H.B. NO. 3136

A BILL FOR AN ACT

RELATING TO CHILD WELFARE SERVICES.

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

SECTION 1. The federal Child and Family Services Review of Hawaii's child welfare system recommends the use of culturally sensitive and family strengthening diversion and other supportive services to improve the safety and well-being of children and families. This Act seeks to comply with the Child and Family Services Review's recommendations by clarifying that our local customs of caring for children outside of the family home by relatives and friends and other diversion and supportive services are, where appropriate, available alternatives to the department of human services and the court assuming custody of children. This will ensure that no child is taken into custody unnecessarily and will preserve the relationships that are important to every child's well-being.

SECTION 2. Section 587-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"<u>"Caregiver" means an adult who is not the child's legal and physical custodian but with whom a child has been residing</u>

for at least six months with the verbal or written consent of the child's legal and physical custodian; this definition applies to situations outside of the child welfare system, not situations of voluntary placement or court order.

"Safe home" means a home, other than the family home, where a child has resided with the consent of the child's legal and physical custodian, and where an adult other than the child's legal and physical custodian has demonstrated a willingness and ability to provide a home where the child is not subject to harm or threatened harm, as determined by the department. A "safe home" situation lies outside of the formal child welfare system, and shall not apply to situations involving voluntary placement or court order."

SECTION 3. Section 587-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon satisfying itself as to the course of action that should be pursued to best accord with the purpose of this chapter, the department shall:

(1) Close the matter if the child is residing with an appropriate caregiver who is willing and able to provide a safe home for the child provided that:

(A) There is documentation of the following:

1 (i) Concerns, findings, and problems that
2 initially warranted the department's
3 involvement, the specific needs of parents,
4 specific services offered to address those
5 needs, and whether the parents declined
6 services;
7 (ii) The parents' acknowledgment that they
8 understand the risk of terminating their
9 parental rights;
10 (iii) Whether the caregiver is eligible to be
11 licensed by the department; provided that
12 the department has the discretion to
13 determine that, even if the home is not
14 licensable, the home is safe;
15 (iv) The length of time the child can live with
16 the caregiver, and the agreed upon
17 conditions for the child's return, including
18 but not limited to, notice from the
19 caregiver to the department if the child
20 will be returned to the legal and physical
21 custodian;

1 (v) Whether the caregiver and the child are
2 entitled to the same benefits and services
3 that are available to a foster parent and a
4 foster child, including legal services, and
5 whether the caregiver has been informed of
6 these benefits and services, including
7 obtaining an adoption or guardianship; and
8 (vi) Whether the parents and the caregiver agreed
9 that the caregiver can only return the child
10 to the parents with prior notification from
11 the department; and
12 (vii) Whether the legal and physical custodians
13 cannot be located, or that based on the
14 information that is available, they are in
15 agreement with the placement of the child
16 with the caregiver;
17 (B) If the department determines there is a need, the
18 caregivers may be offered diversion or legal
19 assistance services, to the extent that funding
20 and services are available, as long as the
21 department has determined that the caregiver is

1 able to provide a safe home without the services
2 offered;
3 [~~(1)~~] (2) Resolve the matter in an informal fashion
4 appropriate under the circumstances[~~;~~] including but
5 not limited to referring the child and family to a
6 state or community resource that provides the
7 assistance needed to address the problems in the
8 family home;
9 [~~(2)~~] (3) Seek to enter into a service plan, without
10 filing a petition in court, with members of the
11 child's family and other authorized agency as the
12 department deems necessary to the success of the
13 service plan, including but not limited to, the
14 member or members of the child's family who have
15 legal custody of the child. The service plan may
16 include an agreement with the child's family to
17 voluntarily place the child in the foster custody of
18 the department or other authorized agency, or to
19 place the child and the necessary members of the
20 child's family under the family supervision of the
21 department or other authorized agency; provided that
22 if a service plan is not successfully completed

within six months, the department shall file a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter and the case shall be reviewed as is required by federal law;

[~~(3)~~] (4) Assume temporary foster custody of the child pursuant to section 587-24(a) and file a petition with the court under this chapter within three working days, excluding Saturdays, Sundays, and holidays, after the date of the department's assumption of temporary foster custody of the child; or

[~~(4)~~] (5) File a petition or [~~ensure that a petition is filed by~~] refer the matter to another appropriate authorized agency who may file a petition for jurisdiction of the child in court under this chapter."

SECTION 4. Section 587-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A police officer shall assume protective custody of the child without a court order and without the consent of the child's family regardless of whether the child's family is

absent, if in the discretion of the police officer, the child is in such circumstance or condition that the child's continuing in the custody or care of the child's family presents a situation of imminent harm to the child.

[~~A police officer may assume protective custody of the child without a court order and without the consent of the child's family regardless of whether the child's family is absent, if in the discretion of the police officer:~~

~~(1) The child has no legal custodian who is willing and able to provide a safe family home for the child; or~~

~~(2) There is evidence that the parent or legal of the child has subjected the child to harm or threatened harm and that the parent or legal guardian is likely to flee the jurisdiction of the court with the child.~~]"

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin Kirk Gray

BY REQUEST

JAN 22 2008

H.B. NO. 3136

Report Title:
Child welfare; Caregivers; Child Custody

Description:
Clarifies the law to ensure that local customs of caring for children outside the home by friends and relatives are an available alternative when considering the custody of children.

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JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO CHILD WELFARE SERVICES.

PURPOSE: To specify that the children who have an appropriate caregiver do not have to be removed from the caregiver's home if they are safe and add the definitions of "caregiver" and "safe home" to section 587-2, Hawaii Revised Statutes.

MEANS: Amend sections 587-2, 587-21(b), and 587-22(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The proposed changes to chapter 587, HRS, will clarify that the Department may consider alternate care arrangements made by a legal and physical custodian of a child if a determination is made that the alternate care arrangement is safe and appropriate for the child. The Department will not be required to petition for jurisdiction, or remove a child from a safe home if it has been established that the child has been living in the caretaker's home with the legal and physical custodian's written or verbal consent for more than 6 months. This will ensure that no child is taken into custody unnecessarily and will preserve the relationships that are important to the child's well-being.

Chapter 587, HRS, currently requires that the Department assess the safety of the home of the legal and physical custodians of a child who has been reported to the Department as abused or neglected and assigned for investigation.

This means that the Department must base its determination of the safety of the child on our assessment of the home of the child's legal and physical custodians, even if they

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have made safe and appropriate arrangements with family members, or others, to care for and supervise the child outside of the family home.

The proposed changes align our foster care system with previous legislation that provided eligible caregivers the ability to sign consents to meet a child's educational needs (Act 99, Session Laws of Hawaii (SLH) 2003) and medical care (Act 208, SLH 2005). Clearly, the Legislature has recognized and sanctioned appropriate care arrangements, either formal or informal, made by the legal and physical custodians of a child that are safe and appropriate. Most often the care arrangement will be with a member of the child's extended family, which ensures the child, will develop and maintain positive and lasting relationships with their siblings and other family.

Impact on the public: The changes will decrease the number of children in foster custody.

Impact on the department and other agencies: The Department will not be required to take children into custody who have not been abused or neglected.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS 301

OTHER AFFECTED AGENCIES: The Judiciary; Department of the Attorney General

EFFECTIVE DATE: Upon approval.