

ACT 51

S.B. NO. 1291

A Bill for an Act Relating to Child Protective Act Court Proceedings.

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

SECTION 1. During the 2010 regular session, the legislature passed S.B. No. 2716, C.D. 1, which was enacted as Act 135, Session Laws of Hawaii 2010, and codified as the Child Protective Act, chapter 587A, Hawaii Revised Statutes. Act 135 was a comprehensive update of the former Child Protective Act, chapter 587, Hawaii Revised Statutes, which was repealed by Act 135. The provisions of Act 135 ensure the State's compliance with federal Title IV-E requirements so that Hawaii remains eligible for approximately \$40,000,000 in annual federal funding. Subsequent to the enactment of chapter 587A, it has become necessary to clarify wording in the statute to further ensure consistency in practice and compliance with federal requirements.

SECTION 2. Section 587A-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§587A-5]]~~ Jurisdiction. Pursuant to section 571-11(9), the court shall have exclusive original jurisdiction ~~[in a child protective proceeding concerning]:~~

- (1) 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[-]; and
- (2) In any prior child protective proceeding under chapter 587, the former Child Protective Act.”

SECTION 3. Section 587A-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 [faet] family 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."

SECTION 4. Section 587A-28, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(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 587A-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.]~~ terminate parental rights unless 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.
- (B) If aggravated circumstances are not present[,] or there is a compelling reason why it is not in the best interest of the child to file a motion to terminate parental rights, 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."

SECTION 5. Section 587A-30, Hawaii Revised Statutes, is amended to read as follows:

“[§587A-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[;] unless the child is in the permanent custody of the department or an authorized agency. If the child is in the permanent custody of the department or an authorized agency, the court shall conduct a permanency hearing 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[;] and 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;
 - (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;
or
 - (C) To terminate jurisdiction if the court finds that the child’s parents are willing and able to provide the child with a safe family home without the assistance of a service plan;
- (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;]~~ terminate parental rights, 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~~ terminate parental rights if the department determines that the criteria for terminating parental rights are present."

SECTION 6. Section 587A-31, Hawaii Revised Statutes, is amended to read as follows:

"[§587A-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~~[-]~~ or an authorized agency, or every six months thereafter if the child remains in the permanent custody of the department or an authorized agency.

(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~~[-]~~ or an authorized agency;
- (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 ~~[[of]]~~ 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]~~ terminate parental rights, 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.
- (h) ~~Nothing in this section shall prevent the department from filing a motion to [set a termination of parental rights hearing]~~ terminate parental rights if the department determines that the criteria for terminating parental rights are present."

SECTION 7. Section 587A-33, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(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.]~~
terminate parental rights.”

SECTION 8. Section 587A-34, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) At a preliminary hearing on the motion, the court shall continue the prior award of permanent custody and 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.”

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

SECTION 10. This Act shall take effect on October 1, 2011.

(Approved May 18, 2011.)