



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Human Services

Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair

Friday, January 26, 2018 at 2:45 pm
State Capitol, Conference Room 16

By

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2273, 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.

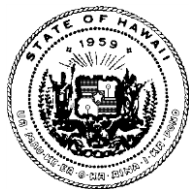
Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 2273 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
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

January 24, 2018

TO: The Honorable Senator Josh Green, Chair
Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB2273 – Relating to Family Court**

Hearing: Friday, January 26, 2018, 2:45 p.m.
Conference Room 016, State Capitol

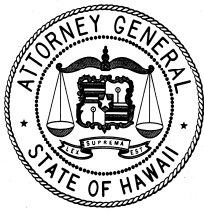
DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this bill and provides comments. For such matters, DHS follows its own procedures and the December 22, 2014 protocol established by the Family Court of the First Circuit.

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), 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, and 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.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2273, RELATING TO FAMILY COURT.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Friday, January 26, 2018

TIME: 2:45 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General, or
Erin K.S. Torres, Deputy Attorney General

Chair Green and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill but recommends that this bill be deferred in order to allow time for further deliberation and possible amendment.

The purposes of this bill are to: (1) require certain persons to report to the family court when a child in foster care has a potential tort claim; and (2) establish a procedure for the family court to investigate the report and, if appropriate, to authorize the filing of a tort claim on behalf of the injured child.

We appreciate the intent to empower foster children who have suffered tortious injury, but are concerned that there is no evidence of a significant number of foster children with potential tort claims that would create a need for a procedure such as this to be added to chapter 587A, Hawaii Revised Statutes ("the Child Protective Act"). Also, there already exists a mechanism to address this need under the Child Protective Act as the Department of Human Services (DHS) and the child's guardian ad litem are required to regularly report to the family court on the status of each child. Under section 587A-18, the DHS is required to report information on "the child's developmental, psychological, medical, and dental health status and needs." Under section 587A-4, guardians ad litem already have a duty to "protect and promote the needs and interests of a child" and are required under section 587A-16(c)(3) to report "actions taken to ensure the child's . . . best interest, and recommend how the court should proceed in

the best interest of that child". Thus, guardians ad litem can easily seek to have an attorney appointed by the family court if a foster child has a potential tort claim.

A second concern is that the procedure set forth in this bill would require the family court to pre-determine whether a viable tort claim exists. Such a decision is outside of the jurisdiction and practice area of the family courts, and may have an impact on a tort case arising out of this procedure. Also, this bill appears to foster litigation by allowing the family court to steer cases to tort litigation and it puts the family court in the position of acting as a referral agency to plaintiff attorneys in the Hawaii bar.

The third issue that requires further consideration is the preservation of the confidentiality of both the DHS's records and the court records in the Child Protective Act case. Pursuant to section 571-84, the court's records are confidential. The DHS's records are confidential under sections 346-10 and 350-1.4(b), chapter 91, and the DHS's rules. The DHS's confidential records are released pursuant to Pennsylvania v. Ritchie, 480 U.S. 39, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987), and State v. Pesetti, 101 Haw. 172, 65 P.3d 119 (2003), when upon receipt of a subpoena, the DHS submits to the court one set of requested documents with proposed redactions and one set without redactions. The court then reviews the documents in camera and ensures that only the appropriate records are released in order to preserve the confidentiality of the chapter 587A case. The procedure in this bill does not provide for in camera review of records prior to their release to the master investigating the tort claim or to the outside counsel appointed to represent the injured child in a separate tort action.

A fourth concern is that given the circumstances of any individual case, it may or may not be in the best interest of a foster child to pursue a viable tort claim. When deciding whether to appoint a master to investigate the potential tort claim, the court should take the best interest of the child into consideration.

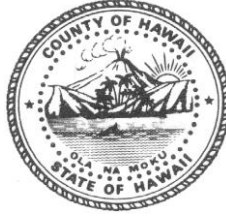
It is our understanding that, in October 2013, the Standing Committee on Children in Family Court, which was then chaired by Justice Paula A. Nakayama, considered whether there should be a statewide policy to facilitate the appointment of attorneys for foster children with potential tort claims and decided not to move forward

with such a policy for reasons that are substantially similar to the issues raised in this testimony.

We respectfully request that this Committee defer this measure for one week to allow us time to draft proposed amendments that would address these concerns.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE
HILO, HAWAII 96720
PH: (808) 961-0466
FAX: (808) 961-8908
(808) 934-3403
(808) 934-3503

WEST HAWAII UNIT
81-980 HALEKI'I ST, SUITE 150
KEALAKEKUA, HAWAII 96750
PH: (808) 322-2552
FAX: (808) 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2276

A BILL FOR AN ACT RELATING TO RELATING TO
CHILD WELFARE SERVICES

COMMITTEE ON HUMAN SERVICES

Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair

Friday, January 26, 2018 2:45 P.M.
State Capitol, Conference Room 16

Honorable Chair Green, Vice-Chair Chang and Members of the Committee on Human Services, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill 2276.

This measure appropriates funds to establish a five-year pilot program in the east Hawaii child welfare services section that limits the number of children per child welfare services caseworker to no more than twenty and additional case managers and support staff for the pilot program.

We are all too familiar with the tragic consequences to children when the child welfare system is inadequately staffed to properly supervise children who are already at high risk of abuse and neglect. The improvements made since the Peter Boy Kema case were essentially wiped out by the loss of workers in 2011. For years now, East Hawaii CWS caseworkers with up to 50 children on their caseload placed in homes in Honokaa to Naalehu and beyond, are faced with an impossible task to visit these children on monthly basis. The cases involving death or serious harm to children is extremely heartbreaking. A social autopsy of the cases often indicate numerous missed opportunities to save them. The civil liability to the state alone is more than sufficient to pay for this project.

CWS workers are our essential partners to help keep our community healthy and safe. We participate with them in multi-disciplinary teams in areas of domestic violence, sexual assault and child abuse. We observe first-hand the stress endured, resulting in burnout and turnover. We have been made aware of procedures workers have been forced to institute in order to keep afloat, and that the family court has started imposing fines against workers. We need to change this dynamic. Our children and families, and our CWS professionals deserve support.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill 2276. Thank you for the opportunity to testify on this matter.

SB-2273

Submitted on: 1/25/2018 2:47:00 PM

Testimony for HMS on 1/26/2018 2:45:00 PM

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 ON HUMAN SERVICES

OF THE STATE SENATE

TWENTY-NINTH LEGISLATURE

REGULAR SESSION OF 2018

Friday, January 26, 2018

2:45 p.m.

Hawaii State Capitol, Conference Room 16

RE: Testimony in Support of 2273, RELATING TO FAMILY COURT; MINORS;
FOSTER CUSTODY; TORT ACTION

To the Honorable Josh Green, Chair; the Honorable Stanlehy Chang, Vice-Chair and
Members of the Committee on Human Services:

Good afternoon, my name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on Senate Bill No. 2273, relating to Family Court, minors, foster custody and tort actions. The OCC Legislative Priorities Committee is in favor of Senate Bill No. 2273 and support its passage.

Senate Bill No. 2273, 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 Senate Bill No. 2273, 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 Senate Bill No. 2273 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

SB-2273

Submitted on: 1/23/2018 9:17:32 PM

Testimony for HMS on 1/26/2018 2:45:00 PM

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

Comments:

Aloha Chairman Green and Members of the Senate Human Services Committee--

I am testifying in STRONG SUPPORT of SB 2237, 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 not add to those challenges by denying them 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.

With Aloha,

David S. Case