
A BILL FOR AN ACT

RELATING TO COURT-APPOINTED ATTORNEYS.

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 Hawaii 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 Hawaii supreme 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. She was also left without an
14 advocate to represent her in negotiations with the department of
15 human services. The supreme court also held that the
16 appointment of an attorney is crucial to ensure that parents are



1 provided a fair process in a termination of parental rights
2 proceeding under the Child Protective Act.

3 The legislature further finds that the Hawaii supreme court
4 held in *In re L.I.*, 149 Hawaii 118 (2021), that parents are
5 constitutionally entitled to counsel upon the filing of a
6 petition for either custody or family supervision and that
7 failure to timely appoint counsel in those cases constitutes
8 structural error requiring reversal.

9 The purpose of this Act is to require the family court to
10 appoint counsel to indigent parents upon the filing of a
11 petition for custody or family supervision and make every effort
12 to do so at the first hearing attended by the parents.

13 SECTION 2. Section 587A-17, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) [The] Upon filing a petition for custody or family
16 supervision, the court [may] shall appoint an attorney to
17 represent a legal parent who is indigent, or was represented by
18 private counsel but is now indigent and no longer represented by
19 counsel, based on court-established guidelines[-] unless the
20 legal parent knowingly and voluntarily waives the right to
21 appointed counsel on the record. If a legal parent appears



1 without counsel, the court or its designee shall utilize court-
2 established guidelines to inquire as to whether the legal parent
3 is indigent. The court shall provide counsel by the first
4 hearing attended by the legal parent; provided that if counsel
5 does not appear at the hearing, the court shall not enter a
6 ruling or order that would prejudice the legal parent's rights
7 until counsel appears or the legal parent knowingly and
8 voluntarily waives the right to appointed counsel on the record;
9 provided further that if counsel is not appointed at least three
10 days prior to the date of the hearing, the court shall grant a
11 continuance if requested. Nothing in this section shall
12 preclude the issuance of court orders required for the immediate
13 safety of the subject child or children. The court may also
14 appoint an attorney to represent another indigent party based on
15 court-established guidelines, if it is deemed to be in the
16 child's best interest. Attorneys who are appointed by the court
17 to represent indigent legal parents and other indigent
18 qualifying parties may be paid by the court, unless the legal
19 parent or party for whom counsel is appointed has an independent
20 estate sufficient to pay such fees and costs. The court may
21 order the appropriate legal parent or party to pay or reimburse



1 the fees and costs of an attorney appointed for the child or
2 incapacitated adult."

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

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

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INTRODUCED BY:

John M. [Signature]
JAN 20 2023



H.B. NO. 779

Report Title:

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

Description:

Requires the court to appoint counsel to indigent parents upon the filing of a petition for custody or family supervision and make every effort to do so at the first hearing attended by the parents.

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

