

STAND. COM. REP. NO.

597

Honolulu, Hawaii

FEB 17 , 2023

RE: H.B. No. 1291
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Human Services, to which was referred H.B. No. 1291 entitled:

"A BILL FOR AN ACT RELATING TO FAMILY COURT,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Require an immediate report of a potential tort claim by certain persons when those persons have reason to believe that a child in foster custody has suffered an injury that may give rise to a tort claim; and
- (2) Establish procedures for the Family Court to follow for investigating and authorizing the filing of a tort claim on behalf of an injured child, including the opportunity for an injured child to obtain outside legal representation.

Your Committee received testimony in support of this measure from two individuals. Your Committee received testimony in opposition to this measure from the Judiciary and one individual. Your Committee received comments on this measure from the Department of the Attorney General and Department of Human Services.

2023-1669 HB1291 HD1 HSCR HMSO



Your Committee finds that the State serves as the legal custodian and representative for many children in foster care due to their age and will cover a child's medical costs if the child is injured by a third party. However, that injured child is unable to obtain legal representation to file a tort claim seeking any additional damages. This measure is intended to establish a process to allow injured children in foster care to file tort claims when they are injured, including an opportunity to obtain outside legal representation.

Your Committee notes the concerns raised in testimony by the Judiciary that there is a significant need for flexibility in the promulgation of court protocols. The needs of one circuit's family court may not be the same as needs of another; additionally, flexibility is needed to properly utilize each circuit's available resources and respond to changes in the legal landscape. Your Committee recognizes the Judiciary's concern that establishing a statewide court protocol in statute to address the investigation and filing of tort claims by minors in foster care would significantly impair this flexibility.

Your Committee also notes the concern by the Department of the Attorney General that the establishment of a process for the investigation and filing of tort claims by minors in foster care may discourage volunteers from being much-needed resource caregivers or alter resource caregivers' behaviors toward children in their care. Your Committee recognizes the concerns that if any injury to a child in foster custody could result in the filing of a civil action, resource caregivers may be forced to limit the child's participation in beneficial extracurricular activities, such as organized sports or any rigorous outdoor activity.

Your Committee has amended this measure by changing the effective date to July 30, 3000, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Human Services that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1291, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1291, H.D. 1, and be referred to your Committee on Judiciary & Hawaiian Affairs.



Respectfully submitted on
behalf of the members of the
Committee on Human Services,



JOHN M. MIZUNO, Chair



