

ACT 144

S.B. NO. 2245

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

1. By adding a new definition to be appropriately inserted and to read: ““Exigent circumstances” means that, based on specific and articulable evidence, there is reasonable cause to believe that immediately assuming protective custody and temporary foster custody of a child is necessary to protect the child from serious harm that is likely to occur before a court order can be obtained.”

2. By amending the definitions of “harm” and “imminent harm” to read: ““Harm” [means damage or injury to a child’s physical or psychological health or welfare, where:

- (1) The child exhibits evidence of injury, including, but not limited to:
 - (A) Substantial or multiple skin bruising;
 - (B) Substantial external or internal bleeding;
 - (C) Burn or burns;
 - (D) Malnutrition;
 - (E) Failure to thrive;
 - (F) Soft tissue swelling;
 - (G) Extreme pain;
 - (H) Extreme mental distress;
 - (I) Gross degradation;
 - (J) Poisoning;
 - (K) Fracture of any bone;
 - (L) Subdural hematoma; or
 - (M) Death;

and the injury is not justifiably explained, or the history given concerning the condition or death is not consistent with the degree or type of the condition or death, or there is evidence that the condition or death may not be the result of an accident;

- (2) The child has been the victim of sexual contact or conduct, including sexual assault; sodomy; molestation; sexual fondling; incest; prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b);
- (3) The child's psychological well-being has been injured as evidenced by a substantial impairment in the child's ability to function;
- (4) The child is not provided in a timely manner with adequate food; clothing; shelter; supervision; or psychological, physical, or medical care;
- (5) The child is provided with dangerous, harmful, or detrimental drugs as defined in section 712-1240, except when a child's family administers drugs to the child as directed or prescribed by a practitioner as defined in section 712-1240; or
- (6) The child has been the victim of labor trafficking under chapter 707;] has the same meaning as "child abuse or neglect" as defined in section 350-1.

"Imminent harm" means that [without intervention within the next ninety days,] there is reasonable cause to believe that harm to the child will occur or reoccur[;] and no reasonable efforts other than removal of the child from the family home will adequately prevent the harm."

SECTION 2. Section 587A-8, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"[§587A-8] Protective custody by police officer [without court order].

(a) A police officer shall assume protective custody of a child [without a court order and without the consent of the child's family, if in the discretion of the police officer, the officer determines that]:

- (1) The child is subject to imminent harm while in the custody of the child's family;
- (2) The child has no parent, as defined in this chapter, who is willing and able to provide a safe family home for the child;
- (3) The child has no caregiver, as defined in this chapter, who is willing and able to provide a safe and appropriate placement for the child; or
- (4) The child's parent has subjected the child to harm or threatened harm and the parent is likely to flee with the child.]
 - (1) With the consent of the child's family;
 - (2) Upon order of the court; or
 - (3) Without the consent of the child's family and without a court order if, in the discretion of the police officer, the officer determines that exigent circumstances are present."

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

"§587A-9 Temporary foster custody [without court order]. (a) [When the department receives protective custody of a child from the police, the department shall:] The department shall assume temporary foster custody of a child:

- (1) ~~[Assume temporary foster custody of the child if, in the discretion of the department, the department determines that the child is subject to imminent harm while in the custody of the child's family;]~~
With the consent of the child's family;
- (2) Upon order of the court; or
- (3) Without the consent of the child's family and without a court order, upon the transfer of protective custody from a police officer if, in the discretion of the department, the department determines that exigent circumstances are present.
- (b) If the department assumes temporary foster custody of a child, the department shall:
 - [(2)] (1) Make every reasonable effort to inform the child's parents of the actions taken, unless doing so would put another person at risk of harm;
 - [(3)] (2) Unless the child is admitted to a hospital or similar institution, place the child in emergency foster care while the department conducts an appropriate investigation, with placement preference being given to an approved relative;
 - [(4)] (3) With authorized agencies, make reasonable efforts to identify and notify all relatives within thirty days of assuming temporary foster custody of the child; and
 - [(5)] (4) Within three days, excluding Saturdays, Sundays, and holidays:
 - (A) Relinquish temporary foster custody, return the child to the child's parents, and proceed pursuant to section 587A-11(4), (5), or (6);
 - (B) Secure a voluntary placement agreement from the child's parents to place the child in foster care, and proceed pursuant to section 587A-11(6) or (8); or
 - (C) File a temporary foster custody petition with the court.
- [(b)] (c) Upon the request of the department and without regard to parental consent, any physician licensed or authorized to practice medicine in the State shall perform an examination to determine the nature and extent of harm or threatened harm to the child under the department's temporary foster custody."

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

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

- (1) Enlist the cooperation and assistance of appropriate state and federal law enforcement authorities, who may conduct an investigation and, if an investigation is conducted, shall provide the department with all preliminary findings, including the results of a criminal history record check of an alleged perpetrator of harm or threatened harm to the child;
- (2) Conduct a criminal history record check of an alleged perpetrator and all adults living in the family home, with or without consent, to ensure the safety of the child;
- (3) Interview the child without the presence or prior approval of the child's family and temporarily assume protective custody of the child for the purpose of conducting the interview;

- (4) Resolve the matter in an informal fashion that it deems appropriate under the circumstances;
- (5) Close the matter if the department finds, after an assessment, that the child is residing with a caregiver who is willing and able to meet the child's needs and provide a safe and appropriate placement for the child;
- (6) Immediately enter into a service plan~~[-]~~ to:
 - (A) ~~[To safely]~~ Safely maintain the child in the family home; or
 - (B) ~~[To place]~~ Place the child in voluntary foster care pursuant to a written agreement with the child's parent.

If the child is placed in voluntary foster care and the family does not successfully complete the service plan within three months after the date on which the department assumed physical custody of the child, the department shall file a petition. The department ~~[is]~~ shall not be required to file a petition if the parents agree to adoption or legal guardianship of the child and the child's safety is ensured; provided that the adoption or legal guardianship hearing is conducted within six months of the date on which the department assumed physical custody of the child;

- (7) Assume temporary foster custody of the child and file a petition with the court within three days, excluding Saturdays, Sundays, and holidays, after the date on which the department assumes temporary foster custody of the child, with placement preference being given to an approved relative; ~~[or]~~
- (8) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter~~[-]~~; or
- (9) File a petition pursuant to section 587A-12 and seek an order for protective custody if there is reasonable cause to believe that the child is subject to imminent harm, as follows:
 - (A) The department may contemporaneously file an ex parte motion for protective custody and the court may issue an order for protective custody without notice and without a hearing;
 - (B) If an ex parte motion for protective custody is filed contemporaneously with a petition pursuant to this paragraph, the initial reports in section 587A-18(b)(1) and (2) shall not be required at the time the petition is filed; provided that the ex parte motion shall be accompanied by a written declaration setting forth the facts establishing reasonable cause to believe that a child is subject to imminent harm. The initial reports required by section 587A-18(b)(1) and (2) shall be filed on or before the next hearing date unless required sooner by the court;
 - (C) If the court finds reasonable cause to believe that the child is subject to imminent harm, the court shall issue a written order that a police officer immediately take the child into protective custody and transfer custody of the child to the department, which will then assume temporary foster custody of the child pursuant to section 587A-8(b);
 - (D) If an order for protective custody is issued under this paragraph, the court shall order that a police officer make every reasonable effort to personally serve the child's parents and any person who has physical custody of the child with copies of the ex parte motion and order; and
 - (E) After the court rules on the ex parte motion, the case shall proceed pursuant to section 587A-12(c)."

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

“(b) ~~[H]~~ For orders for protective custody or in temporary foster custody hearings, in deciding [in temporary foster custody hearings] whether there is reasonable cause to believe that a child is subject to imminent harm, the court may consider relevant hearsay evidence when direct testimony is unavailable or when it is impractical to subpoena witnesses who will be able to testify to facts based on personal knowledge.”

SECTION 6. Section 588-2, Hawaii Revised Statutes, is amended to read as follows:

“**§588-2 Definitions of child abuse.** For purposes of this chapter:

“Child sexual abuse” means any of the offenses described under chapter 707, part V, when committed against a person under the age of eighteen years or ~~[as set forth in paragraph (2) of the definition of “harm” in section 587A-4.]~~ that damage or injure a child’s physical or psychological health or welfare, where the child has been the victim of sexual contact or conduct, including sexual assault; sodomy; molestation; sexual fondling; incest; prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b).

“Serious physical child abuse” means any of the offenses ~~[described in paragraph (1) of the definition of “harm” set forth in section 587A-4]~~ that damage or injure a child’s physical or psychological health or welfare, where the child exhibits evidence of injury, including but not limited to:

- (1) Substantial or multiple skin bruising;
- (2) Substantial external or internal bleeding;
- (3) Burn or burns;
- (4) Malnutrition;
- (5) Failure to thrive;
- (6) Soft tissue swelling;
- (7) Extreme pain;
- (8) Extreme mental distress;
- (9) Gross degradation;
- (10) Poisoning;
- (11) Fracture of any bone;
- (12) Subdural hematoma; or
- (13) Death; and

the injury is not justifiably explained, the history given concerning the condition or death is not consistent with the degree or type of the condition or death, or there is evidence that the condition or death may not be the result of an accident; when the offense rises to the degree of a felony as defined in section 701-107.”

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

SECTION 8. This Act shall take effect on July 1, 2025.

(Approved July 1, 2024.)