

JAN 22 2021

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# 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 process in a



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

3 The legislature further finds that existing law authorizes  
4 the family court to determine whether to appoint an attorney to  
5 represent a legal parent who is indigent based on  
6 court-established guidelines.

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

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

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



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



# S.B. NO. 885

1 party to pay or reimburse the fees and costs of an attorney  
2 appointed for the child or 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: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'A. C.', is written over a horizontal line.

# S.B. NO. 885

**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.

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

