



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First State Legislature, 2021 Regular Session

Senate Committee on Human Services
Senator Joy A San Buenaventura, Chair
Senator Les Ihara, Jr., Vice Chair

Thursday, February 11, 2021, 3:00 P.M.
VIA VIDEOCONFERENCE
State Capitol, Conference Room 225

by
Judge Christine E. Kuriyama
Deputy Chief Judge, Senior Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 885, Relating to the Child Protective Act.

Purpose: Requires the family court to appoint counsel to indigent parents in foster care cases and make every effort to do so at the first hearing attended by the parent.

Judiciary's Position:

The Judiciary does not take a position on this bill, but offers the following comments and observations:

1. The Judiciary appreciates the Legislature’s clarification that the amendment applies to foster care cases as previously suggested in response to S.B. No. 2110 (2020).
2. As a result, this bill is consistent with the Judiciary’s practice in Child Protective Act cases involving foster custody.



Senate Bill No. 885, Relating to Child Protective Act
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3. It should be noted, however, that any further reduction in the Judiciary's budget may have a negative impact on the Judiciary's ability to provide legal counsel for indigent parents in foster custody cases.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 10, 2021

TO: The Honorable Senator Joy San Buenaventura, Chair
Senate Committee on Human Services

FROM: Cathy Betts, Director

SUBJECT: **SB 885 – RELATING TO THE CHILD PROTECTIVE ACT**

Hearing: Thursday, February 11, 2021, 3:00 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of bill, offers comments, and defers to the Judiciary.

PURPOSE: The purpose of the bill is to require the family court to appoint counsel to indigent parents in foster care cases and make every effort to do so at the first hearing attended by the parent.

DHS agrees that all parents should have legal representation at all Chapter 587A, Hawaii Revised Statutes (HRS), court proceedings. The stakes are high and potentially life-changing for children and families involved in child welfare proceedings. Legal proceedings are complex and families need representation at the outset of proceedings.

The department notes the following concerns:

- Limiting the court's ability to enter rulings in cases and allowing for new circumstances for continuances (page 3, lines 4-12) will delay action in foster care cases and potentially cause trauma to children.
- Implementation of this bill will require additional funding to the Judiciary. Passage of this bill without adequate appropriation will result in court hearing delays, causing

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children to remain in foster care longer than necessary, negatively impacting child well-being. However, we respectfully ask that any appropriation not impact budget priorities identified in the executive budget.

Thank you for the opportunity to testify on this matter.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 885, RELATING TO THE CHILD PROTECTIVE ACT.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 11, 2021 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225, Via Video Conference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Ian T. Tsuda,
Deputy Attorney General, at (808) 753-1216)

Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill and provides the following comments.

The purposes of the bill are to require the appointment of counsel for indigent legal parents in foster care cases, prohibit the entry of orders prejudicing a legal parent's rights unless required for the safety of the child, and permit appointment of counsel for non-indigent legal parents if in the child's best interests, by amending section 587A-17, Hawaii Revised Statutes (HRS).

The issue of when appointment of counsel for parents is required in chapter 587A, Child Protective Act (CPA) cases according to *In re T.M.*, 131 Hawai'i 419, 319 P.3d 338 (2014), is currently before the Hawai'i Supreme Court in *In re L.I. and H.D.K.*, SCWC-18-0000773, 2020 WL 4515785 (Haw. Aug 5, 2020). The writ of certiorari in *In re L.I. and H.D.K.* seeks clarity, among other things, as to whether the appointment of counsel must occur upon the filing or granting of a petition for foster custody. As of the submission of this testimony, the Court has yet to issue a decision.

If the bill passes prior to the Court's decision in *In re L.I. and H.D.K.*, future amendments may be required to reflect the Court's requirements for the appointment of counsel for parents. This could include the appointment of counsel in every case brought under the CPA, or it could apply to every indigent parent, even if that parent is

not a child's legal custodian, because the rights of all classifications of "parent" are implicated in CPA proceedings. See, e.g., sections 587A-4 (definition of "parent"), 587A-8 (protective custody by police), 587A-33 (termination of parental rights).

Another concern with the bill is the provision on page 3, lines 2-12, that would prevent the entry of a ruling or order that would prejudice the rights of a legal parent who does not have counsel. That provision could constrain the family court in making necessary decisions, even when appropriate efforts to afford representation for a legal parent have been made. It could also prevent the family court from making certain required findings and orders to comply with federal law and to secure necessary funding for the care of foster children. See 45 C.F.R. §1356.21 (foster care maintenance payments program implementation requirements). These requirements exist irrespective of a family court's efforts to, or a legal parent's participation in, the process to obtain court appointed counsel, which would be hindered by this provision.

For these reasons, the Department's recommendation is to defer the bill until after the Court's decision in *In re L.I. and H.D.K.*

The Department respectfully requests that the Committee consider these recommendations.

Thank you for the opportunity to testify.

SB-885

Submitted on: 2/8/2021 4:49:12 PM

Testimony for HMS on 2/11/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Ruth Yamamoto	Individual	Support	No

Comments:

Thank you for the opportunity to testify in support of SB885. I have concerns that the assigned lawyer and client are given time to conference on the case prior to a hearing. Parents need to know what their rights are in a child welfare, the most important being their right to challenge the allegations. I have a response from 40 Hawaii parents who report that they were advised to stipulate to the allegations to save time with reunification. That is not proper discussion of parent options. Those same parents found themselves on the state Child Abuse Registry that was also not explained to them at the first meeting with their court appointed.

SB-885

Submitted on: 2/8/2021 5:43:34 PM

Testimony for HMS on 2/11/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Support	No

Comments:

EVERY effort to do so!

SB-885

Submitted on: 2/10/2021 10:50:03 AM

Testimony for HMS on 2/11/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherry Alu Campagna	Individual	Support	No

Comments:

I stand in strong support of SB885