

JAN 21 2022

A BILL FOR AN ACT

RELATING TO FAMILY COURT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that, according to the
2 department of human services, 2,782 children were in foster care
3 during the fiscal year of 2019. The State serves as the legal
4 custodian and representative for a significant number of
5 children in foster care due to their age. If a child in foster
6 care suffers an injury caused by a third party, the State will
7 cover the child's medical costs. However, that child is unable
8 to obtain legal representation to file a tort claim to seek any
9 additional damages, such as damages for pain and suffering. In
10 this event, a class of children is, in effect, disenfranchised
11 from a right to counsel simply because they are in foster care
12 with the State serving as their legal custodian.

13 The legislature further finds that the Hawaii state supreme
14 court's standing committee on children in family court has
15 considered and discussed a tort claim procedure or policy to
16 provide outside legal representation on behalf of a child who is
17 in foster care subject to chapter 587A, Hawaii Revised Statutes,



1 and may have a cause of action and seek damages for any injuries
2 sustained. The standing committee declined to adopt a procedure
3 or policy but acknowledged that a process should be established
4 in family court.

5 The purpose of this Act is to:

6 (1) Require certain persons to immediately report a
7 potential tort claim to the family court when that
8 person has reason to believe that a child in foster
9 custody has suffered an injury that may arise to a
10 tort claim; and

11 (2) Establish procedures for the family court to follow
12 when appointing a master to investigate a potential
13 tort claim and when authorizing the filing of a tort
14 claim on behalf of an injured child, including the
15 opportunity for an injured child to obtain outside
16 legal representation.

17 SECTION 2. Chapter 587A, part V, Hawaii Revised Statutes,
18 is amended by adding a new section to be appropriately
19 designated and to read as follows:

20 "§587A- Reporting of injured child in foster custody;
21 tort claim; court-appointed master. (a) In the event that a



1 guardian ad litem, court-appointed special advocate, resource
2 family, party, social worker, or attorney has reason to believe
3 that a child in foster custody has suffered a physical,
4 emotional, or psychological injury that may arise to a tort
5 claim under federal or state law, these persons shall
6 immediately report the matter to the court in writing.

7 (b) Upon receiving a written notice pursuant to subsection
8 (a), the court shall immediately set a hearing and provide a
9 copy of the written communication to all parties. At the
10 hearing, the court shall consider whether issuing an order to
11 appoint a master pursuant to family court rules is necessary to
12 investigate the reported potential tort claim.

13 (c) If the court issues an order appointing a master, the
14 order shall set forth the following:

15 (1) All parties shall cooperate with the master, including
16 gathering and furnishing any records, reports, and
17 data requested by the master;

18 (2) The master shall meet and consult with outside counsel
19 on behalf of the injured child regarding the merits of
20 the potential tort claim;



1 (3) The master shall submit a written report to the court
2 by the date set by the court;

3 (4) The report submitted by the master shall describe the
4 actions taken by the master and provide any
5 recommendations regarding filing a tort claim;

6 (5) A copy of the report submitted by the master shall be
7 submitted to all parties;

8 (6) The court shall set a hearing following the submission
9 of the report by the master; and

10 (7) Any other requirements that the court may deem
11 necessary to assist the master in determining the
12 merits of the reported potential tort action.

13 (d) At the hearing scheduled by the court following the
14 submission of the master's report, the court, upon hearing from
15 all parties and the master, and based on the master's report,
16 shall consider whether:

17 (1) Further action is necessary; or

18 (2) To issue an order authorizing the filing of a tort
19 claim on behalf of the injured child.

20 (e) If the court issues an order authorizing the filing of
21 a tort claim on behalf of the injured child, the court shall:



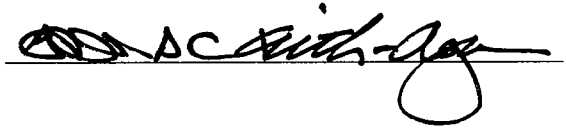
- (1) Appoint outside counsel to represent the injured child if the court determines that the appointment is in the best interest of the child;
- (2) Determine whether the master should continue to serve during the tort action;
- (3) Set periodic hearings to review the tort action; and
- (4) Issue any other orders that are in the best interest of the injured child during the tort action."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY:





S.B. NO. 2422

Report Title:

Family Court; Minors; Foster Custody; Tort Action

Description:

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 follow when appointing a master to investigate a potential tort claim and when authorizing the filing of a tort claim on behalf of an injured child, including the opportunity for an injured child to obtain outside legal representation.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

