

ACT 85

S.B. NO. 2527-76

A Bill for an Act Relating to the Family Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this Act is to modernize Chapter 571 relating to the family court to better assist and protect the families whose unity or well-being is threatened and provide for each child coming within the jurisdiction of the court through a juvenile justice system which responds to the concerns of the community, preserves the family and emphasizes the need of each individual child processed through the system and to provide a fair method of terminating parental rights in conformity with constitutional mandate.

SECTION 2. Section 571-1, Hawaii Revised Statutes, is amended to read:

“Sec. 571-1 Construction and purpose of chapter. This chapter shall be liberally construed to the end that children and families whose rights and well-being are jeopardized shall be assisted and protected, and secured in those rights through action by the court; that the court may formulate a plan adapted to the requirements of the child and his family and the necessary protection of the community, and may utilize all State and community resources to the extent possible in its implementation.

This chapter creates within this State a system of family courts and it shall be a policy and purpose of said courts to conduct all proceedings to the end that no adjudication by the court of the status of any child under this chapter shall be deemed a conviction; no such adjudication shall impose any civil disability ordinarily resulting from conviction; no child shall be found guilty or be deemed a criminal by reason of such adjudication; and no child shall be charged with crime or be convicted in any court except as provided in section 571-22. The disposition made of a child or any evidence given in the court, shall not operate to disqualify the child in any civil service or military application or appointment. Any evidence given in any case under section 571-11 shall not in any civil, criminal, or other cause in any court be lawful or proper evidence against the child for any purpose whatever except in subsequent cases involving the same child under section 571-11.”

SECTION 3. Section 571-2, Hawaii Revised Statutes, is amended to read:

“Sec. 571-2 Definitions. When used in this chapter, unless the context otherwise requires:

- (1) “Court” means one of the family courts as herein established.
- (2) “Judge” means judge of the family court.
- (3) “Senior judge” means the judge so designated, as provided in this chapter.
- (4) “Board” means the board of family court judges.
- (5) “Child” or “minor” means a person less than eighteen years of age.
- (6) “Adult” means a person eighteen years of age or older.
- (7) “Detention” means the temporary care of children who require secure custody for their own or the community’s protection in physically restricting facilities pending court disposition.
- (8) “Shelter” means the temporary care of children in physically unrestricted facilities pending court disposition.
- (9) “Guardianship of the person of a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about his general welfare. It includes but shall not necessarily be limited in either number or kind to:
 - (A) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;
 - (B) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order;
 - (C) The rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution;
 - (D) The authority to consent to the adoption of the minor and to make any other decision concerning him which his parents could make, when the rights of his parents, only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of his legal parents are deceased.
- (10) “Legal custody” means the relationship created by the court’s decree which imposes on the custodian the responsibility of physical possession of the minor and the duty to protect, train, and discipline him and to provide him with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities and the rights and responsibilities of any legally appointed guardian of the person.
- (11) “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily

limited to, the right to reasonable visitation, consent to adoption or marriage, and the responsibility for support.

- (12) "Commit" means to transfer legal custody.
- (13) "Probation" means a legal status created by court order following adjudication in a case involving a violation of law whereby a minor is permitted to remain in his home or in a community residential or non-residential program subject to supervision by the court or an agency designated by the court and subject to return to the court for violation of probation at any time during the period of probation.
- (14) "Protective supervision" means a legal status created by court order in proceedings not involving violations of law but where the legal custody of the minor is subject to change, whereby the minor is permitted to remain in his home or in a community residential or non-residential program under the supervision of the court or an agency designated by the court and subject to return to the court during the period of protective supervision.
- (15) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter."

SECTION 4. Section 571-11, Hawaii Revised Statutes, is amended to read:

"**Sec. 571-11 Jurisdiction; children.** Except as otherwise provided herein, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any person who is alleged to have committed an act prior to achieving eighteen years of age which would constitute a violation or attempted violation of any federal, state or local law or municipal ordinance. Regardless of where the violation occurred jurisdiction may be taken by the court of the circuit where the person resides, is living or is found, or in which the offense is alleged to have occurred.
- (2) Concerning any child living or found within the circuit.
 - (A) Who is neglected as to proper or necessary support, or as to medical or other care necessary for his well-being, or who is abandoned by his parent or other custodian; or
 - (B) Who is subjected to physical or emotional deprivation or abuse as a result of the failure of any person or agency to exercise that degree of care for which he or it is legally responsible; or
 - (C) Who is beyond the control of his parent or other custodian or whose behavior is injurious to his own or others' welfare; or
 - (D) Who is neither attending school nor receiving educational services required by law whether through his own misbehavior or nonattendance or otherwise.
- (3) To determine the custody of any child or appoint a guardian of the person of any child.
- (4) For the adoption of a person under chapter 578.
- (5) For the termination of parental rights under sections 571-61 to 571-63.
- (6) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law.

- (7) For the treatment or commitment of a mentally defective, mentally retarded, or mentally ill child.
- (8) Under the Interstate Compact on Juveniles under chapter 582.”

SECTION 5. Section 571-13, Hawaii Revised Statutes, is amended to read:

“**Sec. 571-13 Retention of jurisdiction.** Except as provided in section 571-22, jurisdiction obtained by the court in the case of a child may be retained by it, for the purposes of this chapter, after he becomes eighteen years of age until the full term for which any order entered shall have expired, provided that such term shall not extend beyond the time he achieves nineteen years of age unless judicially terminated prior thereto. This provision shall not be construed, however, to confer any jurisdiction upon the Family Court over a person for any criminal act committed after he achieves eighteen years of age.”

SECTION 6. Section 571-14, Hawaii Revised Statutes, is amended to read:

“**Sec. 571-14 Jurisdiction; adults.** The court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by his parent or guardian or by any other person having his legal or physical custody, and any violation of sections 707-723, 709-902, 709-903, 709-904, or 709-905, whether or not included in other provisions of this paragraph or paragraph (2).
- (2) To try any adult charged with:
 - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
 - (B) An offense, other than a felony, against the person of the defendant’s husband or wife.

In any case within paragraphs (1) or (2) of this section the court may, in its discretion, waive its jurisdiction over the offense charged.
- (3) In all proceedings under chapter 580, and in all proceedings under chapter 579.
- (4) In proceedings under chapter 575, the Uniform Desertion and Nonsupport Act, and under chapter 576, the Uniform Reciprocal Enforcement of Support Act.
- (5) For commitment of an adult alleged to be mentally defective or mentally ill.
- (6) In all proceedings for support between parent and child or between husband and wife, and in all proceedings to appoint a guardian of the person of an adult.
- (7) In all proceedings for waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-22.”

SECTION 7. Section 571-31, Hawaii Revised Statutes, is amended to read:

“Sec. 571-31 Taking children into custody; release; notice. A child may be taken into custody by any police officer without order of the judge when there are reasonable grounds to believe that a child comes within section 571-11(1) or 571-11(2).

When an officer or other person takes a child into custody the parents, guardian, or legal custodian shall be notified immediately. The child shall be released to the care of his parent or other responsible adult unless his immediate welfare or the protection of the community requires that he be detained. If the person taking the child into custody believes it desirable, he may request the parent, guardian, or legal custodian to sign a written promise to bring the child to the court at the time directed by the court.

If a parent or other responsible custodian fails to produce the child in court as required by an authorized notice, or when notified by the court, a summons or a warrant may be issued for the apprehension of that person or the child or both. The court may assess the cost of the issuance and execution of the summons or warrant against the person.

SECTION 8. Section 571-32, Hawaii Revised Statutes, is amended to read:

“Sec. 571-32 Detention; shelter; release; notice. (a) If the child is not released as provided in section 571-31, he shall be taken without unnecessary delay to the court or to the place of detention or shelter designated by the court. Any child taken into custody who requires care away from his home but who does not require secure physical restriction shall be given temporary care in any available foster family home or other shelter facility.

The officer or other person who brings a child to a detention or shelter facility shall at once give notice to the court, stating the legal basis therefor and the reason why the child was not released to his parents. In case the facility to which the child is taken is not an agency of the court, the person in charge of the facility in which the child is placed shall promptly give notice to the court that the child is in his custody. Prior to acceptance of the child for detention or shelter care, a prompt inquiry shall be made by a duly authorized staff member of the detention or shelter facility or officer of the court. Where it is deemed in the best interests of the child the judge or such officer or staff member or the director of detention services may then order the child or minor to be released, if possible, to the care of his parent, guardian, legal custodian, or other responsible adult, or he may order the child held in the facility subject to further order or placed in some other appropriate facility.

As soon as a child is detained, his parents, guardian, or legal custodian shall be informed, by personal contact or by notice in writing on forms prescribed by the court, that they may have a prompt hearing held by a circuit judge or district family judge regarding release or detention. A child may be released on the order of the judge with or without a hearing. The director of detention services may order the release of the child if an order of detention has not been made.

(b) No child shall be held in detention or shelter longer than forty-eight hours, excluding Sundays and court holidays, unless a petition has been filed or unless the judge shall otherwise order. No child may be so held longer than forty-eight hours, excluding Sundays and court holidays, after the filing of a petition

unless an order for such continued detention or shelter has been signed by the judge.

(c) No child shall be released from such detention except in accordance with this chapter.

(d) No child shall at any time be detained in a police station, lockup, jail, or prison, except that, by the judge's order in which the reasons therefor shall be specified, a child whose conduct or condition endangers his own safety or the safety of others in the detention facility for children may be placed in some other place of confinement that the judge considers proper, including a jail or any other place of detention for adults.

(e) Where a child transferred for criminal proceedings in accordance with section 571-22 is detained, he shall be held in the detention facility used for persons charged with crime. When a child is ordered committed to an agency or institution, he shall be promptly transported to the place of commitment.

(f) Provisions regarding bail shall not be applicable to children detained in accordance with this chapter, except that bail may be allowed after a child has been transferred for criminal prosecution in accordance with section 571-22.

(g) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a child who is or appears to be under eighteen years of age is received at the facility.

SECTION 9. Section 571-41, Hawaii Revised Statutes, is amended to read:

"Sec. 571-41 Procedure in children's cases. Cases of children in proceedings under section 571-11(1) and (2) shall be heard by the court separate from hearings of adult cases and without a jury. Stenographic notes or mechanical recordings shall be required as in other civil cases in the circuit courts, unless the parties waive the right of such record or the court so orders. The hearings may be conducted in an informal manner and may be adjourned from time to time. The general public shall be excluded and only such persons admitted whose presence is requested by the parent or guardian or as the judge or district family judge finds to have a direct interest in the case or in the work of the court from the standpoint of the best interests of the child involved. Prior to the start of a hearing, the parents, guardian, legal custodian, and, when appropriate, the minor shall be notified of the right to be represented by counsel.

Findings of fact by the judge or district family judge of the validity of the allegations in the petition shall be based upon a preponderance of evidence admissible in the trial of civil cases except for petitions alleging the court's jurisdiction under section 571-11(1) which shall require proof beyond a reasonable doubt in accordance with rules of evidence applicable to criminal cases, provided, that no child who is before the court under section 571-11(1) shall have admitted against him any evidence in violation of his rights secured under the constitution of the United States or the State of Hawaii. In the discretion of the judge or district family judge the child may be excluded from the hearing at any time. When more than one child is alleged to have been involved in the same act, the hearing may be held jointly for the purpose of making a finding

as to the allegations in the petition and then shall be heard separately for the purpose of disposition except in cases where the minors involved have one common parent.

In the disposition part of the hearing any relevant and material information, including that contained in a written report, study, or examination, shall be admissible, and may be relied upon to the extent of its probative value; provided, that the maker of the written report, study, or examination shall be subject to both direct and cross-examination upon demand and when he is reasonably available. The disposition shall be based only upon the admitted evidence, and findings adverse to the child as to disputed issues of fact shall be based upon a preponderance of such evidence.

Upon a final adverse disposition, if the parent or guardian is without counsel the court shall inform the parent or guardian of his right to appeal as provided for in section 571-54.

The judge or the senior judge if there is more than one may by order confer concurrent jurisdiction on a district court created under chapter 604 to hear and dispose of cases of violation of traffic laws or ordinances by children, provision to the contrary in section 571-11 or elsewhere notwithstanding. The exercise of jurisdiction over children by district courts shall, nevertheless, be considered non-criminal in procedure and result in the same manner as though the matter had been adjudicated and disposed of by a family court."

SECTION 10. Section 571-42, Hawaii Revised Statutes, is amended to read:

"Sec. 571-42 Procedure in adult cases. In any criminal proceeding arising under section 571-14 the court, with the consent of the defendant or the parties in interest, may make a preliminary investigation and such adjustment as is practicable, without prosecution. The procedure and disposition applicable in the trial of such cases in a criminal court shall be applicable to any trial in the family court. On request of the court, the appropriate prosecuting officer shall prepare and prosecute any criminal case within the purview of section 571-14.

Where in his opinion it is necessary to protect the welfare of the persons before the court, the judge may conduct hearings in chambers, and may exclude persons having no direct interest in the case.

In proceedings arising under section 571-14(3), (4) or (5) the court may also make a preliminary investigation and, with consent of the parties in interest, may make such adjustment as is practicable without further formal procedures.

In any noncriminal proceeding arising under section 571-14, any findings of fact or disposition shall be based upon a preponderance of evidence admissible under the rules of evidence applicable to the trial of civil cases."

SECTION 11. Section 571-48, Hawaii Revised Statutes, is amended to read:

"Sec. 571-48 Decree, if informal adjustment or diversion to a private or community agency or program has not been effected. When a minor is found by the court to come within section 571-11, the court shall so decree and in its decree shall make a finding of the facts upon which the court exercises its jurisdiction

over the minor. Upon such decree the court shall, by order duly entered, proceed as follows:

- (1) As to a child adjudicated under section 571-11(1):
 - (A) The court may place the child on probation in his own home or in the custody of a suitable person elsewhere, upon conditions determined by the court.
 - (B) The court may vest legal custody of the child, after prior consultation with the agency or institution in the Hawaii youth correctional facility in a local public agency or institution; or in any private institution or agency authorized by the court to care for children; or place him in a private home. If legal custody of the child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state's department of social services or other equivalent department.
- (2) As to a child adjudicated under section 571-11(2):
 - (A) The court may place the child under protective supervision, as hereinabove defined, in his own home, or in the custody of a suitable person or agency elsewhere, upon conditions determined by the court.
 - (B) The court may vest legal custody of the child, after prior consultation with the agency or institution in a local governmental agency or institution licensed or approved by the state to care for children, with the exception of an institution primarily for the care and treatment of children committed under section 571-11(1) or in any private agency or institution authorized by the court to care for children. If legal custody of the child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state's department of social services or other equivalent department; provided, however, that the child may not be committed to a public or private institution operated solely for the treatment of law violators.
- (3) An order vesting legal custody in an individual, agency, or institution under section 571-11(2) shall be for an indeterminate period but shall not remain in force or effect beyond three years from the date entered, except that the individual, institution, or agency may file with the court a petition for renewal of the order and the court may renew the order if it finds such renewal necessary to safeguard the welfare of the child or the public interest. The court may, after notice to the parties, conduct a hearing of the petition. Renewal may be periodic during minority, but no order shall have any force or effect beyond the period authorized by section 571-13. An agency granted legal custody shall be subject to prior approval of the court in any case in which the child is to reside without the territorial jurisdiction of the court and may be subject to prior approval in other cases. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise

- authorized by the court.
- (4) Whenever the court commits a child to the care of the director of social services or vests legal custody of a child in an institution or agency it shall transmit with the order copies of the clinical reports, social study, and other information pertinent to the care and treatment of the child, and the institution or agency shall give to the court any information concerning the child that the court may at any time require. An institution or agency receiving a child under this subsection shall inform the court whenever the status of the child is affected through temporary or permanent release, discharge, or transfer to other custody. An institution to which a child is committed under section 571-11(1) or (2) shall not transfer custody of the child to an institution for the correction of adult offenders, except as authorized under section 352-27.
 - (5) The court may order, for any child within its jurisdiction, whatever care or treatment is authorized by law.
 - (6) In placing a child under the guardianship or custody of an individual or of a private agency or private institution, the court shall give primary consideration to the welfare of the child.
 - (7) In support of any order or decree under section 571-11(1) or (2), the court may require the parents or other persons having the custody of the child, or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter and who are parties to the proceeding, to do or to omit doing any acts required or forbidden by law, when the judge deems this requirement necessary for the welfare of the child. If such persons fail to comply with the requirement, the court may proceed against them for contempt of court.
 - (8) In support of any order of decree for custody or support, the court may make an order of protection setting forth reasonable conditions of behavior to be observed for a specified time, binding upon both parents or either of them. This order may require either parent to stay away from the home or from the other parent or children, may permit the other to visit the children at stated periods, or may require a parent to abstain from offensive conduct against the children or each other.
 - (9) The court may dismiss the petition or otherwise terminate its jurisdiction at any time.
 - (10) In any other case of which the court has jurisdiction, the court may make any order or judgment authorized by law.

SECTION 12. Section 571-49, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 571-50, Hawaii Revised Statutes, is amended to read:

“Sec. 571-50 Modification of decree, rehearing. Except as otherwise provided by this chapter, any decree or order of the court may be modified at any time.

At any time during supervision of a child the court may issue notice or other appropriate process to the child if he is of sufficient age to understand the nature of the process, to the parents, and to any other necessary parties to appear at a hearing on a charge of violation of the terms of supervision, for any change in or modification of the decree or for discharge. The provisions of this chapter relating to process, custody, and detention at other stages of the proceeding shall be applicable.

A parent, guardian, custodian, or next friend of any child whose status has been adjudicated by the court, or any adult affected by a decree of the court, may at any time petition the court for a rehearing on the ground that new evidence, which was not known or not available through the exercise of due diligence at the time of the original hearing and which might affect the decree, has been discovered. Upon a satisfactory showing of such evidence, the court shall order a new hearing and make such disposition of the case as the facts and the best interests of the child warrant.

A parent, guardian, or next friend of a child whose legal custody has been transferred by the court to an institution, facility, agency, or person may petition the court for modification or revocation of the decree, on the ground that such legal custodian has wrongfully denied application for the release of the child or has failed to act upon it within a reasonable time, or has acted in an arbitrary manner not consistent with the welfare of the child or the public interest. An institution, facility, agency, or person vested with legal custody of a child may petition the court for a renewal, modification, or revocation of the custody order on the ground that such charge is necessary for the welfare of the child or in the public interest. The court may dismiss the petition if on preliminary investigation it finds it without substance. If the court is of the opinion that the decree should be reviewed, it shall conduct a hearing on notice to all parties concerned, and may enter an order continuing, modifying, or terminating the decree.

Notwithstanding the foregoing provisions of this section the court's authority with respect to the review, rehearing, renewal, modification, or revocation of decrees, judgments, or orders entered in the hereinbelow listed classes of proceedings shall be limited by any specific limitations set forth in the statutes governing such proceedings or in any other specifically applicable statutes or rules. Such proceedings are as follows:

- (1) Annulment, divorce, separation, and other proceedings under chapter 580;
- (2) Adoption proceedings under chapter 578;
- (3) Paternity proceedings under chapter 579;
- (4) Termination of parental rights proceedings under this chapter;
- (5) Waimano training school and hospital commitment proceedings under chapter 333;
- (6) State hospital commitment proceedings under chapter 334;

A decree, judgment, or order committing a child to the care of the director of social services shall be reviewable under this section at the instance of others than duly authorized representatives of such department only after a lapse of thirty days following the date of the decree, judgment, or order, and thereafter only at intervals of not less than one year.

Notwithstanding this section the court shall not conduct a rehearing of any petition, filed under section 571-11(1), which, following a hearing, has been denied or dismissed.”

SECTION 14. Section 571-61, Hawaii Revised Statutes, is amended to read:

“Sec. 571-61 Termination of parental rights; petition. (a) Relinquishment.

The parents or either parent or the surviving parent who desire to relinquish parental rights to any natural or adopted child and thus make the child available for adoption or readoption, may petition the family court of the circuit in which they or he or she resides, or of the circuit in which the child resides, or was born, for the entry of a judgment of termination of parental rights. The petition shall be verified and shall be substantially in such form as may be prescribed by the judge or senior judge of the family court. The petition may be filed at any time following the mother’s sixth month of pregnancy; provided, that no judgment may be entered upon a petition concerning an unborn child until after the birth of the child and in respect to a legal parent or parents until the petitioner or petitioners have filed in the termination proceeding a written reaffirmation of their desires as expressed in the petition or in respect to a legal parent or parents until the petitioner or petitioners have been given not less than ten days’ notice of a proposal for the entry of judgment and an opportunity to be heard in connection with such proposal.

(b) Involuntary termination.

- (1) The family courts may terminate the parental rights in respect to any child as to any legal parent:
 - (A) Who has deserted the child without affording means of identification for a period of at least 90 days;
 - (B) Who has voluntarily surrendered the care and custody of the child to another for a period of at least two years;
 - (C) Who, when the child is in the custody of another, has failed to communicate with the child when able to do so for a period of at least one year;
 - (D) Who, when the child is in the custody of another, has failed to provide for care and support of the child when able to do so for a period of at least one year;
 - (E) Whose child has been removed from his physical custody pursuant to legally authorized judicial action under section 571-11(2) (A), and who is found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the child;
 - (F) Who is found by the court to be mentally ill or mentally retarded and incapacitated from giving consent to the adoption of or from providing adequate care to the child;
 - (G) Who is found not to be the child’s natural or adoptive father.
- (2) The family courts may terminate the parental rights in respect to any minor of any natural but not legal father who is an adjudicated, presumed or concerned father under the provisions of chapter 578 relating to adoption, or who is named as the father on the child’s birth certificate:

- (A) Who fails within subparagraphs (b) (1) (A), (B), (C), (D), (E), or (F) of paragraph (b) of section 571-61;
 - (B) Whose child is sought to be adopted by the child's stepfather and said stepfather has lived with said child and said child's legal mother for a period of at least one year;
 - (C) Who has failed to file a petition for the adoption of said child or whose petition for the adoption of said child has been denied;
 - (D) Who is found to be an unfit or improper parent or to be financially or otherwise unable to give the child a proper home and education.
- (3) In respect to proceedings under paragraphs (1) and (2) herein, the authority to terminate parental rights may be exercised by the court only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born and the court has conducted a hearing of the petition. A copy of the petition, together with notice of the time and place of the hearing thereof, shall be personally served at least twenty days prior to the hearing upon the parent whose rights are sought to be terminated. In the event that personal service cannot be effected within the State, service of the notice may be made as provided in section 634-23 or 634-24.
- (4) The family courts may terminate the parental rights in respect to any child as to any natural father who is not the child's legal, adjudicated, presumed or concerned father under the provisions of chapter 578 relating to adoption.

Such authority may be exercised under this chapter only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born, and the court has conducted a hearing of the petition.

If the mother of the child files with the petition an affidavit representing that the identity or whereabouts of the child's father is unknown to her or not ascertainable by her or that other good cause exists why notice cannot or should not be given to said father, the court shall conduct a hearing to determine whether notice must be given.

In the event the court finds that good cause exists why notice cannot or should not be given to the child's father, and that said father is neither the legal nor adjudicated nor presumed father of the child, nor has he demonstrated a reasonable degree of interest, concern or responsibility as to the existence or welfare of the child, the court may enter an order authorizing the termination of said father's parental rights and the subsequent adoption of said child without notice to said father."

SECTION 15. Section 571-63, Hawaii Revised Statutes, is amended to read:

"Sec. 571-63 Findings and judgment. No judgment of termination of parental rights entered under sections 571-61 to 571-63 shall be valid or binding

unless it contains a finding that the facts upon which the petition is based bring the child within such sections and have been proved by the evidence and that the adjudication of termination of parental rights is necessary for the protection and preservation of the best interests of the child concerned and will facilitate the legal adoption of the child.

In any judgment entered pursuant to sections 571-61 to 571-63 the court may terminate the parental rights of one or both of the parents of the child concerned, may transfer the care, custody and control of the child to any proper person not forbidden by law to place a child for adoption or to the department of social services and housing or to any child-placing organization approved by the department, may appoint a guardian of the person of the child, and may authorize the person or the department or the agency or the guardian to consent to the legal adoption of the child.

No judgment of termination of parental rights entered under sections 571-61 to 571-63 shall operate to terminate the mutual rights of inheritance of the child and the parent or parents involved, or to terminate the legal duties and liabilities of the parent or parents, unless and until the child has been legally adopted.

Every such judgment of termination of parental rights when the procedural provisions of sections 571-61 to 571-63 have been followed shall become final and binding upon all of the parties concerned as of the date of its entry and filing, subject to the right of appeal. No such judgment shall be set aside for reasons other than the best interests and welfare of the child concerned, after the entry of a decree of adoption of the child concerned or during any period when the child is in an adoptive home in which the child has been placed by the department of social services and housing or by a child-placing organization approved by the department or by any person not forbidden by law to place a child for adoption. When any such child is placed for adoption, a sworn certificate evidencing the placement shall be filed in the termination proceeding by the agency or person making the placement. Upon the entry of a final decree of adoption of any such child, a certified copy of the decree shall be filed in the termination proceeding and notification of the entry of the decree, without disclosing the identity of the adopting parents, shall, unless waived by the court, be given to each person whose parental rights have been terminated by registered or certified mail addressed to the last known address of each such person; provided, that at any time following the expiration of one year from the date of the entry of any such judgment of termination of parental rights, upon the motion of the parent or parents of the child or the department of social services and housing or any child-placing organization approved by the department or any other proper person, based upon the fact that the child has not been adopted or placed in a prospective adoptive home, the court in which the judgment was entered shall review the same and shall consider the currently reported circumstances of the child and of the parent or parents and shall enter its findings as to whether the circumstances, and the present best interests of the child, justify the continuance of the judgment. Upon such reconsideration, the court may either set aside the judgment or continue it in effect, as the circumstances may warrant. Upon the entry in the termination proceeding of a certified copy of the final decree of adoption of any

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such child and notification thereof to the person whose parental rights have been terminated, unless waived as herein provided, or upon the dismissal or discontinuance or other final disposition of the petition in the termination proceeding the clerk of the court shall seal all records in the termination proceeding and the seal shall not be broken and the records shall not be inspected by any person, including the parties to the termination proceeding, except upon order of the court.”

SECTION 16. Section 571-72, Hawaii Revised Statutes, is amended to read:

“**Sec. 571-72 Duties and powers; reports.** The juvenile crime prevention bureau shall direct its attention specifically to the suppression, prevention, and investigation of crimes committed by children under the age of eighteen years, and any police officer shall have the power and authority to take and detain any minor coming within section 571-11 at the bureau or other suitable places for questioning and investigation. If it appears upon conclusion of the investigation that the minor does come within such provisions, he may be referred to the family court or to a proper agency for treatment, and a written report of the findings of the officer shall be submitted to the court or the agency.”

SECTION 17. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 18. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 19. This Act shall take effect upon its approval.

(Approved May 12, 1976.)

*Edited accordingly.