



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

17 The policy and purpose of this chapter is to provide  
18 children with prompt and ample protection from the harms  
19 detailed herein, with an opportunity for timely reconciliation  
20 with their families if the families can provide safe family  
21 homes, and with timely and appropriate service or permanent



1 plans to ensure the safety of the child so they may develop and  
2 mature into responsible, self-sufficient, law-abiding citizens.  
3 The service plan shall effectuate the child's remaining in the  
4 family home, when the family home can be immediately made safe  
5 with services, or the child's returning to a safe family home.  
6 The service plan shall be carefully formulated with the family  
7 in a timely manner. Every reasonable opportunity should be  
8 provided to help the child's legal custodian to succeed in  
9 remedying the problems that put the child at substantial risk of  
10 being harmed in the family home. Each appropriate resource,  
11 public and private, family and friend, should be considered and  
12 used to maximize the legal custodian's potential for providing a  
13 safe family home for the child. Full and careful consideration  
14 shall be given to the religious, cultural, and ethnic values of  
15 the child's legal custodian when service plans are being  
16 discussed and formulated. Where the court has determined, by  
17 clear and convincing evidence, that the child cannot be returned  
18 to a safe family home, the child shall be permanently placed in  
19 a timely manner.



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

4           (1) Providing assistance to families to address the causes  
5           for abuse and neglect;

6           (2) Respecting and using each family's strengths,  
7           resources, culture, and customs;

8           (3) Ensuring that families are meaningfully engaged and  
9           children are consulted in an age-appropriate manner in  
10           case planning;

11           (4) Enlisting the early and appropriate participation of  
12           family and the family's support networks;

13           (5) Respecting and encouraging the input and views of  
14           caregivers; and

15           (6) Ensuring a permanent home through timely adoption or  
16           other permanent living arrangement,  
17 if safe reunification with the family is not possible.

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



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

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

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

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

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

12 (2) Has adequate:

13 (A) Food that is nutritious and healthy;

14 (B) Clothing;

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

17 (D) Mental health services;

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



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

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

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

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

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

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

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

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

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

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

18 "Aggravated circumstances" means that:

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





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

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

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

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

9 (5) The child is an abandoned infant.

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

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

20 "Case plan" means the combined safe family home factors and  
21 the service plan or permanent plan.



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

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

9 "Court" means one of the family courts established pursuant  
10 to chapter 571.

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

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



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

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

9 "Department" means the department of human services and its  
10 authorized representatives.

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

- 18 (1) Legal or physical custody or guardianship of the  
19 child, or  
20 (2) Responsibility for the child's care.



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

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

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

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

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

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



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

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

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

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

15 (A) Substantial or multiple skin bruising;

16 (B) Substantial external or internal bleeding;

17 (C) Burn or burns;

18 (D) Malnutrition;

19 (E) Failure to thrive;

20 (F) Soft tissue swelling;

21 (G) Extreme pain;



- 1 (H) Extreme mental distress;
- 2 (I) Gross degradation;
- 3 (J) Poisoning;
- 4 (K) Fracture of any bone;
- 5 (L) Subdural hematoma; or
- 6 (M) Death;
- 7 and the injury is not justifiably explained, or the
- 8 history given concerning the condition or death is not
- 9 consistent with the degree or type of the condition or
- 10 death, or there is evidence that the condition or
- 11 death may not be the result of an accident;
- 12 (2) The child has been the victim of sexual contact or
- 13 conduct, including sexual assault; sodomy;
- 14 molestation; sexual fondling; incest; prostitution;
- 15 obscene or pornographic photographing, filming, or
- 16 depiction; or other similar forms of sexual
- 17 exploitation;
- 18 (3) The child's psychological well-being has been injured
- 19 as evidenced by a substantial impairment in the
- 20 child's ability to function;

- 1           (4) The child is not provided in a timely manner with  
2           adequate food; clothing; shelter; supervision; or  
3           psychological, physical, or medical care; or
- 4           (5) The child is provided with dangerous, harmful, or  
5           detrimental drugs as defined in section 712-1240,  
6           except when a child's family administers drugs to the  
7           child as directed or prescribed by a practitioner as  
8           defined in section 712-1240.

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

12          "Incapacitated person" means a person who, even with  
13          appropriate and reasonably available assistance, is unable to  
14          substantially:

- 15          (1) Comprehend the legal significance of the issues or  
16          nature of the proceedings under this chapter;
- 17          (2) Consult with counsel; and
- 18          (3) Assist in preparing the person's case or strategy.

19          Incapacity shall not be based solely on a person's status  
20          as a minor.



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

10 "Parent" means any legal parent of a child; the natural  
11 mother, unless the child has been legally adopted; the  
12 adjudicated, presumed, or concerned natural father of the child  
13 as provided in section 578-2(a)(5), unless the child has been  
14 legally adopted; or the legal guardians or any other legal  
15 custodians of the child.

16 "Party" means an authorized agency; a child who is subject  
17 to a proceeding under this chapter; the child's parents and  
18 guardian ad litem; foster parents or resource families; any  
19 other person who is alleged in the petition or who is  
20 subsequently found at any child protective proceeding to be  
21 encouraging, causing, or contributing to the acts or conditions





1 that brought the child within the scope of this chapter; and any  
2 other person the court determines should be made a party to the  
3 proceedings; provided that the court may limit a party's right  
4 to participate in any child protective proceeding if the court  
5 deems such limitation of such party's participation to be  
6 consistent with the best interests of the child and such party  
7 is not a family member who is required to be summoned pursuant  
8 to section -15, except as otherwise provided in this chapter.

9 "Permanent custody" means the legal status created by order  
10 of the court after the termination of parental rights as set  
11 forth in this chapter.

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

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

20 "Preponderance of the evidence" means the degree of proof,  
21 which as a whole, convinces the trier of fact that the fact



1 sought to be proved is more probable than not. "Preponderance  
2 of the evidence" shall be the standard of proof required in any  
3 proceeding, unless otherwise specified.

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

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

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

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

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



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

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

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

12 "Termination of parental rights" means the severance of  
13 parental rights.

14 "Threatened harm" means any reasonably foreseeable  
15 substantial risk of harm to a child.

16 **PART II. JURISDICTION AND VENUE**

17 **§ -5 Jurisdiction.** Pursuant to section 571-11(9), the  
18 court shall have exclusive original jurisdiction in a child  
19 protective proceeding concerning any child who is or was found  
20 within the state at the time specified facts and circumstances  
21 occurred, are discovered, or are reported to the department.



1 These facts and circumstances constitute the basis for the  
2 court's finding that the child's physical or psychological  
3 health or welfare is subject to imminent harm, has been harmed,  
4 or is subject to threatened harm by the acts or omissions of the  
5 child's parents.

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

11 PART III. SAFE FAMILY HOME FACTORS AND  
12 PRE-PETITION PROCEDURES

13 § -7 Safe family home factors. (a) The following  
14 factors shall be fully considered when determining whether a  
15 child's family is willing and able to provide the child with a  
16 safe family home:

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

19 (A) The child's age, vulnerability, and special needs  
20 that affect the child's attachment, growth, and  
21 development;



- 1 (B) The child's developmental, psychological,  
2 medical, and dental health status and needs,  
3 including the names of assessment and treatment  
4 providers;
- 5 (C) The child's peer and family relationships and  
6 bonding abilities;
- 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);
- 4           (9) Whether any non-perpetrator who resides in the family  
5           home has demonstrated an ability to protect the child  
6           from further harm and to ensure that any current  
7           protective orders are enforced;
- 8           (10) Whether there is a support system available to the  
9           child's family, including adoptive and hanai  
10           relatives, friends, and faith-based or other community  
11           networks;
- 12           (11) Attempts to locate and involve extended family,  
13           friends, and faith-based or other community networks;
- 14           (12) Whether the child's family has demonstrated an  
15           understanding of and involvement in services that have  
16           been recommended by the department or court-ordered as  
17           necessary to provide a safe family home for the child;
- 18           (13) Whether the child's family has resolved identified  
19           safety issues in the family home within a reasonable  
20           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. Upon receiving  
4 a report that a child is subject to imminent harm, has been  
5 harmed, or is subject to threatened harm, the department shall  
6 cause such investigation to be made as it deems to be  
7 appropriate. In conducting the investigation, the department  
8 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 ensure that a petition is filed by
- 10 another appropriate authorized agency in court under
- 11 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;
  - 19 (B) The name, birth date, gender, and residential
  - 20 address of the child;



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



1 child into protective custody and that the department  
2 immediately assume temporary foster custody of the child.

3 (c) The court shall conduct:

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

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

16 § -13 **Summons and service of summons.** (a) After a  
17 petition has been filed, the court shall issue a summons  
18 requiring the presence of the parents and other persons to be  
19 parties to the proceeding, as follows:

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





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

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

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

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

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



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

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



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

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

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

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



1 hearing while present in court, subject to a shortening of time  
2 as ordered by the court.

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

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

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

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

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



1           (3) The child is represented by a guardian ad litem or  
2           counsel.

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

5           § -15 Duties, rights, and liability of authorized  
6 agencies. (a) If an authorized agency has family supervision,  
7 it has the following duties and rights, subject to such  
8 conditions or restrictions as the court deems to be in the best  
9 interests of a child:

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

15          (2) Placement of the child in foster care and thereby  
16 assuming temporary foster custody or foster custody of  
17 the child. The authorized agency shall immediately  
18 notify the court when such placement occurs. Upon  
19 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 or the court;
- 8 (2) The right to consent to adoption, to marriage, or to  
9 major medical or psychological care or treatment; and
- 10 (3) The continuing responsibility to support the child,  
11 including repayment for the cost of any care,  
12 treatment, or other service provided by the authorized  
13 agency or the court for the child's benefit.
- 14 (d) If an authorized agency has permanent custody, it has  
15 the following duties and rights:
- 16 (1) Assuming the parental and custodial duties and rights  
17 of a legal custodian and family member;
- 18 (2) Determining where and with whom the child shall live;  
19 provided that the child shall not be placed outside  
20 the state without prior order of the court;



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



1            Saturdays, Sundays, and holidays, after the child  
2            leaves the home.

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

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

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

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

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

17           (B) Consult with counsel; and

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

19           (2) If the court orders a professional evaluation, the  
20           party shall be examined by a physician, psychologist,



1 or other individual appointed by the court who is  
2 qualified to evaluate the party's alleged impairment:

3 (A) Unless otherwise directed by the court, the  
4 examiner shall promptly file with the court a  
5 written report which shall contain:

6 (i) A description of the nature, type, and  
7 extent of the party's specific cognitive and  
8 functional capabilities and limitations;

9 (ii) An evaluation of the party's mental and  
10 physical condition and, if appropriate,  
11 educational potential, adaptive behavior,  
12 and social skills;

13 (iii) A prognosis for improvement and a  
14 recommendation as to the appropriate  
15 treatment or habilitation plan; and

16 (iv) The dates of any assessments or examinations  
17 upon which the report is based;

18 (B) Upon the request of any party or sua sponte, and  
19 after such hearing as the court deems  
20 appropriate, the court may appoint a guardian ad  
21 litem for an adult party only after a



1                   determination, by clear and convincing evidence,  
2                   that:

3                   (i) The party is an incapacitated person; and

4                   (ii) The party's identified needs cannot be met  
5                   by less restrictive means, including the use  
6                   of appropriate and reasonably available  
7                   assistance.

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

10                  (1) Have access to the child or incapacitated adult;

11                  (2) Have the authority to inspect and receive copies of  
12 any records, notes, and electronic recordings

13 concerning the child or incapacitated adult that are  
14 relevant to the proceedings filed under this chapter.

15 This authority shall exist even without the consent of  
16 the child, incapacitated adult, or individuals and  
17 authorized agencies that have control of the child or  
18 incapacitated adult; provided that nothing in this  
19 section shall override any attorney-client or attorney  
20 work product privilege;



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



1 and during such proceedings as the court deems to be  
2 in the best interests of the child.

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

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

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

10 (e) The guardian ad litem for an incapacitated adult shall  
11 inform the court of the incapacitated adult's opinions and  
12 requests and may recommend how the court should proceed in the  
13 best interest of the incapacitated adult.

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

20 § -17 Court-appointed attorneys. (a) The court may  
21 appoint an attorney to represent a legal parent who is indigent



1 based on court-established guidelines. The court may also  
2 appoint an attorney to represent another indigent party based on  
3 court-established guidelines, if it is deemed to be in the  
4 child's best interest. Attorneys who are appointed by the court  
5 to represent indigent legal parents and other qualifying parties  
6 may be paid by the court, unless the legal parent or party for  
7 whom counsel is appointed has an independent estate sufficient  
8 to pay such fees and costs. The court may order the appropriate  
9 legal parent or party to pay or reimburse the fees and costs of  
10 an attorney appointed for the child or incapacitated adult.

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

- 15 (1) Concurrent with the filing of a petition invoking the  
16 jurisdiction of the court under this chapter; and  
17 (2) No less than fifteen days before a scheduled return  
18 hearing, periodic review hearing, permanency hearing,  
19 or termination of parental rights hearing; provided  
20 that additional information may be submitted to the  
21 court up to the date of the hearing; provided that the





1 department or other authorized agencies make a good  
2 cause showing that such additional information was not  
3 available to the department or other authorized agency  
4 after the fifteen day deadline.

5 (b) The reports shall include:

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

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

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

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

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



1           §   -19   **Testimony by department social worker.**  A person  
2 employed by the department as a social worker in the area of  
3 child protective services or child welfare services shall be  
4 presumed to be qualified to testify as an expert on child  
5 protective or child welfare services.  Any party may move the  
6 court to qualify a person employed by the department as a social  
7 worker in the area of child protective services or child welfare  
8 services called to testify as an expert on child protective or  
9 child welfare services.

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

16          §   -21   **Admissibility of evidence; testimony by a child.**

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

20       (b)  In deciding in temporary foster custody hearings  
21 whether there is reasonable cause to believe that a child is



1 subject to imminent harm the court may consider relevant hearsay  
2 evidence when direct testimony is unavailable or when it is  
3 impractical to subpoena witnesses who will be able to testify to  
4 facts based on personal knowledge.

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

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

9 (2) The recording equipment used is capable of producing  
10 an accurate recording, was operated by a competent  
11 person, and the recording is accurate and has not been  
12 altered; and

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

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

20 § -22 Unavailability of specified privileges. The  
21 following privileges shall not be available to exclude evidence



1 of imminent harm, harm, or threatened harm in any proceeding  
2 under this chapter:

- 3 (1) The physician-patient privilege;
- 4 (2) The psychologist-client privilege;
- 5 (3) The spousal privilege; and
- 6 (4) The victim-counselor privilege.

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

12 § -24 Motions to vacate or modify prior orders brought  
13 or decided upon pursuant to Rule 59, Hawaii Family Court Rules.  
14 In considering a party's motion to vacate or modify prior orders  
15 brought or decided upon pursuant to Rule 59, Hawaii Family Court  
16 Rules, the court need not commence a trial or hearing de novo,  
17 but rather, after such further hearing as the court deems to be  
18 appropriate, may proceed to enter such orders as are in the best  
19 interests of the child.

20 § -25 Conduct of hearing in child protective  
21 proceedings. (a) The court shall hear child protective



1 proceedings without a jury at a hearing separate from those for  
2 adults.

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

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

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

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

20 (b) The temporary foster custody hearing may be continued  
21 for a period not to exceed fifteen days if the court determines



1 that further investigation would be in the child's best  
2 interests.

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

6 (1) That the child be immediately released from the  
7 department's temporary foster custody, placed in  
8 temporary family supervision, and returned to the  
9 child's family home with the assistance of services,  
10 upon finding that the child's family is able to  
11 provide a safe family home with services; or

12 (2) That the child continue in the department's temporary  
13 foster custody, upon finding that there is reasonable  
14 cause to believe that continued placement in foster  
15 care is necessary to protect the child from imminent  
16 harm; provided that in making this determination, the  
17 court shall consider whether:

18 (A) The department made reasonable efforts to prevent  
19 or eliminate the need for removing the child from  
20 the child's family home before the child was  
21 placed in foster care;



1 (B) The alleged or potential perpetrator of imminent  
2 harm, harm, or threatened harm should be removed  
3 from the family home rather than continuing the  
4 child's placement in foster care. The child's  
5 family shall have the burden of establishing that  
6 it is in the child's best interests to remove the  
7 child, rather than the alleged or potential  
8 perpetrator, from the family home; and

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

13 (d) The court shall conduct a return hearing on the  
14 petition within fifteen days after the temporary foster custody  
15 hearing.

16 (e) The court may further order that:

17 (1) Any party undergo a physical, developmental,  
18 psychological, or psychiatric evaluation and that a  
19 written or oral report be submitted or communicated to  
20 the court and all parties before the next court  
21 hearing;



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





1 (8) The child's guardian ad litem visit the child's family  
2 home and resource family home, be present during  
3 supervised visitation, and prepare a written report  
4 that includes specific recommendations concerning  
5 services and assistance to the family; and

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

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

13 § -27 Service plan. (a) The service plan shall  
14 provide:

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



- 1 (2) Whether an ohana conference will be conducted for fact  
2 finding and family group decision making;
- 3 (3) The respective responsibilities of the child, the  
4 parents, legal guardian or custodian, the department,  
5 other family members, and treatment providers, and a  
6 description and expected outcomes of the services  
7 required to achieve the permanency goal;
- 8 (4) The required frequency and types of contact between  
9 the assigned social worker, the child, and the family;
- 10 (5) The time frames during which services will be  
11 provided, actions must be completed, and  
12 responsibilities must be discharged;
- 13 (6) Notice to the parents that their failure to  
14 substantially achieve the objectives described in the  
15 service plan within the time frames established may  
16 result in termination of their parental rights;
- 17 (7) Notice to the parents that if the child has been in  
18 foster care under the responsibility of the department  
19 for an aggregate of fifteen out of the most recent  
20 twenty-two months from the child's date of entry into  
21 foster care, the department is required to file a



1 motion to set a termination of parental rights  
2 hearing, and the parents' failure to provide a safe  
3 family home within two years from the date when the  
4 child was first placed under foster custody by the  
5 court, shall result in the parents' parental rights  
6 being terminated; and

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

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

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



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

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

9 (1) The filing of the petition; or

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

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

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

18 (2) Set a continued return hearing and:

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



- 1 (B) If service of summons is ordered to be made by  
2 mail or publication, shall set the continued  
3 return hearing no less than twenty-one days after  
4 the date of service as evidenced by the signature  
5 of the recipient on a return receipt or the date  
6 of the last publication.
- 7 (c) At a continued return hearing, the court shall:
- 8 (1) Enter the default of the party who was served but  
9 failed to appear at the continued return hearing;
- 10 (2) Order the party who was served to appear on the date  
11 of the next scheduled hearing in the case; or
- 12 (3) Set a hearing on the oral motion to vacate prior  
13 orders, if a party appears at the hearing and moves  
14 the court to vacate or modify prior orders. The  
15 moving party shall file a written motion and serve the  
16 other parties with proper written notice of the motion  
17 and the hearing date.
- 18 (d) At the return hearing, the court shall decide:
- 19 (1) Whether the child's physical or psychological health  
20 or welfare has been harmed or is subject to threatened  
21 harm by the acts or omissions of the child's parents;



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

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

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

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

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

15           (3) Shall enter orders:

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



1 (B) That the child be placed in family supervision if  
2 the court finds that the child's parents are  
3 willing and able to provide the child with a safe  
4 family home with the assistance of a service  
5 plan;

6 (4) Shall determine whether aggravated circumstances are  
7 present.

8 (A) If aggravated circumstances are present, the  
9 court shall:

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

15 (ii) Order the department to file a motion to set  
16 the case for a termination of parental  
17 rights hearing at the initial permanency  
18 hearing;

19 (B) If aggravated circumstances are not present, the  
20 court shall order that the department make  
21 reasonable efforts to reunify the child with the



1 child's parents and order an appropriate service  
2 plan;

3 (5) Shall order reasonable supervised or unsupervised  
4 visits for the child and the child's family, including  
5 with the child's siblings, unless such visits are  
6 determined to be unsafe or detrimental to, and not in  
7 the best interests of, the child;

8 (6) Shall order each of the child's natural parents to  
9 complete the medical information forms and release the  
10 medical information required under section 578-14.5,  
11 to the department. If the child's natural parents  
12 refuse to complete the forms or to release the  
13 information, the court may order the release of the  
14 information over the parents' objections;

15 (7) Shall determine whether each party understands that  
16 unless the family is willing and able to provide the  
17 child with a safe family home, even with the  
18 assistance of a service plan, within the reasonable  
19 period of time specified in the service plan, their  
20 respective parental and custodial duties and rights  
21 shall be subject to termination;





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



1 facilities, as is determined to be in the child's  
2 best interests.

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

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

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

16 § -30 Periodic review hearing. (a) The court shall set  
17 a periodic review hearing to be conducted no later than six  
18 months after a child's date of entry into foster care.  
19 Thereafter, the court shall conduct periodic review hearings at  
20 intervals of no longer than six months until the court's  
21 jurisdiction is terminated. The court may set a case for a



1 periodic review hearing upon the motion of a party at any time,  
2 if the court deems the hearing to be in the best interests of  
3 the child.

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

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



- 1 (B) The child's permanent placement out of the family  
2 home in the following order of preference:
- 3 (i) Adoption;
- 4 (ii) Legal guardianship; or
- 5 (iii) Other permanent out-of-home placement;
- 6 (6) Evaluate visitation arrangements; and
- 7 (7) Issue such further or other appropriate orders as it  
8 deems to be in the best interests of the child.
- 9 (c) If the child has been in foster care under the  
10 responsibility of the department for an aggregate of fifteen out  
11 of the most recent twenty-two months from the date of entry into  
12 foster care, the department shall file a motion to set the  
13 matter for a termination of parental rights hearing, unless:
- 14 (1) The department has documented in the safe family home  
15 factors or other written report submitted to the court  
16 a compelling reason why it is not in the best interest  
17 of the child to file a motion; or
- 18 (2) The department has not provided to the family of the  
19 child, consistent with the time period required in the  
20 service plan, such services as the department deems



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

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

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

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

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



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



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



- 1 (B) The safety and health of the child can be  
2 adequately safeguarded; and
- 3 (C) The child has not been in foster care for a total  
4 of twelve consecutive months or an aggregate of  
5 at least fifteen out of the last twenty-two  
6 months from the date of entry into foster care;  
7 or
- 8 (3) A permanent plan with a goal of:
- 9 (A) Placing the child for adoption and when the  
10 department will file a motion to set the matter  
11 for the termination if parental rights;
- 12 (B) Placing the child for legal guardianship if the  
13 department documents and presents to the court a  
14 compelling reason why termination of parental  
15 rights and adoption are not in the best interests  
16 of the child; or
- 17 (C) Awarding permanent custody to the department or  
18 an authorized agency, if the department documents  
19 and presents to the court a compelling reason why  
20 adoption and legal guardianship are not in the  
21 best interests of the child.





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

5 (f) A permanency hearing may be held concurrently with a  
6 periodic review hearing.

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

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

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



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

5           § -32 Permanent plan. (a) The permanent plan shall:

6           (1) State whether the permanency goal for the child will  
7 be achieved through adoption, legal guardianship, or  
8 permanent custody;

9           (2) Establish a reasonable period of time by which the  
10 adoption or legal guardianship shall be finalized;

11          (3) Document:

12           (A) A compelling reason why legal guardianship or  
13 permanent custody is in the child's best  
14 interests if adoption is not the goal; or

15           (B) A compelling reason why permanent custody is in  
16 the child's best interests if adoption or legal  
17 guardianship is not the goal;

18          (4) Establish other related goals, including those  
19 pertaining to the stability of the child's placement;  
20 education; health; therapy; counseling; relationship  
21 with the child's birth family, including visits, if



1 any; cultural connections; and preparation for  
 2 independent living;

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

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

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

- 10 (1) Progress toward achieving the goal of the plan;
- 11 (2) Proposed revisions to the goal of the plan and reasons  
 12 for the revisions; and
- 13 (3) Proposed revisions to the methods for achieving the  
 14 goals of the plan and objectives and the reasons for  
 15 the revisions.

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

- 20 (1) A child's parent whose rights are subject to  
 21 termination is not presently willing and able to



1 provide the parent's child with a safe family home,  
2 even with the assistance of a service plan;

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

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

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

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

21 and



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

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

10          (1) That the child's parent's parental rights be  
11          terminated;

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

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

16          (4) An appropriate permanent plan; and

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



1           (c) Unless otherwise ordered by the court or until the  
2 child is adopted, the child's family member shall retain, to the  
3 extent that the family member possessed the responsibility prior  
4 to the termination of parental rights, the continuing  
5 responsibility to support the child, including repaying the cost  
6 of any and all care, treatment, or any other service provided by  
7 the permanent custodian, any subsequent permanent custodian,  
8 other authorized agency, or the court for the child's benefit.

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

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

19           (f) The court, in its discretion, may vest permanent  
20 custody of a child in an authorized agency or in subsequently



1 authorized agencies, as the court deems to be in the best  
2 interests of the child.

3 (g) If the department receives a report that the child has  
4 been harmed or is subject to threatened harm by the acts or  
5 omissions of the permanent custodians of the child, the  
6 department may automatically assume either family supervision  
7 over the child and the child's permanent custodian or foster  
8 custody of the child. The department shall immediately notify  
9 the court, and the court shall set the case for a permanency  
10 hearing within ten days after the department receives such a  
11 report, unless the court deems a later date to be in the best  
12 interests of the child.

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

16 (1) The preparation of a plan to achieve permanency for  
17 the child;

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

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



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

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

9 § -34 Reinstatement of parental rights. (a) A child  
10 who is subject to an active proceeding under this chapter, the  
11 child's guardian ad litem, the child's attorney, if any, any  
12 parent whose parental rights have been terminated, or the  
13 department, may file a motion to reinstate the terminated  
14 parental rights of the child's parents in a proceeding under  
15 this chapter, where the following circumstances exist:

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

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

19 (b) A motion to reinstate parental rights shall be filed  
20 with the court and shall describe the factors supporting a  
21 reinstatement of parental rights. The court shall order a





1 preliminary hearing to be held within ninety days and shall give  
2 prior notice to:

- 3 (1) The former parent whose rights are sought to be  
4 reinstated;
- 5 (2) The child's guardian ad litem;
- 6 (3) The department; and
- 7 (4) The child's resource family.
- 8 (c) The motion shall be denied if the parent whose rights  
9 are sought to be reinstated cannot be located.

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

- 13 (1) The material change in circumstances since the  
14 termination of parental rights;
- 15 (2) The reasons parental rights were terminated and the  
16 date of the termination order;
- 17 (3) A parent's willingness to resume contact with the  
18 child and to have parental rights reinstated;
- 19 (4) The child's willingness to resume contact with the  
20 parent and to have parental rights reinstated;



1 (5) A parent's willingness and ability to be involved in  
2 the child's life and to accept physical custody of the  
3 child; and

4 (6) Other relevant information.

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

8 (1) There has been a material change in circumstances;

9 (2) A parent is willing to provide care for the child;

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

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

15 (f) If the court issues a temporary order of reinstatement  
16 of parental rights:

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

20 (2) The department shall develop a permanent plan for  
21 reunification and shall ensure that transition



1 services are provided to the family, as appropriate;  
2 and

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

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

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

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

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

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



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

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

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

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

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

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

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





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

4           (3)   Entering or visiting the dwelling or residence of any  
5                    protected party or child.

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

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

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

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

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



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

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

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

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

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



1           §   -40   **Court records.**   The court shall keep a record of  
2 all child protective proceedings under this chapter.   Written  
3 reports, photographs, x-rays, or other information that are  
4 submitted to the court may be made available to other  
5 appropriate persons, who are not parties, only upon an order of  
6 the court.   The court may issue this order upon determining that  
7 such access is in the best interests of the child or serves some  
8 other legitimate purpose.

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

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





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

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

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

12 (2) To seek and obtain ordinary medical and dental care,  
13 immunizations, and well-baby and well-child medical  
14 services.

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



1 director of the department. The department shall appoint  
2 members of the child protective review panel, who may include:

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

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

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

20 (d) This section shall not be construed as interfering  
21 with any authority of the department or the courts to remove, to



1 place, or to order any disposition on custody of an abused child  
2 under this chapter."

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

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

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

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

19 "§350- Authorization for color photographs, x-rays, and  
20 radiological or other diagnostic examination. (a) Any health  
21 professional or paraprofessional, physician licensed or



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

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

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



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

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

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

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



1 adopt an individual toward whom the person or persons do not  
 2 sustain the legal relationship of parent and child and for a  
 3 change of the name of the individual. When adoption is the goal  
 4 of a permanent plan recommended by the department of human  
 5 services and ordered pursuant to section [~~587-737~~]       -31, the  
 6 department may petition for adoption on behalf of the proposed  
 7 adoptive parents. The petition shall be in such form and shall  
 8 include such information and exhibits as may be prescribed by  
 9 the family court."

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

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

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

15 (A) A parent who has deserted a child without  
 16 affording means of identification for a period of  
 17 ninety days;

18 (B) A parent who has voluntarily surrendered the care  
 19 and custody of the child to another for a period  
 20 of two years;



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



1 to be incapacitated from giving consent to the  
2 adoption of the child;

3 (H) Any legal guardian or legal custodian of the  
4 child sought to be adopted, other than a parent,  
5 who has failed to respond in writing to a request  
6 for consent for a period of sixty days or who,  
7 after examination of the person's written reasons  
8 for withholding consent, is found by the court to  
9 be withholding the person's consent unreasonably;

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





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

4 (K) A parent whose parental and custodial duties and  
5 rights have been divested by an award of  
6 permanent custody pursuant to section [~~587-73.~~]  
7 -33;

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

12 (A) The petitioner is the stepfather of the child and  
13 the child has lived with the child's legal mother  
14 and the petitioning stepfather for a period of at  
15 least one year;

16 (B) The father is a concerned father as provided by  
17 subsection (a)(5), herein, and has not filed a  
18 petition to adopt the child, or the petition to  
19 adopt the child filed by the father has been  
20 denied; or



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

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

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

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

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



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

7           SECTION 7. Effective upon approval of this Act, sections  
 8 321-342, 321-471, 325-101, 346-16, 346-65, 350-2, 350-3,  
 9 560:5-205, 560:5-206, 571-2, 571-11, 571-41, 577-28, 586-10.5,  
 10 626-1, Rule 505.5, and 706-606.3, Hawaii Revised Statutes, are  
 11 amended by replacing the reference to chapter 587, Hawaii  
 12 Revised Statutes, with the reference to the new replacement  
 13 chapter in section 1 of this Act.

14           SECTION 8. Chapter 587, Hawaii Revised Statutes, is  
 15 repealed.

16           SECTION 9. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18           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 HD2)

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

