
A BILL FOR AN ACT

RELATING TO CHILDREN.

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

1 PART I

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

5 "PART . ILLEGAL DRUG USE

6 §587- Definitions. For purposes of this part, unless
7 the context otherwise requires, "illegal drug use" means the use
8 of crystal methamphetamine, heroin, cocaine, phencyclidine
9 (PCP), or morphine.

10 §587- Investigation. Upon receiving a report that a
11 parent, guardian, cohabitant, caregiver, or legal custodian of a
12 child may be engaging in illegal drug use when the child is
13 present, the department shall conduct an investigation within
14 twenty-four hours of receipt of the reported allegation of
15 illegal drug use. If the department's investigation determines
16 that the parent, guardian, cohabitant, caregiver, or legal
17 custodian has tested positive for illegal drug use within a



1 -day period prior to the investigation, and that the child
2 is subject to imminent harm because of the illegal drug use, the
3 department shall:

- 4 (1) Immediately contact the police who shall make a
5 determination under section 587-22 on whether the
6 child should be taken into protective custody; and
7 (2) File for a temporary restraining order on behalf of
8 the child against the individual who tested positive
9 for illegal drug use.

10 **§587- Substance abuse treatment.** The department shall
11 require a parent, guardian, or legal custodian who was
12 investigated and found to have tested positive for illegal drug
13 use to successfully participate in a drug treatment program for
14 a minimum of one year before the parent, guardian, or legal
15 custodian may regain full custody of a child. A cohabitant or
16 caregiver shall not solely supervise a child until after having
17 successfully participated in a drug treatment program for a
18 minimum of one year.

19 **§587-D Rules.** The department may adopt rules in accordance
20 with chapter 91 to implement this part."

21 SECTION 2. The department of human services shall submit a
22 report to the legislature no later than twenty days prior to the



1 regular session of 2009 on its efforts to prevent children from
2 being injured or exposed to unreasonable risk or neglect by
3 parents, guardians, or caregivers who test positive for illegal
4 drug use.

5 PART II

6 SECTION 3. Section 587-2, Hawaii Revised Statutes, is
7 amended by adding two new definitions to be appropriately
8 inserted and to read as follows:

9 "Caregiver" means an adult, other than a child's legal or
10 physical custodian, with whom the child has resided for a
11 continuous period of six months or more, with the verbal or
12 written consent of the child's legal and physical custodian.
13 The term "caregiver" shall not apply to situations involving
14 voluntary placement of a child or a court order.

15 "Safe home" means a home, other than a child's family home,
16 where the child has resided with the consent of the child's
17 legal and physical custodian, and where a caregiver has
18 demonstrated an ongoing willingness and ability to provide a
19 residence where the child is not subject to harm or threatened
20 harm, as determined by the department. A safe home shall not
21 apply to situations involving voluntary placement of a child or
22 a court order."



1 SECTION 4. Section 587-21, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Upon satisfying itself as to the course of action
4 that should be pursued to best accord with the purpose of this
5 chapter, the department shall:

6 (1) Terminate the investigation if the child is residing
7 with a caregiver in a safe home; provided that there
8 is documentation of the following:

9 (A) The concerns, findings, and problems that
10 initially warranted the department's involvement;

11 (B) The specific needs of parents, the specific
12 services offered to address those needs, and
13 whether the parents declined services;

14 (C) The parents' acknowledgment that they understand
15 the risks of having their parental rights
16 terminated;

17 (D) Whether the caregiver is eligible to be licensed
18 as a foster parent by the department; provided
19 that the department has the discretion to
20 determine that, even if the caregiver's home is
21 not in total accord with relevant foster care
22 licensing standards, the home is a safe home;



1 (E) The length of time the child can live with the
2 caregiver and the agreed-upon conditions for the
3 child's return, including any period for advance
4 mandatory notice from the caregiver to the
5 department if the caregiver seeks to permanently
6 return the child to the child's legal and
7 physical custodian;

8 (F) Whether the caregiver and the child shall be
9 entitled to the same benefits and services that
10 are available to a foster parent and a foster
11 child, including legal services, and whether the
12 caregiver has been informed of these benefits and
13 services, including information on obtaining an
14 adoption or guardianship;

15 (G) Whether the parents and the caregiver agree that
16 the caregiver can return the child to the parents
17 only with prior notification from the department;
18 and

19 (H) That the child's legal custodian agrees to place
20 the child with the caregiver, or that the child's
21 legal custodian cannot be located based on
22 available information.



1 (2) If the department determines there is a need, a
2 caregiver may be offered diversion or legal assistance
3 services, to the extent that funding and services are
4 available; provided that the department has determined
5 that the caregiver is able to provide a safe home
6 without the services offered.

7 [~~(1)~~] (3) Resolve the matter in an informal fashion
8 appropriate under the circumstances~~[+]~~, including
9 referral of the child and other family members to
10 state or community resources that provide the
11 assistance needed to address the problems in the
12 family home;

13 [~~(2)~~] (4) Seek to enter into a service plan, without filing
14 a petition in court, with members of the child's
15 family and other authorized agency as the department
16 deems necessary to the success of the service plan,
17 including [~~but not limited to,~~] the member or members
18 of the child's family who have legal custody of the
19 child. The service plan may include an agreement with
20 the child's family to voluntarily place the child in
21 the foster custody of the department or other
22 authorized agency, or to place the child and the



1 necessary members of the child's family under the
2 family supervision of the department or other
3 authorized agency; provided that if a service plan is
4 not successfully completed within six months, the
5 department shall file a petition or ensure that a
6 petition is filed by another appropriate authorized
7 agency in court under this chapter and the case shall
8 be reviewed as is required by federal law;

9 ~~[(3)]~~ (5) Assume temporary foster custody of the child
10 pursuant to section 587-24(a) and file a petition with
11 the court under this chapter within three working
12 days, excluding Saturdays, Sundays, and holidays,
13 after the date of the department's assumption of
14 temporary foster custody of the child; or

15 ~~[(4)]~~ (6) File a petition or ~~[ensure that a petition is~~
16 ~~filed by]~~ refer the matter to another appropriate
17 authorized agency, which may file a petition for
18 jurisdiction of the child in court under this
19 chapter."

20 SECTION 5. If any provision of this Act, or the
21 application thereof to any person or circumstance is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act, which can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 PART III

5
6 SECTION 6. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act shall take effect on January 1, 2112.



Report Title:

Child Custody; Parent Drug Use

Description:

Requires the Department of Human Services (DHS) to investigate reports of drug use in the home of a child within 24 hours. Requires a parent, legal custodian, cohabitant, or caregiver to participate in substance abuse treatment for at least one year before being awarded full custody of a child or being allowed to solely supervise the child. Establishes a system for DHS to allow children to continue to reside in pre-existing caregivers' safe homes rather than enter into foster care, subject to certain conditions. Effective 1/1/2112. (HB2596 HD2)

