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# A BILL FOR AN ACT

RELATING TO CHILD WELFARE SERVICES.

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

1           SECTION 1. The federal Child and Family Services Review of  
2 Hawaii's child welfare system recommends the use of culturally  
3 sensitive and family strengthening diversion and other  
4 supportive services to improve the safety and well-being of  
5 children and families. This Act seeks to comply with the Child  
6 and Family Services Review's recommendations by clarifying that  
7 our local customs of caring for children outside of the family  
8 home by relatives and friends and other diversion and supportive  
9 services are, where appropriate, available alternatives to the  
10 department of human services and the court assuming custody of  
11 children. This will ensure that no child is taken into custody  
12 unnecessarily and will preserve the relationships that are  
13 important to every child's well-being.

14           SECTION 2. Section 587-2, Hawaii Revised Statutes, is  
15 amended by adding two new definitions to be appropriately  
16 inserted and to read as follows:

17           "Caregiver" means an adult who is not the child's legal  
18 and physical custodian but with whom a child has been residing



1 for at least six months with the verbal or written consent of  
2 the child's legal and physical custodian; this definition  
3 applies to situations outside of the child welfare system, not  
4 situations of voluntary placement or court order.

5 "Safe home" means a home, other than the family home, where  
6 a child has resided with the consent of the child's legal and  
7 physical custodian, and where an adult other than the child's  
8 legal and physical custodian has demonstrated a willingness and  
9 ability to provide a home where the child is not subject to harm  
10 or threatened harm, as determined by the department. A "safe  
11 home" situation lies outside of the formal child welfare system,  
12 and shall not apply to situations involving voluntary placement  
13 or court order."

14 SECTION 3. Section 587-21, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:

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

19 (1) Close the matter if the child is residing with an  
20 appropriate caregiver who is willing and able to  
21 provide a safe home for the child provided that:

22 (A) There is documentation of the following:



- 1           (i) Concerns, findings, and problems that  
2           initially warranted the department's  
3           involvement, the specific needs of parents,  
4           specific services offered to address those  
5           needs, and whether the parents declined  
6           services;
- 7           (ii) The parents' acknowledgment that they  
8           understand the risk of terminating their  
9           parental rights;
- 10          (iii) Whether the caregiver is eligible to be  
11          licensed by the department; provided that  
12          the department has the discretion to  
13          determine that, even if the home is not  
14          licensable, the home is safe;
- 15          (iv) The length of time the child can live with  
16          the caregiver, and the agreed upon  
17          conditions for the child's return, including  
18          but not limited to, notice from the  
19          caregiver to the department if the child  
20          will be returned to the legal and physical  
21          custodian;



1           (v) Whether the caregiver and the child are  
2           entitled to the same benefits and services  
3           that are available to a foster parent and a  
4           foster child, including legal services, and  
5           whether the caregiver has been informed of  
6           these benefits and services, including  
7           obtaining an adoption or guardianship;

8           (vi) Whether the parents and the caregiver agreed  
9           that the caregiver can only return the child  
10           to the parents with prior notification from  
11           the department; and

12           (vii) Whether the legal and physical custodians  
13           cannot be located, or that based on the  
14           information that is available, they are in  
15           agreement with the placement of the child  
16           with the caregiver;

17           (B) If the department determines there is a need, the  
18           caregivers may be offered diversion or legal  
19           assistance services, to the extent that funding  
20           and services are available, as long as the  
21           department has determined that the caregiver is



1                   able to provide a safe home without the services  
2                   offered;

3       [~~(1)~~] (2)   Resolve the matter in an informal fashion  
4                   appropriate under the circumstances[~~+~~] including but  
5                   not limited to referring the child and family to a  
6                   state or community resource that provides the  
7                   assistance needed to address the problems in the  
8                   family home;

9       [~~(2)~~] (3)   Seek to enter into a service plan, without filing  
10                   a petition in court, with members of the child's  
11                   family and other authorized agency as the department  
12                   deems necessary to the success of the service plan,  
13                   including but not limited to, the member or members of  
14                   the child's family who have legal custody of the  
15                   child. The service plan may include an agreement with  
16                   the child's family to voluntarily place the child in  
17                   the foster custody of the department or other  
18                   authorized agency, or to place the child and the  
19                   necessary members of the child's family under the  
20                   family supervision of the department or other  
21                   authorized agency; provided that if a service plan is  
22                   not successfully completed within six months, the



1 department shall file a petition or ensure that a  
2 petition is filed by another appropriate authorized  
3 agency in court under this chapter and the case shall  
4 be reviewed as is required by federal law;

5 ~~[(3)]~~ (4) Assume temporary foster custody of the child  
6 pursuant to section 587-24(a) and file a petition with  
7 the court under this chapter within three working  
8 days, excluding Saturdays, Sundays, and holidays,  
9 after the date of the department's assumption of  
10 temporary foster custody of the child; or

11 ~~[(4)]~~ (5) File a petition or ~~[ensure that a petition is~~  
12 ~~filed by]~~ refer the matter to another appropriate  
13 authorized agency who may file a petition for  
14 jurisdiction of the child in court under this  
15 chapter."

16 SECTION 4. Section 587-22, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) A police officer shall assume protective custody of  
19 the child without a court order and without the consent of the  
20 child's family regardless of whether the child's family is  
21 absent, if in the discretion of the police officer, the child is  
22 in such circumstance or condition that the child's continuing in



1 the custody or care of the child's family presents a situation  
2 of imminent harm to the child.

3 ~~[A police officer may assume protective custody of the~~  
4 ~~child without a court order and without the consent of the~~  
5 ~~child's family regardless of whether the child's family is~~  
6 ~~absent, if in the discretion of the police officer.]~~

7 ~~(1) The child has no legal custodian who is willing and~~  
8 ~~able to provide a safe family home for the child; or~~  
9 ~~(2) There is evidence that the parent or legal guardian of~~  
10 ~~the child has subjected the child to harm or~~  
11 ~~threatened harm and that the parent or legal guardian~~  
12 ~~is likely to flee the jurisdiction of the court with~~  
13 ~~the child.]"~~

14 SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Child welfare; Caregivers; Child Custody

**Description:**

Clarifies the law to ensure that local customs of caring for children outside the home by friends and relatives are an available alternative when considering the custody of children.

(SD1)

