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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
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January 29, 2019

TO: The Honorable Senator Russell E. Ruderman, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 214 – RELATING TO THE CHILD PROTECTIVE ACT**

Hearing: Wednesday, January 30th, 2019 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 offers comments.

PURPOSE: The purpose of this Act is to ensure the due process rights of indigent parents by requiring the court to appoint counsel to indigent parents and to make every effort to do so at the first hearing attended by the parent of parents. This bill amends 587A-17, Hawaii Revised Statutes, by requiring the court to appoint an attorney to represent a legal parent who is indigent unless the legal parent knowingly and voluntarily waives the right to appointed counsel on the record. If counsel is not present at such hearing, the court shall not enter a ruling or order that would prejudice the legal parent's rights.

DHS comments that rescheduling hearings due to a lack of counsel may negatively impact children by increasing the time youth spend in care due to continuances and delayed rulings. DHS defers to the Judiciary regarding appropriations necessary to provide legal representation to indigent parents.

Thank you for the opportunity to provide testimony on this bill.



Testimony of the Lawyers for Equal Justice
Regarding SB 214, Senate Human Service Committee
Wednesday, January 30, 2019 at 2:45 PM

Thank you for the opportunity to testify in **strong support** of SB 214, which codifies the recent Hawaii Supreme Court decision requiring the appointment of legal counsel to parents involved in Child Protective Services cases. Please accept this testimony on behalf of Lawyers for Equal Justice (LEJ).

There is no greater interest in life for a parent than their children, and the decision to sever the bond between parent and child carries great weight. In recognition of this fact, the Hawaii Supreme Court ruled in the case *In Re T.M.*, 319 P3rd 338(Haw.2014) that inherent in the substantive liberty interest that parents have in the care, custody, and control of their children under the Hawaii Constitution is the right to counsel to prevent erroneous deprivation of their parental rights. The court held that "[t]he right to counsel is an essential component of a fair trial" in the criminal context. *State v. Tarumoto*, 62 Haw. 298, 299, [614 P.2d 397](#), 398 (1980). The same considerations suggest that an attorney is necessary for a "fair procedure" in parental termination proceedings. With this ruling, Hawaii joined the majority of other states that ensure that due process protections be provided to parents, including the right to counsel.

This bill simply confirms our state's existing obligation to appoint counsel to indigent parents by amending Haw. Rev. Stat. § 587-A17 (a) to eliminate the outdated discretionary language currently on the books. This amended language is critical to ensuring that trial judges are aware of parents' right to counsel as well as the requirement that any waiver of this right be informed and voluntary. The amendment also clarifies when the appointment of counsel should occur in the process, emphasizing that "the court shall make effort to provide counsel at the first hearing attended by the legal guardian, but if counsel does not appear at such a hearing, the court shall not enter a ruling or order that would prejudice the legal parent's rights until counsel appears..."

Lawyers for Equal Justice **strongly supports** Bill 214 and urges the Committee on Human Services to pass it without amendment.

Victor Geminiani

Executive Director

Lawyers for Equal Justice (LEJ) is a non-profit law firm that advocates for low-income residents of Hawai'i. The central mission of Lawyers for Equal Justice is to help our clients gain access to the resources, services and fair treatment that they need to realize their opportunities for self-achievement and economic security. Our cases change systems and policies to make justice, equality and opportunity available to everyone.

SB-214

Submitted on: 1/28/2019 3:48:28 PM

Testimony for HMS on 1/30/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Pollock	Testifying for National Coalition for a Civil Right to Counsel	Support	No

Comments:

SB-214

Submitted on: 1/29/2019 2:32:17 PM

Testimony for HMS on 1/30/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



Hon. Simeon R. Acoba
Associate Justice (Ret.)
Hawai'i Supreme Court
Chair

Derek R. Kobayashi
Vice Chair

HAWAII ACCESS TO JUSTICE COMMISSION

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January 29, 2019

The Honorable Russell E. Ruderman, Chair
The Honorable Karl Rhoads, Vice Chair
Senate Committee on Human Services
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: SB 214
Hearing: January 30, 2019 at 2:45 p.m.
Testimony IN SUPPORT (written testimony only)

Dear Chair Ruderman, Vice Chair Cullen and members of the Senate Committee on Human Services:

I am writing on behalf of the Hawai'i Access to Justice Commission (the "ATJ Commission") to express the ATJ Commission's **support** for SB 214. As you may know, the ATJ Commission was established on May 1, 2008 by the enactment of Rule 21 of the Rules of the Supreme Court of the State of Hawai'i. Rule 21(b) expressly provides, "The purpose of the Commission shall be to substantially increase access to justice in civil legal matters for low- and moderate-income (together "low-income") residents of Hawai'i."

Towards fulfilling this stated purpose, the ATJ Commission hereby expresses its support of SB 214, the intent of which is to ensure that our laws comport with the Hawai'i Supreme Court decision *In the Interest of T.M.*, 131 Haw. 419 (2014), wherein the Court held that under the due process clause of the Hawai'i State Constitution, indigent parents are guaranteed the right to court-appointed counsel in termination of parental rights proceedings. Enactment of SB 214 would serve the ATJ Commission's purpose of increasing access to justice in civil legal matters for low- and

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The Honorable Karl Rhoads, Vice Chair
Senate Committee on Human Services
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moderate-income residents of Hawaii by ensuring the right to counsel to indigent legal parents in cases where their parental rights are in jeopardy.

Accordingly, the ATJ Commission submits this testimony in support of SB 214 and respectfully requests that your Committee give this measure its favorable consideration.

Sincerely,



Derek R. Kobayashi
Vice Chair
Hawai'i Access to Justice Commission

Cc: Hon. Simeon R. Acoba, Associate Justice, Hawaii Supreme Court (Ret.)
Chair
Hawai'i Access to Justice Commission