

JAN 20 2023

A BILL FOR AN ACT

RELATING TO CHILD SEARCH AND SEIZURE.

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

1 SECTION 1. The legislature finds that, in fiscal year
2 2019, only thirty-two per cent of the 2,336 cases of suspected
3 child abuse or neglect investigated by the department of human
4 services were confirmed to be abuse or neglect. In fiscal year
5 2020, only sixteen per cent of the 1,131 children who entered
6 foster care in Hawaii were placed as the result of a court order
7 or voluntary consent. Eighty-four per cent of the children who
8 entered foster care were removed from their homes without
9 judicial oversight or as part of a coordinated child or family
10 safety plan. The legislature notes that Native Hawaiian
11 families and children are disproportionately impacted by these
12 involuntarily removals. Native Hawaiian children comprise
13 almost half the children in foster care in Hawaii, while
14 comprising less than one-third of the total children in the
15 State.

16 The legislature believes that one of the reasons for the
17 high rate of child removals without a warrant or court order is



1 the overly broad and confusing language of the governing
2 statute. The statute allows immediate removal of a child when
3 there is reasonable cause to believe that the child will suffer
4 harm within the following ninety days. However, the ninety-day
5 threshold provides more than sufficient time for the police or
6 child protective services to petition for a warrant or court
7 order for removal.

8 The legislature recognizes that many parents or guardians
9 are not aware of their legal rights at the time their child is
10 involuntarily removed by the State. Parents and children have a
11 well-established constitutional right to live together without
12 governmental interference. The fourteenth amendment of the
13 United States Constitution guarantees that a parent will not be
14 separated from their child without due process of law except in
15 emergencies. Law enforcement officials violate the fourteenth
16 amendment right of both the parent and the child if they remove
17 the child from the home absent information at the time of the
18 removal that establishes reasonable cause to believe there is
19 imminent harm. Parents should also be made aware that they are
20 not required to sign any document or speak to police or
21 department investigators and that they have the right to have an



1 attorney present when questioned. Many states, including
2 Connecticut, Arizona, Idaho, Colorado, and New York have
3 enacted, or are considering, legislation requiring that parents
4 be presented with a written notification of their rights when a
5 child welfare investigation is initiated.

6 Accordingly, the purpose of this Act is to ensure that the
7 State's laws for child removal comply with United States
8 Constitution and United States Supreme Court precedent by:

- 9 (1) Clarifying the definition of "imminent harm";
- 10 (2) Requiring police officers to comply with exigency
11 requirements when removing a child from the child's
12 home and to promptly submit a police report
13 documenting specific, articulable evidence of imminent
14 harm to the child that warranted the child's immediate
15 removal;
- 16 (3) Requiring the State to provide written notice to a
17 parent of the parent's rights when conducting an
18 investigation of reported child abuse or neglect; and
- 19 (4) Requiring police officers to have parental consent, a
20 court order, or evidence of exigent circumstances,
21 when interviewing a child at school or removing the



1 child to protective custody to complete an
2 investigation.

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

6 "Imminent harm" means [~~that without intervention within~~
7 ~~the next ninety days, there is reasonable cause to believe that~~
8 ~~harm to the child will occur or reoccur.~~] an immediate,
9 significant, and clearly observable family condition or
10 situation that is actively occurring at the point of contact
11 with a family and risks serious injury or death to a child."

12 SECTION 3. Section 587A-8, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~{}~~**§587A-8**~~{}~~ **Protective custody by police officer**
15 **without court order.** (a) A police officer shall assume
16 protective custody of a child without a court order and without
17 the consent of the child's family if [~~in the discretion of the~~
18 ~~police officer, the officer determines that:~~] there is no time
19 to obtain a court order, and the officer observes and can
20 articulate in the initial police report that:



- 1 (1) The child is subject to imminent harm at the point of
2 contact with the family and while in the custody of
3 the child's family;
- 4 (2) The child has no parent, as defined in this chapter,
5 who is willing and able to provide a safe family home
6 for the child;
- 7 (3) The child has no caregiver, as defined in this
8 chapter, who is willing and able to provide a safe and
9 appropriate placement for the child; or
- 10 (4) The child's parent has subjected the child to harm or
11 threatened harm and the parent is likely to flee with
12 the child.
- 13 (b) The department shall assume temporary foster custody
14 of the child when a police officer has completed the transfer of
15 protective custody of the child to the department as follows:
- 16 (1) A police officer who assumes protective custody of a
17 child shall complete transfer of protective custody to
18 the department by presenting physical custody of the
19 child to the department; or
- 20 (2) If the child is or will be admitted to a hospital or
21 similar institution, the police officer shall



1 immediately complete the transfer of protective
2 custody to the department by notifying the department
3 and receiving an acknowledgment from the hospital or
4 similar institution that it has been informed that the
5 child is under the temporary foster custody of the
6 department.

7 (c) A police officer who assumes protective custody of a
8 child pursuant to subsection (a) shall, within twenty-four hours
9 of assuming protective custody, submit to the department an
10 initial written report articulating the imminent harm that the
11 officer observed that caused the officer to reasonably believe
12 that immediate removal of the child was necessary."

13 SECTION 4. Section 587A-9, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 **"§587A-9 Temporary foster custody without court order.**

16 (a) When the department receives protective custody of a child
17 from the police, the department shall:

- 18 (1) Assume temporary foster custody of the child if, in
19 the discretion of the department, the department
20 determines that the child is subject to imminent harm
21 while in the custody of the child's family;



1 (2) Obtain from the police officer who assumed protective
2 custody of the child a copy of the initial police
3 report pursuant to section 587A-8(c);

4 [~~2~~] (3) Make every reasonable effort to inform the
5 child's parents of the actions taken, including
6 providing them with a copy of the initial police
7 report, unless doing so would put another person at
8 risk of harm;

9 [~~3~~] (4) Unless the child is admitted to a hospital or
10 similar institution, place the child in emergency
11 foster care while the department conducts an
12 appropriate investigation, with placement preference
13 being given to an approved relative;

14 [~~4~~] (5) With authorized agencies, make reasonable efforts
15 to identify and notify all relatives within thirty
16 days of assuming temporary foster custody of the
17 child; and

18 [~~5~~] (6) Within three days, excluding Saturdays, Sundays,
19 and holidays:

20 (A) Relinquish temporary foster custody, return the
21 child to the child's parents, and proceed



1 pursuant to section [~~587A-11(4)~~], 587A-11(b) and
2 587A-11(c)(4), (5), or (6);

3 (B) Secure a voluntary placement agreement from the
4 child's parents to place the child in foster
5 care, and proceed pursuant to section [~~587A-~~
6 ~~11(6)~~] 587A-11(c)(6) or (8); or

7 (C) File a petition with the court[-] that shall
8 include a copy of the initial police report."

9 SECTION 5. Section 587A-11, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§587A-11 Investigation; department powers.** (a) Upon
12 receiving a report that a child is subject to imminent harm, has
13 been harmed, or is subject to threatened harm, and when an
14 assessment is required by this chapter, the department shall
15 cause [~~such~~] an investigation to be made as it deems to be
16 appropriate.

17 (b) In conducting the investigation, the department [~~may~~]
18 shall:

19 (1) At the time of the initial face-to-face contact,
20 provide the parent with written notice of the parent's
21 rights and legal disclosures in a document entitled



1 "Notice of Parent Rights", which shall be developed by
2 the department and shall state that:

3 (A) The department is investigating suspected child
4 abuse or neglect according to the law;

5 (B) The department is required to notify the parent
6 of the allegations before conducting any
7 interview with the parent;

8 (C) The parent is not required to permit the
9 department or police officer to enter the
10 parent's residence, unless presented with a valid
11 warrant;

12 (D) The parent is not required to speak to the
13 department; however, failure to cooperate may
14 have serious consequences;

15 (E) The parent has the right to record the parent's
16 interview with the department;

17 (F) The parent is entitled to seek representation by
18 an attorney and have the attorney present when
19 the parent is questioned by the department;



1 (G) Neither the department's representative nor the
2 police officer is the parent's attorney, and
3 neither may provide legal advice to the parent;

4 (H) Any statement made by the parent, or any family
5 member, may be used against the parent in a
6 hearing initiated pursuant to this chapter; and

7 (I) The parent is not required to sign any document
8 presented by the department or a police officer,
9 including a release of claims or service
10 agreement, and is entitled to have an attorney
11 review any document before the parent agrees to
12 sign;

13 (2) Make reasonable efforts to ensure that the notice
14 provided to a parent under this section is written in
15 a manner that will be understood by the parent and in
16 a language in which the parent is fluent;

17 (3) Request that the parent sign and date the notice as
18 evidence of having received it. If the parent refuses
19 to sign and date the notice upon request, the
20 department shall specifically indicate on the notice
21 the department's request and the parent's refusal to



1 sign. The department shall sign the notice as a
2 witness to the parent's refusal to sign and shall
3 provide the parent with a copy of the signed notice at
4 the time of the initial face-to-face contact with the
5 parent; and

6 (4) Except when an initial contact with a parent results
7 in the immediate or same-day placement of a child into
8 emergency foster care, the notice provided under this
9 section shall be implemented, retained in the child's
10 case file, and attached to a court petition if a
11 subsequent removal to foster custody occurs.

12 (c) In conducting the investigation, the department may:

13 (1) Enlist the cooperation and assistance of appropriate
14 state and federal law enforcement authorities, who may
15 conduct an investigation and, if an investigation is
16 conducted, shall provide the department with all
17 preliminary findings, including the results of a
18 criminal history record check of an alleged
19 perpetrator of harm or threatened harm to the child;

20 (2) Conduct a criminal history record check of an alleged
21 perpetrator and all adults living in the family home,



1 with or without consent, to ensure the safety of the
2 child;

3 (3) Interview the child [~~without the presence or prior~~
4 ~~approval of the child's family and temporarily assume~~
5 ~~protective custody of the child for the purpose of~~
6 ~~conducting the interview;~~] at the child's school or
7 take protective custody of the child for the purpose
8 of conducting an interview; provided the department
9 has:

10 (A) Parental consent;

11 (B) A court order; or

12 (C) Evidence of exigent circumstances;

13 (4) Resolve the matter in an informal fashion that it
14 deems appropriate under the circumstances;

15 (5) Close the matter if the department finds, after an
16 assessment, that the child is residing with a
17 caregiver who is willing and able to meet the child's
18 needs and provide a safe and appropriate placement for
19 the child;

20 (6) Immediately enter into a service plan:



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- 1 (A) To safely maintain the child in the family home;
- 2 or
- 3 (B) To place the child in voluntary foster care
- 4 pursuant to a written agreement with the child's
- 5 parent.

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

- 17 (7) Assume temporary foster custody of the child and file
- 18 a petition with the court within three days, excluding
- 19 Saturdays, Sundays, and holidays, after the date on
- 20 which the department assumes temporary foster custody


1 of the child, with placement preference being given to
2 an approved relative; or

3 (8) File a petition or ensure that a petition is filed by
4 another appropriate authorized agency in court under
5 this chapter."

6 SECTION 6. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

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

11 SECTION 8. This Act shall take effect upon its approval.

12 INTRODUCED BY:  _____



S.B. NO. 1042

Report Title:

Department of Human Services; Child Welfare; Child Removal

Description:

Clarifies the definition of "imminent harm". Requires police officers to comply with exigency requirements when removing a child from the child's home and to promptly submit a police report documenting specific, articulable evidence of imminent harm to the child that warranted the child's immediate removal. Requires the State to provide written notice to a parent of the parent's rights when conducting an investigation of reported child abuse or neglect. Requires police officers to have parental consent, a court order, or evidence of exigent circumstances, when interviewing a child at school or removing the child to protective custody to complete an investigation.

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

