

ACT 133

H.B. NO. 2350

A Bill for an Act Relating to Foster Children.

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

SECTION 1. The legislature finds that the Preventing Sex Trafficking and Strengthening Families Act of 2014, Public Law 113-183, expands the opportunities for children in foster care to participate in age or developmentally

appropriate extracurricular, enrichment, cultural, and social activities equal to their classmates and peers in accordance with the “reasonable and prudent parent standard”.

The Preventing Sex Trafficking and Strengthening Families Act, title 42 United States Code section 675(10)(A), defines the “reasonable and prudent parent standard” as “the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, and social activities”.

The legislature further finds that qualified immunity from civil liability for injury to a child resulting from participation in extracurricular activities will encourage and allow resource caregivers and child caring institutions to make reasonable parenting decisions and will remove barriers to recruitment and retention of high quality resource caregivers. Qualified immunity from liability for resource caregivers and child caring institutions that authorize a child’s participation in ordinary childhood activities in accordance with the reasonable and prudent parent standard as defined under federal law protects and enhances the capacity of resource caregivers and child caring institutions and to encourage and support children.

The Preventing Sex Trafficking and Strengthening Families Act also requires that children in foster care who are fourteen years of age and older be included in case planning and be informed of their rights and the options available to them. The federal Act lowered the age from sixteen to fourteen years old in recognition that those children should be included in the important planning processes that will strengthen their self-sufficiency and better prepare them for successful transition from foster care into adulthood.

Compared to their peers, young people who have experienced foster care are more likely to become homeless and unemployed when they age out of foster care, are less likely to complete high school or postsecondary education, and are more likely to have physical, developmental, and mental health challenges. Unlike their peers, most lose their support system when they reach age eighteen and are discharged from state custody.

The purpose of this Act is to bring the State into compliance with the Preventing Sex Trafficking and Strengthening Families Act of 2014; expand the opportunities for children in foster care to participate equally with their classmates and peers by providing qualified immunity from liability for resource caregivers and child caring institutions for their decisions regarding the child’s participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities; and require courts, in proceedings for children aged fourteen years or older, to make findings and include in the permanent plan the services needed to assist the child to transition from foster care to independent living.

SECTION 2. Section 346-16, Hawaii Revised Statutes, is amended by amending the definition of “foster boarding home” to read as follows:

“~~“Foster boarding~~” “Resource family home” means any boarding home in which:

- (1) One or more, but fewer than six, minor children are received; ~~and~~
- or
- (2) Six or more minor siblings are placed together in the best interests of the children,

for care and maintenance apart from their parents or guardians on a twenty-four hour basis for fee or charge.”

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

“§346-17 Child placing organizations, child caring institutions, and ~~foster boarding~~ resource family homes; authority over, investigation of, and standards for.

(a) No child placing organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets the standards of conditions, management, and competence set by the department of human services.

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

(c) No ~~foster boarding~~ resource family home shall receive for care and maintenance any child unless:

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

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

(d) The department shall adopt rules pursuant to chapter 91 relating to:

(1) Standards for the organization and administration of child placing organizations; and

(2) Standards ~~of~~ for the conditions, management, operations, and competence of child caring institutions and resource family homes for the care ~~and training~~, education, and protection of minor children ~~in child caring institutions and foster boarding homes; and~~

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

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

(f) As a condition for a certificate of approval, any organization, institution, or ~~foster boarding~~ resource family home, including all adults residing in the ~~foster boarding~~ resource family home, shall:

(1) Meet all standards and requirements established by the department;

(2) Be subject to criminal history record checks in accordance with section 846-2.7, and child abuse and neglect registry checks, in accordance with departmental procedures; and

(3) Provide consent to the department or its designee to obtain criminal history record and child abuse and neglect registry information.

New employees of the organization, institution, or home shall be fingerprinted within five working days of employment.

(g) Upon approval of the organization, institution, or ~~foster boarding~~ resource family home, the department or its authorized agents shall issue a certificate of approval that shall continue in force for one year or for two years

if the organization, institution, or ~~[foster-boarding]~~ resource family home meets the criteria established by the department, unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual or biennial investigation, if the investigation discloses that the organization, institution, or ~~[foster-boarding]~~ resource family home continues to meet the standards set by the department. The certificate of approval shall be a permit to operate the child placing organization, child caring institution, or ~~[foster-boarding]~~ resource family home, and no person or organization shall operate or maintain the organization, institution, or ~~[foster-boarding]~~ resource family home without the certificate.

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

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

(j) The department or its designee shall request:

- (1) A criminal history record check through the Hawaii criminal justice data center on all operators, employees, and new employees of child care institutions, child placing organizations, and ~~[foster-boarding]~~ resource family homes, including all adults residing in the ~~[foster-boarding]~~ resource family homes, subject to ~~[licensure]~~ checks pursuant to section 846-2.7; and
- (2) A child abuse and neglect registry check on all operators, employees, and new employees of child care institutions, child placing organizations, and adults residing in a ~~[foster-boarding]~~ resource family home subject to licensure in accordance with departmental procedures.

(k) The department may deny a certificate of approval if an operator, employee, or new employee of a child care institution or child placing organization's facility, or any adult residing in a ~~[foster-boarding]~~ resource family home, was convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds that the criminal history record or child abuse registry history of an operator, employee, new employee, or adult residing in a ~~[foster-boarding]~~ resource family home poses a risk to the health, safety, or well-being of the children in care.

(l) The department or its designee shall make a name inquiry into the criminal history records for the first two years of certification of a ~~[foster-boarding]~~ resource family home and annually or biennially thereafter and into the child abuse and neglect registry in accordance with departmental procedures depending on the certification status of the home.

(m) Any resource caregiver or child caring institution issued a certificate of approval pursuant to this section shall be immune from liability in a civil action to recover damages for injury, death, or loss to a person or property that results by authorizing a child in the caregiver's or institution's foster care to participate in an extracurricular, enrichment, cultural, or social activity; provided that the authorization is in accordance with the reasonable and prudent parent standard as defined in title 42 United States Code section 675(10)(A)."

SECTION 4. Section 587A-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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[-]; and
- (11) May participate in extracurricular, enrichment, cultural, and social activities; provided that the child caring institution or resource caregiver authorizes the participation in accordance with the reasonable and prudent parent standard as defined in title 42 United States Code section 675(10)(Ap).”

SECTION 5. Section 587A-31, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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 adop-

- tive 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 ongoing 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~~ fourteen 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.”

SECTION 6. Section 587A-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(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~~ fourteen, 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).”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act, upon its approval, shall take effect on July 1, 2016.

(Approved June 29, 2016.)