

## ACT 153

H.B. NO. 1117

A Bill for an Act Relating to the Child Protective Act.

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

SECTION 1. Section 587-2, Hawaii Revised Statutes, is amended:

1. By adding a new definition to be appropriately inserted and to read:

““Abandoned infant” means a child who is three years old or younger and:

- (1) Whose parent or parents, as applicable, regardless of any incidental contact or communication with the child, have demonstrated an extreme disinterest or lack of commitment for assuming parental responsibility for the child;
- (2) Whose parent’s or parents’, as applicable, identity or whereabouts have been unknown to the caretaker for no less than sixty days, and reasonable efforts have been made to identify or locate the parent or parents;
- or
- (3) Whose presumed or alleged non-adjudicated father has failed to assert a claim or interest as a parent for no less than sixty days if he has knowledge of the birth of the child and that he is the presumed or alleged father, and whose mother also falls under paragraph (1) or (2).”

2. By amending the definition of “aggravated circumstances” to read:

““Aggravated circumstances” means that:

- (1) The parent has committed, or has aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent;
- (2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;
- (3) [The parental rights to a sibling have been terminated involuntarily pursuant to chapter 571; or] The parental rights have been judicially terminated or divested regarding a sibling;
- (4) The parent has tortured the child;
- (5) The child is an abandoned infant; or

[(4)] (6) A court has made a determination regarding a sibling under section 587-73(a) of the presence of the situation described under section 587-73(a)(1) [or and (2)[, or both].”

SECTION 2. Section 587-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Service of summons shall be made personally by delivery of a certified copy thereof to the person or legal entity summoned; provided that if the party to be served resides outside of the State of Hawaii, service shall be made by registered or certified mail addressed to the last known address or if the court is satisfied that it is impracticable to serve personally the summons provided for in the preceding section, the court may order service by registered or certified mail addressed to the last known address, or by publication thereof, or both. Service shall be effected at least twenty-four hours prior to the time fixed in the summons for a temporary foster custody hearing or at least forty-eight hours prior to the time fixed in the summons for any other hearing under this chapter, unless the party otherwise was ordered by the court to appear at the hearing. Personal service of summons required under this chapter shall be made by the sheriff or other authorized person and a return must be made on the summons showing to whom, the date, and time service was made.”

SECTION 3. Section 587-71, Hawaii Revised Statutes, is amended to read as follows:

“**§587-71 Disposition hearing.** (a) The court may consider the evidence which is relevant to disposition which is in the best interests of the child; provided that the court shall determine initially whether the child’s family home is a safe family home. The court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25 and the report or reports submitted pursuant to section 587-40, in rendering such a determination.

(b) If the court determines that the child’s family is presently willing and able to provide the child with a safe family home without the assistance of a service plan, the court shall terminate jurisdiction.

(c) If the court determines that the child’s family home is a safe family home with the assistance of a service plan, the court shall place the child and the child’s family members who are parties under the family supervision of an authorized agency, return the child to the child’s family home, and enter further orders, including[,] but not limited to[,] restrictions upon the rights and duties of the authorized agency, as the court deems to be in the best interests of the child.

(d) If the court determines that the child’s family home is not a safe family home, even with the assistance of a service plan, the court shall vest foster custody of the child in an authorized agency and enter such further orders as the court deems to be in the best interests of the child.

(e) If the child’s family home is determined not to be safe, even with the assistance of a service plan pursuant to subsection (d), the court may, and if the child has been residing without the family home for a period of [eighteen] twelve consecutive months shall, set the case for a show cause hearing as deemed appropriate by the court at which the child’s family shall have the burden of presenting evidence to the court regarding such reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon such show cause hearing as the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), and:

- (1) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40; or

(2) Proceed pursuant to this section.

(f) Except as provided in subsection (e)(1), if the court does not terminate the court's jurisdiction, the court shall order in every case that the authorized agency make every reasonable effort, pursuant to section 587-40, to prepare a written service plan, as set forth in section 587-26.

(g) The court may continue the disposition hearing concerning the terms and conditions of the proposed service plan to a date within forty-five days from the date of the original disposition hearing, unless the court deems a later date to be in the best interests of the child; provided that if the court is convinced that a party has signed and fully understands and accepts the service plan, the court may order that the service plan shall constitute the service plan by court order concerning such party and that the service plan be entered into evidence with such party's presence being waived for good cause shown at the continued disposition hearing.

(h) Prior to ordering a service plan at the disposition or continued disposition hearing, the court shall make a finding that each term, condition, and consequence of the service plan has been thoroughly explained to and is understood by each party or a party's guardian ad litem; provided that the court need not [order a service plan and may proceed pursuant to<sup>1</sup> 587-72(c)(7)] enter the findings if the court finds that aggravated circumstances are present.

(i) After a hearing that the court deems to be appropriate, the court may order terms, conditions, and consequences to constitute a service plan as the court deems to be in the best interests of the child; provided that a copy of the service plan shall be incorporated as part of the order. The court need not order a service plan [and may proceed pursuant to<sup>1</sup> 587-72(c)(7)] if the court finds that aggravated circumstances are present.

(j) If the court makes a determination that aggravated circumstances are present under this section, the court shall set the case for a show cause hearing as deemed appropriate by the court within thirty days. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing.

[(j)] (k) The court may order that any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and are deemed to be in the best interests of the child.

[(k)] (l) At any stage of the child protective proceedings, the court may order that a child be examined by a physician, surgeon, psychiatrist, or psychologist, and it may order treatment by any of them of a child as is deemed to be in the best interests of the child. For either the examination or treatment, the court may place the child in a hospital or other suitable facility.

[(l)] (m) The court shall order reasonable supervised or unsupervised visitation rights to the child's family and to any person interested in the welfare of the child and that the visitation shall be in the discretion of an authorized agency and the child's guardian ad litem, unless it is shown that rights of visitation may be detrimental to the best interests of the child; provided that the court need not order any visitation if the court finds that aggravated circumstances are present.

[(m)] (n) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall:

- (1) Make a finding that each party understands that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and
- (2) Set the case for a review hearing within six months.

(o) Nothing in this section shall prevent the court from setting a show cause hearing or a permanent plan hearing at any time the court determines such a hearing to be appropriate.”

SECTION 4. Section 587-72, Hawaii Revised Statutes, is amended as follows:

“§587-72 Review hearings. (a) Except for good cause shown, the court shall set each case for review hearing not later than six months after the date that a service plan is ordered by the court and, thereafter, the court shall set subsequent review hearings at intervals of no longer than six months until the court’s jurisdiction has been terminated or the court has ordered a permanent plan and has set the case for a permanent plan review hearing; the court may set a case for a review hearing upon the motion of a party at any time if the hearing is deemed by the court to be in the best interests of the child.

(b) Notice of review hearings shall be served upon the parties and upon the present foster parent or parents, each of whom shall be entitled to participate in the proceedings as a party. Notice of the review hearing shall be served by the department upon the present foster parent or parents no less than forty-eight hours before the scheduled hearing. No hearing shall be held until the foster parent or parents are served. For purposes of this subsection, notice to foster parents may be effected by hand delivery or by regular mail; and may consist of the last court order, if it includes the date and time of the hearing.

(c) Upon each review hearing the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including but not limited to[,] the report submitted pursuant to section 587-40, and:

- (1) Determine whether the child’s family is presently willing and able to provide the child with a safe family home without the assistance of a service plan and, if so, the court shall terminate jurisdiction;
- (2) Determine whether the child’s family is presently willing and able to provide the child with a safe family home with the assistance of a service plan and, if so, the court shall return the child or continue the placement of the child in the child’s family home under the family supervision of the appropriate authorized agency;
- (3) If the child’s family home is determined, pursuant to subsection (c)(2) not to be safe, even with the assistance of a service plan, order that the child remain or be placed under the foster custody of the appropriate authorized agency; [if the child has been residing without the family home for a period of twelve months or if there has been a court ordered service plan for a period of one year, the court may set the case for a show cause hearing at which the child’s family shall have the burden of presenting evidence to the court regarding the reasons and considerations as the family has to offer as to why the case should not be set for a permanent plan hearing. Upon a show cause hearing that the court deems to be appropriate, the court shall consider the criteria set forth in section 587-73(a)(1), (2), and (4), or section 587-73(e), and:
  - (A) Set the case for a permanent plan hearing and order that the authorized agency submit a report pursuant to section 587-40; or
  - (B) Proceed pursuant to this section;]
- (4) Determine whether the parties have complied with, performed, and completed every term and condition of the service plan that was previously court ordered;

- (5) Order revisions to the existing service plan, after satisfying section 587-71(h), as the court, upon a hearing that the court deems to be appropriate, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;
  - (6) Enter further orders as the court deems to be in the best interests of the child; [and]
  - (7) Determine whether aggravated circumstances are present and, if so, the court shall set the case for a show cause hearing [at which] as the court deems appropriate within thirty days. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing[.]; and
  - (8) If the child has been residing outside the family home for twelve consecutive months, set the case for a show cause hearing as deemed appropriate by the court. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing.
- (d) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall:
- (1) Make a finding that the parties understand that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and
  - (2) Set the case for a review hearing within six months.
- (e) If the child has been residing outside of the family home for an aggregate of fifteen out of the most recent twenty-two months, the department shall file a motion to set the matter for a permanent plan hearing unless:
- (1) The department has documented in the safe family home guidelines prepared pursuant to section 587-25(a), a compelling reason why it would not be in the best interests of the child to file a motion; or
  - (2) The State has not provided to the family of the child, consistent with the time period in the service plan, such services as the department deems necessary for the safe return of the child to the family home;
- provided that nothing in this section shall prevent the department from filing such a motion to set a permanent plan hearing if the department has determined that the criteria in section 587-73(a) are present."

SECTION 5. Section 587-73, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including[,] but not limited to[,] the report or reports submitted pursuant to section 587-40, and determine whether there exists clear and convincing evidence that:

- (1) The child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan;
- (2) It is not reasonably foreseeable that the child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 will become willing and able to provide the child

with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed [three] two years from the date upon which the child was first placed under foster custody by the court;

- (3) The proposed permanent plan will assist in achieving the goal which is in the best interests of the child; provided that the court shall presume that:
  - (A) It is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes; and
  - (B) The presumption increases in importance proportionate to the youth of the child upon the date that the child was first placed under foster custody by the court; and
- (4) If the child has reached the age of fourteen, the child is supportive of the permanent plan.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

**Note**

1. Prior to amendment “section” appeared here.