



NEW APPELLATE LAW, and STATUTES AND RULES AMENDMENTS

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2023 Child Welfare Law Update Conference
August 11, 2023

DISCLAIMER

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- This presentation is not intended to be a substitute for your diligent review of the statutes, court rules and appellate cases discussed during this presentation. **YOU NEED TO READ THE APPELLATE CASES AND THE STATUTES.**
- Please Do Not Subpoena the Presenter.



Appellate Law



A photograph of the United States Supreme Court building, featuring a grand portico with tall columns and a pediment. The inscription "EQUAL JUSTICE UNDER LAW" is visible on the pediment. The building is surrounded by a wide set of steps and flanked by statues. The sky is blue with some clouds.

United States Supreme Court

Indian Child Welfare Act ("ICWA")



ICWA: U.S. SUPREME COURT CASES

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989) (“Holyfield”).

Adoptive Couple v. Baby Girl, 570 U.S. 637 (2013) (“Baby Girl Veronica”).

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HAALAND, SECRETARY OF THE INTERIOR, ET AL. *v.*
BRACKEEN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 21–376. Argued November 9, 2022—Decided June 15, 2023*

This case arises from three separate child custody proceedings governed by the Indian Child Welfare Act (ICWA), a federal statute that aims to keep Indian children connected to Indian families. ICWA governs state court adoption and foster care proceedings involving Indian children. Among other things, the Act requires placement of an Indian child according to the Act’s hierarchical preferences, unless the state court finds “good cause” to depart from them. 25 U. S. C. §§1915(a), (b). Under those preferences, Indian families or institutions from any tribe (not just the tribe to which the child has a tie) outrank unrelated non-Indians or non-Indian institutions. Further, the child’s tribe may pass a resolution altering the prioritization order. §1915(c). The preferences of the Indian child or her parent generally cannot trump those set by statute or tribal resolution.

In involuntary proceedings, the Act mandates that the Indian child’s parent or custodian and tribe be given notice of any custody proceedings, as well as the right to intervene. §§1912(a), (b), (c). Section 1912(d) requires a party seeking to terminate parental rights or to remove an Indian child from an unsafe environment to “satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent breakup of the Indian family,” and a court cannot order relief unless the party demonstrates, by a heightened burden of proof and expert testimony, that the child is

*Together with No. 21–377, *Cherokee Nation et al. v. Brackeen et al.*, No. 21–378, *Texas v. Haaland, Secretary of the Interior, et al.*, and No. 21–380, *Brackeen et al. v. Haaland, Secretary of the Interior, et al.*, also on certiorari to the same court.

Haaland et al.
v.
Brackeen et al.,
___ U.S. ___, No. 21-376,
2023 WL 4002951
(Jun. 15, 2023).

Plaintiffs

Brackeens: Want to adopt the Child. Filed the lawsuit to stay the Texas Dept. of Family and Protective Services decision to move the Child, who is a member of the Navajo Nation, to New Mexico for placement with a family designated by the Navajo Nation. The Navajo family withdrew from consideration, and the Brackeens adopted the Child. The sibling was placed in their home, and the Brackeens want to adopt the sibling.

Hernandez & Librettis: Mother (Hernandez), who is a non-Indian, chose the Librettis, a non-Indian family, to adopt the Child. The biological Indian Father supported the adoption. The Father's tribe unilaterally enrolled the Child in the tribe. The tribe withdrew the challenge to the adoption when Mother and the Librettis joined the lawsuit. The Librettis stayed in the lawsuit because they plan to foster and adopt Indian children in the future.

Plaintiffs

Cliffords: The Child's maternal grandmother is an enrolled member of an Indian Tribe, but the mother was not. When the Child entered state custody, Mother and the Tribe stated that the Child was not an "Indian Child." Two years later, the Tribe stated that the Child was eligible for membership and unilaterally enrolled the Child. The court placed the Child with maternal grandmother, who lost her state foster home license due to a criminal conviction.

State Plaintiffs:

- State of Texas.
- State of Indiana.
- State of Louisiana.

Defendants


Federal Government Defendants:

- The United States.
- The Department of the Interior, and its Secretary.
- The Bureau of Indian Affairs and its Director.
- The Department of Health and Human Services, and its Secretary.

Indian Tribes: Intervenor:

- The Cherokee Nation.
- The Oneida Nation.
- The Quinault Indian Nation.
- The Morongo Band of Mission Indians.
- The Navajo Nation (on appeal in 5th Circuit).

Procedural History



Lawsuit filed in the U.S. District Court for the Northern District of Texas challenging the constitutionality of ICWA. *Brackeen et al. v. Haaland et al.*

The U.S. District ruled that ICWA was unconstitutional

The divided three-judge panel of the U.S. Fifth Circuit Court of Appeals reversed.

After rehearing the case *en banc*, the U.S. Fifth Circuit Court of Appeals, in a “fractured” 350-page decision, affirmed in part and reversed in part

Procedural History

The Parties filed *Petitions for Writ of Certiorari* in the U.S. Supreme Court asking for review of the issues that they did not prevail in the U.S. Fifth Circuit Court of Appeals.

- The Federal Government Defendants: Docket No. 21-376.
- The Indian Nations/Tribes (except the Navajo Nation): Docket No. 21-377.
- The State of Texas (only): Docket No. 21-378.
- The Individual Plaintiffs: Docket No. 21-380



The Supreme Court granted all of the *Petitions for Writ of Certiorari*.

- Consolidated under Docket No. 21-376, *Haaland et al. v. Brackeen, et al.*
- The plaintiffs were designated as the “petitioners,” and the defendants were designated as the “respondents.”

Supreme Court's Ruling

Congress did not exceed its U.S. Constitution Article 1 authority when it enacted ICWA.

The following ICWA provisions regarding involuntary state proceedings did not violate the Anti-Commandeering Clause of the 10th Amendment to the U.S. Constitution:

- § 1912(d): “Active Efforts” requirement.
- § 1915 (a) and (b): Placement Preferences. States not required to make diligent search for alternative placement; burden on party objecting to placement to show another placement with the higher preference.
- § 1915: Record Keeping.


The Plaintiffs did not have standing to raise their equal protection challenges to ICWA

- The states (Texas) do not have equal protection rights of its own and has no standing to raise claims on behalf of its citizens.
- The individual plaintiffs did not show that they would be injured by the Federal parties; the states implement ICWA and they were not parties.


U.S. v. Rahimi,
No. 22-915.



Procedural History



A federal grand jury charges Rahimi for possessing a firearm while being under (subject to) a domestic violence restraining order in violation of 18 U.S.C. § 922(g)(8).



Rahimi files a motion to dismiss on the grounds 18 U.S.C. § 922(g)(8) is unconstitutional because it violates the Second Amendment. The motion is denied.



Rahimi pleads “guilty” but appeals the denial of his motion.

The U.S. Fifth Circuit Court of Appeals affirms.


Procedural History



The U.S. Supreme Court enters its decision in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, ___ U.S. ___, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022) (“*Bruen*”).



The U.S. Fifth Circuit Court of Appeals withdraws its decision, and orders supplemental briefing on the impact of *Bruen*.



In a “substitute” opinion, the U.S. Fifth Circuit of Appeals rules that 18 U.S.C. § 922(g)(c) violates the Second Amendment. The U.S. District Court’s denial of Rahimi’s motion to dismiss is reversed and Rahimi’s conviction is vacated.

The U.S. Supreme Court grants the government’s *Petition for Writ of Certiorari*.

Issues

Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic violence restraining orders, violates the Second Amendment on its face? [Hawai'i has a similar criminal statute: HRS § 134-7(f) and (h)].

Will this case affect the constitutionality of domestic abuse restraining orders and red flag restraining orders that prohibit the respondent from possessing firearms?

A photograph of the Hawaii State Capitol building, a large, ornate, light-colored stone structure with a central clock tower. The building is surrounded by numerous tall palm trees. In the foreground, there is a circular green lawn with a white pedestal holding a statue. The text "Hawaii's Appellate Cases" is overlaid in large white font.

Hawaii's Appellate Cases

Placement of Youth In Foster Care



Placement: Hawai'i Case Law

In re Doe, 7 Haw. App. 547, 557, 784 P.2d 873, 880 (1989) *overruled* , *in part*, by
In re AS, 130 Hawai'i 486, 312 P.3d 1193 (App. 2013) *affirmed and clarified* by
In re AS, 132 Hawai'i 368, 322 P.3d 263 (2014).

In re Doe, 96 Hawai'i 272, 286 P.3d 878 (2002).

In re Doe, 100 Hawai'i 335, 60 P.3d 285 (2002).

In re Doe, 101 Hawai'i 220, 65 P.3d 167 (2003)

In re Doe, 103 Hawai'i 130, 80 P.3d 20 (App. 2003).

Placement: Hawai'i Case Law

In re Doe, 109 Hawai'i 399, 126 P.3d 1086 (2006).

In re AS, 130 Hawai'i 486, 312 P.3d 1193 (App. 2013) *affirmed and clarified by*
In re AS, 132 Hawai'i 368, 322 P.3d 263 (2014).

In re AS, 132 Hawai'i 368, 322 P.3d 263 (2014).

In re Adoption of HA, 143 Hawai'i 64, 422 P.3d 642 (App. 2017).

In re AB, 145 Hawai'i 498, 454 P.3d 439 (2019).

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Supreme Court
SCWC-21-0000285
27-DEC-2022
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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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IN THE INTEREST OF ASK

SCWC-21-0000285

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-21-0000285; FC-S NO. 18-00112, FC-S NO. 18-00241,
FC-A NO. 20-1-6137, FC-A NO. 21-1-6005)

DECEMBER 27, 2022

RECKTENWALD, C.J., NAKAYAMA, McKENNA, WILSON, AND EDDINS, JJ.


OPINION OF THE COURT BY EDDINS, J.

I.

The family court has to consider sixteen factors to guide its best interests of the child finding in parental custody and visitation cases. See Hawai'i Revised Statutes (HRS) § 571-46(b) (2018). But there are no statutory factors to guide a family court's "best interests of the individual" finding in adoption

In re ASK,
152 Hawai'i 123,
522 P.3d 270 (2022).

In re ASK: Procedural History



2018: DHS places the then three-year old and seven-month-old sisters in a non-relative resource care home. Months later, the newborn brother is placed in the same resource care home.



April 2020: family court grants Paternal Aunt and Uncle's motion to intervene on the issue of the children's permanent placement.

July 2020:

- Father stipulates to the termination of his parental rights.
- DHS is awarded permanent custody.
- Court orders permanent plan with goal of adoption.
- Cases are set for trial on the Children's permanent placement.

In re ASK: Procedural History



October 2020: DHS files adoption petition designating the non-relative resource caregivers as the prospective adoptive parents.

January 2021:

- Paternal Aunt and Uncle file their adoption petition.
- DHS files its Notice of Withholding Consent to Adoption by Paternal Aunt and Uncle.

January and March 2021: Consolidated Trial in the four cases.

March 2021: Family Court's Decision:

- Best interests of the children to be permanently placed with and to be adopted by the resource caregivers.
- Not in the children's best interests to be permanently placed with Paternal Aunt and Uncle in the State of California.
- Adoption findings made as to resource caregivers, but adoption not granted.

In re ASK: Procedural History



Family court approves the stipulation to consolidate the four cases for purposes of appeal.

April 2021: Paternal Aunt and Uncle file their notice of appeal.

April 2022: ICA issues/enters its Summary Disposition Order, affirming the family court's decision.

June 2022: ICA enters the Judgment on Appeal.

August 2022: Hawai'i Supreme grants/accepts Paternal Aunt and Uncle's *Application for Writ of Certiorari*.

In re ASK:
**Hawai'i Supreme Court's Decision –
ICA & Family Court Affirmed**

In determining which proposed permanent placement is in the children's best interests, the family court shall consider all admissible evidence regarding the best interest of the children.

The family/trial court is free to assess the credibility of the evidence and to weigh the evidence in making its best interests of the child determination..

The HRS § 571-46(b) best interest factors/analysis to determine custody and visitation is not applicable in CPA/adoption cases in contested permanent placement proceedings (but the family court's consideration of the factors does not mean that the family court erred). Only five of the sixteen factors applicable .

The proposed permanent placement's blood/kinship relationship may be factor. [This is not a relative placement preference].

Placement of Youth in Foster Care: Outstanding Issues



In CPA termination of parental rights proceedings, is the child's permanent placement required to be identified in determining whether the permanent plan is in the child's best interest pursuant to HRS § 587A-33(a)(3)?



Is In CPA termination of parental rights proceedings, is the child's permanent placement part of the analysis in determining whether the permanent plan is in the child's best interest pursuant to HRS § 587A-33(a)(3)?



Do family/relatives have a right to placement under the constitutional right to family association?

DUE PROCESS RIGHT TO COUNSEL



Due Process Right to Counsel: Case Law

Lassiter v. North Carolina, 452 U.S. 18 (1981).

In re A Children, 119 Hawai'i 28, 193 P.3d 1228 (App. 2008).

In re R.G.B., 123 Hawai'i 1, 229 P.3d 1066 (2010).

In re T.M. 131 Hawai'i 419, 319 P.3d 338 (2014).

In re L.I. and H.D.K., 149 Hawai'i 118, 482 P.3d 1079 (2021).

Right to Counsel: Discharge of Counsel

- The court appoints counsel for the indigent parent.
- The parent fails to appear at a hearing, and the court enters a default against the parent.
- The court discharges the indigent parent's court-appointed counsel, subject to recall.
- Parent re-appears at a subsequent hearing and counsel is re-appointed, or never re-appears.



PARENTAL RIGHTS ARE TERMINATED

- ICA reverses and vacates the TPR order in its entirety on the grounds that the discharge of counsel was “structural error.”
- Remands to family court.
 - Remand is not the beginning of a “new” two-year period for the parents to address safety issues.
 - The family court to determine whether a particular permanent plan is in the child's best interests.

Right to Counsel: Discharge of Counsel

In re J.M. and Z.M., 150 Hawai‘i 125, 497 P.3d 140 (2021) (Family court’s order discharging counsel for an indigent parent after the entry of default is “structural error,” even when counsel is re-appointed when the entry of default is set aside; order terminating parental rights is *vacatur*).

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Supreme Court
SCWC-21-0000316
15-MAR-2023
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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IN THE INTEREST OF JH

SCWC-21-0000316

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-21-0000316; FC-S NO. 18-00251)

MARCH 15, 2023

RECKTENWALD, C.J., NAKAYAMA, McKENNA, AND EDDINS, JJ.;
AND WILSON, J., DISSENTING¹

OPINION OF THE COURT BY EDDINS, J.

At the start of this Child Protective Act case, the Family Court of the First Circuit appointed attorneys for a mother and father (Parents). Then, when Parents failed to appear at a court hearing, the court discharged counsel. Later, Parents reappeared, the court reappointed counsel, and the case

¹ At the time of this opinion's publication, Justice Wilson's dissent is forthcoming.


In re JH,
152 Hawai'i 373,
526 P.3d 350 (2023).

In re JH: Family Court Proceedings




October 2018: Child is born. The DHS files its Temporary Foster Custody Petition.

October 2018: Court appoints counsel for mother and father




July 2019: Family court orders mother and father to appear at the continued return hearing in August 2019. Court cautioned them that if they fail to appear, they will be defaulted, and the court will adjudicate the petition and award foster custody to the DHS without their presence.



August 2019: Mother and father fail to appear at the hearing and are defaulted. The family court discharges counsel effective 30 days after the hearing. Counsel given leave to file an ex parte motion to rescind discharge order if mother and/or father contacts their counsel.

In re JH: Family Court Proceedings



January 2020: The DHS files its motion to terminate parental rights one week before the scheduled hearing.

January 2020: Mother and father appear. Counsel re-appointed.

January 2021: Termination of parental rights trial starts.

April 2021: The family court grants the DHS' motion. Parental rights terminated.

In re JH: Appellate Proceedings

ICA Reverses: Structural Error.



The Hawai'i Supreme Court grants the *Application for Writ of Certiorari* of the DHS, and the GAL. The supreme court also grants the *Application for Writ of Certiorari* of the DHS, the GAL and the resource caregivers in *In re JB*, No. SCWC-21-0000283. Both cases are consolidated for oral argument.

In re JH: Hawai'i Supreme Court's Ruling

Due process is flexible and is intertwined with fundamental fairness.

Structural error only occurs when counsel is not appointed at the beginning of a CPA case or at the parent's first court appearance.

No Structural error when counsel is appointed at the beginning of a CPA case, and counsel is discharged after the entry of default against the parent, but counsel is re-appointed when the parent re-appears.

Fundamental Fairness Test: Viewing the entire proceedings as a whole, there was no violation of the parent's due process rights when the parent received a fundamentally fair trial when the parental rights were terminated.

In re JH: Hawai'i Supreme Court's Ruling

A parent's voluntary choice not to appear in court and not to maintain contact with counsel should not undermine the child's interests in permanency.

The family court should advise the parents about the consequences of not appearing in court and of not maintaining contact with their counsel.

There is no structural error when a parent is appointed counsel at the beginning of a CPA case, and counsel is discharged after a default is entered against the parent.

There is no Due Process violation when the proceedings to terminate parental rights were fundamentally fair: fundamental fairness test.

Right to Counsel: Discharge of Counsel

In re J.M. and Z.M., 150 Hawai‘i 125, 497 P.3d 140 (2021) *abrogated by In re JH*, 152 Hawai‘i 373, 526 P.3d 350 (2023); *see In re JB*, No. SCWC-21-0000283, 2023 WL 2553925 (Haw. Mar. 17, 2023) (memo.) (Reversing the ICA on the same grounds as *In re JH*).

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Intermediate Court of Appeals
CAAP-22-0000415
28-APR-2023
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IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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IN THE INTEREST OF I CHILDREN

NO. CAAP-22-0000415

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 21-00150)

AND

IN THE INTEREST OF I CHILDREN

NO. CAAP-22-0000416

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 21-00152)

APRIL 28, 2023

GINOZA, C.J., AND HIRAOKA AND WADSWORTH, JJ.

OPINION OF THE COURT BY WADSWORTH, J.

In these consolidated appeals, Appellant Father (**Father**) appeals from two sets of orders entered successively by the Family Court of the First Circuit (**Family Court**)^{1/} in two related cases which, together, awarded Petitioner-Appellee Department of Human Services (**DHS**) foster custody of OI, SI1, SI2, NI, and JI (the **Children**). Specifically, Father appeals from: (1) the June 29, 2022 Orders Concerning Child Protective

^{1/} The Honorable Jessi L. Hall presided.

In re I Children
153 Hawai'i 223,
529 P.3d 701 (App. 2023).

In re I Children: Family Court Proceedings




In two related CPA cases, the DHS filed Petitions for Temporary Foster Custody of the Children centered on allegations of sexual harm of one of the children by the Father-Appellant (“Father”).




After Father’s counsel cross-examines the DHS CWS worker, the family court granted Father’s request to speak to his counsel and takes a recess.

After the recess, Father, through counsel, requests a new attorney. The family court stated that it would appoint new counsel after trial. The family court granted Father’s request to address the court directly, but did not ask Father why he wanted a new attorney.

In re I Children: Family Court Proceedings



The family court adjudicates the Petitions, invokes its CPA subject matter jurisdiction, and awards foster custody to the DHS.



Father, through new counsel, files a motion for new trial based ineffective assistance of counsel. Family court denies Father's motion.



Father appeals to the ICA.

The ICA orders supplemental briefing on whether Due Process required the family court to conduct an examination of Father on the reason(s) he wanted new counsel.

- The DHS argued that the case must be remanded for an examination of Father by the family court.
- Father argued that the ICA must remand and order a new trial.

In re I Children: ICA' Ruling

Parents in CPA proceeding have the Due Process Right to Counsel, including the right to effective assistance of counsel.

When the parent requests new counsel, Due Process requires:

- The parent be given the opportunity to state the basis/reason for the request for new counsel.
- A determination by the family court as to the merits of the objection.

Due Process requires the family court to conduct a “penetrating and comprehensive examination” of the parent to determine the basis/reason for the request for new counsel to protect the parent’s right to effective assistance of counsel.

Right to Counsel: Outstanding Issues



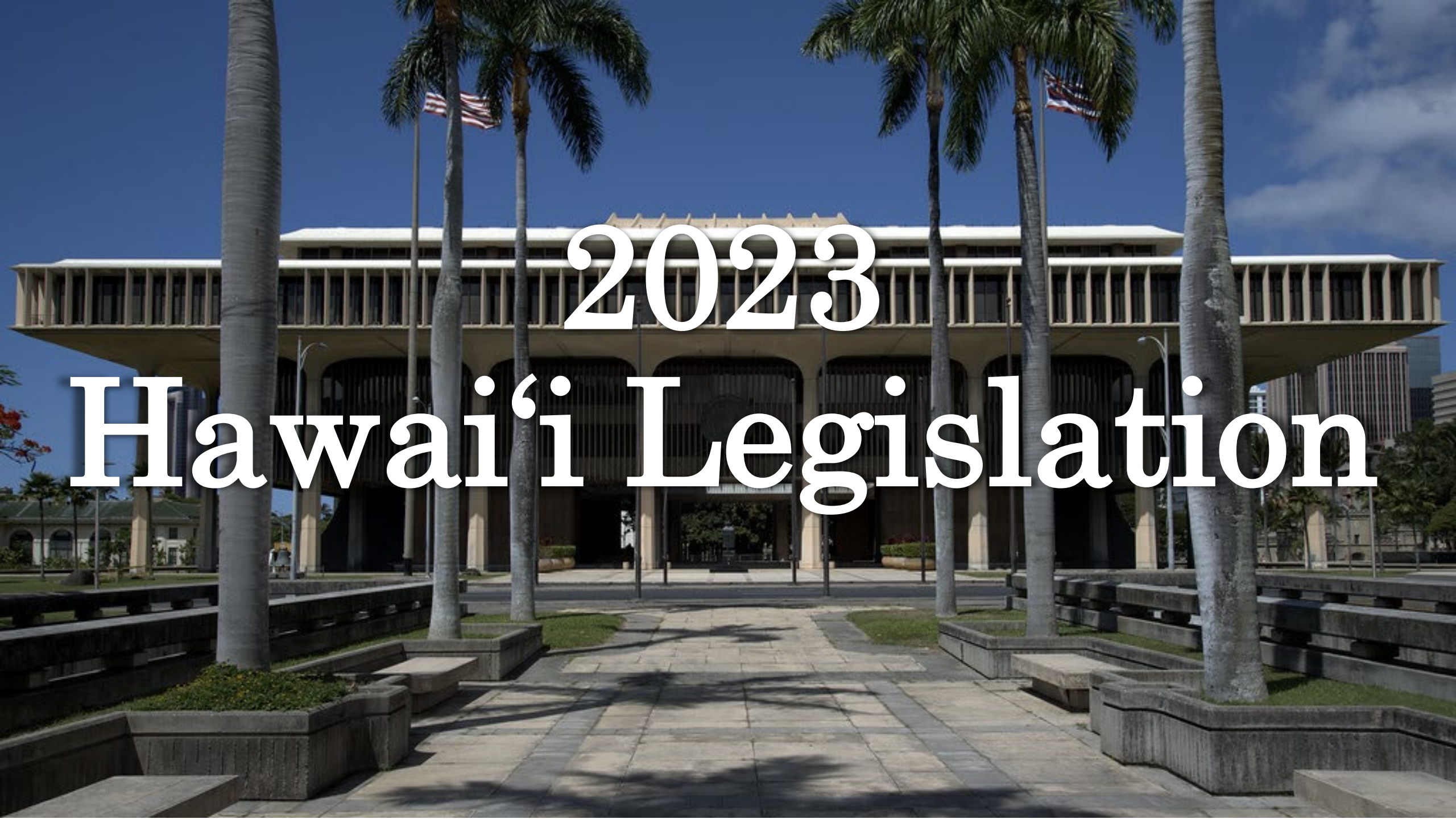
In guardianship proceedings arising out of a court-ordered permanent plan, with the goal of guardianship, do indigent parents have a right to court-appointed counsel?



What is trial court-appointed counsel's legal duty to file an appeal when the indigent parent wants to appeal a final appealable order? *In re R.G.B.*, 123 Hawai'i 1, 229 P.3d 1066 (2010).



What is the meaning of "the family court shall appoint counsel for indigent parents when a CPA petition is filed?"



2023 Hawai'i Legislation

A BILL FOR AN ACT

RELATING TO THE CHILD WELFARE SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that criticism of
2 Hawaii's child welfare system has been increasing and is
3 accentuated when there is a tragedy. Shortcomings in Hawaii's
4 child welfare system are not new, and there is strong desire in
5 the community to address these concerns. Before the
6 disappearance of six-year-old Isabella Kalua at her home in
7 Waimanalo, the effects of the coronavirus disease 2019 pandemic
8 were already having an outsized impact on Hawaii's children and
9 youth, further stressing the department of human services and
10 its social services division's child welfare services branch.

11 The legislature further finds that, although Native
12 Hawaiian children and families are overrepresented in the
13 State's child welfare system, all children in the system have
14 similar issues and needs. Historically, Native Hawaiian
15 ancestors had a very well-structured child welfare system in
16 which the people within the kauhale, or community, shared the
17 responsibilities of caring for and nurturing its keiki. This
18 kuleana, or responsibility and privilege, was collectively



2023 Act 86
Working Group
To
Improve State CWS

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

S.B. NO. 109
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO GENDER-NEUTRAL TERMINOLOGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 321-342, Hawaii Revised Statutes, is
2 amended by amending the definition of "family" to read as
3 follows:
4 "Family" means:
5 (1) Each legal parent;
6 (2) ~~[The]~~ Each natural ~~[mother,]~~ parent;
7 ~~[-3-]~~ ~~The natural father,~~
8 ~~[-4-]~~ (3) The adjudicated, presumed, or concerned natural
9 ~~[father]~~ parent as defined under section 578-2;
10 ~~[-5-]~~ (4) Each parent's spouse or former spouses;
11 ~~[-6-]~~ (5) Each sibling or person related by consanguinity
12 or marriage;
13 ~~[-7-]~~ (6) Each person residing in the same dwelling unit;
14 and
15 ~~[-8-]~~ (7) Any other person who, or legal entity that, is a
16 child's legal or physical custodian or guardian, or
17 who is otherwise responsible for the child's care,
18 other than an authorized agency that assumes such a



2023 Act 160
Gender Neutral
Terminology: "Family"
(Effective Date: January 1, 2024)

2023 Act 160 § 14

HRS § 587A-4

“Family” means each legal parent of a child; the ~~[birth-mother]~~ birthing parent, unless the child has been legally adopted; the concerned ~~[birth-father]~~ non-birthing parent as provided by section 578-(a)(5), unless the child has been legally adopted; each parent’s spouse or former spouse; each sibling or person related by blood or marriage; each person residing in the dwelling unit; and any other person or legal entity with:

- (1) Legal or physical custody or guardianship of the child; or
- (2) Responsibility for the child’s care.

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.

Effective Date: January 1, 2024.

A BILL FOR AN ACT

RELATING TO GENDER-NEUTRAL TERMINOLOGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 578, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§578- Interpretation of words to be gender-neutral.
5 With regard to the rights, benefits, protections, and
6 responsibilities of persons set forth in this chapter, all
7 gender-specific terminology, such as "wife", "husband",
8 "mother", "father", or similar terms, shall be construed in a
9 gender-neutral manner. This rule of interpretation shall apply
10 to all administrative rules adopted hereunder."

11 SECTION 2. Chapter 580, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§580- Interpretation of words to be gender-neutral.
15 With regard to the rights, benefits, protections, and
16 responsibilities of persons set forth under this chapter, all
17 gender-specific terminology, such as "wife", "husband",
18 "mother", "father", "aunt", "uncle", "niece", "nephew", or

2023 Act 161
Gender Neutral Terminology:
HRS Chapters 578 & 580
(Effective Date: January 1, 2024)

Gender Specific Term/Word	Gender Neutral Term/Word
Mother	Birthing Parent
Father	Non-Birthing Parent

Gender Neutral
Term/Word
(Effective: January 1, 2024)

Birthing Parent

Non-Birthing Parent

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 350
H.D. 2
S.D. 1

A BILL FOR AN ACT

RELATING TO CHILD ABUSE REPORTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that exempting members of
2 the clergy from mandatory reporting of suspected future child
3 abuse or neglect creates a danger that extreme cases of abuse
4 and neglect may never be reported to appropriate authorities if
5 details of those cases were revealed only in the context of a
6 penitential communication with clergy. The legislature
7 recognizes both the importance of ensuring the confidentiality
8 of penitential communications and the societal obligation to
9 protect vulnerable minors and prevent further harm in cases of
10 suspected future child abuse or neglect. The legislature
11 believes that this Act's limited exception to the exemption from
12 mandatory reporting by members of the clergy strikes an
13 appropriate balance between these two competing interests.

14 Accordingly, the purpose of this Act is to specify that the
15 exemption from mandatory reporting by members of the clergy does
16 not apply when the clergy member believes that there exists a
17 substantial risk that child abuse or neglect that is especially



2023 Act 80

Mandated Reporters: Clergy – Exception To Penitential Communications Exemption

HRS § 350-1.1(a)(1)

Members of the clergy are mandated child abuse and neglect reporters, except when the information is gained solely during a penitential communication: i.e. the sacrament of confession.

Exception to Penitential Exception:

The clergy member believes that there exists a substantial risk that child abuse or neglect that is especially heinous, atrocious, or cruel manifesting cruel depravity (as defined by HRS § 706-657) may occur in the reasonably foreseeable future.

HRS § 706-657:

The phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime which is unnecessarily torturous to a victim.

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 777
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the department of
2 human services assists vulnerable persons, including minors,
3 young adults, and vulnerable adults. It is therefore necessary
4 for the department of human services to exercise caution when
5 employing or retaining workers, including volunteers,
6 contractors, and others, whose positions place them in close
7 proximity with persons who may be at risk.

8 The purpose of this Act is to:

9 (1) Help ensure the safety of vulnerable persons by
10 authorizing the department of human services to
11 conduct comprehensive background checks on current or
12 prospective employees, volunteers, contractors,
13 contractors' employees and volunteers, subcontractors,
14 and subcontractors' employees and volunteers, whose
15 position places or would place them in close proximity
16 to certain minors, young adults, or vulnerable adults;
17 and



2023 Act 88

Background Checks

on JUN 14 2023

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAIIS.B. NO. 406
S.D. 1
H.D. 2

A BILL FOR AN ACT

RELATING TO CHILD VISITATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Section 571-46.3, Hawaii Revised Statutes, is
2 amended to read as follows:
- 3 "~~§571-46.3~~ **Grandparents' visitation rights; petition;**
4 **notice; order.** (a) A grandparent or the grandparents of a
5 minor child may file a petition with the court for an order of
6 reasonable visitation rights. The court may award reasonable
7 visitation rights; provided that the following ~~[criteria are~~
8 ~~met]~~ findings are made:
- 9 (1) ~~[This]~~ The State is the home state of the child at the
10 time of the commencement of the proceeding; [and]
- 11 (2) ~~[Reasonable visitation rights are in the best~~
12 ~~interests of the child.]~~ The petitioner's child, who
13 is a parent of the minor child, is otherwise unable to
14 exercise parental visitation of the minor child due to
15 incarceration or death; and
- 16 (3) Denial of reasonable grandparent visitation rights
17 would cause significant harm to the child.

2023 Act 77
Grandparent Visitation

Grandparent / Third Party Visitation Rights: Appellate Cases

Troxel v. Granville, 530 U.S. 57 (2000) (plurality opinion).

- The Washington State visitation statute was unconstitutional because it allowed third parties (such as grandparents) to be granted visitation even if the parent is “fit.”
- There is a rebuttable presumption that a “fit” parent is capable of determining whether visitation with a third party is in the child’s best interests

Doe v. Doe, 116 Hawai‘i 323, 172 P.3d 1067 (2007).

- The Hawai‘i grandparent statute, HRS § 571-46.3 is unconstitutional because it authorized the court to order visitation with grandparents, upon the finding that such visitation is in the child’s best interests, even if the parent is “fit.”
- The state can only invade these interests when there is a compelling state interest: the child has been harmed or is subject to threatened harm; the parent is “not fit.”

Grandparent / Third Party Visitation Rights: Appellate Cases

SC v. TG and AG, 151 Hawai'i 153, 509 P.3d 1116 (App. 2022).

- Based on the “**unique circumstances**” of this Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), HRS Chapter 583A case, the ICA affirmed the family court’s decision denying the father’s motion to modify the Colorado order granting the biological maternal grandparents visitation rights.
- The Colorado visitation order did not violate the liberty interests of the father, whose fitness was not at issue, because the children would suffer harm if they were not allowed to have visits with their grandparents.

HRS § 571-46.3: Grandparent Visitation Rights

Only Grandparents (no other third parties) have the right petition the family court to visit the child, provided the family court finds:

- Hawai'i is the child's home state.
- The parent (who is the grandparents' child) is unable to exercise their own visitation rights due to:
 - Incarceration; or
 - Death.
- Denial of reasonable grandparent visitation would cause significant harm to the child.

HRS § 571-46.3: Grandparent Visitation Rights

Rebuttable Presumption:

A [fit] parent's or custodian's decisions regarding visitation is in the best interests of the child.

Presumption is rebutted by clear and convincing evidence that denial of reasonable grandparent visitation would cause significant harm to the child.

The family court shall be guided by all standards, considerations, and procedures in awarding parental visitation under HRS § 571-46.

A BILL FOR AN ACT

RELATING TO CHILDREN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Section 571-11, Hawaii Revised Statutes, is
2 amended to read as follows:
- 3 "**§571-11 Jurisdiction; children.** Except as otherwise
4 provided in this chapter, the court shall have exclusive
5 original jurisdiction in proceedings:
- 6 (1) Concerning any person who is alleged to have committed
7 an act [~~prior to~~] before achieving eighteen years of
8 age that would constitute a violation or attempted
9 violation of any federal, state, or local law or
10 county ordinance. Regardless of where the violation
11 occurred, jurisdiction may be taken by the court of
12 the circuit where the person resides, is living, or is
13 found, or in which the offense is alleged to have
14 occurred;
- 15 (2) Concerning any child living or found within the
16 circuit[+] who is:



2023 Act 79
Emancipation of Minors
(Effective Date: January 1, 2024)

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

S.B. NO. 45
S.D. 1
H.D. 2

A BILL FOR AN ACT

RELATING TO MINORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that adolescence can be a
2 challenging time for young people. During this stage of life,
3 adolescents are navigating new experiences while encountering
4 potential changes in their social spheres, including their
5 relationships with peers and family members. Adolescents'
6 romantic relationships can cause tension between family members,
7 such as when parents do not want their child to date, advise
8 their child against entering into a relationship with a
9 particular person, or express disapproval of their child's
10 dating relationship. It is not uncommon for some adolescents to
11 keep private the details, in particular any problems or
12 challenges, of their romantic relationships.

13 The legislature also finds that adolescents in abusive
14 romantic relationships that were entered into without parental
15 approval may be reluctant to approach their parents for
16 assistance. Some adolescents have the option of seeking the
17 help of another trusted adult who is not their parent, such as a



2023 Act 259

Authorizing Minors to File Chapter 586 Petitions Without Parental Consent

on APR 19 2023

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 841
H.D. 2

A BILL FOR AN ACT

RELATING TO DOMESTIC ABUSE PROTECTIVE ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that when a parent seeks
2 a domestic abuse restraining order against another parent or
3 household member for allegations of domestic abuse, the law
4 requires a referral to the department of human services for
5 intervention or investigation by the child welfare services
6 branch. The legislature further finds that the law is
7 unnecessarily broad and overburdens the child welfare services
8 branch. Automatic referrals should be limited to allegations of
9 child abuse. The legislature notes that the family court
10 currently has the authority, at its discretion, to refer a case
11 to the department of human services where investigation is
12 warranted to ensure the family's safety.

13 Accordingly, the purpose of this Act is to amend the
14 automatic referral requirements regarding domestic abuse
15 protective orders to apply only when there are allegations of
16 alleged child abuse.



2023 Act 27

Family Court Referrals to the DHS In HRS Chapter 586 Proceedings

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

S.B. NO. 1267
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO PROTECTIVE ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 586-2, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "[~~+~~]~~586-2~~[~~+~~] Court jurisdiction. (a) An application for
4 relief under this chapter may be filed in [~~any~~] the family court
5 in the circuit in which [~~the~~]:
6 (1) The petitioner resides[~~-~~] or is temporarily located;
7 (2) The respondent resides;
8 (3) The subject of the petition, a petitioner's family or
9 household member who is a minor, an incapacitated
10 person as defined in section 560:5-102 or physically
11 unable to go to the appropriate place to complete or
12 file the petition, resides or is temporarily located;
13 or
14 (4) The domestic abuse occurred.
15 (b) Actions under this chapter shall be given docket
16 priorities by the court."



2023 Act 81

Authorizing the HRS Chapter 586 Petitioner to Appear Remotely

on APR 19 2023

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 1344
H.D. 2

A BILL FOR AN ACT

RELATING TO ANGER MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 586-4, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:
3 "(e) When a temporary restraining order is granted and the
4 respondent or person to be restrained knows of the order, a
5 knowing or intentional violation of the restraining order is a
6 misdemeanor. A person convicted under this section shall
7 ~~[undergo domestic violence intervention]~~ be ordered by the court
8 to complete an assessment at any available domestic violence
9 program ~~[as ordered by the court.]~~ and shall complete a domestic
10 violence intervention or anger management course as determined
11 by the domestic violence program. The court additionally shall
12 sentence a person convicted under this section as follows:
13 (1) Except as provided in paragraph (2), for a first
14 conviction for a violation of the temporary
15 restraining order, the person shall serve a mandatory
16 minimum jail sentence of forty-eight hours and be
17 fined ~~[not]~~ no less than \$150 nor more than \$500;



2023 Act 23

Domestic Violence/ Anger Management Assessment

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 579
H.D. 2
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO HUMAN TRAFFICKING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that children in the
2 State are vulnerable to sex trafficking and commercial sexual
3 exploitation. Foster children and runaways with histories of
4 abuse and neglect are at particularly high risk. Other highly
5 vulnerable groups include LGBTQ+ youth, immigrants, undocumented
6 workers, and youth suffering from mental illnesses and substance
7 abuse issues. Victims are often lured into sex trafficking
8 through traffickers' use of emotional manipulation and control,
9 force, fraud, or threats.

10 The legislature recognizes that, in the last decade, the
11 commercial sexual exploitation of children has garnered greater
12 attention in Hawaii and throughout the United States. The
13 department of human services has received an increasing number
14 of hotline calls involving witnesses or victims of child sex
15 trafficking. However, because child sex trafficking is covert,
16 it is difficult to accurately measure the scope of the problem,



2023 Act 83

State Human Trafficking Prevention Program

A BILL FOR AN ACT

RELATING TO CHILD AND ADOLESCENT MENTAL HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that there is a need to
2 improve mental health crisis intervention for at-risk youths in
3 the community by expanding existing crisis response services to
4 provide trauma-informed engagement within the system and
5 individual training in trauma-informed care. These expanded
6 services may reduce the risk of harm to youths; promote safety
7 for youths in home, school, and community settings; reduce the
8 use of emergency facilities, acute psychiatric hospitals, and
9 other out-of-home placements for youths; increase supports
10 available to youths and families to maintain placement and
11 improve quality of life; and provide trauma-informed care and
12 ongoing support to youths and families in the community.

13 The purpose of this Act is to establish, and appropriate
14 funds for, a child and adolescent crisis mobile outreach team
15 pilot program to provide additional support and expansion of
16 services for existing crisis response services, with one crisis
17 mobile outreach team to be located on Oahu and one crisis mobile



2023 Act 89

DOH Mobile Crisis Outreach Team Pilot Project

A group of nine diverse young children, ranging from approximately 4 to 7 years old, are standing in a row outdoors. They are all smiling and looking towards the camera. The children are dressed in casual clothing, including t-shirts, polo shirts, sweaters, and jeans. The background is a dark, out-of-focus brick wall. The text "Good Bye" is overlaid in the center of the image in a large, white, serif font.

Good Bye