

JAN 17 2020

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# 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, chapter 587A, Hawaii Revised  
2 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 to represent a legal parent who  
21 is indigent, or was represented by private counsel but is now



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



# S.B. NO. 2110

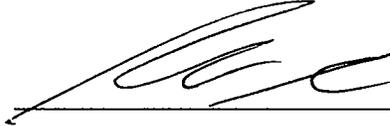
1 parties may be paid by the court, unless the legal parent or  
 2 party for whom counsel is appointed has an independent estate  
 3 sufficient to pay such fees and costs. The court may order the  
 4 appropriate legal parent or party to pay or reimburse the fees  
 5 and costs of an attorney appointed for the child or  
 6 incapacitated adult."

7 SECTION 3. Statutory material to be repealed is bracketed  
 8 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:




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# S.B. NO. 2110

**Report Title:**

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

**Description:**

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

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

