

JAN 26 2009

A BILL FOR AN ACT

RELATING TO PERMANENCY HEARINGS.

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

1 SECTION 1. Chapter 587, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§587- Permanency hearings. (a) A permanency hearing
5 shall be held within twelve months of the child's initial date
6 of entry into out-of-home care or within thirty days of a
7 judicial determination that the child is an abandoned infant or
8 that aggravated circumstances are present and reasonable efforts
9 to reunify a child and family are not required. The permanency
10 hearing may be held simultaneously with a review hearing. The
11 status of the child shall be reviewed at least every twelve
12 months thereafter, for as long as the child remains in out-of-
13 home care under the placement responsibility of the department.

14 (b) The court must review the status of the case to
15 determine whether the child is receiving appropriate services
16 and care, that case plans are being properly implemented, and
17 that activities are directed toward a permanent placement for
18 the child. Procedural safeguards relating to notice,

1 participation of the parties, and appeal shall be provided
2 according to the rules of the court. At the permanency hearing,
3 the court shall:

4 (1) Determine that the department has made reasonable
5 efforts to finalize a permanency plan for the child
6 within twelve months of the initial date of entry into
7 out-of-home care;

8 (2) Determine the safety of the child and the continued
9 need for and appropriateness of the out-of-home
10 placement;

11 (3) Determine the extent to which each party has complied
12 with the case plan and the progress that the family
13 has made in making the home safe;

14 (4) Determine the extent of progress toward resolving the
15 problems that caused the placement and necessitate
16 continued placement;

17 (5) Project a likely date for the child's return to a safe
18 family home, or permanent placement out of the family
19 home in the following order of preference, through
20 adoption, through legal guardianship, or through other
21 permanent out-of-home placement;

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- 1 (6) Determine the need for a permanent plan hearing
2 pursuant to section 587-73;
- 3 (7) Determine in the following order of preference
4 whether, and if applicable when, the child will be:
- 5 (A) Returned to the legal custodian;
6 (B) Placed for adoption and parental rights divested;
7 (C) Placed in a legal guardianship;
8 (D) Placed permanently with a fit and willing
9 relative; or
- 10 (E) Placed in another planned permanent custody
11 living arrangement, but only in cases where the
12 department has documented to the court a
13 compelling reason for determining it would not be
14 in the best interest of the child to follow one
15 of the four specified options above.
- 16 (8) In the case of a child who will not be returned to the
17 parent, the hearing shall consider in-state and out-
18 of-state placement options.
- 19 (9) Determine if the child is placed out of the state in
20 which the home of the legal custodian is located,
21 whether the out-of-state placement continues to be in
22 the best interest of the child;

1 appropriate, the court shall consider the criteria set forth in
2 section 587-73(a) (1), (2), and (4), and:

3 (1) Set the case for a [~~permanent plan~~] permanency hearing
4 [~~and order that the authorized agency submit a report~~
5 ~~pursuant to section 587-40~~]; or

6 (2) Proceed pursuant to this section."

7 (2) By amending subsection (j) to read as follows:

8 "(j) If the court makes a determination that aggravated
9 circumstances are present under this section, the court shall
10 set the case for a [~~show cause~~] permanency hearing [~~as deemed~~
11 ~~appropriate by the court~~] within thirty days. [~~At the show~~
12 ~~cause hearing, the child's family shall have the burden of~~
13 ~~presenting evidence to the court regarding the reasons and~~
14 ~~considerations as to why the case should not be set for a~~
15 ~~permanent plan hearing.]"~~

16 (3) By amending subsection (p) to read as follows:

17 "(p) Nothing in this section shall prevent the court from
18 setting a show cause hearing, a permanency hearing, or a
19 permanent plan hearing at any time the court determines such a
20 hearing to be appropriate."

21 SECTION 3. Section 587-72, Hawaii Revised Statutes, is
22 amended to read as follows:

1 **"§587-72 Review hearings.** (a) Except for good cause
2 shown, the court shall set each case for review hearing not
3 later than six months after the date that a service plan is
4 ordered by the court and, thereafter, the court shall set
5 subsequent review hearings at intervals of no longer than six
6 months until the court's jurisdiction has been terminated or the
7 court has ordered a permanent plan and has set the case for a
8 permanent plan review hearing. The court may set a case for a
9 review hearing upon the motion of a party at any time if the
10 hearing is deemed by the court to be in the best interests of
11 the child.

12 (b) Upon each review hearing, the court shall consider
13 fully all relevant prior and current information pertaining to
14 the safe family home guidelines, as set forth in section 587-25,
15 including but not limited to the report submitted pursuant to
16 section 587-40, and:

17 (1) Determine whether the child's family is presently
18 willing and able to provide the child with a safe
19 family home without the assistance of a service plan
20 and, if so, the court shall terminate jurisdiction;

21 (2) Determine whether the child's family is presently
22 willing and able to provide the child with a safe

1 family home with the assistance of a service plan and,
2 if so, the court shall return the child or continue
3 the placement of the child in the child's family home
4 under the family supervision of the appropriate
5 authorized agency;

6 (3) If the child's family home is determined, pursuant to
7 paragraph (2) not to be safe, even with the assistance
8 of a service plan, order that the child remain or be
9 placed under the foster custody of the appropriate
10 authorized agency;

11 (4) Determine whether the parties have complied with,
12 performed, and completed every term and condition of
13 the service plan that was previously court ordered;

14 (5) Order revisions to the existing service plan, after
15 satisfying section 587-71(h), as the court, upon a
16 hearing that the court deems to be appropriate,
17 determines to be in the best interests of the child;
18 provided that a copy of the revised service plan shall
19 be incorporated as part of the order;

20 (6) Enter further orders as the court deems to be in the
21 best interests of the child;

1 (7) Determine whether aggravated circumstances are present
2 and, if so, the court shall set the case for a [show
3 cause] permanency hearing [~~as the court deems~~
4 appropriate] within thirty days. [~~At the show cause~~
5 hearing, the child's family shall have the burden of
6 presenting evidence to the court regarding the reasons
7 and considerations as to why the case should not be
8 set for a permanent plan hearing]; and

9 (8) If the child has been residing outside the family home
10 for twelve consecutive months from the initial date of
11 entry into out-of-home care, set the case for a [show
12 cause] permanency hearing [~~as deemed appropriate by~~
13 the court. ~~At the show cause hearing, the child's~~
14 family shall have the burden of presenting evidence to
15 the court regarding the reasons and considerations as
16 to why the case should not be set for a permanent plan
17 hearing]."

18 (c) In any case that a permanent plan hearing is not
19 deemed to be appropriate, the court shall:

20 (1) Make a finding that the parties understand that unless
21 the family is willing and able to provide the child
22 with a safe family home, even with the assistance of a

1 service plan, within the reasonable period of time
2 specified in the service plan, their respective
3 parental and custodial duties and rights shall be
4 subject to termination; and

5 (2) Set the case for a review hearing within six months.

6 (d) If the child has been residing outside of the family
7 home for an aggregate of fifteen out of the most recent twenty-
8 two months from the initial date of entry into out-of-home care,
9 the department shall file a motion to set the matter for a
10 permanent plan hearing unless:

11 (1) The department has documented in the safe family home
12 guidelines prepared pursuant to section 587-25(a), a
13 compelling reason why it would not be in the best
14 interests of the child to file a motion; or

15 (2) The State has not provided to the family of the child,
16 consistent with the time period in the service plan,
17 such services as the department deems necessary for
18 the safe return of the child to the family home;

19 provided that nothing in this section shall prevent the
20 department from filing such a motion to set a permanent plan
21 hearing if the department has determined that the criteria in
22 section 587-73(a) are present.

1 (e) If the child's family home is determined not to be
2 safe, even with the assistance of a service plan pursuant to
3 subsection (b) (2), the court may, set the case for a show cause
4 hearing as deemed appropriate by the court at which the child's
5 family shall have the burden of presenting evidence to the court
6 regarding such reasons and considerations as the family has to
7 offer as to why the case should not be set for a permanent plan
8 hearing. Upon such show cause hearing as the court deems to be
9 appropriate, the court shall consider the criteria set forth in
10 section 587-73(a) (1), (2), and (4), and:

- 11 (1) Set the case for a permanency hearing; or
12 (2) Otherwise proceed pursuant to this section."

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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BY REQUEST

Report Title:

Permanency Hearings

Description:

Amends chapter 587, Hawaii Revised Statutes, to ensure compliance with federal Title IV-E hearing requirements.

SB 912

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO PERMANENCY HEARINGS.

PURPOSE: To ensure compliance with federal Title IV-E hearing requirements to be consistent with the federal case review system in section 475(5) of the Social Security Act, including 6-month periodic review hearings and 12-month permanency hearings.

MEANS: Add a new section to chapter 587, Hawaii Revised Statutes, and amend sections 587-71 (e), (j) and (p) and 587-72, Hawaii Revised Statutes.

JUSTIFICATION: This legislation is necessary to ensure that chapter 587, Hawaii Revised Statutes, is consistent with federal Title IV-E provisions related to permanency hearings. Currently, chapter 587 does not specifically address the federal requirement for permanency hearings at twelve-month intervals to determine the permanency plan for a child in accordance with section 475(5)(C)(1) of the Social Security Act and title 45 Code of Federal Regulations section 1356.21(h). Instead, chapter 587 continues to require eighteen-month dispositional hearings along with requirements that were made obsolete by the amendments in the Adoption and Safe Families Act of 1997 (P.L. 105-89).

The Department is in the process of submitting an updated Title IV-E State Plan and this is one of the requirements needed to finalize federal approval of the State Plan. If the suggested changes are not made, the State Plan will not be approved which will jeopardize the State's receipt of Title IV-E federal funds until the statute is revised.

The State receives over \$50,000,000 in Title IV-E federal funds per year.

Impact on the public: There would be an extremely negative impact on the public if the State loses any Title IV-E federal funding.

Impact on the department and other agencies: While there will be an initial implementation and adjustment period when the new provisions take effect, it is already a general family court practice to review the need for permanency at twelve-month intervals to determine the permanency plan for a child.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	HMS 301
OTHER AFFECTED AGENCIES:	Judiciary, Department of the Attorney General
EFFECTIVE DATE:	Upon approval.