

2010 Child Protective Act  
 Comparison with HRS Chapter 587  
 Rev. 30 August 2010

HRS CHAPTER 587	ACT 135
<p><b>§587-1. Purpose; construction.</b>            This chapter creates within the jurisdiction of the family court a child protective act to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm. Furthermore, this chapter makes provisions for the service, treatment, and permanent plans for these children and their families.</p> <p>The legislature finds that children deserve and require competent, responsible parenting and safe, secure, loving, and nurturing homes. The legislature finds that children who have been harmed or are threatened with harm are less likely than other children to realize their full educational, vocational, and emotional potential, and become law-abiding, productive, self-sufficient citizens, and are more likely to become involved with the mental health system, the juvenile justice system, or the criminal justice system, as well as become an economic burden on the State. The legislature finds that prompt identification, reporting, investigation, services, treatment, adjudication, and disposition of cases involving children who have been harmed or are threatened with harm are in the children's, their families', and society's best interests because the children are defenseless, exploitable, and vulnerable. The legislature recognizes that many relatives are willing and able to provide a nurturing and safe placement for children who have been harmed or are threatened with harm.</p> <p>The policy and purpose of this chapter is to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families if the families can provide safe family homes, and with timely and appropriate service or permanent plans to ensure the safety of the child so they may develop and mature into responsible, self-sufficient, law-abiding citizens. The service plan shall effectuate the child's remaining in the family home, when the family home can be immediately made safe with services, or the child's returning to a safe family home. The</p>	<p><b>§ --2. Purpose; construction.</b>            This chapter creates within the jurisdiction of the family court a child protective act to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm. Furthermore, this chapter makes provisions for the service, treatment, and permanent plans for these children and their families.</p> <p>The legislature finds that children deserve and require competent, responsible parenting and safe, secure, loving, and nurturing homes. The legislature finds that children who have been harmed or are threatened with harm are less likely than other children to realize their full educational, vocational, and emotional potential, and become law-abiding, productive, self-sufficient citizens, and are more likely to become involved with the mental health system, the juvenile justice system, or the criminal justice system, as well as become an economic burden on the State. The legislature finds that prompt identification, reporting, investigation, services, treatment, adjudication, and disposition of cases involving children who have been harmed or are threatened with harm are in the children's, their families', and society's best interests because the children are defenseless, exploitable, and vulnerable. The legislature recognizes that many relatives are willing and able to provide a nurturing and safe placement for children who have been harmed or are threatened with harm.</p> <p>The policy and purpose of this chapter is to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families if the families can provide safe family homes, and with timely and appropriate service or permanent plans to ensure the safety of the child so they may develop and mature into responsible, self-sufficient, law-abiding citizens. The service plan shall effectuate the child's remaining in the family home, when the family home can be immediately made safe with services, or the child's returning to a safe family home. The</p>

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service plan shall be carefully formulated with the family in a timely manner. Every reasonable opportunity should be provided to help the child's legal custodian to succeed in remedying the problems that put the child at substantial risk of being harmed in the family home.—Each appropriate resource, public and private, family and friend, should be considered and used to maximize the legal custodian's potential for providing a safe family home for the child. Full and careful consideration shall be given to the religious, cultural, and ethnic values of the child's legal custodian when service plans are being discussed and formulated. Where the court has determined, by clear and convincing evidence, that the child cannot be returned to a safe family home, the child shall be permanently placed in a timely manner.

The ~~department's~~ child protective services provided under this chapter shall ~~make~~ every reasonable effort to be open, accessible, and communicative to the persons affected in any manner by a child protective proceeding; provided that the safety and best interests of the child under this chapter shall not be endangered in the process.

This chapter shall be liberally construed to serve the best interests of the children and the purposes set ~~out in this chapter~~. [L 1983, c 171, pt of §1; am L 1986, c 316, §1; am L 1992, c 190, §5; am L 1998, c 134, §6; am L 2008, c 199, §3]

service plan shall be carefully formulated with the family in a timely manner. Every reasonable opportunity should be provided to help the child's legal custodian to succeed in remedying the problems that put the child at substantial risk of being harmed in the family home. Each appropriate resource, public and private, family and friend, should be considered and used to maximize the legal custodian's potential for providing a safe family home for the child. Full and careful consideration shall be given to the religious, cultural, and ethnic values of the child's legal custodian when service plans are being discussed and formulated. Where the court has determined, by clear and convincing evidence, that the child cannot be returned to a safe family home, the child shall be permanently placed in a timely manner.

The policy and purpose of this chapter includes the protection of children who have been harmed or are threatened with harm by:

- (1) Providing assistance to families to address the causes for abuse and neglect;
- (2) Respecting and using each family's strengths, resources, culture, and customs;
- (3) Ensuring that families are meaningfully engaged and children are consulted in an age-appropriate manner in case planning;
- (4) Enlisting the early and appropriate participation of family and the family's support networks;
- (5) Respecting and encouraging the input and views of caregivers; and
- (6) Ensuring a permanent home through timely adoption or other permanent living arrangement,

if safe reunification with the family is not possible.

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	The child protective services under this chapter shall <u>be provided with</u> every reasonable effort to be open, accessible, and communicative to the persons affected by a child protective proceeding without endangering the safety and best interests of the child under this chapter. This chapter shall be liberally construed to serve the best interests of the children <u>affected</u> and the purpose and policies set <u>forth herein</u> .
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**COMMENT:** Same language as HRS Chapter 587, but added the paragraph with the numbered “bullets” regarding the engagement of families and other persons involved in the case.

**Explanation of noted changes:**

**Left column = HRS Chapter 587.** Stricken language in the left column was either deleted entirely in Act 135 or replaced with another comparable word/phrase. If the language in Act 135 is a rearrangement of the comparable section in Chapter 587 and retains virtually the same meaning as Chapter 587, the language in the left column is not stricken.

**Right column = Act 135 (NEW CPA).** Underlined language in the right column is entirely new language. If the language in Act 135 is a rearrangement of the comparable section in Chapter 587 and retains virtually the same meaning as Chapter 587, the language in the right column is not underlined.

**New Sections:**

- § --15. Duties, rights, and liability of authorized agencies
- § --31. Permanency Hearing
- § --34. Reinstatement of parental rights
- § --39. Notice and service of protective order

The above new sections may be found at the end of the comparison chart.

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<p><b>§587-2. Definitions.</b></p> <p><b>"Abandoned infant"</b> means a child who is three years old or younger and:</p> <ol style="list-style-type: none"> <li>(1) <del>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;</del></li> <li>(2) <del>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</del></li> <li>(3) <del>Whose presumed or alleged nonadjudicated 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).</del></li> </ol>	<p><b>§ -- 4. Definitions.</b></p> <p><b>"Abandoned infant"</b> means a child who is three years old or younger and:</p> <ol style="list-style-type: none"> <li>(1) <u>The child's</u> parents, regardless of any incidental contact or communication with the child, have demonstrated an extreme disinterest in or lack of commitment for assuming parental responsibility for the child;</li> <li>(2) <u>The persons with whom the child resides</u> have not known the identity or whereabouts of the child's parents for sixty days or more, and reasonable efforts have been made to identify or locate the child's parents; or</li> <li>(3) The child's mother also falls under the provisions of paragraph (1) or (2), and the child's presumed or alleged father has failed to assert a claim or interest as a parent for sixty days or more; provided that the child's father has knowledge of the child's birth and that he is the child's presumed or alleged father.</li> </ol> <p><b>COMMENT:</b> Revised language.</p>
	<p><b>"Adjudication"</b> means a finding by a court that is supported by a <u>preponderance of the evidence that the child has been harmed or is subjected to threatened harm by the acts or omissions of the child's family.</u></p> <p><b>COMMENT:</b> New definition.</p>
<p><del><b>"Adjudication hearing"</b> means a hearing held pursuant to section 587-63.</del></p>	<p><b>COMMENT:</b> Deleted definition. Combined with old Disposition hearing to create the new Return hearing.</p>
<p><b>"Aggravated circumstances"</b> means that:</p> <ol style="list-style-type: none"> <li>(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;</li> <li>(2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;</li> <li>(3) The parental rights have been judicially terminated or divested</li> </ol>	<p><b>"Aggravated circumstances"</b> means that:</p> <ol style="list-style-type: none"> <li>(1) The parent has murdered, or has solicited, aided, abetted, attempted, or conspired to commit the murder or voluntary manslaughter of, another child of the parent;</li> <li>(2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;</li> <li>(3) The parent's rights regarding a sibling of the child have been</li> </ol>

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<p>regarding a sibling; (4) The parent has tortured the child; (5) The child is an abandoned infant; or (6) <del>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) and (2).</del></p>	<p>judicially terminated or divested; (4) The parent has tortured the child; or (5) The child is an abandoned infant.  <b>COMMENT:</b> Deleted language regarding the old permanent hearing.</p>
<p><b>"Authorized agency"</b> means the department or other public or private agency, a person, organization, corporation, and benevolent society or association which is licensed or approved by the department or the court to receive children for control, care, maintenance, or placement.</p>	<p><b>"Authorized agency"</b> means the department, other public agency, or a person or organization that is licensed by the department or approved by the court to receive children for control, care, maintenance, or placement.  <b>COMMENT:</b> Revised language. Deleted "corporation and benevolent society or association."</p>
	<p><b>"Birth parent" and "biological parent"</b> can be used interchangeably and mean the biological parents of the child. The term "birth", as used in this chapter, is interchangeable with the term "natural", as that term is used in chapter 578.  <b>COMMENT:</b> New definition.</p>
	<p><b>"Caregiver"</b> means an adult who is not a child's parent or legal and physical custodian, and with whom the child has been residing for at least six months with the verbal or written consent of the child's legal and physical custodian. The status of "caregiver" as used in this chapter does not pertain to court-ordered or voluntary foster placement.  <b>COMMENT:</b> New definition.</p>
	<p><b>"Case plan"</b> means the combined safe family home factors and the service plan or permanent plan.  <b>COMMENT:</b> New definition.</p>
<p><b>"Child"</b> means a person who is born alive and is less than eighteen years of age.</p>	<p><b>COMMENT:</b> No change.</p>
<p><b>"Child protective proceeding"</b> means any action, hearing, or other</p>	<p><b>COMMENT:</b> Deleted.</p>

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<p>civil proceeding before the court under this chapter.</p>	
<p><b>"Clear and convincing evidence"</b> means that <del>measure or</del> degree of proof which will produce in the mind of the trier of fact a firm belief or conviction <del>as to the truth of the allegations sought to be established.</del> This measure falls between the preponderance standard of typical civil cases and the beyond-a-reasonable-doubt standard of criminal cases.</p>	<p><b>"Clear and convincing evidence"</b> means the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction <u>that the fact sought to be proved is true.</u> This measure falls between the preponderance standard of typical civil cases and the beyond-a-reasonable-doubt standard of criminal cases.</p> <p><b>COMMENT:</b> Revised language.</p>
<p><b>"Court"</b> means one of the family courts established pursuant to the <del>family court act.</del></p>	<p><b>"Court"</b> means one of the family courts established pursuant to <u>chapter 571.</u></p> <p><b>COMMENT:</b> Revised language.</p>
	<p><b>"Court-appointed special advocate"</b> means a responsible adult <u>volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who, when appointed by the court, serves as an officer of the court in the capacity of a guardian ad litem.</u></p> <p><b>COMMENT:</b> New definition.</p>
<p><b>"Criminal history record check"</b> means an examination of an individual's criminal history <del>record</del> through fingerprint analysis or name inquiry into state and national criminal history record files, including, <del>but not limited to,</del> the files of the Hawaii criminal justice data center; <del>provided that the information obtained shall be used exclusively for purposes under this chapter and shall be subject to applicable federal laws and regulations.</del></p>	<p><b>"Criminal history record check"</b> means an examination of an individual's criminal history through fingerprint analysis or name inquiry into state and national criminal history records and files, including the files of the Hawaii criminal justice data center.</p> <p><b>COMMENT:</b> Revised language.</p>
	<p><b>"Date of entry into foster care"</b> means the date a <u>child was first placed in foster custody by the court or sixty days after the child's actual removal from the home, whichever is earlier.</u></p> <p><b>COMMENT:</b> New definition. Reflects federal language.</p>
	<p><b>"Default"</b> means the status found by the court when a party who has <u>been properly served or notified of a scheduled hearing fails to appear at court for the hearing or fails to plead or otherwise defend,</u></p>

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	<p><u>thereby allowing the court to proceed without the absent party.</u></p> <p><b>COMMENT:</b> New definition.</p>
"Department" means the department of human services and its authorized representatives.	<b>COMMENT:</b> No change.
<del>"Disposition hearing" means a hearing held pursuant to section 587-71.</del>	<b>COMMENT: Deleted.</b> Combined with old Adjudication hearing to create the new Return hearing.
<p>"Family" means each legal parent, the natural mother, <del>the natural father, the adjudicated, presumed, or concerned natural father as defined under</del> section 578-2, each parent's spouse, or former spouses, each sibling or person related by <del>consanguinity</del> or marriage, each person residing in the same dwelling unit, and any other person who or legal entity <del>which is a child's</del> legal or physical custodian or guardian, or who is otherwise responsible for the child's care, other <del>than</del> an authorized agency which assumes such a legal status or relationship with the child <del>under this chapter.</del></p>	<p>"Family" means each legal parent <u>of a child</u>; the <u>birth</u> mother, <u>unless the child has been legally adopted</u>; the concerned <u>birth</u> father as <u>provided</u> in section 578-2(a)(5), <u>unless the child has been legally adopted</u>; each parent's spouse or former spouse; each sibling or person related by <u>blood</u> or marriage; each person residing in the dwelling unit; and any other person or legal entity with:</p> <p>(1) Legal or physical custody or <u>guardianship of the child, or</u> (2) Responsibility for the child's care.</p> <p><u>For purposes of this chapter, the term "family" does not apply to an authorized agency that assumes the foregoing legal status or relationship with a child.</u></p> <p><b>COMMENT:</b> Revised language. Changed "natural" to "birth." Added language regarding adoption of the child.</p>
"Family home" means the home of the child's legal custodian <del>where there is the provision of care for the child's physical and psychological health and welfare.</del>	<p>"Family home" means the home of a child's legal custodian.</p> <p><b>COMMENT:</b> Deleted second part.</p>
<p>"Family supervision" means the legal status <del>created pursuant to this section, section 587-21(b)(2), or by an order of court after the court has determined that the child is presently in the legal or permanent custody of a family which</del> is willing and able, with the assistance of a service plan, to provide the child with a safe family home. Family supervision vests in an authorized agency the following <b>duties</b> and rights, subject to such restriction as the court deems to be in the best interests of the child:</p> <p>(1) To monitor and supervise the child and the child's</p>	<p>"Family supervision" means the legal status <u>in which</u> a child's legal custodian is willing and able, with the assistance of a service plan, to provide the child with a safe family home.</p> <p><b>COMMENT:</b> Made into a "pure" definition. Deleted the duties, rights and liabilities, which now has its own section – see § -- 15.</p> <p><b>§ --15. Duties, rights, and liability of authorized agencies</b> (a) <u>If an authorized agency has family supervision, it has the following</u></p>

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<p>family members who are parties, including, <del>but not limited to</del>, reasonable access to each of the family members who are parties, and into the child's family home; and</p> <p>(2) To <del>have authority to</del> place the child in foster care and thereby <del>automatically</del> assume temporary foster custody or foster custody of the child. <del>Upon placement,</del> the authorized agency shall immediately notify the court. Upon notification, the court shall set the case for a temporary foster custody hearing within three <del>working</del><sup>1</sup> days or, if jurisdiction has been established, <del>a disposition or a review hearing</del> within ten <del>working</del> days of the child's placement, <del>unless the court deems</del> a later date to be in the best interests of the child.</p> <p>An authorized agency shall not be liable to third persons for acts of the child solely by reason of <del>its possessing the status of temporary family supervision or family supervision in relation to the child.</del></p>	<p>duties and rights, subject to such conditions or restrictions as the court deems to be in the best interests of a child:</p> <p>(1) Monitoring and supervising the child and the child's family members who are parties. <u>Monitoring and supervision shall include reasonable access to each of the family members who are parties and <del>reasonable access</del> into the child's family home; and</u></p> <p>(2) Placement of the child in foster care and thereby assuming temporary foster custody or foster custody of the child. The authorized agency shall immediately notify the court <u>when such placement occurs.</u> Upon notification, the court shall set the case for:</p> <p>(A) A temporary foster custody hearing within three days, <u>excluding Saturdays, Sundays, and holidays</u> or</p> <p>(B) If jurisdiction has been established, a <u>periodic review hearing</u> within ten days of the child's placement.</p> <p><u>The temporary foster custody hearing or the periodic review hearing may be held at a later date, only if the court finds it to be in the best interests of the child.</u></p> <p>(e) An authorized agency shall not be liable to third <u>party</u> persons for the acts of the child solely by reason of <u>the agency's status as foster custodian or permanent custodian of the child.</u></p>
<p><del>"Foster care" means a residence designated as suitable by an authorized agency or the court to provide twenty-four hour out of family home, substitute care for the child.</del></p>	<p><u>"Foster care" means continuous twenty-four-hour care and supportive services provided for a child by an authorized agency or the court, including, the care, supervision, guidance, and rearing of a child by a resource family.</u></p> <p><b>COMMENT:</b> Revised language (added "care, supervision, guidance...").</p>
	<p><u>"Foster custodian" means the authorized agency that has foster custody of a child.</u></p>

<sup>1</sup> Generally: "Working days" changed to: "... days, excluding Saturdays, Sundays, and holidays."  
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<p><b>"Foster custody"</b> means the legal status created pursuant to this section, <del>section 587-21(b)(2), or by an order of court</del> after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan.</p> <p>(1) Foster custody vests in a <del>foster custodian</del> the following duties and rights:</p> <p>(A) To determine where and with whom the child shall be placed in foster care; provided that the child shall not be placed in foster care outside the State without prior order of the court; provided further that, <del>subsequent to the temporary foster custody hearing,</del> unless otherwise ordered by the court, the temporary foster custodian or the foster custodian may permit the child to <del>resume residence with</del> the family from which the child was removed after providing prior written notice to the court and to all parties, which notice shall state that there is no objection of any party to the return; and upon the return of the child to the family, temporary foster custody, or foster custody automatically shall be revoked and the child and the child's family members who are parties shall be under the temporary family supervision or the family supervision of the <del>former temporary foster custodian or foster custodian</del>;</p> <p>(B) To <del>assure</del> that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities;</p> <p>(C) To monitor <del>the provision to the child of</del> appropriate education;</p> <p>(D) To provide <del>all</del> consents <del>which</del> are required for</p>	<p><b>COMMENT: New definition.</b></p> <p><b>"Foster custody"</b> means the legal status created <u>when the department places a child outside of the family home with the agreement of the legal custodian or pursuant to court order</u>, after the court has determined that the child's family is not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan.</p> <p><b>COMMENT: Made into a "pure" definition. Deleted the duties, rights and liabilities, which now has its own section – see § -- 15. Consents for driver's license moved from Sec. 286-112.</b></p> <p><b>§ --15. Duties, rights, and liability of authorized agencies</b></p> <p>(b) <u>If an authorized agency has foster custody</u> it has the following duties and rights:</p> <p>(1) Determining where and with whom the child shall be placed in foster care; provided that the child shall not be placed in foster care outside the State without prior order of the court;</p> <p>(2) Permitting the child to <u>return to the family</u> from which the child was removed, unless otherwise ordered by the court. <u>The child's return may occur only if no party objects to such placement</u> and prior written notice is given to the court and to all parties stating that there is no objection of any party to the child's return. Upon the child's return to the family, temporary foster custody or foster custody shall be automatically revoked, and the child and the child's family members who are parties shall be placed under temporary family supervision or the family supervision of the <u>authorized agency</u>;</p> <p>(3) <u>Ensuring</u> that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities in a timely manner;</p> <p>(4) Monitoring <u>whether the child is being provided with an</u> appropriate education;</p> <p>(5) Providing required consents for the child's physical or psychological health or welfare, including ordinary medical,</p>
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<p>the child's physical or psychological health or welfare, including, <del>but not limited to,</del> ordinary medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs; and to provide <del>all</del> consents for any other medical or psychological care or treatment, including, <del>but not limited to,</del> surgery, if the care or treatment is deemed by two physicians or two psychologists, whomever is appropriate, licensed or authorized to practice in this State to be necessary for the child's physical or psychological health or welfare, and the persons who are otherwise authorized to provide the consent are unable or <del>have refused</del> to consent to the care or treatment;</p> <p>(E) To provide consent to the recording of a statement pursuant to section <del>587-43</del>; and</p> <p>(F) To provide the court with information concerning the child <del>that the court may require at any time.</del></p> <p>(2) The court, in its discretion, may vest foster custody of a child in any authorized agency or subsequent authorized agencies, in the child's best interests; <del>provided that</del> the rights and duties <del>which</del> are so assumed by an authorized agency shall supersede the rights and duties of any legal or permanent custodian of the child, <del>other than as is provided in paragraph (4).</del></p> <p>(3) An authorized agency shall not be liable to third persons for the acts of the child solely by reason of the agency's status as <del>temporary</del> foster custodian or foster custodian of the child.</p> <p>(4) Unless otherwise ordered by the court, a child's family <del>member</del> shall retain the following rights and responsibilities after a transfer of temporary foster custody or foster custody, to the extent that the family <del>member</del> possessed the rights and responsibilities prior</p>	<p>dental, psychiatric, psychological, educational, employment, recreational, or social needs;</p> <p>(6) Providing consents for any other medical or psychological care or treatment, including surgery, if the persons who are otherwise authorized to provide consent are unable or <u>unwilling to consent</u>. Before being provided to the child, this care or treatment shall be deemed necessary for the child's physical or psychological health or welfare by two physicians or two psychologists, as appropriate, who are licensed or authorized to practice in the State;</p> <p>(7) <u>Providing consent for the child's application for a driver's instructional permit, provisional driver's license, or driver's license;</u></p> <p>(8) Providing consent to the recording of a statement pursuant to <u>section -21</u>; and</p> <p>(9) Providing the court with information concerning the child.</p> <p>The court, in its discretion, may vest foster custody of a child in any authorized agency or subsequently authorized agencies, <u>if the court finds that it is</u> in the child's best interests to do so. The rights and duties <u>that</u> are so assumed by an authorized agency shall supersede the rights and duties of any legal or permanent custodian of the child.</p> <p>(c) <u>Unless otherwise provided in this section or as</u> otherwise ordered by the court, a child's family shall retain the following rights and responsibilities after a transfer of temporary foster custody or foster custody, to the extent that the family possessed the rights and responsibilities prior to the transfer of temporary foster custody or foster custody:</p> <p>(1) The right of reasonable supervised or unsupervised visitation at the discretion of the authorized agency <u>or the court</u>;</p> <p>(2) The right to consent to adoption, to marriage, or to major medical or psychological care or treatment; and</p> <p>(3) The continuing responsibility to support the child, including repayment for the cost of any care, treatment, or other service provided by the <u>authorized agency</u> or the court for the child's</p>
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<p>to the transfer of temporary foster custody or foster custody, <del>to wit:</del> the right of reasonable supervised or unsupervised visitation at the discretion of the authorized agency; the right to consent to adoption, to marriage, or to major medical or psychological care or treatment, <del>except as provided in paragraph (1)(D);</del> and the continuing responsibility for support of the child, including, <del>but not limited to,</del> repayment for the cost of any <del>and all</del> care, treatment, or any other service <del>supplied or provided by the temporary foster custodian, the foster custodian, or the court for the child's benefit.</del></p>	<p>benefit.</p> <p>(e) An authorized agency shall not be liable to third <u>party</u> persons for the acts of the child solely by reason of the agency's status as foster custodian or <u>permanent custodian of the child</u>.</p>
	<p><b>"Foster parent" or "foster family"</b> means a person or family <u>licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with "resource family"</u>.</p> <p><b>COMMENT:</b> New definition</p>
<p><b>"Guardian ad litem"</b> means a person appointed by the court under <del>section 587-34 whose role is</del> to protect and promote the needs and interests of the child or a party.</p>	<p><b>"Guardian ad litem"</b> means any person <u>who is</u> appointed by the court under <u>this chapter</u> to protect and promote the needs and interests of a child or a party, <u>including a court-appointed special advocate</u>.</p> <p><b>COMMENT:</b> Revised language.</p>
<p><b>"Hanai relative"</b> means an adult other than a blood relative who performs or has performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child, as deemed credible by the court or the department.</p>	<p><b>"Hanai relative"</b> means an adult, other than a blood relative, whom the court or department <u>has found</u> by credible evidence <u>to</u> perform or to have performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child.</p> <p><b>COMMENT:</b> Revised language.</p>
<p><b>"Harm"</b> <del>to a child's physical or psychological health or welfare occurs in a case where there exists evidence of injury, including, but not limited to:</del></p> <p>(1) Any case where the child exhibits evidence of:</p> <p>(A) Substantial or multiple skin bruising <del>or any</del></p>	<p><b>"Harm"</b> <u>means damage or injury to a child's physical or psychological health or welfare, where:</u></p> <p>(1) The child exhibits evidence of <u>injury, including, but not limited to:</u></p> <p>(A) Substantial or multiple skin bruising;</p> <p>(B) Substantial <u>external or internal</u> bleeding;</p>

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<p> <del>other internal bleeding,</del>            (B) <del>Any injury to skin causing</del> substantial bleeding,            (C) Malnutrition,            (D) Failure to thrive,            (E) Burn or burns,            (F) Poisoning,            (G) Fracture of any bone,            (H) Subdural hematoma,            (I) Soft tissue swelling,            (J) Extreme pain,            (K) Extreme mental distress,            (L) Gross degradation, or            (M) Death, and            the injury is not justifiably explained, or where the history given concerning the condition or death is <del>at variance with the degree or type of the condition or death, or circumstances indicate</del> that the condition or death may not be the product of an accidental occurrence;            (2) <del>Any case where</del> the child has been the victim of sexual contact or conduct, including, <del>but not limited to, rape,</del> sodomy, molestation, sexual fondling, incest, prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation;            (3) <del>Any case where there exists injury to the psychological capacity of a child as is</del> evidenced by a substantial impairment in the child's ability to function;            (4) <del>Any case where</del> the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; or            (5) <del>Any case where</del> the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; <del>however, this paragraph shall not apply to a child's family who provide the drugs to the child</del> </p>	<p>           (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 <u>not consistent</u> with the degree or type of the condition or death, or <u>there is evidence</u> 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 <u>sexual assault</u>; sodomy; molestation; sexual fondling; incest; prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation;            (3) <u>The child's psychological well-being has been injured</u> 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; or            (5) The child is provided with dangerous, harmful, or detrimental drugs as defined in section 712-1240, <u>except when</u> a child's family administers drugs to the child as directed or prescribed by a practitioner as defined in section 712-1240.   <b>COMMENT:</b> Revised language.         </p>
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<p>pursuant to the direction or prescription of a practitioner, as defined in section 712-1240.</p>	
<p><b>"Imminent harm"</b> <del>means that there exists reasonable cause to believe that harm to the child will occur or reoccur within the next ninety days with due consideration being given to the age of the child and to the safe family home guidelines, as set forth in section 587-25.</del></p>	<p><b>"Imminent harm"</b> means that <u>without intervention</u> within the next ninety days, there is reasonable cause to believe that harm to the child will occur or reoccur.</p> <p><b>COMMENT:</b> Revised language (added language "without intervention"). Deleted reference to age of child.</p>
	<p><b>"Incapacitated person"</b> means a person who, even with appropriate and reasonably available assistance, is unable to substantially:</p> <ul style="list-style-type: none"> <li><u>(1) Comprehend the legal significance of the issues or nature of the proceedings under this chapter;</u></li> <li><u>(2) Consult with counsel; and</u></li> <li><u>(3) Assist in preparing the person's case or strategy.</u></li> </ul> <p><u>Incapacity shall not be solely based on a person's status as a minor.</u></p> <p><b>COMMENT:</b> New definition.</p>
<p><b>"Ohana conference"</b> means a family-focused, strength-based meeting <del>facilitated</del> by trained community facilitators designed to build and <del>strengthen</del> the network of protection of <del>the extended family and the community</del> for the child. Ohana conferences include extended family members and other important people in the child's life and rely on them to participate in making plans and decisions. The purpose of the ohana conference is to establish a plan that provides for the safety and permanency needs of the child.</p>	<p><b>"Ohana conference"</b> means a family-focused, strength-based meeting <u>conducted</u> by trained community facilitators that is designed to build and <u>enhance</u> the network of protection for a child <u>who is subject to a proceeding under this chapter</u>. Ohana conferences include extended family members and other important people in the child's life and rely on them to participate in making plans and decisions. The purpose of the Ohana conference is to establish a plan that provides for the safety and permanency needs of the child.</p> <p><b>COMMENT:</b> Revised language.</p>
	<p><b>"Parent"</b> <u>means any legal parent of a child; the birth mother, unless the child has been legally adopted; the adjudicated, presumed, or concerned birth father of the child as provided in section 578-2(a)(5), unless the child has been legally adopted; or the legal guardians or any other legal custodians of the child.</u></p> <p><b>COMMENT:</b> New definition.</p>
<p><b>"Party"</b> means an authorized agency, <del>the child, the child's family member or members who are required to be summoned pursuant to</del></p>	<p><b>"Party"</b> means an authorized agency; a child <u>who is subject to a proceeding under this chapter</u>; the child's parents and guardian ad</p>

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<p><del>section 587-32(a), any other member of the child's family, or any other person who is alleged in the petition filed under this chapter or who is subsequently determined at any child protective proceeding to be encouraging, causing, or contributing to the acts or conditions which bring the child within this chapter, and who has been duly served with a summons and a copy of the petition filed under this chapter; provided that the court may limit a party's right to participate in any child protective proceeding if the court deems such limitation of such party's participation to be consistent with the best interests of the child and such party is not a family member who is required to be summoned pursuant to section 587-32(a), except as provided in section 587-73(b)(1)(D).</del></p>	<p><u>item; any other person who is alleged in the petition or who is subsequently found at any child protective proceeding to be encouraging, causing, or contributing to the acts or conditions that brought the child within the scope of this chapter; and may include any other person, including the child's current foster parent or current resource family, if the court finds that such person's participation is in the best interest of the child; provided that the court may limit a party's right to participate in any child protective proceeding if the court deems such limitation of such party's participation to be consistent with the best interests of the child and such party is not a family member who is required to be summoned pursuant to section - 13, except as otherwise provided in this chapter.</u></p> <p><b>COMMENT:</b> Added language that resource families <i>may</i> be considered a party in a case under this chapter. Added language that GAL's are now parties. Clarified that the subject child is considered a party.</p>
<p><del>"Permanent custody" means the legal status created under this chapter by order of the court after the court has considered the criteria set forth in section 587-73(a) or (e) and determined by clear and convincing evidence that it is in the best interests of the child to order a permanent plan concerning the child.</del></p> <p><del>(1) Permanent custody divests from each legal custodian and family member who has been summoned pursuant to section 587-32(a), and vests in a permanent custodian, each of the parental and custodial duties and rights of a legal custodian and family member, including, but not limited to, the following:</del></p> <p><del>(A) To determine where and with whom the child shall live; provided that the child shall not be placed outside the State without prior order of the court;</del></p> <p><del>(B) To assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical</del></p>	<p><u>"Permanent custody" means the legal status created by order of the court after termination of parental rights as set forth in this chapter.</u></p> <p><b>COMMENT:</b> Made into a "pure" definition. Deleted the duties, rights and liabilities, which now has its own section – see § -- 15. Added language about driver's permit/license. Some sections moved into the TPR Hearing section. Permanent custody now available only after TPR.</p> <p><b>§ --15. Duties, rights, and liability of authorized agencies</b></p> <p><u>(d) If an authorized agency has permanent custody, it has the following duties and rights:</u></p> <p><u>(1) Assuming the parental and custodial duties and rights of a legal custodian and family member;</u></p> <p><u>(2) Determining where and with whom the child shall live; provided that the child shall not be placed outside the State without prior order of the court;</u></p> <p><u>(3) Ensuring that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical</u></p>

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<p>care, supervision, and other necessities;</p> <p>(C) To monitor <del>the provision to the child of</del> appropriate education;</p> <p>(D) To provide all consents that are required for the child's physical or psychological health or welfare, including, <del>but not limited to,</del> medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs; <del>and to provide all consents for any other medical or psychological care or treatment, including, but not limited to, surgery;</del></p> <p>(E) To provide consent to adoption, change of name pursuant to <del>section 574-5,</del> or to marriage;</p> <p>(F) <del>To provide the court with information concerning the child that the court may require at any time, and to submit written reports to the court stating the then-current situation and other significant information concerning the child at intervals not to exceed one year, unless otherwise ordered by the court; and</del></p> <p>(G) If the child resides without the home of the permanent custodian for a period of seven consecutive days, to submit a written report to the court stating the then-current situation of the child on or before the tenth consecutive day <del>or the next working day after the date;</del></p> <p>(2) Unless otherwise ordered by the court, a child's family member shall retain, to the extent that the family member possessed the responsibility prior to the <del>transfer of permanent custody,</del> the continuing responsibility for support of the child, including, <del>but not limited to,</del> repayment for the cost of any and all care, treatment, or any other service <del>supplied or</del> provided by the permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the</p>	<p>care, supervision, and other necessities <u>in a timely manner;</u></p> <p>(4) Monitoring <u>whether the child is being provided</u> with an appropriate education;</p> <p>(5) Providing all required consents for the child's physical or psychological health or welfare, including medical, dental, psychiatric, psychological, educational, employment, recreational, and social needs;</p> <p><u>(6) Providing consent for the child's application for a driver's instructional permit, provisional driver's license, or driver's license;</u></p> <p>(7) Providing consent to adoption, change of name, and marriage; and</p> <p>(8) Submitting a written report to the court if the child leaves the home of the permanent custodian for a period of seven consecutive days or more. The report shall state the child's current situation and shall be submitted on or before the tenth day, <u>excluding Saturdays, Sundays, and holidays, after the child leaves the home.</u></p> <p><b>§ --33. Termination of parental rights hearing.</b></p> <p>(c) Unless otherwise ordered by the court <u>or until the child is adopted,</u> the child's family member shall retain, to the extent that the family member possessed the responsibility prior to the <u>termination of parental rights,</u> the continuing responsibility to support the child, including repaying the cost of any and all care, treatment, or any other service provided by the permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the child's benefit.</p> <p>(d) A family member may be permitted visitation with the child at the discretion of the permanent custodian. The court may review the exercise of such discretion and may order that a family member be permitted such visitation as is in the best interests of the child.</p> <p>(e) An order <u>for the termination of parental rights</u> entered under this</p>
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<p>child's benefit;</p> <p>(3) A family member may be permitted visitation with the child at the discretion of the permanent custodian; provided that the exercise of such discretion may be reviewed by the court and the court may order that a family member be permitted such visitation as is in the best interests of the child;</p> <p>(4) An order of <del>permanent custody</del> entered under this chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, <del>unless and</del> until the child has been <del>legally</del> adopted;</p> <p>(5) The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequent authorized agencies as is deemed to be in the best interests of the child;</p> <p>(6) If the department receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the permanent custodian or custodians of the child, the department may automatically assume either family supervision over the child and the child's permanent custodian or foster custody of the child; <del>provided that, in any event,</del> the department shall immediately notify the court and the court shall set the case for a <del>permanent plan review hearing</del> within ten <del>working</del> days, unless the court deems a later date to be in the best interests of the child; and</p> <p>(7) An authorized agency shall not be liable to third party persons for the acts of the child solely by reason of the agency's status as permanent custodian of the child.</p>	<p>chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, until the child has been adopted.</p> <p>(f) The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequently authorized agencies, as <u>the court</u> deems to be in the best interests of the child.</p> <p>(g) If the department receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the permanent custodians of the child, the department may automatically assume either family supervision over the child and the child's permanent custodian or foster custody of the child. The department shall immediately notify the court, and the court shall set the case for a <u>permanency hearing</u> within ten days <u>after the department receives such a report</u>, unless the court deems a later date to be in the best interests of the child.</p> <p><b>§ --15. Duties, rights, and liability of authorized agencies</b></p> <p>(e) An authorized agency shall not be liable to third party persons for the acts of the child solely by reason of the agency's status as <u>foster custodian</u> or permanent custodian of the child.</p>
<p><b>"Permanent plan"</b> means a specific written plan prepared pursuant to section <del>587-27</del>.</p>	<p><b>"Permanent plan"</b> means a specific, <u>comprehensive</u> written plan prepared pursuant to <u>section -32</u>.</p> <p><b>COMMENT:</b> Revised applicable section number.</p>



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<p><b>"Permanent plan hearing"</b> means a hearing held pursuant to section 587-73.</p>	<p><b>COMMENT: Deleted.</b></p>
<p><b>"Permanent plan review hearing"</b> means any hearing, subsequent to a court ordered permanent plan, held pursuant to section 587-73(b).</p>	<p><b>COMMENT: Deleted.</b></p>
<p><b>"Police officer"</b> means a person employed by any county in this State to enforce the laws and ordinances for preserving the peace, safety, and good order of the community or an employee authorized by the director of public safety under section 329-51 or 353C-4 to exercise the powers of this chapter.</p>	<p><b>"Police officer"</b> means a person employed by any county in the State of Hawai'i to enforce the laws and ordinances for preserving the peace and <u>maintaining</u> safety and order in the community, or an employee authorized by the director of public safety under section 329-51 or 353C-4 to exercise the powers set forth in this chapter.</p> <p><b>COMMENT:</b> Revised language.</p>
<p><b>"Preponderance of evidence"</b> means <del>evidence which</del> as a whole shows that the fact sought to be proved is more probable than not.</p>	<p><b>"Preponderance of the evidence"</b> means <u>the degree of proof, which as a whole, convinces the trier of fact</u> that the fact sought to be proved is more probable than not. <u>"Preponderance of the evidence" shall be the standard of proof required in any proceeding, unless otherwise specified.</u></p> <p><b>COMMENT:</b> Revised language – added statement that preponderance of the evidence is the standard of proof in proceedings under this chapter.</p>
<p><b>"Protective custody"</b> means the legal status of a child whose physical custody is <del>retained</del> by a police officer under this chapter <del>in order to protect such child from imminent harm.</del></p>	<p><b>"Protective custody"</b> means the legal status of a child whose physical custody is <u>assumed</u> by a police officer under this chapter.</p> <p><b>§587-8. Protective custody by police officer without court order.</b> (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: (1) The child is subject to imminent harm while in the custody of the child's family;</p> <p><b>COMMENT:</b> Revised language. "Imminent harm" language now in section –8.</p>
<p><b>"Reasonable cause to believe"</b> means reasonably trustworthy</p>	<p><b>"Reasonable cause to believe"</b> means <u>the degree of proof that</u></p>

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evidence which would cause a reasonable person of average caution to believe.	would cause a person of average caution to believe the evidence is <u>reasonably trustworthy</u> .  <b>COMMENT:</b> Revised language.
<b>"Relative"</b> means a person related by blood or adoption, or a hanai relative, as defined in this chapter, who is willing and able to safely provide support to the child and the family, as determined by the court or the department.	<b>"Relative"</b> means a person related <u>to a child</u> by blood or adoption, or a hanai relative as defined in this chapter, who, as determined by the court or the department, is willing and able to safely provide support to the child and the <u>child's</u> family.  <b>COMMENT:</b> Revised language.
	<b>"Resource family"</b> means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with "foster parent" and "foster family".  <b>COMMENT:</b> New definition.
	<b>"Safe family home factors"</b> means a list of criteria that must be considered in determining whether a parent is able to provide a safe family home as set out herein in section -7.  <b>COMMENT:</b> New definition. Formerly known as the "safe family home guidelines."
<del><b>"Safe family home guidelines"</b> means the guidelines set forth in section 587-25.</del>	<b>COMMENT:</b> Deleted – see above definition.
<b>"Service plan"</b> means a specific written plan prepared pursuant to section 587-26.	<b>"Service plan"</b> means a specific, <u>comprehensive</u> written plan prepared by <u>an authorized agency</u> pursuant to <u>section -27</u> .  <b>COMMENT:</b> Revised language.
<del><b>"Temporary family supervision"</b> means a legal status created under this chapter pursuant to an order of the court whereby the department assumes the duties and rights of family supervision over a child and the child's family members who are parties prior to a determination at a disposition proceeding.</del>	<b>"Temporary family supervision"</b> means a legal status created under this chapter pursuant to court order <u>after the department has filed a petition for temporary foster custody, and the court finds it more appropriate to return the child to the child's family home pending an adjudication determination</u> .  <b>COMMENT:</b> Revised language. Added statement about possible

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	appropriateness of child remaining in the family home even though a petition has been filed.
" <b>Temporary foster custody</b> " means a legal status created under this chapter with or without order of the court whereby the department assumes the duties and rights of a foster custodian <del>over</del> a child.	" <b>Temporary foster custody</b> " means a legal status created under this chapter with or without a court order, whereby the department <u>temporarily</u> assumes the duties and rights of a foster custodian <u>of</u> a child.  <b>COMMENT:</b> Revised language.
<del>"<b>Temporary foster custody hearing</b>" means a hearing held pursuant to section 587-53.</del>	<b>COMMENT: Deleted.</b>
	<u>"<b>Termination of parental rights</b>" means the severance of parental rights.</u>  <b>COMMENT: New definition.</b>
<del>"<b>Threatened harm</b>" means any reasonably foreseeable substantial risk of harm to a child with due consideration being given to the age of the child and to the safe family home guidelines, as set forth in section 587-25</del>	" <b>Threatened harm</b> " means any reasonably foreseeable substantial risk of harm to a child.  <b>COMMENT:</b> Revised language. Deleted reference to child's age.

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**§587-3. Foster children; guiding principles.**

(a) The department, as foster or permanent custodian, shall abide by the following guiding principles and shall ensure that foster children:

- (1) Live in a safe and healthy home, free from physical, psychological, sexual, and other abuse;
- (2) Have adequate:
  - (A) Food that is nutritious and healthy;
  - (B) Clothing;
  - (C) Medical, dental and orthodontic, and corrective vision care; and
  - (D) Mental health services;
- (3) Have supervised in-person contact and telephone or ~~mail correspondence~~ with the child's parents and siblings while the child is in foster care unless prohibited by court order;
- (4) Have direct contact with a social worker, guardian ad litem, and probation officer;
- (5) May freely exercise ~~their~~ own religious beliefs, including refusal to attend any religious activities and services;
- (6) Have a personal bank account and assistance managing ~~their~~ personal income, consistent with the child's age and development, unless ~~prohibited due to~~ safety or ~~health~~ concerns;
- (7) Have the right to attend school and participate in appropriate extracurricular activities, and, if a child is moved during a school year, complete the school year at the same school, if practicable; and
- (8) Are provided with life skills training and a transition plan starting at age twelve ~~to provide adequate transitioning~~ for children aging out of the foster care system. ~~The department shall~~ provide written information to all foster children twelve years of age or older and their foster parents about available

**§ --3. Guiding principles for children in foster care.**

(a) The department or an authorized agency, as resource family or permanent custodian, shall abide by the following guiding principles and ensure that a child in foster care:

- (1) Lives in a safe and healthy home, free from physical, psychological, sexual, and other abuse;
- (2) Has adequate:
  - (A) Food that is nutritious and healthy;
  - (B) Clothing;
  - (C) Medical care, dental and orthodontic ~~services~~, and corrective vision care; and
  - (D) Mental health services;
- (3) Has supervised or unsupervised in-person, telephone, or other forms of contact with the child's parents and siblings while the child is in foster care, unless prohibited by court order;
- (4) Has in-person contact with the child's assigned child protective services worker, guardian ad litem, and if applicable, the child's probation officer;
- (5) Meets with the presiding judge in the child's case;
- (6) Is enrolled in a comprehensive health insurance plan and, within forty-five days of out-of-home placement, is provided with a comprehensive health assessment and treatment as recommended;
- (7) May freely exercise the child's own religious beliefs, including the refusal to attend any religious activities and services;
- (8) Has a personal bank account and assistance in managing the child's personal income consistent with the child's age and development, unless safety or other concerns require otherwise;
- (9) Has the right to attend school and participate in appropriate extracurricular activities and, if the child is moved during a school year, has the right to complete the school year at the same school, if practicable; and

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<p>independent living programs, <del>including available</del> foster youth organizations, transitional planning services, and independent living case management programs.</p> <p>(b) The family court may issue any necessary orders, sua sponte or upon appropriate motion, to the department of education, department of human services, or department of health to ensure adherence to the guiding principles enumerated in subsection (a). [L 2008, c 183, §1]</p>	<p>(10) Beginning at age twelve, is provided with <u>age-appropriate</u> life skills training and a transition plan for <u>appropriately</u> moving out of the foster care system, as well as written information concerning independent living programs, foster youth organizations, transitional planning services, and independent living case management programs that are available to all children in foster care who are twelve years of age or older <u>and their resource families.</u></p> <p>(b) Sua sponte or upon appropriate motion, the family court may issue any necessary orders <u>to any party, including</u> the department, department of education, or department of health, to ensure adherence to the guiding principles enumerated in subsection (a) above.</p>
<p><b>COMMENT:</b> Revised language. Added language regarding the child(ren) meeting with the judge and a comprehensive health assessment and plan for the subject children. Added language regarding unsupervised contacts.</p>	

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**~~§587-11.~~ Jurisdiction.**

Pursuant to [section] 571-11(9), the court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who was or is found within the State at the time the facts and circumstances occurred, are discovered, or are reported to the department, which facts and circumstances constitute the basis for the finding that the child ~~is a child whose~~ physical or psychological health or welfare is subject to imminent harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child's family.

**§ --5. Jurisdiction.**

Pursuant to section **571-11(9)**, the court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who is or was found within the state at the time specified facts and circumstances occurred, are discovered, or are reported to the department. These facts and circumstances constitute the basis for the court's finding that the child's physical or psychological health or welfare is subject to imminent harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child's family.

**COMMENT:** Revised language.

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**~~§587-12.~~ Retention of jurisdiction.**

Except as otherwise provided in this chapter, jurisdiction ~~invoked by the court~~ under this chapter may be retained by it, ~~for the purposes of this chapter, after the child becomes eighteen years of age~~ until the full term for which any order entered expires or until the child becomes nineteen years of age.

**§ --35. Retention of jurisdiction.**

Except as otherwise provided in this chapter, the court may retain jurisdiction under this chapter until the full term for which any order entered expires or until the child attains nineteen years of age, whichever comes first.

**COMMENT:** Revised language. Moved to the back of the statute.

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**§587-13. Venue.**

A child protective proceeding under this chapter may be ~~originated~~ in the county in which the child is found or resides at the time of the filing of the petition, or in the county in which ~~a member of the child's family~~ having legal custody of the child resides or is domiciled at the time of the filing of the petition.

**§ --6. Venue.**

A child protective proceeding under this chapter may be filed in the county in which a child is found or resides when the petition is filed, or in the county in which a parent having legal custody of the child resides or is domiciled when the petition is filed.

**COMMENT:** Revised language.



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**§587-21. Investigation.**

(a) Upon receiving a report that a child is subject to imminent harm, has been harmed, or is subject to threatened harm, the department shall cause such investigation to be made as it deems to be appropriate. In conducting the investigation the department may:

- (1) Enlist the cooperation of appropriate law enforcement authorities ~~for phases of the investigation for which they are better equipped~~, and the law enforcement authority may conduct and provide to the department the results of a criminal history record check concerning an alleged perpetrator of ~~imminent~~ harm, harm, or threatened harm to a child; and
- (2) Interview a child ~~who is the subject of an investigation~~ without the prior approval of and without the presence of the child's family, including temporarily assuming protective custody of the child for the purpose of conducting the interview, ~~if the action is deemed necessary and appropriate under the circumstances by the department and a police officer.~~

(b) ~~Upon satisfying itself as to the course of action that should be pursued to best accord with the purpose of this chapter, the department shall:~~

- (1) Resolve the matter in an informal fashion appropriate under the circumstances;
- (2) ~~Seek to enter into a service plan, without filing a petition in court, with members of the child's family and other authorized agency as the department deems necessary to the success of the service plan, including the member or members of the child's family who have legal custody of the child. The service plan may include an agreement with the child's family to voluntarily place the child in the foster custody of the department or other authorized agency, provided that placement preference shall be given to an appropriate~~

**§ --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, the department shall cause such 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) 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;
- (3) Resolve the matter in an informal fashion that it deems appropriate under the circumstances;
- (4) 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;
- (5) Immediately enter into a service plan:
  - (A) To safely maintain the child in the family home; or
  - (B) To 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 not required to

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<p><del>relative identified by the department, or to place the child and the necessary members of the child's family under the family supervision of the department or other authorized agency; provided further that if a service plan is not successfully completed within six months, the department shall file a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter and the case shall be reviewed as is required by federal law;</del></p> <p>(3) Assume temporary foster custody of the child pursuant to <del>section 587-24(a)</del> and file a petition with the court under this chapter within three <del>working</del> days, excluding Saturdays, Sundays, and holidays, after the date of the department's assumption of temporary foster custody of the child; <del>provided that placement preference shall be given to an appropriate relative identified by the department;</del> or</p> <p>(4) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter.</p>	<p><u>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;</u></p> <p>(6) 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 <u>approved</u> relative; or</p> <p>(7) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter.</p>
<p><b>COMMENT:</b> Revised language. Added language about "closing the matter," if the child has a caregiver that is willing and able to provide a safe and appropriate placement. Changed timeframe for VFC from six months to three. Exception to filing petition if adoption or legal guardianship hearing conducted within six months of DHS taking physical custody of the child.</p>	

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**§587-22. Protective custody by police officer without court order.**

(a) A police officer shall assume protective custody of the child without a court order and without the consent of the child's family ~~regardless of whether the child's family is absent, if in the discretion of the police officer, the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child.~~

~~A police officer may assume protective custody of the child without a court order and without the consent of the child's family regardless of whether the child's family is absent, if in the discretion of the police officer:~~

- (1) The child has no ~~legal custodian~~ who is willing and able to provide a safe family home for the child; or
- (2) ~~There is evidence that the parent or legal guardian of the child has subjected the child to harm or threatened harm and that the parent or legal guardian is likely to flee the jurisdiction of the court with the child.~~

(b) A police officer who assumes protective custody of a child ~~immediately~~ shall complete transfer of protective custody to the department by presenting physical custody of the child to the department, unless the child is or presently will be admitted to a hospital or similar institution, ~~in which case~~ the police officer immediately shall complete transfer of protective custody to the department by ~~so informing~~ the department and receiving an acknowledgment from the hospital or similar institution that it has been informed that the child is under the temporary foster custody of the department.

(c) Upon the completion of the transfer of protective custody of a child by a police officer to the department, the department shall ~~automatically~~ assume temporary foster custody of the child.

**§ --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.

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

- (1) A police officer who assumes protective custody of a child shall complete transfer of protective custody to the department by presenting physical custody of the child to the department; or
- (2) If the child is or will be admitted to a hospital or similar institution, the police officer shall immediately complete the transfer of protective custody to the department by notifying the department and receiving an acknowledgement from the hospital or similar institution that it has been informed that the child is under the temporary foster custody of the department.

**COMMENT:** Revised language. Added language that police has discretion to assume protective custody if the child has no caregiver willing to provide a safe and appropriate placement for the child.

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**§587-23. Authorization for color photographs, x-rays, and radiological or other diagnostic examination.**

(a) Any child health professional or paraprofessional, physician licensed or authorized to practice medicine in this State, registered nurse or licensed practical nurse, hospital or similar institution's personnel engaged in the admission, examination, care, or treatment of patients, medical examiner, coroner, social worker, or police officer, who has before the person a child whom the person reasonably believes has been harmed, shall make every good faith effort to take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken x-rays of the child or cause a radiological or other diagnostic examination to be performed on the child.

(b) Color photographs, x-rays, radiological, or other diagnostic examination reports which show evidence of imminent harm, harm, or threatened harm to a child immediately shall be forwarded to the department.

**[To be moved to HRS 350]**

(a) Any health professional or paraprofessional, physician licensed or authorized to practice medicine in this State, registered nurse or licensed practical nurse, hospital or similar institution's personnel engaged in the admission, examination, care, or treatment of patients, and any medical examiner, coroner, social worker, or police officer, who has before the person a child the person reasonably believes has been harmed, shall make every good faith effort to take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken x-rays of the child or cause a radiological or other diagnostic examination to be performed on the child.

(b) Color photographs, x-rays, radiological, or other diagnostic examination reports that show evidence of imminent harm, harm, or threatened harm to a child shall immediately be forwarded to the department.

**COMMENT:** Deleted from new version – moved to HRS chapter 350.

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**§587-24. Temporary foster custody without court order.**

(a) When the department receives physical custody of a child from the police pursuant to section 587-22(b), the department shall assume temporary foster custody of a child without an order of the court and without the consent of the child's family regardless of whether the child's family is absent, if in the discretion of the department the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child.

(b) Upon assuming temporary foster custody of a child under this chapter, the department promptly shall make every reasonable effort to inform a legal custodian of the child of the actions taken concerning the child; provided that the department may withhold such information from the child's family concerning the child as, in its discretion, is deemed to be in the best interests of the child.

(c) Upon assuming temporary foster custody of a child under this chapter, the department shall place the child in emergency foster care, unless the child is admitted to a hospital or similar institution, while it conducts an appropriate investigation; provided that placement preference for emergency foster care shall be given to the appropriate relative identified by the department. The department and authorized agencies shall make reasonable efforts to identify all relatives within six months of assuming foster custody of the child.

(d) Any physician licensed or authorized to practice medicine in this State presented with a child who is under the temporary foster custody of the department shall perform such an examination of the child, with or without the consent of the child's family, as is required in order to determine the nature and extent of any imminent harm, harm, or threatened harm to the child.

(e) Within three working days, excluding Saturdays, Sundays, or holidays, after the date of its assumption of temporary foster custody, the department shall:

- (1) Relinquish its temporary foster custody and return the child to the child's legal custodian and proceed

**§ --9. Temporary foster custody without court order.**

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

- (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;
- (2) 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) 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) 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) 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 -11(3), -11(4), or -11(5);
  - (B) Secure a voluntary placement agreement from the child's parents to place the child in foster care, and proceed pursuant to section -11 (5) or -11(7) ; or
  - (C) File a petition with the court.

(b) 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.

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<p>(2) pursuant to section <del>587-21(b)(1), (2), or (4);</del> <del>Continue its assumption of temporary foster custody of the child with the child</del> being voluntarily placed in foster care by the child's legal <del>custodian</del> and proceed pursuant to section <del>587-21(b)(2) or (4);</del> or</p> <p>(3) <del>Continue its assumption of temporary foster custody of the child and</del> proceed pursuant to section <del>587-21(b)(3).</del></p>	
<p><b>COMMENT:</b> Revised language. Added language about making reasonable efforts to inform parents unless doing so would put someone else at risk of harm. Time frame for notifying relatives is now 30 days from assuming TFC of the child (formerly six months). Exception to notification of child's parents if to do so would post a risk of harm to another person.</p>	

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**§587-24.5. Relatives; foster placement.**

The department shall provide an application within fifteen days of an inquiry from a relative to be a foster placement. If an application ~~to be a foster parent~~ is submitted and denied, the department shall provide the applicant with the specific reasons for the denial and an explanation of the procedures for an administrative appeal.

**§ --10. Relatives; foster placement.**

(a) The department shall provide the child's relative an application to be the child's resource family within fifteen days of the relative's request to provide foster placement for the child. If the application is submitted and denied, the department shall provide the applicant with the specific reasons for the denial and an explanation of the procedures for an administrative appeal.

(b) The department and authorized agencies shall make reasonable efforts to identify and notify all relatives of the child within thirty days after assuming foster custody of the child.

**COMMENT:** Revised – added language about dept making reasonable efforts to notify family members within 30 days of assuming FC.

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**§587-25. Safe family home guidelines.**

(a) The following guidelines shall be fully considered when determining whether the child's family is willing and able to provide the child with a safe family home:

- (1) The current facts relating to the child which include:
  - (A) Age and vulnerability;
  - (B) Psychological, medical, and dental needs;
  - (C) Peer and family relationships and bonding abilities;
  - (D) Developmental growth and schooling;
  - (E) ~~Current~~ living situation;
  - (F) Fear of being in the family home; and
  - (G) Services provided the child;
- (2) The initial and any subsequent reports of harm and threatened harm suffered by the child;
- (3) Date(s) and reason for the child's placement out of the home, description, appropriateness, location of the placement, and who has placement responsibility;
- (4) ~~Historical~~ facts relating to the alleged perpetrator and other ~~appropriate~~ family members who are parties which include:
  - (A) Birthplace and family of origin;
  - (B) ~~How~~ they were parented;
  - (C) Marital/relationship history; and
  - (D) Prior involvement in services;
- (5) The results of psychiatric / psychological / developmental evaluations of the child, the alleged perpetrator, and other ~~appropriate~~ family members who are parties;
- (6) Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the family home;
- (7) Whether there is a history of substance abuse by the child's family or others who have access to the family

**§ --7. Safe family home factors.**

(a) The following factors shall be fully considered when determining whether a child's family is willing and able to provide the child with a safe family home:

- (1) Facts relating to the child's current situation, which shall include:
  - (A) The child's age, vulnerability, and special needs that affect the child's attachment, growth, and development;
  - (B) The child's developmental, psychological, medical, and dental health status and needs, including the names of assessment and treatment providers ;
  - (C) The child's peer and family relationships and bonding abilities;
  - (D) The child's educational status and setting, and the department's efforts to maintain educational stability for the child in out-of-home placement;
  - (E) The child's living situation;
  - (F) The child's fear of being in the family home;
  - (G) The impact of out-of-home placement on the child;
  - (H) Services provided to the child and family; and
  - (I) The department's efforts to maintain connections between the child and the child's siblings, if they are living in different homes;
- (2) The initial and any subsequent reports of harm and threatened harm to the child;
- (3) Dates and reasons for the child's out-of-home placement; description, appropriateness, and location of the placement; and who has placement responsibility;
- (4) Facts regarding the alleged perpetrators of harm to the child, the child's parents, and other family members who are parties to the court proceedings, which facts shall include:
  - (A) Birthplace and family of origin;
  - (B) Manner in which the alleged perpetrator of harm was parented;



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<p>(8) home; Whether the alleged perpetrator(s) has acknowledged and <del>apologized</del> for the harm;</p> <p>(9) Whether the non-perpetrator(s) who resides in the family home has demonstrated the ability to protect the child from further harm and to ensure that any current protective orders are enforced;</p> <p>(10) Whether there is a support system <del>of extended family</del>, including adoptive and hanai relatives, and friends available to the child's family and what attempts have been made to locate and identify extended family, friends, or both;</p> <p>(11) Whether the child's family has demonstrated an understanding and <del>use</del> of the recommended/court ordered services <del>designated to effectuate</del> a safe home for the child;</p> <p>(12) Whether the child's family has resolved <del>or can resolve</del> the identified safety issues in the family home within a reasonable period of time;</p> <p>(13) <del>Whether the child's family has demonstrated the ability to understand and adequately parent the child especially in the areas of communication, nurturing, child development, perception of the child and meeting the child's physical and emotional needs; and</del></p> <p>(14) Assessment (to include the demonstrated ability of the child's family to provide a safe family home for the child) and recommendation.</p> <p>(b) The court shall consider the likelihood that the current situation presented by the <del>guidelines</del> set forth in subsection (a) will continue in the reasonably foreseeable future <del>and the likelihood that the court will receive timely notice of any change or changes in the family's willingness and ability to provide the child with a safe family home.</del></p>	<p>(C) Marital and relationship history; and (D) Prior involvement in services;</p> <p>(5) Results of psychiatric, psychological, or developmental evaluations of the child, the alleged perpetrators, and other family members who are parties;</p> <p>(6) Whether there is a history of abusive or assaultive conduct by the child's family members <u>and</u> others who have access to the family home;</p> <p>(7) Whether there is a history of substance abuse by the child's family or others who have access to the family home ;</p> <p>(8) Whether any alleged perpetrator has <u>completed services in relation to any history identified in paragraphs (6) and (7), and acknowledged and accepted responsibility</u> for the harm <u>to the child</u>;</p> <p>(9) Whether <u>any</u> non-perpetrator who resides in the family home has demonstrated an ability to protect the child from further harm and to ensure that any current protective orders are enforced;</p> <p>(10) Whether there is a support system available to the child's family, including adoptive and hanai relatives, friends, <u>and faith-based or other community networks</u>;</p> <p>(11) Attempts to locate and involve extended family, friends, <u>and faith-based or other community networks</u>;</p> <p>(12) Whether the child's family has demonstrated an understanding <u>of</u> and <u>involvement in</u> services that have been recommended by the department or court-ordered <u>as necessary</u> to provide a safe family home for the child;</p> <p>(13) Whether the child's family has resolved identified safety issues in the family home within a reasonable period of time; and</p> <p>(14) The <u>department's</u> assessment, which shall include the demonstrated ability of the child's family to provide a safe family home for the child, and recommendations.</p> <p>(b) The court shall consider the likelihood that the current situation presented in the <u>safe family home factors</u> set forth in subsection (a)</p>
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	will continue in the reasonably foreseeable future.
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<p><b>COMMENT:</b> Revised language. Changed from “guidelines” to “factors.” Added language regarding the child’s educational needs; impact of out-of-home placement; faith-based and other community resources; efforts to maintain connections between separated siblings. Also added language regarding the alleged perpetrator “accepting responsibility” for the harm (as opposed to apologizing for the harm).</p>
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**§587-26. Service plan.**

(a) A service plan is a specific written plan prepared by an authorized agency and child's family and presented to such members of the child's family ~~as the appropriate authorized agency deems to be necessary to the success of the plan, including, but not limited to, the member or members of the child's family who have legal custody, guardianship, or permanent custody of the child at the time that the service plan is being formulated or revised under this chapter.~~

(b) The service plan ~~should set forth:~~

- (1) The steps that will be necessary to facilitate the return of the child to a safe family home, if the proposed placement of the child is in foster care under foster custody;
- ~~(2) The steps that will be necessary for the child to remain in a safe family home with the assistance of a service plan, if the proposed placement of the child is in a family home under family supervision; and~~
- ~~(3) The steps that will be necessary to make the family home a safe family home and to terminate the appropriate authorized agency's intervention into the family and eliminate, if possible, the necessity for the filing of a petition with the court under this chapter.~~

(c) The service plan ~~should~~ also include, but not necessarily be limited to:

- (1) The consideration given to the use of ohana conferences for family decision making;
- (2) The specific, measurable, behavioral changes that must be achieved by the parties; the specific services ~~or treatment that the parties will be provided and the specific actions the parties must take or specific responsibilities that the parties must assume;~~ the time frames during which the services will be provided and such actions must be completed and responsibilities must be ~~assumed;~~ provided that, services and

**§ --4. Definitions.**

"Service plan" means a specific, comprehensive written plan prepared by an authorized agency pursuant to section -27.

**§ --27. Service plan.**

(a) The service plan shall provide:

- (1) The specific steps necessary to facilitate the return of the child to a safe family home, if the proposed placement of the child is in foster care under foster custody. These specific steps shall include treatment and services that will be provided, actions completed, specific measurable and behavioral changes that must be achieved, and responsibilities assumed;
- (2) Whether an ohana conference will be conducted for fact finding and family group decision making;
- (3) The respective responsibilities of the child, the parents, legal guardian or custodian, the department, other family members, and treatment providers, and a description and expected outcomes of the services;
- (4) The required frequency and types of contact between the assigned social worker, the child, and the family;
- (5) The time frames during which services will be provided, actions must be completed, and responsibilities must be discharged;
- (6) Notice to the parents that their failure to substantially achieve the objectives described in the service plan within the time frames established may result in termination of their parental rights;
- (7) Notice to the parents that if the child has been in foster care under the responsibility of the department for an aggregate of fifteen out of the most recent twenty-two months from the child's date of entry into foster care, the department is required to file a motion to set a termination of parental rights hearing, and the parents' failure to provide a safe family

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<p>assistance should be presented in a manner that does not confuse or overwhelm the parties;</p> <p>(3) The specific consequences that may be reasonably anticipated to result from the parties' <del>success or failure in making the family home a safe family home, including, but not limited to, the consequence that, unless the family is willing and able to provide the child with a safe family home within the reasonable period of time</del> specified in the service plan, their respective parental <del>and custodial duties and</del> rights shall be subject to termination <del>by award of permanent custody;</del> and</p> <p>(4) Such other terms and conditions as the <del>appropriate</del> authorized agency deems to be necessary to the success of the service plan.</p> <p>(d) <del>The service plan should include steps that are structured and presented in a manner which reflects careful consideration and balancing the priority, intensity, and quantity of the services which are needed with the family's ability to benefit from those services.</del></p> <p>(e) After each term and condition of the service plan has been thoroughly explained to <del>and is</del> understood by each member of the child's family whom the appropriate authorized agency deems to be necessary to the success of the service plan, the service plan shall be agreed to <del>and signed</del> by each family member. Thereafter, a copy of the service plan shall be provided to each family member who signed the service plan.</p> <p>(f) If a member of a child's family whom the <del>appropriate</del> authorized agency deems to be necessary to the success of the service plan cannot or <del>does not understand or agree to</del> the terms and conditions set forth in the service plan, the <del>authorized agency shall proceed pursuant to section 587-21(b).</del></p>	<p><u>home within two years from the date when the child was first placed under foster custody by the court, may result in the parents' parental rights being terminated; and</u></p> <p>(8) Any other terms and conditions that <u>the court or the authorized agency</u> deem necessary to the success of the service plan.</p> <p>(b) Services and assistance to the family that are required by a service plan shall be presented in a manner that can be understood by and does not overwhelm the parties.</p> <p>(c) <u>The court shall ensure that each term, condition, and consequence</u> of the service plan has been thoroughly explained to, understood by, <u>and agreed</u> to by each member of the child's family whom the authorized agency deems to be necessary to the success of the service plan. <u>The court shall thereafter order the service plan into effect and order</u> the distribution of copies to each family member or person who is a party to the service plan. If a member of a child's family whom the authorized agency deems to be necessary to the success of the service plan <u>cannot understand or refuses to agree</u> to the terms, conditions, <u>and consequences</u> of the service plan, <u>the court shall conduct a hearing to determine the terms, conditions, and consequences of a service plan that will ensure a safe home for the child.</u></p>
<p><b>COMMENT:</b> Revised – added “15 of 22 months” federal language. Further described the “specific steps necessary to facilitate the return of the child.” Deleted paragraphs discussing the “steps necessary” to remain in family supervision and the steps necessary to make the family home safe (possibly eliminating the need for a petition/dept intervention). Added language regarding the “frequency and types of contact” between the child, social worker and the family.</p>	

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**§587-27. Permanent plan.**

(a) Permanent plan is a ~~specific~~ written plan, prepared by an ~~appropriate~~ authorized agency, which should set forth:

- (1) ~~A position as to whether the court should order an adoption, guardianship, or permanent custody of the child and specify:~~
  - (A) ~~A reasonable period of time during which the adoption or guardianship may be finalized; provided that the identity of the proposed adoptive parent or parents shall be provided to the court in a separate report which shall be sealed and shall not be released to the parties unless the court deems such release to be in the best interests of the child;~~
  - (B) ~~If adoption is not the plan, a clear and convincing explanation why guardianship is preferable to adoption; or~~
  - (C) ~~If adoption or guardianship is not the plan, a clear and convincing explanation why permanent custody is preferable to guardianship;~~
- (2) ~~A specific written plan including:~~
  - (A) ~~The goal, as being: adoption, guardianship, or permanent custody;~~
  - (B) ~~The objectives concerning the child, including, but not limited to, stable placement, education, health, therapy, counseling, birth family (including visitation, if any), culture, and adoption, guardianship, or preparation for independent living; and~~
  - (C) ~~The method or methods for achieving the goal and objectives set forth in subparagraphs (A) and (B);~~
- (3) ~~All supporting exhibits and written consents or an~~

**§ --4. Definitions.**

"Permanent plan" means a specific, comprehensive written plan prepared pursuant to section -32.

**§ --32. Permanent plan.**

- (a) The permanent plan shall:
  - (1) State whether the permanency goal for the child will be achieved through adoption, legal guardianship, or permanent custody;
  - (2) Establish a reasonable period of time by which the adoption or legal guardianship shall be finalized;
  - (3) Document:
    - (A) A compelling reason why legal guardianship or permanent custody is in the child's best interests if adoption is not the goal; or
    - (B) A compelling reason why permanent custody is in the child's best interests if adoption or legal guardianship is not the goal;
  - (4) Establish other related goals, including those pertaining to the stability of the child's placement; education; health; therapy; counseling; relationship with the child's birth family, including visits, if any; cultural connections; and preparation for independent living;
  - (5) If a child has reached the age of sixteen, describe the services needed to assist the child with the transition from foster care to independent living; and
  - (6) Describe the methods for achieving the goals and objectives set forth in paragraphs (4) and (5).
- (b) A permanent plan prepared for a periodic review hearing or a permanency hearing shall describe:
  - (1) Progress toward achieving the goal of the plan;
  - (2) Proposed revisions to the goal of the plan and reasons for the revisions; and

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<p><del>explanation as to why the exhibits or consents are not available. Upon good cause shown, the court may waive submission of any supporting exhibit or written consent; and</del></p> <p><del>(4) Any other information or materials which are necessary to the expeditious facilitation of the permanent plan.</del></p> <p>(b) A permanent plan prepared for a permanent plan review hearing should set forth:</p> <p>(1) Progress toward and any proposed revision to the goal and the reason for the revision;</p> <p>(2) <del>Progress toward and any</del> proposed revision to the objectives and the reason for the revision; and</p> <p>(3) <del>Any</del> proposed revision to the method for achieving the goals and objectives and the reason for the revision.</p>	<p>(3) Proposed revisions to the methods for achieving the goals of the plan and objectives and the reasons for the revisions.</p>
<p><b>COMMENT:</b> Revised. Deleted language regarding supporting exhibits and written consents. “Clear and convincing explanation” changed to “compelling reason.” Deleted language discussing the identities of the persons adopting the child confidential. Added language regarding transition from FC to independent living for youth aged 16 years or older.</p>	

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**§587-31. Petition.**

(a) A petition invoking the jurisdiction of the court under this chapter shall ~~be filed in the manner provided in this section:~~

~~(1) Petitions shall be entitled "In the Interest of \_\_\_\_\_, born on \_\_\_\_\_"~~

~~and shall be verified and shall set forth:~~

(A) A concise statement of the basis for the allegation of the harm or threatened harm which brings the child within this chapter;

(B) The name, birth date, ~~sex~~, and ~~residence~~ address of the child;

(C) The names and last known ~~residence~~ addresses of the ~~member or members of the child's family required to be notified pursuant to section 587-32(a)~~, and other persons who are to be made parties to the ~~child protective proceedings at the time of the filing of the petition pursuant to section 587-32(a)~~; and

(D) Whether the child is under the temporary foster custody of the department in foster care, and, if so, ~~the type and nature of the foster care, the circumstances necessitating the care, and the date the child was placed in the temporary foster custody; and~~

(2) ~~The petition shall state when~~ any of the facts required by this section cannot be determined. The petition may be based on information and belief but ~~in that case the petition shall state the basis of the information and belief.~~

(b) ~~The petition shall state 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 a reasonable period of time, their respective parental and custodial duties and rights shall be subject to termination.

**§ --12. Petition.**

(a) A petition invoking the jurisdiction of the court under this chapter shall:

(1) Be verified and set forth:

(A) A concise statement of the basis for each allegation of harm or threatened harm that brings a child within this chapter;

(B) The name, birth date, gender, and residential address of the child;

(C) The names and last known residential addresses of the parents and other persons to be made parties to the proceedings under this chapter; and

(D) Whether the child is under the temporary foster custody or foster custody of the department and, if so, the date on which the department assumed physical custody of the child;

(2) State whether any of the facts required by this section cannot be determined prior to filing the petition; provided that the petition may be based on information and belief, but shall state the basis thereof; and

(3) Include the warning that, if the petition is granted, parental rights may be terminated unless the family is willing and able, with the assistance of a service plan, to provide the child with a safe family home within a reasonable period of time.

(b) If the court determines that the child is subject to imminent harm while in the custody of the child's family, the court shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody of the child.

(c) The court shall conduct:

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(c) ~~The court shall review each petition under this chapter and if, in the discretion of the court, the child is in a circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child, the court shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody.~~

(d) The court may ~~provide~~ rules concerning the titles, filing, investigation, and the form and content of petitions and other pleadings and proceedings in cases under this chapter, or any other matter arising in child protective proceedings. [L 1983, c 171, pt of § 1; am L 1986, c 316, § 13; am L 1992, c 190, § 13]

(1) A temporary foster custody hearing, pursuant to section -26, within two days after the petition is filed, excluding Saturdays, Sundays, and holidays; or

(2) A return hearing, pursuant to section -28, within fifteen days after the petition is filed or the date a decision is announced by the court during a temporary foster custody hearing, if the petition requests foster custody or family supervision of the child.

(d) The court may adopt rules concerning the titles, filing, investigation, and form and content of petitions and other pleadings and proceedings in cases under this chapter, or any other matter arising in child protective proceedings.

**COMMENT:** Revised language. Added language as to when a TFC hearing and a return hearing will be heard.



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**§587-32. Summons.**

(a) After a petition has been filed, the court shall issue a summons requiring ~~a child's family member or members who have legal or physical custody of the child at the time of the filing of the petition~~ to bring the child before the court at the temporary foster custody hearing or on the return date set forth in the summons. ~~In addition, any legal parent, the natural mother (unless the child has been the subject of an adoption), the adjudicated, presumed, or concerned natural father of the child as defined under section 578-2 (unless the child has been the subject of an adoption), and other persons who are to be parties to the child protective proceeding at the time of the filing of the petition also shall be summoned, in the manner provided in this section.~~

(b) A ~~certified~~ copy of the petition shall be attached to each summons.

(c) The summons shall notify the parties of their right to retain and be represented by counsel.

(d) The summons shall state: "YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE TERMINATED BY AWARD OF PERMANENT CUSTODY IF YOU FAIL TO APPEAR ON THE DATE SET FORTH IN THIS SUMMONS." [L 1983, c 171, pt of § 1; am L 1986, c 316, § 14; am L 1992, c 190, § 14]

**§ --13. Summons and service of summons.**

(a) After a petition has been filed, the court shall issue a summons requiring the presence of the parents and other persons to be parties to the proceeding, as follows:

- (1) A copy of the petition shall be attached to each summons;
- (2) The summons shall notify the parties of their right to retain and be represented by counsel; and
- (3) The summons shall state: "YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE TERMINATED IF YOU FAIL TO APPEAR ON THE DATE SET FORTH IN THIS SUMMONS."

(b) The court may issue a summons to a parent or any person having physical custody of the child to bring the child before the court at the temporary foster custody hearing or the return hearing.

**COMMENT:** Revised language. Deleted description of who will receive a summons. Old §587-32 combined with Old §587-33 to create a single section concerning service and summons.

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**§587-33. Service of summons.**

(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.~~

(b) Where the summons cannot be personally served, or where a person served fails to obey the summons, or ~~in any case when it shall be made to appear to the court that the service will be ineffectual, or that the best interests of the child require that the child be brought forthwith into the custody of the court, the court may issue a warrant for such person or child, as well as issuing an order pursuant to section 587-34(d).~~

(c) When publication is used, the summons shall be published once a week for four consecutive weeks in a newspaper of general circulation in the county. The newspaper shall be designated by the court in the order for publication of the summons, and such publication shall have the same force and effect as though such person had been personally served with the summons; provided that the date of the last publication shall be set not less than twenty-one days prior to the return date ~~stated therein~~. [L 1983, c 171, pt of § 1; am L 1986, c 316, § 15; am L 1989, c 211, pt of § 10; am L 1990, c 281, pt of § 11; am L 1992, c 190, § 15; am L 1999, c 153, § 2]

**§ --13. Summons and service of summons.**

(c) The sheriff or other authorized person shall serve the summons by personally delivering a certified copy to the person or legal entity being summoned. A return on the summons shall be filed, showing the date and time and to whom service was made; provided that:

- (1) If the party to be served does not reside in the State, service shall be made by registered or certified mail addressed to the party's last known address; or
- (2) If the court finds that it is impracticable to personally serve the summons, the court may order service by registered or certified mail addressed to the party's last known address, or by publication, or both. When publication is used, the summons shall be published once a week for four consecutive weeks in a newspaper of general circulation in the county in which the party was last known to have resided. In the order for publication of the summons, the court shall designate the publishing newspaper and shall set the date of the last publication at no less than twenty-one days before the return date. Such publication shall have the same force and effect as personal service of the summons.

(d) Service shall be completed no less than twenty-four hours prior to the time set forth in the summons for a temporary foster custody hearing, or no less than forty-eight hours prior to the time set forth in the summons for any other hearing, unless the party was present when ordered by the court to appear at the hearing.

(e) The court may issue a warrant for the appearance of a person or child, as well as issue an order pursuant to section -16(b) , if:

- (1) The summons cannot be personally served;
- (2) The person served fails to obey the summons;
- (3) The court finds that service will not be effective; or
- (4) The court finds that the best interests of the child require that the child be brought into the custody of the court.

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<b>COMMENT:</b> Revised language. Combined with the Old §587-32 to created a single section for service and summons.	

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**§587-34. Guardian ad litem; court appointed counsel.** (a) The court shall appoint a guardian ad litem for the child to serve throughout the pendency of the child protective proceedings under this chapter. The court may appoint ~~additional counsel for the child pursuant to subsection (c) or independent~~ counsel for any other party if the party is an indigent, ~~counsel is necessary to protect the party's interests adequately, and the interests are not represented adequately by another party who is represented by counsel.~~

(b) A guardian ad litem shall:

(1) ~~Be allowed access to the child by the caretakers of the child whether caretakers are individuals, authorized agencies, or health care providers;~~

(2) Have the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child that are relevant to the proceedings filed under this chapter without the consent of the child or individuals and authorized agencies who have control of the child; and

(3) Be given notice of all hearings and proceedings, civil or criminal, including, ~~but not limited to,~~ grand juries, involving the child and shall protect the best interests of the child therein, ~~unless otherwise ordered by the court.~~

(c) A guardian ad litem ~~appointed pursuant to subsection (a)~~ shall report to the court and all parties in writing at six month intervals, or as is otherwise ordered by the court, regarding such guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interests of the child; provided that such guardian ad litem shall make face to face contact with the child in the child's family or foster home at least once every three months. A guardian ad litem shall inform the court of the child's ~~perceived interests~~ if they differ from those being advocated by the child's guardian ad litem. If the child and the child's guardian ad litem are not in agreement, the court shall ~~evaluate the necessity for~~ appointing special counsel for

**§ --16. Guardian ad litem.**

(a) The court shall appoint a guardian ad litem for a child to serve throughout the pendency of child protective proceedings under this chapter.

**§ --17. Court-appointed attorneys.**

(a) The court may appoint an attorney to represent a legal parent who is indigent based on court-established guidelines. The court may also appoint an attorney to represent another indigent party based on court-established guidelines, if it is deemed to be in the child's best interest. Attorneys who are appointed by the court to represent indigent legal parents and other indigent qualifying parties may be paid by the court, unless the legal parent or party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate legal parent or party to pay or reimburse the fees and costs of an attorney appointed for the child or incapacitated adult.

**§ --16. Guardian ad litem.**

(c) A guardian ad litem shall, unless otherwise ordered by the court:

(1) Have access to the child, or incapacitated adult;

(2) Have the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child or incapacitated adult that are relevant to the proceedings filed under this chapter. This authority shall exist even without the consent of the child, incapacitated adult, or individuals and authorized agencies that have control of the child or incapacitated adult; provided that nothing in this section shall override any attorney-client or attorney work product privilege;

(3) Be given notice of all hearings and proceedings involving the child or incapacitated adult, whether civil or criminal, including grand juries, and shall protect the best interests of the child or incapacitated adult;

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the child to serve as the child's legal advocate-concerning such issues and during such proceedings as the court deems to be in the best interests of the child.

(d) When the court determines, after such hearing as the court deems to be appropriate, that a party is incapable of comprehending the legal significance of the issues or the nature of the ~~child protective~~ proceedings, the court may appoint a guardian ad litem to represent ~~the interests of~~ the party; provided that a guardian ad litem appointed pursuant to this section shall investigate and report to the court in writing at six month intervals, or as is otherwise ordered by the court, ~~regarding the current status of the party's disability, including, but not limited to, a recommendation as to available treatment, if any, for the disability and a recommendation concerning the manner in which the court should proceed in order to best protect the interests of the party in conjunction with the court's determination as to the best interests of the child.~~

(e) A guardian ad litem or counsel appointed pursuant to this section ~~for the child or other party~~ may be paid for by the court, unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. The court may order the appropriate parties to pay or reimburse the costs and fees of the guardian ad litem and other counsel appointed for the child. [L 1986, § 16; am L 1992, c 190, § 16]

- (4) Make face-to-face contact with the child or incapacitated adult in the child's or incapacitated adult's family or resource family home at least once every three months;
- (5) Report to the court and all parties in writing at six month intervals, or as ordered by the court, regarding such guardian ad litem's actions taken to ensure the child's or incapacitated adult's best interest, and recommend how the court should proceed in the best interest of that child or incapacitated adult; and
- (6) Inform the court of the child's opinions and requests. If the child's opinions and requests differ from those being advocated by the guardian ad litem, the court shall evaluate and determine whether it is in the child's best interests to appoint an attorney to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child.

**§ --16. Guardian ad litem.**

(f) The fees and costs of a guardian ad litem appointed pursuant to this section may be paid by the court, unless the party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate parties to pay or reimburse the fees and costs of the guardian ad litem and any attorney appointed for the child.

**§ --17. Court-appointed attorneys - see language in section – 17(a)**

**§ --16. Guardian ad litem.**

(b) The court may appoint a guardian ad litem for an incapacitated adult party, as set forth below:

- (1) Upon the request of any party or sua sponte, the court may order a professional evaluation of an adult party to determine the party's capacity to substantially:
  - (A) Comprehend the legal significance of the issues and nature of the proceedings under this chapter;

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- (B) Consult with counsel; and
- (C) Assist in preparing the party's case or strategy;
- (2) If the court orders a professional evaluation, the party shall be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the party's alleged impairment:
  - (A) Unless otherwise directed by the court, the examiner shall promptly file with the court a written report which shall contain:
    - (i) A description of the nature, type, and extent of the party's specific cognitive and functional capabilities and limitations;
    - (ii) An evaluation of the party's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
    - (iii) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
    - (iv) The dates of any assessments or examinations upon which the report is based;
  - (B) Upon the request of any party or sua sponte, and after such hearing as the court deems appropriate, the court may appoint a guardian ad litem for an adult party only after a determination, by clear and convincing evidence, that:
    - (i) The party is an incapacitated person; and
    - (ii) The party's identified needs cannot be met by less restrictive means, including the use of appropriate and reasonably available assistance.
- (d) The court shall, for an incapacitated adult:
  - (1) Grant a guardian ad litem only those powers necessitated by the incapacitated adult's limitations and demonstrated needs; and
  - (2) Make appointive and other orders that will encourage the development of the incapacitated adult's maximum self-

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reliance and independence.

(e) Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad litem. The guardian ad litem for an incapacitated adult shall inform the court of the incapacitated adult's opinions and requests and may recommend how the court should proceed in the best interest of the incapacitated adult.

**§ --17. Court-appointed attorneys.**

(b) Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad litem.

**COMMENT:** Revised language. Separated into two new sections – one each for GAL and court appointed attorney. Added language regarding incapacitated adults. Clarifies that attorneys for incapacitated adults will take instruction from the incapacitated adult's GAL.

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**§587-40. Reports to be submitted by the department and authorized agencies; social worker expertise.**

~~(a) The department or other appropriate authorized agency shall make every reasonable effort to submit written reports, or a written explanation regarding why a report is not being submitted timely, to the court with copies to the parties or their counsel or guardian ad litem:~~

- ~~(1) Within forty-eight hours, excluding Saturdays, Sundays, and holidays, subsequent to the hour of the filing of a petition for temporary foster custody pursuant to section 587-21(b)(3);~~
- ~~(2) Upon the date of the filing of a petition pursuant to section 587-21(b)(4); and~~
- ~~(3) At least fifteen days prior to the date set for each disposition, review, permanent plan, and permanent plan review hearing, until jurisdiction is terminated, unless a different period of time is ordered by the court or the court orders that no report is required for a specific hearing; or~~
- ~~(4) Prior to or upon the date of a hearing if the report is supplemental to a report that was submitted pursuant to paragraph (1), (2), or (3).~~

~~(b) Report or reports pursuant to subsection (a) specifically shall:~~

- ~~(1) Assess fully all relevant prior and current information concerning each of the safe family home guidelines, as set forth in section 587-25, except for a report required for an uncontested review hearing or a permanent plan review hearing that need only assess relevant current information including, for a review hearing, the degree of the family's progress with services;~~
- ~~(2) In each proceeding, subsequent to adjudication, recommend as to whether the court should order:~~

**§ --18. Reports to be submitted by the department and authorized agencies.**

(a) Unless otherwise ordered by the court, the department or other authorized agencies shall file written reports with the court:

- (1) Concurrent with the filing of a petition invoking the jurisdiction of the court under this chapter; and
- (2) No less than fifteen days before a scheduled return hearing, periodic review hearing, permanency hearing, or termination of parental rights hearing; provided that additional information may be submitted to the court up to the date of the hearing; provided that the department or other authorized agencies make a good cause showing that such additional information was not available to the department or other authorized agency before the fifteen day deadline.

(b) The reports shall include:

- (1) An assessment of each safe family home factor and the family's progress with recommended or court-ordered services;
- (2) A recommended service plan or permanent plan that references the pertinent safe family home factors; and
- (3) A recommendation documenting the basis for any other orders, including protective orders.

(c) The department or other authorized agencies shall submit to the court each report, in its entirety, pertaining to the child or the child's family that has been prepared by a child protective services multidisciplinary team or consultant.

(d) A written report submitted pursuant to this section shall be admissible and relied upon to the extent of its probative value in any proceeding under this chapter, subject to the right of any party to examine or cross-examine the preparer of the report.



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<p>(A) <del>A service plan as set forth in section 587-26 or revision to the existing service plan and, if so, set forth the proposed service or revision and the pertinent number of the guidelines considered in the report, made pursuant to paragraph (1), which guideline or guidelines provide the basis for recommending the service or revision in a service plan or revised service plan; or</del></p> <p>(B) <del>A permanent plan or revision to an existing permanent plan and if it is an initial recommendation, set forth the basis for the recommendation that shall include, but not be limited to, an evaluation of each of the criteria set forth in section 587-73(a), including the written permanent plan as set forth in section 587-27; and</del></p> <p>(3) <del>Set forth recommendations as to other orders deemed to be appropriate and state the basis for recommending that the orders be entered.</del></p> <p>(c) <del>A written report pertaining to cases pending before the family court</del> submitted by the department pursuant to subsection (a) shall be submitted to the court in its entirety, and shall include the following:</p> <p>(1) <del>Any report, or medical or mental health consultation, generated by a child protective services multidisciplinary team or consultant in its entirety; and</del></p> <p>(2) <del>All other relevant information on placement of the child.</del></p> <p>(d) <del>A written report submitted under this section shall be admissible and may be relied upon to the extent of its probative value in any proceeding under this chapter; provided that the person or persons who prepared the report may be subject to direct and cross-examination as to any matter in the report, unless the person is unavailable.</del></p> <p>(e) <del>A person employed by the department as a social</del></p>	<p><b>§ --19. Testimony by department social worker.</b> A person employed by the department as a social worker in the area of child protective services or child welfare services <u>shall be presumed to be</u> qualified to testify as an expert on child protective or child welfare services. <u>Any party may move the court to qualify a person employed by the department as a social worker in the area of child protective services or child welfare services called to testify as an expert on child protective or child welfare services.</u></p>
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worker in the area of child protective or child welfare services is qualified to testify as an expert in the area of <del>social work and</del> child protective or child welfare services. [L 1986, c 316, § 17; am L 1992, c 190, § 17; am L 1998, c 134, § 9]	
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<b>COMMENT:</b> Separated into two new sections – one each for reports to be submitted and social worker expertise. Social worker in CPS or CWS is only presumed to be an expert. Revised language. Reports now filed concurrently with the petition (no longer within 48 hours of the petition filing). Though kept the “15 days prior” to the scheduled hearing deadline, added language that good cause must be shown for reports/information submitted less than fifteen days before a scheduled hearing. Clarifies the right to “move” the court to qualify social workers called to testify as experts. New CPA uses more general language discussing the reports/service plan referencing the safe family home guidelines. Deleted language that discusses the permanent plan and its initial recommendations and basis for such recommendations.
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**§587-41. Evidentiary determination; burden of proof.** (a) In a temporary foster custody hearing, a ~~determination~~ that there exists reasonable cause to believe that a child is subject to imminent harm may be based upon relevant ~~evidence, including, but not limited to,~~ hearsay evidence when direct testimony is unavailable or when it is impractical to subpoena witnesses who will be able to testify to facts ~~from~~ personal knowledge.

~~(b) In an adjudication hearing, a determination that the child has been harmed or is subject to threatened harm shall be based on a preponderance of the evidence.~~

(c) In subsequent hearings, ~~other than a permanent plan hearing,~~ any determination shall be based on a preponderance of the evidence.

~~(d) In a permanent plan hearing, a determination that a permanent plan shall be ordered based upon clear and convincing evidence. [L 1983, c 171, pt of § 1; am L 1986, c 316, § 18; am L 1992, c 190, § 18]~~

**§ --21. Admissibility of evidence; testimony by a child.**

(b) 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.

**§ --4. Definitions.** Preponderance of the evidence" means the degree of proof, which as a whole, convinces the trier of fact that the fact sought to be proved is more probable than not. "Preponderance of the evidence" shall be the standard of proof required in any proceeding, unless otherwise specified.

**COMMENT:** Separated into two new sections – admissibility of evidence/testimony by child now has its own section. Burden of proof has been included in the “preponderance of the evidence” definition in the definitions section. Added language to the definition that preponderance is the SOP unless otherwise indicated.

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**§587-42. Evidence may be inadmissible in other state actions or proceedings; testimony by a child.**

(a) Any testimony by or other evidence produced by a party in a ~~child protective~~ proceeding under this chapter, ~~which would otherwise be unavailable, may be~~ ordered by the court to be inadmissible as evidence in any other state civil or criminal action or proceeding, if the court deems such an order to be in the best interests of the child.

(b) The court may direct that a child testify under ~~such~~ circumstances as the court deems to be in the best interests of the child and the furtherance of justice, which may include, ~~or be limited to,~~ an interview on the record in chambers with only those parties present as the court deems to be in the best interests of the child.

(c) Any statement made by the child to any person relating to ~~any~~ allegation of imminent harm, harm, or threatened harm shall be admissible in evidence. [L 1983, c 171, pt of § 1; am L 1986, c 316, § 19]

**§ --20. Inadmissibility of evidence in other state actions or proceedings.**

The court may order that testimony or other evidence produced by a party in a proceeding under this chapter shall be inadmissible as evidence in any other state civil or criminal action or proceeding if the court deems such an order to be in the best interests of the child.

**§ --21. Admissibility of evidence; testimony by a child.**

(d) A child may be directed by the court to testify under circumstances deemed by the court to be in the best interests of the child and the furtherance of justice. These circumstances may include an on-the-record interview of the child in chambers, with only those parties present during the interview as the court deems to be in the best interests of the child.

**§ --21. Admissibility of evidence; testimony by a child.**

(a) Any statement relating to an allegation of imminent harm, harm, or threatened harm that a child has made to any person shall be admissible as evidence.

**COMMENT:** Separated into two separate sections – one each for inadmissibility of evidence in other state actions and admissibility of evidence/testimony by a child. Clarifies inadmissibility of evidence produced in case if the court finds it is in the child's best interests.

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<p><b>§587-43. Recording a statement or the testimony of a child.</b> The recording of a statement of a child is admissible into evidence in any proceeding under this chapter if:</p> <ol style="list-style-type: none"><li>(1) The recording is <del>visual, or oral, or both</del> and is recorded on film, tape, or videotape or by other electronic means;</li><li>(2) The recording equipment <del>was</del> capable of <del>making</del> an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered; and</li><li>(3) Every person on the recording is identified. [L 1986, c 316, § 20]</li></ol>	<p><b>§ --21. Admissibility of evidence; testimony by a child.</b></p> <p>(c) A child's recorded statement shall be admissible in evidence in any proceeding under this chapter; <u>provided that</u>:</p> <ol style="list-style-type: none"><li>(1) <u>The statement</u> is recorded on film, audiotape, or videotape, or by other <u>reliable</u> electronic means;</li><li>(2) The recording equipment <u>used is</u> capable of <u>producing</u> an accurate recording, <u>was</u> operated by a competent person, and the recording is accurate and has not been altered; and</li><li>(3) Every person on the recording is identified.</li></ol>
<p><b>COMMENT:</b> Now a part of the new section regarding admissibility of evidence/testimony by a child.</p>	

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**§587-44. Admissibility of evidence.** The physician-patient privilege, the psychologist-client privilege, the spousal privilege, and the victim-counselor privilege shall not be available to exclude evidence of imminent harm, harm, or threatened harm in any proceeding under this chapter. [L 1986, c 316, § 21; am L 1992, c 217, § 4]

**§ --22. Unavailability of specified privileges.**  
The following privileges shall not be available to exclude evidence of imminent harm, harm, or threatened harm in any proceeding under this chapter:

- (1) The physician-patient privilege;
- (2) The psychologist-client privilege;
- (3) The spousal privilege; and
- (4) The victim-counselor privilege.

**COMMENT:** Renamed “unavailability of specified privileges.”

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**§587-51. Required findings concerning notice prior to a hearing in a child protective proceeding.**

(a) No hearing may commence under this chapter unless the court enters a finding that each of the parties required to be notified pursuant to ~~section 587-32(a)~~ has been served with a copy of the petition; provided that if ~~a member or members of the child's family~~ required to be notified pursuant to ~~section 587-32(a)~~ have not been served, the court may proceed to hear any ~~child protective proceeding under this chapter and enter orders~~ concerning the parties who have been served if the court is satisfied that:

- (1) A reasonable effort has been made to effect personal service;
- (2) It would not be in the best interests of the child to postpone the proceeding until service can be effectuated; and
- (3) The child is represented by a guardian ad litem or counsel.

(b) If, at the return ~~date~~ hearing, it is established that a ~~member or members of the child's family~~ required to be notified pursuant to ~~section 587-32(a)~~ have not been served prior to the ~~return date~~, the court shall:

- (1) ~~Ascertain and~~ order the method of service of summons ~~which~~ the court deems to be appropriate based upon the available information; and
- (2) Set a continued return ~~date~~; ~~provided that~~:
  - (A) ~~The court~~ may waive the appearance of any party at the continued return ~~date~~; and
  - (B) ~~If the court~~ orders that service of summons be made by mail or publication, the court shall set the continued return ~~date~~ not less than twenty-one days ~~subsequent~~ to the date of service evidenced by the signature on a return receipt or the date of the last publication.

(c) ~~Upon~~ the continued return ~~date~~, the court shall:

- (1) Enter a default ~~concerning~~ a party who was served but

**§ --14. Notice of hearings; participation of resource family.**

(e) The court may not convene a hearing under this chapter unless the court enters a finding that each of the parties required to be notified of the hearing has been served with a copy of the petition; provided that if a party is required to be summoned to a temporary foster custody or return hearing and has not been served with the summons, the court may proceed with the hearing if:

- (1) A reasonable effort has been made to effect personal service;
- (2) It would not be in the best interests of the child to postpone the proceeding until service can be effectuated; and
- (3) The child is represented by a guardian ad litem or counsel.

**§ --28. Return Hearing.**

(b) At the return hearing, if it is established that a party required to be notified has not been served prior to the hearing, the court shall:

- (1) Order the method of service of summons that the court deems to be appropriate, based upon the available information; and
- (2) Set a continued return hearing and:
  - (A) May waive the appearance of any party at the continued return hearing; and
  - (B) If service of summons is ordered to be made by mail or publication, shall set the continued return hearing no less than twenty-one days after the date of service as evidenced by the signature of the recipient on a return receipt or the date of the last publication.

(c) At a continued return hearing, the court shall:

- (1) Enter the default of the party who was served but failed to appear at the continued return hearing;
- (2) Order the party who was served to appear on the date of the next scheduled hearing in the case; or

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<p>(2) failed to appear on the continued return date; Order the party who was served to appear on the date of the next scheduled hearing in the case; or</p> <p>(3) <del>If a member of the child's family required to be notified pursuant to section 587-32(a) was served and appears on the continued return date and moves the court that a prior order be vacated or modified, set the oral motion to vacate prior orders for a hearing and order that the moving party proceed to file a written motion and to serve the other parties with proper written notice of the motion and hearing date.</del></p> <p>(d) In considering a party's motion to vacate or modify prior orders, the court need not commence a trial or hearing de novo, but rather, after such further hearing as the court deems to be appropriate, may proceed to enter such orders as are in the best interests of the child.</p> <p>(e) <del>The court shall hear child protective proceedings under this chapter at a hearing separate from those for adults and without a jury. The hearing shall be conducted in an informal manner and may be adjourned from time to time.</del> The general public shall be excluded and only such persons shall be admitted as are found by the court to have a direct interest in the case. The child may be excluded from the hearing at any time at the discretion of the court. If a party is without counsel or a guardian ad litem, the court shall inform the party of the right to be represented by counsel and to appeal.</p> <p>(f) Orders orally stated by the court on the record in a proceeding under this chapter shall have full force and effect upon the date of the hearing until further order of the court; <del>provided that</del> all oral orders shall be reduced to writing as soon as is practicable. [L 1983, c 171, pt of § 1; am L 1986, c 316, § 22; am L 1992, c 190, § 19]</p>	<p>(3) Set a hearing on the oral motion to vacate prior orders, if a party appears at the hearing and moves the court to vacate or modify prior orders. The moving party shall file a written motion and serve the other parties with proper written notice of the motion and the hearing date.</p> <p><b>§ --24. Motions to vacate or modify prior orders brought or decided upon pursuant to Rule 59, Hawai'i Family Court Rules.</b> In considering a party's motion to vacate or modify prior orders brought or decided upon pursuant to Rule 59, Hawaii Family Court Rules, the court need not commence a trial or hearing de novo, but rather, after such further hearing as the court deems to be appropriate, may proceed to enter such orders as are in the best interests of the child.</p> <p><b>§ --25. Conduct of hearing in child protective proceedings.</b></p> <p>(a) The court shall hear child protective proceedings without a jury at a hearing separate from those for adults.</p> <p>(b) The general public shall be excluded from <u>child protective proceedings</u>. Only <u>parties</u> found by the court to have a direct interest in the case shall be admitted to the hearing.</p> <p>(c) The court has discretion to exclude the child from the hearing at any time.</p> <p>(d) If a party is without counsel or a guardian ad litem, the court shall inform the party of the right to be represented by counsel and the right to appeal.</p> <p><b>§ --23. Effect of oral orders.</b> Orders stated orally by the court on the record in a proceeding under this chapter shall have full force and effect <u>from</u> the date of the hearing until further order of the court. All oral orders shall be reduced to writing as soon as is practicable.</p>
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**COMMENT:** Paragraphs in the Old §587-51 were either subsumed into a different section or a new section was created for the particular paragraph. See §§ -- 14; 23; 24; 25 and 28.

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**§587-51.5. Notice of hearings.**

(a) Notice of all hearings shall be served upon the parties ~~and upon the parents~~. Notice of hearings shall be served by the department upon the parties no less than forty-eight hours before the scheduled hearing. ~~No hearing shall be held until the parties are served.~~

(b) Notice of all hearings ~~subsequent to the section 587-71 disposition hearing~~ shall be served upon the current foster parent or ~~parents~~, each of whom shall be entitled to participate in the proceedings as a party. Notice of hearings shall be served ~~by the department~~ upon the current foster parent or ~~parents~~ no less than forty-eight hours before the scheduled hearing, subject to a shortening of time when a hearing is set within a shorter time frame. No hearing shall be held until the current foster parent or ~~parents~~ are served. ~~For purposes of this subsection, notice to foster parents may be effected by hand delivery, regular mail, or by facsimile or electronic mail if receipt may be confirmed, and may consist of the last court order, if it includes the date and time of the hearing.~~

(c) For purposes of this section, "party" or "parties" shall include the current foster parents. [L 2006, c 192, §2]

**§ --14. Notice of hearings; participation of resource family.**

(a) Notice of hearings shall be served on the parties; provided that no further notice is required for any party who defaulted or was given actual notice of a hearing while present in court. Notice of hearings shall be served no less than forty-eight hours before the scheduled hearing, subject to a shortening of time as ordered by the court.

(b) The child's current resource family shall be served written notice of hearings no less than forty-eight hours before a scheduled hearing; provided that no further notice shall be provided to a resource family that was given actual notice of a hearing while present in court, subject to a shortening of time as ordered by the court.

(c) No hearing shall be held until the child, the child's current resource family, and all other parties are given notice of the hearing or are served, as required by this section.

d) The child's current resource family is entitled to participate in the proceedings to provide information to the court, either in person or in writing, concerning the current status of the child in their care.

(f) For purposes of this section, "party" or "parties" shall include the current foster parents.

**COMMENT:** Revised language. Added language regarding participation by resource families/foster families. Added language regarding "no further notice" to parties (including resource families) if they were given actual notice while present in court.

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**§587-52. Order of protection.**

(a) After a petition has been filed with the court under this chapter, the court, upon such hearing as the court deems to be appropriate, may ~~make~~ an order of protection. Such an order ~~may include, but need not be limited to,~~ a requirement that a party:

- (1) ~~Stay away from the family home, a school, or any other place or location which is deemed by the court to present an opportunity for contact between the parties themselves, or with other persons, which contact would not be in the best interests of the child;~~
  - (2) Abstain from physically or verbally contacting, threatening, or abusing any party or person;
  - (3) ~~Not permit the child to be removed from a certain location;~~
  - (4) ~~Not to interfere with the physical, legal, foster, or permanent custody of the child; and~~
  - (5) ~~Report any violation of an order of protection to the appropriate law enforcement authorities and other authorized agencies.~~
- (b) The parties may release copies of an order of protection to appropriate law enforcement authorities. [L 1983, c 171, pt of § 1; am L 1986, c 316, § 23; am L 1992, c 190, § 20]

**§ --38. Protective order.**

(a) After a petition has been filed with the court under this chapter, the court, upon such hearing as the court deems to be appropriate, may issue a protective order to restrain any party from contacting, threatening, or physically abusing any other party or a child, if the court finds that a protective order is necessary to prevent domestic abuse (as that term and its component terms are defined in section 586-1) or a recurrence of domestic abuse.

(b) The protective order shall enjoin a party to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing any protected party or child;
- (2) Contacting, threatening, or physically abusing any person residing at the dwelling or residence of any protected party or child; and
- (3) Entering or visiting the dwelling or residence of any protected party or child.

(c) The protective order may provide for further relief as the court deems necessary to prevent the occurrence or recurrence of domestic abuse.

(d) The protective order may require a party to leave the party's dwelling or residence during the period of time in which the protective order is in effect.

(e) The protective order shall be binding upon not only any party against whom the protective order is directed, but also upon each such party's officers, agents, servants, employees, attorneys, and any other persons in active concert or participation with each such party.

(f) The court may order that an individual be made a party for the

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limited purpose of issuing a protective order against that individual.

(g) Upon application and a hearing, the court may modify the terms of, or terminate, an existing protective order.

(h) Any party may provide to appropriate law enforcement authorities a copy of a protective order issued pursuant to this section.

(i) The protective order shall become effective upon service pursuant to section -39(a).

**COMMENTS:** Revised. New language regarding the prevention and/or recurrence of domestic abuse; whom the protective order is binding upon; actions a protective order prohibits; allowing the court to modify or terminate an existing protective order; court's discretion to make a person a party for the purposes of the protective order. Deleted language that prohibited removal of the child from the jurisdiction; interfering with physical, legal, foster or permanent custody of the child; reporting violations to the appropriate authorities.

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**§587-53. Temporary foster custody hearing.** (a) If the department has continued to assume temporary foster custody of a child pursuant to section 587-24(e)(3), the court shall set a temporary foster custody hearing within two working days, excluding Saturdays, Sundays, and holidays, ~~after the filing of a petition to determine whether the best interests of the child require further protection prior to an adjudicatory determination.~~

(b) After reviewing a petition and the report or reports submitted ~~pursuant to section 587-40, the court, on its own motion, may order that the child immediately be released from temporary foster custody and returned to the child's family home under the terms and conditions, including, but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child; provided that upon the return the child and the child's family members who are parties shall be under the temporary family supervision of the department prior to the temporary foster custody hearing.~~

(c) The temporary foster custody hearing shall be continued for a period not to exceed fifteen days, if the court determines that it would be in the best interests of the child that further investigation be conducted ~~and information concerning whether the child should remain in temporary foster custody be provided to the court by each of the parties, prior to rendering a determination as to whether the child should remain in temporary foster custody prior to an adjudication determination.~~

(d) ~~During a continuance period ordered pursuant to subsection (c) or at any other time during the pendency of a child protective proceeding, the court may further order that:~~

- (1) Any party undergo a physical, developmental, psychological, or psychiatric evaluation and that a written or oral report be submitted to the court and all parties prior to ~~or upon~~ the date of the ~~continued or~~ next hearing;
- (2) The child's family members who are parties provide

**§ -26. Temporary foster custody hearing.**

(a) When the department assumes temporary foster custody of a child and files a petition pursuant to this chapter, the court shall conduct a temporary foster custody hearing within two days after the petition is filed, excluding Saturdays, Sundays, and holidays. The purpose of a temporary foster custody hearing is to determine whether a child's safety continues to require protection prior to an adjudicatory determination at a return hearing.

(b) The temporary foster custody hearing may be continued for a period not to exceed fifteen days if the court determines that further investigation would be in the child's best interests.

(c) After reviewing the petition and any reports submitted by the department and considering all information pertaining to the safe family home factors, the court shall order:

- (1) That the child be immediately released from the department's temporary foster custody, placed in temporary family supervision, and returned to the child's family home with the assistance of services, upon finding that the child's family is able to provide a safe family home with services; or
- ( 2 ) That the child continue in the department's temporary foster custody, upon finding that there is reasonable cause to believe that continued placement in foster care is necessary to protect the child from imminent harm; provided that in making this determination, the court shall consider whether:
  - (A) The department made reasonable efforts to prevent or eliminate the need for removing the child from the child's family home before the child was placed in foster care;
  - (B) The alleged or potential perpetrator of imminent harm, harm, or threatened harm should be removed from the family home rather than continuing the child's placement in foster care. The child's family shall have the burden of establishing that it is in the child's best interests to remove

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<p>the department or <del>other appropriate</del> authorized agency with the names and addresses of other relatives and friends who <del>may be</del> potential visitation supervisors or <del>foster parents</del> for the child and that they <del>arrange for the persons to appear in court upon the date of the continued or next hearing;</del></p> <p>(3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of the department or <del>other appropriate</del> authorized agency and the child's guardian ad litem;</p> <p>(4) <del>The parties, subject to their agreement unless jurisdiction has been established, meet with appropriate expert witnesses to discuss the alleged harm to the child;</del></p> <p>(5) The court and the parties view a <del>visual recording</del> or listen to an <del>oral recording</del> of the child's statement at such time and in such manner as the court deems to be appropriate;</p> <p>(6) <del>The child and the child's family members who are parties, subject to their agreement unless jurisdiction has been established, arrange and commence participation in such counseling or therapy for themselves and the child as the court deems to be appropriate and consistent with the best interests of the child;</del></p> <p>(7) An <del>appropriate</del> order of protection be entered;</p> <p>(8) A criminal history record check be conducted by the department or <del>other appropriate</del> authorized agency concerning a party who is an alleged perpetrator of imminent harm, harm, or threatened harm to the child, and that the results be submitted to the court and other parties in such manner as the court deems to be appropriate prior to or upon the date of the continued or next hearing;</p> <p>(9) The department or <del>other appropriate</del> authorized</p>	<p><u>the child, rather than the alleged or potential perpetrator, from the family home;</u> and</p> <p>(C) Every reasonable effort has been or is being made to place siblings or psychologically-bonded children together, unless such placement is not in the children's best interests.</p> <p><u>(d) The court shall conduct a return hearing on the petition within fifteen days after the temporary foster custody hearing.</u></p> <p>(e) The court may further order that:</p> <p>(1) Any party undergo a physical, developmental, psychological, or psychiatric evaluation and that a written or oral report be submitted <u>or communicated</u> to the court and all parties before the next court hearing;</p> <p>(2) The child's family members who are parties provide the department or <u>another</u> authorized agency the names and addresses of other relatives and friends who <u>are</u> potential visitation supervisors or <u>resource families</u> for the child;</p> <p>(3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of the child's guardian ad litem, the department, or <u>another</u> authorized agency;</p> <p>(4) The court and the parties view a <u>video</u> or listen to an <u>audio</u> recording of the child's statements at such time and in such manner as the court deems appropriate;</p> <p>(5) A criminal history record check be conducted by the department or <u>another</u> authorized agency on a party who is an alleged <u>or potential</u> perpetrator of imminent harm, harm, or threatened harm to the child;</p> <p>(6) A protective order be entered;</p> <p>(7) The department or <u>another</u> authorized agency prepare a written supplemental report;</p> <p>(8) The child's guardian ad litem visit the child's family home and resource family home, be present during supervised visitation, and prepare a written report that includes specific</p>
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<p>agency prepare a written <del>or oral</del> supplemental report pursuant to <del>section 587-40</del> and submit the report to the court, the guardian ad litem, and all parties prior to or upon the date of the continued or next hearing; or</p> <p>(10) The child's guardian ad litem visit the child's family home and <del>foster</del> home, be present during a supervised visitation, and prepare a written <del>or oral</del> report, including specific recommendations concerning services and assistance, <del>to be submitted to the court and all parties prior to or upon the date of the continued or next hearing.</del></p> <p>(e) <del>The court shall consider 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, prior to rendering a determination in the temporary foster custody hearing.</del></p> <p>(f) After a temporary foster custody hearing, if the court determines that there is reasonable cause to believe that continued placement in foster care is necessary to protect the child from imminent harm, it shall order that the child continue in the temporary foster custody of the department under the terms and conditions, including, but not limited to, orders concerning services and assistance and which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child; <del>provided that</del> prior to ordering placement or continued placement in any proceeding under this chapter the court first shall give due consideration to whether:</p> <p>(1) The removal or continued removal of the alleged potential perpetrator of the imminent harm, harm, or threatened harm from the child's family home prior to continuing or placing the child out of the family home. The child's family shall have the burden of establishing that it is not in the best interests of the child that the alleged perpetrator be removed from the family's home rather than the child by order of the court; and</p> <p>(2) Every reasonable effort has been or is being made to</p>	<p>recommendations concerning services and assistance to the family; and</p> <p><u>(9) Any other orders be entered that the court deems necessary and in the best interests of the child.</u></p> <p>(f) Any party may file a motion <u>requesting</u>, or the court may order sua sponte, a temporary foster custody hearing or rehearing at any time after a petition is filed, to determine whether the child should be placed in temporary foster custody to ensure the child's safety pending a scheduled return hearing.</p>
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place siblings or psychologically bonded children together, unless the placement is not in the best interests of the children.

(g) After a temporary foster custody hearing, if the court determines that continued placement in foster care is not necessary to protect the child from imminent harm, it may order that the child immediately be released from temporary foster custody and returned to the child's family home with the assistance of services and ~~under the other terms and conditions, including but not limited to, orders which may be entered pursuant to subsection (d), as are deemed by the court to be in the best interests of the child pending an adjudication or disposition hearing;~~ provided that upon the return, the child and the child's family members who are parties shall be under the temporary family supervision of the department ~~prior to an adjudication or dispositional determination.~~

(h) Any party may move for, or the court on its own motion may order, a temporary foster custody hearing or rehearing at any time after the petition is filed under this chapter ~~in order~~ to determine whether the best interests of the child require that the child be placed in temporary foster custody prior to an adjudication or dispositional determination. [L 1983, c 171, pt of §1; am L 1986, c 316, §24; am L 1992, c 190, §21; am L 1998, c 134, §10; am L 2008, c 199, §7]

**COMMENT:** Revised language. Deleted language regarding the child and parties to meet with expert witnesses and participate in counseling, as the court deems appropriate. Added "reasonable efforts" language to eliminate the need to remove the child, the purpose of a TFC hearing. Added language regarding when the return hearing is to be held by. Streamlined the language.



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**§587-62. Return date.** (a) When a petition has been filed, the court shall set a return date to be held within fifteen days of (1) the filing of the petition or (2) the date a decision is orally stated by the court on the record in a temporary foster custody hearing.

(b) ~~On the return date, the court shall preside over a pretrial conference and may order that:~~

~~(1) During the period of time from the return date to the date of the adjudication hearing, the parties participate in and cooperate with appropriate services, actions, and recommendations pursuant to section 587-53(d);~~

~~(2) Such further investigation and information as the court deems to be relevant to the issues to be determined at the adjudication hearing be conducted and be available for the court's consideration at the adjudication hearing;~~

~~(3) If the parties stipulate to orders of adjudication and foster custody or family supervision, the case be set for a further disposition hearing concerning an appropriate service plan, unless an appropriate written service plan is available and included as part of the stipulated orders; or~~

~~(4) If the parties do not stipulate to orders of adjudication and foster custody or family supervision, the case be set for an adjudication hearing or, if adjudication is stipulated to, a disposition hearing as soon as is practicable; provided that if the child is to remain in foster care subsequent to the return date, the court shall set the case for an adjudication hearing or a disposition hearing within ten working days of the return date, unless the court deems a later date for the hearing to be in the best interests of the child or the later date is agreed to by all parties and is approved by the court. [L 1983, c 171, pt of § 1; am L 1986, c 316,~~

**§ --28. Return hearing.**

(a) When a petition has been filed, the court shall conduct a return hearing within fifteen days of:

(1) The filing of the petition; or

(2) The date a decision is announced by the court during a temporary foster custody hearing.

(b) At the return hearing, if it is established that a party required to be notified has not been served prior to the hearing, the court shall:

(1) Order the method of service of summons that the court deems to be appropriate, based upon the available information; and

(2) Set a continued return hearing and:

(A) May waive the appearance of any party at the continued return hearing; and

(B) If service of summons is ordered to be made by mail or publication, shall set the continued return hearing no less than twenty-one days after the date of service as evidenced by the signature of the recipient on a return receipt or the date of the last publication.

(c) At a continued return hearing, the court shall:

(1) Enter the default of the party who was served but failed to appear at the continued return hearing;

(2) Order the party who was served to appear on the date of the next scheduled hearing in the case; or

(3) Set a hearing on the oral motion to vacate prior orders, if a party appears at the hearing and moves the court to vacate or modify prior orders. The moving party shall file a written motion and serve the other parties with proper written notice of the motion and the hearing date.

(d) At the return hearing, the court shall decide:

(1) Whether the child's physical or psychological health or

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~~§ 26; am L 1992, c 190, § 22]~~

welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family;

- (2) Whether the child should be placed in foster custody or under family supervision; and
- (3) What services should be provided to the child's parents.

(e) If the court finds that the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family, the court:

- (1) Shall enter a finding that the court has jurisdiction pursuant to section -5;
- (2) Shall enter a finding regarding whether, before the child was placed in foster care, the department made reasonable efforts to prevent or eliminate the need to remove the child from the child's family home;
- (3) Shall enter orders:
  - (A) That the child be placed in foster custody if the court finds that the child's remaining in the family home is contrary to the welfare of the child and the child's parents are not willing and able to provide a safe family home for the child, even with the assistance of a service plan; or
  - (B) That the child be placed in family supervision if the court finds that the child's parents are willing and able to provide the child with a safe family home with the assistance of a service plan;
- (4) Shall determine whether aggravated circumstances are present.
  - (A) If aggravated circumstances are present, the court shall:
    - (i) Conduct a permanency hearing within thirty days, and the department shall not be required to provide the child's parents with an interim service plan or interim visitation; and
    - (ii) Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to set the case for a termination of

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parental rights hearing.

(B) If aggravated circumstances are not present, the court shall order that the department make reasonable efforts to reunify the child with the child's parents and order an appropriate service plan;

(5) Shall order reasonable supervised or unsupervised visits for the child and the child's family, including with the child's siblings, unless such visits are determined to be unsafe or detrimental to, and not in the best interests of, the child;

(6) Shall order each of the child's birth parents to complete the medical information forms and release the medical information required under section 578-14.5, to the department. If the child's birth parents refuse to complete the forms or to release the information, the court may order the release of the information over the parents' objections;

(7) Shall determine whether 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;

(8) Shall determine the child's date of entry into foster care as defined in this chapter;

(9) Shall set a periodic review hearing to be conducted no later than six months after the date of entry into foster care and a permanency hearing to be held no later than twelve months after the date of entry into foster care;

(10) Shall set a status conference, as the court deems appropriate, to be conducted no later than ninety days after the return hearing; and

(11) May order that:

(A) 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 that are determined to be in the child's best interests;

(B) The child be examined by a physician, surgeon,

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psychiatrist, or psychologist; and  
(C) The child receive treatment, including hospitalization or placement in other suitable facilities, as is determined to be in the child's best interests.

(f) If the court finds that the child's physical or psychological health or welfare has not been harmed or subjected to threatened harm by the acts or omissions of the child's family, the court shall enter an order to dismiss the petition and shall state the grounds for dismissal.

(g) Nothing in this section shall prevent the court from setting a termination of parental rights hearing at any time the court deems appropriate.

**COMMENT:** Completely revised. Combined with Adjudication hearing and Disposition hearing to create the new Return hearing section. Deleted all references to adjudication hearing and disposition hearing. Added paragraphs regarding service and summons and continued return hearings. Added language regarding findings and orders if a court finds that child's physical or psychological health or welfare has been harmed or subjected to harm; dismissal of the petition if no harm or nor will be subjected to threatened harm; aggravated circumstances findings; language for other orders. Added language to set a periodic review hearing and a permanency hearing.

**NOTE:** new language in the new § -- 28, Return hearing is similar to some of the old language in the old Adjudication hearing and Disposition hearing (e.g. regarding aggravated circumstances, similar language may be found in the old Disposition hearing).

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~~§587-63. Adjudication hearing; interim orders.~~ (a) The court shall consider the evidence which is relevant to the adjudication; provided that 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 a determination concerning adjudication.

~~(b) If facts sufficient to sustain the petition under this chapter are:~~

~~(1) Established in accordance with this chapter, the court shall enter an order sustaining the petition and a finding that the child is a child whose physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family; provided that if the parties consent, the facts for the finding may be based upon the report or reports submitted pursuant to section 587-40 or other stipulated evidence deemed by the court to constitute an adequate basis for sustaining the petition, which report or reports or stipulated evidence may be admitted into evidence subject to reservation by the parties of their right to cross-examination subject to section 587-40(c), or~~

~~(2) Not established, the court shall enter an order dismissing the petition and shall state the grounds for dismissal.~~

~~(c) If the court sustains the petition and does not commence immediately the disposition hearing, it shall:~~

~~(1) Determine, based upon the facts adduced during the adjudication hearing and any other additional facts presented to it, whether a temporary foster custody order should be continued or should be entered pending an order of disposition. The court shall consider all relevant prior and current information pertaining to the safe family home guidelines, as set~~

**§ --28. Return hearing.**

(d) At the return hearing, the court shall decide:

(1) Whether the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family;

(2) Whether the child should be placed in foster custody or under family supervision; and

(3) What services should be provided to the child's parents.

(f) If the court finds that the child's physical or psychological health or welfare has not been harmed or subjected to threatened harm by the acts or omissions of the child's family, the court shall enter an order to dismiss the petition and shall state the grounds for dismissal.

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~~forth in section 587-25 and the report or reports submitted pursuant to section 587-40, and proceed pursuant to section 587-53(f) or (g) prior to rendering a determination; and~~

- ~~(2) Enter such orders regarding visitation and the provision of services to the child and the child's family and the child's and family's acceptance and cooperation with such services as the court deems to be appropriate and consistent with the best interests of the child. [L 1983, c 171, pt of § 1; am L 1986, c 316, § 27; am L 1992, c 190, § 23]~~

**COMMENT:** Deleted section. Combined with old Disposition Hearing to create new Return Hearing. See § -- 28, Return hearing.

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~~§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 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~~

**§ --28. Return hearing.**

(e) If the court finds that the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family, the court:

(1) Shall enter a finding that the court has jurisdiction pursuant to section -5;

(2) Shall enter a finding regarding whether, before the child was placed in foster care, the department made reasonable efforts to prevent or eliminate the need to remove the child from the child's family home;

(3) Shall enter orders:

(A) That the child be placed in foster custody if the court finds that the child's remaining in the family home is contrary to the welfare of the child and the child's parents are not willing and able to provide a safe family home for the child, even with the assistance of a service plan; or

(B) That the child be placed in family supervision if the court finds that the child's parents are willing and able to provide the child with a safe family home with the assistance of a service plan;

(4) Shall determine whether aggravated circumstances are present.

(A) If aggravated circumstances are present, the court shall:

(i) Conduct a permanency hearing within thirty days, and the department shall not be required to provide the child's parents with an interim service plan or interim visitation; and

(ii) Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to set the case for a termination of parental rights hearing.

(B) If aggravated circumstances are not present, the court shall order that the department make reasonable efforts

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~~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 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 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~~

to reunify the child with the child's parents and order an appropriate service plan;

(5) Shall order reasonable supervised or unsupervised visits for the child and the child's family, including with the child's siblings, unless such visits are determined to be unsafe or detrimental to, and not in the best interests of, the child;

(6) Shall order each of the child's birth parents to complete the medical information forms and release the medical information required under section 578-14.5, to the department. If the child's birth parents refuse to complete the forms or to release the information, the court may order the release of the information over the parents' objections;

(7) Shall determine whether 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;

(8) Shall determine the child's date of entry into foster care as defined in this chapter;

(9) Shall set a periodic review hearing to be conducted no later than six months after the date of entry into foster care and a permanency hearing to be held no later than twelve months after the date of entry into foster care;

(10) Shall set a status conference, as the court deems appropriate, to be conducted no later than ninety days after the return hearing; and

(11) May order that:

(A) 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 that are determined to be in the child's best interests;

(B) The child be examined by a physician, surgeon, psychiatrist, or psychologist; and

(C) The child receive treatment, including hospitalization or placement in other suitable facilities, as is determined to



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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.~~

(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.

(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.

(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.

(n) Each of the natural parents shall be ordered to complete the medical information forms and consent to release medical information required under section 578-14.5 and shall return the completed forms to the department.

~~(o) 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.~~

~~(p) Nothing in this section shall prevent the court from setting a show cause hearing or a permanent plan hearing at any time~~

be in the child's best interests.

(g) Nothing in this section shall prevent the court from setting a termination of parental rights hearing at any time the court deems appropriate.

**§ --29. Show cause hearing.**

At any stage of the proceeding, the court may set a show cause hearing at which a child's parents shall have the burden of presenting evidence as to why the case should not be set for a termination of parental rights or legal guardianship hearing.

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the court determines such a hearing to be appropriate. ~~L 1983, c 171, pt of § 1; am L 1986, c 316, § 28; am L 1992, c 190, § 24; am L 1998, c 134, § 11; am L 1999, c 153, § 3; am L 2001, c 67, § 2}~~

**COMMENT:** Deleted section. Combined with old Adjudicatory Hearing to create the new Return Hearing. See § -- 28, Return hearing. "Show cause" language now has its own section – see § -- 29.

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**§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) ~~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 paragraph (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;~~
- ~~(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,~~

**§ --30. Periodic review hearing.**

(a) The court shall set a periodic review hearing to be conducted no later than six months after a child's date of entry into foster care. Thereafter, the court shall conduct periodic review hearings at intervals of no longer than six months until the court's jurisdiction is terminated. The court may set a case for a periodic review hearing upon the motion of a party at any time, if the court deems the hearing to be in the best interests of the child.

(b) At each periodic review hearing, the court shall review the status of the case to determine whether the child is receiving appropriate services and care, whether the case plan is being properly implemented, and whether the department's or authorized agency's activities are directed toward a permanent placement for the child. At the hearing, the court shall:

- (1) Determine whether the child is safe;
- (2) Determine the continued need for and appropriateness of the out-of-home placement;
- (3) Determine the extent to which each party has complied with the case plan and the family's progress in making their home safe for the child;
- (4) Determine the family's progress in resolving the problems that caused the child harm or to be threatened with harm and, if applicable, the necessity for continued out-of-home placement of the child;
- (5) Project a likely date for:
  - (A) The child's return to a safe family home; or
  - (B) The child's permanent placement out of the family home in the following order of preference:
    - (i) Adoption;
    - (ii) Legal guardianship; or
    - (iii) Other permanent out-of-home placement;
- (6) Evaluate visitation arrangements; and
- (7) Issue such further or other appropriate orders as it deems to be in the best interests of the child

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<p>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;</p> <p>(6) Enter further orders as the court deems to be in the best interests of the child;</p> <p>(7) Determine whether aggravated circumstances are present and, if so, the court shall set the case for a show cause hearing 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</p> <p>(8) If the child has been residing outside the family home for twelve consecutive months from the initial date of entry into out-of-home care, 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.</p> <p>(c) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall:</p> <p>(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</p> <p>(2) Set the case for a review hearing within six months.</p> <p>(d) If the child has been residing outside of the family home for an aggregate of fifteen out of the most recent twenty-two months from the initial date of entry into out-of-home care, the department shall file a motion to set the matter for a permanent plan hearing unless:</p>	<p><b>§ --29. Show cause hearing.</b> At any stage of the proceeding, the court may set a show cause hearing at which a child's parents shall have the burden of presenting evidence as to why the case should not be set for a <u>termination of parental rights or legal guardianship hearing.</u></p> <p><b>§ --28. Return hearing.</b> <u>(e) If the court finds that the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family, the court:</u></p> <p>(4) Shall determine whether aggravated circumstances are present. (A) If aggravated circumstances are present, the court shall: (i) Conduct a <u>permanency hearing</u> within thirty days, <u>and the department shall not be required to provide the child's parents with an interim service plan or interim visitation;</u> and (ii) <u>Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to set the case for a termination of parental rights hearing.</u> (B) <u>If aggravated circumstances are not present, the court shall order that the department make reasonable efforts to reunify the child with the child's parents and order an appropriate service plan;</u></p> <p><b>§ --30. Periodic review hearings.</b> (c) If the child has been <u>in foster care under the responsibility of the department</u> for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into <u>foster care</u>, the department shall file a motion to set the matter for a <u>termination of parental rights hearing;</u> unless: (1) The department has documented in the safe family home factors or other written report submitted to the court a</p>
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<p>(1) The department has documented in the safe family home <del>guidelines prepared pursuant to section 587-25(a)</del>, a compelling reason why it would not be in the best interests of the child to file a motion; or</p> <p>(2) The <del>State</del> 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;</p> <p>provided that nothing in this section shall prevent the department from filing such a motion to set a <del>permanent plan hearing</del> if the department has determined that the criteria in <del>section 587-73(a)</del> are present. [L 1983, c 171, pt of §1; am L 1986, c 316, §29; am L 1992, c 190, §25; am L 1993, c 319, §1; am L 1998, c 134, §12; am L 1999, c 153, §4; am L 2000, c 97, §1; am L 2006, c 192, §3]</p>	<p>compelling reason why it is not in the best interest of the child to file a motion; or</p> <p>(2) The <u>department</u> has not provided to the family of the child, consistent with the time period required in the service plan, such services as the department deems necessary for the safe return of the child to the family home.</p> <p>(d) Nothing in this section shall prevent the department from filing a motion to set a <u>termination of parental rights hearing</u> if the department determines that the criteria for <u>terminating parental rights</u> are present.</p>
<p><b>COMMENT:</b> Revised entire section. Renamed “Periodic Review Hearing.” Some deleted language in the old §587-72 have been subsumed into multiple sections in the new CPA – see § --28 Return hearing (e.g. aggravated circumstances language) and § --29 Show cause hearing (show cause hearing language). Replaced “permanent plan hearing” language with “termination of parental rights hearing.” Added language regarding what the court will do during a PRH (e.g. review status of case; determine whether child is safe; determine whether out of home placement appropriate).</p>	

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**§587-73. Permanent plan hearing.** (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 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 consents to the permanent plan, unless the court, after consulting with the child in camera, finds that it is in the

**§ -33. Termination of parental rights hearing.**

(a) At a termination of parental rights hearing, the court shall determine whether there exists clear and convincing evidence that:

- (1) A child's parent whose rights are subject to termination is not presently willing and able to provide the parent's child with a safe family home, even with the assistance of a service plan;
- (2) It is not reasonably foreseeable that the child's parent whose rights are subject to termination 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 two years from the child's date of entry into foster care;
- (3) The proposed permanent plan is in the best interests of the child. In reaching this determination, the court shall:
  - (A) Presume that it is in the best interests of the child to be promptly and permanently placed with responsible and competent substitute parents and family in a safe and secure home; and
  - (B) Give greater weight to the presumption that the permanent plan is in the child's best interest, the younger the child is upon the child's date of entry into foster care; and
- (4) The child consents to the permanent plan if the child is at least fourteen years old, unless the court consults with the child in camera and finds that it is in the best interest of the child to proceed without the child's consent.

(b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence and the goal of the permanent plan is for the child to be adopted or remain in permanent custody, the court shall order:

- (1) That the child's parent's parental rights be terminated;
- (2) Termination of the existing service plan and revocation of the prior award of foster custody;
- (3) That permanent custody of the child be awarded to an

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<p>best interest of the child to dispense with the child's consent.</p> <p>(b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence and:</p> <p>(1) The goal of the permanent plan is for the child to be adopted or remain in permanent custody, the court shall order:</p> <p>(A) That the existing service plan be terminated and that the prior award of foster custody be revoked;</p> <p>(B) That permanent custody be awarded to an appropriate authorized agency;</p> <p>(C) <del>That an appropriate permanent plan be implemented concerning the child whereby the child will:</del></p> <p style="padding-left: 2em;"><del>(i) Be adopted pursuant to chapter 578; provided that the court shall presume that it is in the best interests of the child to be adopted, unless the child is or will be in the home of family or a person who has become as family and who for good cause is unwilling or unable to adopt the child but is committed to and is capable of being the child's guardian or permanent custodian;</del></p> <p style="padding-left: 2em;">(ii) Remain in permanent custody until the child is subsequently adopted, placed under a guardianship, or reaches the age of majority, and that such status shall not be subject to modification or revocation except upon a showing of extraordinary circumstances to the court;</p> <p>(D) <del>That such further orders as the court deems to be in the best interests of the child, including, but not limited to, restricting or excluding</del></p>	<p>appropriate authorized agency;</p> <p>(4) An appropriate permanent plan; and</p> <p>(5) The entry of any other orders the court deems to be in the best interests of the child, including restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings;</p> <p><u>(c) Unless otherwise ordered by the court or until the child is adopted, the child's family member shall retain, to the extent that the family member possessed the responsibility prior to the termination of parental rights, the continuing responsibility to support the child, including repaying the cost of any and all care, treatment, or any other service provided by the permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the child's benefit.</u></p> <p><u>(d) A family member may be permitted visitation with the child at the discretion of the permanent custodian. The court may review the exercise of such discretion and may order that a family member be permitted such visitation as is in the best interests of the child.</u></p> <p><u>(e) An order for the termination of parental rights entered under this chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, until the child has been adopted.</u></p> <p>(f) The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequently authorized agencies, as the court deems to be in the best interests of the child.</p> <p><u>(g) If the department receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the permanent custodians of the child, the department may automatically assume either family supervision over the child and the child's permanent custodian or foster custody of the child. The department shall immediately notify the court, and the court shall set</u></p>
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~~unnecessary parties from participating in adoption or other subsequent proceedings, be entered; and~~

~~(E) Until adoption or guardianship is ordered, that each case be set for a permanent plan review hearing not later than one year after the date that a permanent plan is ordered by the court, or sooner if required by federal law, and thereafter, that subsequent permanent plan review hearings be set not later than each year, or sooner if required by federal law; provided that at each permanent plan review hearing, the court shall review the existing permanent plan and enter such further orders as are deemed to be in the best interests of the child.~~

~~(2) The goal of the permanent plan is for the child to be placed under guardianship pursuant to part 2 of article V of Chapter 560, the court shall order:~~

~~(A) That the prior award of foster custody be continued and that the existing service plan be terminated;~~

~~(B) That an appropriate permanent plan be implemented concerning the child whereby the child will be placed under guardianship pursuant to part 2 of article V of Chapter 560; and~~

~~(C) That, until the guardianship is ordered, each case be set for a permanent plan review hearing not later than six months after the date that a permanent plan is ordered by the court, or sooner if required by federal law; provided that at each permanent plan review hearing, the court shall review the existing permanent plan and enter such further orders as are deemed to be in the best interests of the child.~~

(c) If the court determines that the criteria set forth in

the case for a permanency hearing within ten days after the department receives such a report, unless the court deems a later date to be in the best interests of the child.

(h) If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order:

- (1) The preparation of a plan to achieve permanency for the child;
- (2) The entry of any orders that the court deems to be in the best interests of the child;
- (3) A periodic review hearing to be held within six months after the date of the last permanency hearing; and
- (4) A permanency hearing to be held within twelve months of the date of the last permanency hearing.

(i) Absent compelling reasons, if the child has been in foster care under the department's responsibility for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing.

Regarding the **old** §587-73(b)(1)(C)(ii), please see the new § --34. Reinstatement of parental rights (pages 101-102), which elaborates more on this subsection.



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subsection (a) are not established by clear and convincing evidence, the court shall order that:

- (1) The permanent plan hearing be continued for a reasonable period of time not to exceed six months from the date of the continuance or the case be set for a review hearing within six months;
  - ~~(2) The existing service plan be revised as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, 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;~~
  - ~~(3) The authorized agency submit a written report pursuant to section 587-40; and~~
  - (4) Such further orders as the court deems to be in the best interests of the child be entered.
- ~~(d) At the continued permanent plan hearing, the court shall proceed pursuant to subsections (a), (b), and (c) until such date as the court determines that:~~
- ~~(1) There is sufficient evidence to proceed pursuant to subsection (b); or~~
  - ~~(2) The child's family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, upon which determination the court may:~~
    - ~~(A) Revoke the prior award of foster custody to the authorized agency and return the child to the family home;~~
    - ~~(B) Terminate jurisdiction;~~
    - ~~(C) Award family supervision to an authorized agency;~~
    - ~~(D) Order such revisions to the existing service plan as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, determines to be in the best~~

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<p>interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;</p> <p><del>(E) Set the case for a review hearing within six months; and</del></p> <p>(F) Enter such further orders as the court deems to be in the best interests of the child. [L 1986, c 316, § 30; am L 1992, c 190, § 26; am L 1999, c 153, § 5; am L 2000, c 78, § 1; am L 2007, c 106, § --</p>	
<p><b>COMMENT:</b> Renamed “Termination of parental rights hearing.” Added language about parents retaining the responsibility to support the child; visitation; “15 out of 22 months” language; what the dept will do if receive a report of harm/threatened harm to the child by the permanent guardians. Deleted language regarding adoption pursuant to Chapter 578; goal of the permanent plan being guardianship under 560; service plan and the continued permanent plan hearing.</p> <p><b>NOTE:</b> before a child may be placed under the permanent custody of the department, parental rights must have been terminated.</p> <p><b>NOTE:</b> please see the new § -- 34 “Reinstatement of parental rights” on pages 101-102 for an elaboration of the <b>old</b> §587-73(b)(1)(C)(ii).</p>	

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**§587-76. Payment for service or treatment provided to a party or for a child's care, support, or treatment.** Whenever a service or treatment is provided to a party, or whenever care, support, or treatment of a child is provided under this chapter, after ~~due~~ notice to the persons or legal entities legally obligated to pay for such service, treatment, care, or support of the child, and after a hearing, the court may order that such a legally ~~obligated~~ person shall pay, in such a manner as the court may direct, ~~a reasonable sum that will cover in whole or in part the cost of the service or treatment provided to a party, or the cost of the care, support, or treatment provided for the child.~~ The provisions of section 571-52 and all other remedies available under the law shall be applicable to enforce such orders. [L 1983, c 171, pt of § 1; ren and am L 1986, c 316, § 33]

**§ --41. Payment for service or treatment provided to a party or for a child's care, support, or treatment.**

(a) Whenever a service or treatment is provided to a party, or whenever care, support, or treatment of a child is provided under this chapter, the court may order the payment of such expenses by the persons or legal entities who are legally responsible for the same, after reasonable notice and hearing as the court directs.

(b) The provisions of section 571-52 and all other remedies available under the law shall be applicable to enforce orders issued pursuant to this section.

**COMMENT:** Revised language. Separated into two paragraphs.

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**§587-77. Failure to comply with terms or conditions of an order of the court.** If a party fails to comply with the terms and conditions of an order issued under this chapter, the court may apply the provisions of section 710-1077 and all other provisions available under the law. [L 1983, c 171, pt of § 1; ren and am L 1986, c 316, § 34]

**§ --37. Failure to comply with terms and conditions of an order of the court.**

If a party fails to comply with the terms and conditions of an order issued by the court under this chapter, the court may apply the provisions of section 710-1077 and any other provisions available under the law.

**COMMENT:** No change.

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**§587-78. Appeal.** An interested party aggrieved by any order or decree of the court may appeal as provided by section 571-54. [L 1983, c 171, pt of § 1; ren L 1986, c 316, § 35]

**§ -36. Appeal.**  
An interested party aggrieved by any order or decree of the court under this chapter may appeal as provided in section 571-54.

**COMMENT:** No change.

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**§587-81. Court records.** The court shall keep a record of all child protective proceedings under this chapter. ~~The written reports, photographs, x-rays, or other information of any nature which are submitted to the court may be made available to other appropriate persons, who are not parties, only upon an order of the court after the court has determined that such access is in the best interests of the child or serves some other legitimate purpose; provided that the department may disclose, without order of the court, such information as is in the court record in the manner and to the extent as is set forth in departmental rules that have been legally promulgated and concern the confidentiality of records; provided further that:~~

- ~~(1) The department shall not disclose parties' names to researchers without prior order of the court; and~~
- ~~(2) The department shall report each disclosure to the court and all parties as part of its next report to the court after the department has disclosed information pursuant to this section. [L 1983, c 171, pt of § 1; am L 1986, c 316, § 36]~~

**§ 587-40. Court records.**

The court shall keep a record of all child protective proceedings under this chapter. Written reports, photographs, x-rays, or other information that are submitted to the court may be made available to other appropriate persons, who are not parties, only upon an order of the court. The court may issue this order upon determining that such access is in the best interests of the child or serves some other legitimate purpose.

As set forth in rules adopted pursuant to chapter 91 by the department of human services and consistent with applicable laws, the department may disclose information in the court record without order of the court, unless otherwise ordered by the court.

**COMMENT:** Revised language. Added reference to chapter 91.

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~~§587-82. Fiscal responsibility.~~ The court, the department, or other authorized agency shall provide only the care, service, treatment, or support, or the payment for care, service, treatment, or support, as is set forth in the budget of the court, the department, or authorized agency and is authorized by law. [~~L 1983, c 171, pt of § 1; ree L 1986, c 316, § § 37 to 39~~]

**COMMENT:** Deleted.

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**§587-82.5. Educational and recreational needs.** Upon the first day of placement, ~~foster parents may provide~~ consent for the routine educational and recreational needs and activities of the foster children placed in their care, except for purposes regulated under title 8, chapters ~~53~~ and ~~56~~, of the Hawaii administrative rules. [L 2001, c 73, § 1]

**§ --42. Educational, medical, dental, and recreational needs.** Upon the first day of placement, a child's resource family shall have the authority, for the child placed in the resource family's care:  
(1) To consent to routine educational and recreational needs and activities, except for purposes regulated under title 8, chapters 60 and 61, of the Hawaii Administrative Rules, or successor rules; and  
(2) To seek and obtain ordinary medical and dental care, immunizations, and well-baby and well-child medical services

**COMMENT:** Revised language. Added language regarding ordinary medical and dental care. Added reference to chapters 60 and 61 of the Hawai'i Admin Rules.



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**§587-83. Short title.** This chapter shall be known and cited as the "Child Protective Act". [L 1983, c 171, pt of § 1; ree L 1986, c 316, § 37 to 39]

**§ 587-1. Short title.** This chapter shall be known and cited as the "Child Protective Act."

**COMMENT:** No change. Moved to front of the statute.

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~~§587-84. Cooperation. Every public official or department shall render all assistance and cooperation within such person's or its jurisdictional power which may further the purpose and objectives of this chapter. The department and the court may seek the cooperation of organizations whose objective is to protect or aid children and family life. [L 1983, c 171, pt of § 1; ree L 1986, c 316, § § 37 to 39]~~

**COMMENT:** Deleted.

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~~§587-85. Medical treatment.~~ (a) ~~Each child placed in foster care shall be covered by an established comprehensive health care plan meeting the requirements of the department. Each child placed in foster care shall be provided with evidence of the child's coverage under an established comprehensive health care plan including the telephone of the child's health plan. Upon the first day of placement, foster parents may seek and obtain ordinary medical care, immunizations, and well-baby and well-child medical services.~~

~~(b) The department shall establish a procedure governing the timely enrollment of foster children into an appropriate health insurance program. [L 1998, c 134, § 2; am 1999, c 271, § 2]~~

**COMMENT:** Deleted. Most of the language from this section was moved to the new § -- 3(a)(6) and the new § -- 42. See also Chapter 346 re: Health Assessment.

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**§587-86. Health assessment.** The department shall ensure the provision of a comprehensive health assessment for each child in out-of-home placement forty-five days before or after an initial placement.  
[L 1998, c 134, § 2]

**COMMENT:** Moved to HRS 346.

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**§587-87. Disclosure of records.** (a) The department shall disclose to foster parents and the foster child's principal treating physician copies of the foster child's complete medical records in the department's physical custody and relevant social history within thirty days of foster placement.

(b) If a child is active in the child protective service system, physicians may share with other physicians, orally or in writing, or both, medical information without parental consent.

(c) Any records or information released to a foster child's foster parents, or the foster child's principal treating physician pursuant to subsection (a), or any information shared by one physician with another physician pursuant to subsection (b), shall remain confidential in accordance with section 350-1.4. [L 1998, c 134, § 2]

**COMMENT:** Moved to HRS 350.

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**§587-88. Child protective review panel.** (a) The department shall establish a child protective review panel to review each case of ~~serious abuse~~. Based upon its review, the panel shall submit a report of findings and recommendations to the director. The department shall appoint members of the child protective review panel who may include, ~~but not be limited to:~~

- (1) Any physician treating the child for abuse;
- (2) Any child protective services worker assigned to the case and the worker's supervisor;
- (3) The guardian ad litem for the child, appointed under section 587-34, if applicable;
- (4) The members of the child's multidisciplinary team or child protective services consultant; and
- (5) Other child protective services workers and supervisors.

(b) Members of the child protective review panel shall serve without compensation and shall not be reimbursed for costs, ~~except for~~ state employees serving within the scope of their employment ~~who~~ shall receive compensation and reimbursements as provided by law or by collective bargaining.

(c) Members of the child protective review panel shall be immune from any liability for injuries and damages arising from the panel's report under subsection (a).

(d) This section shall not be construed as interfering with any authority of the department or the courts to remove, to place, or to order any disposition on custody of the abused child under this chapter.

~~(e) As used in this section, "serious abuse" means reabuse, hospitalization, or death arising from an abuse. [L 1998, c 134, § 2]~~

**§ --43. Child protective review panel.**

(a) The department shall establish a child protective review panel to review each case of child abuse or neglect that leads to near fatality or death as a result of acts or omissions of the child's legal caretaker. Based upon its review, the panel shall submit a report of its findings and recommendations to the director of the department. The department shall appoint members of the child protective review panel, who may include:

- (1) Any physician treating the child for abuse;
- (2) Any child protective services worker assigned to the case and the worker's supervisor;
- (3) The guardian ad litem for the child, appointed under section -16, if applicable;
- (4) The members of the child's multidisciplinary team or a child protective services consultant; and
- (5) Other child protective services workers and supervisors.

(b) Members of the child protective review panel shall serve without compensation and shall not be reimbursed for costs; provided that state employees serving within the scope of their employment shall receive compensation and reimbursement as provided by law or by collective bargaining.

(c) Members of the child protective review panel shall be immune from any liability for injuries and damages arising from the panel's report under subsection (a).

(d) This section shall not be construed as interfering with any authority of the department or the courts to remove, to place, or to order any disposition on custody of an abused child under this chapter

**COMMENT:** Revised language. Added language further describing the cases the panel will review. Adjusted reference to GAL section.

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~~§587-89. Drug-affected infants; treatment; family referral; federal grants.~~ (a) In conformity to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a) as amended by the Keeping Children and Families Safe Act of 2003 (Public Law 108-36), the department of human services shall implement and operate a statewide program relating to child abuse and neglect that includes:

- ~~(1) Policies and procedures, including but not limited to appropriate referrals to child protective service systems and other appropriate services, to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, including a requirement that health care providers involved in the delivery or care of an affected infant notify child protective services of the occurrence of the condition in the infant; provided that the notification shall not be construed to require criminal prosecution for any illegal action;~~
- ~~(2) Development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms; and~~
- ~~(3) Triage procedures for the appropriate referral to a community organization or voluntary preventive service for a child who is not at risk of imminent harm and for the child's family.~~

~~(b) The department of human services, under the Keeping Children and Families Safe Act of 2003 and subsequent federal laws, shall:~~

- ~~(1) Seek available federal grants and prepare and submit a state plan for the purposes thereof;~~
- ~~(2) Ensure that federal reporting requirements are adhered to; and~~
- ~~(3) Adopt rules pursuant to chapter 91 necessary to obtain grants. [L 2004, c 210]~~

COMMENT: Deleted.

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**§587-90. Motor vehicle insurance.** The parents of a child under foster care who has obtained a driver's license shall pay the costs of the child's motor vehicle insurance, unless the court determines the parents to be financially unable to pay the costs, in which case the child's insurance costs shall be paid pursuant to sections 431:10C-407 and 431:10C-410. [L 2006, c 289, §1]

**COMMENT:** Moved to HRS 346.



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**NEW SECTIONS ADDED**

- § --15. Duties, rights, and liability of authorized agencies
- § --31. Permanency Hearing
- § --34. Reinstatement of parental rights
- § --39. Notice and service of protective order

**NOTE:** New § --15 language was originally part of the **Old** chapter 587 definitions for family supervision, foster custody and permanent custody.

**NOTE:** before a child may be placed under permanency custody of the department, parental rights must have been terminated.

**§ --15. Duties, rights, and liability of authorized agencies.**

(a) If an authorized agency has family supervision, it has the following duties and rights, subject to such conditions or restrictions as the court deems to be in the best interests of a child:

- (1) Monitoring and supervising the child and the child's family members who are parties. Monitoring and supervision shall include reasonable access to each of the family members who are parties and reasonable access into the child's family home; and
- (2) Placement of the child in foster care and thereby assuming temporary foster custody or foster custody of the child. The authorized agency shall immediately notify the court when such placement occurs. Upon notification, the court shall set the case for:
  - (A) A temporary foster custody hearing within three days, excluding Saturdays, Sundays, and holidays; or
  - (B) If jurisdiction has been established, a periodic review hearing within ten days of the child's placement. The temporary foster custody hearing or the periodic review hearing may be held at a later date, only if the court finds it to be in the best interests of the child.

(b) If an authorized agency has foster custody it has the following duties and rights:

- (1) Determining where and with whom the child shall be placed in foster care; provided that the child shall not be placed in foster care outside the State without prior order of the court;
- (2) Permitting the child to return to the family from which the child was removed, unless otherwise ordered by the court. The child's return may occur only if no party objects to such placement and prior written notice is given to the court and to all parties stating that there is no objection of any party to the child's return. Upon the child's return to the family, temporary foster custody or foster custody shall be

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automatically revoked, and the child and the child's family members who are parties shall be placed under temporary family supervision or the family supervision of the authorized agency;

- (3) Ensuring that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities in a timely manner;
- (4) Monitoring whether the child is being provided with an appropriate education;
- (5) Providing required consents for the child's physical or psychological health or welfare, including ordinary medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs;
- (6) Providing consents for any other medical or psychological care or treatment, including surgery, if the persons who are otherwise authorized to provide consent are unable or unwilling to consent. Before being provided to the child, this care or treatment shall be deemed necessary for the child's physical or psychological health or welfare by two physicians or two psychologists, as appropriate, who are licensed or authorized to practice in the State;
- (7) Providing consent for the child's application for a driver's instructional permit, provisional driver's license, or driver's license;
- (8) Providing consent to the recording of a statement pursuant to section -21; and
- (9) Providing the court with information concerning the child. The court, in its discretion, may vest foster custody of a child in any authorized agency or subsequently authorized agencies, if the court finds that it is in the child's best interests to do so. The rights and duties that are so assumed by an authorized agency shall supersede the rights and duties of any legal or permanent custodian of the child.

(c) Unless otherwise provided in this section or as otherwise

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ordered by the court, a child's family shall retain the following rights and responsibilities after a transfer of temporary foster custody or foster custody, to the extent that the family possessed the rights and responsibilities prior to the transfer of temporary foster custody or foster custody:

- (1) The right of reasonable supervised or unsupervised visitation at the discretion of the authorized agency or the court;
- (2) The right to consent to adoption, to-marriage, or to major medical or psychological care or treatment; and
- (3) The continuing responsibility to support the child, including repayment for the cost of any care, treatment, or other service provided by the authorized agency or the court for the child's benefit.

(d) If an authorized agency has permanent custody, it has the following duties and rights:

- (1) Assuming the parental and custodial duties and rights of a legal custodian and family member;
- (2) Determining where and with whom the child shall live; provided that the child shall not be placed outside the State without prior order of the court;
- (3) Ensuring that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities in a timely manner;
- (4) Monitoring whether the child is being provided with an appropriate education;
- (5) Providing all required consents for the child's physical or psychological health or welfare, including medical, dental, psychiatric, psychological, educational, employment, recreational, and social needs ;
- (6) Providing consent for the child's application for a driver's instructional permit, provisional driver's license, or driver's license; 1
- (7) Providing consent to adoption, change of name, and marriage; and

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(8) Submitting a written report to the court if the child leaves the home of the permanent custodian for a period of seven consecutive days or more. The report shall state the child's current situation and shall be submitted on or before the tenth day, excluding Saturdays, Sundays, and holidays, after the child leaves the home.

(e) An authorized agency shall not be liable to third party persons for the acts of the child solely by reason of the agency's status as foster custodian or permanent custodian of the child.

**§ --31. Permanency Hearing.**

(a) A permanency hearing shall be conducted within twelve months of the child's date of entry into foster care or within thirty days of a judicial determination that the child is an abandoned infant or that aggravated circumstances are present. A permanency hearing shall be conducted at least every twelve months thereafter for as long as the child remains in foster care under the placement responsibility of the department.

(b) The court shall review the status of the case to determine whether the child is receiving appropriate services and care, that case plans are being properly implemented, and that activities are directed toward a permanent placement for the child.

(c) At each permanency hearing, the court shall make written findings pertaining to:

- (1) The extent to which each party has complied with the service plan and progressed in making the home safe;
- (2) Whether the current placement of the child continues to be appropriate and in the best interests of the child or if another in-state or out-of-state placement should be considered;
- (3) The court's projected timetable for reunification or, if the current placement is not expected to be permanent, placement in an adoptive home, with a legal guardian, or under the permanent custody of the department;

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|  | <ul style="list-style-type: none"><li>(4) Whether the department has made reasonable efforts, in accordance with the safety and well-being of the child, to:<ul style="list-style-type: none"><li>(A) Place siblings who have been removed from the family home with the same resource family, adoptive placement, or legal guardians; and</li><li>(B) Provide for frequent visitation or other on-going interactions with siblings who are not living in the same household;</li></ul></li><li>(5) The appropriate permanency goal for the child, including whether a change in goal is necessary;</li><li>(6) Whether the department has made reasonable efforts to finalize the permanency goal in effect for the child and a summary of those efforts;</li><li>(7) The date by which the permanency goal for the child is to be achieved;</li><li>(8) In the case of a child who has attained sixteen years of age, the services needed to assist the child, with the transition from foster care to independent living; and</li><li>(9) Consultations with the child in an age-appropriate manner about the proposed plan for permanency or transition from foster care to independent living.</li></ul> <p>(d) At each permanency hearing, the court shall order:</p> <ul style="list-style-type: none"><li>(1) The child's reunification with a parent or parents;</li><li>(2) The child's continued placement in foster care, where:<ul style="list-style-type: none"><li>(A) Reunification is expected to occur within a time frame that is consistent with the developmental needs of the child; and</li><li>(B) The safety and health of the child can be adequately safeguarded; or</li></ul></li><li>(3) A permanent plan with a goal of:<ul style="list-style-type: none"><li>(A) Placing the child for adoption and when the department will file a motion to set the matter for the termination if parental rights;</li><li>(B) Placing the child for legal guardianship if the department documents and presents to the court a compelling</li></ul></li></ul> |
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reason why termination of parental rights and adoption are not in the best interests of the child; or  
(C) Awarding permanent custody to the department or an authorized agency, if the department documents and presents to the court a compelling reason why adoption and legal guardianship are not in the best interests of the child.

(e) At each permanency hearing where a permanent plan is ordered, the court shall make appropriate orders to ensure timely implementation of the permanent plan and to ensure that the plan is accomplished within a specified period of time.

(f) A permanency hearing may be held concurrently with a periodic review hearing.

(g) If the child has been in foster care under the responsibility of the department for a total of twelve consecutive months or an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing unless:

- (1) The department has documented in the safe family home factors or other written report submitted to the court, a compelling reason why it is not in the best interest of the child to file a motion; or
- (2) The department has not provided to the family of the child, consistent with the time period required in the service plan, such services as the department deems necessary for the safe return of the child to the family home.

Nothing in this section shall prevent the department from filing a motion to set a termination of parental rights hearing if the department determines that the criteria for terminating parental rights are present.

**§ --34. Reinstatement of parental rights.**

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- (a) A child who is subject to an active proceeding under this chapter, the child's guardian ad litem, the child's attorney, if any, or the department, may file a motion to reinstate the terminated parental rights of the child's parents in a proceeding under this chapter, where the following circumstances exist:
- (1) The child has been in permanent custody for at least twelve months; and
  - (2) The child is fourteen years of age or older.
- (b) A motion to reinstate parental rights shall be filed with the court and shall describe the factors supporting a reinstatement of parental rights. The court shall order a preliminary hearing to be held within ninety days and shall give prior notice to:
- (1) The former parent whose rights are sought to be reinstated;
  - (2) The child's guardian ad litem;
  - (3) The department; and
  - (4) The child's resource family.
- (c) The motion shall be denied if the parent whose rights are sought to be reinstated cannot be located.
- (d) Within seven days before the preliminary hearing on the motion, the department and the child's guardian ad litem shall submit reports to the court that address:
- (1) The material change in circumstances since the termination of parental rights;
  - (2) The reasons parental rights were terminated and the date of the termination order;
  - (3) A parent's willingness to resume contact with the child and to have parental rights reinstated;
  - (4) The child's willingness to resume contact with the parent and to have parental rights reinstated;
  - (5) A parent's willingness and ability to be involved in the child's life and to accept physical custody of the child; and
  - (6) Other relevant information.

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- (e) At a preliminary hearing on the motion, the court may order a trial home placement and a temporary reinstatement of parental rights upon finding that:
- (1) There has been a material change in circumstances;
  - (2) A parent is willing to provide care for the child;
  - (3) A parent is able to provide a safe family home or the home can be made safe with the assistance of services; and
  - (4) A trial home placement is in the child's best interests.
- (f) If the court issues a temporary order of reinstatement of parental rights:
- (1) The child shall be conditionally placed in the physical care of the parent for a period not to exceed six months;
  - (2) The department shall develop a permanent plan for reunification and shall ensure that transition services are provided to the family, as appropriate; and
  - (3) The court shall hold a hearing on the motion to reinstate parental rights after the child has been placed with the parent for six months.
- (g) The department has the authority to assess the trial home placement and to rescind the trial home placement according to the child's best interests.
- (h) At a final hearing on the motion to reinstate parental rights, the court may issue a final order of reinstatement of parental rights and terminate its jurisdiction if the trial home placement has been successful. In making its final decision, the court shall determine whether the moving party has proven by clear and convincing evidence that:
- (1) Reinstatement of parental rights is in the best interests of the child, taking into consideration:
    - (A) Whether a parent has remedied the conditions that caused the termination of parental rights;
    - (B) The age and maturity of the child and the child's ability to express a preference; and



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(C) The likelihood of risk to the health, safety, or welfare of the child;

- (2) A parent is able to provide the child with a safe family home;
- (3) Both the parent and child consent to the reinstatement of parental rights; and
- (4) The permanent plan goals for the child have not been and are not likely to be

(i) A proceeding to reinstate parental rights shall be a separate action from the proceeding for the termination of parental rights. The granting of the motion to reinstate parental rights shall not affect the validity of the original termination order.

**§ --39. Notice and service of protective order.**

(a) A protective order issued pursuant to section --38 shall be served either personally or by certified mail on each party to be restrained. In the case where a party was present at the hearing during which the protective order was issued, that party shall be deemed to have notice of the order.

(b) The court may order the police department to serve a protective order issued pursuant to section -38 upon each party to be restrained, to accompany a protected party to that party's dwelling or residence, and to place the protected party in possession of that party's dwelling or residence.

(c) Within twenty-four hours after its issuance, a protective order issued pursuant to section -38 shall be transmitted by the clerk of the court to the appropriate county police department.