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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 S.B. No. 2716, C.D. 1, which was enacted as  
3 Act 135, Session Laws of Hawaii 2010, and codified as the Child  
4 Protective Act, chapter 587A, Hawaii Revised Statutes. Act 135  
5 was a comprehensive update of the former Child Protective Act,  
6 chapter 587, Hawaii Revised Statutes, which was repealed by Act  
7 135. The provisions of Act 135 ensure the State's compliance  
8 with federal Title IV-E requirements so that Hawaii remains  
9 eligible for approximately \$40,000,000 in annual federal  
10 funding. Subsequent to the enactment of chapter 587A, it has  
11 become necessary to clarify wording in the statute to further  
12 ensure 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  
17 571-11(9), the court shall have exclusive original jurisdiction  
18 ~~[in a child protective proceeding concerning]:~~



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

11        (2) In any prior child protective proceeding under chapter  
12                587, the former Child Protective Act."

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

15        "(a) The service plan shall provide:

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

15 (A) That 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) That the child be placed in family supervision if  
22 the court finds that the child's parents are



1           willing and able to provide the child with a safe  
2           family home with the assistance of a service  
3           plan; or

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

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

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

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

17          (5) Project a likely date for:

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

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

21                   (i) Adoption;

22                   (ii) Legal guardianship; or

- 1 (iii) Other permanent out-of-home placement;
- 2 (6) Evaluate visitation arrangements; and
- 3 (7) Issue such further or other appropriate orders as it
- 4 deems to be in the best interests of the child.

5 (c) If the child has been in foster care under the

6 responsibility of the department for an aggregate of fifteen out

7 of the most recent twenty-two months from the date of entry into

8 foster care, the department shall file a motion to [~~set the~~

9 ~~matter for a termination of parental rights hearing,~~] terminate

10 parental rights, unless:

11 (1) The department has documented in the safe family home

12 factors or other written report submitted to the court

13 a compelling reason why it is not in the best interest

14 of the child to file a motion; or

15 (2) The department has not provided to the family of the

16 child, consistent with the time period required in the

17 service plan, such services as the department deems

18 necessary for the safe return of the child to the

19 family home.

20 (d) Nothing in this section shall prevent the department

21 from filing a motion to [~~set a termination of parental rights~~



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

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

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

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

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



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



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

- 1 (A) Placing the child for adoption and when the  
2 department will file a motion to set the matter  
3 for the termination [{}of{}] parental rights;
- 4 (B) Placing the child for legal guardianship if the  
5 department documents and presents to the court a  
6 compelling reason why termination of parental  
7 rights and adoption are not in the best interests  
8 of the child; or
- 9 (C) Awarding permanent custody to the department or  
10 an authorized agency, if the department documents  
11 and presents to the court a compelling reason why  
12 adoption and legal guardianship are not in the  
13 best interests of the child.

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

18 (f) A permanency hearing may be held concurrently with a  
19 periodic review hearing.

20 (g) If the child has been in foster care under the  
21 responsibility of the department for a total of twelve  
22 consecutive months or an aggregate of fifteen out of the most



1 recent twenty-two months from the date of entry into foster  
2 care, the department shall file a motion to [~~set the matter for~~  
3 ~~a termination of parental rights hearing~~] terminate parental  
4 rights, unless:

5 (1) The department has documented in the safe family home  
6 factors or other written report submitted to the  
7 court[~~r~~] a compelling reason why it is not in the best  
8 interest of the child to file a motion; or

9 (2) The department has not provided to the family of the  
10 child, consistent with the time period required in the  
11 service plan, such services as the department deems  
12 necessary for the safe return of the child to the  
13 family home.

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

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

20 "(i) Absent compelling reasons, if the child has been in  
21 foster care under the department's responsibility for an  
22 aggregate of fifteen out of the most recent twenty-two months





1 from the date of entry into foster care, the department shall  
2 file a motion to [~~set the matter for a termination of parental~~  
3 ~~rights hearing.~~] terminate parental rights."

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

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

- 10 (1) There has been a material change in circumstances;  
11 (2) A parent is willing to provide care for the child;  
12 (3) A parent is able to provide a safe family home or the  
13 home can be made safe with the assistance of services;  
14 and  
15 (4) A trial home placement is in the child's best  
16 interests."

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

19 SECTION 10. This Act shall take effect on October 1, 2011.



**Report Title:**

Child Protective Act Hearings

**Description:**

Ensures that Child Protective Act hearings in Chapter 587A, Hawaii Revised Statutes, are consistent with federal Title IV-E provisions. Effective October 1, 2011. (SB1291 HD2)

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

