

ACT 199

S.B. NO. 2730

A Bill for an Act Relating to Child Protection.

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

SECTION 1. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§587- Relatives; foster placement. The department shall provide an application within fifteen days of an inquiry from a relative to be a foster placement. If an application to be a foster parent is submitted and denied, the department shall provide the applicant with the specific reasons for the denial and an explanation of the procedures for an administrative appeal.”

SECTION 2. Section 587-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“‘Hanai relative’ means an adult other than a blood relative who performs or has performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child, as deemed credible by the court or the department.

“Relative” means a person related by blood or adoption, or a hanai relative, as defined in this chapter, who is willing and able to safely provide support to the child and the family, as determined by the court or the department.”

SECTION 3. 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 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 leg-

islature 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 legislature recognizes that many relatives are willing and able to provide a nurturing and safe placement for children who have been harmed or are threatened with harm.

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 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]~~ shall 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]~~ that 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]~~ shall be given to the religious, cultural, and ethnic values of the child's legal custodian when service plans are being discussed and formulated. Where the court has determined, by clear and convincing evidence, that the child cannot be returned to a safe family home, the child ~~[will]~~ shall 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 4. 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 that should be pursued to best accord with the purpose of this chapter, the department shall:

- (1) Resolve the matter in an informal fashion appropriate under the circumstances;
- (2) Seek to enter into a service plan, without filing a petition in court, with members of the child's family and other authorized agency as the department deems 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, provided that placement preference shall be given to an appropriate relative identified by the department, 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 further 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 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 three working days, excluding Saturdays, Sundays, and holidays, after the date of the department's assumption of temporary foster custody of the child; provided that placement preference shall be given to an appropriate relative identified by the department; or
- (4) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter.”

SECTION 5. Section 587-24, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Upon assuming temporary foster custody of a child under this chapter, the department shall place the child in emergency foster care, unless the child is admitted to a hospital or similar institution, while it conducts an appropriate investigation[-]; provided that placement preference for emergency foster care shall be given to the appropriate relative identified by the department. The department and authorized agencies shall make reasonable efforts to identify all relatives within six months of assuming foster custody of the child.”

SECTION 6. Section 587-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 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~~] and threatened harm suffered by the child;
- (3) Date(s) and reason for the child's placement out of the home, description, appropriateness, [~~and~~] location of the placement [~~and~~], 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]~~ ensure that any current protective orders are enforced;
- (10) Whether there is a support system of extended family ~~[and/or]~~, including adoptive and hanai relatives, and friends available to the child's family[;] and what attempts have been made to locate and identify extended family, friends, or both;
- (11) Whether the child's family has demonstrated an understanding and ~~[utilization]~~ use 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 7. Section 587-53, Hawaii Revised Statutes, is amended by amending subsection (d) as follows:

1. By amending subsection (d) to read:¹

"(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]~~ relatives and friends who may be potential visitation supervisors or foster parents for the child and that they arrange for 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."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 9. This Act shall take effect on July 1, 2008.

(Approved June 20, 2008.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.