

ACT 190

S.B NO. 1347

A Bill for an Act Relating to Child Protective and Welfare Services.

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

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read:

“PART . ADOPTION ASSISTANCE

§346- Adoption assistance program established. The department of human services shall maintain an adoption assistance program to facilitate the adoption of children with special needs.

§346- Equal benefits. The adoption assistance program referred to in section 346- shall provide equal benefits for children regardless of whether federal matching funds for adoption assistance are received by the State.

§346- Rules. The department of human services shall maintain rules describing eligibility criteria for adoption assistance and describing the types, duration, and amounts of adoption assistance benefits that may be received.

§346- Eligibility. Eligibility for adoption assistance shall not depend upon the amount of income or property of the adoptive family.

§346- Effect on prior adoption assistance agreements. Nothing in this act shall invalidate any adoption assistance agreement already entered into or benefits previously provided by the department of human services nor shall require a reduction of benefits already being provided."

SECTION 2. Chapter 346-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Adoption assistance" means the provision of one or more of the following to enable the adoption of children with special needs:

- (1) Monetary assistance;
- (2) Medical benefits; or
- (3) Social services.

"Child with special needs" means a child:

- (1) Who is legally free for adoption;
- (2) Whose adoption is in his or her best interests;
- (3) Who may not be adopted without adoption assistance because one or more specific factors or special circumstances identified by the department of human services in its rules are applicable to the child; and
- (4) For whom a reasonable, but unsuccessful effort has been made to find a suitable adoptive placement without providing adoption assistance, except, where it would not be in the child's best interests."

SECTION 3. Section 578-1, Hawaii Revised Statutes, is amended to read as follows:

"§578-1 Who may adopt; jurisdiction; venue. Any proper adult person, not married, or any person married to the legal father or mother of a minor child, or a husband and wife jointly, may petition the family court of the circuit in which [he or they] the person or persons reside or are in military service or the family court of the circuit in which the individual to be adopted resides or was born or in which a child placing organization approved by the department of human services under the provisions of section 346-17 having legal custody (as defined in section 571-2) of the child is located, for leave to adopt an individual toward whom [he or they] the person or persons do not sustain the legal relationship of parent and child and for a change of the name of the individual. When adoption is the goal of a permanent plan recommended by the department of human services and ordered pursuant to section 587-73, the department may petition for adoption on behalf of the proposed adoptive parents. The petition shall be in such form and shall include such information and exhibits as may be prescribed by the family court."

SECTION 4. Section 578-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Persons as to whom consent not required or whose consent may be dispensed with by order of the court.

- (1) Persons as to whom consent not required:
 - (A) A parent who has deserted a child without affording means of identification for a period of ninety days;
 - (B) A parent who has voluntarily surrendered the care and custody of the child to another for a period of two years;
 - (C) A parent of the child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so;
 - (D) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to provide for the care and support of the child when able to do so;
 - (E) A natural father who was not married to the child’s mother at the time of the child’s conception or birth and who does not fall within the provisions of subsection (a)(3), [or] (4), or (5);
 - (F) A parent whose parental rights have been judicially terminated under the provisions of sections 571-61 to 571-63, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take [such] the action;
 - (G) A parent judicially declared mentally ill or mentally retarded and who is found by the court to be incapacitated from giving consent to the adoption of the child;
 - (H) Any legal guardian or legal custodian of the child sought to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of [his] the person’s written reasons for withholding consent, is found by the court to be withholding [his] the person’s consent unreasonably;
 - (I) A parent of a child who has been in the custody of a petitioner under this chapter for a period of at least one year and who entered the United States of America as a consequence of extraordinary circumstances in [said] the child’s country of origin, by reason of which extraordinary circumstances the existence, identity, or whereabouts of [said] the child’s parents is not reasonably ascertainable or there is no reasonable means of obtaining suitable evidence of the child’s identity or availability for adoption;
 - (J) Any parent of the individual to be adopted, if the individual is an adult eligible for adoption under subsection (b)[.]; and
 - (K) A parent whose parental and custodial duties and rights have been divested by an award of permanent custody pursuant to section 587-73.
- (2) Persons whose consent may be dispensed with by order of the court. The court may dispense with the consent of a parent who comes within subsection (a)(3), [or] (4), or (5) herein, upon finding that:
 - (A) The petitioner is the stepfather of the child and the child has lived with [his] the child’s legal mother and the petitioning stepfather for a period of at least one year; [or]

- (B) The adjudicated, presumed or concerned father has not filed a petition to adopt [such] the child, or the petition to adopt [said] the child filed by [said] the father has been denied; or
- (C) The adjudicated, presumed, or concerned father is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education.”

SECTION 5. 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] service and permanent plans for children who have been harmed or are threatened with harm.

The legislature finds that children deserve and require competent, responsible parenting and safe, secure, loving, and nurturing homes. The legislature finds that children who have been harmed or are 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, services, treatment, adjudication, [treatment,] and disposition of cases involving children who [are] have been harmed or are threatened with harm are in [both] the children’s, their families’, and society’s best interests because [such] the 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] appropriate service or permanent plans so they may develop and mature into responsible, self-sufficient, law-abiding citizens. [This permanent planning should effectuate placement with a child’s own family when possible and should be conducted in an expeditious fashion so that where return to the child’s family is not possible as provided in this chapter, such children will be promptly and permanently placed with responsible, competent, substitute parents and families, and their place in such families secured by adoption or permanent custody orders.] The service plan shall effectuate the child’s remaining in the family home, when the family home can be immediately made safe with services, or the child’s returning to a safe family home. The service plan should be carefully formulated with the family in a timely manner. Every reasonable opportunity should be provided to help the child’s legal custodian to succeed in remedying the problems which put the child at substantial risk of being harmed in the family home. Each appropriate resource, public and private, family and friend, should be considered and used to maximize the legal custodian’s potential for providing a safe family home for the child. Full and careful consideration should be given to the religious, cultural, and ethnic values of the child’s legal custodian when service plans are being discussed and formulated. It should be recognized at each stage of the child protective proceeding that the child will always be a natural member of the child’s birth family. In making each determination, all involved should consider the fact that the child’s best interests may well be forever intertwined with those of the child’s birth family, even where the legal custodian is determined to be either unwilling or unable to provide the child with a safe family home. Where the court has determined, by clear and convincing evidence, that

the child cannot be returned to a safe family home, the child will be permanently placed in a timely manner.

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

SECTION 6. 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] Adjudication hearing” means a hearing held pursuant to section [587-62.] 587-63.

“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 who is born alive and is less than eighteen years of age.

“Child protective 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 chapter¹ shall be subject to applicable federal laws and regulations.

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

“Disposition hearing” means a hearing held pursuant to section 587-71.

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

“Family” means each legal parent, the natural mother, the natural father, the adjudicated, presumed, 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(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. 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 place the child in [emergency foster care or] foster care 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 an authorized agency or the court [for the appropriate care of a child upon orders of disposition or permanent custody.] to provide 24-hour out of family home, substitute care for the child.

"Foster custody" means the legal status created pursuant to this section, section 587-21(b)(2), or by an order of court after the court has determined that 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.

- (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] order of the court; 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] the 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 other necessities;
 - (C) To monitor the provision to the child of appropriate education;
 - (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 or psychological care or treatment, including, but not limited to, surgery, if [such] the care or treatment is deemed by two physicians or two psychologists, whomever is appropriate, 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] the consent are unable or have refused to consent to [such] the care or treatment;

- (E) To provide consent to the recording of a statement pursuant to section 587-43; and
 - (F) 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 or subsequent authorized agencies, in the child's best interests; provided that [such] the 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] the family member possessed [such] the 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 or psychological 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.] a party.

["Guidelines for determining whether the child's family is willing and able to provide the child with a safe family home" means the guidelines set forth in section 587-25.]

"Harm" to a child's physical or psychological health or welfare occurs in a case where there exists 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] the injury is not justifiably explained, or where the history given concerning [such] the condition or death is at variance with the degree or type of [such] the condition or death, or circumstances indicate that [such] the 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, 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] a 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] the 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 will occur or reoccur within the next ninety days 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[, guidelines, 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 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 under this chapter by order of the court after the court has considered the criteria set forth in section 587-73(a) or (e) and determined by clear and convincing evidence that it is in the best interests of the child to order [an appropriate] a 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] order 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 or psychological care or treatment, including, but not limited to, surgery;
 - (E) To provide consent to adoption, change of name pursuant to section 574-5, 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] the date;
- (2) Unless otherwise ordered by the court, a child's family member shall retain, to the extent that [such] the family member possessed [such] the 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 party 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 hearing held pursuant to section 587-72.

"Safe family home guidelines" means the guidelines set forth in section 587-25.

"Service plan" means a specific written plan prepared 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.] determination at a disposition proceeding.

"Temporary foster custody" means a legal status created under this chapter with or without order of the court whereby the department 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 provide the child with a] safe family home[, guidelines, as set forth in section 587-25."

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

"§587-11 Jurisdiction. [The] Pursuant to subsection 571-11(9), the court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who was or is found within the State at the time [such] the 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 subject to imminent

harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child's family."

SECTION 8. Section 587-21, Hawaii Revised Statutes, is amended to read as follows:

"§587-21 [Authorization for department to act.] Investigation. (a)

Upon receiving a report that a child 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.];

- (1) Enlist the cooperation of appropriate law enforcement authorities for phases of the investigation for which they are better equipped, and the law enforcement authority may conduct and provide to the department the results of a criminal history record check concerning an alleged perpetrator of imminent harm, harm, or threatened harm to a child; and
- (2) Interview a child who is the subject of an investigation without the prior approval of and without the presence of the child's family, including temporarily assuming protective custody of the child for the purpose of conducting the interview, if the action is deemed necessary and appropriate under the circumstances by the department and a police officer.

(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,] six months, the department shall file a petition 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 with the court under this chapter within two working days, excluding Saturdays, Sundays, and holidays, after the date of the department's assumption of temporary foster custody of the child; or
- (4) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter."

SECTION 9. Section 587-24, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Within two working days, excluding Saturdays, Sundays, or holidays, [from] after 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 legal custodian [or custodians] and proceed pursuant to section 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 legal custodian [or custodians] and proceed pursuant to section 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(b)(3).”

SECTION 10. Section 587-25, Hawaii Revised Statutes, is amended by amending the title and subsection (a) 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.] Safe family home guidelines. (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.]
- (1) The current facts relating to the child which include:
 - (A) Age and vulnerability;
 - (B) Psychological, medical and dental needs;
 - (C) Peer and family relationships and bonding abilities;
 - (D) Developmental growth and schooling;
 - (E) Current living situation;
 - (F) Fear of being in the family home; and
 - (G) Services provided the child;
- (2) The initial and any subsequent reports of harm and/or threatened harm suffered by the child;
- (3) Date(s) and reason for child's placement out of the home, description, appropriateness, and location of the placement and who has placement responsibility;
- (4) Historical facts relating to the alleged perpetrator and other appropriate family members who are parties which include:
 - (A) Birthplace and family of origin;
 - (B) How they were parented;
 - (C) Marital/relationship history; and
 - (D) Prior involvement in services;
- (5) The results of psychiatric/psychological/developmental evaluations of the child, the alleged perpetrator and other appropriate family members who are parties;

- (6) Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the family home;
- (7) Whether there is a history of substance abuse by the child's family or others who have access to the family home;
- (8) Whether the alleged perpetrator(s) has acknowledged and apologized for the harm;
- (9) Whether the non-perpetrator(s) who resides in the family home has demonstrated the ability to protect the child from further harm and to insure that any current protective orders are enforced;
- (10) Whether there is a support system of extended family and/or friends available to the child's family;
- (11) Whether the child's family has demonstrated an understanding and utilization of the recommended/court ordered services designated to effectuate a safe home for the child;
- (12) Whether the child's family has resolved or can resolve the identified safety issues in the family home within a reasonable period of time;
- (13) Whether the child's family has demonstrated the ability to understand and adequately parent the child especially in the areas of communication, nurturing, child development, perception of the child and meeting the child's physical and emotional needs; and
- (14) Assessment (to include the demonstrated ability of the child's family to provide a safe family home for the child) and recommendation."

SECTION 11. Section 587-26, Hawaii Revised Statutes, is amended as follows:

"§587-26 Service plan. (a) A service plan is a specific written plan prepared by an authorized agency and child's family 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, guardianship, or permanent 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, measurable, behavioral changes that must be achieved by the parties; 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] the services will be provided and such actions must be completed and [such] responsibilities must be assumed; provided

that, services and assistance should be presented in a manner that does not confuse or overwhelm the parties.

- (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,] making the family home a safe family home, 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.] The service plan should include steps that are structured and presented in a manner which reflects careful consideration and balancing the priority, intensity, and quantity of the services which are needed with the family's ability to benefit from those services.

(e) 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 family member. Thereafter, a copy of the service plan shall be provided to each family member who signed the service plan.

[(e)] (f) 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. Section 587-27, Hawaii Revised Statutes, is amended to read as follows:

"§587-27 Permanent plan. (a) 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, guardianship, or permanent custody of the child and specify:
 - (A) A reasonable period of time during which the adoption or guardianship 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] If adoption is not the plan[;], a clear and convincing explanation why guardianship is preferable to adoption; or
 - (C) If adoption or guardianship is not the plan, a clear and convincing explanation why permanent custody is preferable to guardianship;
- (2) A specific written plan including:

- (A) The goal, as being: adoption, guardianship, or permanent custody [with subsequent adoption, or permanent custody until majority];
- (B) The objectives concerning the child, including, but not limited to, stable placement, education, health, therapy, counseling, birth family[,] (including visitation, if any), culture, and adoption, guardianship, or preparation for [majority;] independent living; 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] the 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.
- (b) A permanent plan prepared for a permanent plan review hearing should set forth:
 - (1) Progress toward and any proposed revision to the goal and the reason for the revision;
 - (2) Progress toward and any proposed revision to the objectives and the reason for the revision; and
 - (3) Any proposed revision to the method for achieving the goals and objectives and the reason for the revision."

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 _____, born on _____" and shall be verified and shall set forth [with specificity]:
 - (A) [The facts] A concise statement of the basis for the allegation of the harm or threatened harm which [bring] brings 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] the care, and the date the child was placed in [such] the temporary foster custody[.]; and
- (2) [When] The petition shall state 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] that case the petition shall state the basis of [such] the information and belief.

(b) [Petitions] The petition 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.

(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.] The court shall review each petition under this chapter and if, in the discretion of the court, the child is in a 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.

(d) 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, presumed, 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 proceeding at the time of the filing of the petition also shall be summoned, in the manner provided in this section.

(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."

[(e) The court shall review each petition under this chapter 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 by amending subsection (a) to read as follows:

"(a) Service of summons shall be made personally by delivery of 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 any other hearing under this chapter, unless [such] the party otherwise was ordered by the court to appear at [such] the hearing. Personal service of summons required under this chapter shall be made by the sheriff or other [person appointed by the court,] authorized person and a return must be made on the summons showing to whom, the date, and time service was made."

SECTION 16. Section 587-34, Hawaii Revised Statutes, is amended:

1. By amending the title to read:

"§587-34 Guardian ad litem; court appointed counsel."

2. By amending subsection (a) to read as follows:

"(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] the 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."

3. By amending subsection (d) to read as follows:

"(d) [Where] When 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 the 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] party's disability, including, but not limited to, a recommendation as to available treatment, if any, for [such] the disability and a recommendation concerning the manner in which the court should proceed in order to best protect the interests of the [ward] party in conjunction with the court's determination as to the best interests of the child."

SECTION 17. Section 587-40, Hawaii Revised Statutes, is amended to read as follows:

"§587-40 Reports to be submitted by the 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 disposition, review, permanent plan, and permanent plan review 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] Assess 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[, guidelines, 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;] except for a report required for an uncontested review hearing or a permanent plan review hearing which need only assess relevant current information including, for a review hearing, the degree of the family's progress with services;
 - (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] the 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;] A permanent plan or revision to an existing permanent plan and if [so,] it is an initial recommendation, set forth the basis for [such] the 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] the 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] the person is unavailable.
- (d) A person employed by the department as a social worker in the area of child protective or child welfare services is qualified to testify as an expert in the area of social work and child protective or child welfare services."

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

“§587-41 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.

(b) In an [adjudicatory] adjudication hearing, 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 and relevant evidence may be admitted].

(c) In subsequent hearings, other than a permanent plan hearing, any determination shall be based on a preponderance of the evidence[; and any relevant evidence shall be admitted].

(d) In a permanent plan hearing[:

- (1) A, a determination that a permanent [custody of a child be awarded to an appropriate authorized agency] plan shall be ordered 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].”

SECTION 19. 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 that each of the parties required to be notified pursuant to section 587-32(a) has been served with a copy of the petition; provided that if a member or members of the child’s family required to be notified pursuant to section 587-32(a) 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) 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; and
- (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.

(e) 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.

(f) Orders 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 oral orders shall be reduced to writing as soon as is practicable."

SECTION 20. Section 587-52, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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. Such an order may include, but need not be limited to, a requirement that a party:

- (1) Stay away from the family home, a school, or any 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) Abstain from 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.] Not permit the child to be removed from a certain location;
- (4) Not to interfere with the physical, legal, foster, or permanent custody of the child; and
- (5) Report any violation of an order of protection to the appropriate law enforcement authorities and other authorized agencies."

SECTION 21. 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] continued to assume temporary foster custody of a child [with or without an order of the court,] pursuant to section 587-24(e)(3), the

court shall [hold] set 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 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, may order that the child immediately be released from temporary foster custody and returned to the child's family home under [such] the 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] the 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 would be in the best interests of the child that further investigation be conducted and information 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 prior to an [adjudicatory] adjudication determination.

(d) 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] the 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, including specific recommendations concerning services and assistance, 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 provide the child with a] safe family home[.] guidelines, as set forth in section 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] the terms and conditions, including, but not limited to, orders concerning services and assistance and 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[:] the court first shall give due consideration to whether:

- (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[:]; and
- (2) [If siblings or psychologically bonded children are removed from their family home, the court shall order that every] Every reasonable effort [be] has been or is being made to place [them] siblings or psychologically bonded children together, unless [it] the placement 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] services and under [such] the 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] adjudication or [dispositional] disposition hearing; provided that upon [such] the 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] adjudication 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 prior to an [adjudicatory] adjudication or dispositional determination.”

SECTION 22. Section 587-62, Hawaii Revised Statutes, is amended to read as follows:

“§587-62 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 a decision is orally stated by the court on the record in a temporary foster custody hearing.

(b) On the return date, the 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] adjudication 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] adjudication hearing be conducted and be available for the court’s consideration at the [adjudicatory] adjudication hearing; [and]
- (3) If the parties stipulate to orders of [jurisdiction] adjudication 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] adjudication and foster custody or family supervision, the case be set for an [adjudicatory] adjudication hearing or, if [jurisdiction] adjudication 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] adjudication hearing or a disposition hearing within ten working days of the return date, unless the court deems a later date for [such] the hearing to be in the best interests of the child or [such] the 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.]”

SECTION 23. Section 587-63, Hawaii Revised Statutes, is amended to read as follows:

“§587-63 [Sustaining or dismissing petition;] Adjudication hearing; interim orders. (a) [If facts sufficient to sustain the petition are established in accord with this chapter, the court shall enter an order finding that the child is a

child whose physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family and shall state the grounds for the finding; 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).] The court shall consider the evidence which is relevant to the adjudication; provided that the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, in rendering a determination concerning adjudication.

(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.];

- (1) Established in accordance with this chapter, the court shall enter an order sustaining the petition and a finding that the child is a child whose physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family; provided that if the parties consent, the facts 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 sustaining the petition, 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), or
- (2) Not established, the court shall enter an order dismissing 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, based upon the facts adduced during the [adjudicatory] adjudication hearing and any other additional facts presented to it, whether a temporary foster custody order should be continued or should be entered pending 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 provide the child with a] safe family home[,] guidelines, as set forth in section 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
- (2) Enter such orders regarding visitation and the provision of services to the child and the child's family and 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.

[(d) Orders 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 oral orders shall be reduced to writing as soon as convenient.]"

SECTION 24. Section 587-71, Hawaii Revised Statutes, is amended:

1. By amending subsection (a) to read as follows:

“(a) The court may consider [any information] the evidence which is relevant to 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 provide the child with a] safe family home[.] guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, in rendering such a determination.”

2. By amending subsection (e) to read as follows:

“(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] eighteen months 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).] this section.”

3. By amending subsection (k)² to read as follows:

“(k) At any stage of the child protective proceedings, the court may order that a child be examined by a physician, surgeon, psychiatrist, or psychologist, and it may order treatment by any of them of a child as 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.”

4. By amending subsection (m) to read as follows:

“(m) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall [make]:

- (1) 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[.]; and
- (2) Set the case for a review hearing within six months.”

SECTION 25. 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 has ordered a permanent plan and has set the case for a permanent plan review hearing; the court may set a case for a review hearing upon the

motion of a party at any time if [such] the 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 entitled to participate in the proceedings as a party.

(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[, guidelines, 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] eighteen months 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);] this section;
- (4) Determine whether the parties have complied with, performed, and completed each and every term and condition of the service plan which was previously court ordered;
- (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
- (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]:

- (1) 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[.]; and
- (2) Set the case for a review hearing within six months."

SECTION 26. Section 587-73, Hawaii Revised Statutes, is amended 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[,] guidelines, 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] legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are 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] legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 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 will assist in achieving the goal which 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] The 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;] chapter 578; provided that the court shall presume that it is in the best interests of the child to be adopted, unless the child is or will be in the [permanent custody] home of family or [persons] a person who [have] has become as family and who for good cause [are] is unwilling or unable to adopt the child but [are] is committed to and [are] is capable of being the child's guardian or permanent [custodians;] custodian; [or]
 - (B) Be placed under guardianship pursuant to chapter 560; or
- [(B)] (C) Remain in permanent custody until the child is subsequently adopted, placed under a guardianship, 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,] adoption or guardianship is ordered, 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[;] or the case be set for a review hearing within six months;
- (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[;] within six months; 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."

ACT 190

SECTION 27. Section 587-74, Hawaii Revised Statutes, is repealed.

SECTION 28. Statutory material to be repealed is bracketed.³ New statutory material is underscored.

SECTION 29. This Act shall take effect on January 1, 1993.

(Approved June 12, 1992.)

Notes

1. Prior to amendment "and" appeared here.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.