

ACT 134

S.B. NO. 2987

A Bill for an Act Relating to Child Protection.

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

SECTION 1. The legislature finds that child abuse has become a serious problem which requires broad-based community action to prevent children from becoming innocent victims. Recent trends across the country in dealing with this problem have been to provide alternatives to the traditional philosophy of returning the abused child to the natural family, which may not be in the best interests of the child's safety. Providing a child with a safe home should be the ultimate concern, regardless of whether a safe home be the natural family, adoptive family, or foster family.

Although the issue of family reunification versus safety-first has been predominantly on the public's mind due to recent news coverage that shed light on child abuse, other important changes in the child protective services system must be evaluated. For instance, a frustration among all parties involved in protecting a child from harm is the closed child protective services system. The legislature finds that child protective services need to be open, accessible, and communicative to affected persons. This recommendation includes such changes as requiring that all reports related to child abuse or neglect be submitted to the department of human services and subsequently to the court, allowing foster parents to seek medical care for their wards upon the first day of placement, and allowing physicians to share medical information if a child is under the child protective services system.

The purpose of this Act is to reform the child protective services system and to save the lives of innocent children by ensuring that:

- (1) A child who is removed from dangerous or neglectful situations in the natural home is not placed in worse situations once the child is taken into state custody; and
- (2) A child receives adequate medical treatment to help the child overcome any problems created by the trauma the child has experienced.

SECTION 2. Chapter 587, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§587- Medical treatment.** Each child placed in foster care shall be covered by an established comprehensive health care plan meeting the requirements of the department. Each child placed in foster care shall be provided with evidence of the child's coverage under an established comprehensive health care plan including the telephone number of the child's health plan. Upon the first day of placement,

foster parents may seek and obtain ordinary medical care, immunizations, and well-baby and well-child medical services.

**§587- Health assessment.** The department shall ensure the provision of a comprehensive health assessment for each child in out-of-home placement forty-five days before or after an initial placement.

**§587- Disclosure of records.** (a) The department shall disclose to foster parents and the foster child's principal treating physician copies of the foster child's complete medical records in the department's physical custody and relevant social history within thirty days of foster placement.

(b) If a child is active in the child protective service system, physicians may share with other physicians, orally or in writing, or both, medical information without parental consent.

(c) Any records or information released to a foster child's foster parents, or the foster child's principal treating physician pursuant to subsection (a), or any information shared by one physician with another physician pursuant to subsection (b), shall remain confidential in accordance with section 350-1.4.

**§587- Child protective review panel.** (a) The department shall establish a child protective review panel to review each case of serious abuse. Based upon its review, the panel shall submit a report of findings and recommendations to the director. The department shall appoint members of the child protective review panel who may include, but not be limited to:

- (1) Any physician treating the child for abuse;
- (2) Any child protective services worker assigned to the case and the worker's supervisor;
- (3) The guardian ad litem for the child, appointed under section 587-34, if applicable;
- (4) The members of the child's multidisciplinary team or child protective services consultant; and
- (5) Other child protective services workers and supervisors.

(b) Members of the child protective review panel shall serve without compensation and shall not be reimbursed for costs, except for state employees serving within the scope of their employment who shall receive compensation and reimbursements as provided by law or by collective bargaining.

(c) Members of the child protective review panel shall be immune from any liability for injuries and damages arising from the panel's report under subsection (a).

(d) This section shall not be construed as interfering with any authority of the department or the courts to remove, to place, or to order any disposition on custody of the abused child under this chapter.

(e) As used in this section, "serious abuse" means reabuse, hospitalization, or death arising from an abuse."

SECTION 3. Section 587-2, Hawaii Revised Statutes, is amended by adding the definition of "aggravated circumstances" to be appropriately inserted and to read as follows:

"Aggravated circumstances" means that:

- (1) The parent has committed, or has aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent;

- (2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;
- (3) The parental rights to a sibling have been terminated involuntarily pursuant to chapter 571; or
- (4) A court has made a determination regarding a sibling under section 587-73(a) of the presence of the situation described under section 587-73(a)(1) or (2), or both.”

SECTION 4. Section 350-1.1, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The initial oral report shall be followed as soon [thereafter] as possible by a report in writing[; provided that where] to the department. If a police department is the initiating agency, a written report shall [not be required to] be filed with the department [unless the police department has declined to take further action and the department informs the police department that it intends to pursue the matter of the orally reported incident of child abuse or neglect.] for cases that the police take further action on or for active cases in the department under this chapter. All written reports shall contain the name and address of the child and the child’s parents or other persons responsible for the child’s care, if known, the child’s age, the nature and extent of the child’s injuries, and any other information that the reporter believes might be helpful or relevant to the investigation of the child abuse or neglect. This subsection shall not be construed to serve as a cause of action against the department or the police.”

SECTION 5. Section 350-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department shall maintain a central registry of reported child abuse or neglect cases and shall promptly expunge the reports in cases [where:] if:

- (1) The department has found the reports to be unsubstantiated; or
- (2) The petition arising from the report has been dismissed by order of the family court after an adjudicatory hearing on the merits pursuant to chapter 587.

For purposes of expungement under [(c)] paragraph (1) [above], a report is unsubstantiated only when the department has found the allegations [contained therein] to be frivolous or to have been made in bad faith.

However, the department may retain records and information of alleged child abuse and neglect with respect to the child that is the subject of the alleged abuse.

The department shall adopt [such] rules as may be necessary in carrying out this section.”

SECTION 6. 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 service and permanent plans for children who have been harmed or are threatened with harm.] to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm. Furthermore, this chapter makes provisions for the service, treatment, and permanent plans for these children and their families.

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, and disposition of cases involving children who have been harmed or are threatened with harm are in the children's, their families', and society's best interests because 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,] if the families can provide safe family homes, and with timely and appropriate service or permanent plans to ensure the safety of the child so they may develop and mature into responsible, self-sufficient, law-abiding citizens. 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.

The department's child protective services provided under this chapter shall make every reasonable effort to be open, accessible, and communicative to the persons affected in any manner by a child protective proceeding; provided that the safety and best interests of the child under this chapter shall not be endangered in the process.

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

SECTION 7. Section 587-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon satisfying itself as to the course of action [which] that should be pursued to best accord with the purpose of this chapter, the department shall:

- (1) Resolve the matter in [such] an informal fashion[, as is] appropriate under the circumstances;
- (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 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;

- (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] three 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 8. Section 587-24, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Within [two] three working days, excluding Saturdays, Sundays, or holidays, 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 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 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 9. 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, 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] that was submitted pursuant to paragraph (1), (2), or (3).
- (b) Report or reports pursuant to subsection (a) specifically shall:
- (1) Assess fully all relevant prior and current information concerning each of the safe family home guidelines, as set forth in section 587-25, except for a report required for an uncontested review hearing or a

permanent plan review hearing [which] that 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 the service [or services] or revision [or revisions] in a service plan or revised service plan; or
  - (B) A permanent plan or revision to an existing permanent plan and if it is an initial recommendation, set forth the basis for the recommendation [which] that 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 the orders be entered.

(c) A written report pertaining to cases pending before the family court submitted by the department pursuant to subsection (a) shall be submitted to the court in its entirety, and shall include the following:

- (1) Any report, or medical or mental health consultation, generated by a child protective services multidisciplinary team or consultant in its entirety; and
- (2) All other relevant information on placement of the child.

[(c)] (d) A written report submitted [pursuant to subsection (a)] under this section 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 the person is unavailable.

[(d)] (e) 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 10. Section 587-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [In any case where] If the department has continued to assume temporary foster custody of a child pursuant to section 587-24(e)(3), the court shall 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.”

SECTION 11. Section 587-71, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (h) to read:

“(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 conse-

quence of the service plan has been thoroughly explained to and is understood by each party or a party's guardian ad litem[.]; provided that the court need not order a service plan and may proceed pursuant to 587-72(c)(7) if the court finds that aggravated circumstances are present."

2. By amending subsection (i) to read:

"(i) After [such] a hearing [as] that 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. The court need not order a service plan and may proceed pursuant to 587-72(c)(7) if the court finds that aggravated circumstances are present."

3. By amending subsection (l) to read:

"(l) The court 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] the 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[.]; provided that the court need not order any visitation if the court finds that aggravated circumstances are present."

SECTION 12. Section 587-72, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Upon each review hearing 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, 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;
- (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 [eighteen] twelve months or if there has been a court ordered service plan for a period of one year [shall], the court may 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] the 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] a show cause hearing [as] that 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 this section;
- (4) Determine whether the parties have complied with, performed, and completed [each and] every term and condition of the service plan [which] that was previously court ordered;

- (5) Order [such] revisions to the existing service plan, after [ensuring that the requirement of] satisfying section 587-71(h) [is satisfied], as the court, upon [such] a hearing [as] that 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; and
- (7) Determine whether aggravated circumstances are present and, if so, the court 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 the reasons and considerations as to why the case should not be set for a permanent plan hearing."

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect upon its approval.

(Approved June 24, 1998.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.