



The Judiciary, State of Hawai'i

Testimony to the House Committee on Health & Human Services

Representative John M. Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair

Thursday, January 25, 2018 at 9:00 am
State Capitol, Conference Room 329

By

Catherine H. Remigio
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1885, Relating to Family Court

Purpose: Requires certain persons to immediately report a potential tort claim to the family court when that person has reason to believe that a child in foster custody has suffered an injury that may arise to a tort claim. Establishes procedures for the family court to allow a child in foster custody who has suffered an injury to seek outside legal representation for a claim of damages as a result of a tort.

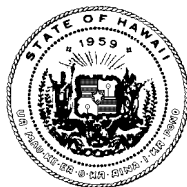
Judiciary's Position:

The Judiciary takes no position on House Bill No. 1885 but respectfully offers the following comment.

There is a potential for large costs to the Judiciary and the family court associated with the court's appointment of a master, including the master's compensation and other costs related to the master's report.

Thank you for the opportunity to submit testimony on this measure.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
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January 23, 2018

TO: The Honorable Representative John M. Mizuno, Chair
House Committee on Health & Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **HB1885 – Relating to Family Court**

Hearing: Thursday, January 25, 2018, 9 a.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this bill and provides comments. For such matters, DHS follows its own procedures and the protocol established by the Honorable R. Mark Browning, Family Court of the First Circuit, on December 22, 2014.

PURPOSE: The purpose of this bill requires certain persons to immediately report a potential tort claim to the family court when that person has reason to believe that a child in foster custody has suffered an injury that may arise to a tort claim; establishes procedures for the family court to allow a child in foster custody who has suffered an injury to seek outside legal representation for a claim of damages as a result of a tort.

DHS Child Welfare Services Branch (CWS), has established procedures related to reports of harm, serious harm and death on active cases, and informs the Family Court of such incident if the child victim is under the court's jurisdiction (foster custody, family supervision, permanent custody).

We defer to the opinions of the department of the attorney general and the Judiciary regarding additional recommended processes and protocol.

Thank you for the opportunity to testify on this bill.

AN EQUAL OPPORTUNITY AGENCY

HB-1885

Submitted on: 1/24/2018 4:48:24 AM

Testimony for HHS on 1/25/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments:

**PRESENTATION OF THE
OAHU COUNTY COMMITTEE ON LEGISLATIVE PRIORITIES
DEMOCRATIC PARTY OF HAWAII
TO THE COMMITTEE OF HEALTH & HUMAN SERVICES
HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018
Thursday, January 25, 2018**

9:00 a.m.

Hawaii State Capitol, Conference Room 329

RE: Testimony in Support of HB 1885, RELATING TO FAMILY COURT; MINORS; FOSTER CUSTODY; TORT ACTION

To the Honorable John M. Mizuno, Chair; the Honorable Bertrand Kobayashi, Vice-Chair and Members of the Committee on Health & Human Services:

Good morning, my name is Melodie Aduja. I serve as Chair of the Oahu County Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on House Bill No. 1885, relating to Family Court, minors, foster custody and tort actions. The OCC Legislative Priorities Committee is in favor of House Bill No. 1885 and support its passage.

House Bill No. 1885, is in alignment with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it requires certain persons to immediately report a potential

tort claim to the family court when that person has reason to believe that a child in foster custody has suffered an injury that may arise to a tort claim. Further, this measure establishes procedures for the family court to allow a child in foster custody who has suffered an injury to seek outside legal representation for a claim of damages because of a tort.

Specifically, the DPH Platform states, “We believe that all families should have an equal opportunity to build their assets and become self-sufficient, and we support a strong safety net of programs that will afford them the opportunity to do so. We much protect our children, our future, from violence and neglect and provide them with a safe and healthy environment in which to grow and thrive. . . .We support legislation and best practice policies that prioritize the safety, security, and well-being of our foster children, who are our most vulnerable keiki in our community. This is the paramount consideration when making decisions regarding the time frame criteria and justification for reunification and family placement. We will always respect family and familial bonds but reunification with every biological family is not always the safest, most secure or in the best interest of every child. This is especially true in aggravated circumstances, cases involving drug use history, physical abuse, sexual abuse and unstable housing. We strongly support the efforts of parents and all people to recover and reorganize their lives of the better, but our ultimate concern must also be for the short and long-term safety and well-being of our foster children. (DPH Platform, Lines 184-187, 193-201 (2016)).

As provided in HB 1885, according to the department of human services, 2,386 children were in foster care during the fiscal year of 2015. The State serves as the legal custodian and representative for a significant number of children in foster care due to their age. If a child in foster care suffers an injury caused by a third party, the State will cover the child’s medical costs. However, that child is unable to obtain legal representation to file a tort claim to seek any additional damages, such as pain and suffering. Thus, a class of children is disenfranchised from their right to counsel in such an event because they are in foster care with the State serving as their legal custodian.

Given that House Bill No. 1885 establishes procedures for the family court to allow a child in foster custody who has suffered an injury to seek outside legal representation for a claim of damages because of a tort, it is the position of the OCC Legislative Committee to support this measure as it promotes the short and long-term safety and well-being of our foster children in an area where foster children had no prior means of redress.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Tel.: (808) 258-8889

FOSTER CHILDREN IN HAWAII AND THEIR RIGHT TO COUNSEL

Thank you for allowing me to offer testimony on behalf of House Bill 1885. My interest in this subject is prompted by my 25 years plus as licensed foster parent, my 3 years as a VGAL with the Family Court and my service as a Special Master with Family Court where I have represented the interests of abandoned and abused children, including helping them secure access to counsel when they suffer harm. As some of you may know, I recently served *pro bono* as the Special Master in the Peter Boy Kema case.

What I have found most striking in my experience is that in the land of milk and honey where there are probably more licensed attorneys per square foot than almost any country in the world, our most vulnerable population, the children who are wards of the State and or in foster care have virtually no access to counsel if they suffer harm as a result of third party tort liability.

According to Toni Schwartz, the Public Information Officer of the Department of Human Services, 2745 children went through the foster care system in Hawaii in 2010. In earlier years the numbers approached 5,000. Of the children in foster care, a significant number of them are also wards of the State of Hawaii. That is, they have no responsible adult or parent to serve as their legal guardian. The State of Hawaii is their legal guardian and that duty is largely discharged by the DHS social worker assigned to the child and the attendant family court case.

If your child, who is not in foster care, suffers an injury or harm at the hands of another, such as an automobile accident, schoolyard fall etc., you as the parent may choose to consult a lawyer on your child's behalf to see if the child has a claim for damages. In the event a lawyer decides there is a claim, he will appoint you to serve as your child's *prochien ami*, or next friend, so that the claim can be filed in court. In Hawaii a minor under 18 years of age cannot hire a lawyer on their own and can only be represented if the court approves a responsible adult or parent to act on his or her behalf.

If a child in foster care who is also a ward of the State of Hawaii is involved in an accident or otherwise suffers harm, the paradigm changes dramatically. First of all, if there are physical injuries involved requiring medical care, the State of Hawaii steps in and pay the medical bills through the Department of Human Services MedQuest program. However, there is no one present in the child's life at this point that has the legal authority to act on the child's behalf and in their best interest to investigate if there is a claim for damages.

If there is a Volunteer Guardian Ad Litem involved with the child, the local office has taken the position that it is outside the authority of the VGAL to act in this area or to even investigate a possible claim for the child. The Department of Social Services has taken the position in at least several cases that it isn't their responsibility to even report such an injury let alone seek an independent voice to represent the best interests of the child and investigate a possible claim. Most troublesome of all, if the State of Hawaii

discovers there is insurance, they will seek to “represent” the child in a claim for damages but only to the extent that they are able to recover back the “out of pocket” expenses they incurred by extending the MedQuest benefits to the injured child.

The State of Hawaii is certainly entitled to try and assert their lien rights in such a case by attempting to secure reimbursement for their medical costs. However, they ethically cannot do that while standing in the child’s shoes, pretending to be the child’s lawyer on one hand, and their own lawyer on the other. The old adage that you cannot serve two masters applies here. The child should be entitled to their own independent voice and counsel who would seek full recovery for any claims of damage they might have against a third party who caused the injury, not simply limited to recovering their medical expenses for the purpose of reimbursing the State of Hawaii. That is the Attorney General’s job, but not as the lawyer for the child.

Under the present system an entire class of children has been fundamentally disenfranchised of their right to counsel in the event they suffer injury at the hands of another because they had the misfortune of becoming wards of the State through no fault of their own.

While there is a provision in the Family Court Rules for the family court judge to appoint what is described as a Special Master under Rule 66 to act in the child’s best interest in investigating such claims and securing a *prochien ami* and or counsel to represent the child, there are other systems in place that appear to offer the same remedy, more efficiently and comprehensively. In some California jurisdictions for example, their Juvenile Courts automatically appoint litigation or civil counsel in the event that a ward of the jurisdiction suffers harm.

The Dependency Court Tort Policy in the Juvenile Division of the Los Angeles County Superior Court has proven to be both effective and efficient, As proposed by HB 1885 there are no administrative costs attendant to the program and between March of 1992 and February of 2008 more than \$18,000,000 was recovered including millions of dollars reimbursed to the county and State for the costs of medical and related services that would have otherwise been lost.

The provisions afforded in Senate Bill 2273 and House Bill 1885 are a sensible and cost efficient way to address this long standing inequity. At no additional cost to the State, it provides counsel to otherwise disenfranchised minor children who suffer harm and in many cases results in a significant recovery of otherwise lost costs incurred by the State in paid medical and related expenses.

Steve Lane

HB-1885

Submitted on: 1/23/2018 9:21:58 PM

Testimony for HHS on 1/25/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David S. Case		Support	No

Comments:

Aloha Chariman Mizuno and Members of the House Health and Human Services Committee--

I am testifying in STRONG SUPPORT of HB1885, to provide access to legal counsel for children injured while they are wards of the State. These children are State wards because they have been abandoned, abused or otherwise put in jeopardy. They will face many challenges in their lives arising out of their circumstances. The State should help them overcome one of those challenges by facilitating their access to dedicated legal counsel if they are negligently injured while in the State's custody. This should not happen often, but when a child is so injured it can have long-term, even life-long, consequences. This Bill (and its Senate companion) remedy this possibility at no cost to the State. I urge your Committee's approval of this measure as a matter of justice in a free society.

Very Truly Yours,

David S. Case