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# A BILL FOR AN ACT

RELATING TO THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS OF  
KANAKA MAOLI.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

**PART I**

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SECTION 1. The legislature, recognizing the special relationship between the United States, the State of Hawaii, and the Native Hawaiian people, and the federal and state responsibility to Native Hawaiians, finds:

(1) That clause 3, section 8, article 1 of the United States Constitution provides that "The Congress shall have Power...To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;" and that, through this and other constitutional authority, Congress has plenary power over Native Hawaiian affairs;

(2) That Congress, through statute, treaties, and the general course of dealing with Native Hawaiians, has assumed the responsibility for the protection and preservation of Native Hawaiians and their resources;



1 (3) That there is no resource that is more vital to the  
2 continued existence and integrity of Native Hawaiians  
3 than their children, and that the United States has a  
4 direct interest as trustee in protecting Native  
5 Hawaiian children;

6 (4) That an alarmingly high percentage of Native Hawaiian  
7 families are broken up by the removal, often  
8 unwarranted, of their children from them by non-  
9 Hawaiian public and private agencies and that an  
10 alarmingly high percentage of such children are placed  
11 in non-Hawaiian foster and adoptive homes and  
12 institutions; and

13 (5) That the State, exercising its jurisdiction over  
14 Native Hawaiian child custody proceedings through  
15 administrative and judicial bodies, has often failed  
16 to recognize the essential customary relations of  
17 Native Hawaiian people and the cultural and social  
18 standards prevailing in Native Hawaiian communities  
19 and families.

20 The legislature hereby declares that it is the policy of  
21 this State to protect the cultural and traditional interests of  
22 Native Hawaiian children and to promote the stability and



1 security of Native Hawaiian families by the establishment of  
 2 standards for the removal of Native Hawaiian children from their  
 3 families and the placement of such children in hanai or lawe  
 4 hanai homes which will reflect the unique values of Native  
 5 Hawaiian culture, and by providing for assistance to Native  
 6 Hawaiians in the operation of child and family service programs.

7 SECTION 2. The Hawaii Revised Statutes is amended by  
 8 adding a new chapter to be appropriately designated and to read  
 9 as follows:

10 "CHAPTER

11 NATIVE HAWAIIAN CHILD WELFARE ACT

12 PART I. CHILD CUSTODY PROCEEDINGS

13 § -1 Short title. This chapter may be cited as the  
 14 "Native Hawaiian Child Welfare Act".

15 § -2 Definitions. For the purposes of this chapter,  
 16 except as may be specifically provided otherwise:

17 "Ahupuaa" means Native Hawaiian districts as defined in  
 18 Kingdom of Hawaii law and any lands, not covered under such  
 19 section, title to which is either held by the United States and  
 20 the department of Hawaiian home lands in trust for the benefit  
 21 of any Native Hawaiian or held by any Native Hawaiian subject to  
 22 a restriction by the Nation of Hawaii against alienation.



1 "Child custody proceeding" shall include hanai placement or  
2 lawe hanai placement of, or involuntary termination of parental  
3 rights to, a Native Hawaiian child.

4 "Extended family member" shall be as defined by the custom  
5 of the Native Hawaiian child, and shall include a person who has  
6 reached the age of eighteen years and who is the Native Hawaiian  
7 child's grandparent, aunt or uncle, brother or sister, brother-  
8 in-law or sister-in-law, niece or nephew, first or second  
9 cousin, stepparent, or hanai or lawe hanai relation.

10 "Hanai placement":

11 (1) Means any action to remove a Native Hawaiian child  
12 from the child's parent or Native Hawaiian custodian  
13 for temporary placement in a hanai or lawe hanai home  
14 or institution, or the home of a guardian or  
15 conservator. In a hanai placement, the parent or  
16 Native Hawaiian custodian cannot have the child  
17 returned upon demand, but the parental rights of that  
18 parent or custodian have not been terminated.

19 (2) Shall not include a placement based upon an act which,  
20 if committed by an adult, would be deemed a crime; or  
21 upon an award in a divorce or similar proceeding of  
22 custody of the child to one of the parents.



1 "Lawe hanai placement" means .  
2 "Na Kupuna tribunal" means the Na Kupuna administrative  
3 body before which matters may be heard or tried but which is not  
4 necessarily presided by over by judges as in a judicial forum.  
5 The Na Kupuna tribunal exercises licensing, certifying,  
6 approval, or adjudication authority which affects the legal  
7 rights of all Native Hawaiian people; and which includes the  
8 maximum participation of Native Hawaiians in all phases of its  
9 activities.

10 "Native Hawaiian" means any person who is a linear  
11 descendant of the people who exercised sovereignty in Hawaii  
12 prior to 1778. "Native Hawaiian" shall include any Native  
13 Hawaiian nation, or Native Hawaiian organized group or Native  
14 Hawaiian community, which is recognized as eligible for the  
15 special programs and services provided by the United States to  
16 Native Hawaiians because of their status as Native Hawaiians.

17 "Native Hawaiian child" means any unmarried person or  
18 married person who is under the age of eighteen.

19 "Native Hawaiian custodian" means any Native Hawaiian or  
20 non-Hawaiian person who has the responsibility for the care,  
21 custody, and control of a Native Hawaiian child under standards  
22 and policies adopted by the Na Kupuna tribunal, or to whom



1 temporary physical care, custody, and control has been  
2 transferred by the parent of the child.

3 "Native Hawaiian organization" means any group,  
4 association, partnership, corporation, or other legal entity  
5 owned or controlled by Native Hawaiians.

6 "Parent" means any biological parent or parents of a Native  
7 Hawaiian child or any Native Hawaiian or non-Hawaiian person who  
8 has lawfully adopted a Native Hawaiian child, including hanai or  
9 lawe hanai customs.

10 § -3 Na Kupuna tribunal; establishment. There is  
11 established the Na Kupuna tribunal, which shall be a body  
12 corporate and politic. The Na Kupuna tribunal shall be placed  
13 within the for administrative purposes only.

14 The Na Kupuna tribunal shall consist of members.

15 Notwithstanding section 26-34, members of the Na Kupuna  
16 tribunal shall be selected by for year  
17 terms. The members of the tribunal shall serve without  
18 compensation, but shall be reimbursed reasonable expenses in  
19 connection with their duties.

20 § -4 Na Kupuna tribunal; jurisdiction over Native  
21 Hawaiian child custody proceedings. (a) The Na Kupuna tribunal  
22 shall have exclusive jurisdiction over any child custody

1 proceeding involving a Native Hawaiian child in this State, and  
2 may petition for the transfer of proceedings involving a Native  
3 Hawaiian child from any other state to its jurisdiction pursuant  
4 to this chapter. Where a Native Hawaiian child is a ward of a  
5 Native Hawaiian or non-Hawaiian entity, the Na Kupuna tribunal  
6 shall retain exclusive jurisdiction over the child,  
7 notwithstanding the residence or domicile of the child.

8 (b) In any court proceeding for the hanai or lawe hanai  
9 placement of, or involuntary termination of parental rights to a  
10 Native Hawaiian child in this State, the court shall transfer  
11 such proceeding to the jurisdiction of the Na Kupuna tribunal,  
12 absent objection by either parent, and upon the petition of  
13 either parent or the Native Hawaiian custodian.

14 (d) The tribunal may decline jurisdiction over any case at  
15 any time.

16 § -5 **Right of intervention.** The Native Hawaiian  
17 custodian of the child and the Na Kupuna tribunal and shall have  
18 a right to intervene at any point in any state court proceeding  
19 for the hanai or lawe hanai placement of, or involuntary  
20 termination of parental rights to a Native Hawaiian child.

21 § -6 **Proceedings in other states and jurisdictions.** (a)  
22 The Native Hawaiian custodian of the child and the Na Kupuna



1 tribunal may petition to intervene at any point in any court  
2 proceeding for the hanai or lawe hanai placement of, or  
3 involuntary termination of parental rights to a Native Hawaiian  
4 child, in any other state or jurisdiction.

5 (b) In any court proceeding for the hanai or lawe hanai  
6 placement of, or involuntary termination of parental rights to a  
7 Native Hawaiian child, the Native Hawaiian custodian of the  
8 child and the Na Kupuna tribunal may petition the court for  
9 transfer of the proceedings to this State.

10 § -7 **Court proceedings.** (a) In any child custody  
11 proceeding in a court of this State, where the court knows or  
12 has reason to believe that a Native Hawaiian child is involved,  
13 the party seeking the hanai or lawe hanai placement of, or  
14 involuntary termination of parental rights to, a Native Hawaiian  
15 child shall notify the parent or Native Hawaiian custodian and  
16 the Na Kupuna tribunal by registered mail with return receipt  
17 requested, of the pending proceedings and of their right of  
18 intervention. If the identity or location of the parent or  
19 Native Hawaiian custodian and the Na Kupuna tribunal cannot be  
20 determined, the notice shall be given to the governor, who shall  
21 have fifteen days after receipt to provide the requisite notice  
22 to the parent or Native Hawaiian custodian and the tribunal.





1 (b) No child custody proceeding involving a Native  
2 Hawaiian child shall be held until at least ten days after  
3 receipt of notice by the parent or Native Hawaiian custodian and  
4 the Na Kupuna tribunal; provided that the parent or Native  
5 Hawaiian custodian or the Na Kupuna tribunal shall be granted,  
6 upon request, up to twenty additional days to prepare for such  
7 proceeding.

8 (c) Where it appears to the court that a person requesting  
9 the appointment of counsel satisfies the requirements of chapter  
10 802 for determination of indigency, the parent or Native  
11 Hawaiian custodian shall have the right to counsel provided by  
12 the Na Kupuna tribunal. Compensation for such counsel shall be  
13 as provided in section 571-87.

14 (d) Each party to a hanai or lawe hanai placement, or  
15 involuntary termination of parental rights proceeding involving  
16 a Native Hawaiian child shall have the right to examine all  
17 reports or other documents filed with the court upon which any  
18 decision with respect to such action may be based.

19 (e) Any court entering a final decree or order for hanai  
20 or lawe hanai placement of a Native Hawaiian child after the  
21 effective date of this Act, shall provide the Na Kupuna tribunal



1 with a copy of such decree or order together with such other  
2 information as may be deemed necessary to show:

- 3 (1) The name and genealogy of the child;
- 4 (2) The names and addresses of the biological parents;
- 5 (3) The names and addresses of the hanai or lawe hanai  
6 parents; and
- 7 (4) The identity of any agency having files or information  
8 relating to such hanai or lawe hanai placement.

9 Where the court records contain an affidavit of the  
10 biological parent or parents requesting that their identity  
11 remain confidential, the court shall include such affidavit with  
12 the other information. The Na Kupuna tribunal shall insure that  
13 the confidentiality of such information is maintained and such  
14 information shall not be subject to chapter 92F or the Freedom  
15 of Information Act (5 U.S.C. 552), as amended.

16 § -8 Remedial services and rehabilitative programs;  
17 preventive measures. (a) Any party seeking to effect a hanai  
18 or lawe hanai placement of, or involuntary termination of  
19 parental rights to a Native Hawaiian child shall immediately be  
20 referred to the Na Kupuna tribunal to provide customarily  
21 traditional remedial services and culturally sensitive



1 rehabilitative programs designed to prevent the involuntary  
2 breakup of the Native Hawaiian family.

3 (b) No hanai or lawe hanai placement may be ordered in  
4 such proceeding in the absence of a determination, supported by  
5 evidence beyond a reasonable doubt, and by testimony of Native  
6 Hawaiian family members and the Na Kupuna tribunal, that the  
7 continued custody of the child by the parent or Native Hawaiian  
8 custodian is likely to result in serious emotional or physical  
9 damage to the child.

10 § -9 **Parental rights; involuntary termination**

11 **prohibited.** No involuntary termination of parental rights may  
12 be ordered.

13 § -10 **Parental rights; consent to voluntary termination.**

14 (a) Where any parent or Native Hawaiian custodian voluntarily  
15 consents to a hanai or lawe hanai placement, or to the voluntary  
16 termination of parental rights to a Native Hawaiian child, such  
17 consent shall not be valid unless executed in writing and  
18 recorded before the Na Kupuna tribunal or other competent  
19 jurisdiction, and accompanied by the Na Kupuna tribunal's  
20 certification that the terms and consequences of the consent  
21 were fully explained in detail and were fully understood by the  
22 parent or Native Hawaiian custodian. The explanation and



1 consent may be in the English language if understood by the  
2 parent or Native Hawaiian custodian, or at the request of the  
3 parent or Native Hawaiian custodian, shall be in any language  
4 the parent or Native Hawaiian custodian understands.

5 (b) Any consent given prior to, or within twelve months  
6 after, birth of the Native Hawaiian child shall not be valid.

7 **§ -11 Parental rights; withdrawal of consent to**

8 **voluntary termination.** (a) Any parent or Native Hawaiian  
9 custodian may withdraw consent to a hanai or lawe hanai  
10 placement at any time, and upon such withdrawal, the child shall  
11 be returned to the parent or Native Hawaiian custodian.

12 (b) In any voluntary proceeding for termination of  
13 parental rights to, or voluntary adoptive placement of a Native  
14 Hawaiian child, the consent of the parent may be withdrawn for  
15 any reason, and the child shall be returned to the parent upon  
16 completion of ho'oponopono process in its entirety.

17 (c) After the entry of a final decree of voluntary  
18 adoption of a Native Hawaiian child in any court, the parent may  
19 withdraw consent thereto upon the ground that consent was  
20 obtained through fraud or duress and may petition the court to  
21 vacate the decree. Upon a finding that such consent was  
22 obtained through fraud or duress, the court shall vacate the



1 decree and return the child to the parent. Any adoption which  
2 has been obtained through fraud or duress shall be invalidated  
3 under the provisions of this subsection.

4 § -12 **Petition to court of competent jurisdiction to**  
5 **invalidate action upon showing of certain violations.** Any  
6 Native Hawaiian child who is the subject of any action for hanai  
7 or lawe hanai placement or involuntary termination of parental  
8 rights, any parent or Native Hawaiian custodian from whose  
9 custody the child was removed, and the Na Kupuna tribunal may  
10 petition any court of competent jurisdiction to invalidate such  
11 action upon a showing that the action violated any provision of  
12 this chapter.

13 § -13 **Placement of Native Hawaiian children.** (a) In  
14 any hanai or lawe hanai placement of a Native Hawaiian child  
15 under this chapter, preference shall be given, in the absence of  
16 good cause to the contrary, to a placement with:

- 17 (1) A member of the child's extended family;
- 18 (2) Other members of the Native Hawaiian child's family;
- 19 (3) Other Native Hawaiian families;
- 20 (4) A hanai or lawe hanai home licensed, approved, or
- 21 specified by the Na Kupuna tribunal;



1 (5) A Native Hawaiian hanai or lawe hanai home licensed or  
2 approved by a non-Native Hawaiian licensing authority  
3 authorized by the Na Kupuna tribunal; or

4 (6) An institution for children approved by the Na Kupuna  
5 tribunal or operated by a Native Hawaiian organization  
6 which has a program suitable to meet the Native  
7 Hawaiian child's needs.

8 The Na Kupuna tribunal may establish a different order of  
9 preference by resolution.

10 (b) Any child accepted for hanai or lawe hanai placement  
11 shall be placed in the least restrictive setting which most  
12 approximates a family and in which the child's special needs, if  
13 any, may be met. The child shall also be placed within  
14 reasonable proximity to the child's former home, taking into  
15 account any special needs of the child.

16 (c) Where appropriate, the preference of the Native  
17 Hawaiian child or parent shall be paramount; provided, that  
18 where a consenting parent evidences a desire for anonymity, the  
19 Na Kupuna tribunal or authorized agency shall give weight to  
20 such desire in applying the preferences.

21 (d) The standards to be applied in meeting the preference  
22 requirements of this section shall be the prevailing social and



1 cultural standards of the Native Hawaiian community in which the  
2 parent or extended family resides or with which the parent or  
3 extended family members maintain social and cultural ties.

4 (e) A record of each placement of a Native Hawaiian child  
5 shall be maintained by the Na Kupuna tribunal in which the  
6 placement was made, evidencing the efforts to comply with the  
7 order of preference specified in this section. The record shall  
8 be made available at any time upon the request of the Na Kupuna  
9 tribunal.

10 § -14 **Return of custody.** (a) Whenever a final decree  
11 of adoption of a Native Hawaiian child has been vacated or set  
12 aside, or the adoptive parents voluntarily consent to the  
13 termination of their parental rights to the child, a biological  
14 parent or prior Native Hawaiian custodian may petition for  
15 return of custody of the child. The Na Kupuna tribunal shall  
16 grant the petition unless there is a showing, in a proceeding  
17 subject to this chapter, that the return of custody is not in  
18 the best cultural interests of the child.

19 (b) Whenever a Native Hawaiian child is removed from a  
20 hanai home or lawe hanai home or institution for the purpose of  
21 further hanai placement, such placement shall be in accordance  
22 with the provisions of this chapter, except in the case where a



1 Native Hawaiian child is being returned to the parent or Native  
2 Hawaiian custodian from whose custody the child was originally  
3 removed.

4       §   -15   **Genealogical information; disclosure by the Na**  
5 **Kupuna tribunal.** Upon application by a Native Hawaiian  
6 individual who has reached the age of eighteen and who was the  
7 subject of a hanai or lawe hanai placement, or the hanai or lawe  
8 hanai parents of a Native Hawaiian child, the Na Kupuna tribunal  
9 shall disclose such information as may be necessary for the  
10 determination of any rights or benefits the individual or child  
11 may have that is associated with the child's genealogy. Where  
12 the documents relating to such child contain an affidavit from  
13 the biological parent or parents requesting anonymity, the Na  
14 Kupuna tribunal shall certify to the Native Hawaiian child's  
15 family, where the information warrants, that the child's  
16 parentage and other circumstances of birth entitle the child to  
17 all rights and benefits of that lineage.

18       §   -16   **Reassumption of jurisdiction over child custody**  
19 **proceedings.** (a) The Na Kupuna tribunal that became subject to  
20 state jurisdiction pursuant to the provisions of the Admission  
21 Act or pursuant to any other federal law, may reassume  
22 jurisdiction over child custody proceedings. Before the Na





1 Kupuna tribunal may reassume jurisdiction over Native Hawaiian  
2 child custody proceedings, the tribunal shall present to the  
3 governor for approval a petition to reassume such jurisdiction  
4 which includes a suitable plan to exercise such jurisdiction.

5 (b) In considering the petition and feasibility of the  
6 plan of the Na Kupuna tribunal under subsection (a), the  
7 governor shall consider, among other things:

8 (1) Whether or not the Na Kupuna tribunal maintains a  
9 sovereign roster of Native Hawaiians clearly  
10 identifying the persons who will be affected by the  
11 reassumption of jurisdiction by the tribunal;

12 (2) The size of the Native Hawaiian land base which will  
13 be affected by retrocession and reassumption of  
14 jurisdiction by Na Kupuna tribunal;

15 (3) The population base of the Na Kupuna tribunal, or  
16 distribution of the population in homogeneous  
17 communities or geographic areas; and

18 (4) The feasibility of the plan in cases of multicultural  
19 occupation of a single geographic area.

20 (c) In those cases where the governor determines that the  
21 jurisdictional provisions of this chapter are not feasible, the  
22 governor is authorized to accept partial retrocession which will



1 enable the Na Kupuna tribunal to exercise referral jurisdiction,  
2 or, where appropriate, will allow it to exercise exclusive  
3 jurisdiction as provided in this chapter over limited community  
4 or geographic areas.

5 (d) If the governor approves any petition under subsection  
6 (a), the governor shall have notice of that approval published  
7 in the Federal Register and shall notify the affected states of  
8 the approval. Na Kupuna tribunal shall reassume jurisdiction  
9 sixty days after publication in the Federal Register of notice  
10 of approval. If the governor disapproves any petition under  
11 this section, the governor shall provide such technical  
12 assistance as may be necessary to enable the Na Kupuna tribunal  
13 to correct any deficiency which the governor identified as a  
14 cause for disapproval.

15 (e) Assumption of jurisdiction under this section shall  
16 not affect any action or proceeding over which the Na Kupuna  
17 tribunal already assumed jurisdiction.

18 § -17 **Agreements between other states and Na Kupuna**  
19 **tribunal.** (a) The Na Kupuna tribunal may enter into agreements  
20 with other states respecting care and custody of Native Hawaiian  
21 children and jurisdiction over child custody proceedings,  
22 including agreements which may provide for orderly transfer of



1 jurisdiction of all cases affected by this chapter and  
2 agreements authorized by this section which provide for  
3 concurrent jurisdiction between the other states and the Na  
4 Kupuna tribunal.

5 (b) Agreements entered into pursuant to subsection (a)  
6 shall bind all parties upon ninety days' written notice to the  
7 other party and shall not affect any action or proceeding over  
8 which a court has already assumed jurisdiction, unless the  
9 agreement provides otherwise.

10 § -18 **Improper removal of child from custody; return of**  
11 **child.** Where any petitioner in a Native Hawaiian child custody  
12 proceeding before a state court has improperly removed the child  
13 from the custody of the parent or Native Hawaiian custodian, or  
14 has improperly retained custody after a visit or other temporary  
15 relinquishment of custody, the court shall decline jurisdiction  
16 over such petition and shall forthwith return the child to its  
17 parent or Native Hawaiian custodian unless the court determines,  
18 based upon evidence beyond a reasonable doubt, that returning  
19 the child to its parent or custodian would subject the child to  
20 a substantial and immediate danger or threat of such danger.

21 § -19 **Na Kupuna tribunal standard applicable to protect**  
22 **rights of parent or Native Hawaiian custodian of Native Hawaiian**



1 **child.** In any case where Na Kupuna tribunal law applicable to  
2 child custody proceedings under Na Kupuna tribunal law provides  
3 a higher standard of protection to the rights of the parent or  
4 Native Hawaiian custodian of a Native Hawaiian child than the  
5 rights provided under this chapter, the state or federal court  
6 shall apply the Na Kupuna tribunal standard.

7 § -20 **Emergency removal or placement of child;**

8 **appropriate action.** (a) Nothing in this chapter shall be  
9 construed to prevent the emergency removal of a Native Hawaiian  
10 child from its parent or Native Hawaiian custodian or the  
11 emergency placement of such child in a hanai or lawe hanai home  
12 or institution in order to prevent imminent physical damage or  
13 harm to the child.

14 (b) Any governmental authority, official, or agency  
15 involved in the emergency removal or placement shall ensure that  
16 the removal or placement terminates immediately when no longer  
17 necessary to prevent imminent physical damage or harm to the  
18 child, and shall expeditiously initiate a child custody  
19 proceeding subject to the provisions of this chapter, transfer  
20 the child to the jurisdiction of the Na Kupuna tribunal, or  
21 restore the child to the parent or Native Hawaiian custodian, as  
22 may be appropriate.





- 1           and for the temporary custody of Native Hawaiian  
2           children;
- 3           (3) Family assistance, including homemaker and home  
4           counselors, day care, after school care, employment,  
5           recreational activities, and respite care;
- 6           (4) Home improvement programs;
- 7           (5) Employment of Native Hawaiian professionals and other  
8           trained Native Hawaiian personnel to assist the Na  
9           Kupuna tribunal in the disposition of domestic  
10          relations and child welfare matters;
- 11          (6) Education and training of Native Hawaiians, including  
12          Na Kupuna tribunal staff, in skills relating to child  
13          and family assistance and service programs;
- 14          (7) A subsidy program under which hanai or lawe hanai  
15          children may be provided support comparable to that  
16          for which they would be eligible as Native Hawaiian  
17          children, taking into account the appropriate Native  
18          Hawaiian cultural values of support for maintenance  
19          and medical needs; and
- 20          (8) Guidance, legal representation, and advice to Native  
21          Hawaiian families involved in all child custody  
22          proceedings.

1           (b) Funding of programs in accordance with this section  
2 may be utilized as non-federal matching share in connection with  
3 funds provided under Titles IV-B and XX of the Social Security  
4 Act (42 U.S.C. sections 620 et seq., 1397 et seq.) or under any  
5 other federal financial assistance program which contributes to  
6 the purpose for which such funds are authorized to be  
7 appropriated for use under this chapter. Assistance under this  
8 chapter shall not be a basis for the denial or reduction of any  
9 assistance otherwise authorized under Titles IV-B and XX of the  
10 Social Security Act or any other federal financial assistance  
11 program. For purposes of qualifying for assistance under a  
12 federally assisted program, licensing or approval of hanai or  
13 lawe hanai homes or institutions by the Na Kupuna tribunal shall  
14 be deemed equivalent to licensing or approval by the State.

15           (c) In the establishment, operation, and funding of Native  
16 Hawaiian child and family service programs Na Kupuna tribunal  
17 may enter into agreements with the Secretary of Health and Human  
18 Services; provided that authority to make payments pursuant to  
19 such agreements shall be effective only to the extent and in  
20 such amounts as may be appropriated in advance by the  
21 legislature."



1 SECTION 3. Chapter 571, Hawaii Revised Statutes, is  
2 amended by adding a new section to part VI to be appropriately  
3 designated and to read as follows:

4 "§571- Application to Native Hawaiians. (a) A child-  
5 custody proceeding that pertains to a Native Hawaiian child, as  
6 defined in chapter , shall not be subject to this chapter  
7 to the extent that it is governed by chapter .

8 (b) A court of this State shall treat the Na Kupuna  
9 tribunal, established in chapter , as if it were a state of  
10 the United States for the purpose of applying this chapter.

11 (c) A child-custody determination involving a Native  
12 Hawaiian child made pursuant to chapter shall be recognized  
13 and enforced under this chapter."

14 SECTION 4. Chapter 578, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17 "§578- Application to Native Hawaiians. A child-custody  
18 proceeding that pertains to a Native Hawaiian child, as defined  
19 in chapter , shall not be subject to this chapter to the  
20 extent that it is governed by chapter ."

21 SECTION 5. Section 571-11, Hawaii Revised Statutes, is  
22 amended to read as follows:





1           "§571-11   **Jurisdiction; children.**   Except as otherwise  
2 provided in this chapter, and except as related to child custody  
3 proceedings involving Native Hawaiian children as provided by  
4 chapter \_\_\_\_\_, the court shall have exclusive original  
5 jurisdiction in proceedings:

6           (1)   Concerning any person who is alleged to have committed  
7                an act prior to achieving eighteen years of age which  
8                would constitute a violation or attempted violation of  
9                any federal, state, or local law or municipal  
10              ordinance.  Regardless of where the violation  
11              occurred, jurisdiction may be taken by the court of  
12              the circuit where the person resides, is living, or is  
13              found, or in which the offense is alleged to have  
14              occurred.

15           (2)   Concerning any child living or found within the  
16                circuit:

17                (A)   Who is neglected as to or deprived of educational  
18                      services because of the failure of any person or  
19                      agency to exercise that degree of care for which  
20                      it is legally responsible;



- 1 (B) Who is beyond the control of the child's parent
- 2 or other custodian or whose behavior is injurious
- 3 to the child's own or others' welfare;
- 4 (C) Who is neither attending school nor receiving
- 5 educational services required by law whether
- 6 through the child's own misbehavior or
- 7 nonattendance or otherwise; or
- 8 (D) Who is in violation of curfew.
- 9 (3) To determine the custody of any child or appoint a
- 10 guardian of any child.
- 11 (4) For the adoption of a person under chapter 578.
- 12 (5) For the termination of parental rights under sections
- 13 571-61 to 571-63.
- 14 (6) For judicial consent to the marriage, employment, or
- 15 enlistment of a child, when such consent is required
- 16 by law.
- 17 (7) For the treatment or commitment of a mentally
- 18 defective, mentally retarded, or mentally ill child.
- 19 (8) Under the Interstate Compact on Juveniles under
- 20 chapter 582.
- 21 (9) For the protection of any child under chapter 587.



1 (10) For a change of name as provided in section 574-  
2 5(a)(2)(C)."

3 SECTION 6. Section 571-87, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) [~~When~~] Except as provided in chapter \_\_\_\_\_, when it  
6 appears to a judge that a person requesting the appointment of  
7 counsel satisfies the requirements of chapter 802 for  
8 determination of indigency, or the court in its discretion  
9 appoints counsel under chapters 587 and 346, part X, or that a  
10 person requires appointment of a guardian ad litem, the judge  
11 shall appoint counsel or a guardian ad litem to represent the  
12 person at all stages of the proceedings, including appeal, if  
13 any. Appointed counsel and the guardian ad litem shall receive  
14 reasonable compensation for necessary expenses, including  
15 travel, the amount of which shall be determined by the court,  
16 and fees pursuant to subsection (b). All of these expenses  
17 shall be certified by the court and paid upon vouchers approved  
18 by the judiciary and warrants drawn by the comptroller."

19 SECTION 7. Section 577-25, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[+]§577-25[+] **Emancipation of certain minors.** Any law to  
22 the contrary notwithstanding, a minor who has been married



1 pursuant to chapter 572 shall be deemed to be emancipated and  
 2 shall be regarded as though he or she were of legal age and  
 3 shall have all the rights, duties, privileges, and  
 4 responsibilities provided by the civil law to a person who has  
 5 reached the age of majority under civil law; provided that:

6 (1) Nothing in this section shall be deemed to confer upon  
 7 such person the right to vote in any federal, state,  
 8 or county election or the right to purchase, possess,  
 9 or sell alcoholic beverages; [~~and~~]

10 (2) Nothing in this section shall change the status of  
 11 such persons as minors in connection with any criminal  
 12 law, nor affect the exclusive original jurisdiction of  
 13 the family court over such persons under section 571-  
 14 11(1) [~~-~~]; and

15 (3) Nothing in this section shall change the status of a  
 16 Native Hawaiian under proceedings as provided in  
 17 chapter \_\_\_\_\_.

18 For purposes of this section, "minor" means a person under  
 19 the age of majority."

20 SECTION 8. Section 583A-104, Hawaii Revised Statutes, is  
 21 amended to read as follows:

1           " ~~[f]~~ §583A-104 ~~[f]~~   Application to Indian tribes ~~[r]~~ and  
2   Native Hawaiians.   (a)   A child-custody proceeding that pertains  
3   to an Indian child as defined in the Indian Child Welfare Act,  
4   25 United States Code section 1901 et seq., shall not be subject  
5   to this chapter to the extent that it is governed by the Indian  
6   Child Welfare Act.

7           (b)   A child-custody proceeding that pertains to a Native  
8   Hawaiian child as defined in chapter           , shall not be subject  
9   to this chapter to the extent that it is governed by chapter  
10             .

11           ~~[b]~~ (c)   A court of this State shall treat a tribe and  
12   the Na Kupuna tribunal established in chapter           , as if ~~[t]~~  
13   they were a state of the United States for the purpose of  
14   applying parts I and II.

15           ~~[e]~~ (d)   A child-custody determination made by a tribe  
16   under factual circumstances in substantial conformity with the  
17   jurisdictional standards of this chapter shall be recognized and  
18   enforced under part III.   A child-custody determination made by  
19   the Na Kupuna tribunal under chapter            shall be recognized  
20   and enforced under part III."



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**PART II**

SECTION 9. The legislature finds that the absence of culturally sensitive Native Hawaiian schools and programs contribute to the breakup of Native Hawaiian families.

The Na Kupuna tribunal shall prepare, in consultation with appropriate agencies in the departments of health, education, and human services, a report on the feasibility of providing Native Hawaiian children with schools and programs that promote traditional and customary rights, and Native Hawaiian national history. In developing this report, the Na Kupuna tribunal shall give particular consideration to the provision of educational facilities for Native Hawaiian children in the elementary grades.

The Na Kupuna tribunal shall submit this report to the governor, the legislature, the Select Committee on Indian Affairs of the United States Senate, and the Committee on Interior and Insular Affairs of the United States House of Representatives within one year of the effective date of this Act.

**PART III**

SECTION 10. If any provision of this Act, or the application thereof to any person or circumstance is held

1 invalid, the invalidity does not affect other provisions or  
2 applications of the Act, which can be given effect without the  
3 invalid provision or application, and to this end the provisions  
4 of this Act are severable.

5 SECTION 11. This Act shall take effect upon its approval;  
6 provided that the child custody procedures in chapter ,  
7 Hawaii Revised Statutes, contained in section 2 of this Act  
8 shall not affect a proceeding for hanai or lawe hanai placement  
9 which was initiated or completed prior to ninety days after the  
10 approval of this Act, but shall apply to any subsequent  
11 proceeding in the same matter or subsequent proceedings  
12 affecting the custody or placement of the same child.

13 SECTION 12. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 13. This Act shall take effect upon its approval.

16

INTRODUCED BY: Michael P. Kahihua BR

JAN 17 2006



**Report Title:**

Native Hawaiian; Child Welfare Act

**Description:**

Creates a Native Hawaiian Child Welfare Act preventing the involuntary termination of parental rights of Kanaka Maoli thus protecting the cultural and traditional rights of the Native Hawaiian people. This is also known as "The Kupuna Bill".

