

JAN 24 2018

A BILL FOR AN ACT

RELATING TO THE CHILD PROTECTIVE ACT.

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



1 under the Child Protective Act under chapter 587A, Hawaii
2 Revised Statutes.

3 Existing law authorizes the family court to determine
4 whether to appoint an attorney to represent a legal parent who
5 is indigent based on court-established guidelines. However, the
6 Hawaii supreme court opined that this case-by-case approach for
7 court-appointed attorneys under section 587A-17, Hawaii Revised
8 Statutes, fails to protect an indigent parent's liberty interest
9 in the care, custody, and control of the parent's children and
10 the vagaries of this case-by-case approach would be removed by
11 mandating the appointment of counsel for indigent parents.

12 The purpose of this Act is to ensure the due process rights
13 of indigent parents by requiring the court to appoint counsel to
14 indigent parents and to make every effort to do so at the first
15 hearing attended by the parent or parents.

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

19 "[+]§587A-17[+] **Court-appointed attorneys.** (a) The court
20 [may] shall appoint an attorney, in foster custody cases, to
21 represent a legal parent who is indigent, or was represented by



1 private counsel but is now indigent and no longer represented by
2 counsel, based on court-established guidelines[-], unless the
3 legal parent knowingly and voluntarily waives the right to
4 appointed counsel on the record. If a legal parent appears
5 without counsel, the court or its designee shall utilize court-
6 established guidelines to inquire as to whether the legal parent
7 is indigent. The court shall make every effort to provide
8 counsel at the first hearing attended by the legal parent, but
9 if counsel does not appear at such hearing, the court shall not
10 enter a ruling or order that would prejudice the legal parent's
11 rights until counsel appears or the legal parent knowingly and
12 voluntarily waives the right to appointed counsel on the record,
13 except that nothing in this section shall preclude court orders
14 required for the safety of the subject child or children. The
15 court may also appoint an attorney to represent a legal parent
16 in family supervision cases or another indigent party based on
17 court-established guidelines, if it is deemed to be in the
18 child's best interest. Attorneys who are appointed by the court
19 to represent indigent legal parents and other indigent
20 qualifying parties may be paid by the court, unless the legal
21 parent or party for whom counsel is appointed has an independent



S.B. NO. 2720


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

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

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

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

11
INTRODUCED BY:



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S.B. NO. 2720

Report Title:

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

Description:

Requires the court to appoint counsel to indigent parents and to make every effort to do so at the first hearing attended by the parent.

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