

JAN 18 2008

S.B. NO. 2730

A BILL FOR AN ACT

RELATING TO CHILD PROTECTION.

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

1 SECTION 1. The Legislature finds that when decisions are
2 being made under chapter 587, Hawaii Revised Statutes,
3 concerning out-of-home placement of children under the
4 jurisdiction of the department of human services, preference
5 should be given to the child's grandparent or grandparents.
6 With this preference, children needing out-of-home care will be
7 more likely to be placed with appropriate family members in safe
8 and appropriate homes.

9 Grandparents are a part of the natural support system for a
10 family. Placement with a grandparent or grandparents can help
11 ensure that the child can stay within the family system and
12 maintain relationships that support the child's safety,
13 permanence, and well-being. In addition to being family,
14 grandparents can often bring other strengths and resources,
15 including additional life experience and maturity.

16 Data from the 2000 U.S. Census demonstrated the
17 increasingly visible role of grandparents as caregivers for
18 their grandchildren. Nationally, 4.5 million children lived in



1 grandparent-headed households. This was 6.3 per cent of all
2 children under age eighteen, and represented a thirty per cent
3 increase from 1990 to 2000. Furthermore, 2.4 million
4 grandparents reported that they were responsible for their
5 grandchildren who were living with them. In Hawaii, 38,051
6 children lived in grandparent-headed households in 2000, which
7 was 12.9 per cent of all the children in the State. Also,
8 14,029 grandparents reported that they were responsible for
9 their grandchildren who were living with them.

10 The legislature provided eligible caregivers the ability to
11 sign consents to meet a child's educational needs (Act 99,
12 Session Laws of Hawaii 2003) and medical care (Act 208, Session
13 Laws of Hawaii 2005). Clearly, the legislature has recognized
14 and sanctioned appropriate family relationships and care
15 arrangements, either formal or informal, made by the legal and
16 physical custodians of a child that are safe and appropriate.
17 Most often the care arrangement will be with a member of the
18 child's extended family, such as a grandparent, which provides
19 the child the optimal opportunity to develop and maintain
20 positive and lasting relationships with the child's siblings and
21 other extended family. Maintaining family connections was an
22 important factor in the last federal child and family service



1 review and will be more heavily weighted in the upcoming child
2 and family service review of Hawaii's child welfare system
3 scheduled for 2009.

4 Establishing a preference for a grandparent or grandparents
5 does not mean that children who need out-of-home placement will
6 automatically be placed with a grandparent or grandparents. The
7 safety of the child is paramount and consideration of the
8 child's safety is part of any placement decision.

9 The purpose of this Act is to establish a grandparent
10 preference for out-of-home placement of children needing
11 protection under chapter 587, Hawaii Revised Statutes.

12 SECTION 2. Section 587-1, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§587-1 Purpose; construction.** This chapter creates
15 within the jurisdiction of the family court a child protective
16 act to make paramount the safety and health of children who have
17 been harmed or are in life circumstances that threaten harm.
18 Furthermore, this chapter makes provisions for the service,
19 treatment, and permanent plans for these children and their
20 families.

21 The legislature finds that children deserve and require
22 competent, responsible parenting and safe, secure, loving, and



1 nurturing homes. The legislature finds that children who have
2 been harmed or are threatened with harm are less likely than
3 other children to realize their full educational, vocational,
4 and emotional potential, and become law-abiding, productive,
5 self-sufficient citizens, and are more likely to become involved
6 with the mental health system, the juvenile justice system, or
7 the criminal justice system, as well as become an economic
8 burden on the State. The legislature finds that prompt
9 identification, reporting, investigation, services, treatment,
10 adjudication, and disposition of cases involving children who
11 have been harmed or are threatened with harm are in the
12 children's, their families', and society's best interests
13 because the children are defenseless, exploitable, and
14 vulnerable. The legislature recognizes that many grandparents
15 are willing and able to provide a nurturing and safe placement
16 for their grandchildren who have been harmed or are threatened
17 with harm.

18 The policy and purpose of this chapter is to provide
19 children with prompt and ample protection from the harms
20 detailed herein, with an opportunity for timely reconciliation
21 with their families if the families can provide safe family
22 homes, and with timely and appropriate service or permanent



1 plans to ensure the safety of the child so they may develop and
2 mature into responsible, self-sufficient, law-abiding citizens.
3 The service plan shall effectuate the child's remaining in the
4 family home, when the family home can be immediately made safe
5 with services, or the child's returning to a safe family home.
6 If it is necessary to ensure the child's safety by removing the
7 child from the family home, the child shall be placed in foster
8 care, with placement preference given to the child's grandparent
9 or grandparents who are willing and able to care for the child.
10 The service plan [~~should~~] shall be carefully formulated with the
11 family in a timely manner. Every reasonable opportunity should
12 be provided to help the child's legal custodian to succeed in
13 remedying the problems [~~which~~] that put the child at substantial
14 risk of being harmed in the family home. Each appropriate
15 resource, public and private, family and friend, should be
16 considered and used to maximize the legal custodian's potential
17 for providing a safe family home for the child. Full and
18 careful consideration [~~should~~] shall be given to the religious,
19 cultural, and ethnic values of the child's legal custodian when
20 service plans are being discussed and formulated. Where the
21 court has determined, by clear and convincing evidence, that the



1 child cannot be returned to a safe family home, the child [~~will~~]
2 shall be permanently placed in a timely manner.

3 The department's child protective services provided under
4 this chapter shall make every reasonable effort to be open,
5 accessible, and communicative to the persons affected in any
6 manner by a child protective proceeding; provided that the
7 safety and best interests of the child under this chapter shall
8 not be endangered in the process.

9 This chapter shall be liberally construed to serve the best
10 interests of the children and the purposes set out in this
11 chapter."

12 SECTION 3. Section 587-2, Hawaii Revised Statutes, is
13 amended by amending the definition of "foster custody" to read:

14 "Foster custody" means the legal status created pursuant
15 to this section, section 587-21(b)(2), or by an order of court
16 after the court has determined that the child's family is not
17 presently willing and able to provide the child with a safe
18 family home, even with the assistance of a service plan.

19 (1) Foster custody vests in a foster custodian the
20 following duties and rights:

21 (A) To determine where and with whom the child shall
22 be placed in foster care; provided that



1 preference shall be given to the child's
2 grandparent or grandparents who are willing and
3 able to care for the child; provided further that
4 the child shall not be placed in foster care
5 outside the State without prior order of the
6 court; provided further that, subsequent to the
7 temporary foster custody hearing, unless
8 otherwise ordered by the court, the temporary
9 foster custodian or the foster custodian may
10 permit the child to resume residence with the
11 family from which the child was removed after
12 providing prior written notice to the court and
13 to all parties, which notice shall state that
14 there is no objection of any party to the return;
15 and upon the return of the child to the family,
16 temporary foster custody[7] or foster custody
17 automatically shall be revoked and the child and
18 the child's family members who are parties shall
19 be under the temporary family supervision or the
20 family supervision of the former temporary foster
21 custodian or foster custodian;



- 1 (B) To assure that the child is provided in a timely
- 2 manner with adequate food, clothing, shelter,
- 3 psychological care, physical care, medical care,
- 4 supervision, and other necessities;
- 5 (C) To monitor the provision to the child of
- 6 appropriate education;
- 7 (D) To provide all consents [~~which~~] that are required
- 8 for the child's physical or psychological health
- 9 or welfare, including[] but not limited to[]
- 10 ordinary medical, dental, psychiatric,
- 11 psychological, educational, employment,
- 12 recreational, or social needs; and to provide all
- 13 consents for any other medical or psychological
- 14 care or treatment, including[] but not limited
- 15 to[] surgery, if the care or treatment is deemed
- 16 by two physicians or two psychologists, whomever
- 17 is appropriate, licensed or authorized to
- 18 practice in this State to be necessary for the
- 19 child's physical or psychological health or
- 20 welfare, and the persons who are otherwise
- 21 authorized to provide the consent are unable or
- 22 have refused to consent to the care or treatment;



- 1 (E) To provide consent to the recording of a
2 statement pursuant to section 587-43; and
- 3 (F) To provide the court with information concerning
4 the child that the court may require at any time.
- 5 (2) The court, in its discretion, may vest foster custody
6 of a child in any authorized agency or subsequent
7 authorized agencies, in the child's best interests;
8 provided that the rights and duties [~~which~~] that are
9 so assumed by an authorized agency shall supersede the
10 rights and duties of any legal or permanent custodian
11 of the child, other than as is provided in paragraph
12 (4).
- 13 (3) An authorized agency shall not be liable to third
14 persons for the acts of the child solely by reason of
15 the agency's status as temporary foster custodian or
16 foster custodian of the child.
- 17 (4) Unless otherwise ordered by the court, a child's
18 family member shall retain the following rights and
19 responsibilities after a transfer of temporary foster
20 custody or foster custody, to the extent that the
21 family member possessed the rights and
22 responsibilities prior to the transfer of temporary



1 foster custody or foster custody[~~to wit~~]: the right
2 of reasonable supervised or unsupervised visitation at
3 the discretion of the authorized agency; the right to
4 consent to adoption, to marriage, or to major medical
5 or psychological care or treatment, except as provided
6 in paragraph (1)(D); and the continuing responsibility
7 for support of the child, including[~~to~~] but not limited
8 to[~~to~~] repayment for the cost of any and all care,
9 treatment, or any other service supplied or provided
10 by the temporary foster custodian, the foster
11 custodian, or the court for the child's benefit."

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

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

17 (1) Resolve the matter in an informal fashion appropriate
18 under the circumstances;

19 (2) Seek to enter into a service plan, without filing a
20 petition in court, with members of the child's family
21 and other authorized agency as the department deems
22 necessary to the success of the service plan,



1 including but not limited to, the member or members of
2 the child's family who have legal custody of the
3 child. The service plan may include an agreement with
4 the child's family to voluntarily place the child in
5 the foster custody of the department or other
6 authorized agency, provided that placement preference
7 shall be given to the child's grandparent or
8 grandparents who are willing and able to care for the
9 child, or to place the child and the necessary members
10 of the child's family under the family supervision of
11 the department or other authorized agency; provided
12 that if a service plan is not successfully completed
13 within six months, the department shall file a
14 petition or ensure that a petition is filed by another
15 appropriate authorized agency in court under this
16 chapter and the case shall be reviewed as is required
17 by federal law;

- 18 (3) Assume temporary foster custody of the child pursuant
19 to section 587-24(a) and file a petition with the
20 court under this chapter within three working days,
21 excluding Saturdays, Sundays, and holidays, after the
22 date of the department's assumption of temporary



1 foster custody of the child; provided that placement
2 preference shall be given to the child's grandparent
3 or grandparents who are willing and able to care for
4 the child; or

5 (4) File a petition or ensure that a petition is filed by
6 another appropriate authorized agency in court under
7 this chapter."

8 SECTION 5. Section 587-24, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) Upon assuming temporary foster custody of a child
11 under this chapter, the department shall place the child in
12 emergency foster care, unless the child is admitted to a
13 hospital or similar institution, while it conducts an
14 appropriate investigation[-]; provided that placement preference
15 for emergency foster care shall be given to the child's
16 grandparent or grandparents who are willing and able to care for
17 the child."

18 SECTION 6. Section 587-53, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (d) to read:



1 "(d) During a continuance period ordered pursuant to
2 subsection (c) or at any other time during the pendency of a
3 child protective proceeding, the court may further order that:

4 (1) Any party undergo a physical, developmental,
5 psychological, or psychiatric evaluation and that a
6 written or oral report be submitted to the court and
7 all parties prior to or upon the date of the continued
8 or next hearing;

9 (2) The child's family members who are parties provide the
10 department or other appropriate authorized agency with
11 the names and addresses of the child's grandparents,
12 other family, and friends who may be potential
13 visitation supervisors or foster parents for the child
14 and that they arrange for the persons to appear in
15 court upon the date of the continued or next hearing;

16 (3) The child's family members who are parties be
17 permitted reasonable supervised or unsupervised
18 visitation with the child at the discretion of the
19 department or other appropriate authorized agency and
20 the child's guardian ad litem;

21 (4) The parties, subject to their agreement unless
22 jurisdiction has been established, meet with



1 appropriate expert witnesses to discuss the alleged
2 harm to the child;

3 (5) The court and the parties view a visual recording or
4 listen to an oral recording of the child's statement
5 at such time and in such manner as the court deems to
6 be appropriate;

7 (6) The child and the child's family members who are
8 parties, subject to their agreement unless
9 jurisdiction has been established, arrange and
10 commence participation in such counseling or therapy
11 for themselves and the child as the court deems to be
12 appropriate and consistent with the best interests of
13 the child;

14 (7) An appropriate order of protection be entered;

15 (8) A criminal history record check be conducted by the
16 department or other appropriate authorized agency
17 concerning a party who is an alleged perpetrator of
18 imminent harm, harm, or threatened harm to the child,
19 and that the results be submitted to the court and
20 other parties in such manner as the court deems to be
21 appropriate prior to or upon the date of the continued
22 or next hearing;



1 (9) The department or other appropriate authorized agency
2 prepare a written or oral supplemental report pursuant
3 to section 587-40 and submit the report to the court,
4 the guardian ad litem, and all parties prior to or
5 upon the date of the continued or next hearing; or

6 (10) The child's guardian ad litem visit the child's family
7 home and foster home, be present during a supervised
8 visitation, and prepare a written or oral report,
9 including specific recommendations concerning services
10 and assistance, to be submitted to the court and all
11 parties prior to or upon the date of the continued or
12 next hearing."

13 2. By amending subsection (f) to read:

14 "(f) After a temporary foster custody hearing, if the
15 court determines that there is reasonable cause to believe that
16 continued placement in foster care is necessary to protect the
17 child from imminent harm, it shall order that the child continue
18 in the temporary foster custody of the department (provided that
19 preference shall be given to the child's grandparent or
20 grandparents who are willing and able to care for the child)
21 under the terms and conditions, including[~~7~~] but not limited
22 to[~~7~~] orders concerning services and assistance and [~~which~~] that



1 may be entered pursuant to subsection (d), as are deemed by the
2 court to be in the best interests of the child; provided that
3 prior to ordering placement or continued placement in any
4 proceeding under this chapter the court first shall give due
5 consideration to whether:

6 (1) The removal or continued removal of the alleged
7 potential perpetrator of the imminent harm, harm, or
8 threatened harm from the child's family home prior to
9 continuing or placing the child out of the family
10 home. The child's family shall have the burden of
11 establishing that it is not in the best interests of
12 the child that the alleged perpetrator be removed from
13 the family's home rather than the child by order of
14 the court; and

15 (2) Every reasonable effort has been or is being made to
16 place siblings or psychologically bonded children
17 together, unless the placement is not in the best
18 interests of the children."

19 SECTION 7. Section 587-73, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) At the permanent plan hearing, the court shall
22 consider fully all relevant prior and current information



1 pertaining to the safe family home guidelines, as set forth in
2 section 587-25, including but not limited to the report or
3 reports submitted pursuant to section 587-40, and determine
4 whether there exists clear and convincing evidence that:

5 (1) The child's legal mother, legal father, adjudicated,
6 presumed, or concerned natural father as defined under
7 chapter 578 are not presently willing and able to
8 provide the child with a safe family home, even with
9 the assistance of a service plan;

10 (2) It is not reasonably foreseeable that the child's
11 legal mother, legal father, adjudicated, presumed, or
12 concerned natural father as defined under chapter 578
13 will become willing and able to provide the child with
14 a safe family home, even with the assistance of a
15 service plan, within a reasonable period of time which
16 shall not exceed two years from the date upon which
17 the child was first placed under foster custody by the
18 court;

19 (3) The proposed permanent plan will assist in achieving
20 the goal which is in the best interests of the child;
21 provided that the court shall presume that:



1 (A) It is in the best interests of a child to be
 2 promptly and permanently placed with responsible
 3 and competent substitute parents and families in
 4 safe and secure homes; provided that preference
 5 shall be given to the child's grandparent or
 6 grandparents who are willing and able to care for
 7 the child; and

8 (B) The presumption increases in importance
 9 proportionate to the youth of the child upon the
 10 date that the child was first placed under foster
 11 custody by the court; and

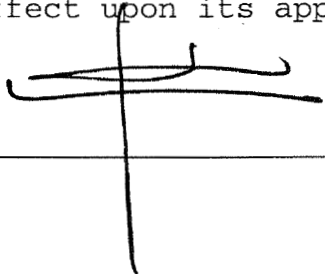
12 (4) If the child has reached the age of fourteen, the
 13 child consents to the permanent plan, unless the
 14 court, after consulting with the child in camera,
 15 finds that it is in the best interest of the child to
 16 dispense with the child's consent."

17 SECTION 8. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 9. This Act shall take effect upon its approval.

20

INTRODUCED BY: _____


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By Request



Report Title:

Child Protection Act; Ohana Preference; Grandparents

Description:

Establishes a grandparent preference for out-of-home placement of children needing child protective services.

