

A Bill for an Act Relating to Child Protective Act.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CHILD PROTECTIVE ACT**

**PART I. SHORT TITLE, PURPOSE, CONSTRUCTION,
GUIDING PRINCIPLES, AND DEFINITIONS**

§ -1 **Short title.** This chapter shall be known and cited as the Child Protective Act.

§ -2 **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 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 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 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 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 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 shall be permanently placed in a timely manner.

The policy and purpose of this chapter includes the protection of children who have been harmed or are threatened with harm by:

- (1) Providing assistance to families to address the causes for abuse and neglect;
- (2) Respecting and using each family's strengths, resources, culture, and customs;
- (3) Ensuring that families are meaningfully engaged and children are consulted in an age-appropriate manner in case planning;
- (4) Enlisting the early and appropriate participation of family and the family's support networks;
- (5) Respecting and encouraging the input and views of caregivers; and
- (6) Ensuring a permanent home through timely adoption or other permanent living arrangement,

if safe reunification with the family is not possible.

The child protective services under this chapter shall be provided with every reasonable effort to be open, accessible, and communicative to the persons affected by a child protective proceeding without endangering the safety and best interests of the child under this chapter.

This chapter shall be liberally construed to serve the best interests of the children affected and the purpose and policies set forth herein.

§ -3 Guiding principles for children in foster care. (a) The department or an authorized agency, as resource family or permanent custodian, shall abide by the following guiding principles and ensure that a child in foster care:

- (1) Lives in a safe and healthy home, free from physical, psychological, sexual, and other abuse;
- (2) Has adequate:
 - (A) Food that is nutritious and healthy;
 - (B) Clothing;
 - (C) Medical care, dental and orthodontic services, and corrective vision care; and
 - (D) Mental health services;
- (3) Has supervised or unsupervised in-person, telephone, or other forms of contact with the child's parents and siblings while the child is in foster care, unless prohibited by court order;
- (4) Has in-person contact with the child's assigned child protective services worker, guardian ad litem, and if applicable, the child's probation officer;
- (5) Meets with the presiding judge in the child's case;
- (6) Is enrolled in a comprehensive health insurance plan and, within forty-five days of out-of-home placement, is provided with a comprehensive health assessment and treatment as recommended;
- (7) May freely exercise the child's own religious beliefs, including the refusal to attend any religious activities and services;
- (8) Has a personal bank account and assistance in managing the child's personal income consistent with the child's age and development, unless safety or other concerns require otherwise;
- (9) Has the right to attend school and participate in appropriate extracurricular activities and, if the child is moved during a school year, has the right to complete the school year at the same school, if practicable; and

- (10) Beginning at age twelve, is provided with age-appropriate life skills training and a transition plan for appropriately moving out of the foster care system, as well as written information concerning independent living programs, foster youth organizations, transitional planning services, and independent living case management programs that are available to all children in foster care who are twelve years of age or older and their resource families.

(b) Sua sponte or upon appropriate motion, the family court may issue any necessary orders to any party, including the department, department of education, or department of health, to ensure adherence to the guiding principles enumerated in subsection (a) above.

§ -4 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

“Abandoned infant” means a child who is three years old or younger and:

- (1) The child’s parents, regardless of any incidental contact or communication with the child, have demonstrated an extreme disinterest in or lack of commitment for assuming parental responsibility for the child;
- (2) The persons with whom the child resides have not known the identity or whereabouts of the child’s parents for sixty days or more, and reasonable efforts have been made to identify or locate the child’s parents; or
- (3) The child’s mother also falls under the provisions of paragraph (1) or (2), and the child’s presumed or alleged father has failed to assert a claim or interest as a parent for sixty days or more; provided that the child’s father has knowledge of the child’s birth and that he is the child’s presumed or alleged father.

“Adjudication” means a finding by a court that is supported by a preponderance of the evidence that the child has been harmed or is subjected to threatened harm by the acts or omissions of the child’s family.

“Aggravated circumstances” means that:

- (1) The parent has murdered, or has solicited, aided, abetted, attempted, or conspired to commit the 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 parent’s rights regarding a sibling of the child have been judicially terminated or divested;
- (4) The parent has tortured the child; or
- (5) The child is an abandoned infant.

“Authorized agency” means the department, other public agency, or a person or organization that is licensed by the department or approved by the court to receive children for control, care, maintenance, or placement.

“Birth parent” and “biological parent” can be used interchangeably and mean the biological parents of the child. The term “birth”, as used in this chapter, is interchangeable with the term “natural”, as that term is used in chapter 578.

“Caregiver” means an adult who is not a child’s parent or legal and physical custodian, and with whom the child has been residing for at least six months with the verbal or written consent of the child’s legal and physical custodian. The status of “caregiver” as used in this chapter does not pertain to court-ordered or voluntary foster placement.

“Case plan” means the combined safe family home factors and the service plan or permanent plan.

“Child” means a person who is born alive and is less than eighteen years of age.

“Clear and convincing evidence” means the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction that the fact sought to be proved is true. 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 chapter 571.

“Court-appointed special advocate” means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who, when appointed by the court, serves as an officer of the court in the capacity of a guardian ad litem.

“Criminal history record check” means an examination of an individual’s criminal history through fingerprint analysis or name inquiry into state and national criminal history records and files, including the files of the Hawaii criminal justice data center.

“Date of entry into foster care” means the date a child was first placed in foster custody by the court or sixty days after the child’s actual removal from the home, whichever is earlier.

“Default” means the status found by the court when a party who has been properly served or notified of a scheduled hearing fails to appear at court for the hearing or fails to plead or otherwise defend, thereby allowing the court to proceed without the absent party.

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

“Family” means each legal parent of a child; the birth mother, unless the child has been legally adopted; the concerned birth father as provided in section 578-2(a)(5), unless the child has been legally adopted; each parent’s spouse or former spouse; each sibling or person related by blood or marriage; each person residing in the dwelling unit; and any other person or legal entity with:

- (1) Legal or physical custody or guardianship of the child, or
- (2) Responsibility for the child’s care.

For purposes of this chapter, the term “family” does not apply to an authorized agency that assumes the foregoing legal status or relationship with a child.

“Family home” means the home of the child’s legal custodian.

“Family supervision” means the legal status in which a child’s legal custodian is willing and able, with the assistance of a service plan, to provide the child with a safe family home.

“Foster care” means continuous twenty-four-hour care and supportive services provided for a child by an authorized agency or the court, including, the care, supervision, guidance, and rearing of a child by a resource family.

“Foster custodian” means the authorized agency that has foster custody of the child.

“Foster custody” means the legal status created when the department places a child outside of the family home with the agreement of the legal custodian or pursuant to court order, 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.

“Foster parent” or “foster family” means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with “resource family”.

“Guardian ad litem” means any person who is appointed by the court under this chapter to protect and promote the needs and interests of a child or a party, including a court-appointed special advocate.

“Hanai relative” means an adult, other than a blood relative, whom the court or department has found by credible evidence to perform or to have 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.

“Harm” means damage or injury to a child’s physical or psychological health or welfare, where:

- (1) The child exhibits evidence of injury, including, but not limited to:
 - (A) Substantial or multiple skin bruising;
 - (B) Substantial external or internal bleeding;
 - (C) Burn or burns;
 - (D) Malnutrition;
 - (E) Failure to thrive;
 - (F) Soft tissue swelling;
 - (G) Extreme pain;
 - (H) Extreme mental distress;
 - (I) Gross degradation;
 - (J) Poisoning;
 - (K) Fracture of any bone;
 - (L) Subdural hematoma; or
 - (M) Death;

and the injury is not justifiably explained, or the history given concerning the condition or death is not consistent with the degree or type of the condition or death, or there is evidence that the condition or death may not be the result of an accident;
- (2) The child has been the victim of sexual contact or conduct, including sexual assault; sodomy; molestation; sexual fondling; incest; prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation;
- (3) The child’s psychological well-being has been injured as evidenced by a substantial impairment in the child’s ability to function;
- (4) The child is not provided in a timely manner with adequate food; clothing; shelter; supervision; or psychological, physical, or medical care; or
- (5) The child is provided with dangerous, harmful, or detrimental drugs as defined in section 712-1240, except when a child’s family administers drugs to the child as directed or prescribed by a practitioner as defined in section 712-1240.

“Imminent harm” means that without intervention within the next ninety days, there is reasonable cause to believe that harm to the child will occur or reoccur.

“Incapacitated person” means a person who, even with appropriate and reasonably available assistance, is unable to substantially:

- (1) Comprehend the legal significance of the issues or nature of the proceedings under this chapter;
- (2) Consult with counsel; and
- (3) Assist in preparing the person’s case or strategy.

Incapacity shall not be based solely on a person’s status as a minor.

“Ohana conference” means a family-focused, strength-based meeting conducted by trained community facilitators that is designed to build and enhance the network of protection for a child who is subject to a proceeding under this chapter. Ohana conferences include extended family members and other important people in the child’s life and rely on them to participate in making plans and decisions. The purpose of the ohana conference is to establish a plan that provides for the safety and permanency needs of the child.

“Parent” means any legal parent of a child; the birth mother, unless the child has been legally adopted; the adjudicated, presumed, or concerned birth father of the child as provided in section 578-2(a)(5), unless the child has been legally adopted; or the legal guardians or any other legal custodians of the child.

“Party” means an authorized agency; a child who is subject to a proceeding under this chapter; the child’s parents and guardian ad litem; any other person who is alleged in the petition or who is subsequently found at any child protective proceeding to be encouraging, causing, or contributing to the acts or conditions that brought the child within the scope of this chapter; and may include any other person, including the child’s current foster parent or current resource family, if the court finds that such person’s participation is in the best interest of the child; 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 -13, except as otherwise provided in this chapter.

“Permanent custody” means the legal status created by order of the court after the termination of parental rights as set forth in this chapter.

“Permanent plan” means a specific, comprehensive written plan prepared pursuant to section -32.

“Police officer” means a person employed by any county in the State of Hawaii to enforce the laws and ordinances for preserving the peace and maintaining safety and order in the community, or an employee authorized by the director of public safety under section 329-51 or 353C-4 to exercise the powers set forth in this chapter.

“Preponderance of the evidence” means the degree of proof, which as a whole, convinces the trier of fact that the fact sought to be proved is more probable than not. “Preponderance of the evidence” shall be the standard of proof required in any proceeding, unless otherwise specified.

“Protective custody” means the legal status of a child whose physical custody is assumed by a police officer under this chapter.

“Reasonable cause to believe” means the degree of proof that would cause a person of average caution to believe the evidence is reasonably trustworthy.

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

“Resource family” means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with “foster parent” and “foster family”.

“Safe family home factors” means a list of criteria that must be considered in determining whether a parent is able to provide a safe family home as set out herein in section -7.

“Service plan” means a specific, comprehensive written plan prepared by an authorized agency pursuant to section -27.

“Temporary family supervision” means a legal status created under this chapter pursuant to court order after the department has filed a petition for tem-

porary foster custody, and the court finds it more appropriate to return the child to the child's family home pending an adjudication determination.

"Temporary foster custody" means a legal status created under this chapter with or without a court order, whereby the department temporarily assumes the duties and rights of a foster custodian of a child.

"Termination of parental rights" means the severance of parental rights.

"Threatened harm" means any reasonably foreseeable substantial risk of harm to a child.

PART II. JURISDICTION AND VENUE

§ -5 **Jurisdiction.** Pursuant to section 571-11(9), the court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who is or was found within the state at the time specified facts and circumstances occurred, are discovered, or are reported to the department. These facts and circumstances constitute the basis for the court's finding that the child's 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.

§ -6 **Venue.** A child protective proceeding under this chapter may be filed in the county in which a child is found or resides when the petition is filed, or in the county in which a parent having legal custody of the child resides or is domiciled when the petition is filed.

PART III. SAFE FAMILY HOME FACTORS AND PRE-PETITION PROCEDURES

§ -7 **Safe family home factors.** (a) The following factors shall be fully considered when determining whether a child's family is willing and able to provide the child with a safe family home:

- (1) Facts relating to the child's current situation, which shall include:
 - (A) The child's age, vulnerability, and special needs that affect the child's attachment, growth, and development;
 - (B) The child's developmental, psychological, medical, and dental health status and needs, including the names of assessment and treatment providers;
 - (C) The child's peer and family relationships and bonding abilities;
 - (D) The child's educational status and setting, and the department's efforts to maintain educational stability for the child in out-of-home placement;
 - (E) The child's living situation;
 - (F) The child's fear of being in the family home;
 - (G) The impact of out-of-home placement on the child;
 - (H) Services provided to the child and family; and
 - (I) The department's efforts to maintain connections between the child and the child's siblings, if they are living in different homes;
- (2) The initial and any subsequent reports of harm and threatened harm to the child;
- (3) Dates and reasons for the child's out-of-home placement; description, appropriateness, and location of the placement; and who has placement responsibility;

- (4) Facts regarding the alleged perpetrators of harm to the child, the child's parents, and other family members who are parties to the court proceedings, which facts shall include:
 - (A) Birthplace and family of origin;
 - (B) Manner in which the alleged perpetrator of harm was parented;
 - (C) Marital and relationship history; and
 - (D) Prior involvement in services;
- (5) Results of psychiatric, psychological, or developmental evaluations of the child, the alleged perpetrators, and other family members who are parties;
- (6) Whether there is a history of abusive or assaultive conduct by the child's family members and 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 any alleged perpetrator has completed services in relation to any history identified in paragraphs (6) and (7), and acknowledged and accepted responsibility for the harm to the child;
- (9) Whether any non-perpetrator who resides in the family home has demonstrated an ability to protect the child from further harm and to ensure that any current protective orders are enforced;
- (10) Whether there is a support system available to the child's family, including adoptive and hanai relatives, friends, and faith-based or other community networks;
- (11) Attempts to locate and involve extended family, friends, and faith-based or other community networks;
- (12) Whether the child's family has demonstrated an understanding of and involvement in services that have been recommended by the department or court-ordered as necessary to provide a safe family home for the child;
- (13) Whether the child's family has resolved identified safety issues in the family home within a reasonable period of time; and
- (14) The department's assessment, which shall include the demonstrated ability of the child's family to provide a safe family home for the child, and recommendations.

(b) The court shall consider the likelihood that the current situation presented in the safe family home factors set forth in subsection (a) will continue in the reasonably foreseeable future.

§ -8 Protective custody by police officer without court order. (a) A police officer shall assume protective custody of a child without a court order and without the consent of the child's family, if in the discretion of the police officer, the officer determines that:

- (1) The child is subject to imminent harm while in the custody of the child's family;
- (2) The child has no parent, as defined in this chapter, who is willing and able to provide a safe family home for the child;
- (3) The child has no caregiver, as defined in this chapter, who is willing and able to provide a safe and appropriate placement for the child; or
- (4) The child's parent has subjected the child to harm or threatened harm and the parent is likely to flee with the child.

(b) The department shall assume temporary foster custody of the child when a police officer has completed the transfer of protective custody of the child to the department as follows:

- (1) A police officer who assumes protective custody of a child shall complete transfer of protective custody to the department by presenting physical custody of the child to the department; or
- (2) If the child is or will be admitted to a hospital or similar institution, the police officer shall immediately complete the transfer of protective custody to the department by notifying the department and receiving an acknowledgment from the hospital or similar institution that it has been informed that the child is under the temporary foster custody of the department.

§ -9 Temporary foster custody without court order. (a) When the department receives protective custody of a child from the police, the department shall:

- (1) Assume temporary foster custody of the child if, in the discretion of the department, the department determines that the child is subject to imminent harm while in the custody of the child's family;
- (2) Make every reasonable effort to inform the child's parents of the actions taken, unless doing so would put another person at risk of harm;
- (3) Unless the child is admitted to a hospital or similar institution, place the child in emergency foster care while the department conducts an appropriate investigation, with placement preference being given to an approved relative;
- (4) With authorized agencies, make reasonable efforts to identify and notify all relatives within thirty days of assuming temporary foster custody of the child; and
- (5) Within three days, excluding Saturdays, Sundays, and holidays:
 - (A) Relinquish temporary foster custody, return the child to the child's parents, and proceed pursuant to section -11(3), -11(4), or -11(5);
 - (B) Secure a voluntary placement agreement from the child's parents to place the child in foster care, and proceed pursuant to section -11(5) or -11(7); or
 - (C) File a petition with the court.

(b) Upon the request of the department and without regard to parental consent, any physician licensed or authorized to practice medicine in the State shall perform an examination to determine the nature and extent of harm or threatened harm to the child under the department's temporary foster custody.

§ -10 Relatives; foster placement. (a) The department shall provide the child's relative an application to be the child's resource family within fifteen days of the relative's request to provide foster placement for the child. If the application 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.

(b) The department and authorized agencies shall make reasonable efforts to identify and notify all relatives of the child within thirty days after assuming foster custody of the child.

§ -11 Investigation; department powers. 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 as it deems to be appropriate. In conducting the investigation, the department may:

- (1) Enlist the cooperation and assistance of appropriate state and federal law enforcement authorities, who may conduct an investigation and, if an investigation is conducted, shall provide the department with all preliminary findings, including the results of a criminal history record check of an alleged perpetrator of harm or threatened harm to the child;
- (2) Interview the child without the presence or prior approval of the child's family and temporarily assume protective custody of the child for the purpose of conducting the interview;
- (3) Resolve the matter in an informal fashion that it deems appropriate under the circumstances;
- (4) Close the matter if the department finds, after an assessment, that the child is residing with a caregiver who is willing and able to meet the child's needs and provide a safe and appropriate placement for the child;
- (5) Immediately enter into a service plan:
 - (A) To safely maintain the child in the family home; or
 - (B) To place the child in voluntary foster care pursuant to a written agreement with the child's parent.

If the child is placed in voluntary foster care and the family does not successfully complete the service plan within three months after the date on which the department assumed physical custody of the child, the department shall file a petition. The department is not required to file a petition if the parents agree to adoption or legal guardianship of the child and the child's safety is ensured; provided that the adoption or legal guardianship hearing is conducted within six months of the date on which the department assumed physical custody of the child;

- (6) Assume temporary foster custody of the child and file a petition with the court within three days, excluding Saturdays, Sundays, and holidays, after the date on which the department assumes temporary foster custody of the child, with placement preference being given to an approved relative; or
- (7) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter.

PART IV. COURT PROCEEDINGS, EVIDENCE, AND ORDERS

§ -12 **Petition.** (a) A petition invoking the jurisdiction of the court under this chapter shall:

- (1) Be verified and set forth:
 - (A) A concise statement of the basis for each allegation of harm or threatened harm that brings a child within this chapter;
 - (B) The name, birth date, gender, and residential address of the child;
 - (C) The names and last known residential addresses of the parents and other persons to be made parties to the proceedings under this chapter; and
 - (D) Whether the child is under the temporary foster custody or foster custody of the department and, if so, the date on which the department assumed physical custody of the child;

- (2) State whether any of the facts required by this section cannot be determined prior to filing the petition; provided that the petition may be based on information and belief, but shall state the basis thereof; and
- (3) Include the warning that, if the petition is granted, parental rights may be terminated unless the family is willing and able, with the assistance of a service plan, to provide the child with a safe family home within a reasonable period of time.

(b) If the court determines that the child is subject to imminent harm while in the custody of the child's family, the court shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody of the child.

(c) The court shall conduct:

- (1) A temporary foster custody hearing, pursuant to section -26, within two days after the petition is filed, excluding Saturdays, Sundays, and holidays; or
- (2) A return hearing, pursuant to section -28, within fifteen days after the petition is filed or the date a decision is announced by the court during a temporary foster custody hearing, if the petition requests foster custody or family supervision of the child.

(d) The court may adopt rules concerning the titles, filing, investigation, and form and content of petitions and other pleadings and proceedings in cases under this chapter, or any other matter arising in child protective proceedings.

§ -13 **Summons and service of summons.** (a) After a petition has been filed, the court shall issue a summons requiring the presence of the parents and other persons to be parties to the proceeding, as follows:

- (1) A copy of the petition shall be attached to each summons;
- (2) The summons shall notify the parties of their right to retain and be represented by counsel; and
- (3) 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 IF YOU FAIL TO APPEAR ON THE DATE SET FORTH IN THIS SUMMONS."

(b) The court may issue a summons to a parent or any person having physical custody of the child to bring the child before the court at the temporary foster custody hearing or the return hearing.

(c) The sheriff or other authorized person shall serve the summons by personally delivering a certified copy to the person or legal entity being summoned. A return on the summons shall be filed, showing the date and time and to whom service was made; provided that:

- (1) If the party to be served does not reside in the State, service shall be made by registered or certified mail addressed to the party's last known address; or
- (2) If the court finds that it is impracticable to personally serve the summons, the court may order service by registered or certified mail addressed to the party's last known address, or by publication, or both. When publication is used, the summons shall be published once a week for four consecutive weeks in a newspaper of general circulation in the county in which the party was last known to have resided. In the order for publication of the summons, the court shall designate the publishing newspaper and shall set the date of the last publication at no less than twenty-one days before the return date.

Such publication shall have the same force and effect as personal service of the summons.

(d) Service shall be completed no less than twenty-four hours prior to the time set forth in the summons for a temporary foster custody hearing, or no less than forty-eight hours prior to the time set forth in the summons for any other hearing, unless the party was present when ordered by the court to appear at the hearing.

(e) The court may issue a warrant for the appearance of a person or child, as well as issue an order pursuant to section -16(b), if:

- (1) The summons cannot be personally served;
- (2) The person served fails to obey the summons;
- (3) The court finds that service will not be effective; or
- (4) The court finds that the best interests of the child require that the child be brought into the custody of the court.

§ -14 Notice of hearings; participation of resource family. (a) Notice of hearings shall be served on the parties; provided that no further notice is required for any party who defaulted or was given actual notice of a hearing while present in court. Notice of hearings shall be served no less than forty-eight hours before the scheduled hearing, subject to a shortening of time as ordered by the court.

(b) The child's current resource family shall be served written notice of hearings no less than forty-eight hours before a scheduled hearing; provided that no further notice shall be provided to a resource family that was given actual notice of a hearing while present in court, subject to a shortening of time as ordered by the court.

(c) No hearing shall be held until the child, the child's current resource family, and all other parties are given notice of the hearing or are served, as required by this section.

(d) The child's current resource family is entitled to participate in the proceedings to provide information to the court, either in person or in writing, concerning the current status of the child in their care.

(e) The court may not convene a hearing under this chapter unless the court enters a finding that each of the parties required to be notified of the hearing has been served with a copy of the petition; provided that if a party is required to be summoned to a temporary foster custody or return hearing and has not been served with the summons, the court may proceed with the hearing if:

- (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.

(f) For purposes of this section, "party" or "parties" shall include the current foster parents.

§ -15 Duties, rights, and liability of authorized agencies. (a) If an authorized agency has family supervision, it has the following duties and rights, subject to such conditions or restrictions as the court deems to be in the best interests of a child:

- (1) Monitoring and supervising the child and the child's family members who are parties. Monitoring and supervision shall include reasonable access to each of the family members who are parties and reasonable access into the child's family home; and
- (2) Placement of the child in foster care and thereby assuming temporary foster custody or foster custody of the child. The authorized

agency shall immediately notify the court when such placement occurs. Upon notification, the court shall set the case for:

- (A) A temporary foster custody hearing within three days, excluding Saturdays, Sundays, and holidays; or
- (B) If jurisdiction has been established, a periodic review hearing within ten days of the child's placement.

The temporary foster custody hearing or the periodic review hearing may be held at a later date, only if the court finds it to be in the best interests of the child.

(b) If an authorized agency has foster custody it has the following duties and rights:

- (1) Determining where and with whom the child shall be placed in foster care; provided that the child shall not be placed in foster care outside the State without prior order of the court;
- (2) Permitting the child to return to the family from which the child was removed, unless otherwise ordered by the court. The child's return may occur only if no party objects to such placement and prior written notice is given to the court and to all parties stating that there is no objection of any party to the child's return. Upon the child's return to the family, temporary foster custody or foster custody shall be automatically revoked, and the child and the child's family members who are parties shall be placed under temporary family supervision or the family supervision of the authorized agency;
- (3) Ensuring that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities in a timely manner;
- (4) Monitoring whether the child is being provided with an appropriate education;
- (5) Providing required consents for the child's physical or psychological health or welfare, including ordinary medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs;
- (6) Providing consents for any other medical or psychological care or treatment, including surgery, if the persons who are otherwise authorized to provide consent are unable or unwilling to consent. Before being provided to the child, this care or treatment shall be deemed necessary for the child's physical or psychological health or welfare by two physicians or two psychologists, as appropriate, who are licensed or authorized to practice in the State;
- (7) Providing consent for the child's application for a driver's instructional permit, provisional driver's license, or driver's license;
- (8) Providing consent to the recording of a statement pursuant to section -21; and
- (9) Providing the court with information concerning the child.

The court, in its discretion, may vest foster custody of a child in any authorized agency or subsequently authorized agencies, if the court finds that it is in the child's best interests to do so. The rights and duties that are so assumed by an authorized agency shall supersede the rights and duties of any legal or permanent custodian of the child.

(c) Unless otherwise provided in this section or as otherwise ordered by the court, a child's family shall retain the following rights and responsibilities after a transfer of temporary foster custody or foster custody, to the extent that the family possessed the rights and responsibilities prior to the transfer of temporary foster custody or foster custody:

- (1) The right of reasonable supervised or unsupervised visitation at the discretion of the authorized agency or the court;
 - (2) The right to consent to adoption, to marriage, or to major medical or psychological care or treatment; and
 - (3) The continuing responsibility to support the child, including repayment for the cost of any care, treatment, or other service provided by the authorized agency or the court for the child's benefit.
- (d) If an authorized agency has permanent custody, it has the following duties and rights:
- (1) Assuming the parental and custodial duties and rights of a legal custodian and family member;
 - (2) Determining where and with whom the child shall live; provided that the child shall not be placed outside the State without prior order of the court;
 - (3) Ensuring that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities in a timely manner;
 - (4) Monitoring whether the child is being provided with an appropriate education;
 - (5) Providing all required consents for the child's physical or psychological health or welfare, including medical, dental, psychiatric, psychological, educational, employment, recreational, and social needs;
 - (6) Providing consent for the child's application for a driver's instructional permit, provisional driver's license, or driver's license;
 - (7) Providing consent to adoption, change of name, and marriage; and
 - (8) Submitting a written report to the court if the child leaves the home of the permanent custodian for a period of seven consecutive days or more. The report shall state the child's current situation and shall be submitted on or before the tenth day, excluding Saturdays, Sundays, and holidays, after the child leaves the home.
- (e) 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 foster custodian or permanent custodian of the child.

§ -16 Guardian ad litem. (a) The court shall appoint a guardian ad litem for a child to serve throughout the pendency of child protective proceedings under this chapter.

(b) The court may appoint a guardian ad litem for an incapacitated adult party, as set forth below:

- (1) Upon the request of any party or sua sponte, the court may order a professional evaluation of an adult party to determine the party's capacity to substantially:
 - (A) Comprehend the legal significance of the issues and nature of the proceedings under this chapter;
 - (B) Consult with counsel; and
 - (C) Assist in preparing the party's case or strategy;
- (2) If the court orders a professional evaluation, the party shall be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the party's alleged impairment:
 - (A) Unless otherwise directed by the court, the examiner shall promptly file with the court a written report which shall contain:

- (i) A description of the nature, type, and extent of the party's specific cognitive and functional capabilities and limitations;
 - (ii) An evaluation of the party's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
 - (iii) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
 - (iv) The dates of any assessments or examinations upon which the report is based;
- (B) Upon the request of any party or sua sponte, and after such hearing as the court deems appropriate, the court may appoint a guardian ad litem for an adult party only after a determination, by clear and convincing evidence, that:
- (i) The party is an incapacitated person; and
 - (ii) The party's identified needs cannot be met by less restrictive means, including the use of appropriate and reasonably available assistance.
- (c) A guardian ad litem shall, unless otherwise ordered by the court:
- (1) Have access to the child or incapacitated adult;
 - (2) Have the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child or incapacitated adult that are relevant to the proceedings filed under this chapter. This authority shall exist even without the consent of the child, incapacitated adult, or individuals and authorized agencies that have control of the child or incapacitated adult; provided that nothing in this section shall override any attorney-client or attorney work product privilege;
 - (3) Be given notice of all hearings and proceedings involving the child or incapacitated adult, whether civil or criminal, including grand juries, and shall protect the best interests of the child or incapacitated adult;
 - (4) Make face-to-face contact with the child or incapacitated adult in the child's or incapacitated adult's family or resource family home at least once every three months;
 - (5) Report to the court and all parties in writing at six-month intervals, or as ordered by the court, regarding such guardian ad litem's actions taken to ensure the child's or incapacitated adult's best interest, and recommend how the court should proceed in the best interest of that child or incapacitated adult; and
 - (6) Inform the court of the child's opinions and requests. If the child's opinions and requests differ from those being advocated by the guardian ad litem, the court shall evaluate and determine whether it is in the child's best interests to appoint an attorney to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child.
- (d) The court shall, for an incapacitated adult:
- (1) Grant a guardian ad litem only those powers necessitated by the incapacitated adult's limitations and demonstrated needs; and
 - (2) Make appointive and other orders that will encourage the development of the incapacitated adult's maximum self-reliance and independence.
- (e) Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad

litem. The guardian ad litem for an incapacitated adult shall inform the court of the incapacitated adult's opinions and requests and may recommend how the court should proceed in the best interest of the incapacitated adult.

(f) The fees and costs of a guardian ad litem appointed pursuant to this section may be paid by the court, unless the party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate parties to pay or reimburse the fees and costs of the guardian ad litem and any attorney appointed for the child.

§ -17 Court-appointed attorneys. (a) The court may appoint an attorney to represent a legal parent who is indigent based on court-established guidelines. The court may also appoint an attorney to represent another indigent party based on court-established guidelines, if it is deemed to be in the child's best interest. Attorneys who are appointed by the court to represent indigent legal parents and other indigent qualifying parties may be paid by the court, unless the legal parent or party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate legal parent or party to pay or reimburse the fees and costs of an attorney appointed for the child or incapacitated adult.

(b) Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad litem.

§ -18 Reports to be submitted by the department and authorized agencies.

(a) Unless otherwise ordered by the court, the department or other authorized agencies shall file written reports with the court:

- (1) Concurrent with the filing of a petition invoking the jurisdiction of the court under this chapter; and
- (2) No less than fifteen days before a scheduled return hearing, periodic review hearing, permanency hearing, or termination of parental rights hearing; provided that additional information may be submitted to the court up to the date of the hearing; provided that the department or other authorized agencies make a good cause showing that such additional information was not available to the department or other authorized agency before the fifteen day deadline.

(b) The reports shall include:

- (1) An assessment of each safe family home factor and the family's progress with recommended or court-ordered services;
- (2) A recommended service plan or permanent plan that references the pertinent safe family home factors; and
- (3) A recommendation documenting the basis for any other orders, including protective orders.

(c) The department or other authorized agencies shall submit to the court each report, in its entirety, pertaining to the child or the child's family that has been prepared by a child protective services multidisciplinary team or consultant.

(d) A written report submitted pursuant to this section shall be admissible and relied upon to the extent of its probative value in any proceeding under this chapter, subject to the right of any party to examine or cross-examine the preparer of the report.

§ -19 Testimony by department social worker. A person employed by the department as a social worker in the area of child protective services or child welfare services shall be presumed to be qualified to testify as an expert on child

protective or child welfare services. Any party may move the court to qualify a person employed by the department as a social worker in the area of child protective services or child welfare services called to testify as an expert on child protective or child welfare services.

§ -20 Inadmissibility of evidence in other state actions or proceedings. The court may order that testimony or other evidence produced by a party in a proceeding under this chapter shall be inadmissible as evidence in any other state civil or criminal action or proceeding if the court deems such an order to be in the best interests of the child.

§ -21 Admissibility of evidence; testimony by a child. (a) Any statement relating to an allegation of imminent harm, harm, or threatened harm that a child has made to any person shall be admissible as evidence.

(b) In deciding in temporary foster custody hearings whether there is reasonable cause to believe that a child is subject to imminent harm the court may consider relevant hearsay evidence when direct testimony is unavailable or when it is impractical to subpoena witnesses who will be able to testify to facts based on personal knowledge.

(c) A child's recorded statement shall be admissible in evidence in any proceeding under this chapter; provided that:

- (1) The statement is recorded on film, audiotape, or videotape, or by other reliable electronic means;
- (2) The recording equipment used is capable of producing an accurate recording, was operated by a competent person, and the recording is accurate and has not been altered; and
- (3) Every person on the recording is identified.

(d) A child may be directed by the court to testify under circumstances deemed by the court to be in the best interests of the child and the furtherance of justice. These circumstances may include an on-the-record interview of the child in chambers, with only those parties present during the interview as the court deems to be in the best interests of the child.

§ -22 Unavailability of specified privileges. The following privileges shall not be available to exclude evidence of imminent harm, harm, or threatened harm in any proceeding under this chapter:

- (1) The physician-patient privilege;
- (2) The psychologist-client privilege;
- (3) The spousal privilege; and
- (4) The victim-counselor privilege.

§ -23 Effect of oral orders. Orders stated orally by the court on the record in a proceeding under this chapter shall have full force and effect from the date of the hearing until further order of the court. All oral orders shall be reduced to writing as soon as is practicable.

§ -24 Motions to vacate or modify prior orders brought or decided upon pursuant to Rule 59, Hawaii Family Court Rules. In considering a party's motion to vacate or modify prior orders brought or decided upon pursuant to Rule 59, Hawaii Family Court Rules, 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.

§ -25 Conduct of hearing in child protective proceedings. (a) The court shall hear child protective proceedings without a jury at a hearing separate from those for adults.

(b) The general public shall be excluded from child protective proceedings. Only parties found by the court to have a direct interest in the case shall be admitted to the hearing.

(c) The court has discretion to exclude the child from the hearing at any time.

(d) 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 the right to appeal.

§ -26 Temporary foster custody hearing. (a) When the department assumes temporary foster custody of a child and files a petition pursuant to this chapter, the court shall conduct a temporary foster custody hearing within two days after the petition is filed, excluding Saturdays, Sundays, and holidays. The purpose of a temporary foster custody hearing is to determine whether a child's safety continues to require protection prior to an adjudicatory determination at a return hearing.

(b) The temporary foster custody hearing may be continued for a period not to exceed fifteen days if the court determines that further investigation would be in the child's best interests.

(c) After reviewing the petition and any reports submitted by the department and considering all information pertaining to the safe family home factors, the court shall order:

(1) That the child be immediately released from the department's temporary foster custody, placed in temporary family supervision, and returned to the child's family home with the assistance of services, upon finding that the child's family is able to provide a safe family home with services; or

(2) That the child continue in the department's temporary foster custody, upon finding that there is reasonable cause to believe that continued placement in foster care is necessary to protect the child from imminent harm; provided that in making this determination, the court shall consider whether:

(A) The department made reasonable efforts to prevent or eliminate the need for removing the child from the child's family home before the child was placed in foster care;

(B) The alleged or potential perpetrator of imminent harm, harm, or threatened harm should be removed from the family home rather than continuing the child's placement in foster care. The child's family shall have the burden of establishing that it is in the child's best interests to remove the child, rather than the alleged or potential perpetrator, from the family home; and

(C) Every reasonable effort has been or is being made to place siblings or psychologically-bonded children together, unless such placement is not in the children's best interests.

(d) The court shall conduct a return hearing on the petition within fifteen days after the temporary foster custody hearing.

(e) 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 or communicated to the court and all parties before the next court hearing;

- (2) The child's family members who are parties provide the department or another authorized agency the names and addresses of other relatives and friends who are potential visitation supervisors or resource families for the child;
 - (3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of the child's guardian ad litem, the department, or another authorized agency;
 - (4) The court and the parties view a video or listen to an audio recording of the child's statements at such time and in such manner as the court deems appropriate;
 - (5) A criminal history record check be conducted by the department or another authorized agency on a party who is an alleged or potential perpetrator of imminent harm, harm, or threatened harm to the child;
 - (6) A protective order be entered;
 - (7) The department or another authorized agency prepare a written supplemental report;
 - (8) The child's guardian ad litem visit the child's family home and resource family home, be present during supervised visitation, and prepare a written report that includes specific recommendations concerning services and assistance to the family; and
 - (9) Any other orders be entered that the court deems necessary and in the best interests of the child.
- (f) Any party may file a motion requesting, or the court may order sua sponte, a temporary foster custody hearing or rehearing at any time after a petition is filed, to determine whether the child should be placed in temporary foster custody to ensure the child's safety pending a scheduled return hearing.

§ -27 Service plan. (a) The service plan shall provide:

- (1) The specific steps 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. These specific steps shall include treatment and services that will be provided, actions completed, specific measurable and behavioral changes that must be achieved, and responsibilities assumed;
- (2) Whether an ohana conference will be conducted for fact finding and family group decision making;
- (3) The respective responsibilities of the child, the parents, legal guardian or custodian, the department, other family members, and treatment providers, and a description and expected outcomes of the services required to achieve the permanency goal;
- (4) The required frequency and types of contact between the assigned social worker, the child, and the family;
- (5) The time frames during which services will be provided, actions must be completed, and responsibilities must be discharged;
- (6) Notice to the parents that their failure to substantially achieve the objectives described in the service plan within the time frames established may result in termination of their parental rights;
- (7) Notice to the parents that if the child has been in foster care under the responsibility of the department for an aggregate of fifteen out of the most recent twenty-two months from the child's date of entry into foster care, the department is required to file a motion to set a termination of parental rights hearing, and the parents' failure to

provide a safe family home within two years from the date when the child was first placed under foster custody by the court, may result in the parents' parental rights being terminated; and

- (8) Any other terms and conditions that the court or the authorized agency deem necessary to the success of the service plan.

(b) Services and assistance to the family that are required by a service plan shall be presented in a manner that can be understood by and does not overwhelm the parties.

(c) The court shall ensure that each term, condition, and consequence of the service plan has been thoroughly explained to, understood by, and agreed to by each member of the child's family whom the authorized agency deems to be necessary to the success of the service plan. The court shall thereafter order the service plan into effect and order the distribution of copies to each family member or person who is a party to the service plan. If a member of a child's family whom the authorized agency deems to be necessary to the success of the service plan cannot understand or refuses to agree to the terms, conditions, and consequences of the service plan, the court shall conduct a hearing to determine the terms, conditions, and consequences of a service plan that will ensure a safe home for the child.

§ -28 Return hearing. (a) When a petition has been filed, the court shall conduct a return hearing within fifteen days of:

- (1) The filing of the petition; or
- (2) The date a decision is announced by the court during a temporary foster custody hearing.

(b) At the return hearing, if it is established that a party required to be notified has not been served prior to the hearing, the court shall:

- (1) Order the method of service of summons that the court deems to be appropriate, based upon the available information; and
- (2) Set a continued return hearing and:

(A) May waive the appearance of any party at the continued return hearing; and

(B) If service of summons is ordered to be made by mail or publication, shall set the continued return hearing no less than twenty-one days after the date of service as evidenced by the signature of the recipient on a return receipt or the date of the last publication.

(c) At a continued return hearing, the court shall:

- (1) Enter the default of the party who was served but failed to appear at the continued return hearing;
- (2) Order the party who was served to appear on the date of the next scheduled hearing in the case; or
- (3) Set a hearing on the oral motion to vacate prior orders, if a party appears at the hearing and moves the court to vacate or modify prior orders. The moving party shall file a written motion and serve the other parties with proper written notice of the motion and the hearing date.

(d) At the return hearing, the court shall decide:

- (1) Whether the child's 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;
- (2) Whether the child should be placed in foster custody or under family supervision; and
- (3) What services should be provided to the child's parents.

(e) If the court finds that the child's 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, the court:

- (1) Shall enter a finding that the court has jurisdiction pursuant to section -5;
- (2) Shall enter a finding regarding whether, before the child was placed in foster care, the department made reasonable efforts to prevent or eliminate the need to remove the child from the child's family home;
- (3) Shall enter orders:
 - (A) That the child be placed in foster custody if the court finds that the child's remaining in the family home is contrary to the welfare of the child and the child's parents are not willing and able to provide a safe family home for the child, even with the assistance of a service plan; or
 - (B) That the child be placed in family supervision if the court finds that the child's parents are willing and able to provide the child with a safe family home with the assistance of a service plan;
- (4) Shall determine whether aggravated circumstances are present.
 - (A) If aggravated circumstances are present, the court shall:
 - (i) Conduct a permanency hearing within thirty days, and the department shall not be required to provide the child's parents with an interim service plan or interim visitation; and
 - (ii) Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to set the case for a termination of parental rights hearing.
 - (B) If aggravated circumstances are not present, the court shall order that the department make reasonable efforts to reunify the child with the child's parents and order an appropriate service plan;
- (5) Shall order reasonable supervised or unsupervised visits for the child and the child's family, including with the child's siblings, unless such visits are determined to be unsafe or detrimental to, and not in the best interests of, the child;
- (6) Shall order each of the child's birth parents to complete the medical information forms and release the medical information required under section 578-14.5, to the department. If the child's birth parents refuse to complete the forms or to release the information, the court may order the release of the information over the parents' objections;
- (7) Shall determine whether 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;
- (8) Shall determine the child's date of entry into foster care as defined in this chapter;
- (9) Shall set a periodic review hearing to be conducted no later than six months after the date of entry into foster care and a permanency hearing to be held no later than twelve months after the date of entry into foster care;

- (10) Shall set a status conference, as the court deems appropriate, to be conducted no later than ninety days after the return hearing; and
- (11) May order that:
 - (A) Any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and that are determined to be in the child's best interests;
 - (B) The child be examined by a physician, surgeon, psychiatrist, or psychologist; and
 - (C) The child receive treatment, including hospitalization or placement in other suitable facilities, as is determined to be in the child's best interests.

(f) If the court finds that the child's physical or psychological health or welfare has not been harmed or subjected to threatened harm by the acts or omissions of the child's family, the court shall enter an order to dismiss the petition and shall state the grounds for dismissal.

(g) Nothing in this section shall prevent the court from setting a termination of parental rights hearing at any time the court deems appropriate.

§ -29 Show cause hearing. At any stage of the proceeding, the court may set a show cause hearing at which a child's parents shall have the burden of presenting evidence as to why the case should not be set for a termination of parental rights or legal guardianship hearing.

§ -30 Periodic review hearing. (a) The court shall set a periodic review hearing to be conducted no later than six months after a child's date of entry into foster care. Thereafter, the court shall conduct periodic review hearings at intervals of no longer than six months until the court's jurisdiction is terminated. The court may set a case for a periodic review hearing upon the motion of a party at any time, if the court deems the hearing to be in the best interests of the child.

(b) At each periodic review hearing, the court shall review the status of the case to determine whether the child is receiving appropriate services and care, whether the case plan is being properly implemented, and whether the department's or authorized agency's activities are directed toward a permanent placement for the child. At the hearing, the court shall:

- (1) Determine whether the child is safe;
- (2) Determine the continued need for and appropriateness of the out-of-home placement;
- (3) Determine the extent to which each party has complied with the case plan and the family's progress in making their home safe for the child;
- (4) Determine the family's progress in resolving the problems that caused the child harm or to be threatened with harm and, if applicable, the necessity for continued out-of-home placement of the child;
- (5) Project a likely date for:
 - (A) The child's return to a safe family home; or
 - (B) The child's permanent placement out of the family home in the following order of preference:
 - (i) Adoption;
 - (ii) Legal guardianship; or
 - (iii) Other permanent out-of-home placement;
- (6) Evaluate visitation arrangements; and

- (7) Issue such further or other appropriate orders as it deems to be in the best interests of the child.
- (c) If the child has been in foster care under the responsibility of the department for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing, unless:
 - (1) The department has documented in the safe family home factors or other written report submitted to the court a compelling reason why it is not in the best interest of the child to file a motion; or
 - (2) The department has not provided to the family of the child, consistent with the time period required in the service plan, such services as the department deems necessary for the safe return of the child to the family home.
- (d) Nothing in this section shall prevent the department from filing a motion to set a termination of parental rights hearing if the department determines that the criteria for terminating parental rights are present.

§ -31 Permanency hearing. (a) A permanency hearing shall be conducted within twelve months of the child's date of entry into foster care or within thirty days of a judicial determination that the child is an abandoned infant or that aggravated circumstances are present. A permanency hearing shall be conducted at least every twelve months thereafter for as long as the child remains in foster care under the placement responsibility of the department.

(b) The court shall review the status of the case to determine whether the child is receiving appropriate services and care, that case plans are being properly implemented, and that activities are directed toward a permanent placement for the child.

(c) At each permanency hearing, the court shall make written findings pertaining to:

- (1) The extent to which each party has complied with the service plan and progressed in making the home safe;
- (2) Whether the current placement of the child continues to be appropriate and in the best interests of the child or if another in-state or out-of-state placement should be considered;
- (3) The court's projected timetable for reunification or, if the current placement is not expected to be permanent, placement in an adoptive home, with a legal guardian, or under the permanent custody of the department;
- (4) Whether the department has made reasonable efforts, in accordance with the safety and well-being of the child, to:
 - (A) Place siblings who have been removed from the family home with the same resource family, adoptive placement, or legal guardians; and
 - (B) Provide for frequent visitation or other on-going interactions with siblings who are not living in the same household;
- (5) The appropriate permanency goal for the child, including whether a change in goal is necessary;
- (6) Whether the department has made reasonable efforts to finalize the permanency goal in effect for the child and a summary of those efforts;
- (7) The date by which the permanency goal for the child is to be achieved;

- (8) In the case of a child who has attained sixteen years of age, the services needed to assist the child with the transition from foster care to independent living; and
- (9) Consultations with the child in an age-appropriate manner about the proposed plan for permanency or transition from foster care to independent living.
- (d) At each permanency hearing, the court shall order:
 - (1) The child's reunification with a parent or parents;
 - (2) The child's continued placement in foster care, where:
 - (A) Reunification is expected to occur within a time frame that is consistent with the developmental needs of the child; and
 - (B) The safety and health of the child can be adequately safeguarded; or
 - (3) A permanent plan with a goal of:
 - (A) Placing the child for adoption and when the department will file a motion to set the matter for the termination if¹ parental rights;
 - (B) Placing the child for legal guardianship if the department documents and presents to the court a compelling reason why termination of parental rights and adoption are not in the best interests of the child; or
 - (C) Awarding permanent custody to the department or an authorized agency, if the department documents and presents to the court a compelling reason why adoption and legal guardianship are not in the best interests of the child.
- (e) At each permanency hearing where a permanent plan is ordered, the court shall make appropriate orders to ensure timely implementation of the permanent plan and to ensure that the plan is accomplished within a specified period of time.
- (f) A permanency hearing may be held concurrently with a periodic review hearing.
- (g) If the child has been in foster care under the responsibility of the department for a total of twelve consecutive months or an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing unless:

- (1) The department has documented in the safe family home factors or other written report submitted to the court, a compelling reason why it is not in the best interest of the child to file a motion; or
- (2) The department has not provided to the family of the child, consistent with the time period required in the service plan, such services as the department deems necessary for the safe return of the child to the family home.

Nothing in this section shall prevent the department from filing a motion to set a termination of parental rights hearing if the department determines that the criteria for terminating parental rights are present.

§ -32 Permanent plan. (a) The permanent plan shall:

- (1) State whether the permanency goal for the child will be achieved through adoption, legal guardianship, or permanent custody;
- (2) Establish a reasonable period of time by which the adoption or legal guardianship shall be finalized;
- (3) Document:

- (A) A compelling reason why legal guardianship or permanent custody is in the child's best interests if adoption is not the goal; or
- (B) A compelling reason why permanent custody is in the child's best interests if adoption or legal guardianship is not the goal;
- (4) Establish other related goals, including those pertaining to the stability of the child's placement; education; health; therapy; counseling; relationship with the child's birth family, including visits, if any; cultural connections; and preparation for independent living;
- (5) If a child has reached the age of sixteen, describe the services needed to assist the child with the transition from foster care to independent living; and
- (6) Describe the methods for achieving the goals and objectives set forth in paragraphs (4) and (5).
- (b) A permanent plan prepared for a periodic review hearing or a permanency hearing shall describe:
 - (1) Progress toward achieving the goal of the plan;
 - (2) Proposed revisions to the goal of the plan and reasons for the revisions; and
 - (3) Proposed revisions to the methods for achieving the goals of the plan and objectives and the reasons for the revisions.

§ -33 Termination of parental rights hearing. (a) At a termination of parental rights hearing, the court shall determine whether there exists clear and convincing evidence that:

- (1) A child's parent whose rights are subject to termination is not presently willing and able to provide the parent's child with a safe family home, even with the assistance of a service plan;
- (2) It is not reasonably foreseeable that the child's parent whose rights are subject to termination 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 two years from the child's date of entry into foster care;
- (3) The proposed permanent plan is in the best interests of the child. In reaching this determination, the court shall:
 - (A) Presume that it is in the best interests of the child to be promptly and permanently placed with responsible and competent substitute parents and family in a safe and secure home; and
 - (B) Give greater weight to the presumption that the permanent plan is in the child's best interest, the younger the child is upon the child's date of entry into foster care; and
- (4) The child consents to the permanent plan if the child is at least fourteen years old, unless the court consults with the child in camera and finds that it is in the best interest of the child to proceed without the child's consent.
- (b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence and the goal of the permanent plan is for the child to be adopted or remain in permanent custody, the court shall order:
 - (1) That the child's parent's parental rights be terminated;
 - (2) Termination of the existing service plan and revocation of the prior award of foster custody;

- (3) That permanent custody of the child be awarded to an appropriate authorized agency;
- (4) An appropriate permanent plan; and
- (5) The entry of any other orders the court deems to be in the best interests of the child, including restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings;¹

(c) Unless otherwise ordered by the court or until the child is adopted, the child's family member shall retain, to the extent that the family member possessed the responsibility prior to the termination of parental rights, the continuing responsibility to support the child, including repaying the cost of any and all care, treatment, or any other service provided by the permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the child's benefit.

(d) A family member may be permitted visitation with the child at the discretion of the permanent custodian. The court may review the exercise of such discretion and may order that a family member be permitted such visitation as is in the best interests of the child.

(e) An order for the termination of parental rights 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, until the child has been adopted.

(f) The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequently authorized agencies, as the court deems to be in the best interests of the child.

(g) 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 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. The department shall immediately notify the court, and the court shall set the case for a permanency hearing within ten days after the department receives such a report, unless the court deems a later date to be in the best interests of the child.

(h) If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order:

- (1) The preparation of a plan to achieve permanency for the child;
- (2) The entry of any orders that the court deems to be in the best interests of the child;
- (3) A periodic review hearing to be held within six months after the date of the last permanency hearing; and
- (4) A permanency hearing to be held within twelve months of the date of the last permanency hearing.

(i) Absent compelling reasons, if the child has been in foster care under the department's responsibility for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing.

§ -34 Reinstatement of parental rights. (a) A child who is subject to an active proceeding under this chapter, the child's guardian ad litem, the child's attorney, if any, or the department, may file a motion to reinstate the terminated parental rights of the child's parents in a proceeding under this chapter, where the following circumstances exist:

- (1) The child has been in permanent custody for at least twelve months; and

(2) The child is fourteen years of age or older.

(b) A motion to reinstate parental rights shall be filed with the court and shall describe the factors supporting a reinstatement of parental rights. The court shall order a preliminary hearing to be held within ninety days and shall give prior notice to:

- (1) The former parent whose rights are sought to be reinstated;
- (2) The child's guardian ad litem;
- (3) The department; and
- (4) The child's resource family.

(c) The motion shall be denied if the parent whose rights are sought to be reinstated cannot be located.

(d) Within seven days before the preliminary hearing on the motion, the department and the child's guardian ad litem shall submit reports to the court that address:

- (1) The material change in circumstances since the termination of parental rights;
- (2) The reasons parental rights were terminated and the date of the termination order;
- (3) A parent's willingness to resume contact with the child and to have parental rights reinstated;
- (4) The child's willingness to resume contact with the parent and to have parental rights reinstated;
- (5) A parent's willingness and ability to be involved in the child's life and to accept physical custody of the child; and
- (6) Other relevant information.

(e) At a preliminary hearing on the motion, the court may order a trial home placement and a temporary reinstatement of parental rights upon finding that:

- (1) There has been a material change in circumstances;
 - (2) A parent is willing to provide care for the child;
 - (3) A parent is able to provide a safe family home or the home can be made safe with the assistance of services; and
 - (4) A trial home placement is in the child's best interests.
- (f) If the court issues a temporary order of reinstatement of parental

rights:

- (1) The child shall be conditionally placed in the physical care of the parent for a period not to exceed six months;
- (2) The department shall develop a permanent plan for reunification and shall ensure that transition services are provided to the family, as appropriate; and
- (3) The court shall hold a hearing on the motion to reinstate parental rights after the child has been placed with the parent for six months.

(g) The department has the authority to assess the trial home placement and to rescind the trial home placement according to the child's best interests.

(h) At a final hearing on the motion to reinstate parental rights, the court may issue a final order of reinstatement of parental rights and terminate its jurisdiction if the trial home placement has been successful. In making its final decision, the court shall determine whether the moving party has proven by clear and convincing evidence that:

- (1) Reinstatement of parental rights is in the best interests of the child, taking into consideration:
 - (A) Whether a parent has remedied the conditions that caused the termination of parental rights;

- (B) The age and maturity of the child and the child's ability to express a preference; and
- (C) The likelihood of risk to the health, safety, or welfare of the child;
- (2) A parent is able to provide the child with a safe family home;
- (3) Both the parent and child consent to the reinstatement of parental rights; and
- (4) The permanent plan goals for the child have not been and are not likely to be achieved.
- (i) A proceeding to reinstate parental rights shall be a separate action from the proceeding for the termination of parental rights. The granting of the motion to reinstate parental rights shall not affect the validity of the original termination order.

§ -35 Retention of jurisdiction. Except as otherwise provided in this chapter, the court may retain jurisdiction under this chapter until the full term for which any order entered expires or until the child attains nineteen years of age, whichever comes first.

§ -36 Appeal. An interested party aggrieved by any order or decree of the court under this chapter may appeal as provided in section 571-54.

PART V. MISCELLANEOUS

§ -37 Failure to comply with terms and conditions of an order of the court. If a party fails to comply with the terms and conditions of an order issued by the court under this chapter, the court may apply the provisions of section 710-1077 and any other provisions available under the law.

§ -38 Protective order. (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 issue a protective order to restrain any party from contacting, threatening, or physically abusing any other party or a child, if the court finds that a protective order is necessary to prevent domestic abuse (as that term and its component terms are defined in section 586-1) or a recurrence of domestic abuse.

(b) The protective order shall enjoin a party to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing any protected party or child;
- (2) Contacting, threatening, or physically abusing any person residing at the dwelling or residence of any protected party or child; and
- (3) Entering or visiting the dwelling or residence of any protected party or child.

(c) The protective order may provide for further relief as the court deems necessary to prevent the occurrence or recurrence of domestic abuse.

(d) The protective order may require a party to leave the party's dwelling or residence during the period of time in which the protective order is in effect.

(e) The protective order shall be binding upon not only any party against whom the protective order is directed, but also upon each such party's officers, agents, servants, employees, attorneys, and any other persons in active concert or participation with each such party.

(f) The court may order that an individual be made a party for the limited purpose of issuing a protective order against that individual.

(g) Upon application and a hearing, the court may modify the terms of, or terminate, an existing protective order.

(h) Any party may provide to appropriate law enforcement authorities a copy of a protective order issued pursuant to this section.

(i) The protective order shall become effective upon service pursuant to section -39(a).

§ -39 Notice and service of protective order. (a) A protective order issued pursuant to section -38 shall be served either personally or by certified mail on each party to be restrained. In the case where a party was present at the hearing during which the protective order was issued, that party shall be deemed to have notice of the order.

(b) The court may order the police department to serve a protective order issued pursuant to section -38 upon each party to be restrained, to accompany a protected party to that party's dwelling or residence, and to place the protected party in possession of that party's dwelling or residence.

(c) Within twenty-four hours after its issuance, a protective order issued pursuant to section -38 shall be transmitted by the clerk of the court to the appropriate county police department.

§ -40 Court records. The court shall keep a record of all child protective proceedings under this chapter. Written reports, photographs, x-rays, or other information that are submitted to the court may be made available to other appropriate persons, who are not parties, only upon an order of the court. The court may issue this order upon determining that such access is in the best interests of the child or serves some other legitimate purpose.

As set forth in rules adopted pursuant to chapter 91 by the department of human services and consistent with applicable laws, the department may disclose information in the court record without order of the court, unless otherwise ordered by the court.

§ -41 Payment for service or treatment provided to a party or for a child's care, support, or treatment. (a) Whenever a service or treatment is provided to a party, or whenever care, support, or treatment of a child is provided under this chapter, the court may order the payment of such expenses by the persons or legal entities who are legally responsible for the same, after reasonable notice and hearing as the court directs.

(b) The provisions of section 571-52 and all other remedies available under the law shall be applicable to enforce orders issued pursuant to this section.

§ -42 Educational, medical, dental, and recreational needs. Upon the first day of placement, a child's resource family shall have the authority, for the child placed in the resource family's care:

- (1) To consent to routine educational and recreational needs and activities, except for purposes regulated under title 8, chapters 60 and 61, of the Hawaii Administrative Rules, or successor rules; and
- (2) To seek and obtain ordinary medical and dental care, immunizations, and well-baby and well-child medical services.

§ -43 Child protective review panel. (a) The department shall establish a child protective review panel to review each case of child abuse or neglect that leads to near fatality or death as a result of acts or omissions of the child's legal

caretaker. Based upon its review, the panel shall submit a report of its findings and recommendations to the director of the department. The department shall appoint members of the child protective review panel, who may include:

- (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 -16, if applicable;
- (4) The members of the child's multidisciplinary team or a 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; provided that state employees serving within the scope of their employment shall receive compensation and reimbursement 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 an abused child under this chapter."

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§346- 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.

§346- Motor vehicle insurance. The parents of a child under foster care who has obtained a driver's license shall pay the costs of the child's motor vehicle insurance, unless the court determines the parents to be financially unable to pay the costs, in which case the child's insurance costs shall be paid pursuant to sections 431:10C-407 and 431:10C-410.”

SECTION 3. Chapter 350, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§350- Authorization for color photographs, x-rays, and radiological or other diagnostic examination. (a) Any health professional or paraprofessional, physician licensed or authorized to practice medicine in this State, registered nurse or licensed practical nurse, hospital or similar institution's personnel engaged in the admission, examination, care, or treatment of patients, and any medical examiner, coroner, social worker, or police officer, who has before the person a child the person reasonably believes has been harmed, shall make every good faith effort to take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken x-rays of the child or cause a radiological or other diagnostic examination to be performed on the child.

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

§350- Disclosure of records. (a) The department shall disclose to resource 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 services 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 resource 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."

SECTION 4. 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 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 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,] -31, 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 5. 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), (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 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 the person's written reasons for withholding consent, is found by the court to be withholding 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 the child's country of origin, by reason of which extraordinary circumstances the existence, identity, or whereabouts of 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.] -33;
- (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), (4), or (5) herein, upon finding that:
- (A) The petitioner is the stepfather of the child and the child has lived with the child's legal mother and the petitioning stepfather for a period of at least one year;
 - (B) The father is a concerned father as provided by subsection (a) (5), herein, and has not filed a petition to adopt the child, or the petition to adopt the child filed by the father has been denied; or
 - (C) The father is an adjudicated, presumed, or concerned father as provided by subsections (a)(3), (4), or (5), herein, and is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education."

SECTION 6. Section 578-14.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Whenever possible, a completed form with the required information on each natural parent shall accompany any document, to be filed with the family court, which requests the relinquishment, termination, or divestiture of parental rights, as provided under sections 571-61 and [587-73(b)(3);] -31, and the petition for adoption under this chapter. If available, a copy of the hospital or other facility's medical records under subsection (b) shall also accompany the document to be filed in the family court. This copy shall not be disseminated to the parties and shall be sealed by the family court pending transmittal to the department of health."

2. By amending subsection (e) to read:

"(e) If the natural parents have been court ordered to complete the forms required in subsection (c) pursuant to section [587-71(a);] -28(e)(6) and have either failed to complete the forms or have failed to return the completed forms

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to the department of human services, the requirement in subsection (c) shall be waived.”

SECTION 7. Effective upon the approval of this Act, sections 321-342, 321-471, 325-101, 346-16, 346-65, 350-2, 350-3, 560:5-205, 560:5-206, 571-2, 571-11, 571-41, 577-28, 586-10.5, 626-1, Rule 505.5, and 706-606.3, Hawaii Revised Statutes, are amended by replacing the reference to chapter 587, Hawaii Revised Statutes, with the reference to the new replacement chapter in section 1 of this Act.

SECTION 8. Chapter 587, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 10. This Act shall take effect on September 1, 2010.

(Approved May 24, 2010.)

Notes

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