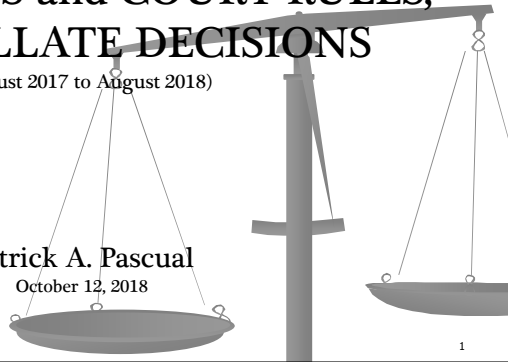# AMENDMENTS
TO STATUTES and COURT RULES, and APPELLATE DECISIONS
(August 2017 to August 2018)

Patrick A. Pascual
October 12, 2018

1

Foster Youth Bill of Rights

2018 Act 105
(Effective: July 5, 2018)

2

Foster Youth Bill of Rights:

Replaces the "Guiding Principles for Children in Foster Care," HRS § 587A-3.

3

HRS § 350-2

2018 Act 176
(Effective: July 1, 2018)

4

2018 Act 176

➤ Authorizes DHS to release information about confirmed child abuse and neglect at a "child care facility" to a parent of a child:
  • Enrolled at a licensed or registered child care facility; or
  • Enrolled at an "exempt" child care facility, <u>with the consent of the child care facility</u>.

2018 Act 176

➤ Authorizes DHS to release information to the general public of child abuse and neglect that resulted in death or near fatality:
  • The cause and circumstances,
  • The age and gender of the child,
  • Previous investigations that are pertinent to the abuse or neglect that led to the death or near fatality, and
  • Actions taken by DHS on behalf of the child.

The Family First Prevention Services Act ("FFPSA") [Division E, Part VII of the Bipartisan Budget Act of 2018, P.L. 115-123]

Amendments to Title IV-B and Title IV-E of the Social Security Act:

➤ Family Preservation: Services to Prevent Removal

➤ Ensure Placement in a Foster Family (Resource Care) Home

➤ Continuing Support for Children and Families

Family Preservation

➤States may "opt-in" to use Title IV-E funds for prevention services for children at risk for foster care placement and for their families for a maximum period of 12 months (effective October 1, 2018, but no claims for reimbursement until October 1, 2019).

➤States may receive Title IV-E reimbursement for a child who is placed with a parent in a licensed residential family-based substance abuse treatment facility for a maximum period of 12 months. regardless of whether the child meets the AFDC income eligibility requirements (Effective October 2018).

9

ENSURING PLACEMENT IN A FOSTER FAMILY HOME

➤Restrictions on the Use of Title IV-E Foster Board Payments for Placements that are NOT a Foster Family Home.

➤Effective Date: October 1, 2019, unless otherwise stated.
  • States may elect to delay the effective date for up to 2 years, but must also delay Title IV-E funding/reimbursement for family preservation services.

10

ENSURING PLACEMENT IN A FOSTER FAMILY HOME

Beginning on the 3rd week of a Child Entering Foster Care, the child must be placed in a foster **family** home to remain eligible for Title IV-E foster care payments unless the placement falls under one of the statutory exceptions.

11

Placements Eligible for Title IV-E Foster Care Payments

➤Licensed Foster Family Homes.

➤Licensed Child Care Institutions ("CCI") (with no more than 25 Children) in one of the following settings:
  • Qualified Residential Treatment Program ("QRTP"),
  • A setting specializing in providing prenatal, post-partum or parenting supports for youth,
  • A supervised setting for youth 18 years and older who are living independently , or
  • A setting providing high-quality residential care and supportive services to children and youth who have been or are at risk of becoming sex trafficking victims

12

Placements Eligible for Title IV-E Foster Care Payments
Other Requirements

Licensed Child Care Facilities are not facilities operated primarily for the detention of children determined to be delinquent such as juvenile detention facilities, forestry camps, or training schools.

Placements Eligible for Title IV-E Foster Care Payments
Other Requirements

➢State Plan must include a certification that the state will not enact or advance policies or practices that will result in a significant increase in the number of youth in the juvenile justice system due to the restrictions on Title IV-E reimbursement for children not placed in foster family homes (effective October 1, 2018).

➢States are Required to Conduct Background checks of all persons working in a group care setting where a child is placed (effective October 1, 2018).

Placements Eligible for Title IV-E Foster Care Payments
Other Requirements (cont.)

➢No later than October 1, 2027, all states will be required to use an electronic interstate case-processing system to expedite interstate placements, adoptions and guardianships.

➢U.S. DHHS shall identify a model licensing standard by October 2018.

➢Limit the number of children in a foster family home to six. (Effective October 2019).

➢Establish protocols and procedures requiring that children in foster care are not being inappropriately diagnosed with mental illnesses that result in placement other than a foster family home. (effective January 2018).

Placements Eligible for Title IV-E Foster Care Payments
Other Requirements

Title IV-B court improvement grants are required to include training for judges, attorneys and other legal personnel in child welfare cases on the Federal child welfare policies and payment limitations regarding children in foster care who are placed in settings that are not a foster family home (effective January 1, 2018). 42 U.S.C. § 629h (b) (1).

Continuing Support for Children and Families

John H. Chaffee
Foster Care Program for Successful Transition to Adulthood
[fka, John H. Chaffee Foster Care Independence Program, aka Chaffee Program]
(Effective April 1, 2018)

Chaffee Program Amendments

➢States that extended jurisdiction of former foster youth to age 21 may elect to extend financial, housing, counseling, employment, education and other services to age 23

➢Extends the eligibility for Education and Training Vouchers from age 23 to age 26, and authorizes the use of higher education vouchers to foster youth age 14 and above, provided that a person can only participate in the program for 5 years (whether or not consecutive)

➢Requires the state to provide foster youth aging-out of foster care any necessary document to prove that the youth was previously in foster care. Such documentation may be necessary to obtain Medicare to age 26 under the Affordable Care Act.

Hawai'i Rules of Appellate Procedure Rule 32 (a) (2)

The Flyleaf (Cover Page):
- The Top Margin must be 3 Inches, or
- If the Top Margin is 1 Inch, there must be 3-Inch x 3-Inch Space In the Top Right Corner.
- Provide Enough Room for File Stamp in the Upper Right Hand Corner.

In re
FG, AG, PG

142 Hawaiʻi 497, 421 P.3d 1267 (2018)

In re FG, AG, PG

The Hawaiʻi Supreme Court ruled:

• In issuing its order prohibiting the parents from publicly disclosing the names of the subject children, the family court failed to make the necessary specific findings of fact to survive a First Amendment challenge: unconstitutional prior restraint.

• The family court abused its discretion by entering an injunction (orders) prohibiting the parents from disclosing the records in the CPA case, and records that will be submitted in the case. The family court failed to explain the basis for the order, and the record did not support the order.

In re FG, AG, PG
(Prior Restraint)

➢The order prohibiting the disclosure of the children's names was a prior restraint on the parents' First Amendment free speech rights.

➢To survive a First Amendment challenge, a prior restraint must:
1. The activity restrained poses either a clear and present danger, or a serious or imminent threat to a competing (compelling) interest;
2. The order is narrowly drawn; **and**
3. Less restrictive alternatives are not available.

➢The court must make specific factual findings supporting each element. "Best Interests of the Child" alone is not sufficient.

In re FG, AG, PG
(Prior Restraint)

➢The State has a compelling interest to protect the confidentiality of child abuse information, as stated in both Federal and Hawaiʻi laws.

➢Federal and Hawaiʻi laws do not specifically prohibit the disclosure of the names of children, who are the subject of a child protective action, to the public.
  ➢The family court was required to make specific factual findings about the threat to a competing (compelling) interest.
  ➢There must be evidence supporting the findings of the effect of the disclosures of the children's names.

In re FG, AG, PG
(Injunction, re: Release of Records)

➤ HRS § 587A-40 prohibits the release of CPA records.

➤ The order was an injunction that would subject the parents to criminal sanctions (contempt of court) if they disobeyed the order.

➤ There was no evidence in the record to support the order prohibiting the parents from disclosing CPA records.
  - Parents did not disclose any records.
  - Parents agreed to obey HRS § 587A-40.
  - DHS' concern about the parents' possibly disclosing records, based on a social media posting, were too speculative to support the order.

W.N. v. S.M.

__ Hawai'i __, 424 P.3d 483, 2018 WL 3617874 (July 30, 2018)

W.N. v. S.M.

- Second family court proceeding after the Hawai'i Supreme Court vacated the family court's December 2014 ruling denying Appellant's HRS § 571-46 (a) (2) petition for joint custody, and remanded the case back to the family court. *A.A. [W.N.] v. B.B. [S.M.],* 130 Hawai'i 102, 384 P.3d 878 (2016).

- Appeal of the family court's June 2017 decision denying Appellant's HRS § 571-46 (a) (2) petition for joint custody.

W.N. v. S.M.

Vacated the family court's June 2017 order:

- The family court erred in limiting its consideration to only the record of the 2014 proceedings, and denying W.N.'s request to hold a further evidentiary hearing on remand to present evidence of the facts that occurred since the 2014 proceedings.
  - In considering which custodial arrangement is in the child's best interests (including a person's fitness), HRS § 571-46 requires the court to consider all relevant, probative evidence about a person's present fitness (at the time of the "contemplated" custody award).

- The child's statements made during visits with W.N. contained in the visitation supervisors' reports is not hearsay.

Keats v. Koile

883 F.3d 1228 (9th Cir. 2018)

Keats v. Koile

➤Parents and their Children have the Constitutional Right (Liberty Interest) to Family Association.

➤The parents and children's right to family association and family relationships is protected by the 1st Amendment to the U.S. Constitution.