
A BILL FOR AN ACT

RELATING TO CHILD PROTECTION.

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

1 SECTION 1. The legislature finds that when a child is
2 removed from the child's family and placed in foster custody,
3 the department of human services is not required by law to
4 perform a diligent search to locate relatives of the child for
5 the purpose of placement despite the family's desire.

6 The purpose of this Act is to require the department of
7 human services to make a good faith effort to locate relatives
8 of a child being placed in foster care to assess the feasibility
9 of placing the child in the foster custody of a member of the
10 child's extended family.

11 SECTION 2. Chapter 587, Hawaii Revised Statutes, is
12 amended by adding a four new sections to be appropriately
13 designated and to read as follows:

14 "~~§587-~~ **Foster custody; placement with extended family;**
15 **required procedures.** (a) Except as described in subsection
16 (f), upon assuming temporary foster custody of a child under
17 this chapter, the department shall make a good faith effort to
18 locate and identify members of the child's extended family to



1 assess the feasibility of placing the child into the foster
2 custody of a member of that extended family, in order to
3 continue the family bond. The department shall consider the
4 degree and nature of the child's attachment and bonding with the
5 current kin or non-kin foster caregiver when making all
6 subsequent placement decisions, including permanent placement
7 decisions.

8 To meet the good faith requirement, the department shall:

9 (1) Within seventy-two hours of the child's placement in
10 temporary foster custody:

11 (A) Make diligent efforts to find and interview known
12 relatives, friends, teachers, and community
13 members who may know of the child's extended
14 family;

15 (B) Find, identify, interview, and assess known
16 members of the child's extended family to
17 determine the feasibility of placing the child
18 into the foster custody of a member of the
19 child's extended family; and

20 (C) Consult with the Na Kupuna Tribunal for
21 assistance in identifying the child's kin; and



1 (2) Specify in the petition filed pursuant to section
2 587-21(b), the procedures used and steps taken to
3 comply with paragraph (1).

4 (b) The department shall make increased use of ohana
5 conferences and other appropriate case consultations to engage
6 extended family members in reunification efforts, permanency
7 planning, and placement decisions. Ohana conferences and other
8 case consultations shall occur after a child is placed in foster
9 custody, if the department determines that the child is likely
10 to remain in foster custody for more than sixty days and
11 potential relatives in the extended family are available for
12 out-of-home placement.

13 (c) The department shall establish a process for ongoing
14 contact with members of the child's extended family who express
15 interest in being considered as a placement resource for the
16 child.

17 (d) If the department decides not to place the child in
18 the foster custody of a relative, the department shall provide
19 documentation as part of the department's safe family home
20 report that clearly identifies the rationale for the decision
21 and corrective action or actions the relative must take to be

1 considered as a viable placement option within the limits of
2 existing statutes and federal requirements.

3 (e) Nothing in this section shall be construed to create
4 an entitlement to services or to create judicial authority to
5 order the provision of services to any person or family if the
6 services are unavailable or unsuitable, or the child or family
7 is not eligible for the services.

8 (f) This section shall not apply to, and shall not be
9 construed to interfere with, a police officer assuming
10 protective custody of a child without a court order or
11 transferring protective custody of the child to the department
12 under section 587-22.

13 (g) For purposes of this section:

14 "Attachment" means a child's deep, persistent emotional
15 relationship with a non-interchangeable single caregiver, having
16 characteristics that include:

- 17 (1) The child's affectionate tie to the caregiver;
18 (2) The child's wish to maintain proximity or contact with
19 the caregiver;
20 (3) The child's seeking security and comfort in the
21 relationship; and



1 (4) The child's feelings of sadness or distress at the
2 involuntary separation from the caregiver.

3 "Bonding" means the emotional relationship between a child
4 and an adult effected through close association. Deep bonding
5 is described as "attachment".

6 "Kin" means both maternal and paternal relatives, adult
7 siblings, or individuals not biologically or legally related to
8 the family, including but not limited to family friends,
9 caregivers, or faith leaders who are perceived as "family" by
10 the child and the child's family members.

11 **§587- Temporary foster care and adoption placements.**

12 (a) At the child's initial removal from the child's parent or
13 parents because of harm, effort shall be made to place the child
14 with a member of the child's family; provided that the
15 department shall consult with the Na Kupuna Tribunal for
16 assistance in identifying the child's kin. If a member of the
17 child's family is not readily identified, a thorough, documented
18 search for kin shall be conducted, subject to the following:

19 (1) These kin shall be fit and willing, licensable, and
20 trainable, without the need for remedial or
21 rehabilitative services;

1 (2) Pending the identification of such kin, the child may
2 be placed in foster care;

3 (3) The search for fit and willing kin, and the licensing
4 and training of such kin shall continue until the
5 child is adopted, placed under guardianship or
6 permanent custody, or remains in the permanent custody
7 of the department, as provided in section 587-73; and

8 (4) If fit and willing kin are not identified, trained,
9 and licensed, the child shall be placed with non-kin
10 foster parents.

11 (b) After the initial placement for temporary foster care,
12 all subsequent foster care and adoption placement decisions
13 shall:

14 (1) Consider the child's age, previous attachments, if
15 any, to biological parents and kin, and current
16 attachment and bonding to kin or non-kin caregiver;

17 (2) Give preference to care settings that will entail the
18 least disruption of the child's current attachment and
19 bonding. Psychologists and psychiatrists, using
20 assessments and, if appropriate in light of the
21 child's age, interviews, shall determine the degree of

- 1 the child's attachment and bonding to the current
2 caregivers;
- 3 (3) Reflect the definition of "kin" from the child's point
4 of view;
- 5 (4) Give preference to care settings that are the most
6 protective, as assessed on the safe family home
7 guidelines pursuant to section 587-25 and other
8 department procedures;
- 9 (5) Give preference to care settings that provide the
10 highest level of care, as assessed by department
11 instruments;
- 12 (6) Give preference to caregivers who will support the
13 biological parents' service plan and visitations of
14 the child if the child has not been permanently
15 removed. If the child has been permanently removed,
16 give preference to caregivers who will support an
17 "open" adoption that includes networking with
18 biological parents' kin;
- 19 (7) Ensure that caregivers are licensed, trained, and
20 committed to continued training; and



1 (8) Be made by a team that includes a social worker,
2 guardian ad litem, psychologist, psychiatrist, public
3 health nurse, and other parties as necessary.

4 (c) Both qualitative and quasi-experimental research shall
5 be conducted by the department to evaluate the efficacy and
6 well-being of the State's foster caregivers, adopting parents,
7 their foster or adopted children, and the placement and
8 monitoring process of the department of human services. The
9 department shall submit a biannual report to the legislature on
10 its research, beginning on January 2, 2007, and every six months
11 thereafter.

12 §587- Review panel decision. Prior to the effective
13 date of a child's final placement, the child's social worker
14 shall request an administrative panel review if the social
15 worker disagrees with the supervisor or section administrator's
16 placement decision.

17 §587- Determination of fit and willing kin. For the
18 purpose of this chapter, the department has the sole authority
19 and responsibility to determine which individual or individuals
20 qualify as fit and willing when determining who will provide
21 care for the harmed child."

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

3 "(a) Permanent plan is a specific written plan, prepared
4 by an appropriate authorized agency, which should set forth:

5 (1) A position as to whether the court should order an
6 adoption, guardianship, or permanent custody of the
7 child and specify:

8 (A) A reasonable period of time during which the
9 adoption or guardianship may be finalized;
10 provided that the identity of the proposed
11 adoptive parent or parents shall be provided to
12 the court in a separate report which shall be
13 sealed and shall not be released to the parties
14 unless the court deems such release to be in the
15 best interests of the child[+]. If current kin
16 or non-kin foster parents desire to adopt or
17 serve as guardians of the child, the identities
18 of these individuals shall be provided to the
19 court in a separate report, with the department's
20 recommendations as to child's best interest;



- 1 (B) If adoption is not the plan, a clear and
- 2 convincing explanation why guardianship is
- 3 preferable to adoption; or
- 4 (C) If adoption or guardianship is not the plan, a
- 5 clear and convincing explanation why permanent
- 6 custody is preferable to guardianship;
- 7 (2) A specific written plan including:
 - 8 (A) The goal, as being: adoption, guardianship, or
 - 9 permanent custody;
 - 10 (B) The objectives concerning the child, including,
 - 11 but not limited to, stable placement, education,
 - 12 health, therapy, counseling, birth family
 - 13 (including visitation, if any), culture, and
 - 14 adoption, guardianship, or preparation for
 - 15 independent living; and
 - 16 (C) The method or methods for achieving the goal and
 - 17 objectives set forth in subparagraphs (A) and
 - 18 (B);
- 19 (3) All supporting exhibits and written consents or an
- 20 explanation as to why the exhibits or consents are not
- 21 available. Upon good cause shown, the court may waive

1 submission of any supporting exhibit or written
2 consent; and

3 (4) Any other information or materials which are necessary
4 to the expeditious facilitation of the permanent
5 plan."

6 SECTION 4. Section 587-73, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) If the court determines that the criteria set forth
9 in subsection (a) are established by clear and convincing
10 evidence, the court shall order:

11 (1) That the existing service plan be terminated and that
12 the prior award of foster custody be revoked;

13 (2) That permanent custody be awarded to an appropriate
14 authorized agency;

15 (3) That an appropriate permanent plan be implemented
16 concerning the child whereby the child will:

17 (A) Be adopted pursuant to chapter 578; provided that
18 the court shall presume that it is in the best
19 interests of the child to be adopted, unless the
20 child is or will be in the home of family or a
21 person who has become as family and who for good
22 cause is unwilling or unable to adopt the child

1 but is committed to and is capable of being the
2 child's guardian or permanent custodian[+].
3 Current kin or non-kin foster parents willing and
4 able to adopt shall be given preference in a
5 child's adoption placement;

6 (B) Be placed under guardianship pursuant to chapter
7 560; or

8 (C) Remain in permanent custody until the child is
9 subsequently adopted, placed under a
10 guardianship, or reaches the age of majority, and
11 that such status shall not be subject to
12 modification or revocation except upon a showing
13 of extraordinary circumstances to the court;

14 (4) That such further orders as the court deems to be in
15 the best interests of the child, including, but not
16 limited to, restricting or excluding unnecessary
17 parties from participating in adoption or other
18 subsequent proceedings, be entered; and

19 (5) Until adoption or guardianship is ordered, that each
20 case be set for a permanent plan review hearing not
21 later than one year after the date that a permanent
22 plan is ordered by the court, or sooner if required by

1 federal law, and thereafter, that subsequent permanent
2 plan review hearings be set not later than each year,
3 or sooner if required by federal law; provided that at
4 each permanent plan review hearing, the court shall
5 review the existing permanent plan and enter such
6 further orders as are deemed to be in the best
7 interests of the child."

8 SECTION 5. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun, before its effective date.

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 1, 2050.

Report Title:

Foster Custody; Relatives; Extended Family

Description:

Affirms the importance of kinship placement and a child's attachment and bonding with a kin or non-kin foster caregiver. Requires the department of human services to make a good faith effort, which includes consulting with the Na Kupuna Tribunal, to identify family members for possible placement of a child.
(SD1)

