



GOV. MSG. NO. **593**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 24, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 24, 2010, the following bill was signed into law:

SB2716 SD2 HD2 CD1

A BILL FOR AN ACT
RELATING TO CHILD PROTECTIVE ACT.
ACT 135 (10)

Sincerely,



LINDA LINGLE

Approved by the Governor

on MAY 24 2010

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

ACT 135

S.B. NO. 2716
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO CHILD PROTECTIVE ACT.

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

1 SECTION 1. 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 CHILD PROTECTIVE ACT

6 PART I. SHORT TITLE, PURPOSE, CONSTRUCTION,

7 GUIDING PRINCIPLES, AND DEFINITIONS

8 § -1 Short title. This chapter shall be known and cited
9 as the Child Protective Act.

10 § -2 Purpose; construction. This chapter creates within
11 the jurisdiction of the family court a child protective act to
12 make paramount the safety and health of children who have been
13 harmed or are in life circumstances that threaten harm.
14 Furthermore, this chapter makes provisions for the service,
15 treatment, and permanent plans for these children and their
16 families.

17 The legislature finds that children deserve and require
18 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 relatives are
15 willing and able to provide a nurturing and safe placement for
16 children who have been harmed or are threatened with harm.

17 The policy and purpose of this chapter is to provide
18 children with prompt and ample protection from the harms
19 detailed herein, with an opportunity for timely reconciliation
20 with their families if the families can provide safe family
21 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 The service plan shall be carefully formulated with the family
7 in a timely manner. Every reasonable opportunity should be
8 provided to help the child's legal custodian to succeed in
9 remedying the problems that put the child at substantial risk of
10 being harmed in the family home. Each appropriate resource,
11 public and private, family and friend, should be considered and
12 used to maximize the legal custodian's potential for providing a
13 safe family home for the child. Full and careful consideration
14 shall be given to the religious, cultural, and ethnic values of
15 the child's legal custodian when service plans are being
16 discussed and formulated. Where the court has determined, by
17 clear and convincing evidence, that the child cannot be returned
18 to a safe family home, the child shall be permanently placed in
19 a timely manner.



1 The policy and purpose of this chapter includes the
2 protection of children who have been harmed or are threatened
3 with harm by:

- 4 (1) Providing assistance to families to address the causes
5 for abuse and neglect;
- 6 (2) Respecting and using each family's strengths,
7 resources, culture, and customs;
- 8 (3) Ensuring that families are meaningfully engaged and
9 children are consulted in an age-appropriate manner in
10 case planning;
- 11 (4) Enlisting the early and appropriate participation of
12 family and the family's support networks;
- 13 (5) Respecting and encouraging the input and views of
14 caregivers; and
- 15 (6) Ensuring a permanent home through timely adoption or
16 other permanent living arrangement,
17 if safe reunification with the family is not possible.

18 The child protective services under this chapter shall be
19 provided with every reasonable effort to be open, accessible,
20 and communicative to the persons affected by a child protective



1 proceeding without endangering the safety and best interests of
2 the child under this chapter.

3 This chapter shall be liberally construed to serve the best
4 interests of the children affected and the purpose and policies
5 set forth herein.

6 § -3 Guiding principles for children in foster care.

7 (a) The department or an authorized agency, as resource family
8 or permanent custodian, shall abide by the following guiding
9 principles and ensure that a child in foster care:

10 (1) Lives in a safe and healthy home, free from physical,
11 psychological, sexual, and other abuse;

12 (2) Has adequate:

13 (A) Food that is nutritious and healthy;

14 (B) Clothing;

15 (C) Medical care, dental and orthodontic services,
16 and corrective vision care; and

17 (D) Mental health services;

18 (3) Has supervised or unsupervised in-person, telephone,
19 or other forms of contact with the child's parents and
20 siblings while the child is in foster care, unless
21 prohibited by court order;



- 1 (4) Has in-person contact with the child's assigned child
2 protective services worker, guardian ad litem, and if
3 applicable, the child's probation officer;
- 4 (5) Meets with the presiding judge in the child's case;
- 5 (6) Is enrolled in a comprehensive health insurance plan
6 and, within forty-five days of out-of-home placement,
7 is provided with a comprehensive health assessment and
8 treatment as recommended;
- 9 (7) May freely exercise the child's own religious beliefs,
10 including the refusal to attend any religious
11 activities and services;
- 12 (8) Has a personal bank account and assistance in managing
13 the child's personal income consistent with the
14 child's age and development, unless safety or other
15 concerns require otherwise;
- 16 (9) Has the right to attend school and participate in
17 appropriate extracurricular activities and, if the
18 child is moved during a school year, has the right to
19 complete the school year at the same school, if
20 practicable; and



1 (10) Beginning at age twelve, is provided with age-
2 appropriate life skills training and a transition plan
3 for appropriately moving out of the foster care
4 system, as well as written information concerning
5 independent living programs, foster youth
6 organizations, transitional planning services, and
7 independent living case management programs that are
8 available to all children in foster care who are
9 twelve years of age or older and their resource
10 families.

11 (b) Sua sponte or upon appropriate motion, the family
12 court may issue any necessary orders to any party, including the
13 department, department of education, or department of health, to
14 ensure adherence to the guiding principles enumerated in
15 subsection (a) above.

16 § -4 **Definitions.** As used in this chapter, unless the
17 context clearly indicates otherwise:

18 "Abandoned infant" means a child who is three years old or
19 younger and:

20 (1) The child's parents, regardless of any incidental
21 contact or communication with the child, have



1 demonstrated an extreme disinterest in or lack of
2 commitment for assuming parental responsibility for
3 the child;

4 (2) The persons with whom the child resides have not known
5 the identity or whereabouts of the child's parents for
6 sixty days or more, and reasonable efforts have been

7 made to identify or locate the child's parents; or

8 (3) The child's mother also falls under the provisions of
9 paragraph (1) or (2), and the child's presumed or
10 alleged father has failed to assert a claim or
11 interest as a parent for sixty days or more; provided
12 that the child's father has knowledge of the child's
13 birth and that he is the child's presumed or alleged
14 father.

15 "Adjudication" means a finding by a court that is supported
16 by a preponderance of the evidence that the child has been
17 harmed or is subjected to threatened harm by the acts or
18 omissions of the child's family.

19 "Aggravated circumstances" means that:

20 (1) The parent has murdered, or has solicited, aided,
21 abetted, attempted, or conspired to commit the murder



1 or voluntary manslaughter of, another child of the
2 parent;

3 (2) The parent has committed a felony assault that results
4 in serious bodily injury to the child or another child
5 of the parent;

6 (3) The parent's rights regarding a sibling of the child
7 have been judicially terminated or divested;

8 (4) The parent has tortured the child; or

9 (5) The child is an abandoned infant.

10 "Authorized agency" means the department, other public
11 agency, or a person or organization that is licensed by the
12 department or approved by the court to receive children for
13 control, care, maintenance, or placement.

14 "Birth parent" and "biological parent" can be used
15 interchangeably and mean the biological parents of the child.
16 The term "birth", as used in this chapter, is interchangeable
17 with the term "natural", as that term is used in chapter 578.

18 "Caregiver" means an adult who is not a child's parent or
19 legal and physical custodian, and with whom the child has been
20 residing for at least six months with the verbal or written
21 consent of the child's legal and physical custodian. The status



1 of "caregiver" as used in this chapter does not pertain to
2 court-ordered or voluntary foster placement.

3 "Case plan" means the combined safe family home factors and
4 the service plan or permanent plan.

5 "Child" means a person who is born alive and is less than
6 eighteen years of age.

7 "Clear and convincing evidence" means the degree of proof
8 that will produce in the mind of the trier of fact a firm belief
9 or conviction that the fact sought to be proved is true. This
10 measure falls between the preponderance standard of typical
11 civil cases and the beyond-a-reasonable-doubt standard of
12 criminal cases.

13 "Court" means one of the family courts established pursuant
14 to chapter 571.

15 "Court-appointed special advocate" means a responsible
16 adult volunteer who has been trained and is supervised by a
17 court-appointed special advocate program recognized by the
18 court, and who, when appointed by the court, serves as an
19 officer of the court in the capacity of a guardian ad litem.

20 "Criminal history record check" means an examination of an
21 individual's criminal history through fingerprint analysis or



1 name inquiry into state and national criminal history records
2 and files, including the files of the Hawaii criminal justice
3 data center.

4 "Date of entry into foster care" means the date a child was
5 first placed in foster custody by the court or sixty days after
6 the child's actual removal from the home, whichever is earlier.

7 "Default" means the status found by the court when a party
8 who has been properly served or notified of a scheduled hearing
9 fails to appear at court for the hearing or fails to plead or
10 otherwise defend, thereby allowing the court to proceed without
11 the absent party.

12 "Department" means the department of human services and its
13 authorized representatives.

14 "Family" means each legal parent of a child; the birth
15 mother, unless the child has been legally adopted; the concerned
16 birth father as provided in section 578-2(a)(5), unless the
17 child has been legally adopted; each parent's spouse or former
18 spouse; each sibling or person related by blood or marriage;
19 each person residing in the dwelling unit; and any other person
20 or legal entity with:



1 (1) Legal or physical custody or guardianship of the
2 child, or

3 (2) Responsibility for the child's care.

4 For purposes of this chapter, the term "family" does not apply
5 to an authorized agency that assumes the foregoing legal status
6 or relationship with a child.

7 "Family home" means the home of the child's legal
8 custodian.

9 "Family supervision" means the legal status in which a
10 child's legal custodian is willing and able, with the assistance
11 of a service plan, to provide the child with a safe family home.

12 "Foster care" means continuous twenty-four-hour care and
13 supportive services provided for a child by an authorized agency
14 or the court, including, the care, supervision, guidance, and
15 rearing of a child by a resource family.

16 "Foster custodian" means the authorized agency that has
17 foster custody of the child.

18 "Foster custody" means the legal status created when the
19 department places a child outside of the family home with the
20 agreement of the legal custodian or pursuant to court order,
21 after the court has determined that the child's family is not



1 presently willing and able to provide the child with a safe
2 family home, even with the assistance of a service plan.

3 "Foster parent" or "foster family" means a person or family
4 licensed by the department or another authorized agency to
5 provide foster care services for children and can be used
6 interchangeably with "resource family".

7 "Guardian ad litem" means any person who is appointed by
8 the court under this chapter to protect and promote the needs
9 and interests of a child or a party, including a court-appointed
10 special advocate.

11 "Hanai relative" means an adult, other than a blood
12 relative, whom the court or department has found by credible
13 evidence to perform or to have performed a substantial role in
14 the upbringing or material support of a child, as attested to by
15 the written or oral designation of the child or of another
16 person, including other relatives of the child.

17 "Harm" means damage or injury to a child's physical or
18 psychological health or welfare, where:

19 (1) The child exhibits evidence of injury, including, but
20 not limited to:

21 (A) Substantial or multiple skin bruising;



- 1 (B) Substantial external or internal bleeding;
- 2 (C) Burn or burns;
- 3 (D) Malnutrition;
- 4 (E) Failure to thrive;
- 5 (F) Soft tissue swelling;
- 6 (G) Extreme pain;
- 7 (H) Extreme mental distress;
- 8 (I) Gross degradation;
- 9 (J) Poisoning;
- 10 (K) Fracture of any bone;
- 11 (L) Subdural hematoma; or
- 12 (M) Death;
- 13 and the injury is not justifiably explained, or the
- 14 history given concerning the condition or death is not
- 15 consistent with the degree or type of the condition or
- 16 death, or there is evidence that the condition or
- 17 death may not be the result of an accident;
- 18 (2) The child has been the victim of sexual contact or
- 19 conduct, including sexual assault; sodomy;
- 20 molestation; sexual fondling; incest; prostitution;
- 21 obscene or pornographic photographing, filming, or



1 depiction; or other similar forms of sexual
2 exploitation;

3 (3) The child's psychological well-being has been injured
4 as evidenced by a substantial impairment in the
5 child's ability to function;

6 (4) The child is not provided in a timely manner with
7 adequate food; clothing; shelter; supervision; or
8 psychological, physical, or medical care; or

9 (5) The child is provided with dangerous, harmful, or
10 detrimental drugs as defined in section 712-1240,
11 except when a child's family administers drugs to the
12 child as directed or prescribed by a practitioner as
13 defined in section 712-1240.

14 "Imminent harm" means that without intervention within the
15 next ninety days, there is reasonable cause to believe that harm
16 to the child will occur or reoccur.

17 "Incapacitated person" means a person who, even with
18 appropriate and reasonably available assistance, is unable to
19 substantially:

20 (1) Comprehend the legal significance of the issues or
21 nature of the proceedings under this chapter;



1 (2) Consult with counsel; and

2 (3) Assist in preparing the person's case or strategy.

3 Incapacity shall not be based solely on a person's status
4 as a minor.

5 "Ohana conference" means a family-focused, strength-based
6 meeting conducted by trained community facilitators that is
7 designed to build and enhance the network of protection for a
8 child who is subject to a proceeding under this chapter. Ohana
9 conferences include extended family members and other important
10 people in the child's life and rely on them to participate in
11 making plans and decisions. The purpose of the ohana conference
12 is to establish a plan that provides for the safety and
13 permanency needs of the child.

14 "Parent" means any legal parent of a child; the birth
15 mother, unless the child has been legally adopted; the
16 adjudicated, presumed, or concerned birth father of the child as
17 provided in section 578-2(a)(5), unless the child has been
18 legally adopted; or the legal guardians or any other legal
19 custodians of the child.

20 "Party" means an authorized agency; a child who is subject
21 to a proceeding under this chapter; the child's parents and



1 guardian ad litem; any other person who is alleged in the
2 petition or who is subsequently found at any child protective
3 proceeding to be encouraging, causing, or contributing to the
4 acts or conditions that brought the child within the scope of
5 this chapter; and may include any other person, including the
6 child's current foster parent or current resource family, if the
7 court finds that such person's participation is in the best
8 interest of the child; provided that the court may limit a
9 party's right to participate in any child protective proceeding
10 if the court deems such limitation of such party's participation
11 to be consistent with the best interests of the child and such
12 party is not a family member who is required to be summoned
13 pursuant to section -13, except as otherwise provided in this
14 chapter.

15 "Permanent custody" means the legal status created by order
16 of the court after the termination of parental rights as set
17 forth in this chapter.

18 "Permanent plan" means a specific, comprehensive written
19 plan prepared pursuant to section -32.

20 "Police officer" means a person employed by any county in
21 the State of Hawaii to enforce the laws and ordinances for



1 preserving the peace and maintaining safety and order in the
2 community, or an employee authorized by the director of public
3 safety under section 329-51 or 353C-4 to exercise the powers set
4 forth in this chapter.

5 "Preponderance of the evidence" means the degree of proof,
6 which as a whole, convinces the trier of fact that the fact
7 sought to be proved is more probable than not. "Preponderance
8 of the evidence" shall be the standard of proof required in any
9 proceeding, unless otherwise specified.

10 "Protective custody" means the legal status of a child
11 whose physical custody is assumed by a police officer under this
12 chapter.

13 "Reasonable cause to believe" means the degree of proof
14 that would cause a person of average caution to believe the
15 evidence is reasonably trustworthy.

16 "Relative" means a person related to a child by blood or
17 adoption, or a hanai relative as defined in this chapter, who,
18 as determined by the court or the department, is willing and
19 able to safely provide support to the child and the child's
20 family.



1 "Resource family" means a person or family licensed by the
2 department or another authorized agency to provide foster care
3 services for children and can be used interchangeably with
4 "foster parent" and "foster family".

5 "Safe family home factors" means a list of criteria that
6 must be considered in determining whether a parent is able to
7 provide a safe family home as set out herein in section -7.

8 "Service plan" means a specific, comprehensive written plan
9 prepared by an authorized agency pursuant to section -27.

10 "Temporary family supervision" means a legal status created
11 under this chapter pursuant to court order after the department
12 has filed a petition for temporary foster custody, and the court
13 finds it more appropriate to return the child to the child's
14 family home pending an adjudication determination.

15 "Temporary foster custody" means a legal status created
16 under this chapter with or without a court order, whereby the
17 department temporarily assumes the duties and rights of a foster
18 custodian of a child.

19 "Termination of parental rights" means the severance of
20 parental rights.



1 "Threatened harm" means any reasonably foreseeable
2 substantial risk of harm to a child.

3 **PART II. JURISDICTION AND VENUE**

4 § -5 **Jurisdiction.** Pursuant to section 571-11(9), the
5 court shall have exclusive original jurisdiction in a child
6 protective proceeding concerning any child who is or was found
7 within the state at the time specified facts and circumstances
8 occurred, are discovered, or are reported to the department.
9 These facts and circumstances constitute the basis for the
10 court's finding that the child's physical or psychological
11 health or welfare is subject to imminent harm, has been harmed,
12 or is subject to threatened harm by the acts or omissions of the
13 child's family.

14 § -6 **Venue.** A child protective proceeding under this
15 chapter may be filed in the county in which a child is found or
16 resides when the petition is filed, or in the county in which a
17 parent having legal custody of the child resides or is domiciled
18 when the petition is filed.

19 **PART III. SAFE FAMILY HOME FACTORS AND**

20 **PRE-PETITION PROCEDURES**



1 § -7 Safe family home factors. (a) The following
2 factors shall be fully considered when determining whether a
3 child's family is willing and able to provide the child with a
4 safe family home:

5 (1) Facts relating to the child's current situation, which
6 shall include:

7 (A) The child's age, vulnerability, and special needs
8 that affect the child's attachment, growth, and
9 development;

10 (B) The child's developmental, psychological,
11 medical, and dental health status and needs,
12 including the names of assessment and treatment
13 providers;

14 (C) The child's peer and family relationships and
15 bonding abilities;

16 (D) The child's educational status and setting, and
17 the department's efforts to maintain educational
18 stability for the child in out-of-home placement;

19 (E) The child's living situation;

20 (F) The child's fear of being in the family home;

21 (G) The impact of out-of-home placement on the child;



- 1 (H) Services provided to the child and family; and
- 2 (I) The department's efforts to maintain connections
- 3 between the child and the child's siblings, if
- 4 they are living in different homes;
- 5 (2) The initial and any subsequent reports of harm and
- 6 threatened harm to the child;
- 7 (3) Dates and reasons for the child's out-of-home
- 8 placement; description, appropriateness, and location
- 9 of the placement; and who has placement
- 10 responsibility;
- 11 (4) Facts regarding the alleged perpetrators of harm to
- 12 the child, the child's parents, and other family
- 13 members who are parties to the court proceedings,
- 14 which facts shall include:
 - 15 (A) Birthplace and family of origin;
 - 16 (B) Manner in which the alleged perpetrator of harm
 - 17 was parented;
 - 18 (C) Marital and relationship history; and
 - 19 (D) Prior involvement in services;
- 20 (5) Results of psychiatric, psychological, or
- 21 developmental evaluations of the child, the alleged



- 1 perpetrators, and other family members who are
2 parties;
- 3 (6) Whether there is a history of abusive or assaultive
4 conduct by the child's family members and others who
5 have access to the family home;
- 6 (7) Whether there is a history of substance abuse by the
7 child's family or others who have access to the family
8 home;
- 9 (8) Whether any alleged perpetrator has completed services
10 in relation to any history identified in paragraphs
11 (6) and (7), and acknowledged and accepted
12 responsibility for the harm to the child;
- 13 (9) Whether any non-perpetrator who resides in the family
14 home has demonstrated an ability to protect the child
15 from further harm and to ensure that any current
16 protective orders are enforced;
- 17 (10) Whether there is a support system available to the
18 child's family, including adoptive and hanai
19 relatives, friends, and faith-based or other community
20 networks;



- 1 (11) Attempts to locate and involve extended family,
- 2 friends, and faith-based or other community networks;
- 3 (12) Whether the child's family has demonstrated an
- 4 understanding of and involvement in services that have
- 5 been recommended by the department or court-ordered as
- 6 necessary to provide a safe family home for the child;
- 7 (13) Whether the child's family has resolved identified
- 8 safety issues in the family home within a reasonable
- 9 period of time; and
- 10 (14) The department's assessment, which shall include the
- 11 demonstrated ability of the child's family to provide
- 12 a safe family home for the child, and recommendations.

13 (b) The court shall consider the likelihood that the
 14 current situation presented in the safe family home factors set
 15 forth in subsection (a) will continue in the reasonably
 16 foreseeable future.

17 § -8 Protective custody by police officer without court
 18 order. (a) A police officer shall assume protective custody of
 19 a child without a court order and without the consent of the
 20 child's family, if in the discretion of the police officer, the
 21 officer determines that:



- 1 (1) The child is subject to imminent harm while in the
2 custody of the child's family;
- 3 (2) The child has no parent, as defined in this chapter,
4 who is willing and able to provide a safe family home
5 for the child;
- 6 (3) The child has no caregiver, as defined in this
7 chapter, who is willing and able to provide a safe and
8 appropriate placement for the child; or
- 9 (4) The child's parent has subjected the child to harm or
10 threatened harm and the parent is likely to flee with
11 the child.
- 12 (b) The department shall assume temporary foster custody
13 of the child when a police officer has completed the transfer of
14 protective custody of the child to the department as follows:
- 15 (1) A police officer who assumes protective custody of a
16 child shall complete transfer of protective custody to
17 the department by presenting physical custody of the
18 child to the department; or
- 19 (2) If the child is or will be admitted to a hospital or
20 similar institution, the police officer shall
21 immediately complete the transfer of protective



1 custody to the department by notifying the department
2 and receiving an acknowledgment from the hospital or
3 similar institution that it has been informed that the
4 child is under the temporary foster custody of the
5 department.

6 § -9 Temporary foster custody without court order. (a)

7 When the department receives protective custody of a child from
8 the police, the department shall:

- 9 (1) Assume temporary foster custody of the child if, in
10 the discretion of the department, the department
11 determines that the child is subject to imminent harm
12 while in the custody of the child's family;
- 13 (2) Make every reasonable effort to inform the child's
14 parents of the actions taken, unless doing so would
15 put another person at risk of harm;
- 16 (3) Unless the child is admitted to a hospital or similar
17 institution, place the child in emergency foster care
18 while the department conducts an appropriate
19 investigation, with placement preference being given
20 to an approved relative;



1 (4) With authorized agencies, make reasonable efforts to
2 identify and notify all relatives within thirty days
3 of assuming temporary foster custody of the child; and

4 (5) Within three days, excluding Saturdays, Sundays, and
5 holidays:

6 (A) Relinquish temporary foster custody, return the
7 child to the child's parents, and proceed
8 pursuant to section -11(3), -11(4), or -11(5);

9 (B) Secure a voluntary placement agreement from the
10 child's parents to place the child in foster
11 care, and proceed pursuant to section -11(5)
12 or -11(7); or

13 (C) File a petition with the court.

14 (b) Upon the request of the department and without regard
15 to parental consent, any physician licensed or authorized to
16 practice medicine in the State shall perform an examination to
17 determine the nature and extent of harm or threatened harm to
18 the child under the department's temporary foster custody.

19 § -10 Relatives; foster placement. (a) The department
20 shall provide the child's relative an application to be the
21 child's resource family within fifteen days of the relative's



1 request to provide foster placement for the child. If the
2 application is submitted and denied, the department shall
3 provide the applicant with the specific reasons for the denial
4 and an explanation of the procedures for an administrative
5 appeal.

6 (b) The department and authorized agencies shall make
7 reasonable efforts to identify and notify all relatives of the
8 child within thirty days after assuming foster custody of the
9 child.

10 § -11 Investigation; department powers. Upon receiving
11 a report that a child is subject to imminent harm, has been
12 harmed, or is subject to threatened harm, the department shall
13 cause such investigation to be made as it deems to be
14 appropriate. In conducting the investigation, the department
15 may:

16 (1) Enlist the cooperation and assistance of appropriate
17 state and federal law enforcement authorities, who may
18 conduct an investigation and, if an investigation is
19 conducted, shall provide the department with all
20 preliminary findings, including the results of a



- 1 criminal history record check of an alleged
2 perpetrator of harm or threatened harm to the child;
- 3 (2) Interview the child without the presence or prior
4 approval of the child's family and temporarily assume
5 protective custody of the child for the purpose of
6 conducting the interview;
- 7 (3) Resolve the matter in an informal fashion that it
8 deems appropriate under the circumstances;
- 9 (4) Close the matter if the department finds, after an
10 assessment, that the child is residing with a
11 caregiver who is willing and able to meet the child's
12 needs and provide a safe and appropriate placement for
13 the child;
- 14 (5) Immediately enter into a service plan:
15 (A) To safely maintain the child in the family home;
16 or
17 (B) To place the child in voluntary foster care
18 pursuant to a written agreement with the child's
19 parent.

20 If the child is placed in voluntary foster care and
21 the family does not successfully complete the service



1 plan within three months after the date on which the
 2 department assumed physical custody of the child, the
 3 department shall file a petition. The department is
 4 not required to file a petition if the parents agree
 5 to adoption or legal guardianship of the child and the
 6 child's safety is ensured; provided that the adoption
 7 or legal guardianship hearing is conducted within six
 8 months of the date on which the department assumed
 9 physical custody of the child;

10 (6) Assume temporary foster custody of the child and file
 11 a petition with the court within three days, excluding
 12 Saturdays, Sundays, and holidays, after the date on
 13 which the department assumes temporary foster custody
 14 of the child, with placement preference being given to
 15 an approved relative; or

16 (7) File a petition or ensure that a petition is filed by
 17 another appropriate authorized agency in court under
 18 this chapter.

19 **PART IV. COURT PROCEEDINGS, EVIDENCE, AND ORDERS**

20 **§ -12 Petition.** (a) A petition invoking the
 21 jurisdiction of the court under this chapter shall:



- 1 (1) Be verified and set forth:
- 2 (A) A concise statement of the basis for each
- 3 allegation of harm or threatened harm that brings
- 4 a child within this chapter;
- 5 (B) The name, birth date, gender, and residential
- 6 address of the child;
- 7 (C) The names and last known residential addresses of
- 8 the parents and other persons to be made parties
- 9 to the proceedings under this chapter; and
- 10 (D) Whether the child is under the temporary foster
- 11 custody or foster custody of the department and,
- 12 if so, the date on which the department assumed
- 13 physical custody of the child;
- 14 (2) State whether any of the facts required by this
- 15 section cannot be determined prior to filing the
- 16 petition; provided that the petition may be based on
- 17 information and belief, but shall state the basis
- 18 thereof; and
- 19 (3) Include the warning that, if the petition is granted,
- 20 parental rights may be terminated unless the family is
- 21 willing and able, with the assistance of a service



1 plan, to provide the child with a safe family home
2 within a reasonable period of time.

3 (b) If the court determines that the child is subject to
4 imminent harm while in the custody of the child's family, the
5 court shall order that a police officer immediately take the
6 child into protective custody and that the department
7 immediately assume temporary foster custody of the child.

8 (c) The court shall conduct:

9 (1) A temporary foster custody hearing, pursuant to
10 section -26, within two days after the petition is
11 filed, excluding Saturdays, Sundays, and holidays; or

12 (2) A return hearing, pursuant to section -28, within
13 fifteen days after the petition is filed or the date a
14 decision is announced by the court during a temporary
15 foster custody hearing, if the petition requests
16 foster custody or family supervision of the child.

17 (d) The court may adopt rules concerning the titles,
18 filing, investigation, and form and content of petitions and
19 other pleadings and proceedings in cases under this chapter, or
20 any other matter arising in child protective proceedings.



1 § -13 Summons and service of summons. (a) After a
2 petition has been filed, the court shall issue a summons
3 requiring the presence of the parents and other persons to be
4 parties to the proceeding, as follows:

5 (1) A copy of the petition shall be attached to each
6 summons;

7 (2) The summons shall notify the parties of their right to
8 retain and be represented by counsel; and

9 (3) The summons shall state: "YOUR PARENTAL AND CUSTODIAL
10 DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO
11 ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE
12 TERMINATED IF YOU FAIL TO APPEAR ON THE DATE SET FORTH
13 IN THIS SUMMONS."

14 (b) The court may issue a summons to a parent or any
15 person having physical custody of the child to bring the child
16 before the court at the temporary foster custody hearing or the
17 return hearing.

18 (c) The sheriff or other authorized person shall serve the
19 summons by personally delivering a certified copy to the person
20 or legal entity being summoned. A return on the summons shall



1 be filed, showing the date and time and to whom service was
2 made; provided that:

3 (1) If the party to be served does not reside in the
4 State, service shall be made by registered or
5 certified mail addressed to the party's last known
6 address; or

7 (2) If the court finds that it is impracticable to
8 personally serve the summons, the court may order
9 service by registered or certified mail addressed to
10 the party's last known address, or by publication, or
11 both. When publication is used, the summons shall be
12 published once a week for four consecutive weeks in a
13 newspaper of general circulation in the county in
14 which the party was last known to have resided. In
15 the order for publication of the summons, the court
16 shall designate the publishing newspaper and shall set
17 the date of the last publication at no less than
18 twenty-one days before the return date. Such
19 publication shall have the same force and effect as
20 personal service of the summons.



1 (d) Service shall be completed no less than twenty-four
2 hours prior to the time set forth in the summons for a temporary
3 foster custody hearing, or no less than forty-eight hours prior
4 to the time set forth in the summons for any other hearing,
5 unless the party was present when ordered by the court to appear
6 at the hearing.

7 (e) The court may issue a warrant for the appearance of a
8 person or child, as well as issue an order pursuant to section
9 -16(b), if:

- 10 (1) The summons cannot be personally served;
- 11 (2) The person served fails to obey the summons;
- 12 (3) The court finds that service will not be effective; or
- 13 (4) The court finds that the best interests of the child
14 require that the child be brought into the custody of
15 the court.

16 § -14 Notice of hearings; participation of resource
17 family. (a) Notice of hearings shall be served on the parties;
18 provided that no further notice is required for any party who
19 defaulted or was given actual notice of a hearing while present
20 in court. Notice of hearings shall be served no less than



1 forty-eight hours before the scheduled hearing, subject to a
2 shortening of time as ordered by the court.

3 (b) The child's current resource family shall be served
4 written notice of hearings no less than forty-eight hours before
5 a scheduled hearing; provided that no further notice shall be
6 provided to a resource family that was given actual notice of a
7 hearing while present in court, subject to a shortening of time
8 as ordered by the court.

9 (c) No hearing shall be held until the child, the child's
10 current resource family, and all other parties are given notice
11 of the hearing or are served, as required by this section.

12 (d) The child's current resource family is entitled to
13 participate in the proceedings to provide information to the
14 court, either in person or in writing, concerning the current
15 status of the child in their care.

16 (e) The court may not convene a hearing under this chapter
17 unless the court enters a finding that each of the parties
18 required to be notified of the hearing has been served with a
19 copy of the petition; provided that if a party is required to be
20 summoned to a temporary foster custody or return hearing and has



1 not been served with the summons, the court may proceed with the
2 hearing if:

3 (1) A reasonable effort has been made to effect personal
4 service;

5 (2) It would not be in the best interests of the child to
6 postpone the proceeding until service can be
7 effectuated; and

8 (3) The child is represented by a guardian ad litem or
9 counsel.

10 (f) For purposes of this section, "party" or "parties"
11 shall include the current foster parents.

12 **§ -15 Duties, rights, and liability of authorized**

13 **agencies.** (a) If an authorized agency has family supervision,
14 it has the following duties and rights, subject to such
15 conditions or restrictions as the court deems to be in the best
16 interests of a child:

17 (1) Monitoring and supervising the child and the child's
18 family members who are parties. Monitoring and
19 supervision shall include reasonable access to each of
20 the family members who are parties and reasonable
21 access into the child's family home; and



1 (2) Placement of the child in foster care and thereby
2 assuming temporary foster custody or foster custody of
3 the child. The authorized agency shall immediately
4 notify the court when such placement occurs. Upon
5 notification, the court shall set the case for:

6 (A) A temporary foster custody hearing within three
7 days, excluding Saturdays, Sundays, and holidays;
8 or

9 (B) If jurisdiction has been established, a periodic
10 review hearing within ten days of the child's
11 placement.

12 The temporary foster custody hearing or the periodic
13 review hearing may be held at a later date, only if
14 the court finds it to be in the best interests of the
15 child.

16 (b) If an authorized agency has foster custody it has the
17 following duties and rights:

18 (1) Determining where and with whom the child shall be
19 placed in foster care; provided that the child shall
20 not be placed in foster care outside the State without
21 prior order of the court;



- 1 (2) Permitting the child to return to the family from
2 which the child was removed, unless otherwise ordered
3 by the court. The child's return may occur only if no
4 party objects to such placement and prior written
5 notice is given to the court and to all parties
6 stating that there is no objection of any party to the
7 child's return. Upon the child's return to the
8 family, temporary foster custody or foster custody
9 shall be automatically revoked, and the child and the
10 child's family members who are parties shall be placed
11 under temporary family supervision or the family
12 supervision of the authorized agency;
- 13 (3) Ensuring that the child is provided with adequate
14 food, clothing, shelter, psychological care, physical
15 care, medical care, supervision, and other necessities
16 in a timely manner;
- 17 (4) Monitoring whether the child is being provided with an
18 appropriate education;
- 19 (5) Providing required consents for the child's physical
20 or psychological health or welfare, including ordinary
21 medical, dental, psychiatric, psychological,



1 educational, employment, recreational, or social
2 needs;

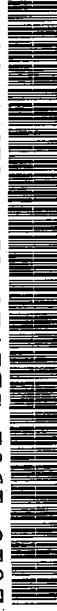
3 (6) Providing consents for any other medical or
4 psychological care or treatment, including surgery, if
5 the persons who are otherwise authorized to provide
6 consent are unable or unwilling to consent. Before
7 being provided to the child, this care or treatment
8 shall be deemed necessary for the child's physical or
9 psychological health or welfare by two physicians or
10 two psychologists, as appropriate, who are licensed or
11 authorized to practice in the State;

12 (7) Providing consent for the child's application for a
13 driver's instructional permit, provisional driver's
14 license, or driver's license;

15 (8) Providing consent to the recording of a statement
16 pursuant to section -21; and

17 (9) Providing the court with information concerning the
18 child.

19 The court, in its discretion, may vest foster custody of a
20 child in any authorized agency or subsequently authorized
21 agencies, if the court finds that it is in the child's best



1 interests to do so. The rights and duties that are so assumed
2 by an authorized agency shall supersede the rights and duties of
3 any legal or permanent custodian of the child.

4 (c) Unless otherwise provided in this section or as
5 otherwise ordered by the court, a child's family shall retain
6 the following rights and responsibilities after a transfer of
7 temporary foster custody or foster custody, to the extent that
8 the family possessed the rights and responsibilities prior to
9 the transfer of temporary foster custody or foster custody:

10 (1) The right of reasonable supervised or unsupervised
11 visitation at the discretion of the authorized agency
12 or the court;

13 (2) The right to consent to adoption, to marriage, or to
14 major medical or psychological care or treatment; and

15 (3) The continuing responsibility to support the child,
16 including repayment for the cost of any care,
17 treatment, or other service provided by the authorized
18 agency or the court for the child's benefit.

19 (d) If an authorized agency has permanent custody, it has
20 the following duties and rights:



- 1 (1) Assuming the parental and custodial duties and rights
2 of a legal custodian and family member;
- 3 (2) Determining where and with whom the child shall live;
4 provided that the child shall not be placed outside
5 the State without prior order of the court;
- 6 (3) Ensuring that the child is provided with adequate
7 food, clothing, shelter, psychological care, physical
8 care, medical care, supervision, and other necessities
9 in a timely manner;
- 10 (4) Monitoring whether the child is being provided with an
11 appropriate education;
- 12 (5) Providing all required consents for the child's
13 physical or psychological health or welfare, including
14 medical, dental, psychiatric, psychological,
15 educational, employment, recreational, and social
16 needs;
- 17 (6) Providing consent for the child's application for a
18 driver's instructional permit, provisional driver's
19 license, or driver's license;
- 20 (7) Providing consent to adoption, change of name, and
21 marriage; and



1 (8) Submitting a written report to the court if the child
2 leaves the home of the permanent custodian for a
3 period of seven consecutive days or more. The report
4 shall state the child's current situation and shall be
5 submitted on or before the tenth day, excluding
6 Saturdays, Sundays, and holidays, after the child
7 leaves the home.

8 (e) An authorized agency shall not be liable to third
9 party persons for the acts of the child solely by reason of the
10 agency's status as foster custodian or permanent custodian of
11 the child.

12 § -16 Guardian ad litem. (a) The court shall appoint a
13 guardian ad litem for a child to serve throughout the pendency
14 of child protective proceedings under this chapter.

15 (b) The court may appoint a guardian ad litem for an
16 incapacitated adult party, as set forth below:

17 (1) Upon the request of any party or sua sponte, the court
18 may order a professional evaluation of an adult party
19 to determine the party's capacity to substantially:

20 (A) Comprehend the legal significance of the issues
21 and nature of the proceedings under this chapter;



- 1 (B) Consult with counsel; and
- 2 (C) Assist in preparing the party's case or strategy;
- 3 (2) If the court orders a professional evaluation, the
- 4 party shall be examined by a physician, psychologist,
- 5 or other individual appointed by the court who is
- 6 qualified to evaluate the party's alleged impairment:
- 7 (A) Unless otherwise directed by the court, the
- 8 examiner shall promptly file with the court a
- 9 written report which shall contain:
- 10 (i) A description of the nature, type, and
- 11 extent of the party's specific cognitive and
- 12 functional capabilities and limitations;
- 13 (ii) An evaluation of the party's mental and
- 14 physical condition and, if appropriate,
- 15 educational potential, adaptive behavior,
- 16 and social skills;
- 17 (iii) A prognosis for improvement and a
- 18 recommendation as to the appropriate
- 19 treatment or habilitation plan; and
- 20 (iv) The dates of any assessments or examinations
- 21 upon which the report is based;



1 (B) Upon the request of any party or sua sponte, and
2 after such hearing as the court deems
3 appropriate, the court may appoint a guardian ad
4 litem for an adult party only after a
5 determination, by clear and convincing evidence,
6 that:

- 7 (i) The party is an incapacitated person; and
- 8 (ii) The party's identified needs cannot be met
9 by less restrictive means, including the use
10 of appropriate and reasonably available
11 assistance.

12 (c) A guardian ad litem shall, unless otherwise ordered by
13 the court:

- 14 (1) Have access to the child or incapacitated adult;
- 15 (2) Have the authority to inspect and receive copies of
16 any records, notes, and electronic recordings
17 concerning the child or incapacitated adult that are
18 relevant to the proceedings filed under this chapter.
19 This authority shall exist even without the consent of
20 the child, incapacitated adult, or individuals and
21 authorized agencies that have control of the child or



1 incapacitated adult; provided that nothing in this
2 section shall override any attorney-client or attorney
3 work product privilege;

4 (3) Be given notice of all hearings and proceedings
5 involving the child or incapacitated adult, whether
6 civil or criminal, including grand juries, and shall
7 protect the best interests of the child or
8 incapacitated adult;

9 (4) Make face-to-face contact with the child or
10 incapacitated adult in the child's or incapacitated
11 adult's family or resource family home at least once
12 every three months;

13 (5) Report to the court and all parties in writing at six-
14 month intervals, or as ordered by the court, regarding
15 such guardian ad litem's actions taken to ensure the
16 child's or incapacitated adult's best interest, and
17 recommend how the court should proceed in the best
18 interest of that child or incapacitated adult; and

19 (6) Inform the court of the child's opinions and requests.
20 If the child's opinions and requests differ from those
21 being advocated by the guardian ad litem, the court



1 shall evaluate and determine whether it is in the
2 child's best interests to appoint an attorney to serve
3 as the child's legal advocate concerning such issues
4 and during such proceedings as the court deems to be
5 in the best interests of the child.

6 (d) The court shall, for an incapacitated adult:

7 (1) Grant a guardian ad litem only those powers
8 necessitated by the incapacitated adult's limitations
9 and demonstrated needs; and

10 (2) Make appointive and other orders that will encourage
11 the development of the incapacitated adult's maximum
12 self-reliance and independence.

13 (e) Unless otherwise ordered by the court, the attorney
14 for an incapacitated adult shall take instructions from the
15 incapacitated adult's guardian ad litem. The guardian ad litem
16 for an incapacitated adult shall inform the court of the
17 incapacitated adult's opinions and requests and may recommend
18 how the court should proceed in the best interest of the
19 incapacitated adult.

20 (f) The fees and costs of a guardian ad litem appointed
21 pursuant to this section may be paid by the court, unless the



1 party for whom counsel is appointed has an independent estate
2 sufficient to pay such fees and costs. The court may order the
3 appropriate parties to pay or reimburse the fees and costs of
4 the guardian ad litem and any attorney appointed for the child.

5 § -17 **Court-appointed attorneys.** (a) The court may
6 appoint an attorney to represent a legal parent who is indigent
7 based on court-established guidelines. The court may also
8 appoint an attorney to represent another indigent party based on
9 court-established guidelines, if it is deemed to be in the
10 child's best interest. Attorneys who are appointed by the court
11 to represent indigent legal parents and other indigent
12 qualifying parties may be paid by the court, unless the legal
13 parent or party for whom counsel is appointed has an independent
14 estate sufficient to pay such fees and costs. The court may
15 order the appropriate legal parent or party to pay or reimburse
16 the fees and costs of an attorney appointed for the child or
17 incapacitated adult.

18 (b) Unless otherwise ordered by the court, the attorney
19 for an incapacitated adult shall take instructions from the
20 incapacitated adult's guardian ad litem.



1 § -18 Reports to be submitted by the department and
2 authorized agencies. (a) Unless otherwise ordered by the
3 court, the department or other authorized agencies shall file
4 written reports with the court:

5 (1) Concurrent with the filing of a petition invoking the
6 jurisdiction of the court under this chapter; and

7 (2) No less than fifteen days before a scheduled return
8 hearing, periodic review hearing, permanency hearing,
9 or termination of parental rights hearing; provided
10 that additional information may be submitted to the
11 court up to the date of the hearing; provided that the
12 department or other authorized agencies make a good
13 cause showing that such additional information was not
14 available to the department or other authorized agency
15 before the fifteen day deadline.

16 (b) The reports shall include:

17 (1) An assessment of each safe family home factor and the
18 family's progress with recommended or court-ordered
19 services;

20 (2) A recommended service plan or permanent plan that
21 references the pertinent safe family home factors; and



1 (3) A recommendation documenting the basis for any other
2 orders, including protective orders.

3 (c) The department or other authorized agencies shall
4 submit to the court each report, in its entirety, pertaining to
5 the child or the child's family that has been prepared by a
6 child protective services multidisciplinary team or consultant.

7 (d) A written report submitted pursuant to this section
8 shall be admissible and relied upon to the extent of its
9 probative value in any proceeding under this chapter, subject to
10 the right of any party to examine or cross-examine the preparer
11 of the report.

12 § -19 **Testimony by department social worker.** A person
13 employed by the department as a social worker in the area of
14 child protective services or child welfare services shall be
15 presumed to be qualified to testify as an expert on child
16 protective or child welfare services. Any party may move the
17 court to qualify a person employed by the department as a social
18 worker in the area of child protective services or child welfare
19 services called to testify as an expert on child protective or
20 child welfare services.



1 § -20 Inadmissibility of evidence in other state actions
2 or proceedings. The court may order that testimony or other
3 evidence produced by a party in a proceeding under this chapter
4 shall be inadmissible as evidence in any other state civil or
5 criminal action or proceeding if the court deems such an order
6 to be in the best interests of the child.

7 § -21 Admissibility of evidence; testimony by a child.

8 (a) Any statement relating to an allegation of imminent harm,
9 harm, or threatened harm that a child has made to any person
10 shall be admissible as evidence.

11 (b) In deciding in temporary foster custody hearings
12 whether there is reasonable cause to believe that a child is
13 subject to imminent harm the court may consider relevant hearsay
14 evidence when direct testimony is unavailable or when it is
15 impractical to subpoena witnesses who will be able to testify to
16 facts based on personal knowledge.

17 (c) A child's recorded statement shall be admissible in
18 evidence in any proceeding under this chapter; provided that:

19 (1) The statement is recorded on film, audiotape, or
20 videotape, or by other reliable electronic means;



1 (2) The recording equipment used is capable of producing
2 an accurate recording, was operated by a competent
3 person, and the recording is accurate and has not been
4 altered; and

5 (3) Every person on the recording is identified.

6 (d) A child may be directed by the court to testify under
7 circumstances deemed by the court to be in the best interests of
8 the child and the furtherance of justice. These circumstances
9 may include an on-the-record interview of the child in chambers,
10 with only those parties present during the interview as the
11 court deems to be in the best interests of the child.

12 **§ -22 Unavailability of specified privileges.** The
13 following privileges shall not be available to exclude evidence
14 of imminent harm, harm, or threatened harm in any proceeding
15 under this chapter:

- 16 (1) The physician-patient privilege;
17 (2) The psychologist-client privilege;
18 (3) The spousal privilege; and
19 (4) The victim-counselor privilege.

20 **§ -23 Effect of oral orders.** Orders stated orally by
21 the court on the record in a proceeding under this chapter shall



1 have full force and effect from the date of the hearing until
2 further order of the court. All oral orders shall be reduced to
3 writing as soon as is practicable.

4 **§ -24 Motions to vacate or modify prior orders brought**
5 **or decided upon pursuant to Rule 59, Hawaii Family Court Rules.**

6 In considering a party's motion to vacate or modify prior orders
7 brought or decided upon pursuant to Rule 59, Hawaii Family Court
8 Rules, the court need not commence a trial or hearing de novo,
9 but rather, after such further hearing as the court deems to be
10 appropriate, may proceed to enter such orders as are in the best
11 interests of the child.

12 **§ -25 Conduct of hearing in child protective**

13 **proceedings.** (a) The court shall hear child protective
14 proceedings without a jury at a hearing separate from those for
15 adults.

16 (b) The general public shall be excluded from child
17 protective proceedings. Only parties found by the court to have
18 a direct interest in the case shall be admitted to the hearing.

19 (c) The court has discretion to exclude the child from the
20 hearing at any time.



1 (d) If a party is without counsel or a guardian ad litem,
2 the court shall inform the party of the right to be represented
3 by counsel and the right to appeal.

4 § -26 Temporary foster custody hearing. (a) When the
5 department assumes temporary foster custody of a child and files
6 a petition pursuant to this chapter, the court shall conduct a
7 temporary foster custody hearing within two days after the
8 petition is filed, excluding Saturdays, Sundays, and holidays.
9 The purpose of a temporary foster custody hearing is to
10 determine whether a child's safety continues to require
11 protection prior to an adjudicatory determination at a return
12 hearing.

13 (b) The temporary foster custody hearing may be continued
14 for a period not to exceed fifteen days if the court determines
15 that further investigation would be in the child's best
16 interests.

17 (c) After reviewing the petition and any reports submitted
18 by the department and considering all information pertaining to
19 the safe family home factors, the court shall order:

20 (1) That the child be immediately released from the
21 department's temporary foster custody, placed in



1 temporary family supervision, and returned to the
2 child's family home with the assistance of services,
3 upon finding that the child's family is able to
4 provide a safe family home with services; or

5 (2) That the child continue in the department's temporary
6 foster custody, upon finding that there is reasonable
7 cause to believe that continued placement in foster
8 care is necessary to protect the child from imminent
9 harm; provided that in making this determination, the
10 court shall consider whether:

11 (A) The department made reasonable efforts to prevent
12 or eliminate the need for removing the child from
13 the child's family home before the child was
14 placed in foster care;

15 (B) The alleged or potential perpetrator of imminent
16 harm, harm, or threatened harm should be removed
17 from the family home rather than continuing the
18 child's placement in foster care. The child's
19 family shall have the burden of establishing that
20 it is in the child's best interests to remove the



1 child, rather than the alleged or potential
2 perpetrator, from the family home; and

3 (C) Every reasonable effort has been or is being made
4 to place siblings or psychologically-bonded
5 children together, unless such placement is not
6 in the children's best interests.

7 (d) The court shall conduct a return hearing on the
8 petition within fifteen days after the temporary foster custody
9 hearing.

10 (e) 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 or communicated to
14 the court and all parties before the next court
15 hearing;

16 (2) The child's family members who are parties provide the
17 department or another authorized agency the names and
18 addresses of other relatives and friends who are
19 potential visitation supervisors or resource families
20 for the child;



- 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 child's guardian ad litem, the department, or another
5 authorized agency;
- 6 (4) The court and the parties view a video or listen to an
7 audio recording of the child's statements at such time
8 and in such manner as the court deems appropriate;
- 9 (5) A criminal history record check be conducted by the
10 department or another authorized agency on a party who
11 is an alleged or potential perpetrator of imminent
12 harm, harm, or threatened harm to the child;
- 13 (6) A protective order be entered;
- 14 (7) The department or another authorized agency prepare a
15 written supplemental report;
- 16 (8) The child's guardian ad litem visit the child's family
17 home and resource family home, be present during
18 supervised visitation, and prepare a written report
19 that includes specific recommendations concerning
20 services and assistance to the family; and



1 (9) Any other orders be entered that the court deems
2 necessary and in the best interests of the child.

3 (f) Any party may file a motion requesting, or the court
4 may order sua sponte, a temporary foster custody hearing or
5 rehearing at any time after a petition is filed, to determine
6 whether the child should be placed in temporary foster custody
7 to ensure the child's safety pending a scheduled return hearing.

8 § -27 Service plan. (a) The service plan shall
9 provide:

10 (1) The specific steps necessary to facilitate the return
11 of the child to a safe family home, if the proposed
12 placement of the child is in foster care under foster
13 custody. These specific steps shall include treatment
14 and services that will be provided, actions completed,
15 specific measurable and behavioral changes that must
16 be achieved, and responsibilities assumed;

17 (2) Whether an ohana conference will be conducted for fact
18 finding and family group decision making;

19 (3) The respective responsibilities of the child, the
20 parents, legal guardian or custodian, the department,
21 other family members, and treatment providers, and a



- 1 description and expected outcomes of the services
2 required to achieve the permanency goal;
- 3 (4) The required frequency and types of contact between
4 the assigned social worker, the child, and the family;
- 5 (5) The time frames during which services will be
6 provided, actions must be completed, and
7 responsibilities must be discharged;
- 8 (6) Notice to the parents that their failure to
9 substantially achieve the objectives described in the
10 service plan within the time frames established may
11 result in termination of their parental rights;
- 12 (7) Notice to the parents that if the child has been in
13 foster care under the responsibility of the department
14 for an aggregate of fifteen out of the most recent
15 twenty-two months from the child's date of entry into
16 foster care, the department is required to file a
17 motion to set a termination of parental rights
18 hearing, and the parents' failure to provide a safe
19 family home within two years from the date when the
20 child was first placed under foster custody by the



1 court, may result in the parents' parental rights
2 being terminated; and

3 (8) Any other terms and conditions that the court or the
4 authorized agency deem necessary to the success of the
5 service plan.

6 (b) Services and assistance to the family that are
7 required by a service plan shall be presented in a manner that
8 can be understood by and does not overwhelm the parties.

9 (c) The court shall ensure that each term, condition, and
10 consequence of the service plan has been thoroughly explained
11 to, understood by, and agreed to by each member of the child's
12 family whom the authorized agency deems to be necessary to the
13 success of the service plan. The court shall thereafter order
14 the service plan into effect and order the distribution of
15 copies to each family member or person who is a party to the
16 service plan. If a member of a child's family whom the
17 authorized agency deems to be necessary to the success of the
18 service plan cannot understand or refuses to agree to the terms,
19 conditions, and consequences of the service plan, the court
20 shall conduct a hearing to determine the terms, conditions, and



1 consequences of a service plan that will ensure a safe home for
2 the child.

3 § -28 Return hearing. (a) When a petition has been
4 filed, the court shall conduct a return hearing within fifteen
5 days of:

- 6 (1) The filing of the petition; or
- 7 (2) The date a decision is announced by the court during a
8 temporary foster custody hearing.

9 (b) At the return hearing, if it is established that a
10 party required to be notified has not been served prior to the
11 hearing, the court shall:

- 12 (1) Order the method of service of summons that the court
13 deems to be appropriate, based upon the available
14 information; and

15 (2) Set a continued return hearing and:

- 16 (A) May waive the appearance of any party at the
17 continued return hearing; and

- 18 (B) If service of summons is ordered to be made by
19 mail or publication, shall set the continued
20 return hearing no less than twenty-one days after
21 the date of service as evidenced by the signature



1 of the recipient on a return receipt or the date
2 of the last publication.

3 (c) At a continued return hearing, the court shall:

4 (1) Enter the default of the party who was served but
5 failed to appear at the continued return hearing;

6 (2) Order the party who was served to appear on the date
7 of the next scheduled hearing in the case; or

8 (3) Set a hearing on the oral motion to vacate prior
9 orders, if a party appears at the hearing and moves
10 the court to vacate or modify prior orders. The
11 moving party shall file a written motion and serve the
12 other parties with proper written notice of the motion
13 and the hearing date.

14 (d) At the return hearing, the court shall decide:

15 (1) Whether the child's physical or psychological health
16 or welfare has been harmed or is subject to threatened
17 harm by the acts or omissions of the child's family;

18 (2) Whether the child should be placed in foster custody
19 or under family supervision; and

20 (3) What services should be provided to the child's
21 parents.



1 (e) If the court finds that the child's physical or
2 psychological health or welfare has been harmed or is subject to
3 threatened harm by the acts or omissions of the child's family,
4 the court:

5 (1) Shall enter a finding that the court has jurisdiction
6 pursuant to section -5;

7 (2) Shall enter a finding regarding whether, before the
8 child was placed in foster care, the department made
9 reasonable efforts to prevent or eliminate the need to
10 remove the child from the child's family home;

11 (3) Shall enter orders:

12 (A) That the child be placed in foster custody if the
13 court finds that the child's remaining in the
14 family home is contrary to the welfare of the
15 child and the child's parents are not willing and
16 able to provide a safe family home for the child,
17 even with the assistance of a service plan; or

18 (B) That the child be placed in family supervision if
19 the court finds that the child's parents are
20 willing and able to provide the child with a safe



1 family home with the assistance of a service
2 plan;

3 (4) Shall determine whether aggravated circumstances are
4 present.

5 (A) If aggravated circumstances are present, the
6 court shall:

7 (i) Conduct a permanency hearing within thirty
8 days, and the department shall not be
9 required to provide the child's parents with
10 an interim service plan or interim
11 visitation; and

12 (ii) Order the department to file, within sixty
13 days after the court's finding that
14 aggravated circumstances are present, a
15 motion to set the case for a termination of
16 parental rights hearing.

17 (B) If aggravated circumstances are not present, the
18 court shall order that the department make
19 reasonable efforts to reunify the child with the
20 child's parents and order an appropriate service
21 plan;



- 1 (5) Shall order reasonable supervised or unsupervised
2 visits for the child and the child's family, including
3 with the child's siblings, unless such visits are
4 determined to be unsafe or detrimental to, and not in
5 the best interests of, the child;
- 6 (6) Shall order each of the child's birth parents to
7 complete the medical information forms and release the
8 medical information required under section 578-14.5,
9 to the department. If the child's birth parents
10 refuse to complete the forms or to release the
11 information, the court may order the release of the
12 information over the parents' objections;
- 13 (7) Shall determine whether each party understands that
14 unless the family is willing and able to provide the
15 child with a safe family home, even with the
16 assistance of a service plan, within the reasonable
17 period of time specified in the service plan, their
18 respective parental and custodial duties and rights
19 shall be subject to termination;
- 20 (8) Shall determine the child's date of entry into foster
21 care as defined in this chapter;



- 1 (9) Shall set a periodic review hearing to be conducted no
2 later than six months after the date of entry into
3 foster care and a permanency hearing to be held no
4 later than twelve months after the date of entry into
5 foster care;
- 6 (10) Shall set a status conference, as the court deems
7 appropriate, to be conducted no later than ninety days
8 after the return hearing; and
- 9 (11) May order that:
- 10 (A) Any party participate in, complete, be liable
11 for, and make every good faith effort to arrange
12 payment for such services or treatment as are
13 authorized by law and that are determined to be
14 in the child's best interests;
- 15 (B) The child be examined by a physician, surgeon,
16 psychiatrist, or psychologist; and
- 17 (C) The child receive treatment, including
18 hospitalization or placement in other suitable
19 facilities, as is determined to be in the child's
20 best interests.



1 (f) If the court finds that the child's physical or
2 psychological health or welfare has not been harmed or subjected
3 to threatened harm by the acts or omissions of the child's
4 family, the court shall enter an order to dismiss the petition
5 and shall state the grounds for dismissal.

6 (g) Nothing in this section shall prevent the court from
7 setting a termination of parental rights hearing at any time the
8 court deems appropriate.

9 § -29 **Show cause hearing.** At any stage of the
10 proceeding, the court may set a show cause hearing at which a
11 child's parents shall have the burden of presenting evidence as
12 to why the case should not be set for a termination of parental
13 rights or legal guardianship hearing.

14 § -30 **Periodic review hearing.** (a) The court shall set
15 a periodic review hearing to be conducted no later than six
16 months after a child's date of entry into foster care.

17 Thereafter, the court shall conduct periodic review hearings at
18 intervals of no longer than six months until the court's
19 jurisdiction is terminated. The court may set a case for a
20 periodic review hearing upon the motion of a party at any time,



1 if the court deems the hearing to be in the best interests of
2 the child.

3 (b) At each periodic review hearing, the court shall
4 review the status of the case to determine whether the child is
5 receiving appropriate services and care, whether the case plan
6 is being properly implemented, and whether the department's or
7 authorized agency's activities are directed toward a permanent
8 placement for the child. At the hearing, the court shall:

- 9 (1) Determine whether the child is safe;
- 10 (2) Determine the continued need for and appropriateness
11 of the out-of-home placement;
- 12 (3) Determine the extent to which each party has complied
13 with the case plan and the family's progress in making
14 their home safe for the child;
- 15 (4) Determine the family's progress in resolving the
16 problems that caused the child harm or to be
17 threatened with harm and, if applicable, the necessity
18 for continued out-of-home placement of the child;
- 19 (5) Project a likely date for:
- 20 (A) The child's return to a safe family home; or



1 (B) The child's permanent placement out of the family
2 home in the following order of preference:

- 3 (i) Adoption;
- 4 (ii) Legal guardianship; or
- 5 (iii) Other permanent out-of-home placement;

6 (6) Evaluate visitation arrangements; and

7 (7) Issue such further or other appropriate orders as it
8 deems to be in the best interests of the child.

9 (c) If the child has been in foster care under the
10 responsibility of the department for an aggregate of fifteen out
11 of the most recent twenty-two months from the date of entry into
12 foster care, the department shall file a motion to set the
13 matter for a termination of parental rights hearing, unless:

14 (1) The department has documented in the safe family home
15 factors or other written report submitted to the court
16 a compelling reason why it is not in the best interest
17 of the child to file a motion; or

18 (2) The department has not provided to the family of the
19 child, consistent with the time period required in the
20 service plan, such services as the department deems



1 necessary for the safe return of the child to the
2 family home.

3 (d) Nothing in this section shall prevent the department
4 from filing a motion to set a termination of parental rights
5 hearing if the department determines that the criteria for
6 terminating parental rights are present.

7 § -31 **Permanency hearing.** (a) A permanency hearing
8 shall be conducted within twelve months of the child's date of
9 entry into foster care or within thirty days of a judicial
10 determination that the child is an abandoned infant or that
11 aggravated circumstances are present. A permanency hearing
12 shall be conducted at least every twelve months thereafter for
13 as long as the child remains in foster care under the placement
14 responsibility of the department.

15 (b) The court shall review the status of the case to
16 determine whether the child is receiving appropriate services
17 and care, that case plans are being properly implemented, and
18 that activities are directed toward a permanent placement for
19 the child.

20 (c) At each permanency hearing, the court shall make
21 written findings pertaining to:



- 1 (1) The extent to which each party has complied with the
2 service plan and progressed in making the home safe;
- 3 (2) Whether the current placement of the child continues
4 to be appropriate and in the best interests of the
5 child or if another in-state or out-of-state placement
6 should be considered;
- 7 (3) The court's projected timetable for reunification or,
8 if the current placement is not expected to be
9 permanent, placement in an adoptive home, with a legal
10 guardian, or under the permanent custody of the
11 department;
- 12 (4) Whether the department has made reasonable efforts, in
13 accordance with the safety and well-being of the
14 child, to:
- 15 (A) Place siblings who have been removed from the
16 family home with the same resource family,
17 adoptive placement, or legal guardians; and
- 18 (B) Provide for frequent visitation or other on-going
19 interactions with siblings who are not living in
20 the same household;



- 1 (5) The appropriate permanency goal for the child,
2 including whether a change in goal is necessary;
- 3 (6) Whether the department has made reasonable efforts to
4 finalize the permanency goal in effect for the child
5 and a summary of those efforts;
- 6 (7) The date by which the permanency goal for the child is
7 to be achieved;
- 8 (8) In the case of a child who has attained sixteen years
9 of age, the services needed to assist the child with
10 the transition from foster care to independent living;
11 and
- 12 (9) Consultations with the child in an age-appropriate
13 manner about the proposed plan for permanency or
14 transition from foster care to independent living.
- 15 (d) At each permanency hearing, the court shall order:
- 16 (1) The child's reunification with a parent or parents;
- 17 (2) The child's continued placement in foster care, where:
- 18 (A) Reunification is expected to occur within a time
19 frame that is consistent with the developmental
20 needs of the child; and



- 1 (B) The safety and health of the child can be
2 adequately safeguarded; or
- 3 (3) A permanent plan with a goal of:
- 4 (A) Placing the child for adoption and when the
5 department will file a motion to set the matter
6 for the termination if parental rights;
- 7 (B) Placing the child for legal guardianship if the
8 department documents and presents to the court a
9 compelling reason why termination of parental
10 rights and adoption are not in the best interests
11 of the child; or
- 12 (C) Awarding permanent custody to the department or
13 an authorized agency, if the department documents
14 and presents to the court a compelling reason why
15 adoption and legal guardianship are not in the
16 best interests of the child.
- 17 (e) At each permanency hearing where a permanent plan is
18 ordered, the court shall make appropriate orders to ensure
19 timely implementation of the permanent plan and to ensure that
20 the plan is accomplished within a specified period of time.



1 (f) A permanency hearing may be held concurrently with a
2 periodic review hearing.

3 (g) If the child has been in foster care under the
4 responsibility of the department for a total of twelve
5 consecutive months or an aggregate of fifteen out of the most
6 recent twenty-two months from the date of entry into foster
7 care, the department shall file a motion to set the matter for a
8 termination of parental rights hearing unless:

9 (1) The department has documented in the safe family home
10 factors or other written report submitted to the
11 court, a compelling reason why it is not in the best
12 interest of the child to file a motion; or

13 (2) The department has not provided to the family of the
14 child, consistent with the time period required in the
15 service plan, such services as the department deems
16 necessary for the safe return of the child to the
17 family home.

18 Nothing in this section shall prevent the department from
19 filing a motion to set a termination of parental rights hearing
20 if the department determines that the criteria for terminating
21 parental rights are present.



- 1 § -32 **Permanent plan.** (a) The permanent plan shall:
- 2 (1) State whether the permanency goal for the child will
- 3 be achieved through adoption, legal guardianship, or
- 4 permanent custody;
- 5 (2) Establish a reasonable period of time by which the
- 6 adoption or legal guardianship shall be finalized;
- 7 (3) Document:
- 8 (A) A compelling reason why legal guardianship or
- 9 permanent custody is in the child's best
- 10 interests if adoption is not the goal; or
- 11 (B) A compelling reason why permanent custody is in
- 12 the child's best interests if adoption or legal
- 13 guardianship is not the goal;
- 14 (4) Establish other related goals, including those
- 15 pertaining to the stability of the child's placement;
- 16 education; health; therapy; counseling; relationship
- 17 with the child's birth family, including visits, if
- 18 any; cultural connections; and preparation for
- 19 independent living;



1 (5) If a child has reached the age of sixteen, describe
2 the services needed to assist the child with the
3 transition from foster care to independent living; and

4 (6) Describe the methods for achieving the goals and
5 objectives set forth in paragraphs (4) and (5).

6 (b) A permanent plan prepared for a periodic review
7 hearing or a permanency hearing shall describe:

8 (1) Progress toward achieving the goal of the plan;

9 (2) Proposed revisions to the goal of the plan and reasons
10 for the revisions; and

11 (3) Proposed revisions to the methods for achieving the
12 goals of the plan and objectives and the reasons for
13 the revisions.

14 **§ -33 Termination of parental rights hearing.** (a) At a
15 termination of parental rights hearing, the court shall
16 determine whether there exists clear and convincing evidence
17 that:

18 (1) A child's parent whose rights are subject to
19 termination is not presently willing and able to
20 provide the parent's child with a safe family home,
21 even with the assistance of a service plan;



1 (2) It is not reasonably foreseeable that the child's
2 parent whose rights are subject to termination will
3 become willing and able to provide the child with a
4 safe family home, even with the assistance of a
5 service plan, within a reasonable period of time,
6 which shall not exceed two years from the child's date
7 of entry into foster care;

8 (3) The proposed permanent plan is in the best interests
9 of the child. In reaching this determination, the
10 court shall:

11 (A) Presume that it is in the best interests of the
12 child to be promptly and permanently placed with
13 responsible and competent substitute parents and
14 family in a safe and secure home; and

15 (B) Give greater weight to the presumption that the
16 permanent plan is in the child's best interest,
17 the younger the child is upon the child's date of
18 entry into foster care;

19 and

20 (4) The child consents to the permanent plan if the child
21 is at least fourteen years old, unless the court



1 consults with the child in camera and finds that it is
2 in the best interest of the child to proceed without
3 the child's consent.

4 (b) If the court determines that the criteria set forth in
5 subsection (a) are established by clear and convincing evidence
6 and the goal of the permanent plan is for the child to be
7 adopted or remain in permanent custody, the court shall order:

8 (1) That the child's parent's parental rights be
9 terminated;

10 (2) Termination of the existing service plan and
11 revocation of the prior award of foster custody;

12 (3) That permanent custody of the child be awarded to an
13 appropriate authorized agency;

14 (4) An appropriate permanent plan; and

15 (5) The entry of any other orders the court deems to be in
16 the best interests of the child, including restricting
17 or excluding unnecessary parties from participating in
18 adoption or other subsequent proceedings;

19 (c) Unless otherwise ordered by the court or until the
20 child is adopted, the child's family member shall retain, to the
21 extent that the family member possessed the responsibility prior



1 to the termination of parental rights, the continuing
2 responsibility to support the child, including repaying the cost
3 of any and all care, treatment, or any other service provided by
4 the permanent custodian, any subsequent permanent custodian,
5 other authorized agency, or the court for the child's benefit.

6 (d) A family member may be permitted visitation with the
7 child at the discretion of the permanent custodian. The court
8 may review the exercise of such discretion and may order that a
9 family member be permitted such visitation as is in the best
10 interests of the child.

11 (e) An order for the termination of parental rights
12 entered under this chapter shall not operate to terminate the
13 mutual rights of inheritance of the child and the child's family
14 members or any other benefit to which the child may be entitled,
15 until the child has been adopted.

16 (f) The court, in its discretion, may vest permanent
17 custody of a child in an authorized agency or in subsequently
18 authorized agencies, as the court deems to be in the best
19 interests of the child.

20 (g) If the department receives a report that the child has
21 been harmed or is subject to threatened harm by the acts or



1 omissions of the permanent custodians of the child, the
2 department may automatically assume either family supervision
3 over the child and the child's permanent custodian or foster
4 custody of the child. The department shall immediately notify
5 the court, and the court shall set the case for a permanency
6 hearing within ten days after the department receives such a
7 report, unless the court deems a later date to be in the best
8 interests of the child.

9 (h) If the court determines that the criteria set forth in
10 subsection (a) are not established by clear and convincing
11 evidence, the court shall order:

- 12 (1) The preparation of a plan to achieve permanency for
13 the child;
- 14 (2) The entry of any orders that the court deems to be in
15 the best interests of the child;
- 16 (3) A periodic review hearing to be held within six months
17 after the date of the last permanency hearing; and
- 18 (4) A permanency hearing to be held within twelve months
19 of the date of the last permanency hearing.

20 (i) Absent compelling reasons, if the child has been in
21 foster care under the department's responsibility for an



1 aggregate of fifteen out of the most recent twenty-two months
2 from the date of entry into foster care, the department shall
3 file a motion to set the matter for a termination of parental
4 rights hearing.

5 § -34 Reinstatement of parental rights. (a) A child
6 who is subject to an active proceeding under this chapter, the
7 child's guardian ad litem, the child's attorney, if any, or the
8 department, may file a motion to reinstate the terminated
9 parental rights of the child's parents in a proceeding under
10 this chapter, where the following circumstances exist:

11 (1) The child has been in permanent custody for at least
12 twelve months; and

13 (2) The child is fourteen years of age or older.

14 (b) A motion to reinstate parental rights shall be filed
15 with the court and shall describe the factors supporting a
16 reinstatement of parental rights. The court shall order a
17 preliminary hearing to be held within ninety days and shall give
18 prior notice to:

19 (1) The former parent whose rights are sought to be
20 reinstated;

21 (2) The child's guardian ad litem;



1 (3) The department; and

2 (4) The child's resource family.

3 (c) The motion shall be denied if the parent whose rights
4 are sought to be reinstated cannot be located.

5 (d) Within seven days before the preliminary hearing on
6 the motion, the department and the child's guardian ad litem
7 shall submit reports to the court that address:

8 (1) The material change in circumstances since the
9 termination of parental rights;

10 (2) The reasons parental rights were terminated and the
11 date of the termination order;

12 (3) A parent's willingness to resume contact with the
13 child and to have parental rights reinstated;

14 (4) The child's willingness to resume contact with the
15 parent and to have parental rights reinstated;

16 (5) A parent's willingness and ability to be involved in
17 the child's life and to accept physical custody of the
18 child; and

19 (6) Other relevant information.



1 (e) At a preliminary hearing on the motion, the court may
2 order a trial home placement and a temporary reinstatement of
3 parental rights upon finding that:

- 4 (1) There has been a material change in circumstances;
- 5 (2) A parent is willing to provide care for the child;
- 6 (3) A parent is able to provide a safe family home or the
7 home can be made safe with the assistance of services;
- 8 and
- 9 (4) A trial home placement is in the child's best
10 interests.

11 (f) If the court issues a temporary order of reinstatement
12 of parental rights:

- 13 (1) The child shall be conditionally placed in the
14 physical care of the parent for a period not to exceed
15 six months;
- 16 (2) The department shall develop a permanent plan for
17 reunification and shall ensure that transition
18 services are provided to the family, as appropriate;
19 and



1 (3) The court shall hold a hearing on the motion to
2 reinstate parental rights after the child has been
3 placed with the parent for six months.

4 (g) The department has the authority to assess the trial
5 home placement and to rescind the trial home placement according
6 to the child's best interests.

7 (h) At a final hearing on the motion to reinstate parental
8 rights, the court may issue a final order of reinstatement of
9 parental rights and terminate its jurisdiction if the trial home
10 placement has been successful. In making its final decision,
11 the court shall determine whether the moving party has proven by
12 clear and convincing evidence that:

13 (1) Reinstatement of parental rights is in the best
14 interests of the child, taking into consideration:

15 (A) Whether a parent has remedied the conditions that
16 caused the termination of parental rights;

17 (B) The age and maturity of the child and the child's
18 ability to express a preference; and

19 (C) The likelihood of risk to the health, safety, or
20 welfare of the child;



1 (2) A parent is able to provide the child with a safe
2 family home;

3 (3) Both the parent and child consent to the reinstatement
4 of parental rights; and

5 (4) The permanent plan goals for the child have not been
6 and are not likely to be achieved.

7 (i) A proceeding to reinstate parental rights shall be a
8 separate action from the proceeding for the termination of
9 parental rights. The granting of the motion to reinstate
10 parental rights shall not affect the validity of the original
11 termination order.

12 § -35 **Retention of jurisdiction.** Except as otherwise
13 provided in this chapter, the court may retain jurisdiction
14 under this chapter until the full term for which any order
15 entered expires or until the child attains nineteen years of
16 age, whichever comes first.

17 § -36 **Appeal.** An interested party aggrieved by any
18 order or decree of the court under this chapter may appeal as
19 provided in section 571-54.

20 **PART V. MISCELLANEOUS**



1 § -37 Failure to comply with terms and conditions of an
2 order of the court. If a party fails to comply with the terms
3 and conditions of an order issued by the court under this
4 chapter, the court may apply the provisions of section 710-1077
5 and any other provisions available under the law.

6 § -38 Protective order. (a) After a petition has been
7 filed with the court under this chapter, the court, upon such
8 hearing as the court deems to be appropriate, may issue a
9 protective order to restrain any party from contacting,
10 threatening, or physically abusing any other party or a child,
11 if the court finds that a protective order is necessary to
12 prevent domestic abuse (as that term and its component terms are
13 defined in section 586-1) or a recurrence of domestic abuse.

14 (b) The protective order shall enjoin a party to be
15 restrained from performing any combination of the following
16 acts:

- 17 (1) Contacting, threatening, or physically abusing any
18 protected party or child;
- 19 (2) Contacting, threatening, or physically abusing any
20 person residing at the dwelling or residence of any
21 protected party or child; and



1 (3) Entering or visiting the dwelling or residence of any
2 protected party or child.

3 (c) The protective order may provide for further relief as
4 the court deems necessary to prevent the occurrence or
5 recurrence of domestic abuse.

6 (d) The protective order may require a party to leave the
7 party's dwelling or residence during the period of time in which
8 the protective order is in effect.

9 (e) The protective order shall be binding upon not only
10 any party against whom the protective order is directed, but
11 also upon each such party's officers, agents, servants,
12 employees, attorneys, and any other persons in active concert or
13 participation with each such party.

14 (f) The court may order that an individual be made a party
15 for the limited purpose of issuing a protective order against
16 that individual.

17 (g) Upon application and a hearing, the court may modify
18 the terms of, or terminate, an existing protective order.

19 (h) Any party may provide to appropriate law enforcement
20 authorities a copy of a protective order issued pursuant to this
21 section.



1 (i) The protective order shall become effective upon
2 service pursuant to section -39(a).

3 § -39 Notice and service of protective order. (a) A
4 protective order issued pursuant to section -38 shall be
5 served either personally or by certified mail on each party to
6 be restrained. In the case where a party was present at the
7 hearing during which the protective order was issued, that party
8 shall be deemed to have notice of the order.

9 (b) The court may order the police department to serve a
10 protective order issued pursuant to section -38 upon each
11 party to be restrained, to accompany a protected party to that
12 party's dwelling or residence, and to place the protected party
13 in possession of that party's dwelling or residence.

14 (c) Within twenty-four hours after its issuance, a
15 protective order issued pursuant to section -38 shall be
16 transmitted by the clerk of the court to the appropriate county
17 police department.

18 § -40 Court records. The court shall keep a record of
19 all child protective proceedings under this chapter. Written
20 reports, photographs, x-rays, or other information that are
21 submitted to the court may be made available to other



1 appropriate persons, who are not parties, only upon an order of
2 the court. The court may issue this order upon determining that
3 such access is in the best interests of the child or serves some
4 other legitimate purpose.

5 As set forth in rules adopted pursuant to chapter 91 by the
6 department of human services and consistent with applicable
7 laws, the department may disclose information in the court
8 record without order of the court, unless otherwise ordered by
9 the court.

10 § -41 Payment for service or treatment provided to a
11 party or for a child's care, support, or treatment. (a)

12 Whenever a service or treatment is provided to a party, or
13 whenever care, support, or treatment of a child is provided
14 under this chapter, the court may order the payment of such
15 expenses by the persons or legal entities who are legally
16 responsible for the same, after reasonable notice and hearing as
17 the court directs.

18 (b) The provisions of section 571-52 and all other
19 remedies available under the law shall be applicable to enforce
20 orders issued pursuant to this section.



1 § -42 Educational, medical, dental, and recreational
2 needs. Upon the first day of placement, a child's resource
3 family shall have the authority, for the child placed in the
4 resource family's care:

- 5 (1) To consent to routine educational and recreational
6 needs and activities, except for purposes regulated
7 under title 8, chapters 60 and 61, of the Hawaii
8 Administrative Rules, or successor rules; and
9 (2) To seek and obtain ordinary medical and dental care,
10 immunizations, and well-baby and well-child medical
11 services.

12 § -43 Child protective review panel. (a) The
13 department shall establish a child protective review panel to
14 review each case of child abuse or neglect that leads to near
15 fatality or death as a result of acts or omissions of the
16 child's legal caretaker. Based upon its review, the panel shall
17 submit a report of its findings and recommendations to the
18 director of the department. The department shall appoint
19 members of the child protective review panel, who may include:

- 20 (1) Any physician treating the child for abuse;



- 1 (2) Any child protective services worker assigned to the
- 2 case and the worker's supervisor;
- 3 (3) The guardian ad litem for the child, appointed under
- 4 section -16, if applicable;
- 5 (4) The members of the child's multidisciplinary team or a
- 6 child protective services consultant; and
- 7 (5) Other child protective services workers and
- 8 supervisors.

9 (b) Members of the child protective review panel shall
10 serve without compensation and shall not be reimbursed for
11 costs; provided that state employees serving within the scope of
12 their employment shall receive compensation and reimbursement as
13 provided by law or by collective bargaining.

14 (c) Members of the child protective review panel shall be
15 immune from any liability for injuries and damages arising from
16 the panel's report under subsection (a).

17 (d) This section shall not be construed as interfering
18 with any authority of the department or the courts to remove, to
19 place, or to order any disposition on custody of an abused child
20 under this chapter."



1 SECTION 2. Chapter 346, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§346- Health assessment. The department shall ensure
5 the provision of a comprehensive health assessment for each
6 child in out-of-home placement forty-five days before or after
7 an initial placement.

8 §346- Motor vehicle insurance. The parents of a child
9 under foster care who has obtained a driver's license shall pay
10 the costs of the child's motor vehicle insurance, unless the
11 court determines the parents to be financially unable to pay the
12 costs, in which case the child's insurance costs shall be paid
13 pursuant to sections 431:10C-407 and 431:10C-410."

14 SECTION 3. Chapter 350, Hawaii Revised Statutes, is
15 amended by adding two new sections to be appropriately
16 designated and to read as follows:

17 "§350- Authorization for color photographs, x-rays, and
18 radiological or other diagnostic examination. (a) Any health
19 professional or paraprofessional, physician licensed or
20 authorized to practice medicine in this State, registered nurse
21 or licensed practical nurse, hospital or similar institution's



1 personnel engaged in the admission, examination, care, or
2 treatment of patients, and any medical examiner, coroner, social
3 worker, or police officer, who has before the person a child the
4 person reasonably believes has been harmed, shall make every
5 good faith effort to take or cause to be taken color photographs
6 of the areas of trauma visible on the child. If medically
7 indicated, such person may take or cause to be taken x-rays of
8 the child or cause a radiological or other diagnostic
9 examination to be performed on the child.

10 (b) Color photographs, x-rays, radiological, or other
11 diagnostic examination reports that show evidence of imminent
12 harm, harm, or threatened harm to a child shall immediately be
13 forwarded to the department.

14 §350- Disclosure of records. (a) The department shall
15 disclose to resource parents and the foster child's principal
16 treating physician copies of the foster child's complete medical
17 records in the department's physical custody and relevant social
18 history within thirty days of foster placement.

19 (b) If a child is active in the child protective services
20 system, physicians may share with other physicians, orally or in
21 writing, or both, medical information without parental consent.



1 (c) Any records or information released to a foster
2 child's resource parents, or the foster child's principal
3 treating physician pursuant to subsection (a), or any
4 information shared by one physician with another physician
5 pursuant to subsection (b), shall remain confidential in
6 accordance with section 350-1.4."

7 SECTION 4. Section 578-1, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§578-1 Who may adopt; jurisdiction; venue. Any proper
10 adult person, not married, or any person married to the legal
11 father or mother of a minor child, or a husband and wife
12 jointly, may petition the family court of the circuit in which
13 the person or persons reside or are in military service or the
14 family court of the circuit in which the individual to be
15 adopted resides or was born or in which a child placing
16 organization approved by the department of human services under
17 the provisions of section 346-17 having legal custody (as
18 defined in section 571-2) of the child is located, for leave to
19 adopt an individual toward whom the person or persons do not
20 sustain the legal relationship of parent and child and for a
21 change of the name of the individual. When adoption is the goal



1 of a permanent plan recommended by the department of human
2 services and ordered pursuant to section [~~587-73,7~~] -31, the
3 department may petition for adoption on behalf of the proposed
4 adoptive parents. The petition shall be in such form and shall
5 include such information and exhibits as may be prescribed by
6 the family court."

7 SECTION 5. Section 578-2, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) Persons as to whom consent not required or whose
10 consent may be dispensed with by order of the court.

11 (1) Persons as to whom consent not required:

12 (A) A parent who has deserted a child without
13 affording means of identification for a period of
14 ninety days;

15 (B) A parent who has voluntarily surrendered the care
16 and custody of the child to another for a period
17 of two years;

18 (C) A parent of the child in the custody of another,
19 if the parent for a period of at least one year
20 has failed to communicate with the child when
21 able to do so;



- 1 (D) A parent of a child in the custody of another, if
- 2 the parent for a period of at least one year has
- 3 failed to provide for the care and support of the
- 4 child when able to do so;
- 5 (E) A natural father who was not married to the
- 6 child's mother at the time of the child's
- 7 conception or birth and who does not fall within
- 8 the provisions of subsection (a)(3), (4), or (5);
- 9 (F) A parent whose parental rights have been
- 10 judicially terminated under the provisions of
- 11 sections 571-61 to 571-63, or under the
- 12 provisions of any other state or other law by a
- 13 court or other agency having jurisdiction to take
- 14 the action;
- 15 (G) A parent judicially declared mentally ill or
- 16 mentally retarded and who is found by the court
- 17 to be incapacitated from giving consent to the
- 18 adoption of the child;
- 19 (H) Any legal guardian or legal custodian of the
- 20 child sought to be adopted, other than a parent,
- 21 who has failed to respond in writing to a request



1 for consent for a period of sixty days or who,
2 after examination of the person's written reasons
3 for withholding consent, is found by the court to
4 be withholding the person's consent unreasonably;

5 (I) A parent of a child who has been in the custody
6 of a petitioner under this chapter for a period
7 of at least one year and who entered the United
8 States of America as a consequence of
9 extraordinary circumstances in the child's
10 country of origin, by reason of which
11 extraordinary circumstances the existence,
12 identity, or whereabouts of the child's parents
13 is not reasonably ascertainable or there is no
14 reasonable means of obtaining suitable evidence
15 of the child's identity or availability for
16 adoption;

17 (J) Any parent of the individual to be adopted, if
18 the individual is an adult eligible for adoption
19 under subsection (b); and

20 (K) A parent whose parental and custodial duties and
21 rights have been divested by an award of



1 permanent custody pursuant to section [587-73.]

2 -33;

3 (2) Persons whose consent may be dispensed with by order
4 of the court. The court may dispense with the consent
5 of a parent who comes within subsection (a) (3), (4),
6 or (5) herein, upon finding that:

7 (A) The petitioner is the stepfather of the child and
8 the child has lived with the child's legal mother
9 and the petitioning stepfather for a period of at
10 least one year;

11 (B) The father is a concerned father as provided by
12 subsection (a) (5), herein, and has not filed a
13 petition to adopt the child, or the petition to
14 adopt the child filed by the father has been
15 denied; or

16 (C) The father is an adjudicated, presumed, or
17 concerned father as provided by subsections
18 (a) (3), (4), or (5), herein, and is not a fit and
19 proper person or is not financially or otherwise
20 able to give the child a proper home and
21 education."



1 SECTION 6. Section 578-14.5, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (c) to read:

4 "(c) Whenever possible, a completed form with the required
5 information on each natural parent shall accompany any document,
6 to be filed with the family court, which requests the
7 relinquishment, termination, or divestiture of parental rights,
8 as provided under sections 571-61 and [~~587-73(b)(3),~~] -31,
9 and the petition for adoption under this chapter. If available,
10 a copy of the hospital or other facility's medical records under
11 subsection (b) shall also accompany the document to be filed in
12 the family court. This copy shall not be disseminated to the
13 parties and shall be sealed by the family court pending
14 transmittal to the department of health."

15 2. By amending subsection (e) to read:

16 "(e) If the natural parents have been court ordered to
17 complete the forms required in subsection (c) pursuant to
18 section [~~587-71(n),~~] -28(e)(6) and have either failed to
19 complete the forms or have failed to return the completed forms
20 to the department of human services, the requirement in
21 subsection (c) shall be waived."



1 SECTION 7. Effective upon the approval of this Act,
2 sections 321-342, 321-471, 325-101, 346-16, 346-65, 350-2, 350-
3 3, 560:5-205, 560:5-206, 571-2, 571-11, 571-41, 577-28, 586-
4 10.5, 626-1, Rule 505.5, and 706-606.3, Hawaii Revised Statutes,
5 are amended by replacing the reference to chapter 587, Hawaii
6 Revised Statutes, with the reference to the new replacement
7 chapter in section 1 of this Act.

8 SECTION 8. Chapter 587, Hawaii Revised Statutes, is
9 repealed.

10 SECTION 9. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect on September 1,
13 2010.

14

APPROVED this 24 day of MAY, 2010


GOVERNOR OF THE STATE OF HAWAII