

JAN 25 2006

S.B. NO. 3218

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# A BILL FOR AN ACT

RELATING TO PLACEMENT OF HARMED CHILDREN.

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

1           SECTION 1. Chapter 587, Hawaii Revised Statutes, is  
2 amended by adding three new sections to be appropriately  
3 designated and to read as follows:

4           "§587-       Harmed children; removal from family home;  
5 placement. (a) If a child is removed from the family home  
6 because of harm, every reasonable effort shall be made to place  
7 the child with fit and willing kin of the family to continue the  
8 family bond. If fit and willing kin cannot be located within a  
9 reasonable time, the child may be placed with licensed and  
10 trained non-kin foster parents. In consideration of the child,  
11 all subsequent placement decisions, including permanency  
12 placement decisions, shall consider the degree and nature of the  
13 child's attachment and bonding with the current kin or non-kin  
14 foster caregivers.

15           (b) For purposes of this section:

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



- 1        (1) The child's affectionate tie to the caregiver;
- 2        (2) The child's wish to maintain proximity or contact with
- 3        the caregiver;
- 4        (3) The child's seeking security and comfort in the
- 5        relationship; and
- 6        (4) The child's feelings of sadness or distress at the
- 7        involuntary separation from the caregiver.

8        "Bonding" means the emotional relationship between a child  
 9 and an adult effected through close association. Deep bonding  
 10 is described as "attachment".

11        "Kin" means both maternal and paternal relatives, adult  
 12 siblings, or individuals not biologically or legally related to  
 13 the family, including but not limited to family friends,  
 14 caregivers, or faith leaders who are perceived as "family" by  
 15 the child and the child's family members. The term includes a  
 16 non-kin foster caregiver to whom the child has become attached  
 17 and bonded.

18        **§587- Temporary foster care and adoption placements.**

19        (a) At the child's initial removal from the child's parent or  
 20 parents because of harm, effort shall be made to place the child  
 21 with a member of the child's family. If a member of the child's

1 family is not readily identified, a thorough, documented search  
2 for kin shall be conducted, subject to the following:

3 (1) These kin shall be fit and willing, licensable, and  
4 trainable, without the need for remedial or  
5 rehabilitative services;

6 (2) Pending the identification of such kin, the child may  
7 be placed in a temporary foster care for thirty to  
8 sixty days;

9 (3) The search for fit and willing kin, and the licensing  
10 and training of such kin shall be completed within  
11 sixty days of the child's removal of the family; and

12 (4) If fit and willing kin are not identified, trained,  
13 and licensed within sixty days, the child shall be  
14 placed with non-kin foster parents or, if deemed  
15 appropriate, with risk-adopt foster parents.

16 (b) After the initial placement for temporary foster care,  
17 all subsequent foster care and adoption placement decisions  
18 shall:

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



- 1        (2) Give preference to care settings that will entail the  
2        least disruption of the child's current attachment and  
3        bonding. Psychologists and psychiatrists, using  
4        assessments and, if appropriate in light of the  
5        child's age, interviews, shall determine the degree of  
6        the child's attachment and bonding to the current  
7        caregivers;
- 8        (3) Reflect the definition of "kin" from the child's point  
9        of view. This may include the redefining of non-kin  
10       foster caregivers as "kin" from the child's  
11       perspective and the melding of two families, the  
12       original kin family and the new kin family, into one  
13       family;
- 14       (4) Give preference to care settings that are the most  
15       protective, as assessed on the safe family home  
16       guidelines pursuant to section 587-25 and other  
17       department procedures;
- 18       (5) Give preference to care settings that provide the  
19       highest level of care, as assessed by department  
20       instruments;
- 21       (6) Give preference to caregivers who will support the  
22       biological parents' service plan and visitations of



1 the child if the child has not been permanently  
2 removed. If the child has been permanently removed,  
3 give preference to caregivers who will support an  
4 "open" adoption that includes networking with  
5 biological parents' kin;

6 (7) Ensure that caregivers are licensed, trained, and  
7 committed to continued training; and

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

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

19 **§587- Determination of fit and willing kin.** For the  
20 purpose of this chapter, the department has the sole authority  
21 and responsibility to determine which individual or individuals



1 qualify as fit and willing when determining who will provide  
2 care for the harmed child."

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

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

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

10 (A) A reasonable period of time during which the  
11 adoption or guardianship may be finalized;  
12 provided that the identity of the proposed  
13 adoptive parent or parents shall be provided to  
14 the court in a separate report which shall be  
15 sealed and shall not be released to the parties  
16 unless the court deems such release to be in the  
17 best interests of the child[+]. If current kin  
18 or non-kin foster parents desire to adopt or  
19 serve as guardian of the child, the identities of  
20 these individuals shall be provided to the court  
21 in a separate report, with the department's  
22 recommendations as to the 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 3. 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 2. Statutory material to be repealed is bracketed  
 9 and stricken. New statutory material is underscored.

10 SECTION 3. This Act shall take effect upon its approval.

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**Report Title:**

Children; Temporary Foster Care; Adoption Placement

**Description:**

Clarifies the importance of kinship placement for temporary foster placement and adoption; affirms the importance of the child's present attachment and bonding to present caregivers, whether kin or non-kin.

