

JAN 21 2022

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, 2,843 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 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. The legislature recognizes
13 that children in foster care--already vulnerable and in need of
14 protection and support--may be facing an increased risk for harm
15 in light of the current coronavirus disease 2019 (COVID-19)
16 pandemic. There is evidence that pandemics increase risk for
17 child abuse and neglect due to accompanying phenomenon such as



1 heightened stress, loss of income, school closures, and social
2 isolation.

3 The legislature further finds that prior to 2018, the
4 judiciary's standing committee on children in family court
5 considered and discussed a tort claim procedure or policy to
6 provide outside legal representation on behalf of a child who is
7 in foster care pursuant to chapter 587A, Hawaii Revised
8 Statutes, and may have a cause of action and seek damages for
9 any injuries sustained. The standing committee declined to
10 adopt a procedure or policy but acknowledged that a process
11 should be established in family court.

12 The purpose of this Act is to:

- 13 (1) Require certain persons to immediately report a
14 potential tort claim to the family court when that
15 person has reason to believe that a child in foster
16 custody has suffered an injury that may give rise to a
17 tort claim; and
- 18 (2) Establish procedures for the family court to allow a
19 child in foster custody who has suffered an injury to
20 seek outside legal representation for a claim of
21 damages resulting from a tort.



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

"§587A- Reporting of injured child in foster custody; tort claim; court-appointed master. (a) If a guardian ad litem, court-appointed special advocate, resource family, party, social worker, or attorney has reason to believe that a child in foster custody has suffered a physical, emotional, or psychological injury that may give rise to a tort claim under federal or state law, these persons shall immediately report the matter to the court in writing.

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

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



- 1 (1) All parties shall cooperate with the master, including
2 gathering and furnishing any records, reports, and
3 data requested by the master;
- 4 (2) The master shall meet and consult with outside counsel
5 on behalf of the injured child regarding the merits of
6 the potential tort claim;
- 7 (3) The master shall submit a written report to the court
8 by the date set by the court;
- 9 (4) The report submitted by the master shall describe the
10 actions taken by the master and provide any
11 recommendations regarding filing a tort claim;
- 12 (5) A copy of the report submitted by the master shall be
13 submitted to all parties;
- 14 (6) The court shall set a hearing following the submission
15 of the report by the master; and
- 16 (7) Any other requirements that the court may deem
17 necessary to assist the master in determining the
18 merits of the reported potential tort action.
- 19 (d) At the hearing scheduled by the court following the
20 submission of the master's report, the court, upon hearing from



1 all parties and the master, and based on the master's report,
2 shall consider whether:

3 (1) No further action is necessary; or

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

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

8 (1) Appoint outside counsel to represent the injured child
9 if the court determines that the appointment is in the
10 best interest of the child;

11 (2) Determine whether the master should continue to serve
12 during the tort action;

13 (3) Set periodic hearings to review the tort action; and

14 (4) Issue any other orders that are in the best interest
15 of the injured child during the tort action."

16 SECTION 3. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 4. New statutory material is underscored.



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

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INTRODUCED BY:

J.D. Rivera



S.B. NO. 2527

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 give rise 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 resulting from 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.

