

**NOT FOR PUBLICATION**

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CONCURRING OPINION BY WATANABE, ACTING C.J.

In light of the standard of review established by the Hawai'i Supreme Court in In re Jane Doe, 95 Hawai'i 183, 196, 20 P.3d 616, 629 (2001), I concur that there is substantial evidence in the record to support the order of the Family Court of the First Circuit (the family court), awarding foster custody over John Doe (John) and family supervision over John's sister, Jane Doe (Jane), and John's three brothers.

I am troubled, however, by the family court's finding that "[t]hreatened harm", one of the elements necessary to establish jurisdiction over this case,<sup>1</sup> "was evidenced by [Jane] having stated, and Mother concurring, that [Jane] never disclosed the sexual harm by [John] because she was afraid she ([Jane]) would get 'busted' for the consequences of the sexual act, leading to her parents to scold her[.]" If the family court had jurisdiction to order foster custody or family supervision based on the failure of a teenager to tell his or her parents about a

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<sup>1</sup> Hawaii Revised Statutes (HRS) § 587-11 provides as follows:

**Jurisdiction.** Pursuant to [section] 571-11(9), the court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who was or is found within the State at the time the facts and circumstances occurred, are discovered, or are reported to the department, which facts and circumstances constitute the basis for the finding that the child is a child whose physical or psychological health or welfare is subject to imminent harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child's family.

HRS § 587-11 (1993) (emphasis added).

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difficult or traumatic problem, the parents of every teenager will shortly find themselves before the family court.

Associate Judge