

ACT 271

H.B. NO. 274

A Bill for an Act Relating to Families.

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

SECTION 1. The legislature finds that child abuse and neglect are a root cause of many serious social problems, including emotional and mental health problems, alcohol and drug abuse and addiction, delinquency, and crime. Child abuse continues to escalate with fifteen thousand reports and over five thousand cases investigated annually in Hawaii. The most severe cases continue to be among the youngest, most vulnerable children.

During the interim following the regular session of 1998, child protection legislative roundtable discussions were convened to suggest statutory, guideline, rule, regulation, and other changes to improve Hawaii's child protective system. Legislators, the departments of human services, health, and the attorney general, the judiciary, private nonprofit child and family serving agencies, and concerned individuals communicated and collaborated with one another, on behalf of abused and neglected children and their families, to develop formal and informal mechanisms for working together.

As a coordinated response to prevent and treat child abuse, the roundtable collectively suggested that the following provisions be added or strengthened:

- (1) Mandated training for foster parents of licensed foster homes;
- (2) Protective custody of a child without court order;
- (3) Required reporting of child abuse and neglect; and
- (4) A procedure governing the timely enrollment of foster children into an appropriate health insurance program.

The purpose of this Act is to improve Hawaii's child protection system.

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

“§587- Medical and health case management. The department shall establish a procedure governing the timely enrollment of foster children into an appropriate health insurance program.”

SECTION 3. Section 346-17, Hawaii Revised Statutes, is amended to read as follows:

“§346-17 Child placing organizations, child caring institutions, and foster boarding homes; authority over [and], investigation of[.], and standards for. (a) No child placing organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets [with] the standards of conditions, management, and competence set by the department of human services.

(b) No child caring institution shall [be allowed to] receive minor children for care and maintenance unless it meets [with] the standards of conditions, management, and competence to care for and train children set by the department.

(c) No foster boarding home shall receive for care and maintenance any child unless [it meets with]:

(1) It meets with the standards of conditions, management, and competence set by the department[.]; and

(2) The foster boarding home applicant successfully completes foster parent training; provided that after July 1, 1999, new special licensed or relative foster home care providers shall successfully complete foster parent training within the first year following placement of the first child into the new special licensed or relative foster home.

(d) The department shall [make] adopt rules pursuant to chapter 91 relating

to:¹

(1) [standards] Standards for the organization and administration of child placing organizations[.];

(2) [standards] Standards of conditions, management, and competence for the care and training of minor children in child caring institutions and foster boarding homes [.]; and

(3) [standards] Standards of conditions and competence of operation of foster boarding homes as may be necessary to protect the welfare of children.

(e) All rules of the department shall have the force and effect of law, and any violation thereof or of this section shall be punishable by a fine of not more than \$200.

(f) As a condition for a certificate of approval, any organization, institution, or home shall meet the standards to assure the reputable and responsible character of its operators and employees by complying with the requirements of a criminal history record check under section 346-19.6.

(g) Upon approval of [any such] the organization, institution, or home, the department or its authorized agents shall issue a certificate of approval [which] that shall continue in force for one year or for two years if the organization, institution, or home meets the criteria established by the department, unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual or biennial investigation, if the investigation discloses that the organization, institution, or home continues to meet with the standards set by the department. The certificate of approval shall be a permit to operate the child placing organization, child caring institution, or foster boarding home, and no person or organization shall operate or maintain [such] the organization, institution, or home without the certificate.

(h) Any child placing organization, child caring institution, or foster boarding home shall be subject to investigation at any time and in [such] a manner, place, and form as may be prescribed by the department or its authorized agents.

(i) As used in this section, "foster parent training" means training or instruction in special skills and knowledge to care for foster children. "

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

"(a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, shall immediately report the matter orally to the department [or] and to the police department:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, attends, treats, or provides other professional or specialized services, including[,] but not limited to[,] physicians, including physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private school;
- (3) Employees or officers of any public or private agency or institution, or other individuals, providing social, medical, hospital, or mental health services, including financial assistance;
- (4) Employees or officers of any law enforcement agency, including[,] but not limited to[,] the courts, police departments, correctional institutions, and parole or probation offices;
- (5) Individual providers of child care, or employees or officers of any licensed or registered child care facility, foster home, or similar institution;
- (6) Medical examiners or coroners; and
- (7) Employees of any public or private agency providing recreational or sports activities."

SECTION 5. Section 350-2, Hawaii Revised Statutes, is amended to read as follows:

"§350-2 Action on reporting. (a) Upon receiving a report concerning child abuse or neglect, the department shall proceed pursuant to chapter 587 and the department's rules.

(b) The department shall inform the appropriate police department of all reports received by the department regarding a case of child abuse or neglect, including reports received under section 350-1.1; provided that the name of the person who reported the case of child abuse or neglect shall be released to the police department pursuant only to court order or the person's consent.

[(b)] (c) The department shall inform the appropriate police department or office of the prosecuting attorney of the relevant information concerning a case of child abuse or neglect when [such] the information is required by the police department or the office of the prosecuting attorney for the investigation or prosecution of that case; provided that the name of the [reporter,] person who [requested that the reporter's name be confidential,] reported the case of child abuse or neglect shall [only] be released to² the³ police department or⁴ the³ office of the prosecuting attorney pursuant only to court order[.] or the person's consent.

[(c)] (d) The department shall maintain a central registry of reported child abuse or neglect cases and shall promptly expunge the reports in cases 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 paragraph (1), a report is unsubstantiated only when the department has found the allegations 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] who is the subject of the alleged abuse.

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

SECTION 6. Section 587-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A police officer shall assume protective custody of² the³ child without a court order and without the consent of the child’s family regardless of whether the child’s family is absent, if in the discretion of [such] the police officer, the child is in such circumstance or condition that the child’s continuing in the custody or care of the child’s family presents a situation of imminent harm to the child.

A police officer may assume protective custody of the child without a court order and without the consent of the child’s family regardless of whether the child’s family is absent, if in the discretion of the police officer:

- (1) The child has no legal custodian who is willing and able to provide a safe family home for the child; or
- (2) There is evidence that the parent or legal guardian of the child has subjected the child to harm or threatened harm and that the parent or legal guardian is likely to flee the jurisdiction of the court with the child.”

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.⁵

SECTION 9. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Notes

1. Colon should be underscored.
2. Prior to amendment “a” appeared here.
3. “The” should be underscored.
4. Prior to amendment “an” appeared here.
5. Edited pursuant to HRS §23G-16.5.