



# 2025 Child Welfare Statutory Changes & Appellate Decisions


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## Disclaimers

- We have 40 minutes to get through this presentation.
- This presentation is given by Derek Peterson and Jamie DeMello in their **personal capacities**. The views and opinions expressed are our own, and do not necessarily reflect the views and opinions of the Department of the Attorney General or the Legal Aid Society of Hawai'i.
- Derek's portion of the presentation has a *Brady Bunch Movie* and *Very Brady Sequel* theme; Jamie's has a '90s nostalgia movies theme.



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## What are we going to talk about?

### State Legislative Update

- Act 147: Torture Statute
- Act 230: Compensation for Court-Appointed Counsel & GALs
- Act 298: Uniform Parentage Act
- Act 147 (2024): Central Registry
- Other Acts of Interest

### Federal Legislative Update

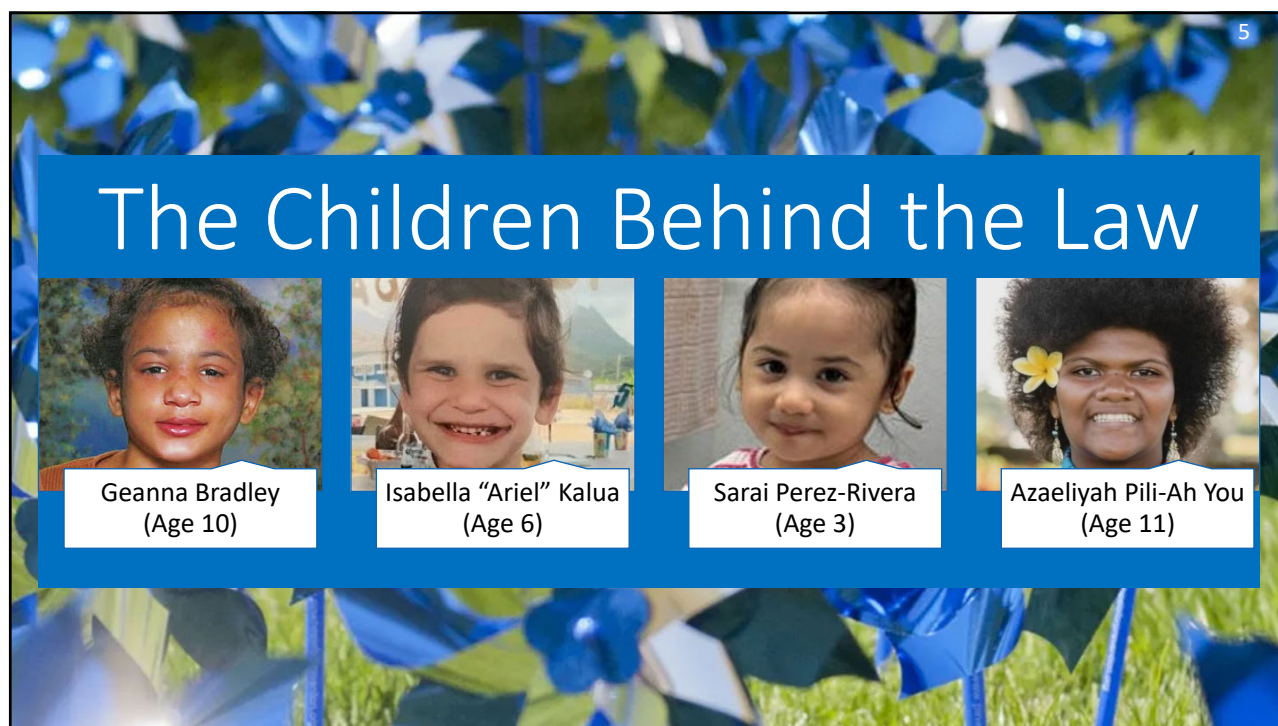
- Public Law 119-21: One Big Beautiful Bill Act
- Public Law 118-258: Supporting America's Children and Families Act

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## State Legislative Update

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**Act 147<sup>1</sup>: Torture Statute**

- Effective **May 30, 2025**.
- Creates a new class A felony offense of torture.

Before Act 147	After Act 147
<ul style="list-style-type: none"> <li>• Torture was not a standalone criminal offense.</li> <li>• Application was extremely limited: Could only be used as a sentencing enhancement in Murder-2 cases,<sup>2</sup> and only if the State proved beyond a reasonable doubt the torture was "unnecessary" to the killing.<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Torture is now its own class A felony.</li> <li>• Allows the State to prosecute torture regardless of whether it results in death.</li> <li>• Brings Hawai'i in line with majority of states.<sup>4</sup></li> <li>• Creates a defense in cases of food, water, or clothing deprivation where poverty is the sole cause of the deprivation.<sup>5</sup></li> </ul>

<sup>1</sup> Codified at HRS § 707 - (official classification pending), available at [https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1247\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1247_.PDF).

<sup>2</sup> HRS § 706-657.

<sup>3</sup> *State v. Young*, 93 Hawai'i 224, 999 P.2d 230 (2000) (holding that record did not support torture sentencing enhancement where Burger King employee was bludgeoned to death with both the claw and blunt ends of a hammer).

<sup>4</sup> See, e.g., Ann Ratnayake Macy, *A Precarious Gap in U.S. Criminal Codes for Cases of Child Torture and Suggested Model Statute*, 96 CHILDREN AND YOUTH SERVICES REVIEW (2019).

<sup>5</sup> Codified at HRS § 707-\*\*\* (5) (official classification pending), available at [https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1247\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1247_.PDF).

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## Act 230<sup>1</sup>: Compensation for Court-Appointed Counsel & GALs

- Effective **June 26, 2025**.
- Increases the fees for court-appointed counsel and GALs to \$150/hour for attorneys and \$122/hour for non-attorneys.
- Fun fact: The previous \$90/hour rate for attorneys and \$60/hour rate for non-attorneys were set in 2007 when the median price of a home on O'ahu was \$650K. Today, the median price is nearly double at \$1.17 million!<sup>2</sup> (And no, they still don't come with an avocado green kitchen or shag carpet.)



♪ Here's the story...of a rate increase! ♪

<sup>1</sup> Codified at HRS § 571-87(b)–(c).

<sup>2</sup> Credit and appreciation to Ian Tsuda for this factoid.

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## Act 298<sup>1</sup>: Uniform Parentage Act

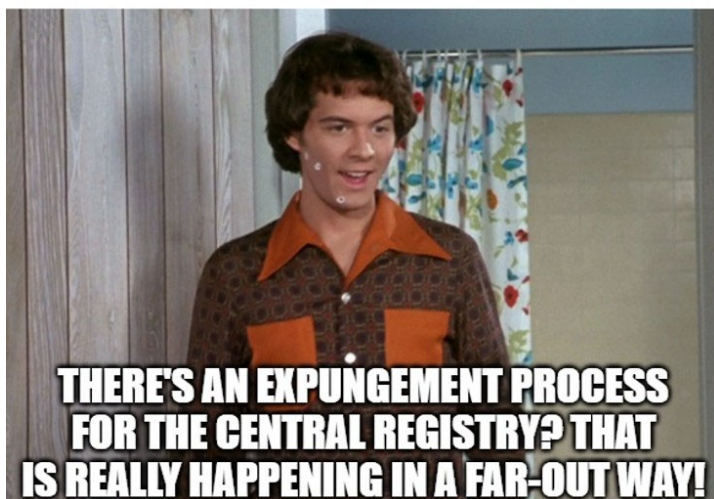
- Effective **January 1, 2026**.
- Substantial legislation (130+ pages) that repeals HRS Chapter 584 (the Uniform Parentage Act of 1973) and replaces it with a whole new chapter that largely tracks the Uniform Parentage Act of 2017.
- Modernizes Hawai'i parentage law to reflect diverse family structures by, among other things:
  - Using inclusive, gender-neutral definitions to recognize same-gender and non-gestational parents;
  - Clarifying the standards for parentage cases involving assisted reproductive technology and surrogacy; and
  - Clarifying the standards for recognizing "functional" (de facto) parents.
- Includes corresponding amendments to related statutes re: divorce, child support, probate, birth certificates, and more.



<sup>1</sup> Act 298 (July 7, 2025) (official classification pending), available at [https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1409\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1409_.PDF).

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## Act 147 (2024): Central Registry

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## Act 147 (2024)<sup>1,2</sup>: Central Registry (cont'd)

- Effective **July 1, 2025**.
- Clarifies forum for challenging the results of a Child Welfare Services (CWS) investigation and creates expungement process.
- Challenging confirmation of harm or threatened harm:
  - If confirmation is made in an open Family Court case (e.g., FC-S case or FDA case) ➡ challenge confirmation in Family Court.
  - If confirmation is not made in an open Family Court case ➡ challenge confirmation in the Administrative Appeals Office (AAO).
- Expungement process:
  - Person may request to be taken off the central registry after a **5-year waiting period** and the person can demonstrate evidence of rehabilitation.
  - Does NOT apply to confirmations of sexual abuse or aggravated circumstances.

<sup>1</sup> Codified at HRS §§ 350-1, 350-2(d), 350-2.5.

<sup>2</sup> The observant audience member will notice this slide is reproduced almost verbatim from last year's presentation.

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## Act 147 (2024)<sup>1</sup>: Central Registry (cont'd)

- Criteria for expungement:
  - (1) Length of time since the report was confirmed;
  - (2) Severity of the abuse or neglect, harm, or threatened harm;
  - (3) Age of the child at the time of the report;
  - (4) Age of the confirmed perpetrator at the time of the report;
  - (5) Evidence of the confirmed perpetrator's rehabilitation; and
  - (6) Any other relevant information received and deemed credible by the department, including but not limited to results of a criminal history record check.
- Implementing Hawai'i Administrative Rules (HARs) appear to be close to final approval!<sup>2</sup> Neat-o!



<sup>1</sup> Codified at HRS §§ 350-1, 350-2(d), 350-2.5.

<sup>2</sup> Preliminary Approval of Proposed Adoption of HAR Chapter 17-1605, available at <https://humanservices.hawaii.gov/wp-content/uploads/2025/06/PRELIMINARY-APPROVAL-OF-PROPOSED-ADOPTION-OF-CHAPTER-17-1605-HAWAII-ADMINISTRATIVE-RULES-RELATING-TO-CHILD-ABUSE-OR-NEGLECT-CENTRAL-REGISTRY.pdf>.

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## Other Acts of Interest

- Act 271<sup>1</sup>: Appropriates \$860K annually for FY 2025-2026 and FY 2026-2027 to DOH to establish peer-to-peer support programs for families with children ages 0 to 5. Effective **July 1, 2025**.
- Act 297<sup>2</sup>: Makes the Safe Spaces for Youth Program permanent. Effective **July 1, 2025**.
- Act 121<sup>3</sup>: Increases penalties for TRO and OFP violations. Effective **May 29, 2025**.
- Act 84<sup>4</sup>: Establishes that minors cannot be adjudicated of law violations until age 12. Effective **May 27, 2025**.
- Act 234<sup>5</sup>: Prohibits the detention of minors in adult correctional facilities except in very limited situations. Effective **June 26, 2025**.



<sup>1</sup> Act 271 (July 1, 2025), available at

[https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1374\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1374_.PDF).

<sup>2</sup> Codified at HRS § 352D- (official classification pending), available at

[https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1408\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2025/bills/GM1408_.PDF).

<sup>3</sup> Codified at HRS §§ 586-4(e), 586-11(a).

<sup>4</sup> Codified at HRS §§ 571-11, 571-21, 571-44.

<sup>5</sup> Codified at HRS §§ 571-32(d)-(e), (g)-(i), (k)-(l).

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# Federal Legislative Update

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## Public Law 119-21<sup>1</sup>: One Big Beautiful Bill Act<sup>2</sup>

- Enacted **July 4, 2025** (staggered effective dates).
- Sweeping tax and spending law with provisions affecting Medicaid, the Affordable Care Act (ACA), the Supplemental Nutrition Assistance Program (SNAP), immigration enforcement, and more.
- Congressional Budget Office estimates the number of individuals without health insurance will increase by 10 million by 2034.<sup>3</sup>
- Cuts to Medicaid and SNAP will not take full effect until after the 2026 midterm elections.

<sup>1</sup> Pub. L. No. 119-21, 139 Stat. 72 (July 4, 2025), available at <https://www.congress.gov/119/bills/hr1/BILLS-119hr1enr.pdf>.

<sup>2</sup> Although popularly known as the "One Big Beautiful Bill Act," that official short title was excised during the Senate amendment process. The final statute does not bear an official short title.

<sup>3</sup> Cong. Budget Office, *Estimated Budgetary Effects of Public Law 119-21, to Provide for Reconciliation Pursuant to Title II of H. Con. Res. 14, Relative to the Budget Enforcement Baseline for Consideration in the Senate at "Summary"* (July 21, 2025), available at <https://www.cbo.gov/publication/61569>.

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## Public Law 118-258: Supporting America's Children and Families Act

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## Social Security Act

OUR FOCUS



Title I: Grants to States for Old-Age Assistance for the Aged	Title II: Federal Old-Age, Survivors, and Disability Insurance Benefits	Title III: Grants to States for Unemployment Compensation Administration	Title IV: Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services	Title V: Maternal and Child Health Services Block Grant	Title VI: Temporary State Fiscal Relief
Title VII: Administration	Title VIII: Special Benefits for Certain World War II Veterans	Title IX: Miscellaneous Provisions Relating to Employment Security	Title X: Grants to States for Aid to the Blind	Title XI: General Provisions, Peer Review, and Administrative Simplification	Title XII: Advances to State Unemployment Funds
Title XIII: Reconversion Unemployment Benefits for Seamen	Title XIV: Grants to States for Aid to the Permanently and Totally Disabled	Title XV: Unemployment Compensation for Federal Employees	Title XVI: Grants to States for Aid to the Aged, Blind, or Disabled	Title XVI: Supplemental Security Income for the Aged, Blind, and Disabled	Title XVII: Grants for Planning Comprehensive Action to Combat Mental Retardation
	Title XVIII: Health Insurance for the Aged and Disabled	Title XIX: Grants to States for Medical Assistance Programs	Title XX: Block Grants to States for Social Services	Title XXI: State Children's Health Insurance Program	

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## Title IV of the Social Security Act

- Part A** Block Grants to States for Temporary Assistance for Needy Families (TANF)
- Part B** Child and Family Services ← **OUR FOCUS**
- Part C** Repealed
- Part D** Child Support and Establishment of Paternity
- Part E** Federal Payments for Foster Care, Prevention, and Permanency
- Part F** Repealed

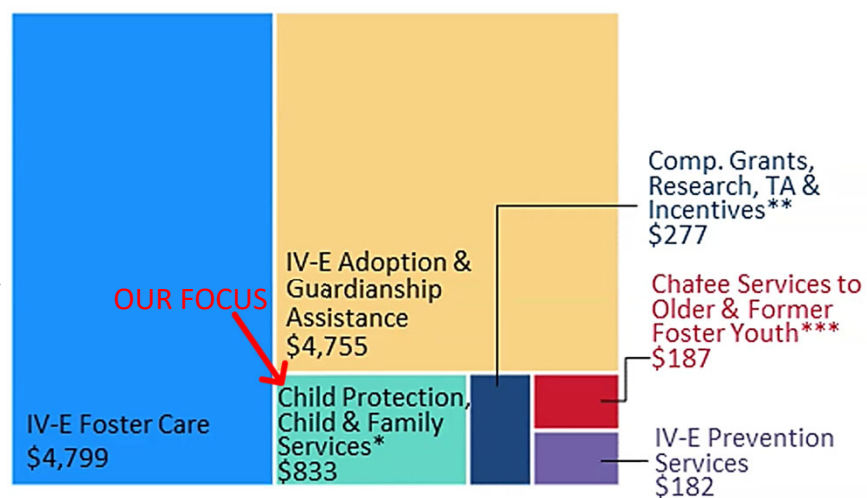
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## Federal Child Welfare Spending

**FY 2024 total:**  
**\$11 billion.**

Dollars shown in millions.



Source: Cong. Rsch. Serv., *Child Welfare: Purposes, Federal Programs, and Funding* (May 19, 2025), available at [https://www.congress.gov/crs\\_external\\_products/IF/PDF/IF10590/IF10590\\_51.pdf](https://www.congress.gov/crs_external_products/IF/PDF/IF10590/IF10590_51.pdf).

\* Includes IV-B and CAPTA formula grants.

\*\* Includes competitive IV-E, IV-B, CAPTA, and Victims of Child Abuse Act funds.

\*\*\* Includes Chafee general and ETV formula grants.

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## Public Law 118-258<sup>1</sup>: Supporting America's Children and Families Act

- Effective **October 1, 2025**.
- Reauthorizes and modernizes Title IV-B of the Social Security Act.
- Adds \$75 million annually starting in 2026 for state and tribal child welfare programs.
- Supports upstream efforts to keep families safely together before they are in crisis.
- Clarifies that poverty alone is not grounds for removing a child.



<sup>1</sup> Supporting America's Children and Families Act, Pub. L. No. 118-258, 138 Stat. 2947 (Jan. 4, 2025), available at <https://www.congress.gov/118/plaws/publ258/PLAW-118publ258.pdf>.



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## 90's Movies You Probably Forgot About (But Don't Forget About These Cases!)

State and Federal Case Law between July 2024 – August 2025

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### Case Law Update

Hawai'i Supreme Court

Hawai'i Intermediate Court of Appeals (ICA)

U.S. Court of Appeals for the Ninth Circuit

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## In re P Children, 155 Hawai'i 332, 564 P.3d 1131 (2025)

### Type of Case: CWS

- Termination of Parental Rights

### Facts

- Safety Concern = Mother's drug abuse
- At return hearing in June 2019, DHS makes oral motion for TFC, Mother defaulted for nonappearance
- In July 2019, Mother appeared, hearing continued, Mother ordered to get counsel
- Mother not appointed counsel until Nov. 2019
- September 2022 Court granted TPR
- ICA overturned TPR, stating that the failure to immediately appoint counsel constituted structural error. The CPA proceedings had to start over.
- GAL filed Application for Writ of Certiorari



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## In re P Children, 155 Hawai'i 332, 564 P.3d 1131 (2025) Cont.

### Holdings

- Parent's constitutional right to counsel is not invoked for structural error purposes until they appear and engage in the case, which includes complying with the court's process for determining indigency.
- Family courts to make indigency determination at a parent's first appearance in a 587A proceeding that substantially affects parental rights.
- After court makes an indigency determination family court should expeditiously undertake efforts to appoint counsel.



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## In re FG, SCWC-24-0000715, 2025 WL 1554616 (Haw. App. May 30, 2025)(Writ of Cert)

### Type of Case: CWS

### Facts

- Mother Appealed Family Court's decision to close her CWS case.
- Family Court filed Request for Temporary Remand to find Mother counsel. ICA construed court's request as motion made on behalf of Mother and denied the request, suggesting the action was not authorized by the Revised Code of Judicial Conduct.
- ICA Affirmed case closure.

### Supreme Court Granted Writ of Certiorari

- In the Writ, Supreme Court strongly disagreed with the ICA's handling of the Family Court's Request, noting that "the family court was bringing a potential violation of Mother's constitutional rights to the attention of the appellate court." SC stated that such action is consistent with the Revised Code of Judicial Conduct, which requires a Judge to accord every person who has a legal interest in a proceeding the right to be heard according to law.



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## In re B Children, No. CAAP-24-0000177, 2024 WL 3964689 (Haw. App. Aug. 28, 2024)(SDO) \*

### Type of Case: CWS

- Termination of Parental Rights

### Facts

- Safety Concerns = Parents reported they could not care for the children. Drug use and DV.
- Father alleges no reasonable efforts because DHS restricted his visitation with the children based on reports by Mother and her TRO, which DHS did not try to amend.
- Father alleges no reasonable efforts because the Children's therapist was not working on reunifying the children with him, but focused on adjusting to the foster home.

### Holding

- DHS not obligated to seek an amendment to Mother's TRO on Father's behalf.
- Per HRS Section 587A-15(b)(3), DHS is obligated to provide adequate psychological care for the children in a timely manner.
- Affirmed.



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## In re S.L., No. CAAP-24-0000344, 2025 WL 101699 (Haw. App. Jan. 15, 2025)(SDO) \*

### Type of Case: CWS

- Termination of Parental Rights

### Facts

- Parents appeal Order Terminating Parental Rights, arguing (1) legal guardianship as an alternative to adoption; (2) the Permanent Plan does not explain time period; and (3) the Permanent Plan fails to specify permanent placement.

### Holding

- HRS Section 587A-32(a) and HRS Section 587A-30, requires a compelling reason when a permanent plan states a goal of legal guardianship or permanent custody over adoption, not the other way around.
- HRS 587A-32(a)(2) requires permanent plan to establish reasonable time period for adoption/LG but does not mandate specific parameters.
- Final determination of permanent placement is not required to be decided until after termination, thus there is no requirement that the permanent plan identify a permanent placement prior to termination of the parents' rights.
- Affirmed.



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## In re T.J., NOS. CAAP-24-0000619 and CAAP-24-0000620, 2025 WL 661825 (Haw. App. Feb. 28, 2025)(mem. op.)\*

### Type of Case: CWS

- Foster Custody, Adjudication and Service Plan

### Facts

- Safety Concern = Sexual Abuse
- Father appeals OCCPA awarding foster custody, adjudicating the petition and ordering service plan.
- Father argues insufficient evidence to find he abused the children.
- Polygraph exam limitations
- An expert witness's conclusory opinions that the child's report is truthful and believable should not be admitted into evidence.
- Affirmed.



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## JW v. RE, No. CAAP-24-0000300, 2025 WL 1394007 (Haw. App. May 14, 2025)(SDO) \*

### Type of Case: Paternity Case

- Custody, Visitation, and Support Order
- Prior CWS case Mother Stipulated to Adjudication of Petition re sex abuse.

### Facts

- Mother appeals from family court's order awarding Father sole legal and physical custody of the child and granting Mother supervised video visits.
- Family Court found that Mother could not relitigate sexual abuse confirmation in Custody case and applied presumption re family violence under HRS Section 571-46(a)(9) against Mother (but not Father) based on Orders for Protection.
- Mother argues that her right to due process was denied because she was not allowed to contest the sexual abuse allegations in the custody case.

### Holding

- Issue re sexual abuse had not been "decided" in the CWS case because Mother stipulated.
- The family court erred by applying HRS Section 571-46(a)(9) presumption without a separate determination of family violence and applied the presumption based solely on the entry of an order for protection.
- Vacated and remanded.



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## Keaau Development Partnership LLC v. Lawrence, No. CAAP-24-0000494, 2025 WL 1366320 (Haw. App. May 12, 2025)(Order)\*

### Type of Case: Hawaii Rules of Civil Procedure

- AI Generated Citation

### Facts

- In his Memorandum in support of dismissing appeal, attorney cited a case that does not exist.
- ICA issued an Order to Show Cause to the attorney to show cause for why he should not be sanctioned for violating state rule of civil procedure requiring presentations to the court to be based on "existing law" arising out of his motion.
- Attorney hired a per diem attorney to help him draft the memorandum and it appears that attorney used AI to help them draft the motion.

### Holding

- A fake opinion is not "existing law" and an attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system.
- ICA noted that federal courts are seeing AI-generated citations to nonexistent cases more frequently.
- ICA found that attorney's citation of the nonexistent case without first attempting to read it to confirm his contention of its holding was a violation of Hawaii Rules of Civil Procedure 11(b)(2).
- The attorney was fined \$100



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## Bates v. Pakseresht, ---F.4th---2025, WL 2079875 (9th Cir. July 24, 2025)

Type of Case: Federal Constitutional Law

### Facts

- Bates applied to become a foster parent with intention to adopt. Oregon denied her application.
- Oregon's DHS ("ODHS") requires that prospective adoptive parents applying to adopt children from foster care agree to "respect, accept, and support the children's sexual orientation, gender identity, and gender expression. Prospective adoptive parents are required to attend a training, which further effectuates this policy."
- State denied Bates's application under this policy after Bates, based on her sincerely held religious beliefs, objected to using hypothetical adopted children's preferred pronouns or taking them to medical appointments for gender transitions. Bates prohibited from adopting any child in State's care.
- Bates sued the State under 42 U.S.C. Section 1983, alleging that the State policy violated her free speech and free exercise rights under the First Amendment and asked that the court declare the policy unconstitutional as applied to her, and sought a preliminary injunction.
- The district court denied her motion for preliminary injunction as she was not likely to succeed on the merits of the case.
- Bates appealed to the Ninth Circuit Court of Appeals.



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## Bates v. Pakseresht, ---F.4th---2025, WL 2079875 (9th Cir. July 24, 2025) Cont.

### Holding

- Oregon's rule **restricted and compelled speech** based on both content and viewpoint, and thus was subject to strict scrutiny under Free Speech Clause, despite state's contention that rule regulated only speech incidental to conduct; ODHS training material implementing rule instructed parents to use child's preferred pronouns, to allow child to dress and express themselves in accordance with their gender identity, to take child to affirming events, and to withhold contrary views.
- Oregon's policy **burdened** prospective adoptive parent's **religious exercise** and was neither neutral nor generally applicable, and thus was subject to strict scrutiny under Free Exercise Clause, even though parent could continue to hold her own religious views; ODHS training material implementing policy referenced religion as oppositional viewpoint, portrayed traditional faith-based communities in negative light, and directed parent to go against her religious commitments, ODHS incorporated ad hoc decision making based on non-objective criteria, and it denied parent's application only after she voiced religious objection.
- Reversed and remanded.



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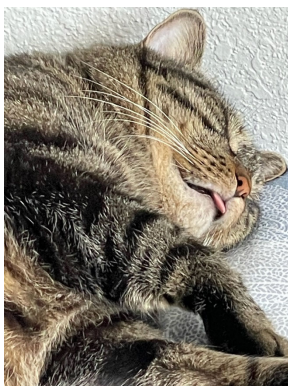
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## U.S. Immigration and Customs Enforcement Directive Re: Detention and Removal of Alien Parents and Legal Guardians of Minor Children

- ICE Directive 11064:4 issued **July 2, 2025**
- "Provides guidance regarding the detention and removal of alien parents and legal guardians of a minor child(ren), to include those who have a direct interest in family court or child welfare proceedings in the United States."
- Allows Covered Individuals to make **in person appearances** in family court or child welfare proceedings when required to maintain or regain custody of minor child(ren).
- **Child welfare** should **provide** documentation for court proceedings or mandated services to ERO Field Offices.
- Directive requires facilitation of **parent-child visitation** when mandated by the family/dependency court or child welfare authority, unless there are safety or security concerns.
- ICE Personnel to facilitate a Covered Individual's efforts to make travel arrangements for **dependents to accompany** them upon repatriation to their home country ("removal"). Itinerary may be shared with stakeholders.
- If the covered individual elects to have their **dependent remain** in the U.S., they will be afforded an opportunity to make alternative caregiving arrangements if necessary.
- If the Covered Individual has an on-going child welfare or guardianship proceeding and is being repatriated, ICE will consider whether the Covered Individual may need to communicate with a child welfare/guardianship stakeholder in advance of their repatriation.
- **Directive and Fact Sheets provided in handouts**

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Tiger  
(AKA Derek's fur baby)



Waiona  
(AKA Jamie's Dog-ter)

## Contact us!

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Questions?



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Thank you!



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