

---

# 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, 2,782 children were in foster care  
3 during the fiscal year of 2019. 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 damages for pain and suffering. In  
10 this event, a class of children is, in effect, disenfranchised  
11 from a right to counsel simply because they are in foster care  
12 with the State serving as their legal custodian.

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



1 and may have a cause of action and seek damages for any injuries  
2 sustained. The standing committee declined to adopt a procedure  
3 or policy but acknowledged that a process should be established  
4 in family court.

5 The purpose of this Act is to require certain persons to  
6 immediately report a potential tort claim to the family court  
7 when that person has reason to believe that a child in foster  
8 custody has suffered an injury that may arise to a tort claim.

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

12 "§587A- Reporting of injured child in foster custody;  
13 tort claim; court-appointed master. (a) In the event that a  
14 guardian ad litem, court-appointed special advocate, resource  
15 family, party, social worker, or attorney has reason to believe  
16 that a child in foster custody has suffered a physical,  
17 emotional, or psychological injury that may arise to a tort  
18 claim under federal or state law, the person shall immediately  
19 report the matter to the court in a declaration attached to a  
20 motion for immediate hearing.



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

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

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

10       (2) The master shall submit a written report to the court  
11 by the date set by the court;

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

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

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

19       SECTION 3. There is appropriated out of the general  
20 revenues of the State of Hawaii the sum of \$                      or so  
21 much thereof as may be necessary for fiscal year 2022-2023 for



1 the judiciary to compensate court-appointed masters appointed by  
2 a court pursuant to this Act.

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

5 SECTION 4. 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 5. New statutory material is underscored.

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



**Report Title:**

Family Court; Minors; Foster Custody; Tort Action; Appropriation

**Description:**

Requires certain persons to immediately submit a declaration attached to a motion to the court if the 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 Family Court upon receipt of the written report, including required contents of an order appointing a master. Appropriates funds. Effective 7/30/2075. (SD2)

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

