

JAN 20 2023

A BILL FOR AN ACT

RELATING TO COURT-APPOINTED ATTORNEYS.

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

1 SECTION 1. The legislature finds that the Hawaii supreme
2 court held in *In re T.M.*, 131 Hawaii 419 (2014), that indigent
3 parents are guaranteed the right to court-appointed counsel
4 under the due process clause of the Hawaii State Constitution in
5 termination of parental rights proceedings. In this case, the
6 court held that the family court abused its discretion in
7 failing to appoint counsel for the mother until nineteen months
8 after the department of human services filed a petition for
9 temporary foster custody over her infant son. As a result, the
10 mother was left without the legal guidance to help her
11 understand the process and ramifications of the parental rights
12 termination process or prepare her for the parental rights
13 termination hearing. She was also left without an advocate to
14 represent her in negotiations with the department of human
15 services. The court also held that the appointment of an
16 attorney is crucial to ensure that parents are provided a fair



1 process in a termination of parental rights proceeding under the
2 Child Protective Act, chapter 587A, Hawaii Revised Statutes.

3 The legislature further finds that the Hawaii supreme court
4 held in *In re L.I.*, 149 Hawaii 118 (2021), that parents are
5 constitutionally entitled to counsel upon the filing of a
6 petition for either custody or family supervision and that the
7 failure to timely appoint counsel in those cases constitutes
8 structural error requiring reversal.

9 The purpose of this Act is to require the family court to
10 appoint counsel to indigent parents upon the filing of a
11 petition for custody or family supervision and make every effort
12 to do so at the first hearing attended by the parents.

13 SECTION 2. Section 587A-17, Hawaii Revised Statutes, is
14 amended by amending its title and subsection (a) to read as
15 follows:

16 " ~~[+] §587A-17 [{}]~~ **Court-appointed attorneys.** (a) ~~[The]~~
17 Upon filing a petition for custody or family supervision, the
18 court ~~[may]~~ shall appoint an attorney to represent a legal
19 parent who is indigent, or was represented by private counsel
20 but is presently indigent and no longer represented by counsel,
21 based on court-established guidelines ~~[=]~~ unless the legal parent



1 knowingly and voluntarily waives the right to appointed counsel
2 on the record. If a legal parent appears without counsel, the
3 court or its designee shall utilize court-established guidelines
4 to inquire as to whether the legal parent is indigent. The
5 court shall provide counsel by the first hearing attended by the
6 legal parent; provided that if counsel does not appear at the
7 hearing, the court shall not enter a ruling or order that would
8 prejudice the legal parent's rights until counsel appears or the
9 legal parent knowingly and voluntarily waives the right to
10 appointed counsel on the record; provided further that if
11 counsel is not appointed at least three days prior to the date
12 of the hearing, the court shall grant a continuance if
13 requested. Nothing in this section shall preclude the issuance
14 of court orders required for the immediate safety of the subject
15 child or children. The court may also appoint an attorney to
16 represent another indigent party based on court-established
17 guidelines, if it is deemed to be in the child's best interest.
18 Attorneys who are appointed by the court to represent indigent
19 legal parents and other indigent qualifying parties may be paid
20 by the court, unless the legal parent or party for whom counsel
21 is appointed has an independent estate sufficient to pay such



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1 fees and costs. The court may order the appropriate legal
2 parent or party to pay or reimburse the fees and costs of an
3 attorney appointed for the child or incapacitated adult."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____



S.B. NO. 411

Report Title:

Child Protective Act; Family Court; Court-Appointed Attorneys;
Indigent Parents

Description:

Requires the court to appoint counsel to indigent parents upon the filing of a petition for custody or family supervision and make every effort to do so at the first hearing attended by the parents.

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

