
A BILL FOR AN ACT

RELATING TO PARENTAL ALIENATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that "parental alienation
2 syndrome" is a disorder that arises primarily in the context of
3 child custody disputes, is manifested primarily in a child's
4 campaign of unjustified denigration of one parent, and is caused
5 by one parent's attempts to turn the child against the other
6 parent. Although there are numerous signs of parental
7 alienation syndrome, the most common include one parent giving
8 or even forcing the child to choose between living with one
9 parent or the other, often in reaction to the child's expression
10 of love for or having a good time with the other parent, telling
11 the child details of or blaming the other parent for the
12 breakup, and even using the child to covertly gather information
13 about the other parent for the parent's own use. Signs of
14 parental alienation syndrome also include resisting or refusing
15 to permit the other parent access to critical records or
16 attendance at school activities, arranging temptations or
17 scheduling activities that interfere with the other parent's



1 visitation, and making demands on the other parent that are
2 contrary to court orders.

3 The purpose of this Act is to prevent or stop "parental
4 alienation syndrome" by requiring all separating parents and
5 their children to attend a court-supervised educational program
6 designed to teach parents how to minimize the negative effects
7 of separation on children and receive information on mediation,
8 counseling and other treatment programs, and child development.
9 This Act also recognizes "parental alienation syndrome" as a
10 form of harm that the courts must consider in making custody
11 decisions.

12 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§571-46 Criteria and procedure in awarding custody and**
15 **visitation.** In the actions for divorce, separation, annulment,
16 separate maintenance, or any other proceeding where there is at
17 issue a dispute as to the custody of a minor child, the court,
18 during the pendency of the action, at the final hearing, or any
19 time during the minority of the child, may make an order for the
20 custody of the minor child as may seem necessary or proper. In
21 awarding the custody, the court shall be guided by the following
22 standards, considerations, and procedures:

- 1 (1) Custody should be awarded to either parent or to both
2 parents according to the best interests of the child,
3 and the court may also consider frequent, continuing,
4 and meaningful contact of each parent with the child
5 unless the court finds that a parent is unable to act
6 in the best interest of the child;
- 7 (2) Custody may be awarded to persons other than the
8 father or mother whenever the award serves the best
9 interest of the child. Any person who has had de
10 facto custody of the child in a stable and wholesome
11 home and is a fit and proper person shall be entitled
12 prima facie to an award of custody;
- 13 (3) If a child is of sufficient age and capacity to
14 reason, so as to form an intelligent preference, the
15 child's wishes as to custody shall be considered and
16 be given due weight by the court;
- 17 (4) Whenever good cause appears therefor, the court may
18 require an investigation and report concerning the
19 care, welfare, and custody of any minor child of the
20 parties. When so directed by the court, investigators
21 or professional personnel attached to or assisting the
22 court shall make investigations and reports which



1 shall be made available to all interested parties and
2 counsel before hearing, and the reports may be
3 received in evidence if no objection is made and, if
4 objection is made, may be received in evidence;
5 provided the person or persons responsible for the
6 report are available for cross-examination as to any
7 matter that has been investigated;

8 (5) The court may hear the testimony of any person or
9 expert, produced by any party or upon the court's own
10 motion, whose skill, insight, knowledge, or experience
11 is such that the person's or expert's testimony is
12 relevant to a just and reasonable determination of
13 what is for the best physical, mental, moral, and
14 spiritual well-being of the child whose custody is at
15 issue;

16 (6) Any custody award shall be subject to modification or
17 change whenever the best interests of the child
18 require or justify the modification or change and,
19 wherever practicable, the same person who made the
20 original order shall hear the motion or petition for
21 modification of the prior award;



- 1 (7) Reasonable visitation rights shall be awarded to
2 parents, grandparents, siblings, and any person
3 interested in the welfare of the child in the
4 discretion of the court, unless it is shown that
5 rights of visitation are detrimental to the best
6 interests of the child;
- 7 (8) The court may appoint a guardian ad litem to represent
8 the interests of the child and may assess the
9 reasonable fees and expenses of the guardian ad litem
10 as costs of the action, payable in whole or in part by
11 either or both parties as the circumstances may
12 justify;
- 13 (9) In every proceeding where there is at issue a dispute
14 as to the custody of a child, a determination by the
15 court that family violence has been committed by a
16 parent raises a rebuttable presumption that it is
17 detrimental to the child and not in the best interest
18 of the child to be placed in sole custody, joint legal
19 custody, or joint physical custody with the
20 perpetrator of family violence. In addition to other
21 factors that a court must consider in a proceeding in
22 which the custody of a child or visitation by a parent

1 is at issue, and in which the court has made a finding
2 of family violence by a parent:

3 (A) The court shall consider as the primary factor
4 the safety and well-being of the child and of the
5 parent who is the victim of family violence;

6 (B) The court shall consider the perpetrator's
7 history of causing physical harm, bodily injury,
8 or assault or causing reasonable fear of physical
9 harm, bodily injury, or assault to another
10 person; and

11 (C) If a parent is absent or relocates because of an
12 act of family violence by the other parent, the
13 absence or relocation shall not be a factor that
14 weighs against the parent in determining custody
15 or visitation;

16 (10) A court may award visitation to a parent who committed
17 family violence only if the court finds that adequate
18 provision can be made for the physical safety and
19 psychological well-being of the child and for the
20 safety of the parent who is a victim of family
21 violence;

22 (11) In a visitation order, a court may:

- 1 (A) Order an exchange of a child to occur in a
2 protected setting;
- 3 (B) Order visitation supervised by another person or
4 agency;
- 5 (C) Order the perpetrator of family violence to
6 attend and complete, to the satisfaction of the
7 court, a program of intervention for perpetrators
8 or other designated counseling as a condition of
9 the visitation;
- 10 (D) Order the perpetrator of family violence to
11 abstain from possession or consumption of alcohol
12 or controlled substances during the visitation
13 and for twenty-four hours preceding the
14 visitation;
- 15 (E) Order the perpetrator of family violence to pay a
16 fee to defray the costs of supervised visitation;
- 17 (F) Prohibit overnight visitation;
- 18 (G) Require a bond from the perpetrator of family
19 violence for the return and safety of the child.
20 In determining the amount of the bond, the court
21 shall consider the financial circumstances of the
22 perpetrator of family violence;

- 1 (H) Impose any other condition that is deemed
2 necessary to provide for the safety of the child,
3 the victim of family violence, or other family or
4 household member; and
- 5 (I) Order the address of the child and the victim to
6 be kept confidential;
- 7 (12) The court may refer but shall not order an adult who
8 is a victim of family violence to attend, either
9 individually or with the perpetrator of the family
10 violence, counseling relating to the victim's status
11 or behavior as a victim as a condition of receiving
12 custody of a child or as a condition of visitation;
- 13 (13) If a court allows a family or household member to
14 supervise visitation, the court shall establish
15 conditions to be followed during visitation; and
- 16 (14) A supervised visitation center [~~must~~] shall provide:
17 a secure setting and specialized procedures for
18 supervised visitation and the transfer of children for
19 visitation and supervision by a person trained in
20 security and the avoidance of family violence[-];
- 21 (15) In every proceeding where there is at issue a dispute
22 as to the custody of a child, a determination by the



1 court that a parent has engaged in conduct causing the
2 child to manifest parental alienation syndrome raises
3 a rebuttable presumption that it is detrimental to the
4 child and not in the best interest of the child to be
5 placed in sole custody, joint legal custody, or joint
6 physical custody with that parent. For purposes of
7 this section, "parental alienation syndrome" means the
8 child's obsessive preoccupation with unjustified or
9 exaggerated criticism of a parent caused by one
10 parent's attempts to turn the child against the other
11 parent including, but not limited to, the parent:

12 (A) Giving the child a choice to or forcing the child
13 to choose between living with one parent or the
14 other, often in reaction to the child's
15 expression of love for or having a good time with
16 the other parent;

17 (B) Telling the child details of or blaming the other
18 parent for the breakup and using the child to
19 covertly gather information about the other
20 parent for the parent's own use;



1 (C) Resisting or refusing to permit the other parent
2 access to critical records or attendance at
3 school activities;

4 (D) Arranging temptations or scheduling activities
5 that interfere with the other parent's
6 visitation; or

7 (E) Making demands on the other parent that are
8 contrary to court orders; and

9 (16) A court may award visitation to a parent who caused
10 the child to manifest parental alienation syndrome
11 only if the court finds that adequate provision can be
12 made for the psychological well-being of the child and
13 may impose any condition on the visitation that is
14 deemed necessary to provide for the psychological
15 well-being of the child, including, but not limited
16 to, requiring the parent to attend and complete, to
17 the satisfaction of the court, a program of
18 intervention or other designated counseling."

19 SECTION 3. Section 577-7, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§577-7 Parents' control and duties.** (a) Parents or, in
22 case they are both deceased, guardians, legally appointed, shall

1 have control over the conduct and education of their minor
2 children. They shall have the right, at all times, to recover
3 the physical custody of their children by habeas corpus. All
4 parents and guardians shall provide, to the best of their
5 abilities, for the discipline, support, and education of their
6 children.

7 (b) To the extent that the minor child has a beneficial
8 interest in the income or principal of any trust [~~which~~] that is
9 applied for such purposes, parents or guardians shall not be
10 required to pay the costs of registration, tuition, books, room
11 and board, and other expenses incurred in connection with the
12 attendance of a minor child at any private grammar, secondary,
13 industrial arts, or trade school, or at any college or
14 university, regardless of whether [~~or not~~] the college or
15 university is a private institution or is maintained by a state
16 or any subdivision thereof. The power of the family court under
17 sections 580-47 and 580-74 to compel the parties to a divorce or
18 separation to provide for the education of a minor or an adult
19 child shall not be limited by any provision of this subsection.

20 (c) Parents or guardians who separate, regardless of
21 whether incident to an action filed pursuant to chapter 580, and
22 their children shall attend whatever educational programs are



1 offered to or required by the family court for parents, and
2 their children, who are parties to an action filed pursuant to
3 chapter 580, provided the programs are designed to teach parents
4 how to minimize the negative effects of separation on children,
5 provide information on mediation, counseling and other treatment
6 programs, and child development, and help children cope with
7 changes in their families."

8 SECTION 4. Section 587-2, Hawaii Revised Statutes, is
9 amended by amending the definition of "harm to read as follows:

10 "Harm" to a child's physical or psychological health or
11 welfare occurs in a case where there exists evidence of injury,
12 including, but not limited to:

- 13 (1) Any case where the child exhibits evidence of:
- 14 (A) Substantial or multiple skin bruising or any
 - 15 other internal bleeding,
 - 16 (B) Any injury to skin causing substantial bleeding,
 - 17 (C) Malnutrition,
 - 18 (D) Failure to thrive,
 - 19 (E) Burn or burns,
 - 20 (F) Poisoning,
 - 21 (G) Fracture of any bone,
 - 22 (H) Subdural hematoma,

1 (I) Soft tissue swelling,

2 (J) Extreme pain,

3 (K) Extreme mental distress,

4 (L) Gross degradation, or

5 (M) Death, and

6 the injury is not justifiably explained, or where the

7 history given concerning the condition or death is at

8 variance with the degree or type of the condition or

9 death, or circumstances indicate that the condition or

10 death may not be the product of an accidental

11 occurrence;

12 (2) Any case where the child has been the victim of:

13 sexual contact or conduct, including, but not limited

14 to, rape, sodomy, molestation, sexual fondling,

15 incest, prostitution; obscene or pornographic

16 photographing, filming, or depiction; or other similar

17 forms of sexual exploitation;

18 (3) Any case where there exists injury to the

19 psychological capacity of a child as is evidenced by a

20 substantial impairment in the child's ability to

21 function;



- 1 (4) Any case where the child is not provided in a timely
2 manner with adequate food, clothing, shelter,
3 psychological care, physical care, medical care, or
4 supervision; [~~or~~]
- 5 (5) Any case where the child is provided with dangerous,
6 harmful, or detrimental drugs as defined by section
7 712-1240; however, this paragraph shall not apply to a
8 child's family who provide the drugs to the child
9 pursuant to the direction or prescription of a
10 practitioner, as defined in section 712-1240[~~+~~]; or
- 11 (6) Any case where the child manifests parental alienation
12 syndrome by obsessive preoccupation with unjustified
13 or exaggerated criticism of a parent caused by one
14 parent's attempts to turn the child against the other
15 parent including, but not limited to, the parent:
- 16 (A) Giving the child a choice to or forcing the child
17 to choose between living with one parent or the
18 other, often in reaction to the child's
19 expression of love for or having a good time with
20 the other parent;
- 21 (B) Telling the child details of or blaming the other
22 parent for the breakup or using the child to



H.B. NO. 2155

1 covertly gather information about the other

2 parent for the parent's own use;

3 (C) Resisting or refusing to permit the other parent

4 access to critical records or attendance at

5 school activities;

6 (D) Arranging temptations or scheduling activities

7 that interfere with the other parent's

8 visitation; or

9 (E) Making demands on the other parent that are

10 contrary to court orders."

11 SECTION 5. Statutory material to be repealed is bracketed

12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect upon its approval.

14 INTRODUCED BY: Celine K. M. Ay

BY REQUEST

JAN 20 2006

HB 2153

Report Title:

Children; Separation and Divorce

Description:

Requires court to consider "parental alienation syndrome" in awarding custody of children. Requires parents who separate to attend court educational program designed to help parents understand the effects of separation and divorce on their children and to help children cope with changes in their families. Amends the definition of "harm" to include "parental alienation syndrome".

