



2024 Child Welfare Statutory Changes & Appellate Decisions

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Disclaimers





- We have 20 minutes to get through this presentation!
- This presentation was prepared in the presenters' **personal capacities**. The views expressed are solely personal and do not represent the views of the Department of the Attorney General or the Legal Aid Society of Hawai'i.
- Derek's portion of the presentation has a "Mean Girls" theme; Emily's has a legal cats theme.





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Legislative Update

-  Act 144: Orders for Protective Custody
-  Act 147: Central Registry
-  Act 148: Relative Resource Caregivers
-  Act 145: Emergency Shelters

Act 144¹: Orders for Protective Custody

- Effective **July 1, 2025**.
- Consistent with Ninth Circuit precedent², authorizes a police officer to take protective custody:
 - (1) with consent of the child's family;
 - (2) pursuant to court order; or
 - (3) if police officer determines "exigent circumstances" are present.
- Amends definitions of "harm" and "imminent harm."
- Be prepared for new forms and new procedures.



¹ Act 144 (July 1, 2024) (to be codified at HRS §§ 587A-4, -8, -9, -11, -21; HRS § 588-2), available at https://www.capitol.hawaii.gov/sessions/session2024/bills/GM1245_.PDF.

² See, e.g., *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007).

Act 147¹: Central Registry



- Effective **July 1, 2025**.
- Clarifies forum for challenging the results of a Child Welfare Services (CWS) investigation and creates expungement process.
- Challenging confirmation of harm or threatened harm:
 - If confirmation is made in an open Family Court case (e.g., FC-S case or FDA case) → challenge confirmation in Family Court.
 - If confirmation is not made in an open Family Court case → challenge confirmation in the Administrative Appeals Office (AAO).
- Expungement process:
 - Person may request to be taken off the central registry after a **5-year waiting period** and the person can demonstrate evidence of rehabilitation.
 - Does NOT apply to confirmations of sexual abuse or aggravated circumstances.

¹ Act 147 (July 1, 2024) (to be codified at HRS § 350, et seq.), available at https://www.capitol.hawaii.gov/sessions/session2024/bills/GM1248_.PDF.

Act 148¹: Relative Resource Caregivers

- Effective **July 1, 2024**.
- Clarifies forum for relatives who want to challenge the denial of a resource caregiver license:
 - If the denial is based upon relative's failure to meet the basic licensing standards → challenge in the Administrative Appeals Office (AAO).
 - If the denial is based upon reasons other than licensing standards (*e.g.*, the child is not placed with relative) → challenge in Family Court.



¹ Codified at HRS § 587A-10.

Act 145¹: Emergency Shelters

- Effective **July 1, 2024**.
- Drafted at request of Residential Youth Services and Empowerment (RYSE), a youth homeless shelter on O'ahu.
- Reinstates an expanded definition of "provider" to include organizations (*e.g.*, RYSE) that provide temporary shelter to unaccompanied minors without a child placing organization license.
- Sunsets June 30, 2029.



¹ Codified at HRS § 346-17.6.

Other Acts of Interest

- Act 250¹: Extends the statute of limitations for survivors of child sexual abuse to file a civil lawsuit for damages against their abuser.
 - For acts committed on/after July 1, 2024, actions may be filed up to the survivor's 50th birthday.
 - Not retroactive.
 - Effective **July 9, 2024**.
- Act 252²: Establishes procedures to prevent and remedy abusive litigation.
 - Effective **January 1, 2025**.
- Act 72³: Authorizes individuals to apply for a marriage license online.
 - Effective **June 21, 2024**.
- Act 85⁴: Designates the shaka as the official state gesture.
 - Effective **June 21, 2024**.



¹ Codified at HRS § 657-1.8.

² Act 252 (July 9, 2024) (official classification pending), available at <https://www.capitol.hawaii.gov/sessions/session2024/bills/GM1357..PDF>.

³ Codified at HRS § 572-6; HRS § 572B-6.

⁴ Codified at HRS § 5- (official classification pending).



Federal Administrative Law Update

Federal Administrative Law Update

- [45 C.F.R. § 1355.22](#)¹: Requires Title IV-E (and IV-B) agencies to ensure “designated placements” are available for children in foster care who identify as LGBTQI+; prohibits placements that practice “conversion therapy.”
 - Effective **July 1, 2024**; implementation deadline **October 1, 2026**.
- [45 C.F.R. §§ 1355.20\(a\), 1356.21\(m\)](#)²: Allows Title IV-E agencies to adopt different licensing standards for relative foster homes (does not change or eliminate safety requirements; just provides flexibility).
 - Effective **November 27, 2023**.
- [45 C.F.R. § 1356.60\(c\)](#)³: Allows Title IV-E agencies to use federal funds to pay for independent legal counsel for parents and children in child welfare cases.
 - Effective **July 9, 2024**.



¹ Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children, 89 Fed. Reg. 34818 - 34861 (April 30, 2024) (to be codified at 45 C.F.R. § 1355.22).

² Separate Licensing or Approval Standards for Relative or Kinship Foster Family Homes, 88 Fed. Reg. 66700 - 66709 (September 28, 2023) (to be codified at 45 C.F.R. §§ 1355.20(a), 1356.21(m)).

³ Foster Care Legal Representation, 89 Fed. Reg. 40400 - 40417 (May 10, 2024) (to be codified at 45 C.F.R. § 1356.60(c)).


Special Shout-Out to DAG Lynne Youmans!






Case Law Update

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Our theme today: Legal Cats



39th Judicial District Court

Recording of this hearing or live stream is prohibited.

Violation may constitute contempt of court and result in a fine of up to \$500 and a jail term of up to 180 days.

39th Judicial District Court

Jerry L. Phillips

39th Judicial District Court

St. Gibbs Baker

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zoom

Caselaw Update



Hawai'i Supreme Court



Hawai'i Intermediate Court of Appeals (ICA)



U.S. Court of Appeals for the Ninth Circuit

Hawai'i Supreme Court



State v. Aquino, No. SCWC-22-0000499, 2024 WL 3219082

(Haw. June 28, 2024)



TYPE OF CASE: Criminal

- Unlawful imprisonment in the first degree



FACTS

- “Wrapped a chain around his minor stepson’s neck and chained him nightly for over a year to the family’s elevated outside porch.”
- Mother complicit
- Child tried to escape and fractured his back



HOLDING: Conviction affirmed

- “[T]he consent definition of ‘restrain’ is not automatically invoked when the person being restrained is a minor”



In re P Children, SCWC-22-0000636**

Hawaii SC accepted certiorari, decision pending



TYPE OF CASE: CWS

- Termination of Parental Rights



FACTS

- Safety risk = Mother’s drug abuse
- GAL for children = formerly represented Mother
- At return hearing in June 2019, DHS made oral motion for TFC, Mother defaulted for non-appearance
- In July 2019, Mother appeared, hearing continued, Mother ordered to get counsel
- Mother not appointed counsel until Nov. 2019 (over 5 months after case initiated)
- September 2022 Court granted TPR
- Mother appealed, arguing GAL had conflict of interest



In re P Children, SCWC-22-0000636**

Hawaii SC accepted certiorari, decision pending



HOLDING: ICA overturned TPR

- (Per ICA) Delay in appointing counsel = plain error. Mother's right to counsel violated
- (Per ICA) Counsel must be appointed when DHS files a petition for FS or TFC
- (Per ICA) Courts cannot wait to confirm parent is indigent before appointing counsel
 - Footnote 7:

In re L.I. is silent about the possibility that a family court consider indigency of a parent after counsel is initially appointed to protect the parent's rights.

- ICA did not address GAL conflict issue
- GAL filed Application for Writ of Certiorari

In re P Children, SCWC-22-0000636**

Hawaii SC accepted certiorari, decision pending



What is the Hawai'i Supreme Court going to do???

- Oral Argument scheduled for August 29, 2024 at 2:00 p.m., will be held remotely

When does parents' right to counsel attach?

What is the remedy if the right to counsel is violated?

Intermediate Court of Appeals



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In re O.H., 154 Hawai'i 45, 544 P.3d 709 (App. 2024)*

* Unpublished Case



TYPE OF CASE: CWS

- Termination of Parental Rights



FACTS

- Mother not appointed counsel when petition for TFC filed, as Mother's identity unknown
- Mother assigned attorney in court, prior to her first court appearance



HOLDING: TPR affirmed

- No structural error to not appoint counsel for a parent who is unknown, as counsel was appointed prior to her first appearance after Mother was identified.



In re Adoption of a Male Child, 154 Hawai‘i 36, 543 P.3d 1088 (App. 2024)*

* Unpublished Case



TYPE OF CASE

- Adoption post-TPR in CWS case



FACTS

- Long procedural history, *see In re A.A.*, 150 Hawai‘i 270, 500 P.3d 455 (2021) (A.A. I) and *In re A.A.*, No. CAAP-22-0000427, 2023 WL 3619865 (App. May 24, 2023) (A.A. II)
- In CWS case, rights of UNF terminated
- Father moved to intervene post-TPR → denied
- Adoption to RCGs granted
- Father appealed, arguing structural error due to lack of counsel for UNF in CWS case

In re Adoption of a Male Child, 154 Hawai‘i 36, 543 P.3d 1088 (App. 2024)*



HOLDING: Adoption affirmed

[Father’s] argument that there was structural error in the CPS Case because the family court did not appoint counsel for the unidentified father, who was properly served and defaulted, [] is without merit. *See In re JH*, 152 Hawai‘i 373, 380, 526 P.3d 350, 357 (2023) (noting that without a client, “what’s an attorney to do?” because counsel would be “hard-pressed to understand the parent’s present objectives, and is challenged to provide sound, ethical representation”).

154 Hawai‘i 36, 543 P.3d 1088 (App. 2024).

In re AG1, 154 Hawai‘i 33, 543 P.3d 1085 (App. 2024)



TYPE OF CASE: CWS

- Failed guardianship (interlocutory appeal)



FACTS

- In 2019, DHS had permanent custody of children post-TPR → children placed with guardians
- In 2022, DHS filed petition for TFC and petition for FS against guardians
- Bio-parents served and summoned to Court
- Court overruled GAL's objection to dismiss bio-parents from case
- GAL filed interlocutory appeal



In re AG1, 154 Hawai‘i 33, 543 P.3d 1085 (App. 2024)



HOLDING: Vacated and remanded

We hold that the context of HRS § 587A-13 does not require that birth parents whose parental rights have been terminated be summoned in further proceedings concerning the child. . . . Parents' parental rights in Children were terminated before DHS filed the Petition. DHS was not required by HRS § 587A-13 to issue summons to Parents, who had no right to participate in the proceeding[.]

154 Hawai‘i at 35–36, 543 P.3d at 1087–88.

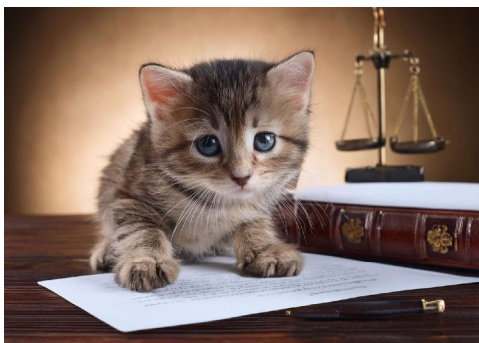
U.S. Court of Appeals of the Ninth Circuit

Federal Cases



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Grant v. City of Long Beach, 96 F.4th 1255 (9th Cir. 2024)



TYPE OF CASE: Civil Rights

- Parent and child sued city and police officer



FACTS

- Appellant's brief did not follow appellate procedure
- "Appellants filed an opening brief replete with misrepresentations and fabricated case law."



HOLDING: Brief stricken, appeal dismissed

- "When writing a brief, counsel *must* provide an argument which *must* contain appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies."

Rieman v. Vazquez, 96 F.4th 1085 (9th Cir. 2024)



TYPE OF CASE: Civil Rights

- § 1983 Claim, CWS Immunity Issue



FACTS

- 20-day old child fell off bed, taken to hospital. No diagnostic tests; child sent home
- Hospital staff told CWS in “an abundance of caution”
- SW and supervisor insisted Mother take child to a different hospital for CT scan and other tests
- Mother made appt. for child at doctor, not hospital
- SW and supervisor got a “warrant” for detention of child, but unable to serve on Mother



Rieman v. Vazquez, 96 F.4th 1085 (9th Cir. 2024)



FACTS

- Filed petition for foster custody, saying Mother “not noticed” because her “whereabouts were unknown.” Listed different phone number for Mother than was listed on the warrant
- Mother’s family tried to contact CWS on multiple occasions, never received a call back
- SW never called or notified Mother about the TFC hearing
- At hearing, court ordered child removed
- 2 days after the hearing, Mother found out, provided CWS with child’s medical records
- 2 months later, court dismissed the TFC Petition at CWS’s request; child returned
- Mother & her family sued CWS in federal court, alleging violation of her civil rights
- Trial court granted summary judgment for Mother (no trial because no evidence in dispute)

Rieman v. Vazquez, 96 F.4th 1085 (9th Cir. 2024)



HOLDING #1: No absolute immunity for the social worker or the SW supervisor

[G]iving notice is non-discretionary and very much unlike the discretionary decision to initiate a prosecution. Accordingly, absolute immunity does not apply to the Riemans' claim that Vazquez [the investigating social worker] and Johnson [the social worker supervisor] failed to give them notice of the detention hearing as such notice was mandatory.

96 F.4th at 1091.

Rieman v. Vazquez, 96 F.4th 1085 (9th Cir. 2024)



HOLDING #2: No qualified immunity for the social worker or the SW supervisor

A parent's "whereabouts" being "unknown" only excuses the notice requirement after there has been a good faith attempt to provide notice to a parent of the detention hearing. [] It is undisputed that no such attempt was ever made. That the parties dispute whether the Riemans were aware of the temporary detention warrant and were therefore evading it by hiding out in a different county is immaterial. Vazquez and Johnson knew how to contact Ms. Rieman about the detention hearing, but they chose not to even try.

96 F.4th at 1092–93 (quotation marks and citation omitted).

Rieman v. Vazquez, 96 F.4th 1085 (9th Cir. 2024)



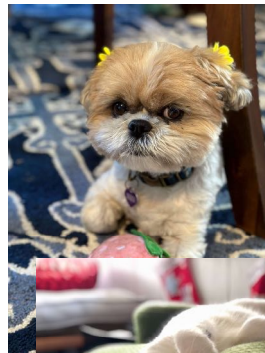
HOLDING #2: No qualified immunity for the social worker or the SW supervisor

[A] reasonable social worker in Vazquez and Johnson’s shoes would have understood, based on prior decisional law, that providing incomplete and false information to the Juvenile Court to convince the court the social worker had satisfied the due process notice requirement constitutes judicial deception. . . . [T]here are no circumstances in a dependency proceeding that would permit government officials to bear false witness against a parent.

96 F.4th at 1094 (quotation marks and citation omitted).



“Tiger”
(AKA Derek’s fur baby)



Livy and Artemis
(Emily’s fur babies)

Contact us!

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Questions?



Thank you!