
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 alleged perpetrator of the abuse on the child
12 shall be ordered by a police officer to leave the home for a
13 period of twenty-four hours, pursuant to section 709-906, and to
14 seek treatment services.
- 15 (b) This section shall not serve as a basis for any civil
16 action or criminal proceeding against the State or its employees
17 or agents for any physical harm to the child from the



1 perpetrator of the abuse which occurs in the family home if the
2 child remains in the family home."

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

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

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



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

8 The policy and purpose of this chapter is to provide
9 children with prompt and ample protection from the harms
10 detailed herein, with an opportunity for timely reconciliation
11 with their families if the families can provide safe family
12 homes, and with timely and appropriate service or permanent
13 plans to ensure the safety of the child so they may develop and
14 mature into responsible, self-sufficient, law-abiding citizens.
15 The service plan shall effectuate the child's remaining in the
16 family home, when the family home can be immediately made safe
17 with services, ~~[or]~~ the child's returning to a safe family
18 home[-], or, when appropriate, removing an alleged perpetrator
19 of abuse or harm, pursuant to section 709-906, from an otherwise
20 safe family home. The service plan shall be carefully
21 formulated with the family in a timely manner. Every reasonable
22 opportunity should be provided to help the child's legal



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

12 The policy and purpose of this chapter includes the
13 protection of children who have been harmed or are threatened
14 with harm by:

- 15 (1) Providing assistance to families to address the causes
16 for abuse and neglect;
- 17 (2) Respecting and using each family's strengths,
18 resources, culture, and customs;
- 19 (3) Ensuring that families are meaningfully engaged and
20 children are consulted in an age-appropriate manner in
21 case planning;



- 1 (4) Enlisting the early and appropriate participation of
- 2 family and the family's support networks;
- 3 (5) Respecting and encouraging the input and views of
- 4 caregivers; [~~and~~]
- 5 (6) Ensuring a permanent home through timely adoption or
- 6 other permanent living arrangement, if safe
- 7 reunification with the family is not possible[-]; and
- 8 (7) Requiring an alleged perpetrator of abuse of a child,
- 9 rather than the child, to leave an otherwise safe
- 10 family home in certain cases, pursuant to section 709-
- 11 906.

12 The child protective services under this chapter shall be

13 provided with every reasonable effort to be open, accessible,

14 and communicative to the persons affected by a child protective

15 proceeding without endangering the safety and best interests of

16 the child under this chapter.

17 This chapter shall be liberally construed to serve the best

18 interests of the children affected and the purpose and policies

19 set forth herein."

20 SECTION 3. Section 587A-7, Hawaii Revised Statutes, is

21 amended by amending subsection (a) to read as follows:



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

4 (1) Facts relating to the child's current situation, which
5 shall include:

6 (A) The child's age, vulnerability, and special needs
7 that affect the child's attachment, growth, and
8 development;

9 (B) The child's developmental, psychological,
10 medical, and dental health status and needs,
11 including the names of assessment and treatment
12 providers;

13 (C) The child's peer and family relationships and
14 bonding abilities;

15 (D) The child's educational status and setting, and
16 the department's efforts to maintain educational
17 stability for the child in out-of-home placement;

18 (E) The child's living situation;

19 (F) The child's fear of being in the family home;

20 (G) The impact of out-of-home placement on the child;
21 provided that preference shall be given to

22 allowing the child to remain in the family home



- 1 if it is more likely than not that the child will
2 be safe from harm in the family home;
- 3 (H) Services provided to the child and family; and
- 4 (I) The department's efforts to maintain connections
5 between the child and the child's siblings, if
6 they are living in different homes;
- 7 (2) The initial and any subsequent reports of harm and
8 threatened harm to the child;
- 9 (3) Dates and reasons for the child's out-of-home
10 placement; description, appropriateness, and location
11 of the placement; and who has placement
12 responsibility;
- 13 (4) Facts regarding the alleged perpetrators of harm to
14 the child, the child's parents, and other family
15 members who are parties to the court proceedings,
16 which facts shall include:
- 17 (A) Birthplace and family of origin;
- 18 (B) Manner in which the alleged perpetrator of harm
19 was parented;
- 20 (C) Marital and relationship history; and
- 21 (D) Prior involvement in services;



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



- 1 (11) Attempts to locate and involve extended family,
2 friends, and faith-based or other community networks;
- 3 (12) Whether the child's family has demonstrated an
4 understanding of and involvement in services that have
5 been recommended by the department or court-ordered as
6 necessary to provide a safe family home for the child;
- 7 (13) Whether the child's family has resolved identified
8 safety issues in the family home within a reasonable
9 period of time; and
- 10 (14) The department's assessment, which shall include the
11 demonstrated ability of the child's family to provide
12 a safe family home for the child, and
13 recommendations[-]; provided that preference shall be
14 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 SECTION 4. Section 587A-11, Hawaii Revised Statutes, is
18 amended to read as follows:

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



1 appropriate. In conducting the investigation, the department
2 may:

- 3 (1) Enlist the cooperation and assistance of appropriate
4 state and federal law enforcement authorities, who may
5 conduct an investigation and, if an investigation is
6 conducted, shall provide the department with all
7 preliminary findings, including the results of a
8 criminal history record check of an alleged
9 perpetrator of harm or threatened harm to the child;
- 10 (2) Interview the child without the presence or prior
11 approval of the child's family and temporarily assume
12 protective custody of the child for the purpose of
13 conducting the interview;
- 14 (3) Resolve the matter in an informal fashion that it
15 deems appropriate under the circumstances;
- 16 (4) Close the matter if the department finds, after an
17 assessment, that the child is residing with a
18 caregiver who is willing and able to meet the child's
19 needs and provide a safe and appropriate placement for
20 the child; provided that preference shall be given to
21 allowing the child to remain in the family home if it



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

3 (5) Immediately enter into a service plan:

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

5 or

6 (B) To place the child in voluntary foster care

7 pursuant to a written agreement with the child's

8 parent[-];

9 provided that preference shall be given to allowing
10 the child to remain in the family home if it is more
11 likely than not that the child will be safe from harm
12 in the family home.

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



- 1 conducted within six months of the date on which the
2 department assumed physical custody of the child;
- 3 (6) Assume temporary foster custody of the child and file
4 a petition with the court within three days, excluding
5 Saturdays, Sundays, and holidays, after the date on
6 which the department assumes temporary foster custody
7 of the child, with placement preference being given to
8 an approved relative; or
- 9 (7) File a petition or ensure that a petition is filed by
10 another appropriate authorized agency in court under
11 this chapter."

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

- 14 1. By amending subsections (a) and (b) to read:
- 15 "(a) If an authorized agency has family supervision, it
16 has the following duties and rights, subject to such conditions
17 or restrictions as the court deems to be in the best interests
18 of a child:

- 19 (1) Monitoring and supervising the child and the child's
20 family members who are parties. Monitoring and
21 supervision shall include reasonable access to each of



1 the family members who are parties and reasonable
2 access into the child's family home; and
3 (2) Placement of the child in foster care and thereby
4 assuming temporary foster custody or foster custody of
5 the child[-]; provided that preference shall be given
6 to allowing the child to remain in the family home if
7 it is more likely than not that the child will be safe
8 from harm in the family home. The authorized agency
9 shall immediately notify the court when [~~such~~] foster
10 care placement occurs. Upon notification, the court
11 shall set the case for:
12 (A) A temporary foster custody hearing within three
13 days, excluding Saturdays, Sundays, and holidays;
14 or
15 (B) If jurisdiction has been established, a periodic
16 review hearing within ten days of the child's
17 placement.
18 The temporary foster custody hearing or the periodic
19 review hearing may be held at a later date, only if
20 the court finds it to be in the best interests of the
21 child.



1 (b) If an authorized agency has foster custody, it has the
2 following duties and rights:

- 3 (1) Determining where and with whom the child shall be
4 placed in foster care; provided that the child shall
5 not be placed in foster care outside the State without
6 prior order of the court; provided that preference
7 shall be given to allowing the child to remain in the
8 family home if it is more likely than not that the
9 child will be safe from harm in the family home;
- 10 (2) Permitting the child to return to the family from
11 which the child was removed, unless otherwise ordered
12 by the court[-]; provided that preference shall be
13 given to allowing the child to remain in the family
14 home if it is more likely than not that the child will
15 be safe from harm in the family home. The child's
16 return may occur only if no party objects to such
17 placement and prior written notice is given to the
18 court and to all parties stating that there is no
19 objection of any party to the child's return. Upon
20 the child's return to the family, temporary foster
21 custody or foster custody shall be automatically
22 revoked, and the child and the child's family members



1 who are parties shall be placed under temporary family
2 supervision or the family supervision of the
3 authorized agency;

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

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

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

15 (6) Providing consents for any other medical or
16 psychological care or treatment, including surgery, if
17 the persons who are otherwise authorized to provide
18 consent are unable or unwilling to consent. Before
19 being provided to the child, this care or treatment
20 shall be deemed necessary for the child's physical or
21 psychological health or welfare by two physicians or



1 two psychologists, as appropriate, who are licensed or
2 authorized to practice in the State;

3 (7) Providing consent for the child's application for a
4 driver's instructional permit, provisional driver's
5 license, or driver's license;

6 (8) Providing consent to the recording of a statement
7 pursuant to section 587A-21; and

8 (9) Providing the court with information concerning the
9 child.

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

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

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



- 1 (1) Assuming the parental and custodial duties and rights
2 of a legal custodian and family member;
- 3 (2) Determining where and with whom the child shall live;
4 provided that the child shall not be placed outside
5 the State without prior order of the court; provided
6 further that preference shall be given to allowing the
7 child to remain in the family home if it is more
8 likely than not that the child will be safe from harm
9 in the family home;
- 10 (3) Ensuring that the child is provided with adequate
11 food, clothing, shelter, psychological care, physical
12 care, medical care, supervision, and other necessities
13 in a timely manner;
- 14 (4) Monitoring whether the child is being provided with an
15 appropriate education;
- 16 (5) Providing all required consents for the child's
17 physical or psychological health or welfare, including
18 medical, dental, psychiatric, psychological,
19 educational, employment, recreational, and social
20 needs;



- 1 (6) Providing consent for the child's application for a
2 driver's instructional permit, provisional driver's
3 license, or driver's license;
- 4 (7) Providing consent to adoption, change of name, and
5 marriage; and
- 6 (8) Submitting a written report to the court if the child
7 leaves the home of the permanent custodian for a
8 period of seven consecutive days or more. The report
9 shall state the child's current situation and shall be
10 submitted on or before the tenth day, excluding
11 Saturdays, Sundays, and holidays, after the child
12 leaves the home."

13 SECTION 6. 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~~[7]~~ to the child and
21 to the perpetrator of the abuse, as necessary, actions



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



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

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

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

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

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

17 (2) Whether the current placement of the child continues
18 to be appropriate and in the best interests of the
19 child or if another in-state or out-of-state placement
20 should be considered; provided that preference shall
21 be given to allowing the child to remain in the family



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

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

8 (4) Whether the department has made reasonable efforts, in
9 accordance with the safety and well-being of the
10 child, to:

11 (A) Place siblings who have been removed from the
12 family home with the same resource family,
13 adoptive placement, or legal guardians; and

14 (B) Provide for frequent visitation or other on-going
15 interactions with siblings who are not living in
16 the same household;

17 (5) The appropriate permanency goal for the child,
18 including whether a change in goal is necessary;

19 (6) Whether the department has made reasonable efforts to
20 finalize the permanency goal in effect for the child
21 and a summary of those efforts;



1 (7) The date by which the permanency goal for the child is
2 to be achieved;

3 (8) In the case of a child who has attained sixteen years
4 of age, the services needed to assist the child with
5 the transition from foster care to independent living;
6 and

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

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

12 "(a) The permanent plan shall:

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

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

22 (3) Document:



- 1 (A) A compelling reason why legal guardianship or
2 permanent custody is in the child's best
3 interests if adoption is not the goal; or
4 (B) A compelling reason why permanent custody is in
5 the child's best interests if adoption or legal
6 guardianship is not the goal;
- 7 (4) Establish other related goals, including those
8 pertaining to the stability of the child's placement;
9 education; health; therapy; counseling; relationship
10 with the child's birth family, including visits, if
11 any; cultural connections; and preparation for
12 independent living;
- 13 (5) If a child has reached the age of sixteen, describe
14 the services needed to assist the child with the
15 transition from foster care to independent living; and
16 (6) Describe the methods for achieving the goals and
17 objectives set forth in paragraphs (4) and (5)."

18 SECTION 9. Section 587A-38, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) The protective order may require a party to leave the
21 party's dwelling or residence during the period of time in which
22 the protective order is in effect[-]; provided that the



1 protective order shall require a party to leave the party's
 2 dwelling or residence during the period of time in which the
 3 protective order is in effect if the protective order restrains
 4 that party from contacting, threatening, or physically abusing a
 5 child and it is more likely than not that the child will be safe
 6 from harm in the family home in the absence of that party."

7 SECTION 10. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect on July 1, 2013.

10

INTRODUCED BY:

Rep. [Signature] John M. [Signature]
[Signature] Tom [Signature]
[Signature]
Mel Cannata
[Signature]

JAN 18 2013



H.B. NO. 400

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 alleged perpetrator of the abuse to leave the home pursuant to section 709-906, HRS, in certain cases of reported or suspected child abuse or neglect. Requires the abused child and the alleged 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. Effective July 1, 2013.

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

