

---

---

**A BILL FOR AN ACT**

RELATING TO CHILD PROTECTIVE ACT COURT PROCEEDINGS.

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

1           SECTION 1. During the 2010 regular session, the  
2 legislature passed Senate Bill 2716, which was enacted as Act  
3 135, Session Laws of Hawaii 2010, and codified as chapter 587A,  
4 Child Protective Act, Hawaii Revised Statutes. Act 135 was a  
5 comprehensive update of chapter 587, the former Child Protective  
6 Act, Hawaii Revised Statutes, which was repealed. The  
7 provisions of Act 135 ensure the State's compliance with federal  
8 Title IV-E requirements so that Hawaii remains eligible for  
9 approximately \$40,000,000 in annual federal funding. Subsequent  
10 to the enactment of chapter 587A, it has become necessary to  
11 clarify wording in the statute to further ensure consistency in  
12 practice and compliance with federal requirements.

13           SECTION 2. Section 587A-5, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           " ~~[+]~~ §587A-5 ~~[+]~~ **Jurisdiction.** Pursuant to section 571-  
16 11(9), the court shall have exclusive original jurisdiction in a  
17 child protective proceeding ~~[concerning]~~           :

1        (1) Concerning any child who is or was found within the  
2                    state at the time specified facts and circumstances  
3                    occurred, are discovered, or are reported to the  
4                    department. These facts and circumstances constitute  
5                    the basis for the court's finding that the child's  
6                    physical or psychological health or welfare is subject  
7                    to imminent harm, has been harmed, or is subject to  
8                    threatened harm by the acts or omissions of the  
9                    child's family[-]; or

10        (2) Any prior proceeding under chapter 587, the former  
11                    Child Protective Act."

12        SECTION 3. Section 587A-27, Hawaii Revised Statutes, is  
13        amended by amending subsection (a) to read as follows:

14        "(a) The service plan shall provide:

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

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

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

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

10 SECTION 4. Section 587A-28, Hawaii Revised Statutes, is  
11 amended by amending subsection (e) to read as follows:

12 "(e) If the court finds that the child's physical or  
13 psychological health or welfare has been harmed or is subject to  
14 threatened harm by the acts or omissions of the child's family,  
15 the court:

16 (1) Shall enter a finding that the court has jurisdiction  
17 pursuant to section 587A-5;

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

22 (3) Shall enter orders:

- 1           (A) That the child be placed in foster custody if the  
2           court finds that the child's remaining in the  
3           family home is contrary to the welfare of the  
4           child and the child's parents are not willing and  
5           able to provide a safe family home for the child,  
6           even with the assistance of a service plan; or  
7           (B) That the child be placed in family supervision if  
8           the court finds that the child's parents are  
9           willing and able to provide the child with a safe  
10           family home with the assistance of a service  
11           plan;
- 12       (4) Shall determine whether aggravated circumstances are  
13       present.
- 14       (A) If aggravated circumstances are present, the  
15       court shall:
- 16           (i) Conduct a permanency hearing within thirty  
17           days, and the department shall not be  
18           required to provide the child's parents with  
19           an interim service plan or interim  
20           visitation; and  
21           (ii) Order the department to file, within sixty  
22           days after the court's finding that

H.B. NO. 1064

1           aggravated circumstances are present, a  
2           motion to [~~set the matter for a termination~~  
3           ~~of parental rights hearing.~~] terminate  
4           parental rights unless the department has  
5           documented in the safe family home factors  
6           or other written report submitted to the  
7           court a compelling reason why it is not in  
8           the best interest of the child to file a  
9           motion.

10           (B) If aggravated circumstances are not present [7] or  
11           there is a compelling reason why it is not in the  
12           best interest of the child to file a motion to  
13           terminate parental rights, the court shall order  
14           that the department make reasonable efforts to  
15           reunify the child with the child's parents and  
16           order an appropriate service plan;

17           (5) Shall order reasonable supervised or unsupervised  
18           visits for the child and the child's family, including  
19           with the child's siblings, unless such visits are  
20           determined to be unsafe or detrimental to, and not in  
21           the best interests of, the child;

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

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

4           (11) May order that:

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

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

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

16           SECTION 5. Section 587A-30, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           " [†] §587A-30 [†] **Periodic review hearing.** (a) The court  
19 shall set a periodic review hearing to be conducted no later  
20 than six months after a child's date of entry into foster care.  
21 Thereafter, the court shall conduct periodic review hearings at  
22 intervals of no longer than six months until the court's



1 jurisdiction is terminated[-] unless the child is in the  
2 permanent custody of the department or an authorized agency. If  
3 the child is in the permanent custody of the department or an  
4 authorized agency, the court shall conduct a permanency hearing  
5 at intervals of no longer than six months until the court's  
6 jurisdiction is terminated. The court may set a case for a  
7 periodic review hearing upon the motion of a party at any time,  
8 if the court deems the hearing to be in the best interests of  
9 the child.

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

16 (1) Determine whether the child is safe[-] and enter  
17 orders that:

18 (A) The child be placed in foster custody if the  
19 court finds that the child's remaining in the  
20 family home is contrary to the welfare of the  
21 child and the child's parents are not willing and

H.B. NO. 1064

- 1           able to provide a safe family home for the child,  
2           even with the assistance of a service plan;  
3        (B) The child be placed in family supervision if the  
4           court finds that the child's parents are willing  
5           and able to provide the child with a safe family  
6           home with the assistance of a service plan; or  
7        (C) Terminate jurisdiction if the court finds that  
8           the child's parents are willing and able to  
9           provide the child with a safe family home without  
10          the assistance of a service plan;  
11        (2) Determine the continued need for and appropriateness  
12           of the out-of-home placement;  
13        (3) Determine the extent to which each party has complied  
14           with the case plan and the family's progress in making  
15           their home safe for the child;  
16        (4) Determine the family's progress in resolving the  
17           problems that caused the child harm or to be  
18           threatened with harm and, if applicable, the necessity  
19           for continued out-of-home placement of the child;  
20        (5) Project a likely date for:  
21           (A) The child's return to a safe family home; or

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

3 (i) Adoption;

4 (ii) Legal guardianship; or

5 (iii) Other permanent out-of-home placement;

6 (6) Evaluate visitation arrangements; and

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

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

15 (1) The department has documented in the safe family home  
16 factors or other written report submitted to the court  
17 a compelling reason why it is not in the best interest  
18 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           (d) Nothing in this section shall prevent the department  
4           from filing a motion to [~~set the matter for a termination of~~  
5           ~~parental rights hearing~~] terminate parental rights if the  
6           department determines that the criteria for terminating parental  
7           rights are present."

8           SECTION 6. Section 587A-31, Hawaii Revised Statutes, is  
9           amended to read as follows:

10          " [†] §587A-31 [†] **Permanency hearing.** (a) A permanency  
11          hearing shall be conducted within twelve months of the child's  
12          date of entry into foster care or within thirty days of a  
13          judicial determination that the child is an abandoned infant or  
14          that 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[-] or an authorized agency or  
18          every six months thereafter if the child remains in the  
19          permanent custody of the department or an authorized agency.

20          (b) The court shall review the status of the case to  
21          determine whether the child is receiving appropriate services  
22          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 [7] or an authorized agency;

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

H.B. NO. 1064

- 1 (B) Provide for frequent visitation or other on-going  
2 interactions with siblings who are not living in  
3 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 in effect for the child  
8 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) Consultations with the child in an age-appropriate  
16 manner about the proposed plan for permanency or  
17 transition 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 or parents;  
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; and
- 4           (B) The safety and health of the child can be  
5           adequately safeguarded; or
- 6       (3) A permanent plan with a goal of:
- 7           (A) Placing the child for adoption and when the  
8           department will file a motion to set the matter  
9           for the termination [H]of[H] parental rights;
- 10          (B) Placing the child for legal guardianship if the  
11          department documents and presents to the court a  
12          compelling reason why termination of parental  
13          rights and adoption are not in the best interests  
14          of the child; or
- 15          (C) Awarding permanent custody to the department or  
16          an authorized agency, if the department documents  
17          and presents to the court a compelling reason why  
18          adoption and legal guardianship are not in the  
19          best interests of the child.
- 20       (e) At each permanency hearing where a permanent plan is  
21 ordered, the court shall make appropriate orders to ensure

1 timely implementation of the permanent plan and to ensure that  
2 the plan is accomplished within a specified period of time.

3 (f) A permanency hearing may be held concurrently with a  
4 periodic review hearing.

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

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

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

21 (h) Nothing in this section shall prevent the department  
22 from filing a motion to [~~set the matter for a termination of~~



1 ~~parental rights hearing]~~ terminate parental rights if the  
2 department determines that the criteria for terminating parental  
3 rights are present."

4 SECTION 7. Section 587A-33, Hawaii Revised Statutes, is  
5 amended by amending subsection (i) to read as follows:

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

12 SECTION 8. Section 587A-34, Hawaii Revised Statutes, is  
13 amended by amending subsection (e) to read as follows:

14 "(e) At a preliminary hearing on the motion, the court  
15 shall continue the prior award of permanent custody and may  
16 order a trial home placement and a temporary reinstatement of  
17 parental rights upon finding that:

- 18 (1) There has been a material change in circumstances;  
19 (2) A parent is willing to provide care for the child;  
20 (3) A parent is able to provide a safe family home or the  
21 home can be made safe with the assistance of services;  
22 and

H.B. NO. 1064

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

3           SECTION 9. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 10. This Act shall take effect upon its approval.

6  
7   INTRODUCED BY:

Calvin H. Ay

8   BY REQUEST

JAN 24 2011

**Report Title:**

Child Protective Act Hearings

**Description:**

To ensure that child protective act hearings in chapter 587A, Hawaii Revised Statutes, are consistent with federal Title IV-E provisions.

JUSTIFICATION SHEET

DEPARTMENT: Human Services.

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

PURPOSE: To ensure state compliance with federal Title IV-E State Plan requirements relating to federally mandated child protective proceedings.

MEANS: Amend sections 587A-5, 587A-27(a), 587A-28(e), 587A-30, 587-31, 587A-33(i), and 587A-34(e), Hawaii Revised Statutes.

JUSTIFICATION: This legislation is necessary to ensure that Hawaii's laws relating to child protective proceedings is consistent with federal Title IV-E provisions.

The 2010 Hawaii State Legislature passed S.B. 2716, S.D. 2, H.D. 2, C.D. 1, which was enacted as Act 135, Session Laws of Hawaii 2010, and codified as chapter 587A, Child Protective Act, Hawaii Revised Statutes. Act 135 was a comprehensive update of chapter 587, the former Child Protective Act, Hawaii Revised Statutes, which was repealed. The provisions of Act 135 ensured the State's compliance with federal Title IV-E requirements so that Hawaii remains eligible for approximately \$40,000,000 in annual federal funding.

However, subsequent to the enactment of the statute, it was discovered that some of the language in the statute is not clear or consistent with federal requirements.

Chapter 587A is proposed to be amended to include the proper language to ensure that federal Title IV-E requirements are met. The statutory changes being proposed are in collaboration with the Department of the Attorney General and the Judiciary.

Impact on the public: There will be a positive impact on the public. Not losing federal Title IV-E funds will preserve vital funding for the State's child protective services program. The revised sections will incorporate all necessary State and Federal requirements that have been revised to be more user-friendly and easier to understand.

Impact on the department and other agencies: There will minimal impact on the department and other agencies.

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