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# 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 No. 2716, which was enacted as  
3 Act 135, Session Laws of Hawaii 2010, and codified as chapter  
4 587A, Hawaii Revised Statutes, the Child Protective Act. Act  
5 135 was a comprehensive update of chapter 587, Hawaii Revised  
6 Statutes, the former Child Protective Act, which was repealed.  
7 The provisions of Act 135 ensured the State's compliance with  
8 federal Title IV-E requirements so that Hawaii remains eligible  
9 for approximately \$40,000,000 in annual federal funding.  
10 Subsequent to the enactment of chapter 587A, it has become  
11 necessary to clarify wording in the law to further ensure  
12 consistency in practice and compliance with federal  
13 requirements.

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

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



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

10       (2) Any prior proceeding under chapter 587."

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

13       "(a) The service plan shall provide:

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



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

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

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

21           (6) Shall order each of the child's birth parents to  
22           complete the medical information forms and release the



1 medical information required under section 578-14.5,  
2 to the department. If the child's birth parents  
3 refuse to complete the forms or to release the  
4 information, the court may order the release of the  
5 information over the parents' objections;

6 (7) Shall determine whether each party understands that  
7 unless the family is willing and able to provide the  
8 child with a safe family home, even with the  
9 assistance of a service plan, within the reasonable  
10 period of time specified in the service plan, their  
11 respective parental and custodial duties and rights  
12 shall be subject to termination;

13 (8) Shall determine the child's date of entry into foster  
14 care as defined in this chapter;

15 (9) Shall set a periodic review hearing to be conducted no  
16 later than six months after the date of entry into  
17 foster care and a permanency hearing to be held no  
18 later than twelve months after the date of entry into  
19 foster care;

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



1 (11) May order that:

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

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

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

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

15 "[~~+~~]**§587A-30**[~~+~~] **Periodic review hearing.** (a) The court  
16 shall set a periodic review hearing to be conducted no later  
17 than six months after a child's date of entry into foster care.  
18 Thereafter, the court shall conduct periodic review hearings at  
19 intervals of no longer than six months until the court's  
20 jurisdiction is terminated[~~-~~], unless the child is in the  
21 permanent custody of the department or an authorized agency. If  
22 the child is in the permanent custody of the department or an





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

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

13 (1) Determine whether the child is safe[+] and enter an  
14 order that:

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

21 (B) The child be placed in family supervision if the  
22 court finds that the child's parents are willing



1                   and able to provide the child with a safe family  
2                   home with the assistance of a service plan; or  
3                   (C) Terminates jurisdiction if the court finds that  
4                   the child's parents are willing and able to  
5                   provide the child with a safe family home without  
6                   the assistance of a service plan;

7                   (2) Determine the continued need for and appropriateness  
8                   of the out-of-home placement;

9                   (3) Determine the extent to which each party has complied  
10                   with the case plan and the family's progress in making  
11                   their home safe for the child;

12                   (4) Determine the family's progress in resolving the  
13                   problems that caused the child harm or to be  
14                   threatened with harm and, if applicable, the necessity  
15                   for continued out-of-home placement of the child;

16                   (5) Project a likely date for:

17                   (A) The child's return to a safe family home; or

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

20                   (i) Adoption;

21                   (ii) Legal guardianship; or

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



1 (6) Evaluate visitation arrangements; and

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

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

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

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

19 (d) Nothing in this section shall prevent the department  
20 from filing a motion to [~~set a termination of parental rights~~  
21 ~~hearing~~] terminate parental rights if the department determines  
22 that the criteria for terminating parental rights are present."



1 SECTION 6. Section 587A-31, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending its title and subsection (a) to read:

4 "~~§~~**587A-31** **Permanency hearing.** (a) A permanency  
5 hearing shall be conducted within twelve months of the child's  
6 date of entry into foster care or within thirty days of a  
7 judicial determination that the child is an abandoned infant or  
8 that aggravated circumstances are present. A permanency hearing  
9 shall be conducted at least every twelve months thereafter for  
10 as long as the child remains in foster care under the placement  
11 responsibility of the department[-] or an authorized agency or  
12 every six months thereafter if the child remains in the  
13 permanent custody of the department or an authorized agency."

14 2. By amending subsections (c) and (d) to read:

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

- 17 (1) The extent to which each party has complied with the  
18 service plan and progressed in making the home safe;
- 19 (2) Whether the current placement of the child continues  
20 to be appropriate and in the best interests of the  
21 child or if another in-state or out-of-state placement  
22 should be considered;



- 1           (3) The court's projected timetable for reunification or,  
2                    if the current placement is not expected to be  
3                    permanent, placement in an adoptive home, with a legal  
4                    guardian, or under the permanent custody of the  
5                    department[+] or an authorized agency;
- 6           (4) Whether the department has made reasonable efforts, in  
7                    accordance with the safety and well-being of the  
8                    child, to:
- 9                    (A) Place siblings who have been removed from the  
10                        family home with the same resource family,  
11                        adoptive placement, or legal guardians; and
- 12                    (B) Provide for frequent visitation or other on-going  
13                        interactions with siblings who are not living in  
14                        the same household;
- 15           (5) The appropriate permanency goal for the child,  
16                    including whether a change in goal is necessary;
- 17           (6) Whether the department has made reasonable efforts to  
18                    finalize the permanency goal in effect for the child  
19                    and a summary of those efforts;
- 20           (7) The date by which the permanency goal for the child is  
21                    to be achieved;



- 1 (8) In the case of a child who has attained sixteen years  
2 of age, the services needed to assist the child with  
3 the transition from foster care to independent living;  
4 and
- 5 (9) Consultations with the child in an age-appropriate  
6 manner about the proposed plan for permanency or  
7 transition from foster care to independent living.
- 8 (d) At each permanency hearing, the court shall order:
- 9 (1) The child's reunification with a parent or parents;
- 10 (2) The child's continued placement in foster care, where:
- 11 (A) Reunification is expected to occur within a time  
12 frame that is consistent with the developmental  
13 needs of the child; and
- 14 (B) The safety and health of the child can be  
15 adequately safeguarded; or
- 16 (3) A permanent plan with a goal of:
- 17 (A) Placing the child for adoption and when the  
18 department will file a motion to set the matter  
19 for the termination [+]of[+] parental rights;
- 20 (B) Placing the child for legal guardianship if the  
21 department documents and presents to the court a  
22 compelling reason why termination of parental



1 rights and adoption are not in the best interests  
2 of the child; or

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

8 3. By amending subsections (g) and (h) to read:

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

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

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



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

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

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

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

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

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

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

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





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

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

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

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



**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. (HB1064 HD1)

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

