

JAN 25 2006

A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. During the 2004 legislative session, the senate
2 adopted S.R. No. 40, which authorized the senate committee on
3 human services to convene interim hearings on the Hawaii family
4 court to explore ways to make the court more accessible and
5 family oriented. During the course of these interim hearings,
6 four task force groups were formed on important issues relating
7 to joint custody, temporary restraining orders and protective
8 orders, standards for guardians ad litem and other court
9 appointed personnel, and alternative dispute resolution.

10 Pursuant to task force recommendations, during the 2005
11 session, the legislature amended the criteria in §571-46(1),
12 Hawaii Revised Statutes, for awarding child custody to include
13 meaningful contact between the child and each parent as a factor
14 the court may take into consideration in determining the best
15 interests of the child. Although meaningful contact is defined
16 in section 571-2, HRS, there are no criteria by which to
17 determine the best interests of the child.



1 The purpose of this Act is to enumerate factors for the
2 court to consider in determining the best interests of the
3 child.

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

6 "**§571-46 Criteria and procedure in awarding custody and**
7 **visitation.** (a) In the actions for divorce, separation,
8 annulment, separate maintenance, or any other proceeding where
9 there is at issue a dispute as to the custody of a minor child,
10 the court, during the pendency of the action, at the final
11 hearing, or any time during the minority of the child, may make
12 an order for the custody of the minor child as may seem
13 necessary or proper. In awarding the custody, the court shall
14 be guided by the following standards, considerations, and
15 procedures:

16 (1) Custody should be awarded to either parent or to both
17 parents according to the best interests of the child,
18 and the court may also consider frequent, continuing,
19 and meaningful contact of each parent with the child
20 unless the court finds that a parent is unable to act
21 in the best interest of the child;

1 report are available for cross-examination as to any
2 matter that has been investigated;

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

11 (6) Any custody award shall be subject to modification or
12 change whenever the best interests of the child
13 require or justify the modification or change and,
14 wherever practicable, the same person who made the
15 original order shall hear the motion or petition for
16 modification of the prior award;

17 (7) Reasonable visitation rights shall be awarded to
18 parents, grandparents, siblings, and any person
19 interested in the welfare of the child in the
20 discretion of the court, unless it is shown that
21 rights of visitation are detrimental to the best
22 interests of the child;

1 (8) The court may appoint a guardian ad litem to represent
2 the interests of the child and may assess the
3 reasonable fees and expenses of the guardian ad litem
4 as costs of the action, payable in whole or in part by
5 either or both parties as the circumstances may
6 justify;

7 (9) In every proceeding where there is at issue a dispute
8 as to the custody of a child, a determination by the
9 court that family violence has been committed by a
10 parent raises a rebuttable presumption that it is
11 detrimental to the child and not in the best interest
12 of the child to be placed in sole custody, joint legal
13 custody, or joint physical custody with the
14 perpetrator of family violence. In addition to other
15 factors that a court must consider in a proceeding in
16 which the custody of a child or visitation by a parent
17 is at issue, and in which the court has made a finding
18 of family violence by a parent:

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

1 (B) The court shall consider the perpetrator's
2 history of causing physical harm, bodily injury,
3 or assault or causing reasonable fear of physical
4 harm, bodily injury, or assault to another
5 person; and

6 (C) If a parent is absent or relocates because of an
7 act of family violence by the other parent, the
8 absence or relocation shall not be a factor that
9 weighs against the parent in determining custody
10 or visitation;

11 (10) A court may award visitation to a parent who committed
12 family violence only if the court finds that adequate
13 provision can be made for the physical safety and
14 psychological well-being of the child and for the
15 safety of the parent who is a victim of family
16 violence;

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

18 (A) Order an exchange of a child to occur in a
19 protected setting;

20 (B) Order visitation supervised by another person or
21 agency;

- 1 (C) Order the perpetrator of family violence to
- 2 attend and complete, to the satisfaction of the
- 3 court, a program of intervention for perpetrators
- 4 or other designated counseling as a condition of
- 5 the visitation;
- 6 (D) Order the perpetrator of family violence to
- 7 abstain from possession or consumption of alcohol
- 8 or controlled substances during the visitation
- 9 and for twenty-four hours preceding the
- 10 visitation;
- 11 (E) Order the perpetrator of family violence to pay a
- 12 fee to defray the costs of supervised visitation;
- 13 (F) Prohibit overnight visitation;
- 14 (G) Require a bond from the perpetrator of family
- 15 violence for the return and safety of the child.
- 16 In determining the amount of the bond, the court
- 17 shall consider the financial circumstances of the
- 18 perpetrator of family violence;
- 19 (H) Impose any other condition that is deemed
- 20 necessary to provide for the safety of the child,
- 21 the victim of family violence, or other family or
- 22 household member; and

1 (I) Order the address of the child and the victim to
2 be kept confidential;

3 (12) The court may refer but shall not order an adult who
4 is a victim of family violence to attend, either
5 individually or with the perpetrator of the family
6 violence, counseling relating to the victim's status
7 or behavior as a victim as a condition of receiving
8 custody of a child or as a condition of visitation;

9 (13) If a court allows a family or household member to
10 supervise visitation, the court shall establish
11 conditions to be followed during visitation; and

12 (14) A supervised visitation center must provide: a secure
13 setting and specialized procedures for supervised
14 visitation and the transfer of children for visitation
15 and supervision by a person trained in security and
16 the avoidance of family violence.

17 (b) For the purposes of this section, the court shall
18 consider all relevant factors in determining the best interests
19 of the child, including:

20 (1) The age of the child;

- 1 (2) The relationship of the child with the child's parents
2 and any other persons who may have a significant
3 effect on the child's welfare;
- 4 (3) The child's preference if the child is of sufficient
5 age and capacity to form a preference;
- 6 (4) The need for frequent, continuing, and meaningful
7 contact between the child and each parent;
- 8 (5) The capacity of each parent to allow and encourage
9 frequent and continuing contact between the child and
10 the other parent, including physical access;
- 11 (6) The length of time the child has lived in a stable,
12 satisfactory environment and the desirability of
13 maintaining continuity;
- 14 (7) The stability of any proposed living situation
15 arrangements for the child;
- 16 (8) The child's adjustment to the child's present home,
17 school, and community;
- 18 (9) The mental and physical health of all individuals
19 involved;
- 20 (10) The capacity of each parent to cooperate or to learn
21 to cooperate in child care;

- 1 (11) Methods for assisting parental cooperation and
- 2 resolving disputes and each parent's willingness to
- 3 use these methods;
- 4 (12) The effect on the child if one parent has sole
- 5 authority over the child's upbringing;
- 6 (13) Any finding of family violence;
- 7 (14) Any evidence that substance abuse by either parent or
- 8 other members of the household directly affects the
- 9 emotional or physical well-being of the child; and
- 10 (15) Other factors that the court considers relevant."

SECTION 3. New statutory material is underscored.

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

INTRODUCED BY: Shoanne Chun Oakland

Shoanne Chun Oakland

April J. Lee

Will Espino

Joe Chavez



SB. NO. 3236

Report Title:

Family Court; Custody; Best Interests of the Child

Description:

Enumerates factors for the court to consider in determining the best interests of a child with respect to custody and visitation.

