

JAN 19 2018

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, 2,386 children were in foster care
3 during the fiscal year of 2015. 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 pain and suffering. Thus, a class
10 of children is disenfranchised from their right to counsel in
11 such an event because they are in foster care with the State
12 serving as their legal custodian.

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



1 Revised Statutes, and may have a cause of action and seek
2 damages for any injuries sustained. The standing committee
3 declined to adopt a procedure or policy, but acknowledged that a
4 process should be established 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 allow a
12 child in foster custody who has suffered an injury to
13 seek outside legal representation for a claim of
14 damages as a result of a tort.

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

18 "§587A- Reporting of injured child in foster custody;
19 tort claim; court-appointed master. (a) In the event that a
20 guardian ad litem, court-appointed special advocate, resource
21 family, party, social worker, or attorney has reason to believe



1 that a child in foster custody has suffered a physical,
2 emotional, or psychological injury that may arise to a tort
3 claim under federal or state law, these persons shall
4 immediately report the matter to the court in writing.

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

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

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

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

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



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

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

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

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

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

15 (1) No further action is necessary; or

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

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



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

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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 allow a child in foster custody who has suffered an injury to seek outside legal representation for a claim of damages as a result of a tort.

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

