



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

House Committee on Human Services
Representative John M. Mizuno, Chair
Representative Terez Amato, Vice Chair

Tuesday, February 14, 2023 at 9:30 a.m.
State Capitol, Conference Room 329 & Videoconference

by:
Jessi L.K. Hall
Judge, Family Court of the First Circuit

Bill No. and Title: House Bill No. 1291, Relating to Family Court.

Purpose: 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.

Judiciary's Position:

The Judiciary respectfully opposes House Bill No. 1291. We agree with the bill's intent that our family courts should establish policies and procedures that assist children in foster care in obtaining legal representation to pursue civil tort claims for personal injuries. However, we disagree that such a process should be enacted by a statute that may work against children's best interests. We respectfully request that this bill be deferred indefinitely by this committee.

If this committee decides to pass the bill out of committee, we respectfully request that the committee amend the language of this bill by adopting the language in Senate Bill No. 2422, S.D. 2 from the 2022 Legislature, included below.

Senate Bill No. 2422 (SB2422) was introduced in the 2022 Legislature. The Judiciary



testified in opposition to that bill. Our reasons for opposition then are the same as our reasons now. The reasons are listed below.

In 2022, the Senate Committee on Human Services acknowledged the Judiciary's concerns and passed out the bill with amendments, SB2422, SD1. Consequently, the Judiciary testified in support of SB2422, SD1 before the joint Senate Committees on Judiciary and Ways and Means. Both committees passed out the bill with amendments in response to testimony from the Judiciary that resulted in SB2422, SD2. After SB2422, SD2 was received by the House, no hearings were set. There was no House companion.

The Preamble in the original SB2422 is identical to this bill's Preamble. The Preamble to SB2422, SD2 was modified by the deletion of the last paragraph of House Bill No. 1291, at page 2, lines 11 to 15: "(2) Establish 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 language of the original SB2422 (2022) is identical to the language of House Bill No. 1291. We respectfully request that, if the committee does not defer this bill, it will adopt the changes reflected in SB2422, SD2.

For this Committee's convenience, SB2422, SD2 from 2022 is reproduced here.

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

"§587A- Reporting of injured child in foster custody; tort claim; court-appointed master. (a) In the event that a guardian ad litem, court-appointed special advocate, resource family, party, social worker, or attorney has reason to believe that a child in foster custody has suffered a physical, emotional, or psychological injury that may arise to a tort claim under federal or state law, the person shall immediately report the matter to the court in a declaration attached to a motion for immediate hearing.

(b) Upon receipt of the motion pursuant to subsection (a), the court shall set a hearing as soon as practicable. At the hearing, the court shall consider whether issuing an order to appoint a master pursuant to family court rules is necessary.

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

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

(2) The master shall submit a written report to the court by



the date set by the court;

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

(4) A copy of the report submitted by the master shall be submitted to all parties; and

(5) The court shall set a hearing following the submission of the report by the master."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2022-2023 for the judiciary to compensate court-appointed masters appointed by a court pursuant to this Act.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 30, 2075."

The concerns we presented in 2022 are relevant to this year's identical House Bill No. 1291. Those concerns are as follows.

1. The "legal culture" in each circuit is different due to size of the population, the number of attorneys who practice in that circuit, and how connections and referrals are made. The family courts in each circuit should have the flexibility to promulgate protocols that match their unique legal cultures and available resources. For example, the first circuit family court has already established a protocol that is appropriate in the first circuit. This is an issue where one size does not fit all. Each circuit needs the flexibility to effectively tailor a protocol that will work best for the children under its jurisdiction. A statewide statute does not allow for this necessary flexibility.

2. The connections and referral strategies evolve over time. Sometimes, the changes can occur quickly (for example, a key appellate ruling that might change the landscape of tort liability). Sometimes a change might be more "organic," such as a reputable personal injury law firm from one circuit setting up an office in another circuit. Modifying a court protocol to reflect these changes can be done fairly quickly. Amending a statute to respond to changes is, properly, more complicated and may take a number of years to accomplish. Any delay in adopting changes to a protocol may work against the best interests of a child whether under supervision with the child's family or in foster care.

3. Flexibility is needed to tailor the process to the needs of a specific child in a specific case. A protocol simply does not have the full force of a statute and is therefore easier to deviate



from when circumstances require deviation in the child's best interest. For example, in a particular case, a guardian ad litem may be able to do what House Bill No. 1291 requires a master to do. Or, an attorney may have good tactical or strategic reasons to delay an independent investigation or may determine that being "tethered" to an existing chapter 587A case is simply not the best way to proceed with the civil lawsuit.

Most certainly no personal injury lawyer will take a case knowing that a statute gives the family court the ability to authorize the filing of the tort action (page 4, line 18-19) and that mandates the family court to conduct "periodic hearings to review the tort action" (page 5, line 6). A court protocol provides the injured child with the flexibility that a statute cannot.

4. Flexibility is also needed with respect to the use of scarce family court resources. House Bill No. 1291 requires the family court to appoint a master to investigate and report on potential tort claims and to appoint legal counsel in appropriate cases. The compensation for court appointed masters and legal counsel will require significant additional funding from the Legislature and is not necessary for the purposes of this bill.

We hope that we have clearly illustrated why the Judiciary respectfully opposes House Bill No. 1291. The policies of this bill do not require additional statutory provisions that mandate specific procedures. Family court judges can decide on a case-by-case basis when to override the confidentiality of a case when it is the child's best interest to explore a tort action. Personal injury lawyers can file lawsuits on behalf of foster children and can access existing laws and rules of court on their behalf. The different circuits should be free to establish their own protocols tailored for their circuits and will have the flexibility to fine tune them over time and based on additional experience.

The Judiciary supports the foster child's ability to sue for damages and, in fact, will keep working on encouraging all of our systems to channel appropriate cases to reputable law firms for evaluation and appropriate follow up.

We respectfully ask that House Bill No. 1291 be deferred by this committee. Short of that, we respectfully suggest this committee's adoption of the language in SB2422, SD2 from the 2022 Legislature.

Thank you for the opportunity to testify in this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 1291, RELATING TO FAMILY COURT.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 14, 2023 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lynne M. Youmans, Deputy Attorney General

Chair Mizuno and Members of the Committee:

The Attorney General appreciates the intent of this bill, and provides the following comments.

The bill adds a section to the Child Protective Act (CPA), chapter 587A, Hawaii Revised Statutes (HRS), that establishes a procedure for Family Court to appoint a master in response to a report of potential harm to a child in foster custody. The master is charged with gathering information, consulting with outside counsel, submitting a written report to the court, and other tasks necessary to evaluate the appropriateness of filing a civil lawsuit on behalf of a child in foster custody. The bill seeks to formalize policies and procedures that were considered but not adopted by the Hawaii State Supreme Court standing committee on children in Family Court. Based on our experience with the informal process for appointing a master currently used by the Family Court, we believe there are some potential problems that need to be addressed.

Our concerns, detailed below, are that (1) the lack of an appropriation could create a financial conflict for the masters, (2) the bill lacks specifications for a master's qualifications or limitations, (3) the focus of a CPA proceeding could be shifted from protecting children to tort litigation, (4) the bill duplicates the authority already possessed by court-appointed guardians ad litem, and (5) the bill could discourage volunteers from becoming much-needed resource caregivers.

First, the bill contemplates that the Family Court will appoint, when appropriate, a master to conduct a thorough investigation of a claim of harm to a child, but there is no appropriation that is requested for the Judiciary to compensate a master for the master's time and effort. There is already a Hawaii Family Court Rule, Rule 53, that empowers the Court to appoint a master to assist the Court. Rule 53 specifically requires the Court to set the compensation for the master, and identify the source of payment. As contemplated in this bill, there is no source of payment for the master other than the filing of a civil action and recovery of damages and costs through that civil action. This creates a conflict of interest because the master cannot conduct a thorough and unbiased investigation if the only available funding for the master's work is through the filing of a civil action and the recovery of money through that action. This concern can be addressed by adding an appropriation for the Judiciary to compensate a master for the master's efforts to impartially investigate a report of harm.

Second, any master appointed pursuant to this section should have experience or expertise in tort litigation so that the master can make an informed recommendation to the Family Court. There should also be reasonable limitations on the master's access to confidential information regarding the family and a clear directive that any confidential information be used only for the master's investigation and destroyed upon the master's completion of the investigation. The family involved should not lose rights to confidentiality otherwise protected by law.

Third, the requirement that the parties to a CPA proceeding report any reasonable belief of harm to a child in foster custody and seek the appointment of a master who may have incentive to file a civil action to be compensated for the master's work, may shift the focus of the CPA proceeding. The purpose of the CPA is to help reunite abused or neglected children safely with their parents or, if that is not possible, to find a safe and stable permanent home with another family. If the focus of the CPA proceeding becomes the discovery and prosecution of a separate civil tort action, it requires parties like Child Welfare Services (CWS) and the resource caregiver families to adopt a defensive posture in anticipation of mitigating potential liability. The proceeding would then shift focus away from the needs of the families and children who

are the subject of the CPA proceedings to the prosecution of tort litigation. The wording of the bill suggests that, even if a child safely reunifies with the child's family, the CPA proceedings may need to remain open for periodic review hearings on the tort action set pursuant to the provision on page 5, line 6, of the bill. And the court could continue the master's involvement "during the tort action" pursuant to the provision on page 5, lines 4-5. Monitoring and facilitating tort litigation is not the expertise or focus of a CPA proceeding, and the master should be discharged upon making a report to the court following the investigation. The provisions on page 5, lines 4-6, should be removed from the bill to avoid the confusion between the CPA proceedings and any tort litigation.

Rather than have the Family Court monitor tort litigation, as contemplated by subsection (e) on page 4, line 20, to page 5, line 8, we recommend that the Family Court, with funds appropriated for this purpose, appoint an attorney to represent the child in a conservatorship action in the Probate Court. In a conservatorship action, the child's family and any other interested party can ask the Probate Court for the authority to represent the child's interest in the contemplated tort litigation. The Probate Court can determine who can best represent the child, make provision for payment of that person from the child's eventual settlement, and monitor that person's use of the funds on behalf of the child. All of these are statutory functions of the Probate Court, and not the Family Court. Specifically, we recommend revising subsection (e) to read as follows:

(e) If the court finds that there is a viable tort claim that can be filed on behalf of an injured child, the court shall appoint an attorney, compensated pursuant to section 571-87, to file an action to appoint a conservator for the injured child pursuant to chapter 560, article V.

Fourth, the bill seems to duplicate what should already be a function of a child's court appointed Guardian Ad Litem (GAL). The GAL is empowered, by section 587A-16(c), HRS, to investigate the child's situation and report to the Court about actions that should be taken on a child's behalf. Those actions can certainly include an order authorizing the GAL to contact civil attorneys to act on behalf of the child when appropriate. Rather than create a new section in chapter 587A to establish a special master, section 587A-16(c) could be revised to explicitly authorize a GAL to evaluate

and report to the court any potential tort claims a child may have, and then the Family Court could appoint an attorney to have a conservator appointed as described above.

Finally, if CPA proceedings become an avenue for finding causes of action against resource caregiver families, it may discourage people from opening their homes to children in need, or alter their behavior towards those children. If any injury to a child in foster custody could result in the filing of a civil action, resource caregiver families may have to limit a child's ability to participate in activities like organized sports or rigorous outdoor activity for fear of an injury. It could also limit the pool of available families to nurture and foster the growth of children who need that care the most.

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 13, 2023

TO: The Honorable John M. Mizuno, Chair
House Committee on Human Services

FROM: Cathy Betts, Director

SUBJECT: [HB 1291](#) - RELATING TO FAMILY COURT.

Hearing: February 14, 2023, 9:30 a.m.
Conference Room 329 & Videoconferencing, State Capitol

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

PURPOSE: The bill 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.

For the Legislature's information, all serious injuries of a child in foster care that require medical attention or injuries that appear inconsistent with how they were reported to have occurred are documented and investigated by Child Welfare Services and the child's medical provider. The investigating social worker can refer the case to the Multi-disciplinary Team (MDT) to examine whether the injury was accidental or non-accidental. The resulting report of the MDT is part of the child's record and is made available to the Court and parties. If the injuries are

determined to be non-accidental or abusive, the child will be removed from the foster home and placed in another foster home if the child's family cannot provide a safe home.

With regard to tort claims, DHS requests clarification on how the measure, if passed, will be reconciled with section 346-17(m), HRS. Notably, via Act 133, Session Laws of Hawaii 2016 (Act 133), the Legislature amended Hawaii law to comply with "the Preventing Sex Trafficking and Strengthening Families Act of 2014, Public Law No. 113-18, to expand opportunities for children in foster care to participate in age or developmentally appropriate extracurricular, enrichment, cultural and social activities equal to their classmates and peers by the "reasonable and prudent parent standard."¹ Amongst other things, Act 133 amended section 346-17, HRS, and added immunity from civil liability as follows:

"(m) Any resource caregiver or child caring institution issued a certificate of approval pursuant to this section shall be immune from liability in a civil action to recover damages for injury, death, or loss to a person or property that results by authorizing a child in the caregiver's or institution's foster care to participate in an extracurricular, enrichment, cultural, or social activity; provided that the authorization is in accordance with the reasonable and prudent parent standard as defined in title 42 United States Code section 675(10)(A)."

The preamble of Act 133 describes the reason for immunity from civil liability as follows,

"The Preventing Sex Trafficking and Strengthening Families Act, title 42 United States Code section 675(10)(A), defines the "reasonable and prudent parent standard" as "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, and social activities."

Federal and State law encourages resource caregivers to provide children in their care the same opportunities to engage in age-appropriate activities as their own children. However, investigating all potential torts while a child is in foster care may influence the resource caregiver's decision-making as to what kind of activities the child in their care may participate in, reducing the child's opportunities to participate in extracurricular, enrichment, and social activities.

DHS is concerned about placing the proposed process in chapter 587A, Hawaii Revised Statutes (HRS). The Child Protective Act (CPA), codified as chapter 587A, is to "provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families if the families can provide safe family homes." Under the CPA and

federal law, parents with children in foster care have a limited time to complete court-ordered services and demonstrate their ability to provide a safe family home. However, per section 587A-29, HRS, the court at any stage may set a show cause hearing where the child's parents have the burden to present evidence as to why the case should not be set for termination of parental rights or legal guardianship hearing. Time is of the essence.

During the Chapter 587A case, the primary focus of all parties involved should be on the child's needs and their parents' successful engagement in completing their service plan. The department must provide "[e]very reasonable opportunity should be provided to help the child's legal custodian to succeed in remedying the problems that put the child at substantial risk of being harmed in the family home." The CPA policy and purpose acknowledges the protection of children by "providing assistance to families to address the causes of abuse and neglect" and "ensuring that families are meaningfully engaged and children are consulted in an age-appropriate manner in case planning." Section 587A-2, HRS. In addition, DHS Child Welfare Services (CWS) must make "reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured" to remain eligible to receive federal foster care maintenance payments under Title IV-E of the Social Security Act.

Although DHS appreciates the intent to explore other possible legal opportunities for children in foster care, the department is concerned that the additional responsibilities associated with investigating potential tort claims during the chapter 587A case may frustrate the Court, CWS, and parents' efforts to provide a safe family home for the children in foster care. DHS is also concerned that if additional tort investigations are initiated during the 587A case, resource caregivers may not want to continue serving as resource caregivers for the child, resulting in the child being further traumatized by an additional move or resources caregivers will be reluctant to make prudent parenting decisions that would allow a child in care to participate in the normal age- and developmentally appropriate prosocial activities.

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

FOSTER CHILDREN IN HAWAII AND THEIR RIGHT TO COUNSEL

Thank you for allowing me to offer testimony on behalf of Senate Bill 2422. My interest in this subject is prompted by my 25 years plus as licensed foster parent, my 3 years as a VGAL with the Family Court and my service as a Special Master with Family Court where I have represented the interests of abandoned and abused children, including helping them secure access to counsel when they suffer harm. As some of you may know, I recently served *pro bono* as the Special Master in the Peter Boy Kema case.

What I have found most striking in my experience is that in the land of milk and honey where there are probably more licensed attorneys per square foot than almost any country in the world, our most vulnerable population, the children who are wards of the State and or in foster care have virtually no access to counsel if they suffer harm as a result of third party tort liability.

According to Toni Schwartz, the Public Information Officer of the Department of Human Services, 2745 children went through the foster care system in Hawaii in 2010. In earlier years the numbers approached 5,000. Of the children in foster care, a significant number of them are also wards of the State of Hawaii. That is, they have no responsible adult or parent to serve as their legal guardian. The State of Hawaii is their legal guardian and that duty is largely discharged by the DHS social worker assigned to the child and the attendant family court case.

If your child, who is not in foster care, suffers an injury or harm at the hands of another, such as an automobile accident, schoolyard fall etc., you as the parent may choose to consult a lawyer on your child's behalf to see if the child has a claim for damages. In the event a lawyer decides there is a claim, he will appoint you to serve as your child's *prochien ami*, or next friend, so that the claim can be filed in court. In Hawaii a minor under 18 years of age cannot hire a lawyer on their own and can only be represented if the court approves a responsible adult or parent to act on his or her behalf.

If a child in foster care who is also a ward of the State of Hawaii is involved in an accident or otherwise suffers harm, the paradigm changes dramatically. First of all, if there are physical injuries involved requiring medical care, the State of Hawaii steps in and pay the medical bills through the Department of Human Services MedQuest program. However, there is no one present in the child's life at this point that has the legal authority to act on the child's behalf and in their best interest to investigate if there is a claim for damages.

If there is a Volunteer Guardian Ad Litem involved with the child, the local office has taken the position that it is outside the authority of the VGAL to act in this area or to even investigate a possible claim for the child. The Department of Social Services has taken the position in at least several cases that it isn't their responsibility to even report such an injury let alone seek an independent voice to represent the best interests of the child and investigate a possible claim. Most troublesome of all, if the State of Hawaii

discovers there is insurance, they will seek to “represent” the child in a claim for damages but only to the extent that they are able to recover back the “out of pocket” expenses they incurred by extending the MedQuest benefits to the injured child.

The State of Hawaii is certainly entitled to try and assert their lien rights in such a case by attempting to secure reimbursement for their medical costs. However, they ethically cannot do that while standing in the child’s shoes, pretending to be the child’s lawyer on one hand, and their own lawyer on the other. The old adage that you cannot serve two masters applies here. The child should be entitled to their own independent voice and counsel who would seek full recovery for any claims of damage they might have against a third party who caused the injury, not simply limited to recovering their medical expenses for the purpose of reimbursing the State of Hawaii. That is the Attorney General’s job, but not as the lawyer for the child.

Under the present system an entire class of children has been fundamentally disenfranchised of their right to counsel in the event they suffer injury at the hands of another because they had the misfortune of becoming wards of the State through no fault of their own.

While there is a provision in the Family Court Rules for the family court judge to appoint what is described as a Special Master under Rule 66 to act in the child’s best interest in investigating such claims and securing a *prochien ami* and or counsel to represent the child, there are other systems in place that appear to offer the same remedy, more efficiently and comprehensively. In some California jurisdictions for example, their Juvenile Courts automatically appoint litigation or civil counsel in the event that a ward of the jurisdiction suffers harm.

The Dependency Court Tort Policy in the Juvenile Division of the Los Angeles County Superior Court has proven to be both effective and efficient, As proposed by HB 2301 there are no administrative costs attendant to the program and between March of 1992 and February of 2008 more than \$18,000,000 was recovered including millions of dollars reimbursed to the county and State for the costs of medical and related services that would have otherwise been lost.

The provisions afforded in Senate Bill 2422 and House Bill 2301 are a sensible and cost efficient way to address this long standing inequity. At no additional cost to the State, it provides counsel to otherwise disenfranchised minor children who suffer harm and in many cases results in a significant recovery of otherwise lost costs incurred by the State in paid medical and related expenses.

Steve Lane

HB-1291

Submitted on: 2/11/2023 3:42:12 PM

Testimony for HUS on 2/14/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support

My name is Francis T. O'Brien. I am an attorney admitted to practice in the State of Hawaii. Over the last 35 years I have concentrated my practice on cases arising under Chapter 587A, HRS (The Child Protective Act). During that time, I have represented parents, foster parents (Resource Caregivers), relatives seeking custody of children, foster children, and Guardians Ad Litem. I have just completed a matter where a Special Master was appointed by the Court in a Chapter 587A case. This appointment was made pursuant to a protocol that was issued by Judge Mark Browning when he was the Chief Judge of the Family Court. Based upon that experience, it is my experience that the protocol and the proposed statute create many more problems than they resolve. In the first instance, the statute contains no provision regarding who may serve as a Special Master and likewise contains no provision dealing with how the Special Master is to be compensated if he/she is appointed. It has been my experience that there are significant issues regarding confidentiality that are created by injecting a Special Master into a case because the statute provides no guidance as to the extent/limitations of the powers of the Special Master. To the extent that the Special Master has contact with persons who are not parties to the case, there are threats to the confidentiality that is required in each case. There are no provisions as to how the Special Master is to be supervised. Likewise, the provision that permits the Special Master to "consult" with outside counsel is itself an invitation to breaches of the confidentiality required in these proceedings. There is no provision in the statute that deals with how counsel for the foster child is to be "appointed" by the court, or what credentials that counsel is supposed to have. Likewise, there is no list of counsel who would be qualified to take such cases. Putting the Judiciary in charge of selecting and then negotiating with outside counsel about representation of the foster child arguably would place the Judiciary in the position of conflict of interest, depending upon who the defendant(s) in a potential tort action might be. Likewise, "supervision" of the tort action by the judiciary places the judiciary in a peculiar position of somehow approving or disapproving actions being taken on behalf of the child. It is unspecified who would be the "client" when counsel for the child was to be appointed. Finally, if there are collateral criminal actions pending, appointment of a Special Master may interfere with a parent's constitutional rights depending upon the actions of the Special Master. The only part of the proposed bill that makes any sense in the context of a Chapter 587A case, is that which provides that if the DHS or the Social Worker becomes aware of facts that indicate that a child has been injured while in foster care, that information should be communicated to the Court for such further action as the Court deems appropriate. I would note that a review of the existing duties of the Department of Human Services and the Guardian Ad Litem would almost certainly obligate the parties involved to pass on that information to the Court. I would note that the language as written would obligate a party to potentially provide information that might be self-incriminating and would potentially require an attorney to violate the attorney-client privilege. Under the circumstances, I believe that the proposed statute raises more issues than it solves and I therefore oppose the statute.