

S.B. NO. 3117

JAN 24 2024

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

3 1. By adding a new definition to be appropriately inserted
4 and to read as follows:

5 "Exigent circumstances" means that based on specific and
6 articulable evidence, there is reasonable cause to believe that
7 immediately assuming protective custody and temporary foster
8 custody of a child is necessary to protect the child from
9 serious harm that is likely to occur before a court order can be
10 obtained pursuant to section 587A-11(9)."

11 2. By amending the definition of "harm" to read:

12 ~~"Harm" [means damage or injury to a child's physical or~~
13 ~~psychological health or welfare, where:~~

14 ~~(1) The child exhibits evidence of injury, including, but~~

15 ~~not limited to:~~

16 ~~(A) Substantial or multiple skin bruising;~~

17 ~~(B) Substantial external or internal bleeding;~~

18 ~~(C) Burn or burns;~~

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1 ~~(D) Malnutrition;~~
2 ~~(E) Failure to thrive;~~
3 ~~(F) Soft tissue swelling;~~
4 ~~(G) Extreme pain;~~
5 ~~(H) Extreme mental distress;~~
6 ~~(I) Gross degradation;~~
7 ~~(J) Poisoning;~~
8 ~~(K) Fracture of any bone;~~
9 ~~(L) Subdural hematoma; or~~
10 ~~(M) Death;~~
11 ~~and the injury is not justifiably explained, or the~~
12 ~~history given concerning the condition or death is not~~
13 ~~consistent with the degree or type of the condition or~~
14 ~~death, or there is evidence that the condition or~~
15 ~~death may not be the result of an accident;~~
16 ~~(2) The child has been the victim of sexual contact or~~
17 ~~conduct, including sexual assault, sodomy,~~
18 ~~molestation; sexual fondling; incest; prostitution;~~
19 ~~obscene or pornographic photographing, filming, or~~
20 ~~depiction; or other similar forms of sexual~~
21 ~~exploitation, including but not limited to acts that~~

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1 ~~constitute an offense pursuant to section~~
2 ~~712-1202(1)(b);~~
3 ~~(3) The child's psychological well being has been injured~~
4 ~~as evidenced by a substantial impairment in the~~
5 ~~child's ability to function;~~
6 ~~(4) The child is not provided in a timely manner with~~
7 ~~adequate food; clothing; shelter; supervision; or~~
8 ~~psychological, physical, or medical care;~~
9 ~~(5) The child is provided with dangerous, harmful, or~~
10 ~~detrimental drugs as defined in section 712-1240,~~
11 ~~except when a child's family administers drugs to the~~
12 ~~child as directed or prescribed by a practitioner as~~
13 ~~defined in section 712-1240; or~~
14 ~~(6) The child has been the victim of labor trafficking~~
15 ~~under chapter 707.] has the same meaning as "child~~
16 ~~abuse or neglect" as defined in section 350-1."~~

17 3. By amending the definition of "imminent harm" to read:
18 "Imminent harm" means that [~~without intervention within~~
19 ~~the next ninety days,~~] there is reasonable cause to believe that
20 harm to the child will occur or reoccur[-] and no reasonable
21 efforts other than removal of the child from the family home
22 will adequately prevent the harm."

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1 SECTION 2. Section 587A-8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[§]587A-8 [§]~~ Protective custody by police officer
4 ~~[without court order]~~. (a) A police officer shall assume
5 protective custody of a child ~~[without a court order and without~~
6 ~~the consent of the child's family, if in the discretion of the~~
7 ~~police officer, the officer determines that:~~

8 ~~(1) The child is subject to imminent harm while in the~~
9 ~~eustody of the child's family;~~

10 ~~(2) The child has no parent, as defined in this chapter,~~
11 ~~who is willing and able to provide a safe family home~~
12 ~~for the child;~~

13 ~~(3) The child has no caregiver, as defined in this~~
14 ~~chapter, who is willing and able to provide a safe and~~
15 ~~appropriate placement for the child; or~~

16 ~~(4) The child's parent has subjected the child to harm or~~
17 ~~threatened harm and the parent is likely to flee with~~
18 ~~the child.];~~

19 (1) With the consent of the child's family;

20 (2) Upon order of the court; or

21 (3) Without the consent of the child's family and without
22 a court order if, in the discretion of the police

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1 officer, the officer determines that exigent
2 circumstances are present.

3 (b) The department shall assume temporary foster custody
4 of the child when a police officer has completed the transfer of
5 protective custody of the child to the department as follows:

6 (1) A police officer who assumes protective custody of a
7 child shall complete transfer of protective custody to
8 the department by presenting physical custody of the
9 child to the department; or

10 (2) If the child is or will be admitted to a hospital or
11 similar institution, the police officer shall
12 immediately complete the transfer of protective
13 custody to the department by notifying the department
14 and receiving an acknowledgment from the hospital or
15 similar institution that it has been informed that the
16 child is under the temporary foster custody of the
17 department."

18 SECTION 3. Section 587A-9, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§587A-9 Temporary foster custody** [~~without court order~~].

21 (a) [~~When the department receives protective custody of a child~~
22 ~~from the police, the department shall:~~

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1 ~~(1) Assume temporary foster custody of the child if, in~~
2 ~~the discretion of the department, the department~~
3 ~~determines that the child is subject to imminent harm~~
4 ~~while in the custody of the child's family;] The~~
5 ~~department shall assume temporary foster custody of a~~
6 ~~child:~~

7 (1) With the consent of the child's family;

8 (2) Upon order of the court; or

9 (3) Without the consent of the child's family and without
10 a court order, upon the transfer of protective custody
11 from a police officer if, in the discretion of the
12 department, the department determines that exigent
13 circumstances are present.

14 (b) When the department assumes temporary foster custody
15 of a child, the department shall:

16 ~~[(2)]~~ (1) Make every reasonable effort to inform the child's
17 parents of the actions taken, unless doing so would
18 put another person at risk of harm;

19 ~~[(3)]~~ (2) Unless the child is admitted to a hospital or
20 similar institution, place the child in emergency
21 foster care while the department conducts an

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1 appropriate investigation, with placement preference
2 being given to an approved relative;

3 ~~[(4)]~~ (3) With authorized agencies, make reasonable efforts
4 to identify and notify all relatives within thirty
5 days of assuming temporary foster custody of the
6 child; and

7 ~~[(5)]~~ (4) Within three days, excluding Saturdays, Sundays,
8 and holidays:

9 (A) Relinquish temporary foster custody, return the
10 child to the child's parents, and proceed
11 pursuant to section 587A-11(4), (5), or (6);

12 (B) Secure a voluntary placement agreement from the
13 child's parents to place the child in foster
14 care, and proceed pursuant to section 587A-11(6)
15 or (8); or

16 (C) File a temporary foster custody petition with the
17 court.

18 ~~[(b)]~~ (c) Upon the request of the department and without
19 regard to parental consent, any physician licensed or authorized
20 to practice medicine in the State shall perform an examination
21 to determine the nature and extent of harm or threatened harm to
22 the child under the department's temporary foster custody."

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

3 "§587A-11 Investigation; department powers. Upon
4 receiving a report that a child is subject to imminent harm, has
5 been harmed, or is subject to threatened harm, and when an
6 assessment is required by this chapter, the department shall
7 cause such investigation to be made as it deems to be
8 appropriate. In conducting the investigation, the department
9 may:

- 10 (1) Enlist the cooperation and assistance of appropriate
11 state and federal law enforcement authorities, who may
12 conduct an investigation and, if an investigation is
13 conducted, shall provide the department with all
14 preliminary findings, including the results of a
15 criminal history record check of an alleged
16 perpetrator of harm or threatened harm to the child;
- 17 (2) Conduct a criminal history record check of an alleged
18 perpetrator and all adults living in the family home,
19 with or without consent, to ensure the safety of the
20 child;
- 21 (3) Interview the child without the presence or prior
22 approval of the child's family and temporarily assume

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1 protective custody of the child for the purpose of
2 conducting the interview;

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

5 (5) Close the matter if the department finds, after an
6 assessment, that the child is residing with a
7 caregiver who is willing and able to meet the child's
8 needs and provide a safe and appropriate placement for
9 the child;

10 (6) Immediately enter into a service plan:

11 (A) To safely maintain the child in the family home;
12 or

13 (B) To place the child in voluntary foster care
14 pursuant to a written agreement with the child's
15 parent.

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

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1 child's safety is ensured; provided that the adoption
2 or legal guardianship hearing is conducted within six
3 months of the date on which the department assumed
4 physical custody of the child;

5 (7) Assume temporary foster custody of the child and file
6 a petition with the court within three days, excluding
7 Saturdays, Sundays, and holidays, after the date on
8 which the department assumes temporary foster custody
9 of the child, with placement preference being given to
10 an approved relative; ~~or~~

11 (8) File a petition or ensure that a petition is filed by
12 another appropriate authorized agency in court under
13 this chapter~~[-]~~; or

14 (9) Seek an order for protective custody if there is
15 reasonable cause to believe that the child is subject
16 to imminent harm, as follows:

17 (A) Court orders under this paragraph may be obtained
18 upon written application by the department,
19 without notice and without a hearing;

20 (B) If the court finds reasonable cause to believe
21 that the child is subject to imminent harm, the
22 court shall issue a written order that a police

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1 officer immediately take the child into
2 protective custody and transfer custody of the
3 child to the department, which will then assume
4 temporary foster custody of the child pursuant to
5 section 587A-8(b);

6 (C) If an order for protective custody is issued
7 under this paragraph, the court shall order that
8 a police officer make every reasonable effort to
9 personally serve the child's parents and any
10 person who has physical custody of the child with
11 copies of the application and order; and

12 (D) If the department assumes temporary foster
13 custody of the child pursuant to an order for
14 protective custody under this paragraph, it shall
15 proceed in accordance with section 587A-9(b)."

16 SECTION 5. Section 587A-21, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

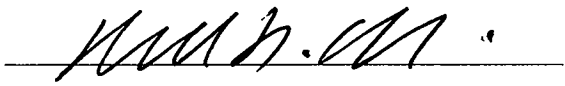
18 "(b) In deciding [~~in temporary foster custody hearings~~]
19 whether there is reasonable cause to believe that a child is
20 subject to imminent harm for orders for protective custody or in
21 temporary foster custody hearings, the court may consider
22 relevant hearsay evidence when direct testimony is unavailable

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1 or when it is impractical to subpoena witnesses who will be able
2 to testify to facts based on personal knowledge."

3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act, upon its approval, shall take effect
6 on July 1, 2025.

7 INTRODUCED BY: 

8 BY REQUEST

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Report Title:

Child Protective Act; Exigent Circumstances; Harm; Imminent Harm; Order for Protective Custody

Description:

Adds a definition for "exigent circumstances;" amends the definitions of "harm" and "imminent harm;" clarifies when the police may take protective custody of a child; clarifies when the department may assume temporary foster custody of a child; creates a judicial process for orders for protective custody.

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 **SB. NO. 3117**

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO THE CHILD PROTECTIVE ACT.

PURPOSE: To clarify when the police may take a child into protective custody and when the Department may take temporary foster custody of a child without first obtaining a court order. To authorize the court to order a child to be placed into protective custody and temporary foster custody without notice or a hearing.

MEANS:

Amend section 587A-4, Hawaii Revised Statutes (HRS), by adding a new definition of "exigent circumstances" and amending the definitions of "harm" and "imminent harm."

Amend section 587A-8, HRS, by clarifying when a police officer may take a child into protective custody.

Amend section 587A-9, HRS, by clarifying when the Department may place a child in temporary foster custody.

Amend sections 587A-11 and 587A-21, HRS, by creating a judicial process for obtaining an order for protective custody.

JUSTIFICATION:

Currently, section 587A-4, HRS, defines "imminent harm" as something that may occur within the next 90 days. That standard may result in children being removed from their homes without a court order more often than is necessary.

The bill adds the definition of "exigent circumstances" to clarify when the police may place a child in protective custody without a court order and when the Department may assume temporary foster custody of a child without a court order.

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To provide judicial oversight over the Department's decisions to assume temporary foster custody of a child, the bill clarifies when the Department may seek an order for protective custody from the court without notice or a hearing and authorizes the family court to review and issue written orders to the police to place a child in protective custody.

Impact on the public: This bill will clarify for the public when the police may take a child into protective custody without a court order, when the Department may place a child in temporary foster custody without a court order, and when the Family Court may issue an order for protective custody of a child.

Impact on the department and other agencies: This bill will require the police departments to revise their policies and procedures regarding removing children into protective custody. This bill will require the Department and the Department of the Attorney General to develop new policies and procedures for obtaining a court order for protective custody and temporary foster custody of a child. It will also require the Family Court to develop new policies and procedures to issue orders for protective custody and temporary foster custody. These changes will require training on the new policies and procedures for the police departments, the staff of the Department, the Department of the Attorney General, and the Judiciary, including parents' counsel and Guardians Ad Litem.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

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OTHER AFFECTED
AGENCIES:

The Department of the Attorney General; the
Judiciary; the police departments.

EFFECTIVE DATE:

July 1, 2025.