

# Permanency for Hawai'i Children in Foster Care

IT TAKES AN

*‘Ohana*

*Supporting foster and adoptive families since 1971*





1<sup>st</sup> Printing

MAHALO TO THE FOLLOWING INDIVIDUALS FOR THEIR REVIEW OF THIS INFORMATION:

**Judith Wilhoite**

Executive Director, It Takes An 'Ohana

**Regina Deihl, J.D.**

Executive Director, Legal Advocates for Permanent Parenting

**Faye Kimura, J.D.**

The Hawai'i Court Improvement Program

**Mary Anne Magnier, J.D.**

Deputy Attorney General, State of Hawai'i

**Daniel Pollard, J.D.**

Legal Aid Society of Hawai'i

**Francis T. O'Brien, J.D.**

Family Law Attorney

This booklet was made possible in part by grants from the Victoria S. & Bradley L. Geist Foundation, the Cooke Foundation, and the Hawai'i Court Improvement Program.

**Copyright © 2009 IT TAKES AN 'OHANA**

These materials are based on laws in effect at the time of publication (March, 2009). Federal and state laws can change at any time. The purpose of this guide is to inform and educate. Every attempt has been made to be as accurate as possible. However, there may be mistakes both typographical and in content. Therefore, this guide is to be used for general information only. It is provided with the understanding that the publisher is not engaged in rendering legal or other professional services. For legal advice, you should consult with an attorney.

# CONTENTS

---

<b>INTRODUCTION</b>	<b>5</b>
A Timeless Need	
Reasonable Efforts	
Safe Family Home Guidelines	
<b>PLANNING FOR PERMANENCY</b>	<b>7</b>
Planning for Permanency	
Permanency Timelines	
<b>PERMANENT PLAN OPTIONS</b>	<b>10</b>
1. Adoption	
2. Legal Guardianship	
3. Permanent Custody	
<b>Making Permanency Real</b>	<b>15</b>



# INTRODUCTION

---

## A Timeless Need

Every child needs and deserves a nurturing, loving family to care for them. When children cannot return home to their parents, relative caregivers and foster parents are the most likely people to provide a permanent home for a child in the foster care system. This pamphlet provides a summary of the laws and procedures to ensure that each foster child has a permanent, stable home within legal time limits. Relative caregivers and foster parents play an important role by helping others in the foster care system understand each child's unique needs and by being available to provide a permanent, loving home for children who cannot return to their parents.

## Reasonable Efforts

Federal law requires child welfare agencies throughout the country, including Hawai'i's Department of Human Services, to make reasonable efforts (efforts that are sensible under the circumstances) to provide services to families to avoid removing children from their homes. In most cases, the Department is also required to make reasonable efforts to return a child home within certain timeframes, if the child can safely be reunified with her parents. If the child cannot safely return home, the Department is required to make reasonable efforts to finalize another permanent plan for the child. The reasonable efforts requirements are intended to make removal a last resort, to encourage child welfare agencies to work to reunify families, and to find safe, permanent homes for children who cannot return to their parents within the timelines allowed by the law.

## Safe Family Home Guidelines

The Hawai'i Legislature intends that children in foster care return to their parents if a child's parents can provide a safe family home for the child within a reasonable period of time.

---

In most cases, the Department prepares a service plan that sets out the steps the child's parents need to go through and the changes in their behaviors that must be achieved for their child to be returned to them. [Hawai'i Revised Statutes §587-26].

At regular intervals in the dependency process, the Department and the Family Court consider specific factors called "safe family home guidelines," to determine whether the child's parents are capable of providing a safe home for the child. [Hawai'i Revised Statutes §587-25]. If the child can safely return home at that time, the Court orders the child placed back with her parents. In very rare instances, the Court may decide that aggravated circumstances exist and order that the case be set for a hearing where the judge decides whether a permanent plan hearing should take place to determine an alternate permanent plan for the child, without reasonable efforts to return the child to her parents. [Hawai'i Revised Statutes §587-71(j); §587-72(b)(7)].



# PLANNING FOR PERMANENCY

---

## Planning for Permanency

Planning for permanency for children who may not be able to safely return to their parents is always a consideration in child welfare cases. If a child is not able to return home, the Department prepares a plan that is submitted to the Family Court recommending an alternate permanent plan for the child. That plan may be adoption, legal guardianship, or permanent custody of the child to an individual or the Department. [Hawai'i Revised Statutes §587-27].

The Court orders the plan that it determines to be in the child's best interest. Relative caregivers and foster parents are important participants in ensuring permanency for children who cannot return home. In nearly all cases, children who cannot return home are placed with their relative caregivers or foster parents on a permanent basis in one of the permanency plan options. (See information below on permanent plan options for children in foster care).

## Permanency Timelines

### ● SHOW CAUSE HEARING IN 12 MONTHS

Children in foster care need to return home to their parents or be placed in another permanent living arrangement within a reasonable period of time. A child's need for permanency and stability is critical to her well-being.

The federal Adoption and Safe Families Act (ASFA), passed by Congress in 1997 (and amended by the Safe and Timely Placement of Foster Children Act of 2006) requires courts throughout the country to hold a permanent plan hearing for each child in foster care within 12 months from the date the child entered foster care.<sup>1</sup> Permanency hearings must be held on a yearly basis after that. [42 U.S.C. §675(5)(C) and (F)].

---

1. The legal "date entered foster care" is the date of the first court finding of abuse or neglect (the adjudication hearing in Hawai'i) or 60 days after the child was physically removed from her home, whichever is earlier [Hawai'i Revised Statutes§587-73].

In Hawai'i, if a child has been living outside the family home for 12 consecutive months, the court will set the case for a "show cause hearing," as deemed appropriate, to consider whether the case should be set for a hearing to determine an alternate permanent plan for the child that does not include family reunification. [Hawai'i Revised Statutes 587-72(b)(8)]. At the permanent plan hearing, the court adopts a permanent plan for the child. [Hawai'i Revised Statutes §587-73].

### ● NO REUNIFICATION SERVICES IN SOME CASES/ PERMANENCY HEARING HELD MORE QUICKLY

As noted earlier, in some very serious cases, reasonable efforts to return the child to her parents are not required, and the Court has authority to hold a permanent plan hearing early on in the case.

Examples of circumstances where the Court may order an alternate permanent plan early in a case include situations where a parent has killed or seriously injured another child of the parent, where the parent has tortured the child or abandoned an infant, or where the parent's rights to other children have already been terminated. [Hawai'i Revised Statutes §587-2].

*For information on the series of court hearings affecting children in foster care, see Caregivers and the Court: A Guide for Foster and Adoptive Families, available from It Takes An 'Ohana.*

### ● MOTION FOR A PERMANENT PLAN HEARING

In order to continue to receive federal funding for foster care cases, the Hawai'i Department of Human Services must file a motion for a permanent plan hearing when a child has been living outside the family home for 15 out of the last 22 months unless:

- the Department has documented a compelling



reason that it is not in the child's best interest to file the motion; or

- the Department has not provided reasonable efforts so that the child can safely return home to her parents.

These are very broad exceptions and many foster children will not have a motion filed for a permanent plan hearing even if they have been in foster care for a longer period of time. [42 U.S.C. § 675(5)(E); Hawai'i Revised Statutes §587-72(d)].

### ● **REASONABLE EFFORTS TO FINALIZE THE PERMANENT PLAN MUST CONTINUE**

Once the Family Court has adopted a permanent plan for the child at the permanent plan hearing, the Department must make reasonable efforts to complete whatever steps are necessary to finalize the plan. (For example, if the plan is for the child to be adopted, the agency must take steps to see that the adoption is finalized). [45 C.F.R. §§1355.20, 1356.21(b)(2)(i); 42 U.S.C. §§675(5)(C), (F)].



# THE PERMANENT PLAN

---

## Permanent Plan Options

At the permanent plan hearing, the Family Court considers all the prior and current information about the capacity of the child's family to provide a safe family home for the child. If the Court finds that the child can safely live with her parents at this time, the Court orders that the child be returned to her home. If, however, the Court finds by clear and convincing evidence that the child's parents are not currently able to provide a safe family home for their child and it is not reasonably foreseeable that they can do so within two years from the date the child was placed under foster custody by the Court, the Court will order another permanent plan for the child. [Hawai'i Revised Statutes 587-73(a)]. If the Court does not order the child to return home, there are three alternate permanent plans the Court can order at the hearing under Hawai'i law: adoption, legal guardianship, and permanent custody.

### 1. ADOPTION

Adoption provides a child with the most legally permanent plan if she cannot return to her parents. If the Court adopts a permanent plan of adoption, the parent's service plan is terminated and permanent custody of the child is awarded to the Department until the child is legally adopted by the adoptive parents. The Court presumes that it is in the best interest of the child to be adopted unless the child is living with a relative or a non-relative who has become like a family member and she is unable to adopt, but is committed to and capable of caring for the child. [Hawai'i Revised Statutes §587-73(b)(1)].

During the period of time prior to adoption finalization, a case-worker arranges home visits, office visits, and telephone contacts with the adoptive family and the child. The formal supervision period is six months, but can vary, depending on the adoptive family and the special needs of the child. In addition, if either parent chooses to appeal the decision to award permanent custody, no adoption can take place until the appeal process is completed. Although the courts expedite these appeals, this can extend the time to adoption by a year or more.



### RELATIVE CAREGIVER AND FOSTER PARENT ROLE IN ADOPTION

Relative caregivers and foster parents are by far the most likely people to adopt children in foster care who cannot return home to their parents.<sup>2</sup> Since federal and State law requires that children in foster care be provided with a permanent home within strict legal timelines, the Department usually develops an alternate permanent plan to reunification for each child in foster care that runs concurrently with the reunification plan; this is called concurrent permanency planning. As a result, caseworkers may ask the child's caregivers if they are willing to make a permanent commitment to adopt the child, if reunification fails. Relative caregivers and foster parents should tell their caseworker if they are willing to adopt the child or make some other form of permanent commitment to the child. Caregivers can also let the child's Guardian Ad Litem know that they are potential adoptive parents, if the child cannot return home. Caregivers can also use one of the formats available



on the *It Takes An 'Ohana* website at [www.ittakesanohana.org](http://www.ittakesanohana.org) to let the Court know that they are willing to adopt the child at the appropriate time in the case. In general, the Court is more interested in learning whether the child's caregivers are willing to adopt once reunification services to the child's parents have ended.

---

2. In fiscal year 2001, national AFCARS data (a national foster care database) shows that 59% of children adopted from foster care in the United States were adopted by their foster parents, and 23% were adopted by relatives. See U.S. Department of Health and Human Services, Administration for Children and Families, Administration for Children, Youth and Families, Children's Bureau, AFCARS report.

## THE PERMANENT PLAN

---

Relative and foster caregivers who adopt a child from Hawai'i's foster care system are eligible for an adoption subsidy. An adoption subsidy is a payment adoptive families receive when they adopt a child who meets the criteria for receiving payments through the Adoption Assistance Program (AAP). The AAP amount is usually \$529 per month plus any Difficulty of Care amount negotiated between the Department and the child's relative or foster caregivers. Detailed information about AAP in Hawai'i is available from It Takes An 'Ohana at [www.ittakesanohana.org](http://www.ittakesanohana.org) or the North American Council on Adoptable Children at [www.nacac.org](http://www.nacac.org).

*Relative caregivers and foster parents should be careful not to thwart reunification efforts by focusing on adopting the child early on in the case. Otherwise, they may be viewed as interfering with the Department's efforts to reunify the child with his parents.*

## 2. LEGAL GUARDIANSHIP

When children cannot return home, and adoption has been ruled out as an appropriate permanent plan, legal guardianship can offer safety and stability for many children. If the Court adopts a permanent plan of legal guardianship, the parent's service plan is terminated and the prior award of foster custody of the child is continued until the guardianship is ordered. The Court continues to monitor the child's progress until a formal guardianship is established.

Legal guardianship transfers a parent's legal rights to custody, care and control of the child to another person or to the Department. In this situation, the legal guardian assumes the responsibilities that would normally be exercised by a parent, including control over the child's protection, education, medical care, and welfare. The child's parents retain some residual rights, however, including the potential to visit the child, support the child, mutual inheritance rights, and the right to continue to participate in court hearings (unless the Court decides that it is not in the child's best interests). In addition, legal

guardianship is subject to modification or revocation by the Court upon a finding of extraordinary circumstances.

Since legal guardianship is a more permanent legal status than permanent custody, legal guardianship is given preference over permanent custody when it is in the best interest of the child and there is a guardian available. When a guardianship is ordered to an individual, the Court and the Department close the child's case. Additionally, the child's Guardian Ad Litem and caseworker will be dismissed from the case.



### **RELATIVE CAREGIVER AND FOSTER PARENT ROLE IN LEGAL GUARDIANSHIP**

Relatives sometimes feel uncomfortable adopting the child in their home and would rather become legal guardians. Legal guardianship allows the guardian to provide stability and care for the child without becoming an adoptive parent. In some cases, older foster youth may prefer legal guardianship over adoption by long term foster parents. In that case, the youth can have the benefits of a stable home while retaining a legal connection to her birth family. Relative caregivers and foster parents should be aware that a guardianship can be terminated and that the guardianship ends when the child turns 18. Financial



payments by the Department can continue during legal guardianship. Caregivers should ask their caseworker to explain in detail what services and funding will be available to them if they become legal guardians.

### 3. PERMANENT CUSTODY

When the Court decides to order permanent custody of a child to an individual, the Court vests certain rights in the custodian. The permanent custodian is authorized to make decisions about the child's care and the Department closes its case. Although the child's permanent custodian assumes care, custody and control of the child, parental rights are not terminated. The child's court case remains open just in case the custodian or the Department needs to request a court order to change custody or for some other reason. Permanent custody generally ends when the child turns 18.



Once permanent custody to an individual is ordered, a payment caseworker is assigned. Although the child welfare caseworker does not automatically remain assigned to the child's case, permanent custodians may contact the Department for assistance, if they need help. The child's Guardian Ad Litem may remain on the case with the Court's permission. Court hearings are held every six months to determine how the child is doing with the custodian. [Hawai'i Revised Statutes §587-73(b) (1)(E)]. Permanent custodians must attend the court hearings.

In some cases, the Court orders co-permanent custody of the child. In that case, the Department and an individual become co-custodians. A caseworker and the child's Guardian Ad Litem remain assigned to the case and Family Court holds hearings every six months to determine how the child is faring in care.



#### **RELATIVE CAREGIVER AND FOSTER PARENT ROLE IN PERMANENT CUSTODY**

Relative caregivers and foster parents are often able to assume responsibility for permanent care of a child, but would

like the child's court case to remain open. Maintaining an open court case allows the custodian and the Department to easily request court assistance if the custodian is no longer able to care for the child or if there are issues regarding services or other resources that can benefit the child.

Permanent custodians should be aware that permanent custody ends when a child reaches 18. As a result, the benefits of adoption, including inheritance rights, do not attach, and the child will not inherit from the permanent custodian (although he may inherit from a birth parent). Nonetheless, permanent custody is a viable option for relative caregivers and foster parents who wish to provide a stable, permanent home for a child without adopting or taking legal guardianship of the child. In extraordinary circumstances, the Court may revoke permanent custody prior to the child's 18th birthday.

### ● Making Permanency Real

In nearly every case, the child's relative caregivers or foster parents have unique insights into what a child needs and what kind of permanent situation would serve the child's best interest. Making sure that others in the system pay attention to the child's need for a permanent home, providing insight into the kind of home a child needs, and being willing to make a permanent commitment to a child all support the child's need for permanency.

Regardless of the permanent plan option a court chooses in a particular situation, all children need a caring, supportive relationship with an adult caregiver. Relative caregivers and foster parents make permanency a reality for children who cannot return to their parents. In keeping with this important role, caregivers should offer their input and expertise to Department and Court decision makers so that the very best decision about a permanent home can be made for each child.

Some 1,750 children in Hawaii are in foster care at any given point in time, children who need the support of foster families to help them through the toughest time of their lives.

It Takes An 'Ohana offers resources and information to those in the community concerned with protecting the interests of children and youth in out-of-home care, while providing responsible advocacy.

By empowering families, by collaborating with governmental and private agencies, and by advocating for foster families and the children they support on a local and state level, ITAO has become an indispensable part of the foster care system.

IT TAKES AN  
*'Ohana*

[info@ittakesanohana.org](mailto:info@ittakesanohana.org)  
[www.ittakesanohana.org](http://www.ittakesanohana.org)