
A BILL FOR AN ACT

RELATING TO PLACEMENT OF HARMED CHILDREN.

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

1 PART I

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

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

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

17 (3) That there is no resource that is more vital to the
18 continued existence and integrity of native Hawaiians



1 than their children, and that the United States has a
2 direct interest as trustee in protecting native
3 Hawaiian children;

4 (4) Approximately fifty per cent of the foster care cases
5 under the jurisdiction of the department of human
6 services involve native Hawaiian families; and

7 (5) Native Hawaiian communities and families have
8 expressed concern that cultural needs are not
9 considered as heavily as they should be in the
10 placement of children in custody proceedings.

11 The legislature hereby declares that it is the policy of
12 this State to protect the cultural and traditional interests of
13 native Hawaiian children and to promote the stability and
14 security of native Hawaiian families by:

15 (1) Establishing standards for the removal of native
16 Hawaiian children from their families and the
17 placement of these children in hanai or lawe hanai
18 homes that will reflect the unique values of native
19 Hawaiian culture; and

20 (2) Providing assistance to native Hawaiians in the
21 operation of child and family service programs.



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

4 "CHAPTER

5 NATIVE HAWAIIAN CHILD WELFARE ACT OF 2006

6 PART I. CHILD CUSTODY PROCEEDINGS

7 § -1 Short title. This chapter may be cited as the
8 "Native Hawaiian Child Welfare Act of 2006".

9 § -2 Definitions. For the purposes of this chapter,
10 except as may be specifically provided otherwise:

11 "Ahupuaa" means native Hawaiian districts as defined in
12 Kingdom of Hawaii law and any lands, not covered under such
13 section, title to which is either held by the United States and
14 the department of Hawaiian home lands in trust for the benefit
15 of any native Hawaiian or held by any native Hawaiian subject to
16 a restriction by the Nation of Hawaii against alienation.

17 "Child custody proceeding" shall include hanai placement or
18 lawe hanai placement of, or involuntary termination of parental
19 rights to, a native Hawaiian child.

20 "Extended family member" shall be as defined by the custom
21 of the native Hawaiian child, and shall include a person who has
22 reached the age of eighteen years and who is the native Hawaiian



1 child's grandparent, aunt or uncle, brother or sister, brother-
2 in-law or sister-in-law, niece or nephew, first or second
3 cousin, stepparent, or hanai or lawe hanai relation.

4 "Hanai" means the native Hawaiian customary and traditional
5 system of family in the nurture, care, and custody of their
6 children.

7 "Hanai or lawe hanai placement":

- 8 (1) Means any action to remove a native Hawaiian child
9 from the child's parent or native Hawaiian or non-
10 native Hawaiian custodian for temporary placement in a
11 hanai or lawe hanai home or institution, or the home
12 of a guardian or conservator. In a hanai or lawe
13 hanai placement, the parent or native Hawaiian or non-
14 native Hawaiian custodian cannot have the child
15 returned upon demand, but the parental rights of that
16 parent or custodian have not been terminated; and
- 17 (2) Shall not include a placement based upon an act which,
18 if committed by an adult, would be deemed a crime; or
19 upon an award in a divorce or similar proceeding of
20 custody of the child to one of the parents.

21 "Ho'oponopono" means native Hawaiian customary and
22 traditional philosophies of spiritual healing.



1 "Lawe hanai placement" means related by blood or a blood
2 relation.

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

10 "Native Hawaiian":

11 (1) Means any person who is a linear descendant of the
12 people who exercised sovereignty in Hawaii prior to
13 1778; and

14 (2) Includes any native Hawaiian nation, or native
15 Hawaiian organized group or native Hawaiian community,
16 which is recognized as eligible for the special
17 programs and services provided by the United States to
18 native Hawaiians because of their status as native
19 Hawaiians.

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



1 "Native Hawaiian or non-native Hawaiian custodian" means
2 any native Hawaiian or non-native Hawaiian person who has the
3 responsibility for the care, custody, and control of a native
4 Hawaiian child under standards and policies adopted by the Na
5 Kupuna tribunal, or to whom temporary physical care, custody,
6 and control has been transferred by the parent of the child.

7 "Native Hawaiian organization" means any group,
8 association, partnership, corporation, or other legal entity
9 owned or controlled by native Hawaiians.

10 "Parent" means any biological parent or parents of a native
11 Hawaiian child or any native Hawaiian or non-native Hawaiian
12 person who has lawfully adopted a native Hawaiian child,
13 including hanai or lawe hanai customs.

14 **§ -3 Na Kupuna tribunal; establishment.** There shall be
15 established the Na Kupuna tribunal, which is a body corporate
16 and politic. The Na Kupuna tribunal shall be placed within the
17 First Hawaiian Nation for administrative purposes only.

18 The Na Kupuna tribunal shall consist of _____ members.

19 Notwithstanding section 26-34, members of the Na Kupuna
20 tribunal shall be selected by each Na Kupuna island council.
21 The members of the tribunal shall serve without compensation,



1 but shall be reimbursed reasonable expenses in connection with
2 their duties.

3 **§ -4 Na Kupuna tribunal; jurisdiction over native**
4 **Hawaiian child custody proceedings.** (a) The Na Kupuna tribunal
5 shall have exclusive jurisdiction over any child custody
6 proceeding involving a native Hawaiian child in this State, and
7 may petition for the transfer of proceedings involving a native
8 Hawaiian child from any other state to its jurisdiction pursuant
9 to this chapter. Where a native Hawaiian child is a ward of a
10 native Hawaiian or non-native Hawaiian entity, the Na Kupuna
11 tribunal shall retain exclusive jurisdiction over the child,
12 notwithstanding the residence or domicile of the child. The
13 department of human services shall take necessary action to
14 assist in the proceedings under this section.

15 (b) In any court proceeding for the hanai or lawe hanai
16 placement of, or involuntary termination of parental rights to a
17 native Hawaiian child in this State, the court shall transfer
18 the proceeding to the jurisdiction of the Na Kupuna tribunal,
19 absent objection by either parent, and upon the petition of
20 either parent or the native Hawaiian or non-native Hawaiian
21 custodian.



1 (c) The Na Kupuna tribunal may decline jurisdiction over
2 any case at any time.

3 **§ -5 Right of intervention.** The native Hawaiian or non-
4 native Hawaiian custodian of the child and the Na Kupuna
5 tribunal shall have a right to intervene at any point in any
6 state court proceeding for the hanai or lawe hanai placement of,
7 or involuntary termination of parental rights to a native
8 Hawaiian child.

9 **§ -6 Proceedings in other states and jurisdictions.** (a)
10 The native Hawaiian or non-native Hawaiian custodian of the
11 child and the Na Kupuna tribunal may petition to intervene at
12 any point in any court proceeding for the hanai or lawe hanai
13 placement of, or involuntary termination of parental rights to a
14 native Hawaiian child, in any other state or jurisdiction.

15 (b) In any court proceeding for the hanai or lawe hanai
16 placement of, or involuntary termination of parental rights to a
17 native Hawaiian child, the native Hawaiian or non-native
18 Hawaiian custodian of the child and the Na Kupuna tribunal may
19 petition the court for transfer of the proceedings to this
20 State.

21 **§ -7 Court proceedings.** (a) In any child custody
22 proceeding in a court of this State, where the court knows or



1 has reason to believe that a native Hawaiian child is involved,
2 the party seeking the hanai or lawe hanai placement of, or
3 involuntary termination of parental rights to, a native Hawaiian
4 child shall notify the parent or native Hawaiian or non-native
5 Hawaiian custodian and the Na Kupuna tribunal by registered mail
6 with return receipt requested, of the pending proceedings and of
7 their right of intervention. If the identity or location of the
8 parent, native Hawaiian or non-native Hawaiian custodian, or the
9 Na Kupuna tribunal cannot be determined, the notice shall be
10 given to the governor, who shall have fifteen days after receipt
11 to provide the requisite notice to the parent or native Hawaiian
12 or non-native Hawaiian custodian and the Na Kupuna tribunal.

13 (b) No child custody proceeding involving a native
14 Hawaiian child shall be held until at least ten days after
15 receipt of notice by the parent or native Hawaiian or non-native
16 Hawaiian custodian and the Na Kupuna tribunal; provided that the
17 parent or native Hawaiian custodian or the Na Kupuna tribunal
18 shall be granted, upon request, up to twenty additional days to
19 prepare for the proceeding.

20 (c) Where it appears to the court that a person requesting
21 the appointment of counsel satisfies the requirements of chapter
22 802 for determination of indigency, the parent or native



1 Hawaiian custodian shall have the right to counsel provided by
2 the Na Kupuna tribunal. Compensation for counsel shall be as
3 provided in section 571-87.

4 (d) Each party to a hanai or lawe hanai placement, or
5 involuntary termination of parental rights proceeding involving
6 a native Hawaiian child shall have the right to examine all
7 reports or other documents filed with the court upon which any
8 decision with respect to the action may be based.

9 (e) Any court entering a final decree or order for hanai
10 or lawe hanai placement of a native Hawaiian child after the
11 effective date of this Act, shall provide the Na Kupuna tribunal
12 with a copy of such decree or order together with such other
13 information as may be deemed necessary to show:

- 14 (1) The name and genealogy of the child;
15 (2) The names and addresses of the biological parents;
16 (3) The names and addresses of the hanai or lawe hanai
17 parents; and
18 (4) The identity of any agency having files or information
19 relating to the hanai or lawe hanai placement.

20 Where the court records contain an affidavit of the
21 biological parent or parents requesting that their identity
22 remain confidential, the court shall include the affidavit with



1 the other information. The Na Kupuna tribunal shall ensure that
2 the confidentiality of the information is maintained and the
3 information shall not be subject to chapter 92F or the Freedom
4 of Information Act (5 U.S.C. 552), as amended.

5 **§ -8 Remedial services and rehabilitative programs;**
6 **preventive measures.** (a) Any party seeking to effect a hanai
7 or lawe hanai placement of, or involuntary termination of
8 parental rights to a native Hawaiian child shall immediately be
9 referred to the Na Kupuna tribunal to provide customarily
10 traditional remedial services and culturally sensitive
11 rehabilitative programs designed to prevent the involuntary
12 breakup of the native Hawaiian family.

13 (b) No hanai or lawe hanai placement may be ordered in
14 such proceeding in the absence of a determination, supported by
15 evidence beyond a reasonable doubt, and by testimony of native
16 Hawaiian family members and the Na Kupuna tribunal that the
17 continued custody of the child by the parent or native Hawaiian
18 custodian is likely to result in serious emotional or physical
19 damage to the child.

20 **§ -9 Parental rights; involuntary termination**
21 **prohibited.** No involuntary termination of parental rights may
22 be ordered.



1 **§ -10 Parental rights; consent to voluntary termination.**

2 (a) Where any parent or native Hawaiian custodian voluntarily
3 consents to a hanai or lawe hanai placement, or to the voluntary
4 termination of parental rights to a native Hawaiian child, the
5 consent shall not be valid unless executed in writing and
6 recorded before the Na Kupuna tribunal or other competent
7 jurisdiction, and accompanied by the Na Kupuna tribunal's
8 certification that the terms and consequences of the consent
9 were fully explained in detail and were fully understood by the
10 parent or native Hawaiian custodian. The explanation and
11 consent may be in the English language if understood by the
12 parent or native Hawaiian custodian, or at the request of the
13 parent or native Hawaiian custodian, shall be in any language
14 the parent or native Hawaiian custodian understands.

15 (b) Any consent given prior to, or within twelve months
16 after, the birth of the native Hawaiian child shall not be
17 valid.

18 **§ -11 Parental rights; withdrawal of consent to**

19 **voluntary termination.** (a) Any parent or native Hawaiian or
20 non-native Hawaiian custodian may withdraw consent to a hanai or
21 lawe hanai placement at any time, and upon the withdrawal, the



1 child shall be returned to the parent or native Hawaiian or non-
2 native Hawaiian custodian.

3 (b) In any voluntary proceeding for termination of
4 parental rights to, or voluntary adoptive placement of a native
5 Hawaiian child, the consent of the parent may be withdrawn for
6 any reason, and the child shall be returned to the parent upon
7 completion of ho'oponopono process in its entirety.

8 (c) After the entry of a final decree of voluntary
9 adoption of a native Hawaiian child in any court, the parent may
10 withdraw consent thereto upon the ground that consent was
11 obtained through fraud or duress and may petition the court to
12 vacate the decree. Upon a finding that the consent was obtained
13 through fraud or duress, the court shall vacate the decree and
14 return the child to the parent. Any adoption that has been
15 obtained through fraud or duress shall be invalidated under this
16 subsection.

17 **§ -12 Petition to court of competent jurisdiction to**
18 **invalidate action upon showing of certain violations.** Any
19 native Hawaiian child who is the subject of any action for hanai
20 or lawe hanai placement or involuntary termination of parental
21 rights, any parent or native Hawaiian custodian from whose
22 custody the child was removed, and the Na Kupuna tribunal may



1 petition any court of competent jurisdiction to invalidate the
2 action upon a showing that the action violated any provision of
3 this chapter.

4 **§ -13 Placement of native Hawaiian children.** (a) In
5 any hanai or lawe hanai placement of a native Hawaiian child
6 under this chapter, preference shall be given, in the absence of
7 good cause to the contrary, to a placement with:

- 8 (1) A member of the child's extended family;
- 9 (2) Other members of the native Hawaiian child's family;
- 10 (3) Other native Hawaiian families;
- 11 (4) A hanai or lawe hanai home licensed, approved, or
12 specified by the Na Kupuna tribunal;
- 13 (5) A native Hawaiian hanai or lawe hanai home licensed or
14 approved by a non-native Hawaiian licensing authority
15 authorized by the Na Kupuna tribunal; or
- 16 (6) An institution for children approved by the Na Kupuna
17 tribunal or operated by a native Hawaiian organization
18 that has a program suitable to meet the native
19 Hawaiian child's needs.

20 The Na Kupuna tribunal may establish a different order of
21 preference by resolution.



1 (b) Any child accepted for hanai or lawe hanai placement
2 shall be placed in the least restrictive setting that most
3 approximates a family and in which the child's special needs, if
4 any, may be met. The child shall also be placed within
5 reasonable proximity to the child's former home, taking into
6 account any special needs of the child.

7 (c) Where appropriate, the preference of the native
8 Hawaiian child or parent shall be paramount; provided that where
9 a consenting parent evidences a desire for anonymity, the Na
10 Kupuna tribunal or authorized agency shall give weight to the
11 desire in applying the preferences.

12 (d) The standards to be applied in meeting the preference
13 requirements of this section shall be the prevailing social and
14 cultural standards of the native Hawaiian community in which the
15 parent or extended family resides or with which the parent or
16 extended family members maintain social and cultural ties.

17 (e) A record of each placement of a native Hawaiian child
18 shall be maintained by the Na Kupuna tribunal in which the
19 placement was made, evidencing the efforts to comply with the
20 order of preference specified in this section. The record shall
21 be made available at any time upon the request of the Na Kupuna
22 tribunal.



1 **§ -14 Return of custody.** (a) Whenever a final decree
2 of adoption of a native Hawaiian child has been vacated or set
3 aside, or the adoptive parents voluntarily consent to the
4 termination of their parental rights to the child, a biological
5 parent or prior native Hawaiian custodian may petition for
6 return of custody of the child. The Na Kupuna tribunal shall
7 grant the petition unless there is a showing, in a proceeding
8 subject to this chapter, that the return of custody is not in
9 the best cultural interests of the child.

10 (b) Whenever a native Hawaiian child is removed from a
11 hanai home or lawe hanai home or institution for the purpose of
12 further hanai placement, the placement shall be in accordance
13 with this chapter, except in the case where a native Hawaiian
14 child is being returned to the parent or native Hawaiian
15 custodian from whose custody the child was originally removed.

16 **§ -15 Genealogical information; disclosure by the Na**
17 **Kupuna tribunal.** Upon application by a native Hawaiian
18 individual who has reached the age of eighteen and who was the
19 subject of a hanai or lawe hanai placement, or the hanai or lawe
20 hanai parents of a native Hawaiian child, the Na Kupuna tribunal
21 shall disclose such information as may be necessary for the
22 determination of any rights or benefits the individual or child



1 may have that is associated with the child's genealogy. Where
2 the documents relating to the child contain an affidavit from
3 the biological parent or parents requesting anonymity, the Na
4 Kupuna tribunal shall certify to the native Hawaiian child's
5 family, where the information warrants, that the child's
6 parentage and other circumstances of birth entitle the child to
7 all rights and benefits of that lineage.

8 **§ -16 Reassumption of jurisdiction over child custody**

9 **proceedings.** (a) The Na Kupuna tribunal that became subject to
10 state jurisdiction pursuant to the Admission Act or pursuant to
11 any other federal law, may reassume jurisdiction over child
12 custody proceedings. Before the Na Kupuna tribunal may reassume
13 jurisdiction over native Hawaiian child custody proceedings, the
14 Na Kupuna tribunal shall present to the governor for approval a
15 petition to reassume jurisdiction that includes a suitable plan
16 to exercise jurisdiction.

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

20 (1) Whether or not the Na Kupuna tribunal maintains a
21 sovereign roster of native Hawaiians clearly



- 1 identifying the persons who will be affected by the
2 reassumption of jurisdiction by the tribunal;
- 3 (2) The size of the native Hawaiian land base that will be
4 affected by retrocession and reassumption of
5 jurisdiction by the Na Kupuna tribunal;
- 6 (3) The population base of the Na Kupuna tribunal, or
7 distribution of the population in homogeneous
8 communities or geographic areas; and
- 9 (4) The feasibility of the plan in cases of multicultural
10 occupation of a single geographic area.
- 11 (c) In those cases where the governor determines that the
12 jurisdictional provisions of this chapter are not feasible, the
13 governor is authorized to accept partial retrocession to enable
14 the Na Kupuna tribunal to exercise referral jurisdiction, or,
15 where appropriate, may allow the Na Kupuna tribunal to exercise
16 exclusive jurisdiction as provided in this chapter over limited
17 community or geographic areas.
- 18 (d) If the governor approves any petition under subsection
19 (a), the governor shall have notice of the approval published in
20 the Federal Register and shall notify the affected states of the
21 approval. The Na Kupuna tribunal shall reassume jurisdiction
22 sixty days after publication in the Federal Register of notice



1 of approval. If the governor disapproves any petition under
2 this section, the governor shall provide technical assistance as
3 may be necessary to enable the Na Kupuna tribunal to correct any
4 deficiency that the governor identified as a cause for
5 disapproval.

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

9 **§ -17 Agreements between other states and Na Kupuna**
10 **tribunal.** (a) The Na Kupuna tribunal may enter into agreements
11 with other states respecting care and custody of native Hawaiian
12 children and jurisdiction over child custody proceedings,
13 including agreements that may provide for the orderly transfer
14 of jurisdiction of all cases affected by this chapter and
15 agreements authorized by this section that provide for
16 concurrent jurisdiction between the other states and the Na
17 Kupuna tribunal.

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



1 **§ -18 Improper removal of child from custody; return of**
2 **child.** Where any petitioner in a native Hawaiian child custody
3 proceeding before a state court has improperly removed the child
4 from the custody of the parent or native Hawaiian custodian, or
5 has improperly retained custody after a visit or other temporary
6 relinquishment of custody, the court shall decline jurisdiction
7 over the petition and shall return the child to its parent or
8 native Hawaiian custodian unless the court determines, based
9 upon evidence beyond a reasonable doubt, that returning the
10 child to its parent or custodian would subject the child to a
11 substantial and immediate danger or threat of such danger.

12 **§ -19 Na Kupuna tribunal standard applicable to protect**
13 **rights of parent or native Hawaiian custodian of native Hawaiian**
14 **child.** In any case where Na Kupuna tribunal law applicable to
15 child custody proceedings provides a higher standard of
16 protection to the rights of the parent or native Hawaiian
17 custodian of a native Hawaiian child than the rights provided
18 under this chapter, the state or federal court shall apply the
19 Na Kupuna tribunal standard.

20 **§ -20 Emergency removal or placement of child;**
21 **appropriate action.** (a) Nothing in this chapter shall be
22 construed to prevent the emergency removal of a native Hawaiian



1 child from its parent or native Hawaiian or non-native Hawaiian
2 custodian or the emergency placement of the child in a hanai or
3 lawe hanai home or institution in order to prevent imminent
4 physical damage or harm to the child.

5 (b) Any governmental authority, official, or agency
6 involved in the emergency removal or placement shall ensure that
7 the removal or placement terminates immediately when no longer
8 necessary to prevent imminent physical damage or harm to the
9 child, and shall expeditiously initiate a child custody
10 proceeding subject to the provisions of this chapter, transfer
11 the child to the jurisdiction of the Na Kupuna tribunal, or
12 restore the child to the parent or native Hawaiian custodian, as
13 may be appropriate.

14 **§ -21 Rules.** Within ninety days after the effective
15 date of this Act, the Na Kupuna tribunal shall adopt rules,
16 pursuant to chapter 91, as may be necessary to carry out this
17 chapter.

18 **PART II. OTHER PROGRAMS**

19 **§ -31 Grants for native Hawaiian programs and child**
20 **welfare codes.** (a) The Na Kupuna tribunal is authorized to
21 accept grants from the federal government to assist in the
22 establishment and operation of native Hawaiian child and family



1 service programs and in the preparation and implementation of
2 child welfare codes. The objective of every native Hawaiian
3 child and family service program shall be to prevent the breakup
4 of native Hawaiian families and, in particular, to ensure that
5 the involuntary termination of parental rights of native
6 Hawaiian families do not occur, thus preserving the native
7 Hawaiian hanai custom, including lawe hanai.

8 (b) Child and family service programs of the Na Kupuna
9 tribunal may include but are not limited to:

- 10 (1) Licensing or otherwise regulating native Hawaiian
11 hanai or lawe hanai homes;
- 12 (2) Operation and maintenance of facilities for the
13 counseling and treatment of native Hawaiian families
14 and for the temporary custody of native Hawaiian
15 children;
- 16 (3) Family assistance, including homemaker and home
17 counselors, day care, after school care, employment,
18 recreational activities, and respite care;
- 19 (4) Home improvement programs;
- 20 (5) Employment of native Hawaiian professionals and other
21 trained native Hawaiian personnel to assist the Na



1 Kupuna tribunal in the disposition of domestic
2 relations and child welfare matters;

3 (6) Education and training of native Hawaiians, including
4 Na Kupuna tribunal staff, in skills relating to child
5 and family assistance and service programs;

6 (7) A subsidy program under which hanai or lawe hanai
7 children may be provided support comparable to that
8 for which they would be eligible as native Hawaiian
9 children, taking into account the appropriate native
10 Hawaiian cultural values of support for maintenance
11 and medical needs; and

12 (8) Guidance, legal representation, and advice to native
13 Hawaiian families involved in all child custody
14 proceedings.

15 (b) Funding of programs in accordance with this section
16 may be utilized as non-federal matching share in connection with
17 funds provided under Titles IV-B and XX of the Social Security
18 Act (42 U.S.C. sections 620 et seq., 1397 et seq.) or under any
19 other federal financial assistance program that contributes to
20 the purpose for which the funds are authorized to be
21 appropriated for use under this chapter. Assistance under this
22 chapter shall not be a basis for the denial or reduction of any



1 assistance otherwise authorized under Titles IV-B and XX of the
2 Social Security Act or any other federal financial assistance
3 program. For purposes of qualifying for assistance under a
4 federally assisted program, licensing or approval of hanai or
5 lawe hanai homes or institutions by the Na Kupuna tribunal shall
6 be deemed equivalent to licensing or approval by the State.

7 (c) In the establishment, operation, and funding of native
8 Hawaiian child and family service programs, the Na Kupuna
9 tribunal may enter into agreements with the Secretary of Health
10 and Human Services; provided that authority to make payments
11 pursuant to the agreements shall be effective only to the extent
12 and in the amounts as may be appropriated in advance by the
13 legislature."

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

17 "§571-_____ Application to native Hawaiians. (a) A child
18 custody proceeding that pertains to a native Hawaiian child, as
19 defined in chapter _____, shall not be subject to this chapter to
20 the extent that it is governed by chapter _____.



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

4 (c) A child custody determination involving a native
5 Hawaiian child made pursuant to chapter _____ shall be recognized
6 and enforced under this chapter."

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

10 "§578-_____ **Application to native Hawaiians.** A child
11 custody proceeding that pertains to a native Hawaiian child, as
12 defined in chapter _____, shall not be subject to this chapter
13 to the extent that it is governed by chapter _____."

14 SECTION 5. Chapter 587, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 "§587-_____ **Cultural needs.** The cultural needs of a
18 child shall be considered, as part of the best interests of the
19 child standard, in the foster custody, placement, and permanent
20 custody decisions made by the court under any proceeding under
21 this chapter."



1 SECTION 6. Section 571-11, Hawaii Revised Statutes, is
2 amended to read as follows:

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

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

17 (2) Concerning any child living or found within the
18 circuit:

19 (A) Who is neglected as to or deprived of educational
20 services because of the failure of any person or
21 agency to exercise that degree of care for which
22 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[-];i
- 9 (3) To determine the custody of any child or appoint a
10 guardian of any child[-];i
- 11 (4) For the adoption of a person under chapter 578[-];i
- 12 (5) For the termination of parental rights under sections
13 571-61 to 571-63[-];i
- 14 (6) For judicial consent to the marriage, employment, or
15 enlistment of a child, when such consent is required
16 by law[-];i
- 17 (7) For the treatment or commitment of a mentally
18 defective, mentally retarded, or mentally ill
19 child[-];i
- 20 (8) Under the Interstate Compact on Juveniles under
21 chapter 582[-];i



1 (9) For the protection of any child under chapter 587[~~-~~];
2 and

3 (10) For a change of name as provided in section 574-
4 5(a)(2)(C)."

5 SECTION 7. Section 571-87, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

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

21 SECTION 8. Section 577-25, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "[~~+~~]**§577-25**[~~+~~] **Emancipation of certain minors.** Any law to
2 the contrary notwithstanding, a minor who has been married
3 pursuant to chapter 572 shall be deemed to be emancipated and
4 shall be regarded as though he or she were of legal age and
5 shall have all the rights, duties, privileges, and
6 responsibilities provided by the civil law to a person who has
7 reached the age of majority under civil law; provided that:

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

12 (2) Nothing in this section shall change the status of
13 such persons as minors in connection with any criminal
14 law, nor affect the exclusive original jurisdiction of
15 the family court over such persons under section 571-
16 11(1)[~~-~~]; and

17 (3) Nothing in this section shall change the status of a
18 native Hawaiian under proceedings as provided in
19 chapter _____.

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



1 SECTION 9. Section 583A-104, Hawaii Revised Statutes, is
2 amended to read as follows:

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

9 (b) A child custody proceeding that pertains to a native
10 Hawaiian child as defined in chapter _____, shall not be subject
11 to this chapter to the extent that it is governed by chapter
12 _____.

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

18 [~~c~~] (d) A [~~child-custody~~] child custody determination
19 made by a tribe under factual circumstances in substantial
20 conformity with the jurisdictional standards of this chapter
21 shall be recognized and enforced under part III. A child



1 custody determination made by the Na Kupuna tribunal under
2 chapter _____ shall be recognized and enforced under part III."

3 PART II

4 SECTION 10. The legislature finds that the absence of
5 culturally sensitive native Hawaiian schools and programs
6 contribute to the breakup of native Hawaiian families.

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

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



1 PART III

2 SECTION 11. (a) There is established a one-year pilot
3 project to implement chapter , Hawaii Revised Statutes,
4 established under section 2 of this Act. As part of this pilot
5 project, the department of human services shall coordinate with
6 the Na Kupuna tribunal established under chapter , Hawaii
7 Revised Statutes, to develop procedures and protocols that will
8 assist the Na Kupuna tribunal in carrying out its
9 responsibilities with respect to child custody proceedings
10 involving native Hawaiian children in this State.

11 (b) For the purposes of the pilot project, no more than
12 twenty-five cases shall be handled by the Na Kupuna tribunal in
13 accordance with the requirements of section 2 of this Act. The
14 department of human services shall enter into any necessary
15 agreements and develop necessary procedures and protocols to
16 allow the handling of cases in the pilot project, and only those
17 cases, as required by this section. The services provided by
18 the department of human services to Na Kupuna tribunal cases
19 shall be limited to programs and services under the department's
20 differential response system.

21 (c) The department of human services, with input from the
22 Na Kupuna tribunal, shall submit a final report on the pilot



1 project, including its status, procedures and protocols
2 developed, outcomes, and findings and recommendations, including
3 proposed legislation, if any, to the legislature no later than
4 twenty days prior to the convening of the regular session of
5 2007.

6 PART IV

7 SECTION 12. (a) The department of human services shall
8 convene a tribunal oversight task force to oversee the Na Kupuna
9 tribunal's functions and review the manner in which courts
10 handle cases involving children with cultural needs.

11 (b) The task force may include but shall not be limited to
12 the representatives of the following:

- 13 (1) The Office of Hawaiian Affairs;
14 (2) The Hawaii Foster Parent Association;
15 (3) The Hawaii Foster Youth Coalition;
16 (4) The Hawaii Youth Services Network;
17 (5) The Attorney General, or designee;
18 (6) HCAP Leeward District;
19 (7) Na Kupuna O Waianae;
20 (8) The Legacy Coalition;
21 (9) Na Kupuna O Kahana; and



1 (10) Any other individuals or organizations the department
2 of human services deems necessary.

3 (c) The task force shall terminate upon completion of the
4 pilot project under section 11.

5 (d) The department of human services shall submit a report
6 to the legislature no later than twenty days prior to the
7 convening of the regular session of 2007 on its findings and
8 recommended legislation.

9 PART V

10 SECTION 13. If any provision of this Act, or the
11 application thereof to any person or circumstance is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the Act, which can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

16 SECTION 14. This Act shall take effect upon its approval;
17 provided that:

18 (1) Sections 2 to 8 shall not be operative for any
19 purposes or matters except for the cases being handled
20 by the pilot project pursuant to section 10(b) of this
21 Act. Sections 2 to 8 shall become fully operative on
22 July 1, 2007; and



1 (2) The child custody procedures in chapter , Hawaii
2 Revised Statutes, contained in section 2 of this Act
3 shall not affect a proceeding for hanai or lawe hanai
4 placement that was initiated or completed prior to
5 October 1, 2007, but shall apply to any subsequent
6 proceeding in the same matter or subsequent
7 proceedings affecting the custody or placement of the
8 same child.

9 SECTION 15. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 16. This Act shall take effect on July 1, 2022.



Report Title:

Native Hawaiians; Child Welfare Act; Child Custody

Description:

Creates the Native Hawaiian Child Welfare Act (Act) that establishes the Na Kupuna Tribunal and grants it exclusive jurisdiction over child custody proceedings involving native Hawaiian children. Establishes a pilot project as a trial run prior to full implementation of the Act in 2007. (SB3218 HD1)

