

JAN 28 2015

A BILL FOR AN ACT

RELATING TO NATIVE HAWAIIAN CHILDREN.

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

PART I

1
2 SECTION 1. The legislature, recognizing the special
3 relationship between the United States, the State of Hawaii, and
4 the native Hawaiian people, and the federal and state
5 responsibility to native Hawaiians, finds:

6 (1) That clause 3, section 8, article 1 of the United
7 States Constitution provides that: "The Congress
8 shall have Power ... To regulate Commerce with foreign
9 Nations, and among the several States, and with the
10 Indian Tribes" and that, through this and other
11 constitutional authority, Congress has plenary power
12 over native Hawaiian affairs;

13 (2) That Congress, through statute, treaties, and the
14 general course of dealing with native Hawaiians, has
15 assumed the responsibility for the protection and
16 preservation of native Hawaiians and their resources;



1 (3) That there is no resource that is more vital to the
2 continued existence and integrity of native Hawaiians
3 than their children, and that the United States has a
4 direct interest as trustee in protecting native
5 Hawaiian children;

6 (4) Approximately 50 per cent of the foster care cases
7 under the jurisdiction of the department of human
8 services involve native Hawaiian families; and

9 (5) Native Hawaiian communities and families have
10 expressed concern that cultural needs are not
11 considered as heavily as they should be in the
12 placement of children in custody proceedings.

13 The legislature hereby declares that it is the policy of
14 this State to protect the cultural and traditional interests of
15 native Hawaiian children and to promote the stability and
16 security of native Hawaiian families by:

17 (1) Establishing standards for the removal of native
18 Hawaiian children from their families and the
19 placement of these children in hanai or lawe hanai
20 homes that will reflect the unique values of native
21 Hawaiian culture; and



1 (2) Providing assistance to native Hawaiians in the
2 operation of child and family service programs.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 NATIVE HAWAIIAN CHILD WELFARE ACT

8 PART I. CHILD CUSTODY PROCEEDINGS

9 § -1 Short title. This chapter may be cited as the
10 "Native Hawaiian Child Welfare Act".

11 § -2 Definitions. For the purposes of this chapter,
12 except as may be specifically provided otherwise:

13 "Ahupuaa" means native Hawaiian districts as defined in
14 Kingdom of Hawaii law and any lands, not covered under such
15 section, title to which is either held by the United States and
16 the department of Hawaiian home lands in trust for the benefit
17 of any native Hawaiian or held by any native Hawaiian subject to
18 a restriction by the Nation of Hawaii against alienation.

19 "Child custody proceeding" shall include hanai placement or
20 lawe hanai placement of, or involuntary termination of parental
21 rights to, a native Hawaiian child.



1 "Extended family member" shall be as defined by the custom
2 of the native Hawaiian child, and shall include a person who has
3 reached the age of eighteen years and who is the native Hawaiian
4 child's grandparent, aunt or uncle, brother or sister, brother-
5 in-law or sister-in-law, niece or nephew, first or second
6 cousin, stepparent, or hanai or lawe hanai relation.

7 "Hanai" means the native Hawaiian customary and traditional
8 system of family in the nurture, care, and custody of their
9 children.

10 "Hanai or lawe hanai placement":

11 (1) Means any action to remove a native Hawaiian child
12 from the child's parent or native Hawaiian or non-
13 native Hawaiian custodian for temporary placement in a
14 hanai or lawe hanai home or institution, or the home
15 of a guardian or conservator. In a hanai or lawe
16 hanai placement, the parent or native Hawaiian or non-
17 native Hawaiian custodian cannot have the child
18 returned upon demand, but the parental rights of that
19 parent or custodian have not been terminated; and

20 (2) Shall not include a placement based upon an act which,
21 if committed by an adult, would be deemed a crime; or



1 upon an award in a divorce or similar proceeding of
2 custody of the child to one of the parents.

3 "Ho'oponopono" means native Hawaiian customary and
4 traditional philosophies of spiritual healing.

5 "Lawe hanai placement" means related by blood or a blood
6 relation.

7 "Na kupuna tribunal" means the na kupuna administrative
8 body before which matters may be heard or tried but which is not
9 necessarily presided over by judges as in a judicial forum. The
10 na kupuna tribunal exercises licensing, certifying, approval, or
11 adjudication authority that affects the legal rights of all
12 native Hawaiian people and includes the maximum participation of
13 native Hawaiians in all phases of its activities.

14 "Native Hawaiian":

15 (1) Means any person who is a linear descendant of the
16 people who exercised sovereignty in Hawaii prior to
17 1778; and

18 (2) Includes any native Hawaiian nation, or native
19 Hawaiian organized group or native Hawaiian community,
20 which is recognized as eligible for the special
21 programs and services provided by the United States to



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1 native Hawaiians because of their status as native
2 Hawaiians.

3 "Native Hawaiian child" means any unmarried or married
4 person who is under the age of eighteen.

5 "Native Hawaiian or non-native Hawaiian custodian" means
6 any native Hawaiian or non-native Hawaiian person who has the
7 responsibility for the care, custody, and control of a native
8 Hawaiian child under standards and policies adopted by the na
9 kupuna tribunal, or to whom temporary physical care, custody,
10 and control has been transferred by the parent of the child.

11 "Native Hawaiian organization" means any group,
12 association, partnership, corporation, or other legal entity
13 owned or controlled by native Hawaiians.

14 "Parent" means any biological parent or parents of a native
15 Hawaiian child or any native Hawaiian or non-native Hawaiian
16 person who has lawfully adopted a native Hawaiian child,
17 including hanai or lawe hanai customs.

18 **§ -3 Na kupuna tribunal; establishment.** There shall be
19 established the na kupuna tribunal, which is a body corporate
20 and politic. The na kupuna tribunal shall be placed within the
21 First Hawaiian Nation for administrative purposes only.



1 The na kupuna tribunal shall consist of members.

2 Notwithstanding section 26-34, members of the na kupuna
3 tribunal shall be selected by each na kupuna island council.

4 The members of the tribunal shall serve without compensation,
5 but shall be reimbursed reasonable expenses in connection with
6 their duties.

7 **§ -4 Na kupuna tribunal; jurisdiction over native**

8 **Hawaiian child custody proceedings.** (a) The na kupuna tribunal
9 shall have exclusive jurisdiction over any child custody
10 proceeding involving a Native Hawaiian child in this State, and
11 may petition for the transfer of proceedings involving a native
12 Hawaiian child from any other state to its jurisdiction pursuant
13 to this chapter. Where a Native Hawaiian child is a ward of a
14 native Hawaiian organization or non-native Hawaiian entity, the
15 na kupuna tribunal shall retain exclusive jurisdiction over the
16 child, notwithstanding the residence or domicile of the child.
17 The department of human services shall take necessary action to
18 assist in the proceedings under this section.

19 (b) In any court proceeding for the hanai or lawe hanai
20 placement of, or involuntary termination of parental rights to a
21 Native Hawaiian child in this State, the court shall transfer



1 the proceeding to the jurisdiction of the na kupuna tribunal,
2 absent objection by either parent, and upon the petition of
3 either parent or the native Hawaiian or non-native Hawaiian
4 custodian.

5 (c) The na kupuna tribunal may decline jurisdiction over
6 any case at any time.

7 **§ -5 Right of intervention.** The native Hawaiian or non-
8 native Hawaiian custodian of the child and the na kupuna
9 tribunal shall have a right to intervene at any point in any
10 state court proceeding for the hanai or lawe hanai placement of,
11 or involuntary termination of parental rights to a native
12 Hawaiian child.

13 **§ -6 Proceedings in other states and jurisdictions.** (a)
14 The native Hawaiian or non-native Hawaiian custodian of the
15 native Hawaiian child and the na kupuna tribunal may petition to
16 intervene at any point in any court proceeding for the hanai or
17 lawe hanai placement of, or involuntary termination of parental
18 rights to a native Hawaiian child, in any other state or
19 jurisdiction.

20 (b) In any court proceeding for the hanai or lawe hanai
21 placement of, or involuntary termination of parental rights to a



1 native Hawaiian child, the native Hawaiian or non-native
2 Hawaiian custodian of the child and the na kupuna tribunal may
3 petition the court for transfer of the proceedings to this
4 State.

5 **§ -7 Court proceedings.** (a) In any child custody
6 proceeding in a court of this State, where the court knows or
7 has reason to believe that a Native Hawaiian child is involved,
8 the party seeking the hanai or lawe hanai placement of, or
9 involuntary termination of parental rights to, a native Hawaiian
10 child shall notify the parent or native Hawaiian or non-native
11 Hawaiian custodian and the na kupuna tribunal by registered mail
12 with return receipt requested, of the pending proceedings and of
13 their right of intervention. If the identity or location of the
14 parent, native Hawaiian or non-native Hawaiian custodian, or the
15 na kupuna tribunal cannot be determined, the notice shall be
16 given to the governor, who shall have fifteen days after receipt
17 to provide the requisite notice to the parent or native Hawaiian
18 or non-native Hawaiian custodian and the na kupuna tribunal.

19 (b) No child custody proceeding involving a Native
20 Hawaiian child shall be held until at least ten days after
21 receipt of notice by the parent or native Hawaiian or non-native



1 Hawaiian custodian and the na kupuna tribunal; provided that the
2 parent or native Hawaiian custodian or the na kupuna tribunal
3 shall be granted, upon request, up to twenty additional days to
4 prepare for the proceeding.

5 (c) Where it appears to the court that a person requesting
6 the appointment of counsel satisfies the requirements of chapter
7 802 for determination of indigency, the parent or native
8 Hawaiian custodian shall have the right to counsel provided by
9 the na kupuna tribunal. Compensation for counsel shall be as
10 provided in section 571-87.

11 (d) Each party to a hanai or lawe hanai placement, or
12 involuntary termination of parental rights proceeding involving
13 a Native Hawaiian child shall have the right to examine all
14 reports or other documents filed with the court upon which any
15 decision with respect to the action may be based.

16 (e) Any court entering a final decree or order for hanai
17 or lawe hanai placement of a Native Hawaiian child after the
18 effective date of this Act shall provide the na kupuna tribunal
19 with a copy of such decree or order together with such other
20 information as may be deemed necessary to show:

21 (1) The name and genealogy of the child;



- 1 (2) The names and addresses of the biological parents;
- 2 (3) The names and addresses of the hanai or lawe hanai
- 3 parents; and
- 4 (4) The identity of any agency having files or information
- 5 relating to the hanai or lawe hanai placement.

6 Where the court records contain an affidavit of the
7 biological parent or parents requesting that their identity
8 remain confidential, the court shall include the affidavit with
9 the other information. The na kupuna tribunal shall ensure that
10 the confidentiality of the information is maintained and the
11 information shall not be subject to chapter 92F or the Freedom
12 of Information Act (5 U.S.C. 552), as amended.

13 **§ -8 Remedial services and rehabilitative programs;**
14 **preventive measures.** (a) Any party seeking to effect a hanai
15 or lawe hanai placement of, or involuntary termination of
16 parental rights to, a Native Hawaiian child shall immediately be
17 referred to the na kupuna tribunal to provide customarily
18 traditional remedial services and culturally sensitive
19 rehabilitative programs designed to prevent the involuntary
20 breakup of the native Hawaiian family.



1 (b) No hanai or lawe hanai placement may be ordered in
2 such proceeding in the absence of a determination, supported by
3 evidence beyond a reasonable doubt, and by testimony of native
4 Hawaiian family members and the na kupuna tribunal that the
5 continued custody of the child by the parent or native Hawaiian
6 custodian is likely to result in serious emotional or physical
7 damage to the child.

8 § -9 Parental rights; involuntary termination

9 prohibited. No involuntary termination of parental rights may
10 be ordered.

11 § -10 Parental rights; consent to voluntary termination.

12 (a) Where any parent or native Hawaiian custodian voluntarily
13 consents to a hanai or lawe hanai placement, or to the voluntary
14 termination of parental rights to a native Hawaiian child, the
15 consent shall not be valid unless executed in writing and
16 recorded before the na kupuna tribunal or other competent
17 jurisdiction, and accompanied by the na kupuna tribunal's
18 certification that the terms and consequences of the consent
19 were fully explained in detail and were fully understood by the
20 parent or native Hawaiian custodian. The explanation and
21 consent may be in the English language if understood by the



1 parent or native Hawaiian custodian, or at the request of the
2 parent or native Hawaiian custodian, shall be in any language
3 the parent or native Hawaiian custodian understands.

4 (b) Any consent given prior to, or within twelve months
5 after, the birth of the native Hawaiian child shall not be
6 valid.

7 **§ -11 Parental rights; withdrawal of consent to**
8 **voluntary termination.** (a) Any parent or native Hawaiian or
9 non-native Hawaiian custodian may withdraw consent to a hanai or
10 lawe hanai placement at any time, and upon the withdrawal, the
11 child shall be returned to the parent or native Hawaiian or non-
12 native Hawaiian custodian.

13 (b) In any voluntary proceeding for termination of
14 parental rights to, or voluntary adoptive placement of a native
15 Hawaiian child, the consent of the parent may be withdrawn for
16 any reason, and the child shall be returned to the parent upon
17 completion of ho'oponopono process in its entirety.

18 (c) After the entry of a final decree of voluntary
19 adoption of a native Hawaiian child in any court, the parent may
20 withdraw consent thereto upon the ground that consent was
21 obtained through fraud or duress and may petition the court to



1 vacate the decree. Upon a finding that the consent was obtained
2 through fraud or duress, the court shall vacate the decree and
3 return the child to the parent. Any adoption that has been
4 obtained through fraud or duress shall be invalidated under this
5 subsection.

6 **§ -12 Petition to court of competent jurisdiction to**
7 **invalidate action upon showing of certain violations.** Any
8 native Hawaiian child who is the subject of any action for hanai
9 or lawe hanai placement or involuntary termination of parental
10 rights, any parent or native Hawaiian custodian from whose
11 custody the child was removed, and the na kupuna tribunal may
12 petition any court of competent jurisdiction to invalidate the
13 action upon a showing that the action violated any provision of
14 this chapter.

15 **§ -13 Placement of native Hawaiian children.** (a) In
16 any hanai or lawe hanai placement of a native Hawaiian child
17 under this chapter, preference shall be given, in the absence of
18 good cause to the contrary, to a placement with:

- 19 (1) A member of the child's extended family;
20 (2) Other members of the native Hawaiian child's family;
21 (3) Other native Hawaiian families;



- 1 (4) A hanai or lawe hanai home licensed, approved, or
- 2 specified by the na kupuna tribunal;
- 3 (5) A native Hawaiian hanai or lawe hanai home licensed or
- 4 approved by a non-native Hawaiian licensing authority
- 5 authorized by the na kupuna tribunal; or
- 6 (6) An institution for children approved by the na kupuna
- 7 tribunal or operated by a native Hawaiian organization
- 8 that has a program suitable to meet the native
- 9 Hawaiian child's needs.

10 The na kupuna tribunal may establish a different order of
11 preference by resolution.

12 (b) Any child accepted for hanai or lawe hanai placement
13 shall be placed in the least restrictive setting that most
14 approximates a family and in which the child's special needs, if
15 any, may be met. The child shall also be placed within
16 reasonable proximity to the child's former home, taking into
17 account any special needs of the child.

18 (c) Where appropriate, the preference of the native
19 Hawaiian child or parent shall be paramount; provided that where
20 a consenting parent evidences a desire for anonymity, the na



1 kupuna tribunal or authorized agency shall give weight to the
2 desire in applying the preferences.

3 (d) The standards to be applied in meeting the preference
4 requirements of this section shall be the prevailing social and
5 cultural standards of the native Hawaiian community in which the
6 parent or extended family resides or with which the parent or
7 extended family members maintain social and cultural ties.

8 (e) A record of each placement of a native Hawaiian child
9 shall be maintained by the na kupuna tribunal in which the
10 placement was made, evidencing the efforts to comply with the
11 order of preference specified in this section. The record shall
12 be made available at any time upon the request of the na kupuna
13 tribunal.

14 **§ -14 Return of custody.** (a) Whenever a final decree
15 of adoption of a native Hawaiian child has been vacated or set
16 aside, or the adoptive parents voluntarily consent to the
17 termination of their parental rights to the child, a biological
18 parent or prior native Hawaiian custodian may petition for
19 return of custody of the child. The na kupuna tribunal shall
20 grant the petition unless there is a showing, in a proceeding



1 subject to this chapter, that the return of custody is not in
2 the best cultural interests of the child.

3 (b) Whenever a native Hawaiian child is removed from a
4 hanai home or lawe hanai home or institution for the purpose of
5 further hanai placement, the placement shall be in accordance
6 with this chapter, except in the case where a native Hawaiian
7 child is being returned to the parent or native Hawaiian
8 custodian from whose custody the child was originally removed.

9 **§ -15 Genealogical information; disclosure by the na**
10 **kupuna tribunal.** Upon application by a native Hawaiian
11 individual who has reached the age of eighteen and who was the
12 subject of a hanai or lawe hanai placement, or the hanai or lawe
13 hanai parents of a native Hawaiian child, the na kupuna tribunal
14 shall disclose such information as may be necessary for the
15 determination of any rights or benefits the individual or child
16 may have that is associated with the child's genealogy. Where
17 the documents relating to the child contain an affidavit from
18 the biological parent or parents requesting anonymity, the na
19 kupuna tribunal shall certify to the native Hawaiian child's
20 family, where the information warrants, that the child's



1 parentage and other circumstances of birth entitle the child to
2 all rights and benefits of that lineage.

3 **§ -16 Reassumption of jurisdiction over child custody**
4 **proceedings.** (a) The na kupuna tribunal that became subject to
5 state jurisdiction pursuant to the Admission Act of 1959 or
6 pursuant to any other federal law, may reassume jurisdiction
7 over child custody proceedings. Before the na kupuna tribunal
8 may reassume jurisdiction over native Hawaiian child custody
9 proceedings, the na kupuna tribunal shall present to the
10 governor for approval a petition to reassume jurisdiction that
11 includes a suitable plan to exercise jurisdiction.

12 (b) In considering the petition and feasibility of the
13 plan of the na kupuna tribunal under subsection (a), the
14 governor shall consider, among other things:

15 (1) Whether or not the na kupuna tribunal maintains a
16 sovereign roster of native Hawaiians clearly
17 identifying the persons who will be affected by the
18 reassumption of jurisdiction by the tribunal;

19 (2) The size of the native Hawaiian land base that will be
20 affected by retrocession and reassumption of
21 jurisdiction by the na kupuna tribunal;



1 (3) The population base of the na kupuna tribunal, or
2 distribution of the population in homogeneous
3 communities or geographic areas; and
4 (4) The feasibility of the plan in cases of multicultural
5 occupation of a single geographic area.
6 (c) In those cases where the governor determines that the
7 jurisdictional provisions of this chapter are not feasible, the
8 governor is authorized to accept partial retrocession to enable
9 the na kupuna tribunal to exercise referral jurisdiction, or,
10 where appropriate, may allow the na kupuna tribunal to exercise
11 exclusive jurisdiction as provided in this chapter over limited
12 community or geographic areas.
13 (d) If the governor approves any petition under subsection
14 (a), the governor shall have notice of the approval published in
15 the Federal Register and shall notify the affected states of the
16 approval. The na kupuna tribunal shall reassume jurisdiction
17 sixty days after publication in the Federal Register of notice
18 of approval. If the governor disapproves any petition under
19 this section, the governor shall provide technical assistance as
20 may be necessary to enable the na kupuna tribunal to correct any



1 deficiency that the governor identified as a cause for
2 disapproval.

3 (e) Assumption of jurisdiction under this section shall
4 not affect any action or proceeding over which the na kupuna
5 tribunal already assumed jurisdiction.

6 **§ -17 Agreements between other states and na kupuna**
7 **tribunal.** (a) The na kupuna tribunal may enter into agreements
8 with other states respecting care and custody of native Hawaiian
9 children and jurisdiction over child custody proceedings,
10 including agreements that may provide for the orderly transfer
11 of jurisdiction of all cases affected by this chapter and
12 agreements authorized by this section that provide for
13 concurrent jurisdiction between the other states and the na
14 kupuna tribunal.

15 (b) Agreements entered into pursuant to subsection (a)
16 shall bind all parties upon ninety days' written notice to the
17 other party and shall not affect any action or proceeding over
18 which a court has already assumed jurisdiction, unless the
19 agreement provides otherwise.

20 **§ -18 Improper removal of child from custody; return of**
21 **child.** Where any petitioner in a native Hawaiian child custody



1 proceeding before a state court has improperly removed the child
2 from the custody of the parent or native Hawaiian custodian, or
3 has improperly retained custody after a visit or other temporary
4 relinquishment of custody, the court shall decline jurisdiction
5 over the petition and shall return the child to its parent or
6 native Hawaiian custodian unless the court determines, based
7 upon evidence beyond a reasonable doubt, that returning the
8 child to its parent or custodian would subject the child to a
9 substantial and immediate danger or threat of such danger.

10 **§ -19 Na kupuna tribunal standard applicable to protect**
11 **rights of parent or native Hawaiian custodian of native Hawaiian**
12 **child.** In any case where na kupuna tribunal law applicable to
13 child custody proceedings provides a higher standard of
14 protection to the rights of the parent or native Hawaiian
15 custodian of a native Hawaiian child than the rights provided
16 under this chapter, the state or federal court shall apply the
17 na kupuna tribunal standard.

18 **§ -20 Emergency removal or placement of child;**
19 **appropriate action.** (a) Nothing in this chapter shall be
20 construed to prevent the emergency removal of a native Hawaiian
21 child from its parent or native Hawaiian or non-native Hawaiian



1 custodian or the emergency placement of the child in a hanai or
2 lawe hanai home or institution to prevent imminent physical
3 damage or harm to the child.

4 (b) Any governmental authority, official, or agency
5 involved in the emergency removal or placement shall ensure that
6 the removal or placement terminates immediately when no longer
7 necessary to prevent imminent physical damage or harm to the
8 child, and shall expeditiously initiate a child custody
9 proceeding subject to the provisions of this chapter, transfer
10 the child to the jurisdiction of the na kupuna tribunal, or
11 restore the child to the parent or native Hawaiian custodian, as
12 may be appropriate.

13 § -21 **Rules.** Within ninety days after the effective
14 date of this Act, the na kupuna tribunal shall adopt rules,
15 pursuant to chapter 91, as may be necessary to carry out this
16 chapter.

17 **PART II. OTHER PROGRAMS**

18 § -31 **Grants for native Hawaiian programs and child**
19 **welfare codes.** (a) The na kupuna tribunal is authorized to
20 accept grants from the federal government to assist in the
21 establishment and operation of native Hawaiian child and family



1 service programs and in the preparation and implementation of
2 child welfare codes. The objective of every native Hawaiian
3 child and family service program shall be to prevent the breakup
4 of native Hawaiian families and, in particular, to ensure that
5 the involuntary termination of parental rights of native
6 Hawaiian families do not occur, thus preserving the native
7 Hawaiian hanai custom, including lawe hanai.

8 (b) Child and family service programs of the na kupuna
9 tribunal may include but are not limited to:

- 10 (1) Licensing or otherwise regulating native Hawaiian
11 hanai or lawe hanai homes;
- 12 (2) Operation and maintenance of facilities for the
13 counseling and treatment of native Hawaiian families
14 and for the temporary custody of native Hawaiian
15 children;
- 16 (3) Family assistance, including homemaker and home
17 counselors, day care, after school care, employment,
18 recreational activities, and respite care;
- 19 (4) Home improvement programs;
- 20 (5) Employment of native Hawaiian professionals and other
21 trained native Hawaiian personnel to assist the na



1 kupuna tribunal in the disposition of domestic
2 relations and child welfare matters;

3 (6) Education and training of native Hawaiians, including
4 na kupuna tribunal staff, in skills relating to child
5 and family assistance and service programs;

6 (7) A subsidy program under which hanai or lawe hanai
7 children may be provided support comparable to that
8 for which they would be eligible as native Hawaiian
9 children, taking into account the appropriate native
10 Hawaiian cultural values of support for maintenance
11 and medical needs; and

12 (8) Guidance, legal representation, and advice to native
13 Hawaiian families involved in all child custody
14 proceedings.

15 (c) Funding of programs in accordance with this section
16 may be utilized as non-federal matching share in connection with
17 funds provided under Titles IV-B and XX of the Social Security
18 Act (42 U.S.C. sections 620 et seq., 1397 et seq.) or under any
19 other federal financial assistance program that contributes to
20 the purpose for which the funds are authorized to be
21 appropriated for use under this chapter. Assistance under this



1 chapter shall not be a basis for the denial or reduction of any
2 assistance otherwise authorized under Titles IV-B and XX of the
3 Social Security Act or any other federal financial assistance
4 program. For purposes of qualifying for assistance under a
5 federally assisted program, licensing or approval of hanai or
6 lawe hanai homes or institutions by the na kupuna tribunal shall
7 be deemed equivalent to licensing or approval by the State.

8 (d) In the establishment, operation, and funding of native
9 Hawaiian child and family service programs, the na kupuna
10 tribunal may enter into agreements with the Secretary of Health
11 and Human Services; provided that authority to make payments
12 pursuant to the agreements shall be effective only to the extent
13 and in the amounts as may be appropriated in advance by the
14 legislature."

15 SECTION 3. Chapter 571, Hawaii Revised Statutes, is
16 amended by adding a new section to part VI to be appropriately
17 designated and to read as follows:

18 "§571- Application to native Hawaiians. (a) A child
19 custody proceeding that pertains to a native Hawaiian child, as
20 defined in chapter , shall not be subject to this chapter
21 to the extent that it is governed by chapter .



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1 (b) A court of this State shall treat the na kupuna
 2 tribunal, established in chapter _____, as if it were a state of
 3 the United States for the purpose of applying this chapter.

4 (c) A child custody determination involving a native
 5 Hawaiian child made pursuant to chapter _____ shall be
 6 recognized and enforced under this chapter."

7 SECTION 4. Chapter 578, Hawaii Revised Statutes, is
 8 amended by adding a new section to be appropriately designated
 9 and to read as follows:

10 **"§578- Application to native Hawaiians.** A child custody
 11 proceeding that pertains to a native Hawaiian child, as defined
 12 in chapter _____, shall not be subject to this chapter to the
 13 extent that it is governed by chapter _____."

14 SECTION 5. Chapter 587A, Hawaii Revised Statutes, is
 15 amended by adding a new section to be appropriately designated
 16 and to read as follows:

17 **"§587A- Cultural needs.** The cultural needs of a child
 18 shall be considered, as part of the best interests of the child
 19 standard, in the foster custody, placement, and permanent
 20 custody decisions made by the court under any proceeding under
 21 this chapter."



1 SECTION 6. 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, and except as related to child custody
5 proceedings involving native Hawaiian children as provided by
6 chapter _____, the court shall have exclusive original
7 jurisdiction in proceedings:

8 (1) Concerning any person who is alleged to have committed
9 an act prior to achieving eighteen years of age which
10 would constitute a violation or attempted violation of
11 any federal, state, or local law or municipal
12 ordinance. Regardless of where the violation
13 occurred, jurisdiction may be taken by the court of
14 the circuit where the person resides, is living, or is
15 found, or in which the offense is alleged to have
16 occurred[=];

17 (2) Concerning any child living or found within the
18 circuit:

19 (A) Who is neglected as to or deprived of educational
20 services because of the failure of any person or



- 1 agency to exercise that degree of care for which
- 2 it is legally responsible;
- 3 (B) Who is beyond the control of the child's parent
- 4 or other custodian or whose behavior is injurious
- 5 to the child's own or others' welfare;
- 6 (C) Who is neither attending school nor receiving
- 7 educational services required by law whether
- 8 through the child's own misbehavior or
- 9 nonattendance or otherwise; or
- 10 (D) Who is in violation of curfew[-];i
- 11 (3) To determine the custody of any child or appoint a
- 12 guardian of any child[-];i
- 13 (4) For the adoption of a person under chapter 578[-];i
- 14 (5) For the termination of parental rights under sections
- 15 571-61 to 571-63[-];i
- 16 (6) For judicial consent to the marriage, employment, or
- 17 enlistment of a child, when such consent is required
- 18 by law[-];i
- 19 (7) For the treatment or commitment of a mentally
- 20 defective, mentally retarded, or mentally ill
- 21 child[-];i



- 1 (8) Under the Interstate Compact on Juveniles under
- 2 chapter 582[-];
- 3 (9) For the protection of any child under chapter 587[-];
- 4 and
- 5 (10) For a change of name as provided in section
- 6 574-5(a)(2)(C)."

7 SECTION 7. Section 571-87, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) [~~When~~] Except as provided in chapter _____, when it
10 appears to a judge that a person requesting the appointment of
11 counsel satisfies the requirements of chapter 802 for
12 determination of indigency, or the court in its discretion
13 appoints counsel under chapters 587 and 346, part X, or that a
14 person requires appointment of a guardian ad litem, the judge
15 shall appoint counsel or a guardian ad litem to represent the
16 person at all stages of the proceedings, including appeal, if
17 any. Appointed counsel and the guardian ad litem shall receive
18 reasonable compensation for necessary expenses, including
19 travel, the amount of which shall be determined by the court,
20 and fees pursuant to subsection (b). All of these expenses



1 shall be certified by the court and paid upon vouchers approved
2 by the judiciary and warrants drawn by the comptroller."

3 SECTION 8. Section 577-25, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~§~~577-25~~§~~] **Emancipation of certain minors.** Any law to
6 the contrary notwithstanding, a minor who has been married
7 pursuant to chapter 572 shall be deemed to be emancipated and
8 shall be regarded as though he or she were of legal age and
9 shall have all the rights, duties, privileges, and
10 responsibilities provided by the civil law to a person who has
11 reached the age of majority under civil law; provided that:

12 (1) Nothing in this section shall be deemed to confer upon
13 such person the right to vote in any federal, state,
14 or county election or the right to purchase, possess,
15 or sell alcoholic beverages; [~~and~~]

16 (2) Nothing in this section shall change the status of
17 such persons as minors in connection with any criminal
18 law, nor affect the exclusive original jurisdiction of
19 the family court over such persons under section
20 571-11(1) [~~-~~]; and



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1 (3) Nothing in this section shall change the status of a
 2 Native Hawaiian child under proceedings as provided in
 3 chapter _____.

4 For purposes of this section, "minor" means a person under
 5 the age of majority."

6 SECTION 9. Section 583A-104, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "~~[+]§583A-104[+]~~ **Application to Indian tribes~~[-]~~ and**
 9 **native Hawaiians.** (a) A ~~[child-custody]~~ child custody
 10 proceeding that pertains to an Indian child as defined in the
 11 Indian Child Welfare Act, 25 United States Code section 1901 et
 12 seq., shall not be subject to this chapter to the extent that it
 13 is governed by the Indian Child Welfare Act.

14 (b) A child custody proceeding that pertains to a Native
 15 Hawaiian child as defined in chapter _____, shall not be subject
 16 to this chapter to the extent that it is governed by chapter
 17 _____.

18 ~~[-(b)-]~~ (c) A court of this State shall treat a tribe as if
 19 it were a state of the United States for the purpose of applying
 20 parts I and II. A court of this State shall treat the na kupuna



1 educational facilities for native Hawaiian children in the
2 elementary grades.

3 The na kupuna tribunal shall submit this report to the
4 governor, the legislature, the Select Committee on Indian
5 Affairs of the United States Senate, and the Committee on
6 Interior and Insular Affairs of the United States House of
7 Representatives within one year of the effective date of this
8 Act.

9 **PART III**

10 SECTION 11. (a) There is established a one-year pilot
11 project to implement Act _____, Session Laws of Hawaii 2015,
12 established under section 2 of this Act. As part of this pilot
13 project, the department of human services shall coordinate with
14 the na kupuna tribunal established under Act _____, Session Laws
15 of Hawaii 2015, to develop procedures and protocols that will
16 assist the na kupuna tribunal in carrying out its
17 responsibilities with respect to child custody proceedings
18 involving native Hawaiian children in this State.

19 (b) For the purposes of the pilot project, no more than
20 twenty-five cases shall be handled by the na kupuna tribunal in
21 accordance with the requirements of section 2 of this Act. The



1 department of human services shall enter into any necessary
2 agreements and develop necessary procedures and protocols to
3 allow the handling of cases in the pilot project, and only those
4 cases, as required by this section. The services provided by
5 the department of human services to na kupuna tribunal cases
6 shall be limited to programs and services under the department's
7 differential response system.

8 (c) The department of human services, with input from the
9 na kupuna tribunal, shall submit a final report on the pilot
10 project, including its status, procedures and protocols
11 developed, outcomes, and findings and recommendations, including
12 proposed legislation, if any, to the legislature no later than
13 twenty days prior to the convening of the regular session of
14 2017.

15 **PART IV**

16 SECTION 12. (a) The department of human services shall
17 convene a tribunal oversight task force to oversee the na kupuna
18 tribunal established pursuant to part I of this Act and review
19 the manner in which courts handle cases involving children with
20 cultural needs.



1 (b) The task force may include but shall not be limited to
2 the representatives of the following:

- 3 (1) The office of Hawaiian affairs;
- 4 (2) The Hawaii Foster Parent Association;
- 5 (3) The Hawaii Foster Youth Coalition;
- 6 (4) The Hawaii Youth Services Network;
- 7 (5) The attorney general, or designee;
- 8 (6) HCAP Leeward District;
- 9 (7) Na Kupuna O Waianae;
- 10 (8) The Legacy Coalition;
- 11 (9) Na Kupuna O Kahana; and
- 12 (10) Any other individuals or organizations the department
13 of human services deems necessary.

14 (c) The task force shall terminate upon completion of the
15 pilot project under section 11 of this Act.

16 (d) The department of human services shall submit a report
17 to the legislature no later than twenty days prior to the
18 convening of the regular session of 2017 on its findings and
19 recommended legislation.

20 **PART V**



1 SECTION 13. If any provision of this Act, or the
2 application thereof to any person or circumstance is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act, which can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 14. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 15. This Act shall take effect upon its approval;
10 provided that:

11 (1) Sections 2 to 8 shall not be operative for any
12 purposes or matters except for the cases being handled
13 by the pilot project pursuant to section 11(b) of this
14 Act. Sections 2 to 8 shall become fully operative on
15 July 1, 2017; and

16 (2) The child custody procedures in Act _____, Session
17 Laws of Hawaii 2015, contained in section 2 of this
18 Act shall not affect a proceeding for hanai or lawe
19 hanai placement that was initiated or completed prior
20 to October 1, 2008, but shall apply to any subsequent
21 proceeding in the same matter or subsequent



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1 proceedings affecting the custody or placement of the
2 same child.

3

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "M. A. Smith", written over a horizontal line.

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Report Title:

Native Hawaiians; Child Welfare Act; Child Custody

Description:

Creates the Native Hawaiian Welfare Act establishing the na kupuna tribunal which is granted exclusive jurisdiction over child custody proceedings involving Native Hawaiian children. Establishes a one-year pilot project prior to full implementation of the Act.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

