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# A BILL FOR AN ACT

RELATING TO CHILD PROTECTIVE ACT.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 CHILD PROTECTIVE ACT

6 PART I. SHORT TITLE, PURPOSE, CONSTRUCTION,  
7 AND GUIDING PRINCIPLES

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

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



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

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

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



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

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

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



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

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

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

7           (2)   Have adequate:

8                   (A)   Food that is nutritious and healthy;

9                   (B)   Clothing;

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

12                  (D)   Mental health services;

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

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

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



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



1 case management programs that are available to all  
2 children in foster care who are twelve years of age or  
3 older and their resource families.

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

9 **PART II. DEFINITIONS**

10 § -4 **Definitions.** When used in this chapter, unless the  
11 context otherwise requires:

12 "Abandoned infant" means a child who is three years old or  
13 younger and:

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

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



1 (3) Whose presumed or alleged father has failed to assert  
2 a claim or interest as a parent for sixty days or  
3 more, if he has knowledge of the child's birth and  
4 that he is the child's presumed or alleged father; and  
5 whose mother also falls under the provisions of  
6 paragraph (1) or (2).

7 "Adjudication" means a finding by a court that is supported  
8 by a preponderance of the evidence that the child has been  
9 harmed or threatened with harm.

10 "Aggravated circumstances" means that:

- 11 (1) The parent has murdered, or has solicited, aided,  
12 abetted, attempted, or conspired to commit the murder  
13 of, another child of the parent;
- 14 (2) The parent has committed a felony assault that results  
15 in serious bodily injury to the child or another child  
16 of the parent;
- 17 (3) The parent's rights regarding a sibling of the child  
18 have been judicially terminated or divested;
- 19 (4) The parent has tortured the child; or
- 20 (5) The child is an abandoned infant.



1 "Authorized agency" means the department, other public  
2 agency, or a person or organization that is licensed by the  
3 department or approved by the court to receive children for  
4 control, care, maintenance, or placement.

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

11 "Case plan" means the combined safe family home factors and  
12 the service plan or permanent plan.

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

15 "Clear and convincing evidence" means the degree of proof  
16 that will produce in the mind of the trier of fact a firm belief  
17 or conviction that the fact sought to be proved is true. This  
18 measure falls between the preponderance standard of typical  
19 civil cases and the beyond-a-reasonable-doubt standard of  
20 criminal cases.





1 "Court" means one of the family courts established pursuant  
2 to chapter 571.

3 "Court-appointed special advocate" means a responsible  
4 adult volunteer who has been trained and is supervised by a  
5 court-appointed special advocate program recognized by the  
6 court, and who, when appointed by the court, serves as an  
7 officer of the court in the capacity of a guardian ad litem.

8 "Criminal history record check" means an examination of an  
9 individual's criminal history through fingerprint analysis or  
10 name inquiry into state and national criminal history records  
11 and files, including, but not limited to, the files of the  
12 Hawaii criminal justice data center.

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

16 "Default" means the status found by the court when a party  
17 who has been properly served or notified of a scheduled hearing  
18 fails to appear at court for the hearing or fails to plead or  
19 otherwise defend, thereby allowing the court to proceed without  
20 the absent party.



1 "Department" means the department of human services and its  
2 authorized representatives.

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

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

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

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

16 "Family home" means the home of the child's legal  
17 custodian.

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



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

5 "Foster custodian" means the authorized agency that has  
6 foster custody of the child.

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

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

17 "Hanai relative" means an adult, other than a blood  
18 relative, who the court or department has found by credible  
19 evidence to perform or to have performed a substantial role in  
20 the upbringing or material support of a child, as attested to by



1 the written or oral designation of the child or of another  
2 person, including other relatives of the child.

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

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

7 (A) Substantial or multiple skin bruising;

8 (B) Substantial external or internal bleeding;

9 (C) Serious burn;

10 (D) Poisoning;

11 (E) Fracture of any bone;

12 (F) Subdural hematoma; or

13 (G) Death; and

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

19 (2) The child has been the victim of sexual contact or  
20 conduct, including, but not limited to rape; sodomy;  
21 molestation; sexual fondling; incest; prostitution;



1           obscene or pornographic photographing, filming, or  
2           depiction; or other similar forms of sexual  
3           exploitation;

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

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

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

15          "Imminent harm" means that without intervention, there is a  
16          substantial present danger that a child will be harmed or will  
17          not be safe.

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



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

5 Incapacity shall not be solely based on a person's status  
6 as a minor.

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

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

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



1 acts or conditions that brought the child within the scope of  
2 this chapter; and any other person the court determines should  
3 be made a party to the proceedings.

4 "Permanent custody" means the legal status created after  
5 the termination of parental rights.

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

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

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



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

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

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

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

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

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





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

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

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

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

14 **PART III. JURISDICTION AND VENUE**

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



1 been harmed, or is subject to threatened harm by the acts or  
2 omissions of the child's family, shall be based upon these facts  
3 and circumstances.

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

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

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

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

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

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



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



- 1 (A) Birthplace and family of origin;
- 2 (B) Manner in which they were parented;
- 3 (C) Marital and relationship history; and
- 4 (D) Prior involvement in services;
- 5 (5) Results of psychiatric, psychological, or
- 6 developmental evaluations of the child, the alleged
- 7 perpetrators, and other family members who are
- 8 parties;
- 9 (6) Whether there is a history of abusive or assaultive
- 10 conduct by the child's family members and others who
- 11 have access to the family home;
- 12 (7) Whether there is a history of substance abuse by the
- 13 child's family and others who have access to the
- 14 family home;
- 15 (8) Whether any alleged perpetrator has completed services
- 16 in relation to any history identified in paragraphs
- 17 (6) and (7), and acknowledged and accepted
- 18 responsibility for the harm to the child;
- 19 (9) Whether any non-perpetrator who resides in the family
- 20 home has demonstrated an ability to protect the child



- 1 from further harm and to ensure that any current  
2 protective orders are enforced;
- 3 (10) Whether there is a support system available to the  
4 child's family, including adoptive and hanai  
5 relatives, friends, and faith-based or other community  
6 networks;
- 7 (11) Attempts to locate and involve extended family,  
8 friends, and faith-based or other community networks;
- 9 (12) Whether the child's family has demonstrated an  
10 understanding of and involvement in services that have  
11 been recommended by the department or court-ordered as  
12 necessary to effectuate a safe family home for the  
13 child;
- 14 (13) Whether the child's family has resolved identified  
15 safety issues in the family home within a reasonable  
16 period of time; and
- 17 (14) The department's assessment, which will include the  
18 demonstrated ability of the child's family to provide  
19 a safe family home for the child, and recommendations.
- 20 (b) The court shall consider the likelihood that the  
21 current situation presented in the safe family home factors set



1 forth in subsection (a) will continue in the reasonably  
2 foreseeable future.

3       §   -8   **Protective custody by police officer without court**  
4 **order.** (a) A police officer shall assume protective custody of  
5 a child without a court order and without the consent of the  
6 child's family, if in the discretion of the police officer, the  
7 officer determines that:

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

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

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

16       (4) The child's parent has subjected the child to harm or  
17 threatened harm and the parent is likely to flee with  
18 the child.

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



1 (1) A police officer who assumes protective custody of a  
2 child shall complete transfer of protective custody to  
3 the department by presenting physical custody of the  
4 child to the department; or

5 (2) If the child is or will be admitted to a hospital or  
6 similar institution, the police officer shall  
7 immediately complete the transfer of protective  
8 custody to the department by notifying the department  
9 and receiving an acknowledgment from the hospital or  
10 similar institution that it has been informed that the  
11 child is under the temporary foster custody of the  
12 department.

13 § -9 Temporary foster custody without court order. (a)

14 When the department receives protective custody of a child from  
15 the police, the department shall:

16 (1) Assume temporary foster custody of the child if, in  
17 the discretion of the department, the department  
18 determines that the child is subject to imminent harm  
19 while in the custody of the child's family;



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





1 (b) Upon the request of the department and without regard  
 2 to parental consent, any physician licensed or authorized to  
 3 practice medicine in the State of Hawaii shall perform an  
 4 examination to determine the nature and extent of harm or  
 5 threatened harm to a child under the department's temporary  
 6 foster custody.

7 § -10 **Relatives; foster placement.** (a) The department  
 8 shall provide the child's relative an application to be the  
 9 child's resource family within fifteen days of the relative's  
 10 request to be a foster placement. If the application is  
 11 submitted and denied, the department shall provide the applicant  
 12 with the specific reasons for the denial and an explanation of  
 13 the procedures for an administrative appeal.

14 (b) The department and authorized agencies shall make  
 15 reasonable efforts to identify and notify all relatives of the  
 16 child within thirty days after assuming foster custody of the  
 17 child.

18 § -11 **Investigation; department powers.** At its  
 19 discretion, and in accordance with its procedures and duly  
 20 adopted departmental rules, the department shall investigate a  
 21 report that a child is subject to imminent harm, has been



1 harmed, or is subject to threatened harm. In conducting the  
2 investigation, the department may:

- 3 (1) Enlist the cooperation of appropriate state and  
4 federal law enforcement authorities for assistance.  
5 The law enforcement authorities may conduct an  
6 investigation and if conducted, shall provide to the  
7 department all preliminary findings, which shall  
8 include the results of a criminal history record check  
9 of an alleged perpetrator of harm or threatened harm  
10 to a child;
- 11 (2) Interview the child without the presence or prior  
12 approval of the child's family, and temporarily assume  
13 protective custody of the child for the purpose of  
14 conducting the interview;
- 15 (3) Resolve the matter in an informal fashion that it  
16 deems appropriate under the circumstances;
- 17 (4) Close the matter if the department finds, after an  
18 assessment, that the child is residing with a  
19 caregiver who is willing and able to meet the child's  
20 needs and provide a safe and appropriate placement for  
21 the child;



- 1 (5) Immediately enter into a service plan:
- 2 (A) To safely maintain the child in the family home;
- 3 or
- 4 (B) To place the child in voluntary foster care
- 5 pursuant to a written agreement with the child's
- 6 parent.

7 If the child is placed in voluntary foster care and

8 the family does not successfully complete the service

9 plan within three months after the date on which the

10 department assumed physical custody of the child, the

11 department shall file a petition. The department is

12 not required to file a petition if the parents agree

13 to adoption or legal guardianship of the child and the

14 child's safety is ensured, so long as the adoption or

15 legal guardianship hearing is conducted within six

16 months of the date on which the department assumed

17 physical custody of the child;

- 18 (6) Assume temporary foster custody of the child and file
- 19 a petition with the court within three days, excluding
- 20 Saturdays, Sundays, and holidays, after the date on
- 21 which the department assumes temporary foster custody



1 of the child, with placement preference being given to  
2 an approved relative; or  
3 (7) File a petition or refer the matter to another  
4 appropriate authorized agency, which may file a  
5 petition under this chapter.

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

7 **§ -12 Petition.** (a) A petition invoking the  
8 jurisdiction of the court under this chapter shall:

- 9 (1) Be verified and set forth:
- 10 (A) A concise statement of the basis for each  
11 allegation of harm or threatened harm that brings  
12 a child within this chapter;
  - 13 (B) The name, birth date, gender, and residential  
14 address of the child;
  - 15 (C) The names and last known residential addresses of  
16 the parents and other persons who are to be made  
17 parties to the proceedings under this chapter;  
18 and
  - 19 (D) Whether the child is under the temporary foster  
20 custody or foster custody of the department and,



1                   if so, the date on which the department assumed  
2                   physical custody of the child;

3           (2) State whether any of the facts required by this  
4           section cannot be determined prior to filing the  
5           petition. The petition may be based on information  
6           and belief, but shall state the basis thereof; and

7           (3) Include the warning that, if the petition is granted,  
8           parental rights may be terminated unless the family is  
9           willing and able to provide the child with a safe  
10           family home within a reasonable period of time, with  
11           the assistance of a service plan.

12           (b) If the court determines that the child is subject to  
13           imminent harm while in the custody of the child's family, the  
14           court shall order that a police officer immediately take the  
15           child into protective custody and that the department  
16           immediately assume temporary foster custody of the child.

17           (c) The court shall conduct:

18           (1) A temporary foster custody hearing, as described in  
19           section -26, within two days after the petition is  
20           filed, excluding Saturdays, Sundays, and holidays; or



1 (2) A return hearing, as described in section -28,  
2 within fifteen days after the petition is filed or the  
3 date a decision is announced by the court during a  
4 temporary foster custody hearing, if the petition  
5 requests foster custody or family supervision of the  
6 child.

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

11 § -13 **Summons and service of summons.** (a) After a  
12 petition has been filed, the court shall issue a summons  
13 requiring the presence of the parents and other persons who are  
14 to be parties to the proceeding, as follows:

15 (1) A copy of the petition shall be attached to each  
16 summons;

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

19 (3) The summons shall state: "YOUR PARENTAL AND CUSTODIAL  
20 DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO  
21 ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE



1           TERMINATED IF YOU FAIL TO APPEAR ON THE DATE SET FORTH  
2           IN THIS SUMMONS."

3           (b) The court may issue a summons to a parent or any  
4 person having physical custody of the child to bring the child  
5 before the court at the temporary foster custody hearing or the  
6 return hearing.

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

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

16           (2) If the court finds that it is impracticable to  
17 personally serve the summons, the court may order  
18 service by registered or certified mail addressed to  
19 the party's last known address, or by publication, or  
20 both. When publication is used, the summons shall be  
21 published once a week for four consecutive weeks in a



1 newspaper of general circulation in the county in  
2 which the party was last known to have resided. In  
3 the order for publication of the summons, the court  
4 shall designate the publishing newspaper and shall set  
5 the date of the last publication at no less than  
6 twenty-one days before the return date. Such  
7 publication shall have the same force and effect as  
8 personal service of the summons.

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

15 (e) The court may issue a warrant for the appearance of a  
16 person or child, as well as issue an order pursuant to section  
17 -16(b), if:

- 18 (1) The summons cannot be personally served;
- 19 (2) The person served fails to obey the summons;
- 20 (3) The court finds that service will not be effective; or





1           (4) The court finds that the best interests of the child  
2           require that the child be brought into the custody of  
3           the court.

4           § -14 **Notice of hearings; participation of resource**

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

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

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

20           (d) The child's current resource family is entitled to  
21 participate in the proceedings to provide information to the



1 court, either in person or in writing, concerning the current  
2 status of the child in their care.

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

10 (1) A reasonable effort has been made to effect personal  
11 service;

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

15 (3) The child is represented by a guardian ad litem or  
16 counsel.

17 § -15 **Duties, rights, and liability of authorized**

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



- 1           (1) To monitor and supervise the child and the child's  
2           family members who are parties. Monitoring and  
3           supervision shall include, but not be limited to,  
4           reasonable access to each of the family members who  
5           are parties and reasonable access into the child's  
6           family home; and
- 7           (2) To place the child in foster care and thereby assume  
8           temporary foster custody or foster custody of the  
9           child. The authorized agency shall immediately notify  
10          the court when such placement occurs. Upon  
11          notification, the court shall set the case for:
- 12          (A) A temporary foster custody hearing within three  
13          days, excluding Saturdays, Sundays, and holidays;  
14          or
- 15          (B) If jurisdiction has been established, a periodic  
16          review hearing within ten days of the child's  
17          placement.
- 18          The temporary foster custody hearing or the periodic  
19          review hearing may be held at a later date, only if  
20          the court finds it to be in the best interests of the  
21          child.



- 1 (b) Foster custody vests in an authorized agency the  
2 following duties and rights:
- 3 (1) To determine where and with whom the child shall be  
4 placed in foster care; however, the child shall not be  
5 placed in foster care outside the State of Hawaii  
6 without prior order of the court;
- 7 (2) To permit the child to return to the family from which  
8 the child was removed, unless otherwise ordered by the  
9 court. The child's return may occur only if no party  
10 objects to such placement and prior written notice is  
11 given to the court and to all parties stating that  
12 there is no objection of any party to the child's  
13 return. Upon the child's return to the family,  
14 temporary foster custody or foster custody shall be  
15 automatically revoked, and the child and the child's  
16 family members who are parties shall be placed under  
17 temporary family supervision or the family supervision  
18 of the authorized agency;
- 19 (3) To ensure that the child is provided in a timely  
20 manner with adequate food, clothing, shelter,



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



- 1           (7) To provide consent for the child's application for a
- 2           driver's instruction permit, provisional driver's
- 3           license, or driver's license;
- 4           (8) To provide consent to the recording of a statement
- 5           pursuant to section       -21; and
- 6           (9) To provide the court with information concerning the
- 7           child.

8           The court, in its discretion, may vest foster custody of a

9 child in any authorized agency or subsequently authorized

10 agencies, if the court finds that it is in the child's best

11 interests to do so. The rights and duties that are so assumed

12 by an authorized agency shall supersede the rights and duties of

13 any legal or permanent custodian of the child.

14           Unless otherwise provided in this section or as otherwise

15 ordered by the court, a child's family shall retain the

16 following rights and responsibilities after a transfer of

17 temporary foster custody or foster custody, to the extent that

18 the family possessed the rights and responsibilities prior to

19 the transfer of temporary foster custody or foster custody: the

20 right of reasonable supervised or unsupervised visitation at the

21 discretion of the authorized agency; the right to consent to



1 adoption, to marriage, or to major medical or psychological care  
2 or treatment; and the continuing responsibility to support the  
3 child, including, but not limited to, repayment for the cost of  
4 any care, treatment, or other service provided by the authorized  
5 agency or the court for the child's benefit.

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

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

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

13 (3) To ensure that the child is timely provided with  
14 adequate food, clothing, shelter, psychological care,  
15 physical care, medical care, supervision, and other  
16 necessities;

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

19 (5) To provide all consents that are required for the  
20 child's physical or psychological health or welfare,  
21 including, but not limited to, medical, dental,



1 psychiatric, psychological, educational, employment,  
2 recreational, and social needs;

3 (6) To provide consent for the child's application for a  
4 driver's instruction permit, provisional driver's  
5 license, or driver's license;

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

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

15 (d) An authorized agency shall not be liable to third  
16 party persons for the acts of the child solely by reason of the  
17 agency's status as foster custodian or permanent custodian of  
18 the child.

19 § -16 **Guardian ad litem.** (a) The court shall appoint a  
20 guardian ad litem for a child to serve throughout the pendency  
21 of the child protective proceedings under this chapter.





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

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

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

8 (B) Consult with counsel; and

9 (C) Assist in preparing the party's case or strategy.

10 (2) If the court orders a professional evaluation, the  
11 party shall be examined by a physician, psychologist,  
12 or other individual appointed by the court who is  
13 qualified to evaluate the party's alleged impairment.

14 (A) Unless otherwise directed by the court, the  
15 examiner shall promptly file a written report  
16 with the court which shall contain:

17 (i) A description of the nature, type, and  
18 extent of the party's specific cognitive and  
19 functional capabilities and limitations;

20 (ii) An evaluation of the party's mental and  
21 physical condition and if appropriate,



- 1 educational potential, adaptive behavior,  
2 and social skills;
- 3 (iii) A prognosis for improvement and a  
4 recommendation as to the appropriate  
5 treatment or habilitation plan; and
- 6 (iv) The dates of any assessments or examinations  
7 upon which the report is based.
- 8 (B) Upon the request of any party or sua sponte, and  
9 after such hearing as the court deems  
10 appropriate, the court may appoint a guardian ad  
11 litem for an adult party only after a  
12 determination, by clear and convincing evidence,  
13 that:
- 14 (i) The party is an incapacitated person; and  
15 (ii) The party's identified needs cannot be met  
16 by less restrictive means, including the use  
17 of appropriate and reasonably available  
18 assistance.
- 19 (c) A guardian ad litem shall, unless otherwise ordered by  
20 the court:
- 21 (1) Have access to the child or incapacitated adult;



- 1           (2) Have the authority to inspect and receive copies of  
2           any records, notes, and electronic recordings  
3           concerning the child or incapacitated adult that are  
4           relevant to the proceedings filed under this chapter.  
5           This authority shall exist even without the consent of  
6           the child, incapacitated adult, or individuals and  
7           authorized agencies that have control of the child or  
8           incapacitated adult;
- 9           (3) Be given notice of all hearings and proceedings  
10           involving the child or incapacitated adult, whether  
11           civil or criminal, including grand juries, and shall  
12           protect the best interests of the child or  
13           incapacitated adult;
- 14           (4) Make face-to-face contact with the child or  
15           incapacitated adult in that child's or incapacitated  
16           adult's family or resource family home at least once  
17           every three months;
- 18           (5) Report to the court and all parties in writing at six  
19           month intervals regarding such guardian ad litem's  
20           activities on behalf of the child or the incapacitated  
21           adult's best interests, and recommend how the court



1 should proceed in the best interests of that child or  
2 incapacitated adult; and

3 (6) Inform the court of the child or incapacitated adult's  
4 opinions and requests. If the child's opinions and  
5 requests differ from those being advocated by the  
6 guardian ad litem, the court shall determine whether  
7 it is in the child's best interests to appoint an  
8 attorney for the child concerning such issues.

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

10 (1) Grant a guardian ad litem only those powers  
11 necessitated by the incapacitated adult's limitations  
12 and demonstrated needs; and

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

16 (e) Unless otherwise ordered by the court, the attorney  
17 for a child or for an incapacitated adult shall take  
18 instructions from the child's or incapacitated adult's guardian  
19 ad litem.

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



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

5       **§ -17 Court-appointed attorneys.** (a) The court shall  
6 appoint an attorney to represent a parent who is indigent based  
7 on court-established guidelines, unless the parent retains, or  
8 waives the right to, an attorney.

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

13       (c) Attorneys who are appointed by the court to represent  
14 indigent parents may be paid by the court, unless the party for  
15 whom counsel is appointed has an independent estate sufficient  
16 to pay such fees and costs. The court may order the appropriate  
17 parties to pay or reimburse the fees and costs of an attorney  
18 appointed for the child.

19       **§ -18 Reports to be submitted by the department and**  
20 **authorized agencies.** (a) Unless otherwise ordered by the



1 court, the department or other authorized agencies shall file  
2 written reports with the court:

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

5 (2) No less than fifteen days before a scheduled return  
6 hearing, periodic review hearing, permanency hearing,  
7 or termination of parental rights hearing; however,  
8 additional information may be submitted to the court  
9 up to the date of the hearing.

10 (b) The reports shall include:

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

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

16 (3) A recommendation documenting the basis for any other  
17 orders, including, but not limited to, protective  
18 orders.

19 (c) The department or other authorized agencies shall  
20 submit to the court any report, in its entirety, pertaining to



1 the child or the child's family that has been prepared by a  
2 child protective services multidisciplinary team or consultant.

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

8 § -19 **Expert testimony by department social worker.** A  
9 person employed by the department as a social worker in the area  
10 of child protective services or child welfare services shall be  
11 presumed to be qualified to testify as an expert in the area of  
12 child protective or child welfare services. Upon reasonable  
13 notice to counsel for the department, any party may request the  
14 court to qualify a specific witness as an expert.

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



1           §   -21   **Admissibility of evidence; testimony by a child.**

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

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

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

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

14           (2) The recording equipment used is capable of producing  
15           an accurate recording, the equipment was operated by a  
16           competent person, and the recording is accurate and  
17           has not been altered; and

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

19          (d) A child may be directed by the court to testify under  
20   circumstances deemed by the court to be in the best interests of  
21   the child and the furtherance of justice. Such circumstances





1 may include an on-the-record interview of the child in chambers,  
2 with only those parties present during the interview as the  
3 court deems to be in the best interests of the child.

4       §   **-22 Unavailability of specified privileges.** The  
5 following privileges shall not be available to exclude evidence  
6 of imminent harm, harm, or threatened harm in any proceeding  
7 under this chapter:

- 8       (1) The physician-patient privilege;
- 9       (2) The psychologist-client privilege;
- 10      (3) The spousal privilege; and
- 11      (4) The victim-counselor privilege.

12       §   **-23 Effect of oral orders.** Orders orally stated by  
13 the court on the record in a proceeding under this chapter shall  
14 have full force and effect from the date of the hearing until  
15 further order of the court. All oral orders shall be reduced to  
16 writing as soon as is practicable.

17       §   **-24 Motions to vacate or modify prior orders.** In  
18 considering a party's motion to vacate or modify prior orders,  
19 the court need not commence a trial or hearing de novo, but  
20 rather, after such further hearing as the court deems to be



1 appropriate, may proceed to enter such orders as are in the best  
2 interests of the child.

3       §   -25   **Conduct of hearing in child protective**

4 **proceedings.** (a) The court shall hear child protective  
5 proceedings without a jury at a hearing separate from those for  
6 adults.

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

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

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

15       §   -26   **Temporary foster custody hearing.** (a) When the  
16 department assumes temporary foster custody of a child and files  
17 a petition pursuant to this chapter, the court shall conduct a  
18 temporary foster custody hearing within two days after the  
19 petition is filed, excluding Saturdays, Sundays, and holidays.  
20 The purpose of a temporary foster custody hearing is to  
21 determine whether a child's safety continues to require



1 protection prior to an adjudicatory determination at a return  
2 hearing.

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

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

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

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



- 1 (A) Before the child was placed in foster care, the  
2 department made reasonable efforts to prevent or  
3 eliminate the need for removing the child from  
4 the child's family home;
- 5 (B) The alleged or potential perpetrator of the  
6 imminent harm, harm, or threatened harm should be  
7 removed from the family home rather than  
8 continuing the child's placement in foster care.  
9 The child's family shall have the burden of  
10 establishing that it is in the child's best  
11 interests to remove the child, rather than the  
12 alleged or potential perpetrator, from the family  
13 home; and
- 14 (C) Every reasonable effort has been or is being made  
15 to place siblings or psychologically-bonded  
16 children together, unless such placement is not  
17 in the children's best interests.
- 18 (d) The court shall conduct a return hearing on the  
19 petition within fifteen days after the temporary foster custody  
20 hearing.
- 21 (e) The court may further order that:

- 1 (1) Any party undergo a physical, developmental,  
2 psychological, or psychiatric evaluation and that a  
3 written or oral report be submitted or communicated to  
4 the court and all parties before the next court  
5 hearing;
- 6 (2) The child's family members who are parties provide the  
7 department or another authorized agency the names and  
8 addresses of other relatives and friends who are  
9 potential visitation supervisors or resource families  
10 for the child;
- 11 (3) The child's family members who are parties be  
12 permitted reasonable supervised or unsupervised  
13 visitation with the child at the discretion of the  
14 child's guardian ad litem, the department, or another  
15 authorized agency;
- 16 (4) The court and the parties view a video or listen to an  
17 audio recording of the child's statements at such time  
18 and in such manner as the court deems appropriate;
- 19 (5) A criminal history record check be conducted by the  
20 department or another authorized agency concerning a



1 party who is an alleged or potential perpetrator of  
2 imminent harm, harm, or threatened harm to the child;

3 (6) A protective order be entered;

4 (7) The department or another authorized agency prepare a  
5 written or oral supplemental report;

6 (8) The child's guardian ad litem visit the child's family  
7 home and resource family home, be present during  
8 supervised visitation, and prepare a written or oral  
9 report that includes specific recommendations  
10 concerning services and assistance to the family; and

11 (9) Any other orders be entered that the court deems  
12 necessary.

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

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



- 1           (1) The specific steps required to ameliorate the safe  
2           family home factors that caused the child harm or to  
3           be threatened with harm. These specific steps shall  
4           include treatment and services that will be provided;  
5           actions completed; specific measurable and behavioral  
6           changes that must be achieved; and responsibilities  
7           assumed;
- 8           (2) Whether ohana conferencing will be conducted for  
9           family finding and family group decision making;
- 10          (3) The respective responsibilities of the child, the  
11          parents, legal guardian or custodian, the department,  
12          other family members, and treatment providers, and a  
13          description and expected outcomes of the services  
14          required to achieve the permanency goal;
- 15          (4) The required frequency and types of contact between  
16          the assigned social worker, the child, and the family;
- 17          (5) The time frames during which services will be  
18          provided, actions must be completed, and  
19          responsibilities must be discharged;
- 20          (6) Notice to the parents that their failure to  
21          substantially achieve the objectives described in the



1 service plan within the time frames established may  
2 result in termination of their parental rights;

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

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

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

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





1 copies to each family member or person who is a party to the  
2 service plan. If a member of a child's family whom the  
3 authorized agency deems to be necessary to the success of the  
4 service plan cannot understand or refuses to agree to the terms,  
5 conditions, and consequences of the service plan, the court  
6 shall conduct a hearing to determine the terms, conditions, and  
7 consequences of a service plan that will ensure a safe home for  
8 the child.

9       §   -28   **Return hearing.** (a) When a petition has been  
10 filed, the court shall conduct a return hearing within fifteen  
11 days of:

12           (1) The filing of the petition; or  
13           (2) The date a decision is announced by the court during a  
14 temporary foster custody hearing.

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

18           (1) Order the method of service of summons that the court  
19 deems to be appropriate, based upon the available  
20 information; and

21           (2) Set a continued return hearing and:



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



- 1           (1) Whether the child's physical or psychological health  
2           or welfare has been harmed or is subject to threatened  
3           harm by the acts or omissions of the child's parents;
- 4           (2) Whether the child should be placed in foster custody  
5           or under family supervision; and
- 6           (3) What services should be provided to the child's  
7           parents.
- 8           (e) If the court finds that the child's physical or  
9           psychological health or welfare has been harmed or is subject to  
10          threatened harm by the acts or omissions of the child's parents,  
11          the court:
- 12          (1) Shall enter a finding that the court has jurisdiction  
13          pursuant to section     -5;
- 14          (2) Shall enter a finding regarding whether, before the  
15          child was placed in foster care, the department made  
16          reasonable efforts to prevent or eliminate the need  
17          for removing the child from the child's family home;
- 18          (3) Shall enter orders:
- 19                (A) That the child be placed in foster custody if the  
20                court finds that the child's remaining in the  
21                family home is contrary to the welfare of the



1 child and the child's parents are not willing and  
2 able to provide a safe family home for the child,  
3 even with the assistance of a service plan; or

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

9 (4) Shall determine whether aggravated circumstances are  
10 present.

11 (A) If aggravated circumstances are present, the  
12 court shall:

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

18 (ii) Order the department to file, within sixty  
19 days after the court's finding that  
20 aggravated circumstances are present, a



1 motion to set the case for a termination of  
2 parental rights hearing.

3 (B) If aggravated circumstances are not present, the  
4 court shall order that the department make  
5 reasonable efforts to reunify the child with the  
6 child's parents and order an appropriate service  
7 plan;

8 (5) Shall order reasonable supervised or unsupervised  
9 visits for the child and the child's family, including  
10 with the child's siblings, unless such visits are  
11 determined to be unsafe or detrimental to the child;

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

19 (7) Shall determine whether each party understands that  
20 unless the family is willing and able to provide the  
21 child with a safe family home, even with the



- 1 assistance of a service plan, within the reasonable  
2 period of time specified in the service plan, their  
3 respective parental and custodial duties and rights  
4 shall be subject to termination;
- 5 (8) Shall determine the child's date of entry into foster  
6 care, as defined in this chapter;
- 7 (9) Shall set a periodic review hearing to be conducted no  
8 later than six months after the date of entry into  
9 foster care and a permanency hearing to be held no  
10 later than twelve months after the date of entry into  
11 foster care;
- 12 (10) Shall set a status conference, as the court deems  
13 appropriate, to be conducted no later than ninety days  
14 after the return hearing; and
- 15 (11) May order that:
- 16 (A) Any party participate in, complete, be liable  
17 for, and make every good faith effort to arrange  
18 payment for such services or treatment as are  
19 authorized by law and that are determined to be  
20 in the child's best interests;



1 (B) The child be examined by a physician, surgeon,  
2 psychiatrist, or psychologist; and  
3 (C) The child receive treatment, including  
4 hospitalization or placement in other suitable  
5 facilities, as is determined to be in the child's  
6 best interests.

7 (f) If the court finds that the child's physical or  
8 psychological health or welfare has not been harmed nor  
9 subjected to threatened harm by the acts or omissions of the  
10 child's parents, the court shall enter an order dismissing the  
11 petition and shall state the grounds for dismissal.

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

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

20 § -30 **Periodic review hearing.** (a) The court shall set  
21 a periodic review hearing to be conducted no later than six



1 months after a child's date of entry into foster care.  
2 Thereafter, the court shall conduct periodic review hearings at  
3 intervals of no longer than six months until the court's  
4 jurisdiction is terminated. The court may set a case for a  
5 periodic review hearing upon the motion of a party at any time,  
6 if the court deems the hearing to be in the best interests of  
7 the child.

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

- 14 (1) Determine whether the child is safe;
- 15 (2) Determine the continued need for and appropriateness  
16 of the out-of-home placement;
- 17 (3) Determine the extent to which each party has complied  
18 with the case plan and the family's progress in making  
19 their home safe for the child;
- 20 (4) Determine the family's progress in resolving the  
21 problems that caused the child harm or to be





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



1           (2) The department has not provided to the family of the  
2           child, consistent with the time period required in the  
3           service plan, such services as the department deems  
4           necessary for the safe return of the child to the  
5           family home.

6           Nothing in this section shall prevent the department from  
7           filing a motion to set a termination of parental rights hearing  
8           if the department determines that the criteria for terminating  
9           parental rights are present.

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

18          (b) The court shall review the status of the case to  
19          determine whether the child is receiving appropriate services  
20          and care, that case plans are being properly implemented, and



1 that activities are directed toward a permanent placement for  
2 the child.

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

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

7 (2) Whether the current placement of the child continues  
8 to be appropriate and in the best interests of the  
9 child or if another in-state or out-of-state placement  
10 should be considered;

11 (3) The court's projected timetable for reunification or,  
12 if the current placement is not expected to be  
13 permanent, placement in an adoptive home, with a legal  
14 guardian, or under the permanent custody of the  
15 department;

16 (4) Whether the department has made reasonable efforts, in  
17 accordance with the safety and well-being of the  
18 child, to:

19 (A) Place siblings who have been removed from the  
20 family home with the same resource family,  
21 adoptive placement, or legal guardians; and



- 1 (B) Provide for frequent visitation or other on-going
- 2 interactions in the case of siblings who are not
- 3 living in the same household;
- 4 (5) The appropriate permanency goal for the child,
- 5 including whether a change in goal is necessary;
- 6 (6) Whether the department has made reasonable efforts to
- 7 finalize the permanency goal that is in effect for the
- 8 child and a summary of those efforts;
- 9 (7) The date by which the permanency goal for the child is
- 10 to be achieved;
- 11 (8) In the case of a child who has attained sixteen years
- 12 of age, the services needed to assist the child with
- 13 the transition from foster care to independent living;
- 14 and
- 15 (9) Consulting with the child in an age-appropriate manner
- 16 about the proposed plan for permanency or transition
- 17 from foster care to independent living;
- 18 (d) At each permanency hearing, the court shall order:
- 19 (1) The child's reunification with a parent(s); or
- 20 (2) The child's continued placement in foster care, where:



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



1                   and presents to the court a compelling reason why  
2                   adoption and legal guardianship are not in the  
3                   best interests of the child.

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

8           (f) A permanency hearing may be held concurrently with a  
9 periodic review hearing.

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

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

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



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

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

7           §   -32   **Permanent plan.**   (a)   The permanent plan shall:

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

11          (2)   Establish a reasonable period of time by which the  
12          adoption or legal guardianship will be finalized;

13          (3)   Document:

14               (A)   If adoption is not the goal, a compelling reason  
15               why legal guardianship or permanent custody is  
16               the most appropriate permanency goal for the  
17               child; or

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



- 1           (4) Establish other related goals, including those  
2           pertaining to the stability of the child's placement;  
3           education; health; therapy; counseling; relationship  
4           with the child's birth family, including visits, if  
5           any; cultural connections; and preparation for  
6           independent living;
- 7           (5) Describe, if a child has reached the age of sixteen,  
8           the services needed to assist the child with the  
9           transition from foster care to independent living; and
- 10          (6) Describe the methods for achieving the goals and  
11          objectives set forth in paragraphs (4) and (5).
- 12          (b) A permanent plan prepared for a periodic review  
13 hearing or a permanency hearing shall describe:
- 14          (1) Progress toward achieving the goal of the plan;
- 15          (2) Proposed revisions to the goal of the plan and the  
16          reasons for the revisions; and
- 17          (3) Proposed revisions to the methods for achieving the  
18          goals of the plan and objectives and the reasons for  
19          the revisions.
- 20          §   **-33 Termination of parental rights hearing.** (a) At a  
21 termination of parental rights hearing, the court shall





1 determine whether there exists clear and convincing evidence  
2 that:

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

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

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

17 (A) Presume that it is in the best interests of the  
18 child to be promptly and permanently placed with  
19 responsible and competent substitute parents and  
20 family in a safe and secure home; and



1 (B) Give greater weight to the presumption that the  
2 permanent plan is in the child's best interests,  
3 the younger the child is upon the child's date of  
4 entry into foster care; and

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

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

14 (1) That the child's parent's parental rights are  
15 terminated;

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

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

20 (4) An appropriate permanent plan;



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



- 1 (8) An order terminating parental rights entered under  
2 this chapter shall not operate to terminate the mutual  
3 rights of inheritance of the child and the child's  
4 family members or any other benefit to which the child  
5 may be entitled, until the child has been adopted;
- 6 (9) The court, in its discretion, may vest permanent  
7 custody of a child in an authorized agency or in  
8 subsequently authorized agencies, as the court deems  
9 to be in the best interests of the child; and
- 10 (10) If the department receives a report that the child has  
11 been harmed or is subject to threatened harm by the  
12 acts or omissions of the permanent custodians of the  
13 child, the department may automatically assume either  
14 family supervision over the child and the child's  
15 permanent custodian or foster custody of the child.  
16 In any event, the department shall immediately notify  
17 the court and the court shall set the case for a  
18 permanency hearing within ten days after the  
19 department receives such a report, unless the court  
20 deems a later date to be in the best interests of the  
21 child.



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

4 (1) The preparation of a plan to achieve permanency for  
5 the child;

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

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

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

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

18 § -34 Reinstatement of parental rights. (a) A child  
19 who is subject to an active proceeding under this chapter, the  
20 child's guardian ad litem, the child's attorney, if any, or the  
21 department may file a motion to reinstate the terminated



1 parental rights of the child's parents in a proceeding under  
2 this chapter, where the following circumstances exist:

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

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

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

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

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

14 (3) The department; and

15 (4) The child's resource family.

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

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



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



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

3 (f) If the court issues a temporary order of reinstatement  
4 of parental rights:

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

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

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

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

18 (h) At a final hearing on the motion to reinstate parental  
19 rights, the court may issue a final order of reinstatement of  
20 parental rights and terminate its jurisdiction if the trial home  
21 placement has been successful. In making its final decision,





1 the court shall determine whether the moving party has proven by  
2 clear and convincing evidence that:

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

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

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

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

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

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

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

17 (i) A proceeding to reinstate parental rights is a  
18 separate action from the proceeding to terminate parental  
19 rights. The granting of the motion to reinstate parental rights  
20 shall not affect the validity of the original termination order.



1           §   **-35 Retention of jurisdiction.** Except as otherwise  
2 provided in this chapter, the court may retain jurisdiction  
3 under this chapter until the full term for which any order  
4 entered expires or until the child attains nineteen years of  
5 age, whichever comes first.

6           §   **-36 Appeal.** An interested party aggrieved by any  
7 order or decree of the court may appeal as provided in section  
8 571-54.

9                               **PART VI. MISCELLANEOUS**

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

15          §   **-38 Protective order.** (a) After a petition has been  
16 filed with the court under this chapter, the court, upon such  
17 hearing as the court deems to be appropriate, may issue a  
18 protective order to restrain any party from contacting,  
19 threatening, or physically abusing any other party or a child,  
20 if the court finds that a protective order is necessary to



1 prevent domestic abuse (as that term and its component terms are  
2 defined in section 586-1) or a recurrence of domestic abuse.

3 (b) The protective order shall enjoin a party to be  
4 restrained from performing any combination of the following  
5 acts:

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

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

11 (3) Entering or visiting the dwelling or residence of any  
12 protected party or child.

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

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

19 (e) The protective order shall be binding not only upon  
20 any party against whom the protective order is directed, but  
21 also upon each such party's officers, agents, servants,



1 employees, attorneys, and any other persons in active concert or  
2 participation with each such party.

3 (f) The court may order that an individual be made a party  
4 for the limited purpose of issuing a protective order against  
5 that individual.

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

8 (h) Any party may provide to appropriate law enforcement  
9 authorities a copy of a protective order issued pursuant to this  
10 section.

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

17 (b) The court may order the police department to serve a  
18 protective order issued pursuant to section -38 upon each  
19 party to be restrained, to accompany a protected party to that  
20 party's dwelling or residence, and to place the protected party  
21 in possession of that party's dwelling or residence.



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

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

13 As set forth in legally adopted departmental rules and  
14 consistent with applicable laws, the department may disclose  
15 information in the court record without order of the court,  
16 unless otherwise ordered by the court.

17 § -41 **Payment for service or treatment provided to a**  
18 **party or for a child's care, support, treatment.** (a) Whenever  
19 a service or treatment is provided to a party, or whenever care,  
20 support, or treatment of a child is provided under this chapter,  
21 the court may order the payment of such expenses by the persons



1 or legal entities who are legally responsible for the same,  
2 after reasonable notice and hearing as the court directs.

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

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

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

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

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



1 submit a report of its findings and recommendations to the  
2 director of the department. The department shall appoint  
3 members of the child protective review panel, who may include,  
4 but are not limited to:

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

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

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



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

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

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

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

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





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

4 "§350- Authorization for color photographs, x-rays, and  
5 radiological or other diagnostic examination. (a) Any child  
6 health professional or paraprofessional, physician licensed or  
7 authorized to practice medicine in this State, registered nurse  
8 or licensed practical nurse, hospital or similar institution's  
9 personnel engaged in the admission, examination, care, or  
10 treatment of patients, medical examiner, coroner, social worker,  
11 or police officer, who has before the person a child who the  
12 person reasonably believes has been harmed, shall make every  
13 good faith effort to take or cause to be taken color photographs  
14 of the areas of trauma visible on the child. If medically  
15 indicated, such person may take or cause to be taken x-rays of  
16 the child or cause a radiological or other diagnostic  
17 examination to be performed on the child.

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



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

4 "§350- Disclosure of records. (a) The department shall  
5 disclose to foster parents and the foster child's principal  
6 treating physician copies of the foster child's complete medical  
7 records in the department's physical custody and relevant social  
8 history within thirty days of foster placement.

9 (b) If a child is active in the child protective service  
10 system, physicians may share with other physicians, orally or in  
11 writing, or both, medical information without parental consent.

12 (c) Any records or information released to a foster  
13 child's foster parents, or the foster child's principal treating  
14 physician pursuant to subsection (a), or any information shared  
15 by one physician with another physician pursuant to subsection  
16 (b), shall remain confidential in accordance with section  
17 350-1.4."

18 SECTION 6. Section 578-1, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§578-1 Who may adopt; jurisdiction; venue. Any proper  
21 adult person, not married, or any person married to the legal



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

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

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



- 1           (1) Persons as to whom consent not required:
- 2           (A) A parent who has deserted a child without
- 3           affording means of identification for a period of
- 4           ninety days;
- 5           (B) A parent who has voluntarily surrendered the care
- 6           and custody of the child to another for a period
- 7           of two years;
- 8           (C) A parent of the child in the custody of another,
- 9           if the parent for a period of at least one year
- 10          has failed to communicate with the child when
- 11          able to do so;
- 12          (D) A parent of a child in the custody of another, if
- 13          the parent for a period of at least one year has
- 14          failed to provide for the care and support of the
- 15          child when able to do so;
- 16          (E) A natural father who was not married to the
- 17          child's mother at the time of the child's
- 18          conception or birth and who does not fall within
- 19          the provisions of subsection (a)(3), (4), or (5);
- 20          (F) A parent whose parental rights have been
- 21          judicially terminated under the provisions of



1 sections 571-61 to 571-63, or under the  
2 provisions of any other state or other law by a  
3 court or other agency having jurisdiction to take  
4 the action;

5 (G) A parent judicially declared mentally ill or  
6 mentally retarded and who is found by the court  
7 to be incapacitated from giving consent to the  
8 adoption of the child;

9 (H) Any legal guardian or legal custodian of the  
10 child sought to be adopted, other than a parent,  
11 who has failed to respond in writing to a request  
12 for consent for a period of sixty days or who,  
13 after examination of the person's written reasons  
14 for withholding consent, is found by the court to  
15 be withholding the person's consent unreasonably;

16 (I) A parent of a child who has been in the custody  
17 of a petitioner under this chapter for a period  
18 of at least one year and who entered the United  
19 States of America as a consequence of  
20 extraordinary circumstances in the child's  
21 country of origin, by reason of which



1 extraordinary circumstances the existence,  
2 identity, or whereabouts of the child's parents  
3 is not reasonably ascertainable or there is no  
4 reasonable means of obtaining suitable evidence  
5 of the child's identity or availability for  
6 adoption;

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

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

13 -33.

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

18 (A) The petitioner is the stepfather of the child and  
19 the child has lived with the child's legal mother  
20 and the petitioning stepfather for a period of at  
21 least one year;



1 (B) The father is a concerned father as provided by  
2 subsection (a)(5), herein, and has not filed a  
3 petition to adopt the child, or the petition to  
4 adopt the child filed by the father has been  
5 denied; or

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

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

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

15 "(c) Whenever possible, a completed form with the required  
16 information on each natural parent shall accompany any document,  
17 to be filed with the family court, which requests the  
18 relinquishment, termination, or divestiture of parental rights,  
19 as provided under sections 571-61 and [~~587-73(b)(3),~~]       -31,  
20 and the petition for adoption under this chapter. If available,  
21 a copy of the hospital or other facility's medical records under



1 subsection (b) shall also accompany the document to be filed in  
2 the family court. This copy shall not be disseminated to the  
3 parties and shall be sealed by the family court pending  
4 transmittal to the department of health."

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

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

12 SECTION 9. Effective upon approval of this Act, sections  
13 321-342, 321-471, 325-101, 346-16, 346-65, 350-2, 350-3,  
14 560:5-205, 560:5-206, 571-2, 571-11, 571-41, 577-28, 586-10.5,  
15 626-1, Rule 505.5, and 706-606.3, Hawaii Revised Statutes, are  
16 amended by replacing the reference to chapter 587, Hawaii  
17 Revised Statutes, with the reference to the new replacement  
18 chapter in section 1 of this Act.

19 SECTION 10. Chapter 587, Hawaii Revised Statutes, is  
20 repealed.





1 SECTION 11. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 12. This Act shall take effect on July 1, 2050.

4



**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. (SD2)

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

