

JAN 22 2016

S.B. NO. 2160

A BILL FOR AN ACT

RELATING TO THE CHILD PROTECTIVE ACT.

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

1 SECTION 1. The legislature finds that the State's best
2 practice policies should prioritize the immediate and continued
3 safety and stability of foster care children, the State's most
4 vulnerable keiki, when making decisions regarding the time
5 frame, criteria, and justification for family placement and
6 reunification. While biological family bonds are respected and
7 the goals of the department of human services, child protective
8 services, and parents are to keep biological families intact,
9 placement with the biological family is not always in the best
10 interest of the foster care child, particularly in an
11 "aggravated circumstances" case that involves a history of
12 neglect, abandonment, physical abuse, drug use, or sexual abuse.
13 The ultimate concern must be for the short- and long-term care,
14 safety, and security of the foster care child.

15 The legislature further finds that judges and guardians ad
16 litem have minimal direction pertaining to cases involving
17 "aggravated circumstances". Given the instances of death, re-



1 abuse, continued abandonment, neglect, drug use, sex abuse, and
2 human trafficking, it is necessary to clarify and specify the
3 conditions for which biological families may no longer be
4 considered a safe placement for a child, and the assessment of
5 the short- and long-term safety and security of a child based on
6 un-remedied and chronic family history and case details demands
7 a declaration of "aggravated circumstances" on behalf of a
8 child.

9 The purpose of this Act is to:

- 10 (1) Recognize many of the chronic and rare variables
11 associated with the parents of children entering
12 foster care by specifying additional chronic or
13 repeated circumstances where a biological family shall
14 be considered an unsafe placement by expanding the
15 definition of "aggravated circumstances" as used in
16 chapter 587A, Hawaii Revised Statutes, the Child
17 Protective Act, to better support case workers,
18 judges, and guardians ad litem as they make decisions
19 regarding the care of foster children; and
20 (2) Require parents to complete any court-ordered service
21 plan before being reunited with their child.



1 SECTION 2. Section 587A-4, Hawaii Revised Statutes, is
2 amended by amending the definition of "aggravated circumstances"
3 to read as follows:

4 "Aggravated circumstances" means that:

- 5 (1) The parent has murdered, or has solicited, aided,
6 abetted, attempted, or conspired to commit the murder
7 or voluntary manslaughter of, another child of the
8 parent;
- 9 (2) The parent has committed a felony assault that results
10 in serious bodily injury to the child or another child
11 of the parent;
- 12 (3) The parent's rights regarding a sibling of the child
13 have been judicially terminated or divested;
- 14 (4) The parent has tortured the child;
- 15 (5) The child is an abandoned infant [+] or the parent has
16 repeatedly failed to provide needed health care for
17 the child, which has resulted in serious bodily injury
18 to that child;
- 19 (6) The parent has committed sexual abuse against another
20 child of the parent [+] or another parent of that
21 child; [~~or~~]



- 1 (7) The parent is required to register with a sex offender
2 registry under section 113(a) of the Adam Walsh Child
3 Protection and Safety Act of 2006, title 42 United
4 States Code section 16913(a) [-];
- 5 (8) The parent has been incarcerated more than once,
6 resulting in the child's repeated placement in foster
7 care;
- 8 (9) The parent has repeatedly placed the child or a
9 sibling of the child in foster care more than once;
- 10 (10) The parent has previously had parental rights
11 voluntarily or involuntarily terminated;
- 12 (11) The parent has failed to complete or comply with the
13 pre-permanency plan or permanency plan requirements
14 more than once, with consideration of the required and
15 appropriate timelines;
- 16 (12) A licensed social worker, service provider, health
17 care professional, legal guardian, physical custodian,
18 officer of the court, foster custodian, or other
19 licensed child care provider has reasonable cause to
20 believe that the parent has subjected or may subject



- 1 the child to repeated or severe child abuse or
- 2 neglect;
- 3 (13) The child suffers repeated or severe abuse or neglect
- 4 by the parent; or
- 5 (14) The parent has committed an offense of promoting
- 6 prostitution as defined in section 712-1202 or sex
- 7 trafficking as defined in title 22 United States Code
- 8 section 7102."

9 SECTION 3. Section 587A-28, Hawaii Revised Statutes, is
10 amended by amending subsection (e) to read as follows:

11 "(e) If the court finds that the child's physical or
12 psychological health or welfare has been harmed or is subject to
13 threatened harm by the acts or omissions of the child's family,
14 the court:

- 15 (1) Shall enter a finding that the court has jurisdiction
- 16 pursuant to section 587A-5;
- 17 (2) Shall enter a finding regarding whether, before the
- 18 child was placed in foster care, the department made
- 19 reasonable efforts to prevent or eliminate the need to
- 20 remove the child from the child's family home;
- 21 (3) Shall enter orders:



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- 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



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1 (ii) Order the department to file, within sixty
2 days after the court's finding that
3 aggravated circumstances are present, a
4 motion to terminate parental rights unless
5 the department has documented in the safe
6 family home factors or other written report
7 submitted to the court a compelling reason
8 why it is not in the best interest of the
9 child to file a motion.

10 (B) If aggravated circumstances are not present 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; provided that
17 the child shall not be reunified with the child's
18 parents until the child's parents have completed
19 the service plan;

20 (5) Shall order reasonable supervised or unsupervised
21 visits for the child and the child's family, including



1 with the child's siblings, unless such visits are
2 determined to be unsafe or detrimental to, and not in
3 the best interests of, the child;

4 (6) Shall order each of the child's birth parents to
5 complete the medical information forms and release the
6 medical information required under section 578-14.5,
7 to the department. If the child's birth parents
8 refuse to complete the forms or to release the
9 information, the court may order the release of the
10 information over the parents' objections;

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

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

20 (9) Shall set a periodic review hearing to be conducted no
21 later than six months after the date of entry into



1 foster care and a permanency hearing to be held no
2 later than twelve months after the date of entry into
3 foster care;

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

7 (11) May order that:

8 (A) Any party participate in, complete, be liable
9 for, and make every good faith effort to arrange
10 payment for such services or treatment as are
11 authorized by law and that are determined to be
12 in the child's best interests;

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

15 (C) The child receive treatment, including
16 hospitalization or placement in other suitable
17 facilities, as is determined to be in the child's
18 best interests."

19 SECTION 4. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



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1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.
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B/R



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Report Title:

Child Protective Act; Definition; Aggravated Circumstances;
Reunification

Description:

Expands the definition of "aggravated circumstances", as used in chapter 587A, Hawaii Revised Statutes, the Child Protective Act, to include situations where the parent is a repeat criminal offender of specific crimes; has been repeatedly incarcerated, resulting in the child's placement in foster care; has placed the child or a sibling of the child in foster care more than once; had parental rights voluntarily or involuntarily terminated; failed to comply with pre-permanency or permanency requirements; has physically abused or neglected the child; or has engaged in human trafficking involving the child or another child of the parent or has solicited, aided, abetted, attempted, or conspired to engage in human trafficking of the child or another child of the parent. Requires parents to complete any court ordered service plan before being reunified with their child.

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

