

S.B. NO. 1291

JAN 26 2011

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6 Act, Hawaii Revised Statutes, which was repealed.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 " ~~[H]~~ §587A-5 ~~[H]~~ **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

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 "[~~f~~] §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

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 [?] 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

- 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 [+]of[+] 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

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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: Q.S.T.L.

8

BY REQUEST

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.