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JAN 27 2016

A BILL FOR AN ACT

RELATING TO FOSTER CHILDREN.

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

1 SECTION 1. The legislature finds that the Preventing Sex
2 Trafficking and Strengthening Families Act of 2014, Public Law
3 113-183, expands the opportunities for children in foster care
4 to participate equally in age or developmentally appropriate
5 extracurricular, social, and cultural activities as their
6 classmates and peers in accordance with the "reasonable and
7 prudent parent standard"; and requires children in foster care,
8 fourteen years of age and older, to be included in case planning
9 and be informed of their rights and options available to them.

10 The Preventing Sex Trafficking and Strengthening Families
11 Act, 42 U.S.C. §675(10)(A)(2014), defines the "reasonable and
12 prudent parent standard" as "the standard characterized by
13 careful and sensible parental decisions that maintain the
14 health, safety, and best interests of a child while at the same
15 time encouraging the emotional and developmental growth of the
16 child, that a caregiver shall use when determining whether to
17 allow a child in foster care under the responsibility of the

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1 State to participate in extracurricular, enrichment, and social
2 activities."

3 The legislature finds that to encourage and allow resource
4 caregivers and child caring institutions to make reasonable
5 parenting decisions and to remove barriers to recruitment and
6 retention of high quality resource caregivers, adding qualified
7 immunity from liability for resource caregivers and child caring
8 institutions to section 346-17, Hawaii Revised Statutes,
9 protects and enhances the capacity of resource caregivers and
10 child caring institutions to encourage and support children to
11 participate in ordinary childhood activities as long as the
12 decision was made using the federal Reasonable and Prudent
13 Parent Standard as defined in 42 U.S.C. §675(10)(A).

14 The Preventing Sex Trafficking and Strengthening Families
15 Act also requires children in foster care, fourteen years of age
16 and older, to be included in case planning and be informed of
17 their rights and options available to them. The federal act
18 lowered the age from sixteen to fourteen years old in
19 recognition that those children should be included in the
20 important planning processes that will strengthen their self-
21 sufficiency and better prepare them for successful transition
22 from foster care and into adulthood.

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1 Compared to their peers, young people who have experienced
2 foster care are more likely to become homeless and unemployed
3 when they age out of foster care, are less likely to complete
4 high school or postsecondary education, and are more likely to
5 have physical, developmental, and mental health challenges.
6 Unlike their peers, most lose their support system when they
7 reach age eighteen and are discharged from state custody.

8 The purpose of this Act is to bring the State into
9 compliance with the Preventing Sex Trafficking and Strengthening
10 Families Act of 2014, expand the opportunities for children in
11 foster care to participate equally in age or developmentally
12 appropriate extracurricular, social, and cultural activities as
13 their classmates and peers by providing qualified immunity from
14 liability for resource caregivers and child caring institutions,
15 and lower the age from sixteen to fourteen years of age of
16 children in foster care who are to be consulted in development
17 of their foster care plan.

18 SECTION 2. Section 346-16, Hawaii Revised Statutes, is
19 amended by amending the definition of "foster boarding home" to
20 read as follows:

21 [~~"Foster boarding]~~ "Resource family home" means any
22 boarding home in which:

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1 (1) One or more, but fewer than six, minor children are
2 received; and

3 (2) Six or more minor siblings are placed together in
4 the best interests of the children,
5 for care and maintenance apart from their parents or guardians
6 on a twenty-four hour basis for fee or charge."

7 SECTION 3. Section 346-17, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§346-17 Child placing organizations, child caring
10 institutions, and [~~foster boarding~~] resource family homes;
11 authority over, investigation of, and standards for. (a) No
12 child placing organization shall engage in the investigation,
13 placement, and supervision of minor children in foster care
14 unless it meets the standards of conditions, management, and
15 competence set by the department of human services.

16 (b) No child caring institution shall receive minor
17 children for care and maintenance unless it meets the standards
18 of conditions, management, and competence to care for and
19 [~~train~~] educate children set by the department.

20 (c) No [~~foster boarding~~] resource family home shall
21 receive for care and maintenance any child unless:

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1 (1) It meets with the standards of conditions, management,
2 and competence set by the department; and

3 (2) The [~~foster boarding~~] resource family home applicant
4 successfully completes [~~foster parent~~] resource
5 caregiver training; provided that [~~after July 1,~~
6 ~~1999,~~] new special licensed or relative [~~foster~~]
7 resource family home [~~care providers~~] caregivers
8 licensed for a specific child or children shall
9 successfully complete [~~foster parent~~] resource
10 caregiver training within the first year following
11 placement of the first child into the new special
12 licensed or relative [~~foster~~] resource family home.

13 (d) The department shall adopt rules pursuant to chapter
14 91 relating to:

15 (1) Standards for the organization and administration of
16 child placing organizations; and

17 (2) Standards [~~of~~] for the conditions, management,
18 operations, and competence of child caring
19 institutions and resource family homes for the care
20 [~~and training~~], education, and protection of minor
21 children [~~in child caring institutions and foster~~
22 ~~boarding homes, and~~].

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1 ~~[(3) Standards of conditions and competence of operation~~
2 ~~of foster boarding homes as may be necessary to~~
3 ~~protect the welfare of children.]~~

4 (e) All rules of the department shall have the force and
5 effect of law, and any violation thereof or of this section
6 shall be punishable by a fine of not more than \$200.

7 (f) As a condition for a certificate of approval, any
8 organization, institution, or ~~[foster boarding]~~ resource family
9 home, including all adults residing in the ~~[foster boarding]~~
10 resource family home, shall:

11 (1) Meet all standards and requirements established by the
12 department;

13 (2) Be subject to criminal history record checks in
14 accordance with section 846-2.7, and child abuse and
15 neglect registry checks, in accordance with
16 departmental procedures; and

17 (3) Provide consent to the department or its designee to
18 obtain criminal history record and child abuse and
19 neglect registry information.

20 New employees of the organization, institution, or home shall be
21 fingerprinted within five working days of employment.

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1 (g) Upon approval of the organization, institution, or
2 ~~[foster boarding]~~ resource family home, the department or its
3 authorized agents shall issue a certificate of approval that
4 shall continue in force for one year or for two years if the
5 organization, institution, or ~~[foster boarding]~~ resource family
6 home meets the criteria established by the department, unless
7 sooner revoked for cause. The certificate shall be renewed by
8 the department or its authorized agents, after annual or
9 biennial investigation, if the investigation discloses that the
10 organization, institution, or ~~[foster boarding]~~ resource family
11 home continues to meet the standards set by the department. The
12 certificate of approval shall be a permit to operate the child
13 placing organization, child caring institution, or ~~[foster~~
14 ~~boarding]~~ resource family home, and no person or organization
15 shall operate or maintain the organization, institution, or
16 ~~[foster boarding]~~ resource family home without the certificate.

17 (h) Any child placing organization, child caring
18 institution, or ~~[foster boarding]~~ resource family home shall be
19 subject to review or investigation at any time and in a manner,
20 place, and form as may be prescribed by the department or its
21 authorized agents.

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1 (i) As used in this section, [~~foster parent~~] "resource
2 caregiver training" means training or instruction in special
3 skills and knowledge to care for foster children

4 (j) The department or its designee shall request:

5 (1) A criminal history record check through the Hawaii
6 criminal justice data center on all operators,
7 employees, and new employees of child care
8 institutions, child placing organizations, and [~~foster~~
9 ~~boarding~~] resource family homes, including all adults
10 residing in the [~~foster boarding~~] resource family
11 homes, subject to [~~licensure~~] checks pursuant to
12 section 846-2.7; and

13 (2) A child abuse and neglect registry check on all
14 operators, employees, and new employees of child care
15 institutions, child placing organizations, and adults
16 residing in a [~~foster boarding~~] resource family home
17 subject to licensure in accordance with departmental
18 procedures.

19 (k) The department may deny a certificate of approval if
20 an operator, employee, or new employee of a child care
21 institution or child placing organization's facility, or any
22 adult residing in a [~~foster boarding~~] resource family home, was

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1 convicted of a crime other than a minor traffic violation
2 involving a fine of \$50 or less and if the department finds that
3 the criminal history record or child abuse registry history of
4 an operator, employee, new employee, or adult residing in a
5 [~~foster boarding~~] resource family home poses a risk to the
6 health, safety, or well-being of the children in care.

7 (1) The department or its designee shall make a name
8 inquiry into the criminal history records for the first two
9 years of certification of a [~~foster boarding~~] resource family
10 home and annually or biennially thereafter and into the child
11 abuse and neglect registry in accordance with departmental
12 procedures depending on the certification status of the home.

13 (m) Except as provided below, any entity or person issued
14 a certificate of approval pursuant to this section shall be
15 immune from liability in a civil action to recover damages for
16 injury, death, or loss to a person or property for any act or
17 omission made in connection with and under the authority of the
18 certificate of approval. This subsection shall not apply if:

19 (1) The act or omission was outside the scope of the
20 certificate of approval; or

21 (2) The act or omission was with malicious purpose, in bad
22 faith, or in a reckless manner."

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1 SECTION 4. Section 587A-3, Hawaii Revised Statutes, is
2 amended by amending subsection (a) as follows:

3 "(a) The department or an authorized agency, as resource
4 family or permanent custodian, shall abide by the following
5 guiding principles and ensure that the child in foster care:

6 (1) Lives in a safe and healthy home, free from physical,
7 psychological, sexual, and other abuse;

8 (2) Has adequate:

9 (A) Food that is nutritious and healthy;

10 (B) Clothing;

11 (C) Medical care, dental and orthodontic services,
12 and corrective vision care; and

13 (D) Mental health services;

14 (3) Has supervised or unsupervised in-person, telephone,
15 or other forms of contact with the child's parents and
16 siblings while the child is in foster care, unless
17 prohibited by court order;

18 (4) Has in-person contact with the child's assigned child
19 protective services worker, guardian ad litem, and if
20 applicable, the child's probation officer;

21 (5) Meets with the presiding judge in the child's case;

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- 1 (6) Is enrolled in a comprehensive health insurance plan
2 and, within forty-five days of out-of-home placement,
3 is provided with a comprehensive health assessment and
4 treatment as recommended;
- 5 (7) May freely exercise the child's own religious beliefs,
6 including the refusal to attend any religious
7 activities and services;
- 8 (8) Has a personal bank account and assistance in
9 managing the child's personal income consistent with
10 the child's age and development, unless safety or
11 other concerns require otherwise;
- 12 (9) Has the right to attend school [~~and participate in~~
13 ~~appropriate extracurricular activities~~] and, if the
14 child is moved during a school year, has the right to
15 complete the school year at the same school, if
16 practicable; [~~and~~]
- 17 (10) Beginning at age twelve, is provided with age-
18 appropriate life skills training and a transitional
19 plan for appropriately moving out of the foster care
20 system, as well as written information concerning
21 independent living programs, foster youth
22 organizations, transitional planning services, and

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1 independent living case management programs that are
2 available to all children in foster care who are
3 twelve years of age or older and their resource
4 families [-]; and

5 (11) Participates in extracurricular, enrichment,
6 cultural, and social activities; provided that the
7 child caring institution or resource caregiver
8 authorizes the participation in accordance with the
9 reasonable and prudent parent standard as defined in
10 42 United States Code section 675."

11 SECTION 5. 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;

21 (3) The court's projected timetable for reunification or,
22 if the current placement is not expected to be

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1 permanent, placement in an adoptive home, with a legal
2 guardian, or under the permanent custody of the
3 department or an authorized agency;

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

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

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

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

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

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

20 (8) In the case of a child who has attained [~~sixteen~~
21 fourteen years of age, the services needed to assist

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1 the child with the transition from foster care to
2 [~~independent living;~~] successful adulthood; and
3 (9) Consultations with the child in an age-appropriate
4 manner about the proposed plan for permanency or
5 transition from foster care to [~~independent living-~~]
6 successful adulthood."

7 SECTION 6. Section 587A-32, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The permanent plan shall:

10 (1) State whether the permanency goal for the child will
11 be achieved through adoption, legal guardianship, or
12 permanent custody;

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

15 (3) Document:

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

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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,~~] successful adulthood;

7 (5) If a child has reached the age of [~~sixteen,~~] fourteen,
8 describe the services needed to assist the child with
9 the transition from foster care to [~~independent~~
10 ~~living,~~] successful adulthood; and

11 (6) Describe the methods for achieving the goals and
12 objectives set forth in paragraphs (4) and (5)."

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act, upon its approval, shall take effect
16 on July 1, 2016.

17
18 INTRODUCED BY: 
19 BY REQUEST

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Report Title:

Foster Children

Description:

Updates the wording from "foster boarding home" to "resource family home" and "foster parents" to "resource caregivers"; establishes qualified immunity for resource caregivers and child caring institutions; adds the requirement that resource caregivers and child care institutions use the reasonable and prudent parent standard when authorizing children in foster care to participate in activities; and changes the age from sixteen to fourteen years of age for children in foster care to be involved in their foster care plans.

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

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO FOSTER CHILDREN.

PURPOSE: To bring the State into compliance with the Preventing Sex Trafficking and Strengthening Families Act of 2014 (PSTSF), Public Law 113-183, and to effectuate its mandates; to update the language from "foster boarding home" to "resource family" home and "foster parents" to "resource caregivers"; to establish qualified immunity for resource caregivers and child caring institutions; to require that resource caregivers and child care institutions use the reasonable prudent parent standard when authorizing youth in foster care to participate in extracurricular, enrichment, and social activities; and to require that youth in foster care, fourteen years of age and older, be included in case planning and be informed of their rights and available options.

MEANS: Amend sections 346-16(a), 346-17, 587A-3(a), 587A-31(c), and 587A-32(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The change in terminology in sections 346-16(a) and 346-17, HRS, is to promote the mindset and practice that caregivers of children in foster care are to provide care for the child and be a resource for the family by maintaining the child's familial relationships and connections that are safe and nurturing, especially with siblings.

To comply with the requirement that resource caregivers and child caring institutions use the "reasonable and prudent parent standard" when determining whether to allow a child in foster care under the responsibility of the

State to participate in extracurricular, enrichment, cultural, and social activities.

This requirement is set forth in 42 U.S.C. §675(10)(A) which established the "reasonable and prudent parent standard" defined as "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities."

Providing qualified immunity from liability for resource caregivers and child caring institutions will protect and enhance their capacity to encourage and support children in foster care to participate in extracurricular, enrichment, cultural, and social activities.

Prior to the PSTSF, children ages 16 and over were required to be consulted in development of the foster care case plan. With the enactment of the PSTSF, the age was lowered to 14 in recognition that children should be included earlier in the important process of case planning and be informed of their rights and options available to them. The involvement of children in their case planning will strengthen their self-sufficiency and better prepare them for a successful transition out of foster care and into adulthood.

Children who reach the age of majority while in foster care experience worse life outcomes than their age group peers, including homelessness, unemployment and poverty. Young people aging out of foster care are more likely than their peers to have children before they are ready (77

percent compared to 40 percent), more likely to become involved in criminal activity (males arrested by age 23 or 24 - 81 percent compared to 17 percent), and less likely to complete higher education (25 percent compared to 7 percent). Source: Mark E. Courtney, Amy Dworsky, JoAnn S. Lee, Melissa Raap. *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Ages 23 and 24* (Chapin Hall at the University of Chicago, 2010), Available at http://www.chapinhall.org/sites/default/files/Midwest_Study_Age_23_24.pdf.

Youth who participate in their case and transition planning as early as possible, are able to establish healthy goals and may experience better life outcomes.

Impact on the public: Supporting normalcy and prudent parenting contributes to an environment that cares for the health, safety, and well-being of a child, while at the same time encouraging emotional, social, and cognitive development, resulting in constructive behavior, self-confidence, problem-solving skills, and positive relationships with peers and adults.

The positive impact of allowing youth to participate in developing their case and transition plans promotes a sense of control over their life and future, identifies support and resources for the youth to reach positive outcomes, and improves the chances of youth becoming successful adults and not dependent upon government assistance.

Impact on the department and other agencies: There may be an increase in the workload for the Department and their contracted resources.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

HMS 301 and HMS 303.

OTHER AFFECTED
AGENCIES:

Department of Health, child placing
organizations that license foster boarding
home and child caring institutions.

EFFECTIVE DATE:

July 1, 2016.