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# A BILL FOR AN ACT

RELATING TO NATIVE HAWAIIAN 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 2007

6 PART I. CHILD CUSTODY PROCEEDINGS

7 § -1 Short title. This chapter may be cited as the  
8 "Native Hawaiian Child Welfare Act of 2007".

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 native Hawaiian child and the Na Kupuna tribunal may petition to  
12 intervene at any point in any court proceeding for the hanai or  
13 lawe hanai placement of, or involuntary termination of parental  
14 rights to a native Hawaiian child, in any other state or  
15 jurisdiction.

16 (b) In any court proceeding for the hanai or lawe hanai  
17 placement of, or involuntary termination of parental rights to a  
18 native Hawaiian child, the native Hawaiian or non-native  
19 Hawaiian custodian of the child and the Na Kupuna tribunal may  
20 petition the court for transfer of the proceedings to this  
21 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 where  
11 a consenting parent evidences a desire for anonymity, the Na  
12 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 to prevent imminent physical  
7   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.





- 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          (c) 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 (d) 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.  Chapter 587, Hawaii Revised Statutes, is  
19 amended by adding a new section to be appropriately designated  
20 and to read as follows:

21       "§587-        Cultural needs.    The cultural needs of a  
22 child shall be considered, as part of the best interests of the



1 child standard, in the foster custody, placement, and permanent  
2 custody decisions made by the court under any proceeding under  
3 this chapter."

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

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

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

20 (2) Concerning any child living or found within the  
21 circuit:



- 1 (A) Who is neglected as to or deprived of educational  
2 services because of the failure of any person or  
3 agency to exercise that degree of care for which  
4 it is legally responsible;
- 5 (B) Who is beyond the control of the child's parent  
6 or other custodian or whose behavior is injurious  
7 to the child's own or others' welfare;
- 8 (C) Who is neither attending school nor receiving  
9 educational services required by law whether  
10 through the child's own misbehavior or  
11 nonattendance or otherwise; or
- 12 (D) Who is in violation of curfew[-];i
- 13 (3) To determine the custody of any child or appoint a  
14 guardian of any child[-];i
- 15 (4) For the adoption of a person under chapter 578[-];i
- 16 (5) For the termination of parental rights under sections  
17 571-61 to 571-63[-];i
- 18 (6) For judicial consent to the marriage, employment, or  
19 enlistment of a child, when such consent is required  
20 by law[-];i



- 1 (7) For the treatment or commitment of a mentally  
2 defective, mentally retarded, or mentally ill  
3 child~~[-]~~;
- 4 (8) Under the Interstate Compact on Juveniles under  
5 chapter 582~~[-]~~;
- 6 (9) For the protection of any child under chapter 587~~[-]~~;  
7 and
- 8 (10) For a change of name as provided in section 574-  
9 5(a)(2)(C)."

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

12 "(a) ~~When~~ Except as provided in chapter \_\_\_\_\_, when it  
13 appears to a judge that a person requesting the appointment of  
14 counsel satisfies the requirements of chapter 802 for  
15 determination of indigency, or the court in its discretion  
16 appoints counsel under chapters 587 and 346, part X, or that a  
17 person requires appointment of a guardian ad litem, the judge  
18 shall appoint counsel or a guardian ad litem to represent the  
19 person at all stages of the proceedings, including appeal, if  
20 any. Appointed counsel and the guardian ad litem shall receive  
21 reasonable compensation for necessary expenses, including  
22 travel, the amount of which shall be determined by the court,



1 and fees pursuant to subsection (b). All of these expenses  
2 shall be certified by the court and paid upon vouchers approved  
3 by the judiciary and warrants drawn by the comptroller."

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

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

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

17 (2) Nothing in this section shall change the status of  
18 such persons as minors in connection with any criminal  
19 law, nor affect the exclusive original jurisdiction of  
20 the family court over such persons under section 571-  
21 11(1) [~~-~~]; and



1        (3) Nothing in this section shall change the status of a  
2        native Hawaiian under proceedings as provided in  
3        chapter \_\_\_\_\_ .

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

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

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

14       (b) A child custody proceeding that pertains to a native  
15       Hawaiian child as defined in chapter \_\_\_\_\_ , shall not be subject  
16       to this chapter to the extent that it is governed by chapter  
17       \_\_\_\_\_ .

18       ~~[+b+]~~ (c) A court of this State shall treat a tribe as if  
19       it were a state of the United States for the purpose of applying  
20       parts I and II. A court of this State shall treat the Na Kupuna  
21       tribunal established in chapter \_\_\_\_\_ , as if it were a state of  
22       the United States for the purpose of applying parts I and II.





1 Interior and Insular Affairs of the United States House of  
2 Representatives within one year of the effective date of this  
3 Act.

4 PART III

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

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



1 shall be limited to programs and services under the department's  
2 differential response system.

3 (c) The department of human services, with input from the  
4 Na Kupuna tribunal, shall submit a final report on the pilot  
5 project, including its status, procedures and protocols  
6 developed, outcomes, and findings and recommendations, including  
7 proposed legislation, if any, to the legislature no later than  
8 twenty days prior to the convening of the regular session of  
9 2008.

10 PART IV

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

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

- 17 (1) The office of Hawaiian affairs;
- 18 (2) The Hawaii Foster Parent Association;
- 19 (3) The Hawaii Foster Youth Coalition;
- 20 (4) The Hawaii Youth Services Network;
- 21 (5) The attorney general, or designee;
- 22 (6) HCAP Leeward District;



- 1 (7) Na Kupuna O Waianae;
- 2 (8) The Legacy Coalition;
- 3 (9) Na Kupuna O Kahana; and
- 4 (10) Any other individuals or organizations the department
- 5 of human services deems necessary.

6 (c) The task force shall terminate upon completion of the

7 pilot project under section 11.

8 (d) The department of human services shall submit a report

9 to the legislature no later than twenty days prior to the

10 convening of the regular session of 2007 on its findings and

11 recommended legislation.

12 PART V

13 SECTION 13. If any provision of this Act, or the

14 application thereof to any person or circumstance is held

15 invalid, the invalidity does not affect other provisions or

16 applications of the Act, which can be given effect without the

17 invalid provision or application, and to this end the provisions

18 of this Act are severable.

19 SECTION 14. This Act shall take effect upon its approval;

20 provided that:

- 21 (1) Sections 2 to 8 shall not be operative for any
- 22 purposes or matters except for the cases being handled



1 by the pilot project pursuant to section 11(b) of this  
2 Act. Sections 2 to 8 shall become fully operative on  
3 July 1, 2008; and

4 (2) The child custody procedures in chapter , Hawaii  
5 Revised Statutes, contained in section 2 of this Act  
6 shall not affect a proceeding for hanai or lawe hanai  
7 placement that was initiated or completed prior to  
8 October 1, 2008, but shall apply to any subsequent  
9 proceeding in the same matter or subsequent  
10 proceedings affecting the custody or placement of the  
11 same child.

12 SECTION 15. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 16. This Act shall take effect on July 1, 2112.



**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 the full implementation of the Act in 2008. (HB1895 HD1)

