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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,  
7   GUIDING PRINCIPLES, AND DEFINITIONS

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

10          § -2 Purpose; construction. 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 parental rights, which are protected by state and  
14 federal laws and constitutions, it is the legislature's belief  
15 that the best interests of a child are generally served by  
16 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       The legislature also finds that children deserve and  
4 require competent, responsible parenting and safe, secure,  
5 loving, and nurturing homes, and that prompt identification,  
6 reporting, investigation, services, treatment, adjudication, and  
7 disposition of cases involving children who have been harmed or  
8 are threatened with harm are in the best interests of the  
9 children, their families, and society. The legislature further  
10 recognizes that when family rehabilitation and reunification are  
11 not possible, many relatives are willing and able to provide a  
12 nurturing and safe placement for these children.

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



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

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

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



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

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

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

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

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

12 (2) Has adequate:

13 (A) Food that is nutritious and healthy;

14 (B) Clothing;

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

17 (D) Mental health services;

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



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



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

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

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

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

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



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

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

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

15 "Adjudication" means a finding by a court that is supported  
16 by a preponderance of the evidence that the child has been  
17 harmed or threatened with harm.

18 "Aggravated circumstances" means that:

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



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

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

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

7 (5) The child is an abandoned infant.

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

12 "Caregiver" means an adult who is not a child's parent or  
13 legal and physical custodian, and with whom the child has been  
14 residing for at least six months with the verbal or written  
15 consent of the child's legal and physical custodian. The status  
16 of "caregiver" as used in this chapter does not pertain to  
17 court-ordered or voluntary foster placement.

18 "Case plan" means the combined safe family home factors and  
19 the service plan or permanent plan.

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





1 "Clear and convincing evidence" means the degree of proof  
2 that will produce in the mind of the trier of fact a firm belief  
3 or conviction that the fact sought to be proved is true. This  
4 measure falls between the preponderance standard of typical  
5 civil cases and the beyond-a-reasonable-doubt standard of  
6 criminal cases.

7 "Court" means one of the family courts established pursuant  
8 to chapter 571.

9 "Court-appointed special advocate" means a responsible  
10 adult volunteer who has been trained and is supervised by a  
11 court-appointed special advocate program recognized by the  
12 court, and who, when appointed by the court, serves as an  
13 officer of the court in the capacity of a guardian ad litem.

14 "Criminal history record check" means an examination of an  
15 individual's criminal history through fingerprint analysis or  
16 name inquiry into state and national criminal history records  
17 and files, including the files of the Hawaii criminal justice  
18 data center.

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



1 "Default" means the status found by the court when a party  
2 who has been properly served or notified of a scheduled hearing  
3 fails to appear at court for the hearing or fails to plead or  
4 otherwise defend, thereby allowing the court to proceed without  
5 the absent party.

6 "Department" means the department of human services and its  
7 authorized representatives.

8 "Family" means each legal parent of a child; the natural  
9 mother, unless the child has been legally adopted; the concerned  
10 natural father as provided in section 578-2(a)(5), unless the  
11 child has been legally adopted; each parent's spouse or former  
12 spouse; each sibling or person related by blood or marriage; and  
13 any other person or legal entity with:

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

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

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

20 "Family home" means the home of the child's legal  
21 custodian.



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

4 "Foster care" means continuous twenty-four-hour care and  
5 supportive services provided for a child by an authorized  
6 agency, including, the care, supervision, guidance, and rearing  
7 of a child by a resource family.

8 "Foster custodian" means the authorized agency that has  
9 foster custody of the child.

10 "Foster custody" means the legal status created when the  
11 department places a child outside of the family home with the  
12 agreement of the legal custodian or pursuant to court order,  
13 after the court has determined that the child's family is not  
14 presently willing and able to provide the child with a safe  
15 family home, even with the assistance of a service plan.

16 "Guardian ad litem" means any person who is appointed by  
17 the court under this chapter to promote the needs and interests  
18 of a child or a party, including a court-appointed special  
19 advocate.

20 "Hanai relative" means an adult, other than a blood  
21 relative, whom the court or department has found by credible



1 evidence to perform or to have performed a substantial role in  
2 the upbringing or material support of a child, as attested to by  
3 the written or oral designation of the child or of another  
4 person, including other relatives of the child.

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

- 7 (1) The child exhibits evidence of physical harm,  
8 including:
- 9 (A) Substantial or multiple skin bruising;
  - 10 (B) Substantial external or internal bleeding;
  - 11 (C) Serious burn;
  - 12 (D) Poisoning;
  - 13 (E) Fracture of any bone;
  - 14 (F) Subdural hematoma; or
  - 15 (G) Death;

16 and the injury is not justifiably explained, or the  
17 history given concerning the condition or death is not  
18 consistent with the degree or type of the condition or  
19 death, or there is evidence that the condition or  
20 death may not be the result of an accident;



- 1           (2) The child has been the victim of sexual contact or  
2           conduct, including sexual assault; sodomy;  
3           molestation; sexual fondling; incest; prostitution;  
4           obscene or pornographic photographing, filming, or  
5           depiction; or other similar forms of sexual  
6           exploitation;
- 7           (3) The child's psychological well-being has been injured  
8           as evidenced by a substantial impairment in the  
9           child's ability to function;
- 10          (4) The child is not provided in a timely manner with  
11          adequate food; clothing; shelter; supervision; or  
12          psychological, physical, or medical care; or
- 13          (5) The child is provided with dangerous, harmful, or  
14          detrimental drugs as defined in section 712-1240,  
15          except when a child's family administers drugs to the  
16          child as directed or prescribed by a practitioner as  
17          defined in section 712-1240.

18           "Imminent harm" means that without intervention, there is a  
19           substantial present danger that a child will be harmed or will  
20           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 based solely 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 provided in section 578-2(a)(5), unless the child has been  
18 legally adopted; or the legal guardians or any other legal  
19 custodians of the child.

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



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

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

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

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



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

6 "Protective custody" means the legal status of a child  
7 whose physical custody is assumed by a police officer under this  
8 chapter.

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

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

17 "Resource family" means a person or family licensed by the  
18 department or another authorized agency to provide temporary  
19 foster care services for children.

20 "Service plan" means a comprehensive written plan prepared  
21 by an authorized agency, in which the goal of the case plan is





1 reunification of a child with the child's parents, and which is  
2 developed in consultation with the child, in an age-appropriate  
3 manner, and with the child's family.

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

10 "Temporary foster custody" means a legal status created  
11 under this chapter with or without a court order, whereby the  
12 department temporarily assumes the duties and rights of a foster  
13 custodian of a child.

14 "Termination of parental rights" means the severance of  
15 parental rights.

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

18 **PART II. JURISDICTION AND VENUE**

19 **§ -5 Jurisdiction.** Pursuant to section 571-11(9), the  
20 court shall have exclusive original jurisdiction in a child  
21 protective proceeding concerning any child who is or was found



1 within the state at the time specified facts and circumstances  
 2 occurred, are discovered, or are reported to the department.  
 3 The court's finding that the child's physical or psychological  
 4 health or welfare is subject to imminent harm, has been harmed,  
 5 or is subject to threatened harm by the acts or omissions of the  
 6 child's family, shall be based upon these facts and  
 7 circumstances.

8 § -6 Venue. A child protective proceeding under this  
 9 chapter may be filed in the county in which a child is found or  
 10 resides when the petition is filed, or in the county in which a  
 11 parent having legal custody of the child resides or is domiciled  
 12 when the petition is filed.

13 PART III. SAFE FAMILY HOME FACTORS AND  
 14 PRE-PETITION PROCEDURES

15 § -7 Safe family home factors. (a) The following  
 16 factors shall be fully considered when determining whether a  
 17 child's family is willing and able to provide the child with a  
 18 safe family home:

- 19 (1) Facts relating to the child's current situation, which  
 20 shall include:



- 1 (A) The child's age and special needs that affect the
- 2 child's attachment, growth, and development;
- 3 (B) The child's developmental, psychological,
- 4 medical, and dental health status, including the
- 5 names of assessment and treatment providers;
- 6 (C) The child's peer and family relationships;
- 7 (D) The child's educational status and setting, and
- 8 the department's efforts to maintain educational
- 9 stability for the child in out-of-home placement;
- 10 (E) The child's living situation;
- 11 (F) The child's fear of being in the family home;
- 12 (G) The impact of out-of-home placement on the child;
- 13 (H) Services provided to the child and family; and
- 14 (I) The department's efforts to maintain connections
- 15 between the child and the child's siblings, if
- 16 they are living in different homes;
- 17 (2) The initial and any subsequent reports of harm and
- 18 threatened harm to the child;
- 19 (3) Dates and reasons for the child's out-of-home
- 20 placement; description, appropriateness, and location



1 of the placement; and who has placement  
2 responsibility;

3 (4) Facts regarding the alleged perpetrators of harm to  
4 the child, the child's parents, and other family  
5 members who are parties to the court proceedings,  
6 which facts shall include:

7 (A) Birthplace and family of origin;  
8 (B) Manner in which the alleged perpetrator of harm  
9 was parented;  
10 (C) Marital and relationship history; and  
11 (D) Prior involvement in services;

12 (5) Results of psychiatric, psychological, or  
13 developmental evaluations of the child, the alleged  
14 perpetrators, and other family members who are  
15 parties;

16 (6) Whether there is a history of abusive or assaultive  
17 conduct by the child's family members and others who  
18 have access to the family home;

19 (7) Whether there is a history of substance abuse by the  
20 child's family or others who have access to the family  
21 home;



- 1           (8) Whether any alleged perpetrator has completed services  
2           in relation to any history identified in paragraphs  
3           (6) and (7), and acknowledged and accepted  
4           responsibility for the harm to the child;
- 5           (9) Whether any non-perpetrator who resides in the family  
6           home has demonstrated an ability to protect the child  
7           from further harm and to ensure that any current  
8           protective orders are enforced;
- 9           (10) Whether there is a support system available to the  
10          child's family, including adoptive and hanai  
11          relatives, friends, and faith-based or other community  
12          networks;
- 13          (11) Attempts to locate and involve extended family,  
14          friends, and faith-based or other community networks;
- 15          (12) Whether the child's family has demonstrated an  
16          understanding of and involvement in services that have  
17          been recommended by the department or court-ordered as  
18          necessary to provide a safe family home for the child;
- 19          (13) Whether the child's family has resolved identified  
20          safety issues in the family home within a reasonable  
21          period of time; and



1 (14) The department's assessment, which shall include the  
2 demonstrated ability of the child's family to provide  
3 a safe family home for the child, and recommendations.

4 (b) The court shall consider the likelihood that the  
5 current situation presented in the safe family home factors set  
6 forth in subsection (a) will continue in the reasonably  
7 foreseeable future.

8 § -8 Protective custody by police officer without court  
9 order. (a) A police officer shall assume protective custody of  
10 a child without a court order and without the consent of the  
11 child's family, if in the discretion of the police officer, the  
12 officer determines that:

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

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

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



1 (4) The child's parent has subjected the child to harm or  
2 threatened harm and the parent is likely to flee with  
3 the child.

4 (b) The department shall assume temporary foster custody  
5 of the child when a police officer has completed the transfer of  
6 protective custody of the child to the department as follows:

7 (1) A police officer who assumes protective custody of a  
8 child shall complete transfer of protective custody to  
9 the department by presenting physical custody of the  
10 child to the department; or

11 (2) If the child is or will be admitted to a hospital or  
12 similar institution, the police officer shall  
13 immediately complete the transfer of protective  
14 custody to the department by notifying the department  
15 and receiving an acknowledgment from the hospital or  
16 similar institution that it has been informed that the  
17 child is under the temporary foster custody of the  
18 department.

19 § -9 Temporary foster custody without court order. (a)  
20 When the department receives protective custody of a child from  
21 the police, the department shall:

- 1           (1) Assume temporary foster custody of the child if, in  
2           the discretion of the department, the department  
3           determines that the child is subject to imminent harm  
4           while in the custody of the child's family;
- 5           (2) Make every reasonable effort to inform the child's  
6           parents of the actions taken, unless doing so would  
7           put another person at risk of harm;
- 8           (3) Unless the child is admitted to a hospital or similar  
9           institution, place the child in emergency foster care  
10          while the department conducts an appropriate  
11          investigation, with placement preference being given  
12          to an approved relative;
- 13          (4) With authorized agencies, make reasonable efforts to  
14          identify and notify all relatives within thirty days  
15          of assuming temporary foster custody of the child; and
- 16          (5) Within three days, excluding Saturdays, Sundays, and  
17          holidays:
  - 18               (A) Relinquish temporary foster custody, return the  
19               child to the child's parents, and proceed  
20               pursuant to section     -11(3), -11(4), or -11(5);





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

5 (C) File a petition with the court.

6 (b) Upon the request of the department and without regard  
7 to parental consent, any physician licensed or authorized to  
8 practice medicine in the state shall perform an examination to  
9 determine the nature and extent of harm or threatened harm to  
10 the child under the department's temporary foster custody.

11 § -10 Relatives; foster placement. (a) The department  
12 shall provide the child's relative an application to be the  
13 child's resource family within fifteen days of the relative's  
14 request to provide foster placement for the child. If the  
15 application is submitted and denied, the department shall  
16 provide the applicant with the specific reasons for the denial  
17 and an explanation of the procedures for an administrative  
18 appeal.

19 (b) The department and authorized agencies shall make  
20 reasonable efforts to identify and notify all relatives of the



1 child within thirty days after assuming foster custody of the  
2 child.

3       § -11 Investigation; department powers. At its  
4 discretion, and in accordance with its procedures and rules  
5 adopted pursuant to chapter 91, the department shall investigate  
6 a report that a child is subject to imminent harm, has been  
7 harmed, or is subject to threatened harm. In conducting the  
8 investigation, the department may:

- 9       (1) Enlist the cooperation and assistance of appropriate  
10 state and federal law enforcement authorities, who may  
11 conduct an investigation and, if an investigation is  
12 conducted, shall provide the department with all  
13 preliminary findings, including the results of a  
14 criminal history record check of an alleged  
15 perpetrator of harm or threatened harm to the child;
- 16       (2) Interview the child without the presence or prior  
17 approval of the child's family and temporarily assume  
18 protective custody of the child for the purpose of  
19 conducting the interview;
- 20       (3) Resolve the matter in an informal fashion that it  
21 deems appropriate under the circumstances;



1 (4) Close the matter if the department finds, after an  
2 assessment, that the child is residing with a  
3 caregiver who is willing and able to meet the child's  
4 needs and provide a safe and appropriate placement for  
5 the child;

6 (5) Immediately enter into a service plan:

7 (A) To safely maintain the child in the family home;  
8 or

9 (B) To place the child in voluntary foster care  
10 pursuant to a written agreement with the child's  
11 parent.

12 If the child is placed in voluntary foster care and  
13 the family does not successfully complete the service  
14 plan within three months after the date on which the  
15 department assumed physical custody of the child, the  
16 department shall file a petition. The department is  
17 not required to file a petition if the parents agree  
18 to adoption or legal guardianship of the child and the  
19 child's safety is ensured; provided that the adoption  
20 or legal guardianship hearing is conducted within six



1 months of the date on which the department assumed  
2 physical custody of the child;

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

9 (7) File a petition or refer the matter to another  
10 appropriate authorized agency, which may file a  
11 petition under this chapter.

12 PART IV. COURT PROCEEDINGS, EVIDENCE, AND ORDERS

13 § -12 Petition. (a) A petition invoking the  
14 jurisdiction of the court under this chapter shall:

15 (1) Be verified and set forth:

16 (A) A concise statement of the basis for each  
17 allegation of harm or threatened harm that brings  
18 a child within this chapter;



- 1 (B) The name, birth date, gender, and residential
- 2 address of the child;
- 3 (C) The names and last known residential addresses of
- 4 the parents and other persons to be made parties
- 5 to the proceedings under this chapter; and
- 6 (D) Whether the child is under the temporary foster
- 7 custody or foster custody of the department and,
- 8 if so, the date on which the department assumed
- 9 physical custody of the child;
- 10 (2) State whether any of the facts required by this
- 11 section cannot be determined prior to filing the
- 12 petition; provided that the petition may be based on
- 13 information and belief, but shall state the basis
- 14 thereof; and
- 15 (3) Include the warning that, if the petition is granted,
- 16 parental rights may be terminated unless the family is
- 17 willing and able, with the assistance of a service
- 18 plan, to provide the child with a safe family home
- 19 within a reasonable period of time.
- 20 (b) If the court determines that the child is subject to
- 21 imminent harm while in the custody of the child's family, the

1 court shall order that a police officer immediately take the  
2 child into protective custody and that the department  
3 immediately assume temporary foster custody of the child.

4 (c) The court shall conduct:

- 5 (1) A temporary foster custody hearing, pursuant to  
6 section -26, within two days after the petition is  
7 filed, excluding Saturdays, Sundays, and holidays; or  
8 (2) A return hearing, pursuant to section -28, within  
9 fifteen days after the petition is filed or the date a  
10 decision is announced by the court during a temporary  
11 foster custody hearing, if the petition requests  
12 foster custody or family supervision of the child.

13 (d) The court may adopt 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 to be  
20 parties to the proceeding, as follows:



- 1           (1) A copy of the petition shall be attached to each
- 2                   summons;
- 3           (2) The summons shall notify the parties of their right to
- 4                   retain and be represented by counsel; and
- 5           (3) The summons shall state: "YOUR PARENTAL AND CUSTODIAL
- 6                   DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO
- 7                   ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE
- 8                   TERMINATED IF YOU FAIL TO APPEAR ON THE DATE SET FORTH
- 9                   IN THIS SUMMONS."

10           (b) The court may issue a summons to a parent or any

11 person having physical custody of the child to bring the child

12 before the court at the temporary foster custody hearing or the

13 return hearing.

14           (c) The sheriff or other authorized person shall serve the

15 summons by personally delivering a certified copy to the person

16 or legal entity being summoned. A return on the summons shall

17 be filed, showing the date and time and to whom service was

18 made; provided that:

- 19           (1) If the party to be served does not reside in the
- 20                   state, service shall be made by registered or



1 certified mail addressed to the party's last known  
2 address; or

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

17 (d) Service shall be completed no less than twenty-four  
18 hours prior to the time set forth in the summons for a temporary  
19 foster custody hearing, or no less than forty-eight hours prior  
20 to the time set forth in the summons for any other hearing,





1 unless the party was present when ordered by the court to appear  
2 at the hearing.

3 (e) The court may issue a warrant for the appearance of a  
4 person or child, as well as issue an order pursuant to section  
5 -16(b), if:

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

12 § -14 Notice of hearings; participation of resource  
13 family. (a) Notice of hearings shall be served on the parties;  
14 provided that no further notice is required for any party who  
15 defaulted or was given actual notice of a hearing while present  
16 in court. Notice of hearings shall be served no less than  
17 forty-eight hours before the scheduled hearing, subject to a  
18 shortening of time as ordered by the court.

19 (b) The child's current resource family shall be served  
20 written notice of hearings no less than forty-eight hours before  
21 a scheduled hearing; provided that no further notice shall be



1 provided to a resource family that was given actual notice of a  
2 hearing while present in court, subject to a shortening of time  
3 as ordered by the court.

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

7 (d) The child's current resource family is entitled to  
8 participate in the proceedings to provide information to the  
9 court, either in person or in writing, concerning the current  
10 status of the child in their care.

11 (e) The court may not convene a hearing under this chapter  
12 unless the court enters a finding that each of the parties  
13 required to be notified of the hearing has been served with a  
14 copy of the petition; provided that if a party is required to be  
15 summoned to a temporary foster custody or return hearing and has  
16 not been served with the summons, the court may proceed with the  
17 hearing if:

18 (1) A reasonable effort has been made to effect personal  
19 service;



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

4 (3) The child is represented by a guardian ad litem or  
5 counsel.

6 § -15 Duties, rights, and liability of authorized  
7 agencies. (a) If an authorized agency has family supervision,  
8 it has the following duties and rights, subject to such  
9 restrictions as the court deems to be in the best interests of a  
10 child:

11 (1) Monitoring and supervising the child and the child's  
12 family members who are parties. Monitoring and  
13 supervision shall include reasonable access to each of  
14 the family members who are parties and reasonable  
15 access into the child's family home; and

16 (2) Placement of the child in foster care and thereby  
17 assuming temporary foster custody or foster custody of  
18 the child. The authorized agency shall immediately  
19 notify the court when such placement occurs. Upon  
20 notification, the court shall set the case for:



1 (A) A temporary foster custody hearing within three  
2 days, excluding Saturdays, Sundays, and holidays;  
3 or

4 (B) If jurisdiction has been established, a periodic  
5 review hearing within ten days of the child's  
6 placement.

7 The temporary foster custody hearing or the periodic  
8 review hearing may be held at a later date, only if  
9 the court finds it to be in the best interests of the  
10 child.

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

13 (1) Determining where and with whom the child shall be  
14 placed in foster care; provided that the child shall  
15 not be placed in foster care outside the state without  
16 prior order of the court;

17 (2) Permitting the child to return to the family from  
18 which the child was removed, unless otherwise ordered  
19 by the court. The child's return may occur only if no  
20 party objects to such placement and prior written  
21 notice is given to the court and to all parties



1 stating that there is no objection of any party to the  
2 child's return. Upon the child's return to the  
3 family, temporary foster custody or foster custody  
4 shall be automatically revoked, and the child and the  
5 child's family members who are parties shall be placed  
6 under temporary family supervision or the family  
7 supervision of the authorized agency;

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

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

14 (5) Providing required consents for the child's physical  
15 or psychological health or welfare, including ordinary  
16 medical, dental, psychiatric, psychological,  
17 educational, employment, recreational, or social  
18 needs;

19 (6) Providing consents for any other medical or  
20 psychological care or treatment, including surgery, if  
21 the persons who are otherwise authorized to provide



1 consent are unable or unwilling to consent. Before  
2 being provided to the child, this care or treatment  
3 shall be deemed necessary for the child's physical or  
4 psychological health or welfare by two physicians or  
5 two psychologists, as appropriate, who are licensed or  
6 authorized to practice in the state;

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

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

12 (9) Providing the court with information concerning the  
13 child.

14 The court, in its discretion, may vest foster custody of a  
15 child in any authorized agency or subsequently authorized  
16 agencies, if the court finds that it is in the child's best  
17 interests to do so. The rights and duties that are so assumed  
18 by an authorized agency shall supersede the rights and duties of  
19 any legal or permanent custodian of the child.

20 (c) Unless otherwise provided in this section or as  
21 otherwise ordered by the court, a child's family shall retain



1 the following rights and responsibilities after a transfer of  
2 temporary foster custody or foster custody, to the extent that  
3 the family possessed the rights and responsibilities prior to  
4 the transfer of temporary foster custody or foster custody:

5 (1) The right of reasonable supervised or unsupervised  
6 visitation at the discretion of the authorized agency;

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

9 (3) The continuing responsibility to support the child,  
10 including repayment for the cost of any care,  
11 treatment, or other service provided by the authorized  
12 agency or the court for the child's benefit.

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

15 (1) Assuming the parental and custodial duties and rights  
16 of a legal custodian and family member;

17 (2) Determining where and with whom the child shall live;  
18 provided that the child shall not be placed outside  
19 the state without prior order of the court;

20 (3) Ensuring that the child is provided with adequate  
21 food, clothing, shelter, psychological care, physical



- 1 care, medical care, supervision, and other necessities  
2 in a timely manner;
- 3 (4) Monitoring whether the child is being provided with an  
4 appropriate education;
- 5 (5) Providing all required consents for the child's  
6 physical or psychological health or welfare, including  
7 medical, dental, psychiatric, psychological,  
8 educational, employment, recreational, and social  
9 needs;
- 10 (6) Providing consent for the child's application for a  
11 driver's instructional permit, provisional driver's  
12 license, or driver's license;
- 13 (7) Providing consent to adoption, change of name, and  
14 marriage; and
- 15 (8) Submitting a written report to the court if the child  
16 leaves the home of the permanent custodian for a  
17 period of seven consecutive days or more. The report  
18 shall state the child's current situation and shall be  
19 submitted on or before the tenth day, excluding  
20 Saturdays, Sundays, and holidays, after the child  
21 leaves the home.





1 (e) An authorized agency shall not be liable to third  
2 party persons for the acts of the child solely by reason of the  
3 agency's status as foster custodian or permanent custodian of  
4 the child.

5 § -16 Guardian ad litem. (a) The court shall appoint a  
6 guardian ad litem for a child to serve throughout the pendency  
7 of child protective proceedings under this chapter.

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

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

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

15 (B) Consult with counsel; and

16 (C) Assist in preparing the party's case or strategy;

17 (2) If the court orders a professional evaluation, the  
18 party shall be examined by a physician, psychologist,  
19 or other individual appointed by the court who is  
20 qualified to evaluate the party's alleged impairment:



1 (A) Unless otherwise directed by the court, the  
2 examiner shall promptly file with the court a  
3 written report which shall contain:  
4 (i) A description of the nature, type, and  
5 extent of the party's specific cognitive and  
6 functional capabilities and limitations;  
7 (ii) An evaluation of the party's mental and  
8 physical condition and, if appropriate,  
9 educational potential, adaptive behavior,  
10 and social skills;  
11 (iii) A prognosis for improvement and a  
12 recommendation as to the appropriate  
13 treatment or habilitation plan; and  
14 (iv) The dates of any assessments or examinations  
15 upon which the report is based;  
16 (B) Upon the request of any party or sua sponte, and  
17 after such hearing as the court deems  
18 appropriate, the court may appoint a guardian ad  
19 litem for an adult party only after a  
20 determination, by clear and convincing evidence,  
21 that:



- 1 (i) The party is an incapacitated person; and
- 2 (ii) The party's identified needs cannot be met
- 3 by less restrictive means, including the use
- 4 of appropriate and reasonably available
- 5 assistance.

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

- 8 (1) Have access to the child or incapacitated adult;
- 9 (2) Have the authority to inspect and receive copies of
- 10 any records, notes, and electronic recordings
- 11 concerning the child or incapacitated adult that are
- 12 relevant to the proceedings filed under this chapter.
- 13 This authority shall exist even without the consent of
- 14 the child, incapacitated adult, or individuals and
- 15 authorized agencies that have control of the child or
- 16 incapacitated adult;
- 17 (3) Be given notice of all hearings and proceedings
- 18 involving the child or incapacitated adult, whether
- 19 civil or criminal, including grand juries, and shall
- 20 protect the best interests of the child or
- 21 incapacitated adult;



- 1           (4) Make face-to-face contact with the child or  
2           incapacitated adult in the child's or incapacitated  
3           adult's family or resource family home at least once  
4           every three months;
- 5           (5) Report to the court and all parties in writing at six-  
6           month intervals, or as ordered by the court, regarding  
7           such guardian ad litem's actions taken to ensure the  
8           child's best interest, and recommend how the court  
9           should proceed in the best interest of that child; and
- 10          (6) Inform the court of the child's opinions and requests.  
11          If the child's opinions and requests differ from those  
12          being advocated by the guardian ad litem, the court  
13          shall determine whether it is in the child's best  
14          interests to appoint an attorney for the child  
15          concerning such issues.
- 16          (d) The court shall, for an incapacitated adult:
- 17          (1) Grant a guardian ad litem only those powers  
18          necessitated by the incapacitated adult's limitations  
19          and demonstrated needs; and



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

4           (e) Unless otherwise ordered by the court, the attorney  
5 for an incapacitated adult shall take instructions from the  
6 incapacitated adult's guardian ad litem. The guardian ad litem  
7 for an incapacitated adult shall inform the court of the  
8 incapacitated adult's opinions and requests and may recommend  
9 how the court should proceed in the best interest of the  
10 incapacitated adult.

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

17          § -17 Court-appointed attorneys. (a) The court may  
18 appoint an attorney to represent a legal parent who is indigent  
19 based on court-established guidelines. The court may also  
20 appoint an attorney to represent another indigent party based on



1 court-established guidelines, if it is deemed to be in the  
2 child's best interest.

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

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

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

- 17 (1) Concurrent with the filing of a petition invoking the  
18 jurisdiction of the court under this chapter; and  
19 (2) No less than fifteen days before a scheduled return  
20 hearing, periodic review hearing, permanency hearing,  
21 or termination of parental rights hearing; provided



1 that additional information may be submitted to the  
2 court up to the date of the hearing.

3 (b) The reports shall include:

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

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

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

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

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

20 § -19 Expert testimony by department social worker. A  
21 person employed by the department as a social worker in the area



1 of child protective services or child welfare services shall be  
2 presumed to be qualified to testify as an expert on child  
3 protective or child welfare services. Upon reasonable notice to  
4 counsel for the department, any party may request the court to  
5 qualify a specific witness as an expert.

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

12 § -21 Admissibility of evidence; testimony by a child.

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

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





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

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

5 (2) The recording equipment used is capable of producing  
6 an accurate recording, was operated by a competent  
7 person, and the recording is accurate and has not been  
8 altered; and

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

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

16 § -22 Unavailability of specified privileges. The  
17 following privileges shall not be available to exclude evidence  
18 of imminent harm, harm, or threatened harm in any proceeding  
19 under this chapter:

20 (1) The physician-patient privilege;

21 (2) The psychologist-client privilege;



1 (3) The spousal privilege; and

2 (4) The victim-counselor privilege.

3 § -23 **Effect of oral orders.** Orders stated orally by  
4 the court on the record in a proceeding under this chapter shall  
5 have full force and effect from the date of the hearing until  
6 further order of the court. All oral orders shall be reduced to  
7 writing as soon as is practicable.

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

14 § -25 **Conduct of hearing in child protective**  
15 **proceedings.** (a) The court shall hear child protective  
16 proceedings without a jury at a hearing separate from those for  
17 adults.

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



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

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

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

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

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



- 1           (1) That the child be immediately released from the  
2           department's temporary foster custody, placed in  
3           temporary family supervision, and returned to the  
4           child's family home with the assistance of services,  
5           upon finding that the child's family is able to  
6           provide a safe family home with services; or
- 7           (2) That the child continue in the department's temporary  
8           foster custody, upon finding that there is reasonable  
9           cause to believe that continued placement in foster  
10          care is necessary to protect the child from imminent  
11          harm; provided that in making this determination, the  
12          court shall consider whether:
- 13           (A) The department made reasonable efforts to prevent  
14           or eliminate the need for removing the child from  
15           the child's family home before the child was  
16           placed in foster care;
- 17           (B) The alleged or potential perpetrator of imminent  
18           harm, harm, or threatened harm should be removed  
19           from the family home rather than continuing the  
20           child's placement in foster care. The child's  
21           family shall have the burden of establishing that



1           it is in the child's best interests to remove the  
2           child, rather than the alleged or potential  
3           perpetrator, from the family home; and

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

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

11          (e) The court may further order that:

12          (1) Any party undergo a physical, developmental,  
13          psychological, or psychiatric evaluation and that a  
14          written or oral report be submitted or communicated to  
15          the court and all parties before the next court  
16          hearing;

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



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



1 (9) Any other orders be entered that the court deems  
2 necessary.

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

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

10 (1) The specific steps required to ameliorate the safe  
11 family home factors that caused the child harm or to  
12 be threatened with harm. These specific steps shall  
13 include treatment and services that will be provided,  
14 actions completed, specific measurable and behavioral  
15 changes that must be achieved, and responsibilities  
16 assumed;

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

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



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





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

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

18 § -28 Return hearing. (a) When a petition has been  
19 filed, the court shall conduct a return hearing within fifteen  
20 days of:

21 (1) The filing of the petition; or



1 (2) The date a decision is announced by the court during a  
2 temporary foster custody hearing.

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

6 (1) Order the method of service of summons that the court  
7 deems to be appropriate, based upon the available  
8 information; and

9 (2) Set a continued return hearing and:

10 (A) May waive the appearance of any party at the  
11 continued return hearing; and

12 (B) If service of summons is ordered to be made by  
13 mail or publication, shall set the continued  
14 return hearing no less than twenty-one days after  
15 the date of service as evidenced by the signature  
16 of the recipient on a return receipt or the date  
17 of the last publication.

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

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



- 1 (2) Order the party who was served to appear on the date  
2 of the next scheduled hearing in the case; or
- 3 (3) Set a hearing on the oral motion to vacate prior  
4 orders, if a party appears at the hearing and moves  
5 the court to vacate or modify prior orders. The  
6 moving party shall file a written motion and serve the  
7 other parties with proper written notice of the motion  
8 and the hearing date.
- 9 (d) At the return hearing, the court shall decide:
- 10 (1) Whether the child's physical or psychological health  
11 or welfare has been harmed or is subject to threatened  
12 harm by the acts or omissions of the child's parents;
- 13 (2) Whether the child should be placed in foster custody  
14 or under family supervision; and
- 15 (3) What services should be provided to the child's  
16 parents.
- 17 (e) If the court finds that the child's physical or  
18 psychological health or welfare has been harmed or is subject to  
19 threatened harm by the acts or omissions of the child's parents,  
20 the court:



- 1           (1) Shall enter a finding that the court has jurisdiction
- 2                   pursuant to section -5;
- 3           (2) Shall enter a finding regarding whether, before the
- 4                   child was placed in foster care, the department made
- 5                   reasonable efforts to prevent or eliminate the need to
- 6                   remove the child from the child's family home;
- 7           (3) Shall enter orders:
- 8                   (A) That the child be placed in foster custody if the
- 9                   court finds that the child's remaining in the
- 10                  family home is contrary to the welfare of the
- 11                  child and the child's parents are not willing and
- 12                  able to provide a safe family home for the child,
- 13                  even with the assistance of a service plan; or
- 14                  (B) That the child be placed in family supervision if
- 15                  the court finds that the child's parents are
- 16                  willing and able to provide the child with a safe
- 17                  family home with the assistance of a service
- 18                  plan;
- 19           (4) Shall determine whether aggravated circumstances are
- 20                   present.



- 1 (A) If aggravated circumstances are present, the  
2 court shall:
- 3 (i) Conduct a permanency hearing within thirty  
4 days, and the department shall not be  
5 required to provide the child's parents with  
6 an interim service plan or interim  
7 visitation; and
- 8 (ii) Order the department to file, within sixty  
9 days after the court's finding that  
10 aggravated circumstances are present, a  
11 motion to set the case for a termination of  
12 parental rights hearing;
- 13 (B) If aggravated circumstances are not present, the  
14 court shall order that the department make  
15 reasonable efforts to reunify the child with the  
16 child's parents and order an appropriate service  
17 plan;
- 18 (5) Shall order reasonable supervised or unsupervised  
19 visits for the child and the child's family, including  
20 with the child's siblings, unless such visits are  
21 determined to be unsafe or detrimental to the child;



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



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

4 (11) May order that:

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

10 (B) The child be examined by a physician, surgeon,  
11 psychiatrist, or psychologist; and

12 (C) The child receive treatment, including  
13 hospitalization or placement in other suitable  
14 facilities, as is determined to be in the child's  
15 best interests.

16 (f) If the court finds that the child's physical or  
17 psychological health or welfare has not been harmed or subjected  
18 to threatened harm by the acts or omissions of the child's  
19 parents, the court shall enter an order to dismiss the petition  
20 and shall state the grounds for dismissal.



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

4 § -29 Show cause hearing. At any stage of the  
5 proceeding, the court may set a show cause hearing at which a  
6 child's parents shall have the burden of presenting evidence as  
7 to why the case should not be set for a termination of parental  
8 rights or legal guardianship hearing.

9 § -30 Periodic review hearing. (a) The court shall set  
10 a periodic review hearing to be conducted no later than six  
11 months after a child's date of entry into foster care.  
12 Thereafter, the court shall conduct periodic review hearings at  
13 intervals of no longer than six months until the court's  
14 jurisdiction is terminated. The court may set a case for a  
15 periodic review hearing upon the motion of a party at any time,  
16 if the court deems the hearing to be in the best interests of  
17 the child.

18 (b) At each periodic review hearing, the court shall  
19 review the status of the case to determine whether the child is  
20 receiving appropriate services and care, whether the case plan  
21 is being properly implemented, and whether the department's or





1 authorized agency's activities are directed toward a permanent  
2 placement for the child. At the hearing, the court shall:

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



1 (c) 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 court  
8 a compelling reason why it is not in the best interest  
9 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 (d) Nothing in this section shall prevent the department  
16 from filing a motion to set a termination of parental rights  
17 hearing if the department determines that the criteria for  
18 terminating parental rights are present.

19 § -31 Permanency hearing. (a) A permanency hearing  
20 shall be conducted within twelve months of the child's date of  
21 entry into foster care or within thirty days of a judicial



1 determination that the child is an abandoned infant or that  
2 aggravated circumstances are present. A permanency hearing  
3 shall be conducted at least every twelve months thereafter for  
4 as long as the child remains in foster care under the placement  
5 responsibility of the department.

6 (b) The court shall review the status of the case to  
7 determine whether the child is receiving appropriate services  
8 and care, that case plans are being properly implemented, and  
9 that activities are directed toward a permanent placement for  
10 the child.

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

13 (1) The extent to which each party has complied with the  
14 service plan and progressed in making the home safe;

15 (2) Whether the current placement of the child continues  
16 to be appropriate and in the best interests of the  
17 child or if another in-state or out-of-state placement  
18 should be considered;

19 (3) The court's projected timetable for reunification or,  
20 if the current placement is not expected to be  
21 permanent, placement in an adoptive home, with a legal



- 1 guardian, or under the permanent custody of the  
2 department;
- 3 (4) Whether the department has made reasonable efforts, in  
4 accordance with the safety and well-being of the  
5 child, to:
- 6 (A) Place siblings who have been removed from the  
7 family home with the same resource family,  
8 adoptive placement, or legal guardians; and
- 9 (B) Provide for frequent visitation or other on-going  
10 interactions with siblings who are not living in  
11 the same household;
- 12 (5) The appropriate permanency goal for the child,  
13 including whether a change in goal is necessary;
- 14 (6) Whether the department has made reasonable efforts to  
15 finalize the permanency goal in effect for the child  
16 and a summary of those efforts;
- 17 (7) The date by which the permanency goal for the child is  
18 to be achieved;
- 19 (8) In the case of a child who has attained sixteen years  
20 of age, the services needed to assist the child with



1 the transition from foster care to independent living;  
2 and

3 (9) Consultations with the child in an age-appropriate  
4 manner about the proposed plan for permanency or  
5 transition from foster care to independent living.

6 (d) At each permanency hearing, the court shall order:

7 (1) The child's reunification with a parent or parents;

8 (2) The child's continued placement in foster care, where:

9 (A) Reunification is expected to occur within a time  
10 frame that is consistent with the developmental  
11 needs of the child;

12 (B) The safety and health of the child can be  
13 adequately safeguarded; and

14 (C) The child has not been in foster care for a total  
15 of twelve consecutive months or an aggregate of  
16 at least fifteen out of the last twenty-two  
17 months from the date of entry into foster care;

18 or

19 (3) A permanent plan with a goal of:



1 (A) Placing the child for adoption and when the  
2 department will file a motion to set the matter  
3 for the termination if parental rights;

4 (B) Placing the child for legal guardianship if the  
5 department documents and presents to the court a  
6 compelling reason why termination of parental  
7 rights and adoption are not in the best interests  
8 of the child; or

9 (C) Awarding permanent custody to the department or  
10 an authorized agency, if the department documents  
11 and presents to the court a compelling reason why  
12 adoption and legal guardianship are not in the  
13 best interests of the child.

14 (e) At each permanency hearing where a permanent plan is  
15 ordered, the court shall make appropriate orders to ensure  
16 timely implementation of the permanent plan and to ensure that  
17 the plan is accomplished within a specified period of time.

18 (f) A permanency hearing may be held concurrently with a  
19 periodic review hearing.

20 (g) If the child has been in foster care under the  
21 responsibility of the department for an aggregate of fifteen out



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

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

8 (2) The department has not provided to the family of the  
9 child, consistent with the time period required in the  
10 service plan, such services as the department deems  
11 necessary for the safe return of the child to the  
12 family home.

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

17 § -32 Permanent plan. (a) The permanent plan shall:

18 (1) State whether the permanency goal for the child will  
19 be achieved through adoption, legal guardianship, or  
20 permanent custody;



- 1           (2) Establish a reasonable period of time by which the
- 2                   adoption or legal guardianship shall be finalized;
- 3           (3) Document:
- 4                   (A) A compelling reason why legal guardianship or
- 5                           permanent custody is the most appropriate
- 6                           permanency goal for the child if adoption is not
- 7                           the goal; or
- 8                   (B) A compelling reason why permanent custody is the
- 9                           most appropriate permanency goal for the child if
- 10                           adoption or legal guardianship is not the goal;
- 11          (4) Establish other related goals, including those
- 12                   pertaining to the stability of the child's placement;
- 13                   education; health; therapy; counseling; relationship
- 14                   with the child's birth family, including visits, if
- 15                   any; cultural connections; and preparation for
- 16                   independent living;
- 17          (5) If a child has reached the age of sixteen, describe
- 18                   the services needed to assist the child with the
- 19                   transition from foster care to independent living; and
- 20          (6) Describe the methods for achieving the goals and
- 21                   objectives set forth in paragraphs (4) and (5).





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

- 3 (1) Progress toward achieving the goal of the plan;
- 4 (2) Proposed revisions to the goal of the plan and reasons  
5 for the revisions; and
- 6 (3) Proposed revisions to the methods for achieving the  
7 goals of the plan and objectives and the reasons for  
8 the revisions.

9 § -33 Termination of parental rights hearing. (a) At a  
10 termination of parental rights hearing, the court shall  
11 determine whether there exists clear and convincing evidence  
12 that:

- 13 (1) A child's parent whose rights are subject to  
14 termination is not presently willing and able to  
15 provide the parent's child with a safe family home,  
16 even with the assistance of a service plan;
- 17 (2) It is not reasonably foreseeable that the child's  
18 parent whose rights are subject to termination will  
19 become willing and able to provide the child with a  
20 safe family home, even with the assistance of a  
21 service plan, within a reasonable period of time,



1 which shall not exceed two years from the child's date  
2 of entry into foster care;

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

6 (A) Presume that it is in the best interests of the  
7 child to be promptly and permanently placed with  
8 responsible and competent substitute parents and  
9 family in a safe and secure home; and

10 (B) Give greater weight to the presumption that the  
11 permanent plan is in the child's best interest,  
12 the younger the child is upon the child's date of  
13 entry into foster care;

14 and

15 (4) The child consents to the permanent plan if the child  
16 is at least fourteen years old, unless the court  
17 consults with the child in camera and finds that it is  
18 in the best interest of the child to proceed without  
19 the child's consent.

20 (b) If the court determines that the criteria set forth in  
21 subsection (a) are established by clear and convincing evidence



1 and the goal of the permanent plan is for the child to be  
2 adopted or remain in permanent custody, the court shall order:

3 (1) That the child's parent's parental rights be  
4 terminated;

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

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

9 (4) An appropriate permanent plan; and

10 (5) The entry of any other orders the court deems to be in  
11 the best interests of the child, including restricting  
12 or excluding unnecessary parties from participating in  
13 adoption or other subsequent proceedings;

14 (c) Unless otherwise ordered by the court or until the  
15 child is adopted, the child's family member shall retain, to the  
16 extent that the family member possessed the responsibility prior  
17 to the termination of parental rights, the continuing  
18 responsibility to support the child, including repaying the cost  
19 of any and all care, treatment, or any other service provided by  
20 the permanent custodian, any subsequent permanent custodian,  
21 other authorized agency, or the court for the child's benefit.



1 (d) A family member may be permitted visitation with the  
2 child at the discretion of the permanent custodian. The court  
3 may review the exercise of such discretion and may order that a  
4 family member be permitted such visitation as is in the best  
5 interests of the child.

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

11 (f) The court, in its discretion, may vest permanent  
12 custody of a child in an authorized agency or in subsequently  
13 authorized agencies, as the court deems to be in the best  
14 interests of the child.

15 (g) If the department receives a report that the child has  
16 been harmed or is subject to threatened harm by the acts or  
17 omissions of the permanent custodians of the child, the  
18 department may automatically assume either family supervision  
19 over the child and the child's permanent custodian or foster  
20 custody of the child. The department shall immediately notify  
21 the court, and the court shall set the case for a permanency



1 hearing within ten days after the department receives such a  
2 report, unless the court deems a later date to be in the best  
3 interests of the child.

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

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

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

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

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

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



1           §   -34 Reinstatement of parental rights. (a) A child  
2 who is subject to an active proceeding under this chapter, the  
3 child's guardian ad litem, the child's attorney, if any, or the  
4 department, may file a motion to reinstate the terminated  
5 parental rights of the child's parents in a proceeding under  
6 this chapter, where the following circumstances exist:

- 7           (1) The child has been in permanent custody for at least  
8                twelve months; and
- 9           (2) The child is fourteen years of age or older.

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

- 15           (1) The former parent whose rights are sought to be  
16                reinstated;
- 17           (2) The child's guardian ad litem;
- 18           (3) The department; and
- 19           (4) The child's resource family.

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



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

- 4 (1) The material change in circumstances since the  
5 termination of parental rights;
- 6 (2) The reasons parental rights were terminated and the  
7 date of the termination order;
- 8 (3) A parent's willingness to resume contact with the  
9 child and to have parental rights reinstated;
- 10 (4) The child's willingness to resume contact with the  
11 parent and to have parental rights reinstated;
- 12 (5) A parent's willingness and ability to be involved in  
13 the child's life and to accept physical custody of the  
14 child; and
- 15 (6) Other relevant information.

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

- 19 (1) There has been a material change in circumstances;
- 20 (2) A parent is willing to provide care for the child;



1 (3) A parent is able to provide a safe family home or the  
2 home can be made safe with the assistance of services;  
3 and

4 (4) A trial home placement is in the child's best  
5 interests.

6 (f) If the court issues a temporary order of reinstatement  
7 of parental rights:

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

11 (2) The department shall develop a permanent plan for  
12 reunification and shall ensure that transition  
13 services are provided to the family, as appropriate;  
14 and

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

18 (g) The department has the authority to assess the trial  
19 home placement and to rescind the trial home placement according  
20 to the child's best interests.





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

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

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

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

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

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

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

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



1 (i) A proceeding to reinstate parental rights shall be a  
2 separate action from the proceeding for the termination of  
3 parental rights. The granting of the motion to reinstate  
4 parental rights shall not affect the validity of the original  
5 termination order.

6 § -35 Retention of jurisdiction. Except as otherwise  
7 provided in this chapter, the court may retain jurisdiction  
8 under this chapter until the full term for which any order  
9 entered expires or until the child attains nineteen years of  
10 age, whichever comes first.

11 § -36 Appeal. An interested party aggrieved by any  
12 order or decree of the court under this chapter may appeal as  
13 provided in section 571-54.

14 PART V. MISCELLANEOUS

15 § -37 Failure to comply with terms and conditions of an  
16 order of the court. If a party fails to comply with the terms  
17 and conditions of an order issued by the court under this  
18 chapter, the court may apply the provisions of section 710-1077  
19 and any other provisions available under the law.

20 § -38 Protective order. (a) After a petition has been  
21 filed with the court under this chapter, the court, upon such



1 hearing as the court deems to be appropriate, may issue a  
2 protective order to restrain any party from contacting,  
3 threatening, or physically abusing any other party or a child,  
4 if the court finds that a protective order is necessary to  
5 prevent domestic abuse (as that term and its component terms are  
6 defined in section 586-1) or a recurrence of domestic abuse.

7 (b) The protective order shall enjoin a party to be  
8 restrained from performing any combination of the following  
9 acts:

- 10 (1) Contacting, threatening, or physically abusing any  
11 protected party or child;
- 12 (2) Contacting, threatening, or physically abusing any  
13 person residing at the dwelling or residence of any  
14 protected party or child; and
- 15 (3) Entering or visiting the dwelling or residence of any  
16 protected party or child.

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



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

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

9 (f) The court may order that an individual be made a party  
10 for the limited purpose of issuing a protective order against  
11 that individual.

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

14 (h) Any party may provide to appropriate law enforcement  
15 authorities a copy of a protective order issued pursuant to this  
16 section.

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

19 § -39 Notice and service of protective order. (a) A  
20 protective order issued pursuant to section -38 shall be  
21 served either personally or by certified mail on each party to



1 be restrained. In the case where a party was present at the  
2 hearing during which the protective order was issued, that party  
3 shall be deemed to have notice of the order.

4 (b) The court may order the police department to serve a  
5 protective order issued pursuant to section -38 upon each  
6 party to be restrained, to accompany a protected party to that  
7 party's dwelling or residence, and to place the protected party  
8 in possession of that party's dwelling or residence.

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

13 § -40 Court records. The court shall keep a record of  
14 all child protective proceedings under this chapter. Written  
15 reports, photographs, x-rays, or other information that are  
16 submitted to the court may be made available to other  
17 appropriate persons, who are not parties, only upon an order of  
18 the court. The court may issue this order upon determining that  
19 such access is in the best interests of the child or serves some  
20 other legitimate purpose.



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

6 § -41 Payment for service or treatment provided to a  
7 party or for a child's care, support, or treatment. (a)  
8 Whenever a service or treatment is provided to a party, or  
9 whenever care, support, or treatment of a child is provided  
10 under this chapter, the court may order the payment of such  
11 expenses by the persons or legal entities who are legally  
12 responsible for the same, after reasonable notice and hearing as  
13 the court directs.

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

17 § -42 Educational, medical, dental, and recreational  
18 needs. Upon the first day of placement, a child's resource  
19 family shall have the authority, for the child placed in the  
20 resource family's care:



1 (1) To consent to routine educational and recreational  
2 needs and activities, except for purposes regulated  
3 under title 8, chapters 60 and 61, of the Hawaii  
4 Administrative Rules, or successor rules; and

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

8 § -43 Child protective review panel. (a) The  
9 department shall establish a child protective review panel to  
10 review each case of child abuse or neglect that leads to near  
11 fatality or death as a result of acts or omissions of the  
12 child's legal caretaker. Based upon its review, the panel shall  
13 submit a report of its findings and recommendations to the  
14 director of the department. The department shall appoint  
15 members of the child protective review panel, who may include:

- 16 (1) Any physician treating the child for abuse;  
17 (2) Any child protective services worker assigned to the  
18 case and the worker's supervisor;  
19 (3) The guardian ad litem for the child, appointed under  
20 section -16, if applicable;



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

3 (5) Other child protective services workers and  
4 supervisors.

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

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

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

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

20 "§346- Health assessment. The department shall ensure  
21 the provision of a comprehensive health assessment for each





1 child in out-of-home placement forty-five days before or after  
2 an initial placement.

3 §346- Motor vehicle insurance. The parents of a child  
4 under foster care who has obtained a driver's license shall pay  
5 the costs of the child's motor vehicle insurance, unless the  
6 court determines the parents to be financially unable to pay the  
7 costs, in which case the child's insurance costs shall be paid  
8 pursuant to sections 431:10C-407 and 431:10C-410."

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

12 "§350- Authorization for color photographs, x-rays, and  
13 radiological or other diagnostic examination. (a) Any health  
14 professional or paraprofessional, physician licensed or  
15 authorized to practice medicine in this state, registered nurse  
16 or licensed practical nurse, hospital or similar institution's  
17 personnel engaged in the admission, examination, care, or  
18 treatment of patients, and any medical examiner, coroner, social  
19 worker, or police officer, who has before the person a child the  
20 person reasonably believes has been harmed, shall make every  
21 good faith effort to take or cause to be taken color photographs



1 of the areas of trauma visible on the child. If medically  
2 indicated, such person may take or cause to be taken x-rays of  
3 the child or cause a radiological or other diagnostic  
4 examination to be performed on the child.

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

9 §350- Disclosure of records. (a) The department shall  
10 disclose to resource parents and the foster child's principal  
11 treating physician copies of the foster child's complete medical  
12 records in the department's physical custody and relevant social  
13 history within thirty days of foster placement.

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

17 (c) Any records or information released to a foster  
18 child's resource parents, or the foster child's principal  
19 treating physician pursuant to subsection (a), or any  
20 information shared by one physician with another physician



1 pursuant to subsection (b), shall remain confidential in  
2 accordance with section 350-1.4."

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

5 "§578-1 Who may adopt; jurisdiction; venue. Any proper  
6 adult person, not married, or any person married to the legal  
7 father or mother of a minor child, or a husband and wife  
8 jointly, may petition the family court of the circuit in which  
9 the person or persons reside or are in military service or the  
10 family court of the circuit in which the individual to be  
11 adopted resides or was born or in which a child placing  
12 organization approved by the department of human services under  
13 the provisions of section 346-17 having legal custody (as  
14 defined in section 571-2) of the child is located, for leave to  
15 adopt an individual toward whom the person or persons do not  
16 sustain the legal relationship of parent and child and for a  
17 change of the name of the individual. When adoption is the goal  
18 of a permanent plan recommended by the department of human  
19 services and ordered pursuant to section [~~587-73,~~] -31, the  
20 department may petition for adoption on behalf of the proposed  
21 adoptive parents. The petition shall be in such form and shall



1 include such information and exhibits as may be prescribed by  
2 the family court."

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

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

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

8 (A) A parent who has deserted a child without  
9 affording means of identification for a period of  
10 ninety days;

11 (B) A parent who has voluntarily surrendered the care  
12 and custody of the child to another for a period  
13 of two years;

14 (C) A parent of the child in the custody of another,  
15 if the parent for a period of at least one year  
16 has failed to communicate with the child when  
17 able to do so;

18 (D) A parent of a child in the custody of another, if  
19 the parent for a period of at least one year has  
20 failed to provide for the care and support of the  
21 child when able to do so;



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



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

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

16 (K) A parent whose parental and custodial duties and  
17 rights have been divested by an award of  
18 permanent custody pursuant to section [~~587-73.~~]

19 -33;

20 (2) Persons whose consent may be dispensed with by order  
21 of the court. The court may dispense with the consent



1 of a parent who comes within subsection (a)(3), (4),  
2 or (5) herein, upon finding that:

3 (A) The petitioner is the stepfather of the child and  
4 the child has lived with the child's legal mother  
5 and the petitioning stepfather for a period of at  
6 least one year;

7 (B) The father is a concerned father as provided by  
8 subsection (a)(5), herein, and has not filed a  
9 petition to adopt the child, or the petition to  
10 adopt the child filed by the father has been  
11 denied; or

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

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

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



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

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

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

19           SECTION 7. Effective upon approval of this Act, sections  
20 321-342, 321-471, 325-101, 346-16, 346-65, 350-2, 350-3,  
21 560:5-205, 560:5-206, 571-2, 571-11, 571-41, 577-28, 586-10.5,





1 626-1, Rule 505.5, and 706-606.3, Hawaii Revised Statutes, are  
2 amended by replacing the reference to chapter 587, Hawaii  
3 Revised Statutes, with the reference to the new replacement  
4 chapter in section 1 of this Act.

5 SECTION 8. Chapter 587, Hawaii Revised Statutes, is  
6 repealed.

7 SECTION 9. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 10. This Act shall take effect on July 1, 2050.



**Report Title:**

Child Protective Act

**Description:**

Establishes child protective provisions in the Hawaii Revised Statutes that are consistent with federal Title IV-E provisions. Effective July 1, 2050. (SB2716 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

