

---

---

# A BILL FOR AN ACT

RELATING TO CHILD PROTECTION.

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

1           SECTION 1. Chapter 587A, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§587A-       Child to remain in family home; circumstance.

5           (a) If a report regarding child abuse or neglect, or suspected  
6 child abuse or neglect, is filed pursuant to section 350-1.1,  
7 the child subject of the report shall be allowed to remain in  
8 the family home if it is more likely than not that the child  
9 will be safe from harm in the family home. To make the family  
10 home safe for the child so that the child may remain in the  
11 family home, the perpetrator of the abuse on the child shall be  
12 ordered by the department or the court, as applicable, to leave  
13 the home and to seek treatment services.

14           (b) This section shall not serve as a basis for any civil  
15 action or criminal proceeding against the State or its employees  
16 or agents for any physical harm to the child from the  
17 perpetrator of the abuse which occurs in the family home if the  
18 child remains in the family home."



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

3 "[+]§587A-2[+] **Purpose; construction.** This chapter  
4 creates within the jurisdiction of the family court a child  
5 protective act to make paramount the safety and health of  
6 children who have been harmed or are in life circumstances that  
7 threaten harm. Furthermore, this chapter makes provisions for  
8 the service, treatment, and permanent plans for these children  
9 and their families.

10 The legislature finds that children deserve and require  
11 competent, responsible parenting and safe, secure, loving, and  
12 nurturing homes. The legislature finds that children who have  
13 been harmed or are threatened with harm are less likely than  
14 other children to realize their full educational, vocational,  
15 and emotional potential, and become law-abiding, productive,  
16 self-sufficient citizens, and are more likely to become involved  
17 with the mental health system, the juvenile justice system, or  
18 the criminal justice system, as well as become an economic  
19 burden on the State. The legislature finds that prompt  
20 identification, reporting, investigation, services, treatment,  
21 adjudication, and disposition of cases involving children who  
22 have been harmed or are threatened with harm are in the



1 children's, their families', and society's best interests  
2 because the children are defenseless, exploitable, and  
3 vulnerable. The legislature recognizes that many relatives are  
4 willing and able to provide a nurturing and safe placement for  
5 children who have been harmed or are threatened with harm.

6 The policy and purpose of this chapter is to provide  
7 children with prompt and ample protection from the harms  
8 detailed herein, with an opportunity for timely reconciliation  
9 with their families if the families can provide safe family  
10 homes, and with timely and appropriate service or permanent  
11 plans to ensure the safety of the child so they may develop and  
12 mature into responsible, self-sufficient, law-abiding citizens.

13 The service plan shall effectuate the child's remaining in  
14 the family home, when the family home can be immediately made  
15 safe with services, ~~[or]~~ the child's returning to a safe family  
16 home[-], or, when appropriate, removing a perpetrator of abuse  
17 or harm from an otherwise safe family home. The service plan  
18 shall be carefully formulated with the family in a timely  
19 manner. Every reasonable opportunity should be provided to help  
20 the child's legal custodian to succeed in remedying the problems  
21 that put the child at substantial risk of being harmed in the  
22 family home. Each appropriate resource, public and private,



1 family and friend, should be considered and used to maximize the  
2 legal custodian's potential for providing a safe family home for  
3 the child. Full and careful consideration shall be given to the  
4 religious, cultural, and ethnic values of the child's legal  
5 custodian when service plans are being discussed and formulated.  
6 Where the court has determined, by clear and convincing  
7 evidence, that the child cannot be returned to a safe family  
8 home, the child shall be permanently placed in a timely manner.

9 The policy and purpose of this chapter includes the  
10 protection of children who have been harmed or are threatened  
11 with harm by:

- 12 (1) Providing assistance to families to address the causes  
13 for abuse and neglect;
- 14 (2) Respecting and using each family's strengths,  
15 resources, culture, and customs;
- 16 (3) Ensuring that families are meaningfully engaged and  
17 children are consulted in an age-appropriate manner in  
18 case planning;
- 19 (4) Enlisting the early and appropriate participation of  
20 family and the family's support networks;
- 21 (5) Respecting and encouraging the input and views of  
22 caregivers; [and]



- 1           (6) Ensuring a permanent home through timely adoption or  
2           other permanent living arrangement, if safe  
3           reunification with the family is not possible[-]; and  
4           (7) Requiring the perpetrator of abuse of a child, rather  
5           than the abused child, to leave an otherwise safe  
6           family home in certain cases.

7           The child protective services under this chapter shall be  
8 provided with every reasonable effort to be open, accessible,  
9 and communicative to the persons affected by a child protective  
10 proceeding without endangering the safety and best interests of  
11 the child under this chapter.

12           This chapter shall be liberally construed to serve the best  
13 interests of the children affected and the purpose and policies  
14 set forth herein."

15           SECTION 3. Section 587A-7, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17           "(a) The following factors shall be fully considered when  
18 determining whether a child's family is willing and able to  
19 provide the child with a safe family home:

- 20           (1) Facts relating to the child's current situation, which  
21           shall include:



- 1           (A) The child's age, vulnerability, and special needs  
2                   that affect the child's attachment, growth, and  
3                   development;
- 4           (B) The child's developmental, psychological,  
5                   medical, and dental health status and needs,  
6                   including the names of assessment and treatment  
7                   providers;
- 8           (C) The child's peer and family relationships and  
9                   bonding abilities;
- 10          (D) The child's educational status and setting, and  
11                   the department's efforts to maintain educational  
12                   stability for the child in out-of-home placement;
- 13          (E) The child's living situation;
- 14          (F) The child's fear of being in the family home;
- 15          (G) The impact of out-of-home placement on the child;  
16                   provided that preference shall be given to  
17                   allowing the child to remain in the family home  
18                   if it is more likely than not that the child will  
19                   be safe from harm in the family home;
- 20          (H) Services provided to the child and family; and



- 1           (I) The department's efforts to maintain connections  
2           between the child and the child's siblings, if  
3           they are living in different homes;
- 4           (2) The initial and any subsequent reports of harm and  
5           threatened harm to the child;
- 6           (3) Dates and reasons for the child's out-of-home  
7           placement; description, appropriateness, and location  
8           of the placement; and who has placement  
9           responsibility;
- 10          (4) Facts regarding the alleged perpetrators of harm to  
11          the child, the child's parents, and other family  
12          members who are parties to the court proceedings,  
13          which facts shall include:
- 14               (A) Birthplace and family of origin;
- 15               (B) Manner in which the alleged perpetrator of harm  
16               was parented;
- 17               (C) Marital and relationship history; and
- 18               (D) Prior involvement in services;
- 19          (5) Results of psychiatric, psychological, or  
20          developmental evaluations of the child, the alleged  
21          perpetrators, and other family members who are  
22          parties;



- 1           (6) Whether there is a history of abusive or assaultive  
2           conduct by the child's family members and others who  
3           have access to the family home;
- 4           (7) Whether there is a history of substance abuse by the  
5           child's family or others who have access to the family  
6           home;
- 7           (8) Whether any alleged perpetrator has completed services  
8           in relation to any history identified in paragraphs  
9           (6) and (7), and acknowledged and accepted  
10          responsibility for the harm to the child;
- 11          (9) Whether any non-perpetrator who resides in the family  
12          home has demonstrated an ability to protect the child  
13          from further harm and to ensure that any current  
14          protective orders are enforced;
- 15          (10) Whether there is a support system available to the  
16          child's family, including adoptive and hanai  
17          relatives, friends, and faith-based or other community  
18          networks;
- 19          (11) Attempts to locate and involve extended family,  
20          friends, and faith-based or other community networks;
- 21          (12) Whether the child's family has demonstrated an  
22          understanding of and involvement in services that have





- 1           been recommended by the department or court-ordered as  
2           necessary to provide a safe family home for the child;
- 3       (13) Whether the child's family has resolved identified  
4           safety issues in the family home within a reasonable  
5           period of time; and
- 6       (14) The department's assessment, which shall include the  
7           demonstrated ability of the child's family to provide  
8           a safe family home for the child, and  
9           recommendations[-]; provided that preference shall be  
10          given to allowing the child to remain in the family  
11          home if it is more likely than not that the child will  
12          be safe from harm in the family home."

13       SECTION 4. Section 587A-11, Hawaii Revised Statutes, is  
14       amended to read as follows:

15       "**[+]§587A-11[+]** **Investigation; department powers.** Upon  
16       receiving a report that a child is subject to imminent harm, has  
17       been harmed, or is subject to threatened harm, the department  
18       shall cause such investigation to be made as it deems to be  
19       appropriate. In conducting the investigation, the department  
20       may:

- 21       (1) Enlist the cooperation and assistance of appropriate  
22       state and federal law enforcement authorities, who may



1           conduct an investigation and, if an investigation is  
2           conducted, shall provide the department with all  
3           preliminary findings, including the results of a  
4           criminal history record check of an alleged  
5           perpetrator of harm or threatened harm to the child;

6           (2) Interview the child without the presence or prior  
7           approval of the child's family and temporarily assume  
8           protective custody of the child for the purpose of  
9           conducting the interview;

10          (3) Resolve the matter in an informal fashion that it  
11          deems appropriate under the circumstances;

12          (4) Close the matter if the department finds, after an  
13          assessment, that the child is residing with a  
14          caregiver who is willing and able to meet the child's  
15          needs and provide a safe and appropriate placement for  
16          the child; provided that preference shall be given to  
17          allowing the child to remain in the family home if it  
18          is more likely than not that the child will be safe  
19          from harm in the family home;

20          (5) Immediately enter into a service plan:

21                (A) To safely maintain the child in the family home;

22                        or



1 (B) To place the child in voluntary foster care  
2 pursuant to a written agreement with the child's  
3 parent[-];

4 provided that preference shall be given to allowing  
5 the child to remain in the family home if it is more  
6 likely than not that the child will be safe from harm  
7 in the family home.

8 If the child is placed in voluntary foster care  
9 and the family does not successfully complete the  
10 service plan within three months after the date on  
11 which the department assumed physical custody of the  
12 child, the department shall file a petition. The  
13 department is not required to file a petition if the  
14 parents agree to adoption or legal guardianship of the  
15 child and the child's safety is ensured; provided that  
16 the adoption or legal guardianship hearing is  
17 conducted within six months of the date on which the  
18 department assumed physical custody of the child;

19 (6) Assume temporary foster custody of the child and file  
20 a petition with the court within three days, excluding  
21 Saturdays, Sundays, and holidays, after the date on  
22 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 ensure that a petition is filed by  
4 another appropriate authorized agency in court under  
5 this chapter."

6 SECTION 5. Section 587A-15, Hawaii Revised Statutes, is  
7 amended as follows:

8 1. By amending subsections (a) and (b) to read:

9 "(a) If an authorized agency has family supervision, it  
10 has the following duties and rights, subject to such conditions  
11 or restrictions as the court deems to be in the best interests  
12 of a child:

13 (1) Monitoring and supervising the child and the child's  
14 family members who are parties. Monitoring and  
15 supervision shall include reasonable access to each of  
16 the family members who are parties and reasonable  
17 access into the child's family home; and

18 (2) Placement of the child in foster care and thereby  
19 assuming temporary foster custody or foster custody of  
20 the child[-]; provided that preference shall be given  
21 to allowing the child to remain in the family home if  
22 it is more likely than not that the child will be safe



1           from harm in the family home. The authorized agency  
2 shall immediately notify the court when [~~sueh~~] foster  
3 care placement occurs. Upon notification, the court  
4 shall set the case for:

5           (A) A temporary foster custody hearing within three  
6 days, excluding Saturdays, Sundays, and holidays;

7           or

8           (B) If jurisdiction has been established, a periodic  
9 review hearing within ten days of the child's  
10 placement.

11           The temporary foster custody hearing or the periodic  
12 review hearing may be held at a later date, only if  
13 the court finds it to be in the best interests of the  
14 child.

15           (b) If an authorized agency has foster custody it has the  
16 following duties and rights:

17           (1) Determining where and with whom the child shall be  
18 placed in foster care; provided that the child shall  
19 not be placed in foster care outside the State without  
20 prior order of the court; provided that preference  
21 shall be given to allowing the child to remain in the



1           family home if it is more likely than not that the  
2           child will be safe from harm in the family home;

3           (2). Permitting the child to return to the family from  
4           which the child was removed, unless otherwise ordered  
5           by the court[-]; provided that preference shall be  
6           given to allowing the child to remain in the family  
7           home if it is more likely than not that the child will  
8           be safe from harm in the family home. The child's  
9           return may occur only if no party objects to such  
10          placement and prior written notice is given to the  
11          court and to all parties stating that there is no  
12          objection of any party to the child's return. Upon  
13          the child's return to the family, temporary foster  
14          custody or foster custody shall be automatically  
15          revoked, and the child and the child's family members  
16          who are parties shall be placed under temporary family  
17          supervision or the family supervision of the  
18          authorized agency;

19          (3) Ensuring that the child is provided with adequate  
20          food, clothing, shelter, psychological care, physical  
21          care, medical care, supervision, and other necessities  
22          in a timely manner;



- 1           (4) Monitoring whether the child is being provided with an  
2           appropriate education;
- 3           (5) Providing required consents for the child's physical  
4           or psychological health or welfare, including ordinary  
5           medical, dental, psychiatric, psychological,  
6           educational, employment, recreational, or social  
7           needs;
- 8           (6) Providing consents for any other medical or  
9           psychological care or treatment, including surgery, if  
10          the persons who are otherwise authorized to provide  
11          consent are unable or unwilling to consent. Before  
12          being provided to the child, this care or treatment  
13          shall be deemed necessary for the child's physical or  
14          psychological health or welfare by two physicians or  
15          two psychologists, as appropriate, who are licensed or  
16          authorized to practice in the State;
- 17          (7) Providing consent for the child's application for a  
18          driver's instructional permit, provisional driver's  
19          license, or driver's license;
- 20          (8) Providing consent to the recording of a statement  
21          pursuant to section 587A-21; and



1           (9) Providing the court with information concerning the  
2           child.

3           The court, in its discretion, may vest foster custody of a  
4 child in any authorized agency or subsequently authorized  
5 agencies, if the court finds that it is in the child's best  
6 interests to do so[-]; provided that preference shall be given  
7 to allowing the child to remain in the family home if it is more  
8 likely than not that the child will be safe from harm in the  
9 family home. The rights and duties that are so assumed by an  
10 authorized agency shall supersede the rights and duties of any  
11 legal or permanent custodian of the child."

12           2. By amending subsection (d) to read:

13           "(d) If an authorized agency has permanent custody, it has  
14 the following duties and rights:

15           (1) Assuming the parental and custodial duties and rights  
16           of a legal custodian and family member;

17           (2) Determining where and with whom the child shall live;  
18           provided that the child shall not be placed outside  
19           the State without prior order of the court; provided  
20           further that preference shall be given to allowing the  
21           child to remain in the family home if it is more





1           likely than not that the child will be safe from harm  
2           in the family home;

3           (3) Ensuring that the child is provided with adequate  
4           food, clothing, shelter, psychological care, physical  
5           care, medical care, supervision, and other necessities  
6           in a timely manner;

7           (4) Monitoring whether the child is being provided with an  
8           appropriate education;

9           (5) Providing all required consents for the child's  
10          physical or psychological health or welfare, including  
11          medical, dental, psychiatric, psychological,  
12          educational, employment, recreational, and social  
13          needs;

14          (6) Providing consent for the child's application for a  
15          driver's instructional permit, provisional driver's  
16          license, or driver's license;

17          (7) Providing consent to adoption, change of name, and  
18          marriage; and

19          (8) Submitting a written report to the court if the child  
20          leaves the home of the permanent custodian for a  
21          period of seven consecutive days or more. The report  
22          shall state the child's current situation and shall be



1 submitted on or before the tenth day, excluding  
2 Saturdays, Sundays, and holidays, after the child  
3 leaves the home."

4 SECTION 6. Section 587A-27, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) The service plan shall provide:

7 (1) The specific steps necessary to facilitate the return  
8 of the child to a safe family home, if the proposed  
9 placement of the child is in foster care under foster  
10 custody. These specific steps shall include treatment  
11 and services that will be provided~~[7]~~ to the child and  
12 to the perpetrator of the abuse, as necessary, actions  
13 completed, specific measurable and behavioral changes  
14 that must be achieved, and responsibilities assumed;

15 (2) Whether an ohana conference will be conducted for  
16 family finding and family group decision making;

17 (3) The respective responsibilities of the child, the  
18 parents, legal guardian or custodian, the department,  
19 other family members, and treatment providers, and a  
20 description and expected outcomes of the services  
21 required to achieve the permanency goal;



- 1           (4) The required frequency and types of contact between  
2           the assigned social worker, the child, and the family;
- 3           (5) The time frames during which services will be  
4           provided, actions must be completed, and  
5           responsibilities must be discharged;
- 6           (6) Notice to the parents that their failure to  
7           substantially achieve the objectives described in the  
8           service plan within the time frames established may  
9           result in termination of their parental rights;
- 10          (7) Notice to the parents that if the child has been in  
11          foster care under the responsibility of the department  
12          for an aggregate of fifteen out of the most recent  
13          twenty-two months from the child's date of entry into  
14          foster care, the department is required to file a  
15          motion to set a termination of parental rights  
16          hearing, and the parents' failure to provide a safe  
17          family home within two years from the date when the  
18          child was first placed under foster custody by the  
19          court, may result in the parents' parental rights  
20          being terminated; and



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

4           SECTION 7. Section 587A-31, Hawaii Revised Statutes, is  
5 amended by amending subsection (c) to read as follows:

6           "(c) At each permanency hearing, the court shall make  
7 written findings pertaining to:

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

10          (2) Whether the current placement of the child continues  
11          to be appropriate and in the best interests of the  
12          child or if another in-state or out-of-state placement  
13          should be considered; provided that preference shall  
14          be given to allowing the child to remain in the family  
15          home if it is more likely than not that the child will  
16          be safe from harm in the family home;

17          (3) The court's projected timetable for reunification or,  
18          if the current placement is not expected to be  
19          permanent, placement in an adoptive home, with a legal  
20          guardian, or under the permanent custody of the  
21          department or an authorized agency;



- 1           (4) Whether the department has made reasonable efforts, in  
2           accordance with the safety and well-being of the  
3           child, to:
- 4           (A) Place siblings who have been removed from the  
5           family home with the same resource family,  
6           adoptive placement, or legal guardians; and
- 7           (B) Provide for frequent visitation or other on-going  
8           interactions with siblings who are not living in  
9           the same household;
- 10          (5) The appropriate permanency goal for the child,  
11          including whether a change in goal is necessary;
- 12          (6) Whether the department has made reasonable efforts to  
13          finalize the permanency goal in effect for the child  
14          and a summary of those efforts;
- 15          (7) The date by which the permanency goal for the child is  
16          to be achieved;
- 17          (8) In the case of a child who has attained sixteen years  
18          of age, the services needed to assist the child with  
19          the transition from foster care to independent living;  
20          and



1 (9) Consultations with the child in an age-appropriate  
2 manner about the proposed plan for permanency or  
3 transition from foster care to independent living."

4 SECTION 8. Section 587A-32, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) The permanent plan shall:

7 (1) State whether the permanency goal for the child will  
8 be achieved through adoption, legal guardianship, or  
9 permanent custody; provided that preference shall be  
10 given to allowing the child to remain in the family  
11 home if it is more likely than not that the child will  
12 be safe from harm in the family home in the absence of  
13 the perpetrator of the abuse on the child;

14 (2) Establish a reasonable period of time by which the  
15 adoption or legal guardianship shall be finalized;

16 (3) Document:

17 (A) A compelling reason why legal guardianship or  
18 permanent custody is in the child's best  
19 interests if adoption is not the goal; or

20 (B) A compelling reason why permanent custody is in  
21 the child's best interests if adoption or legal  
22 guardianship is not the goal;



- 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)   If a child has reached the age of sixteen, describe
- 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           SECTION 9.   Section 587A-38, Hawaii Revised Statutes, is

13 amended by amending subsection (d) to read as follows:

14           "(d)   The protective order may require a party to leave the

15 party's dwelling or residence during the period of time in which

16 the protective order is in effect[-]; provided that the

17 protective order shall require a party to leave the party's

18 dwelling or residence during the period of time in which the

19 protective order is in effect if the protective order restrains

20 that party from contacting, threatening, or physically abusing a

21 child and it is more likely than not that the child will be safe

22 from harm in the family home in the absence of that party."

# H.B. NO. 2140

1 SECTION 10. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect upon its approval.  
4

INTRODUCED BY:

<u>Karen Hoover</u>	<u>John M. Pappas</u>
<u>Steve</u>	<u>Linda Ichizama</u>
<u>Andy Evans</u>	<u>Shawn &amp; He</u>
<u>Chad</u>	<u>Tom Cronin</u>
	<u>Ray Hunter</u>
	<u>Joe A. -</u>

JAN 19 2012





# H.B. NO. 2140

**Report Title:**

Child Abuse; Child Protection

**Description:**

Establishes a preference for allowing a child who has been or is at risk of being abused to remain in a safe family home, and requiring the perpetrator of the abuse to leave the home, in certain cases of reported or suspected child abuse or neglect. Requires the abused child and the perpetrator of the abuse to receive treatment and services as part of the service plan to return a child in foster care back to the family home.

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

