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



1 termination of parental rights proceeding under the Child
2 Protective Act, chapter 587A, Hawaii 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.

6 The purpose of this Act is to ensure the due process rights
7 of indigent parents by requiring the court to appoint counsel to
8 indigent parents in foster care cases and make every effort to
9 do so at the first hearing attended by the parents.

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

13 " ~~[f]~~ §587A-17 ~~[+]~~ **Court-appointed attorneys.** (a) The court
14 ~~[may]~~ shall appoint an attorney, in foster care cases, to
15 represent a legal parent who is indigent, or was represented by
16 private counsel but is now indigent and no longer represented by
17 counsel, based on court-established guidelines~~[-]~~, unless the
18 legal parent knowingly and voluntarily waives the right to
19 appointed counsel on the record. If a legal parent appears
20 without counsel, the court or its designee shall utilize court-
21 established guidelines to inquire as to whether the legal parent



1 is indigent. The court shall make every effort to provide
2 counsel at the first hearing attended by the legal parent;
3 provided that if counsel does not appear at such hearing, the
4 court shall not enter a ruling or order that would prejudice the
5 legal parent's rights until counsel appears or the legal parent
6 knowingly and voluntarily waives the right to appointed counsel
7 on the record; provided further that nothing in this section
8 shall preclude court orders required for the safety of the
9 subject child or children. If counsel is not appointed at least
10 three days prior to the date of the hearing, the court may grant
11 counsel a continuance if requested. The court may also appoint
12 an attorney to represent a legal parent or another indigent
13 party based on court-established guidelines, if it is deemed to
14 be in the child's best interest. Attorneys who are appointed by
15 the court to represent indigent legal parents and other indigent
16 qualifying parties may be paid by the court, unless the legal
17 parent or party for whom counsel is appointed has an independent
18 estate sufficient to pay such fees and costs. The court may
19 order the appropriate legal parent or party to pay or reimburse
20 the fees and costs of an attorney appointed for the child or
21 incapacitated adult."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on December 31,
4 2059.



Report Title:

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

Description:

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. Effective 12/31/2059. (HD1)

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

