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IN THE SUPREME COURT OF THE STATE OF HAWAII

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IN THE INTEREST OF T.J., I.T, A.T.1, A.T.2, and K.T.2,
(CAAP-24-0000619; CASE NO. FC-S 23-00105)

IN THE INTEREST OF L.T.
(CAAP-24-0000620; CASE NO. FC-S 24-00081)

SCWC-24-0000619

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS

OCTOBER 13, 2026

DEVENS, C.J., MCKENNA, EDDINS, AND GINOZA, JJ.,
AND CIRCUIT JUDGE TO'OTO'O, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY DEVENS, C.J.

I. INTRODUCTION

This appeal asks whether the State, in child custody proceedings, may require a parent to make incriminating disclosures as part of their rehabilitation therapy. We hold that it may not, based on a parent's Hawai'i Constitution Article

I, Section 10 right against self-incrimination. However, we also hold that if the parent's silence or denial of abuse interferes with effective therapy, then the court may consider that finding to the parent's detriment without offending the privilege against self-incrimination.

The underlying case concerns the care and custody of children, Taylor, Isabelle, Amanda, Avery, Kevin, and Laura.¹ Petitioner/Father-Appellant (Father) is the biological father of the children except for Taylor. Respondent/Mother (Mother) is the mother of all the children.

After receiving and investigating reports of sexual abuse allegations against Father, Respondent/Appellee Department of Human Services (DHS) filed two petitions for foster custody of the children. Only the custody of Father's children, Isabelle, Amanda, Avery, Kevin, and Laura (collectively, T Children) remains at issue.

The Family Court of the First Circuit (family court)² issued orders granting the petitions that incorporated and implemented

¹ We use pseudonyms to protect the identities of the children and for ease of reference.

² The Honorable Lesley N. Maloian presided.

family service plans (collectively, Service Plan³) recommending sex abuse treatment services for Father. The Service Plan requires that, among other things, Father “acknowledge and take responsibility for the sexual abuse to his victims.” In effect, the Service Plan requires Father to admit to sexual abuse. The Intermediate Court of Appeals (ICA) affirmed.

Father subsequently filed an untimely application for writ of certiorari with this court. We extend our certiorari review holding in State v. Uchima, 147 Hawai‘i 64, 464 P.3d 852 (2020), to parental rights termination proceedings and apply it here to address the merits of Father’s writ application.

Father argues, for the first time in his writ application, that the Service Plan violated his right to free speech under Article I, Section 4 of the Hawai‘i Constitution and the First Amendment to the United States Constitution. We noticed possible plain error and ordered supplemental briefing. We now invalidate the Service Plan on alternate constitutional grounds: the Service Plan violates Father’s privilege against self-

³ The orders underlying this appeal were entered by the family court on September 9, 2024. On October 23, 2025, the family court entered an order modifying the Service Plan (October 23, 2025 Order). We use “Service Plan” to refer to the DHS service plans in effect notwithstanding the October 23, 2025 Order. As the October 23, 2025 Order was entered after Father filed his application for writ of certiorari, we take judicial notice of the October 23, 2025 Order. See Hawai‘i Rules of Evidence Rule 201(b) (2016).

incrimination under Article I, Section 10 of the Hawai'i Constitution.⁴ Although it is undisputed that the State may mandate therapy and condition the disposition of parental rights on Father's completion of such treatment, it may not expressly require Father to admit to committing sex abuse in violation of his Hawai'i constitutional right against self-incrimination. But we also hold that although a court cannot require a parent to admit criminal misconduct, if the parent's silence or denial of abuse interferes with effective therapy, then the court may act on that finding to the parent's detriment without offending the Article I, Section 10 privilege against self-incrimination.

Accordingly, we vacate in part the ICA's judgment on appeal and the family court's September 9, 2024 Orders Concerning Child Protective Act in FC-S No. 23-00105 and FC-S No. 24-00081 to the extent Father is required to comply with the Service Plan condition that he admit to sexual abuse. And we remand to the family court for further proceedings consistent with this opinion. The ICA's judgment on appeal and the family court's

⁴ For ease of reference, unless stated otherwise, "Article I, Section 4" rights will refer to the freedom of speech under both the First Amendment to the U.S. Constitution and Article I, Section 4 of the Hawai'i Constitution, and "Article I, Section 10" rights will refer to the right against self-incrimination under both the Fifth Amendment to the U.S. Constitution and this provision of the Hawai'i Constitution.

September 9, 2024 Orders Concerning Child Protective Act in FC-S No. 23-00105 and FC-S No. 24-00081 are otherwise affirmed.

II. BACKGROUND

A. Relevant Family Court Proceedings

On December 7, 2023, after investigating reports of sexual abuse committed by Father, DHS filed a petition seeking foster custody of Taylor, Isabelle, Amanda, Avery, and Kevin. After Laura was born, DHS also filed a petition seeking foster custody of the newborn.

In conjunction with these petitions, DHS submitted family service plans recommending sex abuse treatment services for Father.

Relevant here, the family service plan submitted in Laura's case required:

1. [Father] will acknowledge and take responsibility for the sexual abuse to his victims.
2. [Father] will understand the dynamics of child sexual abuse and how it impacts the victim/family.
3. [Father] will be able to identify triggers, thinking errors, understand victim empathy, etc.
4. [Father] will cooperate with the service provider, keep all scheduled appointments and obtain a clinical discharge.

(Emphases added.)

The proceedings were consolidated. At trial, a DHS social worker testified that Father had started sex offender treatment

but “there was an impasse” because Father would not admit to the sexual abuse allegations. Father later testified and denied the allegations.⁵

Following trial, on September 9, 2024, the family court issued “Orders Concerning Child Protective Act” in both cases, awarding DHS foster custody of T Children and incorporating the Service Plan and its terms.

B. Relevant Appellate Proceedings

1. ICA’s Memorandum Opinion

Father appealed the family court’s Orders Concerning Child Protective Act in both cases. The ICA consolidated the appeals and affirmed the family court. The ICA subsequently issued its Judgment on Appeal on March 25, 2025.

2. Family Court’s Ex Parte Motion and Appointment of Counsel

On April 21, 2025, the Senior Family Court Judge of the First Circuit filed an ex parte motion with the ICA requesting that the ICA remand the case to the family court to appoint counsel and grant Father an extension to file an application for writ of certiorari. The motion explained that Father’s prior

⁵ There is no evidence in the record that Father was ever criminally prosecuted in conjunction with these sexual abuse allegations.

appointed counsel "experienced an unexpected personal issue" rendering him unable to represent Father. The ICA dismissed the extension request without prejudice, concluding that the family court was unable to file a motion on behalf of Father, but remanded the case for appointment of counsel.

On remand, the family court appointed counsel on May 14, 2025, twenty days after the deadline to file a writ application expired on April 24, 2025. On May 28, 2025, attorney Leigh Woodruff (current attorney) entered a formal appearance on behalf of Father. Father's current attorney subsequently filed a motion for extension of time to file a writ application on behalf of Father, which the appellate clerk denied as untimely.

3. Father's Application for Writ of Certiorari

Father filed an application for writ of certiorari with this court on July 17, 2025. He acknowledges that his previous attorney failed to timely file an application. He requests that this court consider the application on the merits to preserve his right to counsel in these parental rights termination proceedings.

On the merits, Father asserts--for the first time in his application--that the Service Plan incorporated into the family court's Orders Concerning Child Protective Act violated his

right to free speech under our state constitution's Article I, Section 4.

We accepted Father's application on September 15, 2025, and subsequently ordered supplemental briefing on the following:

1. Whether the Service Plan implicates and infringes on Father's right to free speech in violation of the First Amendment to the United States Constitution and article I, section 4 of the Hawai'i Constitution; [and]
2. Whether the Service Plan implicates and infringes on Father's right against self-incrimination in violation of the Fifth Amendment to the United States Constitution and article I, section 10 of the Hawai'i Constitution.

Father, DHS, and Respondent Guardian Ad Litem (GAL) timely filed supplemental briefs.

4. Family Court's Modification of the Service Plan

After we ordered supplemental briefing, the family court entered the October 23, 2025 Order modifying the Service Plan. In a declaration filed with DHS's supplemental brief, counsel for DHS stated that in July 2025, "Father, on his own, began sex offender treatment with [a new therapist]." The October 23, 2025 Order modified the Service Plan (Modified Service Plan) to add this new therapist as an option to provide sex abuse treatment for Father, subject to the present appeal. The family court also ordered: "Given parents' engagement in sex abuse treatment: HRS [§] 587A-20 shall be invoked as to both Mother

and Father which is in the children's best interest at this time[.]”⁶

III. STANDARDS OF REVIEW

A. Plain Error

We may recognize plain error when the error committed affects substantial rights. In re N.C., 123 Hawai'i 184, 193, 231 P.3d 457, 466 (2010) (citations omitted).

B. Constitutional Questions

“We review questions of constitutional law de novo, under the right/wrong standard.” In Interest of FG, AG, PG, 142 Hawai'i 497, 503, 421 P.3d 1267, 1273 (2018) (emphasis and citations omitted).

IV. DISCUSSION

A. Uchima applies to parental rights termination proceedings.

“As a general rule, compliance with the requirement of timely filing of a notice of appeal is jurisdictional, and we must dismiss an appeal on our motion if we lack jurisdiction.” State v. Knight, 80 Hawai'i 318, 323, 909 P.2d 1133, 1138 (1996)

⁶ HRS § 587A-20 (2018) provides: “The court may order that testimony or other evidence produced by a party in a proceeding under this chapter shall be inadmissible as evidence in any other state civil or criminal action or proceeding if the court deems such an order to be in the best interests of the child.” HRS § 587A-20.

(cleaned up). Nevertheless, "we have permitted belated appeals under certain circumstances, namely, when defense counsel has inexcusably or ineffectively failed to pursue a defendant's appeal from a criminal conviction in the first instance." Id. (cleaned up).

In Uchima, for instance, we declined to dismiss a criminal defendant's writ application that was filed six days after it was due. 147 Hawai'i at 72-83, 464 P.3d at 860-71. We noted that "certiorari review is a critical stage of the criminal proceedings during which a defendant has the constitutional right to effective assistance of counsel, which includes counsel's procedural compliance with the steps required to timely file an application for a writ of certiorari." Id. at 69, 464 P.3d at 857. Accordingly, we held that "this court may decline to dismiss an application for writ of certiorari as untimely and proceed to review its merits when it is plain from the record that defense counsel failed to comply with the procedural requirements for filing the application." Id. at 82, 464 P.3d at 870 (citation omitted).

We later extended our holding in Uchima to include juvenile law-violators' proceedings in In the Interest of GH, 152 Hawai'i 8, 518 P.3d 1158 (2022). There, we rendered a merits

determination despite defense counsel filing a writ application more than eight months after the ICA filed its judgment on appeal. Id. at 14-15, 518 P.3d at 1164-65.

We recognize that the present appeal is not criminal in nature. However, we have held that “parents have a constitutional right to counsel under article I, section 5 [of the Hawai‘i Constitution] in parental termination proceedings[.]” In re T.M., 131 Hawai‘i 419, 421, 319 P.3d 338, 340 (2014). See also Interest of P Children, 155 Hawai‘i 332, 337, 564 P.3d 1131, 1136 (2025) (“The Hawai‘i Constitution’s due process clause, article I, section 5, confers parents a right to counsel in Child Protective Act proceedings.” (cleaned up)). We thus extend Uchima to parental rights termination proceedings. In such cases, we may decline to dismiss an application for writ of certiorari as untimely.

Here, Father’s writ application was filed on July 17, 2025, more than thirty days after the ICA filed its Judgment on Appeal on March 25, 2025. It is therefore untimely. See Hawai‘i Rules of Appellate Procedure (HRAP) Rule 40.1(a) (eff. 2023). Father explains that he was without counsel after his former attorney experienced personal issues that made it impossible for him to represent Father. This was detailed in the Senior Family Court

Judge's ex parte motion filed with the ICA. Father's current attorney was eventually appointed by the family court on May 14, 2025, and entered an appearance as counsel of record on May 28, 2025. Father further explains that his current attorney was unable to contact him until the family court provided a telephone number on June 26, 2025. Father's current attorney finally reached Father on June 29, 2025. Meanwhile, around June 25, 2025, the ICA's docket in this case became inaccessible and counsel did not regain access until July 8, 2025. Father filed his writ application nine days later on July 17, 2025.

The delay in filing was clearly due to exigent circumstances beyond Father's control. In light of these circumstances, the record before us, Father's constitutional right to effective counsel in parental rights termination proceedings, and Father's fundamental liberty interest in the care, custody, and control of his children, we consider the merits of Father's writ application notwithstanding its untimeliness. See DJ v. CJ, 147 Hawai'i 2, 17, 464 P.3d 790, 805 (2020) ("[I]t is axiomatic that a parent's right to the care, custody, and control of the parent's child is a fundamental liberty interest protected by the United States and Hawai'i constitutions and entitled to due process protection.").

B. Whether the Service Plan violates Article I, Section 10 and the Fifth Amendment is appropriate for plain error review.

Father argues for the first time in his certiorari application that the Service Plan violated his constitutional right to free speech. Additionally, no party raised whether the Service Plan violated Father's constitutional right against self-incrimination. We first identified that issue in our order granting DHS's and the GAL's motions for supplemental briefing.

As explained below, we hold that the Service Plan violates Father's right against self-incrimination under Article I, Section 10 of the Hawai'i Constitution and decline to reach Father's free-speech argument. Thus, we must first analyze whether plain error review is appropriate to assess the self-incrimination issue.

We may recognize plain error when the error committed affects substantial rights. N.C., 123 Hawai'i at 193, 231 P.3d at 466; HRAP Rule 40.1(d)(1) (eff. 2023) ("The supreme court, at its option, may notice a plain error not presented.").

In WW v. DS, 149 Hawai'i 123, 129-31, 482 P.3d 1084, 1090-92 (2021), we noticed plain error to review a family court's actions in facilitating settlement despite the father's failure to raise this claim before the ICA. We explained:

In civil cases, the plain error rule is only invoked when "justice so requires." We have taken three factors into account in deciding whether our discretionary power to notice plain error ought to be exercised in civil cases: (1) whether consideration of the issue not raised at trial requires additional facts; (2) whether its resolution will affect the integrity of the trial court's findings of fact; and (3) whether the issue is of great public import.

Id. at 130, 482 P.3d at 1091 (quoting U.S. Bank Nat'l Ass'n v. Castro, 131 Hawai'i 28, 42, 313 P.3d 717, 731 (2013)).

Plain error review is appropriate here.

First, no additional facts are required, as the requirements of the sexual abuse treatment program are undisputed. There was a full evidentiary hearing before the family court that included testimony about the treatment program's requirements. The DHS social worker testified that the treatment program requires Father to "take responsibility [for] the abuse" and that clinical discharge from the program requires Father admit to the sexual abuse. Dr. Francisco Najera (Dr. Najera), a clinical psychologist and provider for the treatment program, also testified,

In order to--to receive a clinical discharge, there are certain tasks, therapeutic tasks, that the participant's assigned to complete. Once those tasks are completed, then a clinical discharge is possible. The first step would be to--to show up for their services appointments, and the **second step would be to admit.**

(Emphasis added.)

Second, the resolution of the self-incrimination issue will not affect the integrity of the family court's findings of fact

as our analysis only addresses the constitutionality of the Service Plan, which is a question of law reviewable de novo. See WW, 149 Hawai'i at 130-31, 482 P.3d at 1091-92.

Third, the constitutionality of a DHS service plan, which impacts a parent's ability to parent their child, is undoubtedly a matter of great public importance. See In re Doe, 99 Hawai'i 522, 533, 57 P.3d 447, 458 (2002) ("The manifest importance of the right of a parent to raise his or her child has been analogized to a fundamental liberty interest." (cleaned up)).

All three factors weigh in favor of plain error review. Thus, justice requires that we address the self-incrimination issue.⁷

C. Father's appeal is neither moot nor unripe with respect to his constitutional right against self-incrimination.

The next threshold issue is whether the self-incrimination issue is justiciable. For the reasons discussed below, we find that it is properly before us for review.

1. Father's appeal is not moot.

DHS argues that the issues in this case are moot because the Modified Service Plan no longer requires acceptance of

⁷ In accordance with HRAP Rule 28(b)(4) (eff. 2022), the parties briefed the self-incrimination issue under both the federal and state constitutions in their supplemental briefs filed on December 10, 2025.

responsibility following the family court's October 23, 2025 Order. Additionally, the GAL asserts that Father's self-incrimination challenge is adequately addressed by the family court's invocation of HRS § 587A-20 immunity.⁸ We respectfully disagree with both arguments.

As we have held before:

A case is moot if it has lost its character as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions on abstract propositions of law. The rule is one of the prudential rules of judicial self-governance founded in concern about the proper--and properly limited--role of the courts in a democratic society.

Doe v. Doe, 116 Hawai'i 323, 326, 172 P.3d 1067, 1070 (2007)

(cleaned up).

First, and contrary to DHS's argument, the Modified Service Plan still requires acceptance of responsibility. The Modified Service Plan contains the same language from the original Service Plan which requires that "[Father] will acknowledge and

⁸ Father questions whether the family court retained jurisdiction to modify the Service Plan during the pendency of the appeal. Contrary to Father's contention, the family court had jurisdiction to make the modifications. See HRS § 587A-35 (2018) ("[T]he court may retain jurisdiction under this chapter until the full term for which any order entered expires or until the child attains nineteen years of age, whichever comes first."); HRS § 571-54 (2018) (The pendency of an appeal "shall not suspend the order or decree of the [family] court regarding a child or minor, or discharge the child or minor from the custody of the court or of the person, institution, or agency to whose care the child or minor has been committed, unless otherwise ordered by the family court or by the appellate court after an appeal is taken.").

take responsibility for the sexual abuse to his victims.” Although there is a handwritten modification on the plan listing Father’s new therapist as an option to provide sex abuse treatment for Father, there is no indication that Father’s obligation to acknowledge his sexual abuse has been annulled. Thus, the family court’s modification does not moot the self-incrimination issue.

Second, as to the GAL’s argument, the Modified Service Plan’s application of HRS § 587A-20 does not immunize Father such that his compliance would no longer threaten criminalization.

“Freedom of choice, to speak or not to speak, is article I, section 10’s essence.” State v. Tolentino, 158 Hawai‘i 321, 334, 592 P.3d 209, 222 (2026).

“[T]he privilege against self[-]incrimination extends not only to answers that would in themselves support a conviction, but to those that would furnish a link in the chain of evidence needed to prosecute.” State v. Kupihea, 80 Hawai‘i 307, 313, 909 P.2d 1122, 1128 (1996) (internal quotation marks omitted) (citing Territory of Hawaii v. Lanier, 40 Haw. 65, 72 (Haw. Terr. 1953)).

HRS § 350-1.1(a)(1) provides, in relevant part:

(a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, shall immediately report the matter orally to the department [of human services] or to the police department:

- (1) Any licensed or registered professional of the healing arts or any health-related occupation who examines, attends, treats, or provides other professional or specialized services, including but not limited to physicians, including physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals[.]

HRS § 350-1.1(a)(1) (Supp. 2023) (emphasis added).

In other words, if Father were to admit to sexual abuse to his therapist as required by the Modified Service Plan, the therapist would be required by law to report the matter “immediately” to law enforcement. Such an admission could form the basis for criminal liability.⁹ See HRS § 707-732(1)(b) (Supp. 2021) (“A person commits the offense of sexual assault in the third degree if the person . . . [k]nowingly subjects to sexual contact a person who is less than fourteen years old or causes such a person to have sexual contact with the actor[.]”).

The family court’s invocation of HRS § 587A-20 does not negate or nullify this reporting requirement. Instead, it

⁹ This would be true under the Service Plan as well.

merely provides that any evidence and testimony produced during Father's treatment (including his hypothetical admission) would be inadmissible in subsequent criminal proceedings. See In re K Child., No. CAAP-11-0000805, 2013 WL 6244722, at *4-7 (Haw. App. Nov. 29, 2013) (SDO) (explaining that the family court's application of HRS § 587A-20 "meant that any evidence resulting from the [court-ordered psychosexual] evaluation would not be admissible in [f]ather's criminal prosecution"). The therapist would still be required to report the abuse to law enforcement, and law enforcement would then be able to independently investigate and gather evidence to prosecute Father. Thus, even under the Modified Service Plan, an admission from Father would "furnish a link in the chain of evidence needed to prosecute." Kupihea, 80 Hawai'i at 313, 909 P.2d at 1128.

In sum, the family court's application of HRS § 587A-20 does not sufficiently immunize Father such that the Modified Service Plan does not implicate his self-incrimination rights. Accordingly, the issue is not moot.

2. Father's appeal is ripe.

DHS asserts that the self-incrimination issue is not ripe. It argues that, under HRS § 587A-7, satisfaction of the Service Plan is just one of the factors family courts consider when

determining whether a child's family is willing and able to provide the child with a safe family home.¹⁰ That is, "[i]t is not clear at this point in time . . . that Father would actually lose his parental rights if he fails to admit [to sexual abuse], even under the original [S]ervice [P]lan." DHS further asserts that the record neither indicates that Father has invoked such privilege nor suggests that Father would still invoke his right against self-incrimination in light of the October 23, 2025 Order.

Although Hawai'i courts are not bound by a "case or controversy" requirement,

we nonetheless recognize that the prudential rules of judicial self-governance founded in concern about the proper--and properly limited--role of courts in a democratic society are always of relevant concern. For even in the absence of constitutional restrictions, courts must still carefully weigh the wisdom, efficacy, and timeliness of an exercise of their power before acting.

¹⁰ HRS § 587A-7 (2015) provides, in relevant part:

- (a) The following factors shall be fully considered when determining whether a child's family is willing and able to provide the child with a safe family home:

. . . .

- (8) Whether any alleged perpetrator has completed services in relation to any [history of abusive or assaultive conduct or history of substance abuse], and acknowledged and accepted responsibility for the harm to the child;

. . . .

HRS § 587A-7(a)(8).

Ripeness is peculiarly a question of timing, and the relevant prudential rule deals with problems of prematurity and abstractness that may prevent adjudication in all but the exceptional case. A ruling that an issue is not ripe ordinarily indicates the court has concluded a later decision may be more apt or that the matter is not yet appropriate for adjudication.

State v. Fields, 67 Haw. 268, 274-75, 686 P.2d 1379, 1385 (1984) (cleaned up).

For the reasons discussed below, we do not find that “a later decision may be more apt or that the matter is not yet appropriate for adjudication.” Id. at 275, 686 P.2d at 1385. The issue is ripe.

D. The Service Plan violates Father’s constitutional privilege against self-incrimination.

1. The State may not require Father to admit to sexual abuse in violation of his right against self-incrimination as part of the Service Plan.

“The Fifth Amendment to the U.S. Constitution and Article I, Section 10 of the Hawai‘i Constitution guarantee the right against self-incrimination.” State v. James, 153 Hawai‘i 503, 511, 541 P.3d 1266, 1274 (2024) (cleaned up). “[W]hen a State compels testimony by threatening to inflict potent sanctions unless the constitutional privilege is surrendered, that testimony is obtained in violation of the Fifth Amendment[.]” Lefkowitz v. Cunningham, 431 U.S. 801, 805 (1977). The Fifth Amendment “‘privileges [a person] not to

answer official questions put to [them] in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate [them] in future criminal proceedings.'" Minnesota v. Murphy, 465 U.S. 420, 426 (1984) (citing Lefkowitz v. Turley, 414 U.S. 70, 77 (1973)).

The privilege against self-incrimination "is not limited to an accused testifying at [their] own criminal trial, but applies to testimony of any witness at any proceeding, where the testimony might tend to show that the witness had committed a crime." Kupihea, 80 Hawai'i at 313, 909 P.2d at 1128. Indeed, while the privilege is limited to criminal matters, "it is as broad as the mischief against which it seeks to guard." Id.

In this respect, Matter of Welfare of J.W., 415 N.W.2d 879 (Minn. 1987), which involved a court-ordered treatment plan requiring parents to make incriminating disclosures, is informative. The trial court there found that either or both parents were responsible for the death of their nephew during a trial held to determine if the two children of the parents were "dependent and neglected[.]" Id. at 880-81. The parents' children were placed in foster care due to a high risk of physical abuse in the family home. Id. at 881.

The trial court entered an order adopting the county-

recommended family rehabilitation program, which included psychological evaluations requiring "the explanation of the death of [the nephew], consistent with the medical findings."

Id. Before the trial court, the state's attorney indicated that if the parents refused to undergo the psychological evaluations as ordered, the state would file a petition for parental termination. Id.

On appeal, the Minnesota Supreme Court found the treatment plan unconstitutional. Id. at 883. As an initial matter, the court held that the parents' Fifth Amendment challenge was not premature, rejecting the state's ripeness argument. Id. at 882-83. The court reasoned that even though a termination petition had not been filed, the state's "threat" of termination was "genuine, direct, and immediate," and such a penalty was a "potent sanction." Id. at 882. The court also noted that "termination of parental rights would not be automatic if the parents refuse to cooperate with the court-ordered treatment plan, but that refusal would be a substantial, relevant factor in determining whether or not parental rights should be terminated." Id. at 882-83. Because this amounted to an impermissible penalty for invoking the privilege against self-incrimination, the court found the trial court's order

unenforceable to the extent it required the parents to incriminate themselves. Id. at 883; see also Matter of A.D.L., 402 P.3d 1280, 1285 (Nev. 2017) (agreeing "with other courts that have held that a parent may not be compelled to admit a crime under the threat of the loss of parental rights"); In re C.H., 652 N.W.2d 144, 150 (Iowa 2002) ("The State may require parents to otherwise undergo treatment, but it may not specifically require an admission of guilt as part of the treatment.").

Here, the family court's order implementing the Service Plan lodges a "genuine, direct, and immediate" threat of parental termination. See J.W., 415 N.W.2d at 882. As stated, Dr. Najera testified that Father must admit to sexually abusing the children to receive a clinical discharge as part of the Service Plan. If Father does not receive a clinical discharge, such failure will factor into the family court's determination of whether Father is "willing and able to provide [his children] with a safe family home[.]" See HRS § 587A-7(a)(8). The family court warned Father and Mother that "unless [he and Mother are] willing and able to provide [their] children with a safe family home with the assistance of a service plan within a reasonable period of time, [their] parental rights and custodial duties

shall be subject to termination, pursuant to law." This threat is akin to that in J.W.: admit to sexual abuse, or risk termination of the fundamental liberty interest in the care, custody, and control of his children. See J.W., 415 N.W.2d at 883; see also State v. Zuffante, 157 Hawai'i 194, 203, 576 P.3d 243, 252 (2025) ("This illusory choice – either remain silent and let decisive evidence go unchallenged, or testify to refute the testimony – dents the right against self-incrimination.").

The Service Plan is unconstitutional to the extent it requires Father's admission of sexual abuse. The State may mandate therapy, but it may not go as far as requiring Father to incriminate himself, particularly given that he has maintained his innocence. See State v. Reyes, 93 Hawai'i 321, 328-29, 2 P.3d 725, 732-33 (App. 2000) (vacating trial court's sentencing order where the trial court "expressly and explicitly conditioned [defendant's] probation upon his satisfactory participation in [the statutorily mandated sex offender treatment program], including admitting his sex crime(s)").

To this end, we respectfully disagree with DHS's contention that the self-incrimination issue is unripe. On this record, it is immaterial that the family court has not rendered a decision with respect to the termination of parental rights. As the J.W.

court noted, even though a petition for termination has yet to be filed, the State's "threat" is no less real. J.W., 415 N.W.2d at 882. "It is the threat itself, not necessarily its implementation, that triggers the Fifth Amendment." Id. Accordingly, we do not find that "a later decision may be more apt or that the matter is not yet appropriate for adjudication." Fields, 67 Haw. at 275, 686 P.2d at 1385 (cleaned up).

2. The privilege against self-incrimination does not protect against the adverse consequences of failing to undergo effective therapy.

Although the State may not require incriminating disclosures as the Service Plan does, we note that therapy which does not require admission to past offenses may not be effective, "and ineffective therapy may hurt the parents' chances of regaining their children." J.W., 415 N.W.2d at 883.

Considering these competing concerns, the J.W. court held that the Fifth Amendment does not protect parents from the consequences of failing to undergo meaningful therapy, particularly where the refusal to admit to past abuse hinders engagement. Id. at 884. That court explained:

In the lexicon of the Fifth Amendment, the risk of losing the children for failure to undergo meaningful therapy is neither a "threat" nor a "penalty" imposed by the state. It is simply a consequence of the reality that it is unsafe for children to be with parents who are abusive and violent.

Id. (emphasis added). This principle is consistent with the law in many other states, and we also adopt it under Article I, Section 10 of the Hawai'i Constitution. See, e.g., Dep't of Hum. Servs. v. K.L.R., 230 P.3d 49, 54 (Or. App. 2010)

("[T]erminating or limiting parental rights based on a parent's failure to comply with an order to obtain meaningful therapy or rehabilitation, perhaps in part because a parent's failure to acknowledge past wrongdoing inhibits meaningful therapy, may not violate the Fifth Amendment[.]"); In re Rosalie H., 889 A.2d 199, 207-08 (R.I. 2006) (concluding that the trial court did not infringe on parents' right against self-incrimination in considering their refusal to admit to abuse in light of other evidence supporting termination); In Int. of H.R.K., 433 N.W.2d 46, 50 (Iowa Ct. App. 1988) (affirming termination of parental rights in light of evidence that included parents' refusal to admit to sexual abuse); In re J.A., 699 A.2d 30, 31 (Vt. 1997) (trial court cannot "specifically require the parents to admit criminal misconduct" but "if the parents' denial of abuse interferes with effective therapy, then the court may act on that finding to the parents' detriment without offending the Fifth Amendment privilege[.]" (cleaned up)).

We find this position fair, balanced, and necessary. This court has long recognized that the "paramount consideration" in child custody cases is the welfare of the child. Waldecker v. O'Scanlon, 137 Hawai'i 460, 468-69, 375 P.3d 239, 247-48 (2016) (citing Dela Cruz v. Dela Cruz, 35 Haw. 95, 98 (Haw. Terr. 1939)); HRS § 587A-2 (2018) ("This chapter creates within the jurisdiction of the family court a child protective act to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm.").

Additionally, as other courts have observed, parents can begin to understand and reform their abusive behaviors by acknowledging their past abuse, and "acknowledgment is an important step in the rehabilitation of the family." State v. P.Z., 703 A.2d 901, 912 (N.J. 1997); H.R.K., 433 N.W.2d at 50 ("[T]he requirement that the parents acknowledge and recognize the abuse before any meaningful change can occur is essential in meeting the child's needs.").

Allowing the family court to consider whether a parent engaged in meaningful therapy, which may hinge in part on the parent's failure to confront their past abuse alongside other evidence supporting termination of parental rights, protects a parent's self-incrimination rights but also ensures that we

uphold the "paramount" purpose of protecting children in Hawai'i.¹¹ See Waldecker, 137 Hawai'i at 468-69, 247-48.

Although we hold that the State may not compel a parent to admit to past sexual abuse, it may nonetheless require them to undergo sexual abuse treatment and consider their failure to admit as an indication that the parent did not effectively engage in treatment, which could impact the disposition of their parental rights.

E. We need not address whether the Service Plan violates Father's constitutional right to free speech.

As Father's right against self-incrimination is dispositive of this appeal, we need not reach the issue of whether the Service Plan violates his right to free speech. Accordingly, we decline to address that issue. See Ke Kauhulu o Mānā v. Bd. of

¹¹ In this regard, we agree with the GAL's argument that courts should not require transactional immunity every time a family court is faced with a parent who refuses to admit to sexual abuse of their child. As noted by the Minnesota Supreme Court:

If the state believes talking to the psychologist about [the past offense] would help [the parents] become good parents, the state could abandon its pursuit of criminal prosecutions and apply to the court for a grant of immunity for the parents. The parents could then, without fear of prosecution or prison, participate in meaningful therapy. With or without meaningful therapy, the parents may or may not be successfully rehabilitated, but the results can only be known after whatever treatment is tried.

J.W., 415 N.W.2d at 884.

Land & Nat. Res., 156 Hawai'i 356, 362 n.5, 575 P.3d 13, 19 n.5 (2025) (declining to address remaining issues where one issue was dispositive of the appeal).

V. CONCLUSION

We vacate in part the ICA's March 25, 2025 judgment on appeal and the family court's September 9, 2024 Orders Concerning Child Protective Act in FC-S No. 23-00105 and FC-S No. 24-00081 to the extent Father is required to comply with the Service Plan condition that he admit to sexual abuse. And we remand to the family court for further proceedings consistent with this opinion. The ICA's March 25, 2025 judgment on appeal and the family court's September 9, 2024 Orders Concerning Child Protective Act in FC-S No. 23-00105 and FC-S No. 24-00081 are otherwise affirmed.

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