
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 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 promote the child's safety,
13 stability, and well-being. In addition to being family members,
14 grandparents can often bring other strengths and resources,
15 including additional life experience and maturity.

16 Data from the 2000 United States Census demonstrated the
17 increasingly visible role of grandparents acting as primary
18 caregivers for their grandchildren. Nationally, 4,500,000



1 children lived in grandparent-headed households. This was 6.3
2 per cent of all children under age eighteen, and represented a
3 thirty per cent increase from 1990 to 2000. Furthermore,
4 2,400,000 grandparents reported that they were responsible for
5 their grandchildren who were living with them. In Hawaii,
6 38,051 children lived in grandparent-headed households in 2000,
7 which 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 preference for
10 grandparents and other appropriate family members who are
11 identified by the department of human services, when making out-
12 of-home placements for children needing protection under chapter
13 587, Hawaii Revised Statutes.

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

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



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

20 The policy and purpose of this chapter is to provide
21 children with prompt and ample protection from the harms
22 detailed herein, with an opportunity for timely reconciliation



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



1 legal custodian when service plans are being discussed and
2 formulated. Where the court has determined, by clear and
3 convincing evidence, that the child cannot be returned to a safe
4 family home, the child [~~will~~] shall be permanently placed in a
5 timely manner.

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

12 This chapter shall be liberally construed to serve the best
13 interests of the children and the purposes set out in this
14 chapter."

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

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



1 (1) Foster custody vests in a foster custodian the
2 following duties and rights:
3 (A) To determine where and with whom the child shall
4 be placed in foster care; provided that
5 preference shall be given to the child's
6 grandparent or grandparents, or other appropriate
7 family member identified by the department, who
8 is willing and able to care for the child;
9 provided further that the child shall not be
10 placed in foster care outside the State without
11 prior order of the court; provided further that,
12 subsequent to the temporary foster custody
13 hearing, unless otherwise ordered by the court,
14 the temporary foster custodian or the foster
15 custodian may permit the child to resume
16 residence with the family from which the child
17 was removed after providing prior written notice
18 to the court and to all parties, which notice
19 shall state that there is no objection of any
20 party to the return; and upon the return of the
21 child to the family, temporary foster custody[?]
22 or foster custody automatically shall be revoked



1 and the child and the child's family members who
2 are parties shall be under the temporary family
3 supervision or the family supervision of the
4 former temporary foster custodian or foster
5 custodian;

6 (B) To assure that the child is provided in a timely
7 manner with adequate food, clothing, shelter,
8 psychological care, physical care, medical care,
9 supervision, and other necessities;

10 (C) To monitor the provision to the child of
11 appropriate education;

12 (D) To provide all consents [~~which~~] that are required
13 for the child's physical or psychological health
14 or welfare, including[] but not limited to[]
15 ordinary medical, dental, psychiatric,
16 psychological, educational, employment,
17 recreational, or social needs; and to provide all
18 consents for any other medical or psychological
19 care or treatment, including[] but not limited
20 to[] surgery, if the care or treatment is deemed
21 by two physicians or two psychologists, whomever
22 is appropriate, licensed or authorized to



1 practice in this State to be necessary for the
2 child's physical or psychological health or
3 welfare, and the persons who are otherwise
4 authorized to provide the consent are unable or
5 have refused to consent to the care or treatment;

6 (E) To provide consent to the recording of a
7 statement pursuant to section 587-43; and

8 (F) To provide the court with information concerning
9 the child that the court may require at any time.

10 (2) The court, in its discretion, may vest foster custody
11 of a child in any authorized agency or subsequent
12 authorized agencies, in the child's best interests;
13 provided that the rights and duties [~~which~~] that are
14 so assumed by an authorized agency shall supersede the
15 rights and duties of any legal or permanent custodian
16 of the child, other than as is provided in paragraph
17 (4).

18 (3) An authorized agency shall not be liable to third
19 persons for the acts of the child solely by reason of
20 the agency's status as temporary foster custodian or
21 foster custodian of the child.



1 (4) Unless otherwise ordered by the court, a child's
2 family member shall retain the following rights and
3 responsibilities after a transfer of temporary foster
4 custody or foster custody, to the extent that the
5 family member possessed the rights and
6 responsibilities prior to the transfer of temporary
7 foster custody or foster custody[~~, to wit~~]: the right
8 of reasonable supervised or unsupervised visitation at
9 the discretion of the authorized agency; the right to
10 consent to adoption, to marriage, or to major medical
11 or psychological care or treatment, except as provided
12 in paragraph (1)(D); and the continuing responsibility
13 for support of the child, including[] but not limited
14 to[] repayment for the cost of any and all care,
15 treatment, or any other service supplied or provided
16 by the temporary foster custodian, the foster
17 custodian, or the court for the child's benefit."

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

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



- 1 (1) Resolve the matter in an informal fashion appropriate
2 under the circumstances;
- 3 (2) Seek to enter into a service plan, without filing a
4 petition in court, with members of the child's family
5 and other authorized agency as the department deems
6 necessary to the success of the service plan,
7 including but not limited to, the member or members of
8 the child's family who have legal custody of the
9 child. The service plan may include an agreement with
10 the child's family to voluntarily place the child in
11 the foster custody of the department or other
12 authorized agency, provided that placement preference
13 shall be given to the child's grandparent or
14 grandparents, or other appropriate family member
15 identified by the department, who is willing and able
16 to care for the child, or to place the child and the
17 necessary members of the child's family under the
18 family supervision of the department or other
19 authorized agency; provided that if a service plan is
20 not successfully completed within six months, the
21 department shall file a petition or ensure that a
22 petition is filed by another appropriate authorized



1 agency in court under this chapter and the case shall
2 be reviewed as is required by federal law;

3 (3) Assume temporary foster custody of the child pursuant
4 to section 587-24(a) and file a petition with the
5 court under this chapter within three working days,
6 excluding Saturdays, Sundays, and holidays, after the
7 date of the department's assumption of temporary
8 foster custody of the child; provided that placement
9 preference shall be given to the child's grandparent
10 or grandparents, or other appropriate family member
11 identified by the department, who is willing and able
12 to care for the child; or

13 (4) File a petition or ensure that a petition is filed by
14 another appropriate authorized agency in court under
15 this chapter."

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

18 "(c) Upon assuming temporary foster custody of a child
19 under this chapter, the department shall place the child in
20 emergency foster care, unless the child is admitted to a
21 hospital or similar institution, while it conducts an
22 appropriate investigation[-]; provided that placement preference



1 for emergency foster care shall be given to the child's
2 grandparent or grandparents, or other appropriate family member
3 identified by the department, who is willing and able to care
4 for the child."

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

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

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

11 (1) Any party undergo a physical, developmental,
12 psychological, or psychiatric evaluation and that a
13 written or oral report be submitted to the court and
14 all parties prior to or upon the date of the continued
15 or next hearing;

16 (2) The child's family members who are parties provide the
17 department or other appropriate authorized agency with
18 the names and addresses of the child's grandparents,
19 other family members, and friends who may be potential
20 visitation supervisors or foster parents for the child
21 and that they arrange for the persons to appear in
22 court upon the date of the continued or next hearing;



- 1 (3) The child's family members who are parties be
2 permitted reasonable supervised or unsupervised
3 visitation with the child at the discretion of the
4 department or other appropriate authorized agency and
5 the child's guardian ad litem;
- 6 (4) The parties, subject to their agreement unless
7 jurisdiction has been established, meet with
8 appropriate expert witnesses to discuss the alleged
9 harm to the child;
- 10 (5) The court and the parties view a visual recording or
11 listen to an oral recording of the child's statement
12 at such time and in such manner as the court deems to
13 be appropriate;
- 14 (6) The child and the child's family members who are
15 parties, subject to their agreement unless
16 jurisdiction has been established, arrange and
17 commence participation in such counseling or therapy
18 for themselves and the child as the court deems to be
19 appropriate and consistent with the best interests of
20 the child;
- 21 (7) An appropriate order of protection be entered;



1 (8) A criminal history record check be conducted by the
2 department or other appropriate authorized agency
3 concerning a party who is an alleged perpetrator of
4 imminent harm, harm, or threatened harm to the child,
5 and that the results be submitted to the court and
6 other parties in such manner as the court deems to be
7 appropriate prior to or upon the date of the continued
8 or next hearing;

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

14 (10) The child's guardian ad litem visit the child's family
15 home and foster home, be present during a supervised
16 visitation, and prepare a written or oral report,
17 including specific recommendations concerning services
18 and assistance, to be submitted to the court and all
19 parties prior to or upon the date of the continued or
20 next hearing."

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



1 "(f) After a temporary foster custody hearing, if the
2 court determines that there is reasonable cause to believe that
3 continued placement in foster care is necessary to protect the
4 child from imminent harm, it shall order that the child continue
5 in the temporary foster custody of the department (provided that
6 preference shall be given to the child's grandparent or
7 grandparents, or other appropriate family member identified by
8 the department, who is willing and able to care for the child)
9 under the terms and conditions, including[7] but not limited
10 to[7] orders concerning services and assistance and [~~which~~] that
11 may be entered pursuant to subsection (d), as are deemed by the
12 court to be in the best interests of the child; provided that
13 prior to ordering placement or continued placement in any
14 proceeding under this chapter the court first shall give due
15 consideration to whether:

16 (1) The removal or continued removal of the alleged
17 potential perpetrator of the imminent harm, harm, or
18 threatened harm from the child's family home prior to
19 continuing or placing the child out of the family
20 home. The child's family shall have the burden of
21 establishing that it is not in the best interests of
22 the child that the alleged perpetrator be removed from



1 the family's home rather than the child by order of
2 the court; and

3 (2) Every reasonable effort has been or is being made to
4 place siblings or psychologically bonded children
5 together, unless the placement is not in the best
6 interests of the children."

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

9 "(a) At the permanent plan hearing, the court shall
10 consider fully all relevant prior and current information
11 pertaining to the safe family home guidelines, as set forth in
12 section 587-25, including but not limited to the report or
13 reports submitted pursuant to section 587-40, and determine
14 whether there exists clear and convincing evidence that:

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

20 (2) It is not reasonably foreseeable that the child's
21 legal mother, legal father, adjudicated, presumed, or
22 concerned natural father as defined under chapter 578



1 will become willing and able to provide the child with
2 a safe family home, even with the assistance of a
3 service plan, within a reasonable period of time which
4 shall not exceed two years from the date upon which
5 the child was first placed under foster custody by the
6 court;

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

10 (A) It is in the best interests of a child to be
11 promptly and permanently placed with responsible
12 and competent substitute parents and families in
13 safe and secure homes; provided that preference
14 shall be given to the child's grandparent or
15 grandparents, or other appropriate family member
16 identified by the department, who is willing and
17 able to care for the child; and

18 (B) The presumption increases in importance
19 proportionate to the youth of the child upon the
20 date that the child was first placed under foster
21 custody by the court; and



1 (4) If the child has reached the age of fourteen, the
2 child consents to the permanent plan, unless the
3 court, after consulting with the child in camera,
4 finds that it is in the best interest of the child to
5 dispense with the child's consent."

6 SECTION 8. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

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



Report Title:

Child Protection Act; Ohana Preference; Grandparents

Description:

Establishes a grandparent, or other appropriate relative, preference for out-of-home placement of children needing child protective services. (SD1)

