
A BILL FOR AN ACT

RELATING TO PLACEMENT OF HARMED CHILDREN.

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

PART I

1
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) That an alarmingly high percentage of native Hawaiian
5 families are broken up by the removal, often
6 unwarranted, of their children from them by non-
7 Hawaiian public and private agencies and that an
8 alarmingly high percentage of such children are placed
9 in non-Hawaiian foster and adoptive homes and
10 institutions; and

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

18 The legislature hereby declares that it is the policy of
19 this State to protect the cultural and traditional interests of
20 native Hawaiian children and to promote the stability and
21 security of native Hawaiian families by: establishing standards
22 for the removal of native Hawaiian children from their families

1 and the placement of these children in hanai or lawe hanai homes
2 that will reflect the unique values of native Hawaiian culture;
3 and providing for assistance to native Hawaiians in the
4 operation of child and family service programs.

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

8 "CHAPTER

9 NATIVE HAWAIIAN CHILD WELFARE ACT OF 2006

10 PART I. CHILD CUSTODY PROCEEDINGS

11 § -1 Short title. This chapter may be cited as the
12 "Native Hawaiian Child Welfare Act of 2006".

13 § -2 Definitions. For the purposes of this chapter,
14 except as may be specifically provided otherwise:

15 "Ahupuaa" means native Hawaiian districts as defined in
16 Kingdom of Hawaii law and any lands, not covered under such
17 section, title to which is either held by the United States and
18 the department of Hawaiian home lands in trust for the benefit
19 of any native Hawaiian or held by any native Hawaiian subject to
20 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" means the native Hawaiian customary and traditional
11 system of family in the nurture, care, and custody of their
12 children.

13 "Hanai or lawe hanai placement":

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



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

5 "Ho'oponopono" means native Hawaiian customary and
6 traditional philosophies of spiritual healing.

7 "Lawe hanai placement" means related by blood or a blood
8 relation.

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

16 "Native Hawaiian":

17 (1) Means any person who is a linear descendant of the
18 people who exercised sovereignty in Hawaii prior to
19 1778;

20 (2) Includes any native Hawaiian nation, or native
21 Hawaiian organized group or native Hawaiian community,
22 which is recognized as eligible for the special



1 programs and services provided by the United States to
2 native Hawaiians because of their status as native
3 Hawaiians.

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

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

12 "Native Hawaiian organization" means any group,
13 association, partnership, corporation, or other legal entity
14 owned or controlled by native Hawaiians.

15 "Parent" means any biological parent or parents of a native
16 Hawaiian child or any native Hawaiian or non-native Hawaiian
17 person who has lawfully adopted a native Hawaiian child,
18 including hanai or lawe hanai customs.

19 § -3 Na Kupuna tribunal; establishment. There is
20 established the Na Kupuna tribunal, which is a body corporate
21 and politic. The Na Kupuna tribunal shall be placed within the
22 First Hawaiian Nation for administrative purposes only.



1 The Na Kupuna tribunal shall consist of members.

2 Notwithstanding section 26-34, members of the Na Kupuna
3 tribunal shall be selected by each Na Kupuna island council.

4 The members of the tribunal shall serve without compensation,
5 but shall be reimbursed reasonable expenses in connection with
6 their duties.

7 § -4 Na Kupuna tribunal; jurisdiction over native

8 Hawaiian child custody proceedings. (a) The Na Kupuna tribunal
9 shall have exclusive jurisdiction over any child custody
10 proceeding involving a native Hawaiian child in this State, and
11 may petition for the transfer of proceedings involving a native
12 Hawaiian child from any other state to its jurisdiction pursuant
13 to this chapter. Where a native Hawaiian child is a ward of a
14 native Hawaiian or non-native Hawaiian entity, the Na Kupuna
15 tribunal shall retain exclusive jurisdiction over the child,
16 notwithstanding the residence or domicile of the child.

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

1 either parent or the native Hawaiian or non-native Hawaiian
2 custodian.

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

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

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

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



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

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



1 (c) Where it appears to the court that a person requesting
2 the appointment of counsel satisfies the requirements of chapter
3 802 for determination of indigency, the parent or native
4 Hawaiian custodian shall have the right to counsel provided by
5 the Na Kupuna tribunal. Compensation for counsel shall be as
6 provided in section 571-87.

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

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

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



1 Where the court records contain an affidavit of the
2 biological parent or parents requesting that their identity
3 remain confidential, the court shall include the affidavit with
4 the other information. The Na Kupuna tribunal shall ensure that
5 the confidentiality of the information is maintained and the
6 information shall not be subject to chapter 92F or the Freedom
7 of Information Act (5 U.S.C. 552), as amended.

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

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



1 **§ -9 Parental rights; involuntary termination**

2 **prohibited.** No involuntary termination of parental rights may
3 be ordered.

4 **§ -10 Parental rights; consent to voluntary termination.**

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

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

21 **§ -11 Parental rights; withdrawal of consent to**

22 **voluntary termination.** (a) Any parent or native Hawaiian or

1 non-native Hawaiian custodian may withdraw consent to a hanai or
2 lawe hanai placement at any time, and upon the withdrawal, the
3 child shall be returned to the parent or native Hawaiian or non-
4 native Hawaiian custodian.

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

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

19 **§ -12 Petition to court of competent jurisdiction to**
20 **invalidate action upon showing of certain violations.** Any
21 native Hawaiian child who is the subject of any action for hanai
22 or lawe hanai placement or involuntary termination of parental



1 rights, any parent or native Hawaiian custodian from whose
2 custody the child was removed, and the Na Kupuna tribunal may
3 petition any court of competent jurisdiction to invalidate the
4 action upon a showing that the action violated any provision of
5 this chapter.

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

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



1 The Na Kupuna tribunal may establish a different order of
2 preference by resolution.

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

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

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

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



1 be made available at any time upon the request of the Na Kupuna
2 tribunal.

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

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

18 § -15 Genealogical information; disclosure by the Na
19 Kupuna tribunal. Upon application by a native Hawaiian
20 individual who has reached the age of eighteen and who was the
21 subject of a hanai or lawe hanai placement, or the hanai or lawe
22 hanai parents of a native Hawaiian child, the Na Kupuna tribunal

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

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

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



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



1 approval. The Na Kupuna tribunal shall reassume jurisdiction
2 sixty days after publication in the Federal Register of notice
3 of approval. If the governor disapproves any petition under
4 this section, the governor shall provide technical assistance as
5 may be necessary to enable the Na Kupuna tribunal to correct any
6 deficiency that the governor identified as a cause for
7 disapproval.

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

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

20 (b) Agreements entered into pursuant to subsection (a)
21 shall bind all parties upon ninety days' written notice to the
22 other party and shall not affect any action or proceeding over



1 which a court has already assumed jurisdiction, unless the
2 agreement provides otherwise.

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

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



1 § -20 **Emergency removal or placement of child;**

2 **appropriate action.** (a) Nothing in this chapter shall be
3 construed to prevent the emergency removal of a native Hawaiian
4 child from its parent or native Hawaiian or non-native Hawaiian
5 custodian or the emergency placement of the child in a hanai or
6 lawe hanai home or institution in order to prevent imminent
7 physical damage or harm to the child.

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

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



PART II. OTHER PROGRAMS

§ -31 Grants for native Hawaiian programs and child welfare codes. (a) The Na Kupuna tribunal is authorized to accept grants from the federal government to assist in the establishment and operation of native Hawaiian child and family service programs and in the preparation and implementation of child welfare codes. The objective of every native Hawaiian child and family service program shall be to prevent the breakup of native Hawaiian families and, in particular, to ensure that the involuntary termination of parental rights of native Hawaiian families do not occur, thus preserving the native Hawaiian hanai custom, including lawe hanai.

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

- (1) Licensing or otherwise regulating native Hawaiian hanai or lawe hanai homes;
- (2) Operation and maintenance of facilities for the counseling and treatment of native Hawaiian families and for the temporary custody of native Hawaiian children;



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



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

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

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



1 "§571- Application to native Hawaiians. (a) A child
2 custody proceeding that pertains to a native Hawaiian child, as
3 defined in chapter , shall not be subject to this chapter to
4 the extent that it is governed by chapter .

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

8 (c) A child custody determination involving a native
9 Hawaiian child made pursuant to chapter shall be recognized
10 and enforced under this chapter."

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

14 "§578- Application to native Hawaiians. A child
15 custody proceeding that pertains to a native Hawaiian child, as
16 defined in chapter , shall not be subject to this chapter
17 to the extent that it is governed by chapter ."

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

20 "§571-11 Jurisdiction; children. Except as otherwise
21 provided in this chapter, and except as related to child custody
22 proceedings involving native Hawaiian children as provided by



1 chapter _____, the court shall have exclusive original
2 jurisdiction in proceedings:

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

12 (2) Concerning any child living or found within the
13 circuit:

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

18 (B) Who is beyond the control of the child's parent
19 or other custodian or whose behavior is injurious
20 to the child's own or others' welfare;

21 (C) Who is neither attending school nor receiving
22 educational services required by law whether



- 1 through the child's own misbehavior or
- 2 nonattendance or otherwise; or
- 3 (D) Who is in violation of curfew.
- 4 (3) To determine the custody of any child or appoint a
- 5 guardian of any child.
- 6 (4) For the adoption of a person under chapter 578.
- 7 (5) For the termination of parental rights under sections
- 8 571-61 to 571-63.
- 9 (6) For judicial consent to the marriage, employment, or
- 10 enlistment of a child, when such consent is required
- 11 by law.
- 12 (7) For the treatment or commitment of a mentally
- 13 defective, mentally retarded, or mentally ill child.
- 14 (8) Under the Interstate Compact on Juveniles under
- 15 chapter 582.
- 16 (9) For the protection of any child under chapter 587.
- 17 (10) For a change of name as provided in section 574-
- 18 5(a)(2)(C)."

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

21 "(a) [~~When~~] Except as provided in chapter _____, when it
 22 appears to a judge that a person requesting the appointment of

1 counsel satisfies the requirements of chapter 802 for
2 determination of indigency, or the court in its discretion
3 appoints counsel under chapters 587 and 346, part X, or that a
4 person requires appointment of a guardian ad litem, the judge
5 shall appoint counsel or a guardian ad litem to represent the
6 person at all stages of the proceedings, including appeal, if
7 any. Appointed counsel and the guardian ad litem shall receive
8 reasonable compensation for necessary expenses, including
9 travel, the amount of which shall be determined by the court,
10 and fees pursuant to subsection (b). All of these expenses
11 shall be certified by the court and paid upon vouchers approved
12 by the judiciary and warrants drawn by the comptroller."

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

15 "[~~†~~§577-25[~~†~~] **Emancipation of certain minors.** Any law to
16 the contrary notwithstanding, a minor who has been married
17 pursuant to chapter 572 shall be deemed to be emancipated and
18 shall be regarded as though he or she were of legal age and
19 shall have all the rights, duties, privileges, and
20 responsibilities provided by the civil law to a person who has
21 reached the age of majority under civil law; provided that:



1 (1) Nothing in this section shall be deemed to confer upon
2 such person the right to vote in any federal, state,
3 or county election or the right to purchase, possess,
4 or sell alcoholic beverages; ~~and~~

5 (2) Nothing in this section shall change the status of
6 such persons as minors in connection with any criminal
7 law, nor affect the exclusive original jurisdiction of
8 the family court over such persons under section 571-
9 11(1) ~~[+]~~; and

10 (3) Nothing in this section shall change the status of a
11 native Hawaiian under proceedings as provided in
12 chapter _____.

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

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

17 "[+]§583A-104[+] **Application to Indian tribes~~[-]~~ and**
18 **native Hawaiians.** (a) A ~~[child-custody]~~ child custody
19 proceeding that pertains to an Indian child as defined in the
20 Indian Child Welfare Act, 25 United States Code section 1901 et
21 seq., shall not be subject to this chapter to the extent that it
22 is governed by the Indian Child Welfare Act.

1 native Hawaiian children with schools and programs that promote
 2 traditional and customary rights, and native Hawaiian national
 3 history. In developing this report, the Na Kupuna tribunal
 4 shall give particular consideration to the provision of
 5 educational facilities for native Hawaiian children in the
 6 elementary grades.

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

PART III

13
 14 SECTION 10. (a) There is established a one-year pilot
 15 project to implement chapter , Hawaii Revised Statutes,
 16 established under section 2 of this Act. As part of this pilot
 17 project, the department of human services shall coordinate with
 18 the Na Kupuna tribunal established under chapter , Hawaii
 19 Revised Statutes, to develop procedures and protocols that will
 20 assist the Na Kupuna tribunal in carrying out its
 21 responsibilities with respect to child custody proceedings
 22 involving native Hawaiian children in this State.



1 (b) For the purposes of the pilot project, no more than
2 twenty-five cases shall be handled by the Na Kupuna tribunal in
3 accordance with the requirements of section 2 of this Act. The
4 department of human services and the family court shall enter
5 into any necessary agreements and develop necessary procedures
6 and protocols to allow the handling of cases in the pilot
7 project, and only those cases, as required by this section.

8 (c) The department of human services, with input from the
9 Na Kupuna tribunal, shall submit a final report on the pilot
10 project, including its status, procedures and protocols
11 developed, outcomes, and findings and recommendations, including
12 proposed legislation, if any, to the legislature no later than
13 twenty days prior to the convening of the regular session of
14 2007.

15 **PART IV**

16 SECTION 11. If any provision of this Act, or the
17 application thereof to any person or circumstance is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act, which can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



1 SECTION 12. This Act shall take effect upon its approval;
2 provided that:

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

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

16 SECTION 13. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 14. This Act shall take effect upon its approval.

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. (SD1)

