

JAN 25 2023

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 the State serves as
2 the legal custodian for thousands of children in foster care.
3 If a child in foster care is injured by a third party, the State
4 will cover the child's medical costs. However, the injured
5 child is unable to obtain legal representation to file a tort
6 claim seeking any additional damages, including damages for pain
7 and suffering. The child is effectively disenfranchised and has
8 no independent right to counsel because the State is the child's
9 legal custodian.

10 The legislature recognizes that the Hawaii supreme court's
11 standing committee on children in family court considered this
12 issue and recommended the development of a tort claim policy for
13 children in foster care.

14 Accordingly, the purpose of this Act is to:

15 (1) Require certain persons to immediately report to the
16 family court if the person has reason to believe that



1 a child in foster custody has suffered an injury that
2 may constitute a tort claim; and

3 (2) Establish procedures for the family court to follow
4 when investigating a potential tort claim on behalf of
5 a child in foster care and when determining whether to
6 authorize the filing of a tort claim on behalf of the
7 injured child and whether to appoint outside counsel.

8 SECTION 2. Chapter 587A, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§587A- Child injured in foster custody; reporting**
12 **requirements; court procedures.** (a) If a guardian ad litem,
13 court-appointed special advocate, resource family, party, social
14 worker, or attorney has reason to believe that a child in foster
15 custody has suffered a physical, emotional, or psychological
16 injury that may constitute a tort claim under federal or state
17 law, the person shall immediately report the matter to the court
18 in writing.

19 (b) Upon receiving written notice pursuant to subsection
20 (a), the court shall immediately schedule a hearing and provide
21 a copy of the written communication to all parties. At the



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1 hearing, the court shall consider whether to issue an order
2 pursuant to family court rules for a court-appointed master to
3 investigate the potential tort claim.

4 (c) If the court issues an order for a court-appointed
5 master, the order shall require:

6 (1) All parties to cooperate with the court-appointed
7 master and to gather and furnish any requested
8 records, reports, or data;

9 (2) The court-appointed master to meet and consult with
10 outside counsel on behalf of the injured child
11 regarding the merits of the potential tort claim;

12 (3) The court-appointed master to submit a written report
13 to the court by a date established by the court;

14 (4) That the report submitted by the court-appointed
15 master describe any actions taken in the case and
16 provide recommendations regarding the merits of the
17 potential tort claim;

18 (5) That a copy of the court-appointed master's report be
19 submitted to all parties; and



1 (6) Any other actions the court deems necessary to assist
2 the court-appointed master in determining the merits
3 of the potential tort claim.

4 (d) Following the submission of the court-appointed
5 master's report, the court shall schedule a hearing for the
6 court to consider, after hearing from all parties and the
7 court-appointed master and based on the court-appointed master's
8 report, whether:

9 (1) Further action is needed; or

10 (2) The court will issue an order authorizing the filing
11 of a tort claim on behalf of the injured child.

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

14 (1) Appoint outside counsel to represent the injured child
15 if the court determines that the appointment is in the
16 best interest of the child;

17 (2) Determine whether the court-appointed master should
18 continue to serve during the tort action;

19 (3) Set periodic hearings to review the tort action; and

20 (4) Issue any other orders during the tort action that are
21 in the best interest of the injured child."



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

4 SECTION 4. New statutory material is underscored.

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

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INTRODUCED BY: *Carol Johnson*



S.B. NO. 1530

Report Title:

Family Court; Minors' Foster Custody; Tort Action

Description:

Requires certain persons to immediately report to the family court if the person has reason to believe that a child in foster custody has suffered an injury that may constitute a tort claim. Establishes procedures for the family court to follow when investigating a potential tort claim on behalf of a child in foster care and when determining whether to authorize the filing of a tort claim on behalf of the injured child and whether to appoint outside counsel.

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

