


<p style="text-align: center;"><b>INTERNAL</b></p> <p style="text-align: center;"><b>COMMUNICATION FORM</b></p> <p style="text-align: center;">DEPARTMENT OF HUMAN SERVICES</p>		<p style="text-align: center;"><b>Suspense</b></p> <p style="text-align: center;">07/01/25</p>	
<p><b>Subject:</b>    <b>Revisions to 587A, HRS, Exigent Circumstances and Ex Parte Orders for Protective Custody and Temporary Foster Custody</b></p>		<p><b>Originator:</b>                      Program Development</p>	
To:    ALL CWS SECTIONS	From:    CWSB	Date:    06/19/25	Memo No. 1
<p><b><u>EFFECTIVE DATE OF PROCEDURES DETAILED IN THIS INTERNAL COMMUNICATION:</u></b> July 1, 2025</p>			
<p><b><u>FOR INFORMATION:</u></b></p> <p>In 2024, the legislature passed, and the governor signed a bill that became Act 144, Session Laws of Hawaii 2024 (Act 144). Act 144 revised multiple sections of the Child Protective Act, chapter 587A, Hawaii Revised Statutes (HRS), to establish in the law a mechanism to obtain an ex parte court order for protective custody that directs the police to assume protective custody. The specific revisions to chapter 587A, HRS, are as follows:</p> <ol style="list-style-type: none"> <li>1. Added a definition of “exigent circumstances” to § 587A-4, HRS. “‘Exigent circumstances’ means that, based on specific and articulable evidence, there is reasonable cause to believe that immediately assuming protective custody and temporary foster custody of a child is necessary to protect the child from serious harm that is likely to occur before a court order can be obtained.”</li> <li>2. Modified the definition of “harm” to be the same as the definition of “child abuse and neglect,” which is defined in § 350-1, HRS.</li> <li>3. Modified the definition of “imminent harm” in § 587A-4, HRS. “‘Imminent harm’ means that there is reasonable cause to believe that harm to the child will occur or reoccur and no reasonable efforts other than removal of the child from the family home will adequately prevent the harm.”</li> <li>4. Limited the power of police to take protective custody in § 587A-8, HRS. Police can only take protective custody in three situations: 1. With the legal custodian’s consent; 2. With a court order for protective custody; or 3. If the police believe that there are exigent circumstances as defined in § 587A-4, HRS.</li> <li>5. Defined the power of DHS to take temporary foster custody in § 587A-9, HRS. Like the police, DHS can only assume temporary foster custody in three situations: 1. With the legal custodian’s consent; 2. With a court order for temporary foster custody; or 3. If a police officer has taken protective custody based on their assessment of exigent circumstances and DHS agrees that exigent circumstances are present.</li> <li>6. Established a process to obtain protective custody with a court order at § 587A-11(9), HRS. DHS must file a petition for temporary foster custody, along with an ex parte motion explaining why there is reasonable cause to believe that the child is subject to imminent harm as defined in § 587A-4, HRS. The ex parte motion must be accompanied by a written report. DHS does not have to file a full safe family home report and service plan with the petition, but it will need to file those documents prior to the return hearing on the petition.</li> </ol>			

<b>Subject:</b>	<b>Revisions to 587A, HRS, Exigent Circumstances and Ex Parte Orders for Protective Custody and Temporary Foster Custody</b>	<b>Originator:</b>	Program Development
To:	ALL CWS SECTIONS	From:	CWSB
Date:	06/18/25		Memo No. 1, Page 2
<p>To support the new process to obtain protective custody and temporary foster custody with a court order, the following procedures were developed in consultation with the Department of the Attorney General, Department of Human Services - Social Services Division - Child Welfare Services (CWS) Branch, the Family Courts, and county police departments.</p>			
<b><u>FOR ACTION:</u></b>			
<p>1. <u>Decision about when and how to assume foster custody</u></p> <ul style="list-style-type: none"><li>a. In consultation with their supervisor, the caseworker shall complete their assessment and determine that there is harm or threatened harm that requires removal of a child from the family home. (Please refer to DHS Child Welfare Procedures Manual - Part II. Assessment, Section 2. Assessment Tools and Part III, Section 2. Social Work Investigations).</li><li>b. The caseworker and supervisor must then determine the appropriate steps to take in obtaining foster custody of the child.</li><li>c. The supervisor and caseworker shall consult with their Section Administrator as needed about when and how to obtain foster custody.</li><li>d. DHS may consult with the Department of the Attorney General, as needed.</li></ul> <p>A. Exigent circumstances: This is the standard for the police to assume protective custody of a child without a court order. DHS can then assume temporary foster custody without a court order if DHS agrees with the assessment of the police that there are exigent circumstances. The police have to determine, or agree with your requested determination, that exigent circumstances are present. This determination requires three things. First, there has to be specific and articulable evidence to support the determination. Second, temporary foster custody must be “necessary to protect the child from serious harm.” Finally, that serious harm has to be “likely to occur before a court order can be obtained.”</p> <ul style="list-style-type: none"><li>1. When DHS has assessed that there are exigent circumstances present, DHS may contact the police to request that the police assume protective custody of the child. To get the police to make a determination of exigent circumstances, the worker will have to explain the “specific and articulable evidence.” That requires some preliminary investigation to gather that evidence.</li><li>2. The child must need protection from serious harm</li><li>3. The time frame to consider for when the serious harm will likely occur is going to vary, depending on how long it will take to process the request for a court order. This time period will vary based on the circumstances, including but not limited to the day of the week, the time of day, and the circuit where the family lives.</li><li>4. After DHS assumes temporary foster custody of the child from the police, DHS has three working days to file the petition for temporary foster custody.</li></ul> <p>B. Imminent harm: This is the standard for assuming temporary foster custody with a court order. If there are no exigent circumstances but the child is subject to imminent harm, then DHS can seek an ex parte order which directs the police to take protective custody of the child. DHS must establish two things:</p>			

<b>Subject:</b>	<b>Revisions to 587A, HRS, Exigent Circumstances and Ex Parte Orders for Protective Custody and Temporary Foster Custody</b>	<b>Originator:</b>	Program Development			
To:	ALL CWS SECTIONS	From:	CWSB	Date:	06/18/25	Memo No. 1, Page 3
<p>1. First, “that there is reasonable cause to believe that harm to the child will occur or reoccur.”</p> <p>2. Second, that “no reasonable efforts other than removal of the child from the family home will adequately prevent the harm.” DHS has to document what other efforts were considered or tried and why those efforts would not sufficiently protect the child.</p> <p>C. Neither exigent circumstances nor imminent harm: This is the standard for obtaining foster custody, not temporary foster custody, by court order. In rare circumstances, a child who needs to be in foster custody is currently in a relatively safe and stable situation and DHS can request that the court order foster custody at a hearing on the petition for foster custody. DHS can simply file a petition seeking foster custody and not seek temporary foster custody if the child is not at risk of imminent harm.</p> <p>2. <u>Procedure to obtain an Ex Parte Order for Protective Custody when there is imminent harm (specific procedures will vary in each circuit)</u></p> <p>A. Prepare the Report for Orders for Protective Custody and Temporary Foster Custody</p> <p>1. Focus on the imminent harm.</p> <p>2. Detail what other options were considered before seeking a court order for protective custody and temporary foster custody, and why those options are not sufficient to prevent harm to the child, such as efforts to engage parents and efforts to assess and develop an In-Home Safety Plan.</p> <p>3. The Drafting Guide for the Report for Orders for Protective Custody and Temporary Foster Custody is available for reference, as needed.</p> <p>4. The Report for Orders for Protective Custody and Temporary Foster Custody and Drafting Guide for the Report for Orders for Protective Custody and Temporary Foster Custody is attached to this ICF and available in SHAKA in the Document Center under Report for Orders for Protective Custody and Temporary Foster Custody. They can also be found at: R:\CWS Forms\Report for Orders for Protective Custody &amp; TFC</p> <p>B. Email the Report for Orders for Protective Custody and Order for Temporary Foster Custody to the Department of the Attorney General, Family Law Division (FLD). Work with FLD to prepare the Petition for Order Awarding Temporary Foster Custody, Ex Parte Motion for Protective Custody, and Ex Parte Order for Protective Custody.</p> <p>C. Submit the Petition for Order Awarding Temporary Foster Custody, Ex Parte Motion for Protective Custody, Ex Parte Order for Protective Custody, and necessary accompanying documents to the Family Court.</p> <p>1. The Petition for Order Awarding Temporary Foster Custody, Ex Parte Motion for Protective Custody, Ex Parte Order for Protective Custody, and Summons must be filed by the Family Court.</p>						

<b>Subject:</b> Revisions to 587A, HRS, Exigent Circumstances and Ex Parte Orders for Protective Custody and Temporary Foster Custody			<b>Originator:</b> Program Development			
To:	ALL CWS SECTIONS	From:	CWSB	Date:	06/18/25	Memo No. 1, Page 4
<p>2. The Family Court will set the temporary foster custody hearing within 2 days of filing the Petition for Order Awarding Temporary Foster Custody.</p> <p>D. Pick up and deliver the Petition for Order Awarding Temporary Foster Custody, Ex Parte Motion for Protective Custody, Ex Parte Order for Protective Custody, and necessary accompanying documents to the police, who must:</p> <ol style="list-style-type: none"> <li>1. Make every reasonable effort to serve the child's parents and the person who has physical custody of the child with the service packet; and</li> <li>2. Immediately take the child into protective custody and transfer custody to DHS.</li> <li>3. Prepare the Safe Family Home Report and Service Plan, which must be filed by the temporary foster custody hearing date, unless required sooner by the Family Court.</li> </ol> <p>3. All CWSB shall:</p> <ol style="list-style-type: none"> <li>A. Review this ICF.</li> <li>B. Implement the procedures described in this ICF – effective date July 1, 2025.</li> <li>C. Consult with Supervisors, Section Administrators, or Branch Administrators on implementation. Section Administrators may consult with Branch Administrators and/or the designated Assistant Program Development Administrator, lforvilly@dhs.hawaii.gov, at (808) 587-3168, as needed for questions or clarification.</li> </ol>						
<div style="text-align: center;">   <hr/> Elladine Olevao, CWSBA </div>						
<b>Attachments:</b> Report for Orders for Protective Custody and Temporary Foster Custody Drafting Guide for the Report for Orders for Protective Custody and Temporary Foster Custody						
<b>cc:</b> SSDA CWSBA/ACWSBA All CWS Sections PDA 1&2 SSO SDOA Department of the Attorney General – Family Law Division Department of the Attorney General – Human Services Division						