history record check concerning an alleged perpetrator of imminent harm, harm, or threatened harm to a child.

(b) 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 and such other authorized agency 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, the department shall file a petition [shall be] or ensure that a petition is filed by another appropriate authorized agency in court under this chapter[;] and the case shall be otherwise reviewed as is required by federal law; or
- (3) Assume temporary foster custody of the child pursuant to section 587-24(a) and file a petition [in] with 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] or ensure that a petition is filed by another appropriate authorized agency in court under this chapter."

SECTION 7. Section 587-22, Hawaii Revised Statutes, is amended to read as follows:

**"[ ]§587-22[ ] 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 automatically assume temporary foster custody of the child."

SECTION 8. Section 587-23, Hawaii Revised Statutes, is amended to read as follows:

“[[ ]§587-23[ ]] **Authorization for color photographs, x-rays, and radiological or other diagnostic 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 or other diagnostic examination to be performed on the child.

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

SECTION 9. Section 587-24, Hawaii Revised Statutes, is amended to read as follows:

“[[ ]§587-24[ ]] **Temporary foster custody without court order.** (a) When the department receives physical custody of a child from the police pursuant to section 587-22(b), the department [may] shall 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] custodian 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, 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] legal custodian or custodians and proceed pursuant to section [587-21(a)(1),] 587-21(b)(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] legal custodian or custodians and proceed pursuant to section [587-21(a)(2)] 587-21(b)(2) or (4); or
- (3) Continue its assumption of temporary foster custody of the child and proceed pursuant to section [587-21(a)(3).] 587-21(b)(3).”

SECTION 10. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§587-25 Guidelines for determining whether the child’s family is willing and able to provide the child with a safe family home.** (a) The following guidelines shall be fully considered when determining whether the child’s family is willing and able to provide the child with a safe family home:

- (1) The age and the physical and mental vulnerability of the child;
- (2) The date or dates upon which the child was placed out of the family home and the date or dates of any subsequent change in placement;
- (3) The magnitude of the harm suffered by the child;
- (4) The frequency of the harm suffered by the child;
- (5) Whether the child has been the victim of repeated harm after an initial report and intervention by a social agency;
- (6) Whether the child is fearful of living in or returning to the child’s family home;
- (7) The results of psychiatric/psychological/developmental evaluations of the child, the alleged perpetrator and other appropriate family members who are parties;
- (8) 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;
- (9) Whether there is a history of substance abuse by the child’s family or others who have access to the child’s family home;
- (10) Whether the nonperpetrators who reside in the child’s family home are willing and able to protect the child;
- (11) Whether the perpetrator of the harm to the child is identified;
- (12) Whether the perpetrator has admitted and acknowledged the perpetrator’s responsibility for the harm;
- (13) Whether the perpetrator has apologized to the child for the harm;
- (14) The motive of the perpetrator;
- (15) 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;
- (16) The willingness and ability of the child’s family to seek out, accept, and complete counseling services, and to cooperate with and facilitate close supervision by an appropriate social agency;
- (17) The willingness and ability of the child’s family to effect positive environmental and personal changes within a reasonable period of time;
- (18) 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) A safe physical home environment; and

(E) Protection from repeated exposure to violence even though not directed at the child;

- (19) Whether the child's family has an understanding of the child's needs and capabilities;
- (20) Whether the child's family perceives the child as being "different";
- (21) The child's family's psychological attachment to the child;
- (22) Whether the child's family problems relating to the safety of the family home are sufficiently resolved;
- (23) Whether the obstacles to getting assistance are minimal, such as whether telephone and transportation are available;
- (24) Whether a competent person knows the child's family well enough to have sufficient contact and knowledge to recognize both immediate and pending problems;
- (25) Whether the competent person in paragraph (24) can and will intervene and help, as well as report, when a problem is recognized;
- (26) Whether there is available a social support system consisting of an extended family and friends; and
- (27) Whether there are other professionals, agencies, or relatives who have provided evidence that the child's family home is safe.

(b) The court shall consider the likelihood that the current situation presented by the guidelines set forth in subsection (a) will continue in the reasonably foreseeable future and the likelihood that the court will receive timely notice of any change or changes in the family's willingness and ability to provide the child with a safe family home."

SECTION 11. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"§587-26 Service plan. (a) A service plan is a specific written plan prepared by an authorized agency and presented to such members of the child's family as the 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 the service plan is being formulated or revised under this chapter.

(b) The service plan should set forth:

- (1) The steps that will be necessary to facilitate the return of the child to a safe family home, if the proposed placement of the child is in foster care under foster custody;
- (2) The steps that will be necessary for the child to remain in a safe family home with the assistance of a service plan, if the proposed placement of the child is in a family home under family supervision; and
- (3) The steps that will be necessary to make the family home a safe family home and to terminate the 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.

(c) The service plan should also include, but not necessarily be limited to:

- (1) The specific services or treatment that the parties will be provided and the 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 such responsibilities must be assumed;
- (2) The specific consequences that may be reasonably anticipated to result from the parties' success or failure in complying with,

performing, and completing, if possible, each and every term and condition of the service plan, including, but not limited to, the consequence that, unless the family is willing and able to provide the child with a safe family home within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination by award of permanent custody; and

(3) Such other terms and conditions as the appropriate authorized agency deems to be necessary to the success of the service plan.

(d) 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 whom the 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.

(e) If a member of a child's family whom the 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 authorized agency shall proceed pursuant to section 587-21(b)."

SECTION 12. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"**§587-27 Permanent plan.** Permanent plan is a specific written plan, prepared by an appropriate authorized agency, which should set forth:

- (1) A position as to whether the court should order an adoption of the child and specify:
  - (A) A reasonable period of time during which the adoption may be finalized; provided that the identity of the proposed adoptive parent or parents shall be provided to the court in a separate report which shall be sealed and shall not be released to the parties unless the court deems such release to be in the best interests of the child; or
  - (B) The reason why adoption is not the plan;
- (2) A specific written plan including:
  - (A) The goal, as being: adoption, permanent custody with subsequent adoption, or permanent custody until majority;
  - (B) The objectives concerning the child, including, but not limited to, placement, education, health, therapy, counseling, birth family, culture, and adoption or preparation for majority; and
  - (C) The method or methods for achieving the goal and objectives set forth in subparagraphs (A) and (B);
- (3) All supporting exhibits and written consents or an explanation as to why such exhibits or consents are not available. Upon good cause shown, the court may waive submission of any supporting exhibit or written consent; and
- (4) Any other information or materials which are necessary to the expeditious facilitation of the permanent plan."

SECTION 13. Section 587-31, Hawaii Revised Statutes, is amended to read as follows:

"[ [ §587-31 [ ] ] **Petition.** (a) 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] born on \_\_\_\_\_" 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 587-32(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 587-32(a)[.]; and
  - (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)] (2) 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.

(b) Petitions shall state that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time, their respective parental and custodial duties and rights shall be subject to termination.

[(2)] (c) 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."

SECTION 14. Section 587-32, Hawaii Revised Statutes, is amended to read as follows:

"[ [ ]§587-32[ ] ] **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[, ] parent, the natural mother (unless the child has been the subject of an adoption), the adjudicated, [or] presumed [parent of the child, the natural mother of the child, the], or concerned natural father of the child as defined under section 578-2, (unless the child has been the subject of an adoption) and other persons who are to be parties to the child protective [proceedings] proceeding 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 summons shall state: "YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE TERMINATED BY AWARD OF PERMANENT CUSTODY IF YOU FAIL TO APPEAR ON THE DATE SET FORTH IN THIS SUMMONS."

[(d)] (e) 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[.] until further order of the court."

SECTION 15. Section 587-33, Hawaii Revised Statutes, is amended to read as follows:

"[ [ §587-33[ ] ] **Service of summons[; necessary witnesses, guardian ad litem-counsel]**. (a) Service of summons shall be made personally by delivery of [an attested] a certified 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 or certified 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] any other hearing under this chapter, 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] Personal 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 587-75.] Where the summons cannot be personally 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 [587-32(d).] 587-34d(c)<sup>2</sup>.

(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.]

(c) When publication is used, the summons shall be published once a week for four 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; provided that the date of the last publication shall be set not less than twenty-one days prior to the return date stated therein.

[(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.]”

SECTION 16. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**§587-34 Guardian ad litem; counsel.** (a) The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceedings under this chapter; provided that a guardian ad litem's appointment shall automatically terminate upon an award of permanent custody of the child by the court, unless otherwise ordered by the court. The court may appoint additional counsel for the child pursuant to subsection (c) or independent counsel for any other party if such party is an indigent, 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.

(b) A guardian ad litem shall:

- (1) Be allowed access to the child by the caretakers of the child whether caretakers are individuals, authorized agencies, or health care providers;
- (2) Have the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child that are relevant to the proceedings filed under this chapter without the consent of the child or individuals and authorized agencies who have control of the child; and
- (3) Be given notice of all hearings and proceedings, civil or criminal, including, but not limited to, grand juries, involving the child and shall protect the best interests of the child therein, unless otherwise ordered by the court.

(c) A guardian ad litem appointed pursuant to subsection (a) shall report to the court and all parties 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 make face to face contact with the child in the child's family or foster home at least once every three months. A guardian ad litem shall 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.

(d) Where the court determines, after such hearing as the court deems to be appropriate, that a party is incapable of comprehending the legal significance of the issues or the nature of the child protective proceedings, the court may appoint a guardian ad litem to represent the interests of that party; provided that a guardian ad litem appointed pursuant to this section shall investigate and report to the court in writing at six month intervals, or as is otherwise ordered by the court, regarding the current status of the ward's disability, including, but not limited to, a recommendation as to available treatment, if any, for such disability and a recommendation concerning the manner in which the court should proceed in order to best protect the interests of the ward in conjunction with the court's determination as to the best interests of the child.

(e) A guardian ad litem or counsel appointed pursuant to this section for the child or other party may 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 or reimburse the costs and fees of the guardian ad litem and other counsel appointed for the child."

SECTION 17. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§587-40 Reports to be submitted by department and authorized agencies; social worker expertise.** (a) The department or other appropriate authorized agency shall make every reasonable effort to submit written reports, or a written explanation regarding why a report is not being submitted timely, to the court with copies to the parties or their counsel or guardian ad litem:

- (1) Within forty-eight hours, excluding Saturdays, Sundays, and holidays, subsequent to the hour of the filing of a petition for temporary foster custody pursuant to section 587-21(b)(3);
  - (2) Upon the date of the filing of a petition pursuant to section 587-21(b)(4); and
  - (3) At least fifteen days prior to the date set for each hearing, until jurisdiction is terminated or permanent custody is awarded, unless a different period of time is ordered by the court or the court orders that no report is required for a specific hearing; or
  - (4) Prior to or upon the date of a hearing if the report is supplemental to a report which was submitted pursuant to paragraph (1), (2), or (3).
- (b) Report or reports pursuant to subsection (a) specifically shall:
- (1) Evaluate fully all relevant prior and current information concerning each of the guidelines for determining whether the child's family is presently willing and able to provide the child with a safe family home, as set forth in section 587-25, including, if the family previously entered into a voluntary or court ordered service plan, the effect upon the guidelines of the parties' success or failure in complying with, performing, and completing, if possible, each and every term and condition of the service plan;
  - (2) In each proceeding, subsequent to adjudication, recommend as to whether the court should order:

- (A) A service plan as set forth in section 587-26 or revision or revisions to the existing service plan, and if so, set forth the proposed service or services or revision or revisions and the pertinent number or numbers of the guidelines considered in the report or reports, made pursuant to paragraph (1), which guideline or guidelines provide the basis for recommending such service or services or revision or revisions in a service plan or revised service plan; or
  - (B) An award of permanent custody to an appropriate authorized agency; and if so, set forth the basis for such recommendation which shall include, but not be limited to, an evaluation of each of the criteria set forth in section 587-73(a), including the written permanent plan as set forth in section 587-27; and
- (3) Set forth recommendations as to such other orders as are deemed to be appropriate and state the basis for recommending that such orders be entered.
- (c) A written report submitted pursuant to subsection (a) shall be admissible and may be relied upon to the extent of its probative value in any proceeding under this chapter; provided that the person or persons who prepared the report may be subject to direct and cross-examination as to any matter in the report, unless such person is unavailable.
- (d) A person employed by the department as a social worker in the area of child protective services is qualified to testify as an expert in the area of social work and child protective services.”

SECTION 18. Section 587-41, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§587-41[ ] [Burden] **Evidentiary determination; burden of proof.**  
(a) In a temporary foster custody hearing, a determination that there exists reasonable cause to believe that a child is subject to imminent harm may be based upon any relevant evidence whatsoever, including, but not limited to, hearsay evidence when direct testimony is unavailable or when it is impractical to subpoena witnesses who will be able to testify to facts from personal knowledge.

[(a)] (b) In an adjudicatory hearing, [any] a 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)] (c) In [a disposition, a service plan, a review, or any other hearing in a child protective proceeding,] subsequent hearings, other than [a temporary foster custody hearing,] a permanent plan 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 587-2, if the child's placement may be in issue at such hearing].

(d) In a permanent plan hearing:

- (1) A determination that permanent custody of a child be awarded to an appropriate authorized agency shall be based upon clear and convincing evidence; and
- (2) A determination that a child should be the subject of an adoption shall be based upon a preponderance of the evidence.

[(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.]”

SECTION 19. Section 587-42, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§587-42[ ] ] Evidence may be inadmissible in other state 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, which would otherwise be unavailable, may be ordered by the court to be inadmissible as evidence in any other state 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, harm, or threatened harm shall be admissible in evidence.”

SECTION 20. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§587-43 Recording a statement or the testimony of a child. (a) The recording of a statement of a child is admissible into evidence in any proceeding under this chapter if:

- (1) The recording is visual, or oral, or both and is recorded on film, tape, or videotape or by other electronic means;
- (2) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered; and
- (3) Every person on the recording is identified.”

SECTION 21. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§587-44 Admissibility of evidence. The physician-patient privilege, psychologist-client privilege, and the spousal privilege shall not be available to

exclude evidence of imminent harm, harm, or threatened harm in any proceeding under this chapter.”

SECTION 22. Section 587-51, Hawaii Revised Statutes, is amended to read as follows:

“~~[[ ]§587-51[ ]]~~ **Required findings concerning notice prior to a hearing in a child protective proceeding.** (a) No hearing may commence under this chapter unless the court enters a finding[:

- (1) That] that each of the parties [is present at the hearing and] required to be notified pursuant to section 587-32(a) has been served with a copy of the petition; [or
- (2) If the] provided that if a member or members of the child’s family required to be notified pursuant to section 587-32(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.] have not been served, the court may proceed to hear any child protective proceeding under this chapter and enter orders concerning the parties who have been served if the court is satisfied that:
  - (1) A reasonable effort has been made to effect personal service;
  - (2) It would not be in the best interests of the child to postpone the proceeding until service can be effectuated; and
  - (3) The child is represented by a guardian ad litem or counsel.

(b) If, at the return date hearing, it is established that a member or members of the child’s family required to be notified pursuant to section 587-32(a) [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 587-32(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.] have not been served prior to the return date, the court shall:

- (1) Ascertain and order the method of service of summons which the court deems to be appropriate based upon the available information;
- (2) Set a continued return date; provided that:
  - (A) The court may waive the appearance of any party at the continued return date; and
  - (B) If the court orders that service of summons be made by mail or publication, the court shall set the continued return date not less than twenty-one days subsequent to the date of service evidenced by the signature on a return receipt or the date of the last publication.
- (c) Upon the continued return date, the court shall:
  - (1) Enter a default concerning a party who was served but failed to appear on the continued return date;
  - (2) Order the party who was served to appear on the date of the next scheduled hearing in the case; or

- (3) If a member of the child's family required to be notified pursuant to section 587-32(a) was served and appears on the continued return date and moves the court that a prior order be vacated or modified, set the oral motion to vacate prior orders for a hearing and order that the moving party proceed to file a written motion and to serve the other parties with proper written notice of the motion and hearing date.

(d) In considering a party's motion to vacate or modify prior orders, the court need not commence a trial or hearing de novo, but rather, after such further hearing as the court deems to be appropriate, may proceed to enter such orders as are in the best interests of the child."

SECTION 23. Section 587-52, Hawaii Revised Statutes, is amended to read as follows:

"[ [ ]§587-52[ ] ] 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] include, but need not be limited to, a requirement that a party:

- (1) [To stay] Stay away from the [child's] family home, a school, or any [party or person; or] other place or location which is deemed by the court to present an opportunity for contact between the parties themselves, or with other persons, which contact would not be in the best interests of the child;
- (2) [To abstain] Abstain from [offensive conduct against] physically or verbally contacting, threatening, or abusing any party or person[.]; and
- (3) Report any violation of an order of protection to the appropriate law enforcement authorities and other authorized agencies.

(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.] The parties may release copies of an order of protection to appropriate law enforcement authorities."

SECTION 24. Section 587-53, Hawaii Revised Statutes, is amended to read as follows:

"[ [ ]§587-53[ ] ] 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.] prior to an adjudicatory determination.

(b) After reviewing a petition and the report or reports submitted pursuant to section 587-40, 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 home under such terms and conditions, including, but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child[.]; provided that upon such return the child and

the child's family members who are parties shall be under the temporary family supervision of the department prior to the temporary foster custody hearing.

(c) The temporary foster custody hearing shall be continued for a period not to exceed fifteen days, upon the court's own motion or upon the motion of a party, if the court determines that it [requires] would be in the best interests of the child that further investigation[,] be conducted and information[, a physical examination, or a psychiatric or a psychological evaluation of a party] concerning whether the child should remain in temporary foster custody be provided to the court by each of the parties, prior to rendering a determination as to whether the child should remain in temporary foster custody [pending an adjudicatory hearing.] prior to an adjudicatory determination.

(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.] During a continuance period ordered pursuant to subsection (c) or at any other time during the pendency of a child protective proceeding, the court may further order that:

- (1) Any party undergo a physical, developmental, psychological, or psychiatric evaluation and that a written or oral report be submitted to the court and all parties prior to or upon the date of the continued or next hearing;
- (2) The child's family members who are parties provide the department or other appropriate authorized agency with the names and addresses of other family and friends who may be potential visitation supervisors or foster parents for the child and that they arrange for such persons to appear in court upon the date of the continued or next hearing;
- (3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of the department or other appropriate authorized agency and the child's guardian ad litem;
- (4) The parties, subject to their agreement unless jurisdiction has been established, meet with appropriate expert witnesses to discuss the alleged harm to the child;
- (5) The court and the parties view a visual recording or listen to an oral recording of the child's statement at such time and in such manner as the court deems to be appropriate;
- (6) The child and the child's family members who are parties, subject to their agreement unless jurisdiction has been established, arrange and commence participation in such counseling or therapy for themselves and the child as the court deems to be appropriate and consistent with the best interests of the child;
- (7) An appropriate order of protection be entered;
- (8) A criminal history record check be conducted by the department or other appropriate authorized agency concerning a party who is an alleged perpetrator of imminent harm, harm, or threatened harm to the child, and that the results be submitted to the court and other parties in such manner as the court deems to be appropriate prior to or upon the date of the continued or next hearing;
- (9) The department or other appropriate authorized agency prepare a written or oral supplemental report pursuant to section 587-40 and



- submit the report to the court, the guardian ad litem, and all parties prior to or upon the date of the continued or next hearing; or
- (10) The child's guardian ad litem visit the child's family home and foster home, be present during a supervised visitation, and prepare a written or oral report to be submitted to the court and all parties prior to or upon the date of the continued or next hearing.

(e) The court shall consider all relevant prior and current information pertaining to the guidelines for determining whether the child's family is willing and able to [exercise or to] provide the child with a safe family home, as set forth in section [587-2] 587-25 and the report or reports submitted pursuant to section 587-40, 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[,] under such terms and conditions, including, but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child; provided that prior to ordering placement or continued placement in any proceeding under this chapter:

- (1) The court first shall give due consideration to ordering the removal or continued removal of the alleged potential perpetrator of the imminent harm, harm, or threatened harm from the child's family home prior to continuing or placing the child out of the family home. The child's family shall have the burden of establishing that it is not in the best interests of the child that the alleged perpetrator be removed from the family's home rather than the child by order of the court.
- (2) If siblings or psychologically bonded children are removed from their family home, the court shall order that every reasonable effort be made to place them together, unless it is not in the best interests of the children.

(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 home with the assistance of an interim service plan and under such other terms and conditions, including but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child pending an adjudicatory or dispositional hearing[.]; provided that upon such return the child and the child's family members who are parties shall be under the temporary family supervision of the department prior to an adjudicatory or dispositional determination.

(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.] prior to an adjudicatory or dispositional determination."

SECTION 25. Section 587-61, Hawaii Revised Statutes, is repealed.

SECTION 26. Section 587-62, Hawaii Revised Statutes, is amended to read as follows:

“[ [§587-62[ ] Adjudicatory] Return date; 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 is orally stated by the court on the record 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.] court shall preside over a pretrial conference and may order that:

- (1) During the period of time from the return date to the date of the adjudicatory hearing, the parties participate in and cooperate with appropriate services, actions, and recommendations pursuant to section 587-53(d);
- (2) Such further investigation and information as the court deems to be relevant to the issues to be determined at the adjudicatory hearing be conducted and be available for the court’s consideration at the adjudicatory hearing; and
- (3) If the parties stipulate to orders of jurisdiction and foster custody or family supervision, the case be set for a further disposition hearing concerning an appropriate service plan, unless an appropriate written service plan is available and included as part of the stipulated orders; or
- (4) If the parties do not stipulate to orders of jurisdiction and foster custody or family supervision, the case be set for an adjudicatory hearing or, if jurisdiction is stipulated to, a disposition 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 or a disposition hearing within ten working days of the return date, unless the court deems a later date for such hearing to be in the best interests of the child or such later date is agreed to by all parties 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.]”

SECTION 27. Section 587-63, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§587-63[ ] ] 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 is a child whose physical or psychological health or welfare has been harmed or [subjected] is subject to threatened harm by the acts or omissions of the child's family 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.]; provided that if all parties consent, the grounds for the finding may be based upon the report or reports submitted pursuant to section 587-40 or other stipulated evidence deemed by the court to constitute an adequate basis for the court's invoking its jurisdiction, which report or reports or stipulated evidence may be admitted into evidence subject to reservation by the parties of their right to cross-examination subject to section 587-40(c).

(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:

- (1) [determine,] 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] an order of disposition. The court shall consider all relevant prior and current information pertaining to the guidelines for determining whether the child's family is willing and able to [exercise or to] provide the child with a safe family home, as set forth in section [587-2] 587-25 and the report or reports submitted pursuant to section 587-40, and proceed pursuant to section 587-53(f) or (g) prior to rendering a determination[.]; and

[(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]

- (2) Enter such orders regarding visitation and the provision of services to the child and the child's family and [their] the child's and family's acceptance and cooperation with such services as the court deems to be appropriate and consistent with the best interests of the child.

[(g)] (d) Orders [verbally] orally 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] oral orders shall be reduced [into] to writing as soon as convenient.”

SECTION 28. Section 587-71, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§587-71[ ] **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 family home. The court shall consider fully all relevant prior and current information pertaining to the guidelines for determining whether the child’s family is willing and able to [exercise or to] provide the child with a safe family home, as set forth in section [587-2] 587-25 and the report or reports submitted pursuant to section 587-40, in rendering such a determination.

(b) If the court determines that the child’s family is presently willing and able to provide the child with a safe family home without the assistance of a service plan, the court shall terminate jurisdiction.

[(b)] (c) If the court determines that the child’s family home is a safe family home[,] with the assistance of a service plan, the court shall[:

- (1) Place] place the child and the child’s family members who are parties under the family supervision of [the department or other appropriate] an 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)] (d) If the court determines that the child’s family home is not a safe family home, even with the assistance of a service plan, 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.

(e) If the child’s family home is determined not to be safe, even with the assistance of a service plan pursuant to subsection (d), the court may, and if the child has been residing without the family home for a period of two years shall, set the case for a show cause hearing at which the child’s family shall have the burden of presenting evidence to the court regarding such reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon such show cause hearing as the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), and:

- (1) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40; or
- (2) Proceed pursuant to subsection (f).

[(d) If] (f) Except as provided in subsection (e)(1), if the court does not terminate the court’s jurisdiction, the court shall order in every case that the [department or other] authorized agency make every reasonable effort, pursuant to section 587-40, to 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.] as set forth in section 587-26.

[(e)] (g) The court [shall set a] may continue the disposition hearing concerning the terms and conditions [set forth in] of the proposed service plan [unless] to a date within forty-five days from the date of the original disposition hearing, unless the court deems a later date to be in the best interests of the

child; provided that if the court is convinced that [each of the parties have] a party has signed and fully [understand] understands and [accept] accepts the service plan, [in which event,] the court may order that the service plan shall constitute the service plan by court order concerning such party and that the service plan [shall] be entered into evidence [without a] with such party's presence being waived for good cause shown at the continued disposition hearing.

(h) Prior to ordering a service plan at the disposition or continued disposition hearing, the court shall make a finding that each term, condition, and consequence of the service plan has been thoroughly explained to and is understood by each party or a party's guardian ad litem.

(i) After such hearing as the court deems to be appropriate, the court may order such terms, conditions, and consequences to constitute a service plan as the court deems to be in the best interests of the child; provided that a copy of the service plan shall be incorporated as part of the order.

[(f)] (j) 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] (k) At any stage of the child protective proceedings, the court may order that a child [shall] be examined by a physician, surgeon, psychiatrist, or psychologist, and it may order treatment by any of 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)] (l) The court [may] shall 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[,] and the child's guardian ad litem, unless it is shown that such rights of visitation may be detrimental to the best interests of the child.

(m) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall make a finding that each party understands that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination."

SECTION 29. Section 587-72, Hawaii Revised Statutes, is amended to read as follows:

"[ [ ]§587-72[ ] ] 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[,] or an order of permanent custody has been entered; the court may set a case for a review hearing upon the motion of a party at any time if such hearing is deemed by the court to be in the best interests of the child.

(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[,] as a party.

[(c) The department or other appropriate authorized agency shall make every reasonable effort to submit a written report, pursuant to section 587-41(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) (c) Upon each review hearing the court shall[:] consider fully all relevant prior and current information pertaining to the guidelines for determining whether the child’s family is willing and able to provide the child with a safe family home, as set forth in section 587-25, including, but not limited to, the report or reports submitted pursuant to section 587-40, and:

- (1) Determine whether the child’s family is presently willing and able to provide the child with a safe family home without the assistance of a service plan and, if so, the court shall terminate jurisdiction;
- (2) Determine whether the child’s family is presently willing and able to provide the child with a safe family home with the assistance of a service plan and, if so, the court shall return the child or continue the placement of the child in the child’s family home under the family supervision of the appropriate authorized agency; or

(3) If the child’s family home is determined, pursuant to subsection (c)(2), not to be safe, even with the assistance of a service plan, order that the child remain or be placed under the foster custody of the appropriate authorized agency and, the court may, and if the child has been residing without the family home for a period of two years or there has been a court ordered service plan for a period of one year shall, set the case for a show cause hearing at which the child’s family shall have the burden of presenting evidence to the court regarding such reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon such show cause hearing as the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), or section 587-73(e), and:

(A) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40;

or

(B) Proceed pursuant to paragraphs (4), (5), and (6);

[(1)] (4) 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) (5) Order such revisions to the existing service plan, after ensuring that the requirement of section 587-71(h) is satisfied, as the court, upon such hearing as the court deems to be appropriate, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order; and
- (4) (6) Enter such further orders as the court deems to be in the best interests of the child.

(d) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall make a finding that the parties understand that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination.

[(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) 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) 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.]”

SECTION 30. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§587-73 Permanent plan hearing. (a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the guidelines for determining whether the child’s family is willing and able to provide the child with a safe family home, as set forth in section 587-25, including, but not limited to, the report or reports submitted pursuant to section 587-40, and determine whether there exists clear and convincing evidence that:

- (1) The child’s family is not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan;
  - (2) It is not reasonably foreseeable that the child’s family will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed three years from the date upon which the child was first placed under foster custody by the court;
  - (3) The proposed permanent plan is in the best interests of the child; provided that the court shall presume that:
    - (A) It is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes; and
    - (B) Such presumption increases in importance proportionate to the youth of the child upon the date that the child was first placed under foster custody by the court; and
  - (4) If the child has reached the age of fourteen, the child is supportive of the permanent plan.
- (b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence, the court shall order:
- (1) That the existing service plan be terminated and that the prior award of foster custody be revoked;
  - (2) That permanent custody be awarded to an appropriate authorized agency;



- (3) That an appropriate permanent plan be implemented concerning the child whereby the child will:
  - (A) Be adopted pursuant to section 587-74; provided that the court shall presume that it is in the best interests of the child to be adopted, unless the child is in the permanent custody of family or persons who have become as family and who for good cause are unwilling or unable to adopt the child but are committed to and are capable of being the child's permanent custodians; or
  - (B) Remain in permanent custody until the child is subsequently adopted or reaches the age of majority, and that such status shall not be subject to modification or revocation except upon a showing of extraordinary circumstances to the court;
- (4) That such further orders as the court deems to be in the best interests of the child, including, but not limited to, restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings, be entered; and
- (5) Until the child is adopted, that each case be set for a permanent plan review hearing not later than one year after the date that a permanent plan is ordered by the court, or sooner if required by federal law, and thereafter, that subsequent permanent plan review hearings be set not later than each year, or sooner if required by federal law; provided that at each permanent plan review hearing, the court shall review the existing permanent plan and enter such further orders as are deemed to be in the best interests of the child.
- (c) If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order that:
  - (1) The permanent plan hearing be continued for a reasonable period of time not to exceed six months from the date of the continuance;
  - (2) The existing service plan be revised as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;
  - (3) The authorized agency submit a written report pursuant to section 587-40; and
  - (4) Such further orders as the court deems to be in the best interests of the child be entered.
- (d) At the continued permanent plan hearing, the court shall proceed pursuant to subsections (a), (b), and (c) until such date as the court determines that:
  - (1) There is sufficient evidence to proceed pursuant to subsection (b); or
  - (2) The child's family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, upon which determination the court may:
    - (A) Revoke the prior award of foster custody to the authorized agency and return the child to the family home; and
    - (B) Terminate jurisdiction; or
    - (C) Award family supervision to an authorized agency;
    - (D) Order such revisions to the existing service plan as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, determines to be in the best interests of the child;

provided that a copy of the revised service plan shall be incorporated as part of the order;

- (E) Set the case for a review hearing; and
- (F) Enter such further orders as the court deems to be in the best interests of the child.

(e) The court shall order a permanent plan for the child within three years of the date upon which the child was first placed under foster custody by the court, if the child’s family is not willing and able to provide the child with a safe family home, even with the assistance of a service plan.”

SECTION 31. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§587-74 Adoption. (a) Pursuant to section 587-73(b)(3)(A), upon such further hearing as the court deems to be appropriate, the court may order a decree of adoption as part of a permanent plan for a child upon a determination of the court that:

- (1) The child would otherwise be adoptable under chapter 578 and the court has received such information, consents and other exhibits as are prescribed by the family court for a proceeding pursuant to chapter 578; provided no additional petition or notice shall be required other than such as has been previously required under this chapter;
- (2) The child is physically, mentally, and otherwise suitable for adoption by the proposed adoptive parent or parents; and
- (3) The proposed adoptive parent or parents, who shall be made parties to the proceeding, are fit and proper persons and financially able to give the child a proper home and education; and
- (4) The adoption will be for the best interests of the child.

(b) Subsequent to the entry of a decree of adoption, the court shall proceed pursuant to chapter 578 and other rules or regulations concerning adoption as are prescribed by the supreme court with the advice of the family court.”

SECTION 32.<sup>3</sup> Section 587-73, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 587-74, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§587-74]]~~ **§587-76 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.”

SECTION 34. Section 587-75, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§587-75]]~~ **§587-77 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 willfully and without just cause], the court may apply the provisions of section 710-1077 and all other provisions available under the law.”

SECTION 35. Section 587-76, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§587-76]]~~ **§587-78 Appeal.** An interested party aggrieved by any order or decree of the court may appeal as provided by section 571-54.”

SECTION 36. Section 587-81, Hawaii Revised Statutes, is amended to read as follows:

“~~[[ ]§587-81[ ]]~~ **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 appropriate persons, who are not parties, only upon an order of the court after the court has determined [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.]; provided that the department may disclose, without order of the court, such information as is in the court record in the manner and to the extent as is set forth in departmental rules that have been legally promulgated and concern the confidentiality of records; provided further that:

- (1) The department shall not disclose parties’ names to researchers without prior order of the court; and
- (2) The department shall report each disclosure to the court and all parties as part of its next report to the court after the department has disclosed information pursuant to this section.”

SECTION 37. Section 587-82, Hawaii Revised Statutes, is amended to read as follows:

“~~[[ ]§587-82[ ]]~~ **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.”

SECTION 38. Section 587-83, Hawaii Revised Statutes, is amended to read as follows:

“~~[[ ]§587-83[ ]]~~ **Short title.** This chapter shall be known and cited as the “Child Protective Act”.”

SECTION 39. Section 587-84, Hawaii Revised Statutes, is amended to read as follows:

“~~[[ ]§587-84[ ]]~~ **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 40. There is appropriated out of the general revenues of the State of Hawaii the sum of \$18,000 or so much thereof as may be necessary for fiscal year 1986-1987, for the implementation of the criminal history record checks required under this Act.

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SECTION 41. The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 42. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>4</sup>

SECTION 43. This Act shall take effect upon its approval.

(Approved June 6, 1986.)

### Notes

1. Should be underscored.
2. So in original.
3. Section designation corrected.
4. Edited pursuant to HRS §23G-16.5.