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# 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, AND GUIDING

7 PRINCIPLES

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

10 § -2 Purpose; construction. The legislature recognizes  
11 that parents have a natural and legal right and duty to both  
12 care for and support their children. In view of these  
13 fundamental rights of parents, which are protected by our state  
14 and federal laws and constitutions, it is the legislature's  
15 belief that the best interests of a child are generally served  
16 by allowing the child to remain in the custody of the child's  
17 parents, with the expectation that the child's parents have the  
18 strongest bond of love and affection for, and are best able to

1 provide their child with, the necessary support to ensure the  
2 child's safety and security.

3 Consistent with the above, the legislature finds that  
4 children deserve and require competent, responsible parenting  
5 and safe, secure, loving, and nurturing homes, and that prompt  
6 identification, reporting, investigation, services, treatment,  
7 adjudication, and disposition of cases involving children who  
8 have been harmed or are threatened with harm are in the best  
9 interests of the children, their families, and society. The  
10 legislature further recognizes that when family rehabilitation  
11 and reunification are not possible, many relatives are willing  
12 and able to provide a nurturing and safe placement for these  
13 children.

14 This chapter therefore creates, within the jurisdiction of  
15 the family court, a child protective act to ensure the safety  
16 and well-being of children who have been harmed, or are in  
17 circumstances that threaten harm, due to acts or omissions of  
18 their parents. This chapter further is intended to provide  
19 these children with permanency in a home that meets their  
20 physical, emotional, psychological, educational, and social  
21 needs.

1       The policy and purpose of this chapter include the  
2 protection of children who have been harmed or are threatened  
3 with harm; providing assistance to families to address the  
4 causes for the abuse and neglect; respecting and utilizing each  
5 family's strengths, resources, culture, and customs; ensuring  
6 that families are meaningfully engaged and children are  
7 consulted age-appropriately in case planning; enlisting the  
8 early and appropriate participation of ohana and the family's  
9 support networks; respecting and encouraging the input and views  
10 of caregivers; and ensuring a permanent home through timely  
11 adoption or other permanent living arrangement, if safe  
12 reunification with the family is not possible.

13       The department's child protective services provided under  
14 this chapter shall, without endangering the safety and best  
15 interests of the children under this chapter, make every  
16 reasonable effort to be open, accessible, and communicative to  
17 the persons affected by a child protective proceeding.

18       This chapter shall be liberally construed to serve the best  
19 interests of the children affected by the provisions of this  
20 chapter and the purpose and policies set forth herein.

21

22

1           §   -3   Guiding principles for children in foster care.

2   (a)   The department or an authorized agency, as resource family  
3   or permanent custodian, shall abide by the following guiding  
4   principles and ensure that children in foster care:

5           (1)   Live in a safe and healthy home, free from physical,  
6                 psychological, sexual, and other abuse;

7           (2)   Have adequate:

8                 (A)   Food that is nutritious and healthy;

9                 (B)   Clothing;

10                (C)   Medical, dental and orthodontic, and corrective  
11                    vision care; and

12                (D)   Mental health services;

13           (3)   Have supervised or unsupervised in-person contact and  
14                 telephone or other forms of communication with the  
15                 child's parents and siblings while the child is in  
16                 foster care, unless prohibited by court order;

17           (4)   Have in-person contact with their assigned child  
18                 protective services worker, guardian ad litem, and, if  
19                 applicable, their probation officer;

20           (5)   Meet with the presiding judge in their case;

21           (6)   Be enrolled in a comprehensive health insurance plan  
22                 and, within forty-five days of out-of-home placement,

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- 1 be provided with a comprehensive health assessment and  
2 treatment as recommended;
- 3 (7) May freely exercise their own religious beliefs,  
4 including refusing to attend any religious activities  
5 and services;
- 6 (8) Consistent with the child's age and development, have  
7 a personal bank account and assistance in managing  
8 their personal income, unless prohibited due to safety  
9 or other concerns;
- 10 (9) Have the right to attend school and participate in  
11 appropriate extracurricular activities and, if a child  
12 is moved during a school year, to complete the school  
13 year at the same school, if practicable; and
- 14 (10) Starting at age twelve, are provided with age  
15 appropriate life skills training and a transition plan  
16 for appropriately aging out of the foster care system,  
17 as well as written information concerning independent  
18 living programs, foster youth organizations,  
19 transitional planning services, and independent living  
20 case management programs that are available to all  
21 children in foster care who are twelve years of age or  
22 older and their resource families.

1 (b) Sua sponte or upon appropriate motion, the family  
2 court may issue any necessary orders to any party, including the  
3 department of education, department of human services, or  
4 department of health, to ensure adherence to the guiding  
5 principles enumerated in subsection (a) above.

6 PART II. DEFINITIONS

7 § -4 Definitions. When used in this chapter, unless the  
8 context otherwise requires:

9 "Abandoned infant" means a child who is three years old or  
10 younger and:

11 (1) Whose parents, regardless of any incidental contact or  
12 communication with the child, have demonstrated an  
13 extreme disinterest or lack of commitment for assuming  
14 parental responsibility for the child;

15 (2) The persons with whom the child resides have not known  
16 the identity or whereabouts of the child's parents for  
17 sixty days or more, and reasonable efforts have been  
18 made to identify or locate the child's parents; or

19 (3) Whose presumed or alleged father has failed to assert  
20 a claim or interest as a parent for sixty days or  
21 more, if he has knowledge of the child's birth and  
22 that he is the child's presumed or alleged father; and

1           whose mother also falls under the provisions of  
2           paragraph (1) or (2).

3           "Adjudication" means a finding by a court that a child has  
4           been harmed or threatened with harm is supported by a  
5           preponderance of the evidence.

6           "Aggravated circumstances" means that:

7           (1) The parent has murdered, or has solicited, aided,  
8           abettted, attempted, or conspired to commit murder, of  
9           another child of the parent;

10          (2) The parent has committed a felony assault that results  
11          in serious bodily injury to the child or another child  
12          of the parent;

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

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

16          (5) The child is an abandoned infant.

17          "Authorized agency" means the department, other public  
18          agency, or a person or organization that is licensed by the  
19          department or approved by the court to receive children for  
20          control, care, maintenance, or placement.

21          "Caregiver" means an adult who is not a child's parent or  
22          legal and physical custodian, and with whom the child has been

1 residing for at least six months with the verbal or written  
2 consent of the child's legal and physical custodian. The status  
3 of "caregiver" as used in this chapter does not pertain to  
4 court-ordered or voluntary foster placement.

5 "Case plan" means the combined safe family home factors and  
6 the service plan or permanent plan.

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

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

15 "Criminal history record check" means an examination of an  
16 individual's criminal history through fingerprint analysis or  
17 name inquiry into state and national criminal history records  
18 and files, including, but not limited to, the files of the  
19 Hawaii criminal justice data center.

20 "Court-appointed special advocate" means a responsible  
21 adult volunteer who has been trained and is supervised by a  
22 court-appointed special advocate program recognized by the



1 court, and who, when appointed by the court, serves as an  
2 officer of the court in the capacity of a guardian ad litem.

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

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

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

13 "Family" means each legal parent of a child; the natural  
14 mother, unless the child has been legally adopted; the  
15 adjudicated, presumed, or concerned natural father, as defined  
16 in chapter 578, unless the child has been legally adopted; each  
17 parent's spouse or former spouse; each sibling or person related  
18 by blood or marriage; and any other person or legal entity with:

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

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

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

4 "Family home" means the home of the child's legal  
5 custodian.

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

9 "Foster care" means continuous twenty-four-hour care and  
10 supportive services provided for a child by an authorized  
11 agency, including, but not limited to, the care, supervision,  
12 guidance, and rearing of a child by a resource family.

13 "Foster custodian" means the authorized agency that has  
14 foster custody of the child.

15 "Foster custody" means the legal status created when the  
16 department places a child out of the family home with the  
17 agreement of the legal custodian or pursuant to court order  
18 after the court has determined that the child's family is not  
19 presently willing and able to provide the child with a safe  
20 family home, even with the assistance of a service plan.

21 "Guardian ad litem" means any person who is appointed by  
22 the court under this chapter to promote the needs and interests

1 of a child or a party, including a court appointed special  
2 advocate.

3 "Hanai relative" means an adult, other than a blood  
4 relative, who the court or department has found by credible  
5 evidence to perform or to have performed a substantial role in  
6 the upbringing or material support of a child, as attested to by  
7 the written or oral designation of the child or of another  
8 person, including other relatives of the child.

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

11 (1) The child exhibits evidence of physical harm,  
12 including, but not limited to:

- 13 (A) Substantial or multiple skin bruising;
- 14 (B) Substantial external or internal bleeding;
- 15 (C) Serious burn;
- 16 (D) Poisoning;
- 17 (E) Fracture of any bone;
- 18 (F) Subdural hematoma; or
- 19 (G) Death; and

20 the injury is not justifiably explained, or the  
21 history given concerning the condition or death is not  
22 consistent with the degree or type of the condition or

1 death, or there is evidence that the condition or  
2 death may not be the result of an accident;

3 (2) The child has been the victim of sexual contact or  
4 conduct, including, but not limited to, rape; sodomy;  
5 molestation; sexual fondling; incest; prostitution;  
6 obscene or pornographic photographing, filming, or  
7 depiction; or other similar forms of sexual  
8 exploitation;

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

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

15 (5) Any case where the child is provided with dangerous,  
16 harmful, or detrimental drugs as defined in section  
17 712-1240, except when a child's family administers  
18 drugs to the child as directed or prescribed by a  
19 practitioner, as defined in section 712-1240.

20 "Imminent harm" means that without intervention, there is a  
21 substantial present danger that a child will be harmed or will  
22 not be safe.

1 "Incapacitated person" means a person who, even with  
2 appropriate and reasonably available assistance, is unable to  
3 substantially:

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

6 (2) Consult with counsel; and

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

8 Incapacity shall not be solely based on a person's status  
9 as a minor.

10 "Ohana conference" means a family-focused, strength-based  
11 meeting conducted by trained community facilitators that is,  
12 designed to build and enhance the network of protection for a  
13 child who is subject to a proceeding under this chapter.

14 "Parent" means any legal parent of a child; the natural  
15 mother, unless the child has been legally adopted; the  
16 adjudicated, presumed, or concerned natural father of the child  
17 as defined in chapter 578, unless the child has been legally  
18 adopted; or the legal guardians or any other legal custodians of  
19 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  
22 guardian ad litem; any other person who is alleged in the

1 petition or who is subsequently found at any child protective  
2 proceeding to be encouraging, causing, or contributing to the  
3 acts or conditions that brought the child within the scope of  
4 this chapter; and any other person the court determines should  
5 be made a party to the proceedings.

6 "Permanent custody" means the legal status created after  
7 the termination of parental rights.

8 "Permanent plan" means a comprehensive written plan  
9 prepared by an authorized agency in consultation with a child  
10 and other appropriate parties, which establishes the placement  
11 intended to serve as a child's permanent home after the court  
12 finds that reunification with the child's parents is not the  
13 permanency goal.

14 "Police officer" means a person employed by any county in  
15 the State of Hawaii to enforce the laws and ordinances for  
16 preserving the peace and maintaining safety and order in the  
17 community, or an employee authorized by the director of public  
18 safety under section 329-51 or 353C-4 to exercise the powers set  
19 forth in this chapter.

20 "Preponderance of the evidence" means the degree of proof,  
21 which as a whole, convinces the trier of fact that the fact  
22 sought to be proved is more probable than not. "Preponderance

1 of the evidence" shall be the standard of proof required in any  
2 proceeding, unless otherwise specified.

3 "Protective custody" means the legal status of a child  
4 whose physical custody is assumed by a police officer under this  
5 chapter.

6 "Relative" means a person related to a child by blood or  
7 adoption, or a hanai relative as defined in this chapter, who,  
8 as determined by the court or the department, is willing and  
9 able to safely provide support to the child and the child's  
10 family.

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

14 "Resource family" means a person or family licensed by the  
15 department or another authorized agency to provide temporary  
16 foster care services for children.

17 "Service plan" means a comprehensive written plan prepared  
18 by an authorized agency, in which the goal of the case plan is  
19 reunification of a child with the child's parents, and which is  
20 developed in consultation with the child, in an age-appropriate  
21 manner, and with the child's family.

1 "Temporary family supervision" means a legal status created  
2 under this chapter pursuant to court order after the department  
3 has filed a petition for temporary foster custody, and the court  
4 or the department finds it more appropriate to return a child to  
5 the child's family home pending an adjudication determination.

6 "Temporary foster custody" means a legal status created  
7 under this chapter with or without a court order, whereby the  
8 department temporarily assumes the duties and rights of a foster  
9 custodian of a child.

10 "Termination of parental rights" means the severance of  
11 parental rights.

12 "Threatened harm" means that without intervention, there is  
13 an impending substantial risk of harm to a child.

14 **PART III. JURISDICTION AND VENUE**

15 **§ -5 Jurisdiction.** Pursuant to section 571-11(9), the  
16 court shall have exclusive original jurisdiction in a child  
17 protective proceeding concerning any child who was or is found  
18 within the State of Hawaii at the time specified facts and  
19 circumstances occurred, are discovered, or are reported to the  
20 department. The court's finding that the child's physical or  
21 psychological health or welfare is subject to imminent harm, has  
22 been harmed, or is subject to threatened harm by the acts or



1 omissions of the child's family, shall be based upon these facts  
2 and circumstances.

3       § -6 Venue. A child protective proceeding under this  
4 chapter may be filed in the county in which a child is found or  
5 resides when the petition is filed, or in the county in which a  
6 parent having legal custody of the child resides or is domiciled  
7 when the petition is filed.

8       **PART IV. SAFE FAMILY HOME FACTORS AND PRE-PETITION PROCEDURES**

9       § -7 Safe family home factors. (a) The following  
10 factors shall be fully considered when determining whether a  
11 child's family is willing and able to provide the child with a  
12 safe family home:

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

15           (A) The child's age and special needs that affect the  
16 child's attachment, growth, and development;

17           (B) The child's developmental, psychological,  
18 medical, and dental health status, including the  
19 names of assessment and treatment providers;

20           (C) The child's peer and family relationships;

- 1 (D) The child's educational status and setting, and  
2 the department's efforts to maintain educational  
3 stability for the child in out-of-home placement;
- 4 (E) The child's living situation;
- 5 (F) The child's fear of being in the family home;
- 6 (G) The impact of out-of-home placement on the child;
- 7 (H) Services provided to the child and family; and
- 8 (I) The department's efforts to maintain connections  
9 between the child and the child's siblings, if  
10 they are living in different homes;
- 11 (2) The initial and any subsequent reports of harm and  
12 threatened harm to the child;
- 13 (3) Dates and reasons for the child's out-of-home  
14 placement; description, appropriateness, and location  
15 of the placement; and who has placement  
16 responsibility;
- 17 (4) Facts regarding the alleged perpetrators of harm to  
18 the child, the child's parents, and other family  
19 members who are parties to the court proceedings,  
20 which facts shall include:
- 21 (A) Birthplace and family of origin;
- 22 (B) Manner in which they were parented;

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

1 relatives, friends, and faith-based or other community  
2 networks;

3 (11) Attempts to locate and involve extended family,  
4 friends, and faith-based or other community networks;

5 (12) Whether the child's family has demonstrated an  
6 understanding and involvement in services that have  
7 been recommended by the department or court-ordered as  
8 necessary to effectuate a safe family home for the  
9 child;

10 (13) Whether the child's family has resolved identified  
11 safety issues in the family home within a reasonable  
12 period of time; and

13 (14) The department's assessment, which will include the  
14 demonstrated ability of the child's family to provide  
15 a safe family home for the child, and recommendations.

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

20 § -8 Protective custody by police officer without court  
21 order. (a) A police officer shall assume protective custody of

1 a child without a court order and without the consent of the  
2 child's family, if in the discretion of the police officer:

3 (1) The child is subject to imminent harm while in the  
4 custody of the child's family;

5 (2) The child has no parent, as defined in this chapter,  
6 who is willing and able to provide a safe family home  
7 for the child;

8 (3) The child has no caregiver, as defined in this  
9 chapter, who is willing and able to provide a safe and  
10 appropriate placement for the child; or

11 (4) The child's parent has subjected the child to harm or  
12 threatened harm and the parent is likely to flee with  
13 the child.

14 (b) The department shall assume temporary foster custody  
15 of the child when a police officer has completed the transfer of  
16 protective custody of the child to the department.

17 (1) A police officer who assumes protective custody of a  
18 child shall complete transfer of protective custody to  
19 the department by presenting physical custody of the  
20 child to the department; or

21 (2) If the child is or will be admitted to a hospital or  
22 similar institution, the police officer shall

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

7 § -9 Temporary foster custody without court order. (a)

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

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

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

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

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

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

14          (C) File a petition with the court.

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

21          §   -10 Relatives; foster placement. (a) The department  
22          shall provide the child's relative an application to be the

1 child's resource family within fifteen days of the relative's  
2 request to be a foster placement. If the application is  
3 submitted and denied, the department shall provide the applicant  
4 with the specific reasons for the denial and an explanation of  
5 the procedures for an administrative 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. At its discretion, and in  
11 accordance with its procedures and legally promulgated  
12 departmental rules, the department shall investigate a report  
13 that a child is subject to imminent harm, has been harmed, or is  
14 subject to threatened harm. In conducting the investigation,  
15 the department may:

16 (1) Enlist the cooperation of appropriate state and  
17 federal law enforcement authorities for assistance.  
18 The law enforcement authorities may conduct an  
19 investigation and if conducted, shall provide to the  
20 department all preliminary findings, which shall  
21 include the results of a criminal history record check



1 of an alleged perpetrator of harm or threatened harm  
2 to a 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) Agree, voluntarily and in writing, to place the  
18 child in foster care.

19 If the child is voluntarily placed in foster care and  
20 the family does not successfully complete the service  
21 plan within three months after the date on which the  
22 department assumed physical custody of the child, the

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

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

14 (7) File a petition or refer the matter to another  
15 appropriate authorized agency, which may file a  
16 petition under this chapter.

17 **PART V. COURT PROCEEDINGS, EVIDENCE, AND ORDERS**

18 **§ -12 Petition.** (a) A petition invoking the  
19 jurisdiction of the court under this chapter shall:

20 (1) Be verified and set forth:

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- 1 (A) A concise statement of the basis for each  
2 allegation of harm or threatened harm that brings  
3 a child within this chapter;
- 4 (B) The name, birth date, gender, and residential  
5 address of the child;
- 6 (C) The names and last known residential addresses of  
7 the parents and other persons who are to be made  
8 parties to the proceedings under this chapter;  
9 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; and
- 14 (2) State whether any of the facts required by this  
15 section cannot be determined prior to filing the  
16 petition. The petition may be based on information  
17 and belief, but shall state the basis thereof; and
- 18 (3) Include the warning that, if the petition is granted,  
19 parental rights may be terminated unless the family is  
20 willing and able to provide the child with a safe  
21 family home within a reasonable period of time, with  
22 the assistance of a service plan.

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

6 (c) The court shall conduct:

7 (1) A temporary foster custody hearing within two days  
8 after the petition is filed, excluding Saturdays,  
9 Sundays, and holidays; or

10 (2) A return hearing within fifteen days after the  
11 petition is filed, if the petition requests foster  
12 custody or family supervision of the child.

13 (d) The court may provide rules concerning the titles,  
14 filing, investigation, and form and content of petitions and  
15 other pleadings and proceedings in cases under this chapter, or  
16 any other matter arising in child protective proceedings.

17 § -13 **Summons and service of summons.** (a) After a  
18 petition has been filed, the court shall issue a summons  
19 requiring the presence of the parents and other persons who are  
20 to be parties to the proceeding, as follows:

21 (1) A copy of the petition shall be attached to each  
22 summons;

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

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

8           (b) The court may issue a summons to a parent or any  
9           person having physical custody of the child, to bring the child  
10          before the court at the temporary foster custody hearing or the  
11          return hearing.

12          (c) The sheriff or other authorized person shall serve the  
13          summons by personally delivering a certified copy to the person  
14          or legal entity being summoned. A return on the summons shall  
15          be filed, showing to whom, and the date and time service was  
16          made. However:

17          (1) If the party to be served does not reside in the State  
18          of Hawaii, service shall be made by registered or  
19          certified mail addressed to the party's last known  
20          address; or

21          (2) If the court finds that it is impracticable to  
22          personally serve the summons, the court may order

1 service by registered or certified mail addressed to  
2 the party's last known address, or by publication, or  
3 both. When publication is used, the summons shall be  
4 published once a week for four consecutive weeks in a  
5 newspaper of general circulation in the county in  
6 which the party was last known to have resided. In  
7 the order for publication of the summons, the court  
8 shall designate the publishing newspaper and shall set  
9 the date of the last publication as no less than  
10 twenty-one days before the return date. Such  
11 publication shall have the same force and effect as  
12 personal service of the summons.

13 (d) Service shall be completed no less than twenty-four  
14 hours prior to the time set forth in the summons for a temporary  
15 foster custody hearing, or no less than forty-eight hours prior  
16 to the time set forth in the summons for any other hearing,  
17 unless the party was present when ordered by the court to appear  
18 at the hearing.

19 (e) The court may issue a warrant for the appearance of a  
20 person or child, as well as issue an order pursuant to section  
21 -16(b), if:

22 (1) The summons cannot be personally served;

- 1           (2) The person served fails to obey the summons;
- 2           (3) The court finds that service will not be effective; or
- 3           (4) The court finds that the best interests of the child
- 4                 require that the child be brought into the custody of
- 5                 the court.

6           § -14 . Notice of hearings; participation of resource  
7 family. (a) Notice of hearings shall be served on the parties;  
8 however, no further notice is required for any party who was  
9 defaulted or given actual notice of a hearing while present in  
10 court. Notice of hearings shall be served no less than forty-  
11 eight hours before the scheduled hearing, subject to a  
12 shortening of time as ordered by the court.

13           (b) The child's current resource family shall be served  
14 written notice of hearings no less than forty-eight hours before  
15 a scheduled hearing; however, no further notice needs to be  
16 provided to a resource family who was given actual notice of a  
17 hearing while present in court, subject to a shortening of time  
18 as ordered by the court.

19           (c) No hearing shall be held until the child, the child's  
20 current resource family, and all parties are given notice of the  
21 hearing or served, as required herein.

1 (d) The child's current resource family is entitled to  
2 participate in the proceedings to provide information to the  
3 court, either in person or in writing, concerning the current  
4 status of the child in their care.

5 (e) The court may not convene a hearing under this chapter  
6 unless the court enters a finding that each of the parties  
7 required to be notified of the hearing has been served with a  
8 copy of the petition; however, if a party is required to be  
9 summoned to a temporary foster custody or return hearing, but  
10 has not been served with the summons, the court may proceed with  
11 the hearing if:

12 (1) A reasonable effort has been made to effect personal  
13 service;

14 (2) It would not be in the best interests of the child to  
15 postpone the proceeding until service can be  
16 effectuated; and

17 (3) The child is represented by a guardian ad litem or  
18 counsel.

19 **§ -15 Duties, rights, and liability of authorized**

20 **agencies.** (a) Family supervision vests in an authorized agency  
21 the following duties and rights, subject to such restrictions as  
22 the court deems to be in the best interests of a child:



1           (1) To monitor and supervise the child and the child's  
2           family members who are parties. Monitoring and  
3           supervision shall include, but not be limited to,  
4           reasonable access to each of the family members who  
5           are parties and reasonable access into the child's  
6           family home; and

7           (2) To place the child in foster care and thereby assume  
8           temporary foster custody or foster custody of the  
9           child. The authorized agency shall immediately notify  
10          the court when such placement occurs. Upon  
11          notification, the court shall set the case for:

12          (A) A temporary foster custody hearing within three  
13          days, excluding Saturdays, Sundays, and holidays;  
14          or

15          (B) If jurisdiction has been established, a periodic  
16          review hearing within ten days of the child's  
17          placement.

18          The temporary foster custody hearing or the periodic  
19          review hearing may be held at a later date, only if  
20          the court finds it to be in the best interests of the  
21          child.

1 (b) Foster custody vests in an authorized agency the  
2 following duties and rights:

3 (1) To determine where and with whom the child shall be  
4 placed in foster care; however, the child shall not be  
5 placed in foster care outside the State of Hawaii  
6 without prior order of the court;

7 (2) To permit the child to return to the family from which  
8 the child was removed, unless otherwise ordered by the  
9 court. The child's return may occur only if no party  
10 objects to such placement, and prior written notice is  
11 given to the court and to all parties stating that  
12 there is no objection of any party to the child's  
13 return. Upon the child's return to the family,  
14 temporary foster custody or foster custody shall be  
15 automatically revoked, and the child and the child's  
16 family members who are parties shall be placed under  
17 the temporary family supervision or the family  
18 supervision of the authorized agency;

19 (3) To ensure that the child is provided in a timely  
20 manner with adequate food, clothing, shelter,  
21 psychological care, physical care, medical care,  
22 supervision, and other necessities;

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- 1           (4) To monitor whether the child is being provided with an  
2           appropriate education;
- 3           (5) To provide consents that are required for the child's  
4           physical or psychological health or welfare,  
5           including, but not limited to, ordinary medical,  
6           dental, psychiatric, psychological, educational,  
7           employment, recreational, or social needs;
- 8           (6) To provide consents for any other medical or  
9           psychological care or treatment, including, but not  
10          limited to, surgery, if the persons who are otherwise  
11          authorized to provide the consent are unable or  
12          unwilling to consent. Such care or treatment must be  
13          deemed necessary for the child's physical or  
14          psychological health or welfare by two physicians or  
15          two psychologists, whichever is appropriate, who are  
16          licensed or authorized to practice in the State of  
17          Hawaii;
- 18          (7) To provide consent for the child's application for a  
19          driver's instruction permit, provisional driver's  
20          license, or driver's license;
- 21          (8) To provide consent to the recording of a statement  
22          pursuant to section     -21; and

1           (9) To provide the court with information concerning the  
2           child.

3           The court, in its discretion, may vest foster custody of a  
4 child in any authorized agency or subsequently authorized  
5 agencies, if the court finds that it is in the child's best  
6 interests to do so. The rights and duties that are so assumed  
7 by an authorized agency shall supersede the rights and duties of  
8 any legal or permanent custodian of the child.

9           Unless otherwise provided in this section or as otherwise  
10 ordered by the court, a child's family shall retain the  
11 following rights and responsibilities after a transfer of  
12 temporary foster custody or foster custody, to the extent that  
13 the family possessed the rights and responsibilities prior to  
14 the transfer of temporary foster custody or foster custody: the  
15 right of reasonable supervised or unsupervised visitation at the  
16 discretion of the authorized agency; the right to consent to  
17 adoption, to marriage, or to major medical or psychological care  
18 or treatment; and the continuing responsibility to support the  
19 child, including, but not limited to, repayment for the cost of  
20 any care, treatment, or other service provided by the authorized  
21 agency or the court for the child's benefit.

1 (c) Permanent custody vests in an authorized agency the  
2 following duties and rights:

3 (1) To assume the parental and custodial duties and rights  
4 of a legal custodian and family member;

5 (2) To determine where and with whom the child shall live;  
6 however, the child shall not be placed outside the  
7 State of Hawaii without prior order of the court;

8 (3) To ensure that the child is timely provided with  
9 adequate food, clothing, shelter, psychological care,  
10 physical care, medical care, supervision, and other  
11 necessities;

12 (4) To monitor whether the child is being provided with an  
13 appropriate education;

14 (5) To provide all consents that are required for the  
15 child's physical or psychological health or welfare,  
16 including, but not limited to, medical, dental,  
17 psychiatric, psychological, educational, employment,  
18 recreational, and social needs;

19 (6) To provide consent for the child's application for a  
20 driver's instruction permit, provisional driver's  
21 license, or driver's license;

1 (7) To provide consent to adoption, change of name, and  
2 marriage; and

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

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

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

17 (b) The court may appoint a guardian ad litem for an  
18 incapacitated adult party.

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

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

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1 (iv) The dates of any assessments or examinations  
2 upon which the report is based.

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

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

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

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



- 1 authorized agencies that have control of the child or  
2 incapacitated adult;
- 3 (3) Be given notice of all hearings and proceedings  
4 involving the child or incapacitated adult, whether  
5 civil or criminal, including grand juries, and shall  
6 protect the best interests of those parties therein;
- 7 (4) Make face-to-face contact with the child or  
8 incapacitated adult in that child's or incapacitated  
9 adult's family or resource family home at least once  
10 every three months;
- 11 (5) Report to the court and all parties in writing at six  
12 month intervals regarding such guardian ad litem's  
13 activities on behalf of the child or the incapacitated  
14 adult's best interests, and recommend how the court  
15 should proceed in the best interests of that child or  
16 incapacitated adult; and
- 17 (6) Inform the court of the child or incapacitated adult's  
18 opinions and requests. If the child's opinions and  
19 requests differ from those being advocated by the  
20 guardian ad litem, the court shall determine whether  
21 it is in the child's best interests to appoint an  
22 attorney for the child concerning such issues.

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

2 (1) Grant a guardian ad litem only those powers  
3 necessitated by the incapacitated adult's limitations  
4 and demonstrated needs; and

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

8 (e) Unless otherwise ordered by the court, the attorney  
9 for a child or for an incapacitated adult shall take  
10 instructions from the child's or incapacitated adult's guardian  
11 ad litem.

12 (f) The fees and costs of a guardian ad litem appointed  
13 pursuant to this section may be paid by the court, unless the  
14 party for whom counsel is appointed has an independent estate  
15 sufficient to pay such fees and costs. The court may order the  
16 appropriate parties to pay or reimburse the fees and costs of  
17 the guardian ad litem appointed for the child.

18 **§ -17 Court-appointed attorneys.** (a) The court shall  
19 appoint an attorney to represent a parent who is indigent based  
20 on court-established guidelines, unless the parent retains, or  
21 waives the right to, an attorney.

1 (b) Unless otherwise ordered by the court, the attorney  
2 for a child or for an incapacitated adult shall take  
3 instructions from the child's or incapacitated adult's guardian  
4 ad litem.

5 (c) Attorneys who are appointed by the court to represent  
6 indigent parents may be paid by the court, unless the party for  
7 whom counsel is appointed has an independent estate sufficient  
8 to pay such fees and costs. The court may order the appropriate  
9 parties to pay or reimburse the fees and costs of an attorney  
10 appointed for the child.

11 **§ -18 Reports to be submitted by the department and**  
12 **authorized agencies.** (a) Unless otherwise ordered by the  
13 court, the department or other authorized agencies shall file  
14 written reports with the court:

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

17 (2) No less than fifteen days before a scheduled return  
18 hearing, periodic review hearing, permanency hearing,  
19 or termination of parental rights hearing; however,  
20 additional information may be submitted to the court  
21 up to the date of the hearing.

22 (b) The reports shall include:

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

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

6 (3) A recommendation documenting the basis for any other  
7 orders, including, but not limited to, protective  
8 orders.

9 (c) The department or other authorized agencies shall  
10 submit to the court any report, in its entirety, pertaining to  
11 the child or the child's family that has been prepared by a  
12 child protective services multidisciplinary team or consultant.

13 (d) A written report submitted pursuant to this section  
14 shall be admissible and relied upon to the extent of its  
15 probative value in any proceeding under this chapter, subject to  
16 the right of any party to examine or cross-examine the preparer  
17 of the report as to any matter in the report.

18 § -19 Expert testimony by department social worker. A  
19 person employed by the department as a social worker in the  
20 areas of child protective services or child welfare services  
21 shall be presumed to be qualified to testify as an expert in the  
22 area of child protective or child welfare services. Upon

1 reasonable notice to counsel for the department, any party may  
2 request the court to qualify a specific witness as an expert.

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

9       § -21 Admissibility of evidence; testimony by a child.

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

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

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

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

1           (2) The recording equipment used is capable of producing  
2           an accurate recording, the equipment was operated by a  
3           competent person, and the recording is accurate and  
4           has not been 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. Such 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)<sup>a</sup> The victim-counselor privilege.

20          § -23 **Effect of oral orders.** Orders orally stated by  
21          the court on the record in a proceeding under this chapter shall  
22          have full force and effect upon the date of the hearing until

1 further order of the court. All oral orders shall be reduced to  
2 writing as soon as is practicable.

3       § -24 Motions to vacate or modify prior orders. In  
4 considering a party's motion to vacate or modify prior orders,  
5 the court need not commence a trial or hearing de novo, but  
6 rather, after such further hearing as the court deems to be  
7 appropriate, may proceed to enter such orders as are in the best  
8 interests of the child.

9       § -25 Conduct of hearing in child protective  
10 proceedings. (a) The court shall hear child protective  
11 proceedings without a jury at a hearing separate from those for  
12 adults.

13       (b) The general public shall be excluded from these  
14 proceedings. Only parties found by the court to have a direct  
15 interest in the case shall be admitted to the hearing.

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

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

21       § -26 Temporary foster custody hearing. (a) When the  
22 department assumes temporary foster custody of a child and files

1 a petition pursuant to this chapter, the court shall conduct a  
2 temporary foster custody hearing within two days after the  
3 petition is filed, excluding Saturdays, Sundays, and holidays.  
4 The purpose of a temporary foster custody hearing is to  
5 determine whether a child's safety continues to require  
6 protection prior to an adjudicatory determination at a return  
7 hearing.

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

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

15 (1) That the child be immediately released from the  
16 department's temporary foster custody, placed in  
17 temporary family supervision, and returned to the  
18 child's family home with the assistance of services,  
19 upon finding that the child's family is able to  
20 provide a safe family home with services; or

21 (2) That the child continue in the department's temporary  
22 foster custody, upon finding that there is reasonable



1 cause to believe that continued placement in foster  
2 care is necessary to protect the child from imminent  
3 harm; however, in making this determination, the court  
4 shall consider whether:

5 (A) Before the child was placed in foster care, the  
6 department made reasonable efforts to prevent or  
7 eliminate the need for removing the child from  
8 the child's family home;

9 (B) The alleged or potential perpetrator of the  
10 imminent harm, harm, or threatened harm should be  
11 removed from the family home rather than  
12 continuing the child's placement in foster care.

13 The child's family shall have the burden of  
14 establishing that it is in the child's best  
15 interests to remove the child, rather than the  
16 alleged or potential perpetrator, from the family  
17 home; and

18 (C) Every reasonable effort has been or is being made  
19 to place siblings or psychologically bonded  
20 children together, unless such placement is not  
21 in the children's best interests.

1 (d) The court shall conduct a return hearing on the  
2 petition within fifteen days after the temporary foster custody  
3 hearing.

4 (e) The court may further order that:

5 (1) Any party undergo a physical, developmental,  
6 psychological, or psychiatric evaluation and that a  
7 written or oral report be submitted or communicated to  
8 the court and all parties before the next court  
9 hearing;

10 (2) The child's family members who are parties provide the  
11 department or another authorized agency the names and  
12 addresses of other relatives and friends who are  
13 potential visitation supervisors or resource families  
14 for the child;

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

20 (4) The court and the parties view a video or listen to an  
21 audio recording of the child's statements at such time  
22 and in such manner as the court deems appropriate;

- 1 (5) A criminal history record check be conducted by the  
2 department or another authorized agency concerning a  
3 party who is an alleged or potential perpetrator of  
4 imminent harm, harm, or threatened harm to the child;
- 5 (6) The entry of a protective order;
- 6 (7) The department or another authorized agency prepare a  
7 written or oral supplemental report;
- 8 (8) The child's guardian ad litem visit the child's family  
9 home and resource family home, be present during  
10 supervised visitation, and prepare a written or oral  
11 report that includes specific recommendations  
12 concerning services and assistance to the family; and
- 13 (9) Any other orders that the court deems necessary.
- 14 (f) Any party may file a motion, or the court may order  
15 sua sponte, a temporary foster custody hearing or rehearing at  
16 any time after a petition is filed, in order to determine  
17 whether the child should be placed in temporary foster custody  
18 to ensure the child's safety pending a scheduled return hearing.

19 § -27 **Service plan.** (a) The service plan shall  
20 provide:

- 21 (1) The specific steps required to ameliorate the safe  
22 family home factors that caused the child harm or to

1 be threatened with harm. These specific steps shall  
2 include treatment and services that will be provided;  
3 actions completed; specific measurable and behavioral  
4 changes that must be achieved; and responsibilities  
5 assumed.

6 (2) Whether ohana conferencing will be conducted for  
7 family finding and family group decision making;

8 (3) The respective responsibilities of the child, the  
9 parents, legal guardian or custodian, the department,  
10 other family members, and treatment providers, and a  
11 description and expected outcomes of the services  
12 required to achieve the permanency goal;

13 (4) The required frequency and types of contact between  
14 the assigned social worker and the child and the  
15 family;

16 (5) The time frames during which services will be  
17 provided, actions must be completed, and  
18 responsibilities must be discharged;

19 (6) Notice to the parents that their failure to  
20 substantially achieve the objectives described in the  
21 service plan within the time frames established may  
22 result in termination of their parental rights;

1           (7) Notice to the parents that if the child has been in  
2           foster care under the responsibility of the department  
3           for an aggregate of fifteen out of the most recent  
4           twenty-two months from the child's date of entry into  
5           foster care, the department is required to file a  
6           motion to set a termination of parental rights  
7           hearing; and

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

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

14          (c) The court shall ensure that each term, condition, and  
15          consequence of the service plan has been thoroughly explained  
16          to, understood by, and agreed to by each member of the child's  
17          family whom the authorized agency deems to be necessary to the  
18          success of the service plan. The court shall thereafter order  
19          the service plan into effect, and order the distribution of  
20          copies to each family member or person who is a party to the  
21          service plan. If a member of a child's family whom the  
22          authorized agency deems to be necessary to the success of the

1 service plan cannot understand or refuses to agree to the terms,  
2 conditions, and consequences of the service plan, the court  
3 shall conduct a hearing to determine the terms, conditions, and  
4 consequences of a service plan that will ensure a safe home for  
5 the child.

6 § -28 Return hearing. (a) When a petition has been  
7 filed, the court shall conduct a return hearing within fifteen  
8 days of:

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

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

- 15 (1) Order the method of service of summons that the court  
16 deems to be appropriate, based upon the available  
17 information; and

- 18 (2) Set a continued return hearing and  
19 (A) The court may waive the appearance of any party  
20 at the continued return hearing; and  
21 (B) If service of summons is ordered to be made by  
22 mail or publication, the court shall set the

1 continued return hearing no less than twenty-one  
2 days after the date of service as evidenced by  
3 the signature of the recipient on a return  
4 receipt or the date of the last publication.

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

- 6 (1) Enter the default of the party who was served but  
7 failed to appear at the continued return hearing;  
8 (2) Order the party who was served to appear on the date  
9 of the next scheduled hearing in the case; or  
10 (3) Set a hearing on the oral motion to vacate prior  
11 orders, if a party appears at the hearing and moves  
12 the court to vacate or modify prior orders. The  
13 moving party shall file a written motion and serve the  
14 other parties with proper written notice of the motion  
15 and the hearing date.

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

- 17 (1) Whether the child's physical or psychological  
18 health or welfare has been harmed or is subject  
19 to threatened harm by the acts or omissions of  
20 the child's parents;  
21 (2) Whether the child should be placed in foster  
22 custody or under family supervision; and

1           (3) What services should be provided to the child's  
2           parents.

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

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

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

13          (3) Shall enter orders:

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

20          (B) That the child be placed in family supervision if  
21          the court finds that the child's parents are  
22          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 finding that aggravated  
14 circumstances are present, a motion to set  
15 the case for a termination of parental  
16 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 the child;
- 5           (6) Shall order each of the child's natural parents to  
6           complete the medical information forms and release the  
7           medical information required under section 578-14.5,  
8           to the department. If the child's natural parents  
9           refuse to complete the forms or to release the  
10          information, the court may order the release of the  
11          information over the parents' objections;
- 12          (7) Shall determine whether each party understands that  
13          unless the family is willing and able to provide the  
14          child with a safe family home, even with the  
15          assistance of a service plan, within the reasonable  
16          period of time specified in the service plan, their  
17          respective parental and custodial duties and rights  
18          shall be subject to termination;
- 19          (8) Shall determine the child's date of entry into foster  
20          care, as defined in this chapter;
- 21          (9) Shall set a periodic review hearing to be conducted no  
22          later than six months after the date of entry into

1 foster care and a permanency hearing to be held no  
2 later than twelve months after the date of entry into  
3 foster care;

4 (10) Shall set a status conference, as the court deems  
5 appropriate, to be conducted no later than ninety days  
6 after the return hearing; and

7 (11) May order that:

8 (A) Any party participate in, complete, be liable  
9 for, and make every good faith effort to arrange  
10 payment for such services or treatment as are  
11 authorized by law and that are determined to be  
12 in the child's best interests;

13 (B) A child be examined by a physician, surgeon,  
14 psychiatrist, or psychologist; and

15 (C) A child receive treatment, including  
16 hospitalization or placement in other suitable  
17 facilities, as is determined to be in the child's  
18 best interests.

19 (f) If the court finds that the child's physical or  
20 psychological health or welfare has not been harmed nor  
21 subjected to threatened harm by the acts or omissions of the

1 child's parents, the court shall enter an order dismissing the  
2 petition and shall state the grounds for dismissal.

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

6 § -29 **Show cause hearing.** At any stage of the  
7 proceeding, the court may set a show cause hearing at which a  
8 child's parents shall have the burden of presenting evidence as  
9 to why the case should not be set for a termination of parental  
10 rights or legal guardianship hearing.

11 § -30 **Periodic review hearing.** (a) The court shall set  
12 a periodic review hearing to be conducted no later than six  
13 months after a child's date of entry into foster care.  
14 Thereafter, the court shall conduct periodic review hearings at  
15 intervals of no longer than six months until the court's  
16 jurisdiction is terminated. The court may set a case for a  
17 periodic review hearing upon the motion of a party at any time,  
18 if the court deems the hearing to be in the best interests of  
19 the child.

20 (b) At each periodic review hearing, the court shall  
21 review the status of the case to determine whether the child is  
22 receiving appropriate services and care, whether the case plan

1 is being properly implemented, and whether the department's or  
2 authorized agency's activities are directed toward a permanent  
3 placement for the child. At the hearing, the court shall:

- 4 (1) Determine whether the child is safe;
- 5 (2) Determine the continued need for and appropriateness  
6 of the out-of-home placement;
- 7 (3) Determine the extent to which each party has complied  
8 with the case plan and the family's progress in making  
9 their home safe for the child;
- 10 (4) Determine the family's progress in resolving the  
11 problems that caused the child harm or to be  
12 threatened with harm and, if applicable, the necessity  
13 for continued out-of-home placement of the child;
- 14 (5) Project a likely date for:
  - 15 (A) The child's return to a safe family home; or
  - 16 (B) The child's permanent placement out of the family  
17 home in the following order of preference:
    - 18 (i) Adoption;
    - 19 (ii) Legal guardianship;
    - 20 (iii) Other permanent out-of-home placement;
- 21 (6) Evaluate visitation arrangements; and
- 22 (7) Issue any other appropriate orders.

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

- 6           (1) The department has documented in the safe family home  
7 factors or other written report submitted to the  
8 court, a compelling reason why it would not be in the  
9 best interests of the child to file a motion; or  
10          (2) The department has not provided to the family of the  
11 child, consistent with the time period required in the  
12 service plan, such services as the department deems  
13 necessary for the safe return of the child to the  
14 family home.

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

19           § -31 **Permanency hearing.** (a) The court shall conduct  
20 a permanency hearing to determine the appropriate permanency  
21 goal for a child, to make appropriate findings of fact, and to  
22 order the completion of all steps necessary to finalize the

1 permanency goal. The initial permanency hearing shall be  
2 conducted no later than:

- 3 (1) Twelve months after the child's date of entry into  
4 foster care; or  
5 (2) Thirty days after a judicial determination that  
6 reasonable efforts to return a child to either parent  
7 are not required because the child is an abandoned  
8 infant or other aggravated circumstances are present.

9 (b) At the initial permanency hearing, the court shall:

- 10 (1) Determine the extent to which each party has complied  
11 with the service plan and progressed in making the  
12 home safe;  
13 (2) Determine whether the current placement of the child  
14 continues to be the most suitable for the health,  
15 safety, and welfare of the child, or if another in-  
16 state or out-of-state placement should be considered;  
17 (3) Determine the appropriate permanency goal for the  
18 child;  
19 (4) Determine the date by which the permanency goal for  
20 the child is scheduled to be achieved;  
21 (5) In the case of a child who has attained sixteen years  
22 of age, determine the services needed to assist the

1 child with the transition from foster care to  
2 independent living;

3 (6) Consult with the child in an age appropriate manner  
4 about the proposed permanency or transition plan; and

5 (7) Set the date for the next permanency hearing, if  
6 necessary.

7 (c) Subsequent permanency hearings shall be held at least  
8 every twelve months for any child who continues to be in out-of-  
9 home placement under the responsibility of the department. At  
10 subsequent permanency hearings, the court shall:

11 (1) Determine whether the current placement of the child  
12 continues to be the most suitable for the health,  
13 safety, and welfare of the child;

14 (2) Review the continued appropriateness of the permanency  
15 goal for the child and whether a change in goals is  
16 necessary;

17 (3) Determine the extent to which each party has complied  
18 with the service plan and progressed in making the  
19 home safe;

20 (4) Project the date by which the permanency goal for the  
21 child is to be achieved;



- 1           (5) In the case of a child who has attained sixteen years  
2           of age, determine the services needed to assist the  
3           child with the transition from foster care to  
4           independent living;
- 5           (6) Consult with the child in an age appropriate manner  
6           about the proposed permanency or transition plan; and
- 7           (7) Set the date for the next permanency hearing, if  
8           necessary.
- 9           (d) At each permanency hearing, the court shall order:
- 10          (1) The child's reunification with a parent;
- 11          (2) The child's continued placement in foster care, where:
- 12               (A) Reunification is expected to occur within a time  
13               frame that is consistent with the developmental  
14               needs of the child;
- 15               (B) The safety and health of the child can be  
16               adequately safeguarded; and
- 17               (C) The child has not resided out of the family home  
18               for fifteen of the most recent twenty-two; or
- 19          (3) A permanent plan with a goal of:
- 20               (A) Placing the child for adoption;
- 21               (B) Placing the child for legal guardianship if the  
22               department documents and presents to the court a

1                   compelling reason why termination of parental  
2                   rights and adoption are not in the best interests  
3                   of the child; or

4           (C) Awarding permanent custody to the department or  
5           an authorized agency, if the department documents  
6           and presents to the court a compelling reason why  
7           adoption and legal guardianship are not in the  
8           best interests of the child.

9           (e) At each permanency hearing where a permanent plan is  
10          ordered, the court shall make written findings pertaining to:

11          (1) Whether the department has made reasonable efforts to  
12          finalize the permanent plan that is in effect for the  
13          child and a summary of those efforts;

14          (2) Whether the out-of-home placement continues to be  
15          appropriate and in the best interests of the child;

16          (3) A consideration of in-state and out-of-state placement  
17          options;

18          (4) If the current placement is not expected to be  
19          permanent, the court's projected timetable for  
20          placement in an adoptive home, with a legal guardian,  
21          or under the permanent custody of the department; and

1 (5) Whether the department has made reasonable efforts, in  
2 accordance with the safety and well-being of the  
3 child, to:

4 (A) Place siblings who have been removed from the  
5 family home together with the same resource  
6 family, adoptive placement, or legal guardians;  
7 and

8 (B) Provide for frequent visitation or other on-going  
9 interactions in the case of siblings who are not  
10 living in the same household.

11 (f) At each permanency hearing where a permanent plan is  
12 ordered, the court shall make appropriate orders to ensure  
13 timely implementation of the permanent plan and to ensure that  
14 the plan be accomplished within a specified period of time.

15 (g) A permanency hearing may be held concurrently with a  
16 periodic review hearing.

17 (h) If the child has been in foster care under the  
18 responsibility of the department for an aggregate of fifteen out  
19 of the most recent twenty months from the date of entry into  
20 foster care, the department shall file a motion to set the  
21 matter for a termination of parental rights hearing unless:

- 1           (1) The department has documented in the safe family home  
2           factors or other written report submitted to the  
3           court, a compelling reason why it would not be in the  
4           best interests of the child to file a motion; or
- 5           (2) The department has not provided to the family of the  
6           child, consistent with the time period required in the  
7           service plan, such services as the department deems  
8           necessary for the safe return of the child to the  
9           family home.

10           Nothing in this section shall prevent the department from  
11          filing a motion to set a termination of parental rights hearing  
12          if the department determines that the criteria for terminating  
13          parental rights are present.

14          § -32 **Permanent plan.** (a) The permanent plan shall:

- 15          (1) State whether the permanency goal for a child will be  
16          achieved through adoption, legal guardianship, or  
17          permanent custody;
- 18          (2) Establish a reasonable period of time by which the  
19          adoption or legal guardianship will be finalized;
- 20          (3) Document:
- 21                (A) If adoption is not the goal, a compelling reason  
22                why legal guardianship or permanent custody is

1                   the most appropriate permanency goal for the  
2                   child; or

3                   (B) If adoption or guardianship is not the goal, a  
4                   compelling reason why permanent custody is the  
5                   most appropriate permanency goal for the child;

6                   (4) Establish other related goals, including those  
7                   pertaining to the stability of the child's placement;  
8                   education; health; therapy; counseling; relationship  
9                   with the child's birth family, including visits, if  
10                  any; cultural connections; and preparation for  
11                  independent living;

12                  (5) Describe, if a child has reached the age of sixteen,  
13                  the services needed to assist the child with the  
14                  transition from foster care to independent living; and

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

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

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

20                  (2) Proposed revisions to the goal of the plan and the  
21                  reasons for the revisions; and

1           (3) Proposed revisions to the methods for achieving the  
2           goals of the plan and objectives, and the reasons for  
3           the revisions.

4           § -33 Termination of parental rights hearing. (a) At a  
5           termination of parental rights hearing, the court shall  
6           determine whether there exists clear and convincing evidence  
7           that:

8           (1) A child's parent whose rights are subject to  
9           termination is not presently willing and able to  
10          provide his or her child with a safe family home, even  
11          with the assistance of a service plan;

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

19          (3) The proposed permanent plan is in the best interests  
20          of the child. In reaching this determination, the  
21          court shall:

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1 (A) Presume that it is in the best interests of the  
2 child to be promptly and permanently placed with  
3 responsible and competent substitute parents and  
4 families in a safe and secure home; and

5 (B) Give greater weight to the presumption that the  
6 permanent plan is in the child's best interests,  
7 the younger the child is upon the child's date of  
8 entry into foster care; and

9 (4) The child consents to the permanent plan if the child  
10 is at least fourteen years old, unless the court  
11 consults with the child in camera and finds that it is  
12 in the best interests of the child to proceed without  
13 the child's consent.

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

18 (1) That the child's parent's parental rights are  
19 terminated;

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

- 1           (3) That permanent custody of the child be awarded to an  
2           appropriate authorized agency;
- 3           (4) An appropriate permanent plan;
- 4           (5) The entry of any other orders the court deems to be in  
5           the best interests of the child, including, but not  
6           limited to, restricting or excluding unnecessary  
7           parties from participating in adoption or other  
8           subsequent proceedings;
- 9           (6) Unless otherwise ordered by the court or until the  
10          child is adopted, a child's family member shall  
11          retain, to the extent that the family member possessed  
12          the responsibility prior to the termination of  
13          parental rights, the continuing responsibility to  
14          support the child, including, but not limited to,  
15          repaying the cost of any and all care, treatment, or  
16          any other service provided by the permanent custodian,  
17          any subsequent permanent custodian, other authorized  
18          agency, or the court for the child's benefit;
- 19          (7) A family member may be permitted visitation with the  
20          child at the discretion of the permanent custodian.  
21          The court may review the exercise of such discretion



1 and may order that a family member be permitted such  
2 visitation as is in the best interests of the child;

3 (8) An order terminating parental rights entered under  
4 this chapter shall not operate to terminate the mutual  
5 rights of inheritance of the child and the child's  
6 family members or any other benefit to which the child  
7 may be entitled, until the child has been adopted;

8 (9) The court, in its discretion, may vest permanent  
9 custody of a child in an authorized agency or in  
10 subsequently authorized agencies, as the court deems  
11 to be in the best interests of the child; and

12 (10) If the department receives a report that the child has  
13 been harmed or is subject to threatened harm by the  
14 acts or omissions of the permanent custodians of the  
15 child, the department may automatically assume either  
16 family supervision over the child and the child's  
17 permanent custodian or foster custody of the child.

18 In any event, the department shall immediately notify  
19 the court and the court shall set the case for a  
20 permanency hearing within ten days after the  
21 department receives such a report, unless the court

1           deems a later date to be in the best interests of the  
2           child.

3           (c) If the court determines that the criteria set forth in  
4 subsection (a) are not established by clear and convincing  
5 evidence, the court shall order:

6           (1) The preparation of a plan to achieve permanency for  
7           the child;

8           (2) The entry of any orders that the court deems to be in  
9           the best interests of the child;

10          (3) A periodic review hearing to be held within six months  
11          after the date of the last permanency hearing; and

12          (4) A permanency hearing to be held within twelve months  
13          of the date of the last permanency hearing.

14          (d) Absent compelling reasons, if the child has been in  
15 foster care under the department's responsibility for an  
16 aggregate of fifteen out of the most recent twenty-two months  
17 from the date of entry into foster care, the department shall  
18 file a motion to set the matter for a termination of parental  
19 rights hearing.

20          § -34 Reinstatement of parental rights. (a) A child  
21 who is subject to an active proceeding under this chapter; the  
22 child's guardian ad litem; the child's attorney, if any; or the

1 department may file a motion to reinstate the terminated  
2 parental rights of the child's parents in a proceeding under  
3 this chapter, where the following circumstances exist:

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

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

7 (b) A motion to reinstate parental rights must be filed  
8 with the court and shall describe the factors supporting a  
9 reinstatement of parental rights. The court shall order a  
10 preliminary hearing to be held within ninety days and shall give  
11 prior notice to:

12 (1) The former parent whose rights are sought to be  
13 reinstated;

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

15 (3) The department; and

16 (4) The child's resource family.

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

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

- 1           (1) The material change in circumstances since the
- 2           termination of parental rights;
- 3           (2) The reasons parental rights were terminated and the
- 4           date of the termination order;
- 5           (3) A parent's willingness to resume contact with the
- 6           child and to have parental rights reinstated;
- 7           (4) The child's willingness to resume contact with the
- 8           parent and to have parental rights reinstated;
- 9           (5) A parent's willingness and ability to be involved in
- 10          the child's life and to accept physical custody of the
- 11          child; and
- 12          (6) Other relevant information.
- 13          (e) At a preliminary hearing on the motion, the court may
- 14          order a trial home placement and a temporary reinstatement of
- 15          parental rights upon finding that:
- 16           (1) There has been a material change in circumstances;
- 17           (2) A parent is willing to provide care for the child;
- 18           (3) A parent is able to provide a safe family home or the
- 19           home can be made safe with the assistance of services;
- 20           and
- 21           (4) A trial home placement is in the child's best
- 22           interests.

1 (f) If the court issues a temporary order of reinstatement  
2 of parental rights:

3 (1) The child shall be conditionally placed in the  
4 physical care of the parent for a period not to exceed  
5 six months;

6 (2) The department shall develop a permanent plan for  
7 reunification and shall ensure that transition  
8 services are provided to the family, as appropriate;  
9 and

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

13 (g) The department has the authority to assess the trial  
14 home placement and to rescind the trial home placement according  
15 to the child's best interests.

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

- 1           (1) Reinstatement of parental rights is in the best  
2           interests of the child, taking into consideration:  
3           (A) Whether a parent has remedied the conditions  
4           that caused the termination of parental rights;  
5           (B) The age and maturity of the child, and the  
6           child's ability to express a preference; and  
7           (C) The likelihood of risk to the health, safety, or  
8           welfare of the child;
- 9           (2) A parent is able to provide the child with a safe  
10          family home;
- 11          (3) Both the parent and child consent to the reinstatement  
12          of parental rights; and
- 13          (4) The permanent plan goals for the child have not been  
14          and are not likely to be achieved.
- 15          (i) A proceeding to reinstate parental rights is a  
16          separate action from the proceeding to terminate parental  
17          rights. The granting of the motion to reinstate parental rights  
18          does not affect the validity of the original termination order.
- 19          § -35 Retention of jurisdiction. Except as otherwise  
20          provided in this chapter, the court may retain jurisdiction  
21          under this chapter until the full term for which any order

1 entered expires or until the child attains nineteen years of  
2 age, whichever comes first.

3 § -36 Appeal. An interested party aggrieved by any  
4 order or decree of the court may appeal as provided in section  
5 571-54.

6 PART VI. MISCELLANEOUS

7 § -37 Failure to comply with terms and conditions of an  
8 order of the court. If a party fails to comply with the terms  
9 and conditions of an order issued by the court under this  
10 chapter, the court may apply the provisions of section 710-1077  
11 and any other provisions available under the law.

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

20 (b) The protective order shall enjoin a party to be  
21 restrained from performing any combination of the following  
22 acts:

1 (1) Contacting, threatening, or physically abusing any  
2 protected party or child;

3 (2) Contacting, threatening, or physically abusing any  
4 person residing at the dwelling or residence of any  
5 protected party or child; and

6 (3) Entering or visiting the dwelling or residence of any  
7 protected party or child.

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

11 (d) The protective order may require a party to leave his  
12 or her dwelling or residence during the period of time in which  
13 the protective order is in effect.

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

19 (f) The court may order that an individual be made a party  
20 for the limited purpose of issuing a protective order against  
21 that individual.



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

3 (h) Any party may provide to appropriate law enforcement  
4 authorities a copy of a protective order issued pursuant to this  
5 section.

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

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

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

21 § -40 Court records. The court shall keep a record of  
22 all child protective proceedings under this chapter. The

1 written reports, photographs, x-rays, or other information that  
2 are submitted to the court may be made available to other  
3 appropriate persons, who are not parties, only upon an order of  
4 the court. The court may issue this order upon determining that  
5 such access is in the best interests of the child or serves some  
6 other legitimate purpose.

7 As set forth in legally promulgated departmental rules and  
8 consistent with applicable laws, the department may disclose  
9 information in the court record without order of the court,  
10 unless otherwise ordered by the court.

11 § -41 Payment for service or treatment provided to a  
12 party or for a child's care, support, treatment. (a) Whenever  
13 a service or treatment is provided to a party, or whenever care,  
14 support, or treatment of a child is provided under this chapter,  
15 the court may order the payment of such expenses by the persons  
16 or legal entities who are legally responsible for the same,  
17 after reasonable notice and hearing as 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.

21 § -42 Educational, medical, dental, and recreational  
22 needs. Upon the first day of placement, a child's resource

1 family shall have the authority, for the child placed in the  
2 resource family's care:

3 (1) To consent to routine educational and recreational  
4 needs and activities, except for purposes regulated  
5 under title 8, chapters 53 and 56, of the Hawaii  
6 administrative rules; and

7 (2) To seek and obtain ordinary medical and dental care,  
8 immunizations, and well-baby and well-child medical  
9 services.

10 § -43 Child protective review panel. (a) The  
11 department shall establish a child protective review panel to  
12 review each case of child abuse or neglect that leads to near  
13 fatality or death as a result of acts or omissions of the  
14 child's legal caretaker. Based upon its review, the panel shall  
15 submit a report of its findings and recommendations to the  
16 director. The department shall appoint members of the child  
17 protective review panel, who may include, but are not limited  
18 to:

- 19 (1) Any physician treating the child for abuse;  
20 (2) Any child protective services worker assigned to the  
21 case and the worker's supervisor;

1           (3) The guardian ad litem for the child, appointed under  
2           section       -16, if applicable;

3           (4) The members of the child's multidisciplinary team or a  
4           child protective services consultant; and

5           (5) Other child protective services workers and  
6           supervisors.

7           (b) Members of the child protective review panel shall  
8           serve without compensation and shall not be reimbursed for  
9           costs, except for state employees serving within the scope of  
10          their employment, who shall receive compensation and  
11          reimbursements as provided by law or by collective bargaining.

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

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

19          SECTION 2. Chapter 346, Hawaii Revised Statutes, is  
20          amended by adding a new section to be appropriately designated  
21          and to read as follows:

1        "§346-    Health assessment.    The department shall ensure  
2 the provision of a comprehensive health assessment for each  
3 child in out-of-home placement forty-five days before or after  
4 an initial placement."

5        SECTION 3. Chapter 346, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

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 4. Chapter 350, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17        "§350-    Authorization for color photographs, x-rays, and  
18 radiological or other diagnostic examination.    (a)    Any child  
19 health 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  
22 personnel engaged in the admission, examination, care, or

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

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

13 SECTION 5. Chapter 350, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

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

21 (b) If a child is active in the child protective service  
22 system, physicians may share with other physicians, orally or in

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1 writing, or both, medical information without parental consent.

2 (c) Any records or information released to a foster  
3 child's foster parents, or the foster child's principal treating  
4 physician pursuant to subsection (a), or any information shared  
5 by one physician with another physician pursuant to subsection  
6 (b), shall remain confidential in accordance with section 350-  
7 1.4."

8 SECTION 6. Effective upon approval of this Act, sections  
9 321-342, 321-471, 325-101, 346-16, 346-65, 350-2, 350-3, 571-2,  
10 571-11, 571-41, 571-46, 571-61, 577-28, 578-1, 578-2, 578-14.5,  
11 626-1-Rule 505.5, and 706-606.3, Hawaii Revised Statutes, are  
12 amended by replacing the reference to chapter 587, Hawaii  
13 Revised Statutes, with the reference to the new replacement  
14 chapter in section 1 of this Act.

15 SECTION 7. Chapter 587, Hawaii Revised Statutes, is  
16 repealed.

17 SECTION 8. New statutory material is underscored.

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

19

20

21

INTRODUCED BY: Calvin K. King  
BY REQUEST

JAN 25 2010

**Report Title:**

Child Protective Act

**Description:**

To ensure that child protective provisions in the Hawaii Revised Statutes are consistent with federal Title IV-E provisions.



HB 2563

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO CHILD PROTECTIVE ACT.

PURPOSE: To ensure state compliance with federal Title IV-E State Plan requirements relating to federally mandated timelines, hearings, and case plan requirements for child protective proceedings.

MEANS: Add a new chapter to the Hawaii Revised Statutes, add new sections to chapters 346 and 350, Hawaii Revised Statutes, amend sections 321-342, 321-471, 325-101, 346-16, 350-2, 350-3, 571-2, 571-11, 571-41, 577-28, 578-1, 578-2, 578-14.5, 626-1 Rule 505.5, and 706-606.3, Hawaii Revised Statutes, and repeal chapter 587, Hawaii Revised Statutes.

JUSTIFICATION: This legislation is necessary to ensure that Hawaii's laws relating to child protective proceedings is consistent with federal Title IV-E provisions. If the legislation is not passed, the State will not be able to finalize an approved State Plan for Title IV-E and continue to receive Title IV-E federal funds.

The State receives over \$50,000,000 in Title IV-E federal funds per year.

Legislation submitted to the 2009 Legislature was passed, but did not meet the federal Title IV-E requirements. That bill was vetoed, but the State still has to pass the necessary legislation.

This proposed new Child Protective Act will update, simplify, and incorporate all of the necessary federal Title IV-E requirements. This bill was drafted by a committee convened by the Hawaii State Judiciary and

composed of representatives of the Department of Human Services, the Hawaii State Judiciary, and the Department of the Attorney General, as well as representation from the Legal Aid Society of Hawaii, Guardians Ad Litem, and parents' attorneys. Technical assistance was provided by the National Center for Legal and Judicial Issues.

Impact on the public: There will be a positive impact on the public. Not losing the \$50,000,000 in federal Title IV-E funds will preserve vital funding for the State's child protective services program.

Also, the revised chapter will incorporate all necessary State and Federal requirements into a single chapter that has been revised to be more user-friendly and easier to understand.

Impact on the department and other agencies: There will be an initial implementation and adjustment period when the new provisions take effect.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	HMS 301
OTHER AFFECTED AGENCIES:	Judiciary, Department of the Attorney General
EFFECTIVE DATE:	Upon approval.