

---

---

# A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1           SECTION 1. Section 571-46, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§571-46 Criteria and procedure in awarding custody and**  
4 **visitation[-]; best interest of the child.** (a) In the actions  
5 for divorce, separation, annulment, separate maintenance, or any  
6 other proceeding where there is at issue a dispute as to the  
7 custody of a minor child, the court, during the pendency of the  
8 action, at the final hearing, or any time during the minority of  
9 the child, may make an order for the custody of the minor child  
10 as may seem necessary or proper. In awarding the custody, the  
11 court shall be guided by the following standards,  
12 considerations, and procedures:

13           (1) Custody should be awarded to either parent or to both  
14 parents according to the best interests of the child,  
15 and the court may also consider frequent, continuing,  
16 and meaningful contact of each parent with the child



- 1 unless the court finds that a parent is unable to act  
2 in the best interest of the child;
- 3 (2) Custody may be awarded to persons other than the  
4 father or mother whenever the award serves the best  
5 interest of the child. Any person who has had de  
6 facto custody of the child in a stable and wholesome  
7 home and is a fit and proper person shall be entitled  
8 prima facie to an award of custody;
- 9 (3) If a child is of sufficient age and capacity to  
10 reason, so as to form an intelligent preference, the  
11 child's wishes as to custody shall be considered and  
12 be given due weight by the court;
- 13 (4) Whenever good cause appears therefor, the court may  
14 require an investigation and report concerning the  
15 care, welfare, and custody of any minor child of the  
16 parties. When so directed by the court, investigators  
17 or professional personnel attached to or assisting the  
18 court shall make investigations and reports [~~which~~  
19 that shall be made available to all interested parties  
20 and counsel before hearing, and the reports may be  
21 received in evidence if no objection is made and, if  
22 objection is made, may be received in evidence;



1 provided the person or persons responsible for the  
2 report are available for cross-examination as to any  
3 matter that has been investigated;

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

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

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



1 rights of visitation are detrimental to the best  
2 interests of the child;

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

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



- 1           (A) The court shall consider as the primary factor
- 2           the safety and well-being of the child and of the
- 3           parent who is the victim of family violence;
- 4           (B) The court shall consider the perpetrator's
- 5           history of causing physical harm, bodily injury,
- 6           or assault or causing reasonable fear of physical
- 7           harm, bodily injury, or assault to another
- 8           person; and
- 9           (C) If a parent is absent or relocates because of an
- 10          act of family violence by the other parent, the
- 11          absence or relocation shall not be a factor that
- 12          weighs against the parent in determining custody
- 13          or visitation;
- 14          (10) A court may award visitation to a parent who committed
- 15          family violence only if the court finds that adequate
- 16          provision can be made for the physical safety and
- 17          psychological well-being of the child and for the
- 18          safety of the parent who is a victim of family
- 19          violence;
- 20          (11) In a visitation order, a court may:
- 21               (A) Order an exchange of a child to occur in a
- 22               protected setting;



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



1                   the victim of family violence, or other family or  
2                   household member; and

3                   (I) Order the address of the child and the victim to  
4                   be kept confidential;

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

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

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

19                  (b) In determining what constitutes the best interest of  
20                  the child under this section, the court shall consider but not  
21                  be limited to the following:



- 1        (1) Any history of sexual or physical abuse of a child by  
2        a parent;
- 3        (2) Any history of neglect or emotional abuse of a child  
4        by a parent;
- 5        (3) The overall quality of the parent-child relationship;
- 6        (4) The history of care giving or parenting by each parent  
7        prior and subsequent to marital separation;
- 8        (5) Each parent's cooperation in developing and  
9        implementing a plan to meet the child's ongoing  
10       schedule, needs, and interests;
- 11       (6) The physical health needs of the child;
- 12       (7) The emotional needs of the child;
- 13       (8) The safety needs of the child;
- 14       (9) The educational needs of the child;
- 15       (10) The child's need for relationships with siblings;
- 16       (11) Each parent's willingness to allow the child to  
17       maintain family connections through family events and  
18       activities;
- 19       (12) Each parent's ability to separate the child's needs  
20       from their own;
- 21       (13) Any history of or evidence of current drug or alcohol  
22       abuse by a parent;





- 1        (14) The mental health and psychological adjustment of the  
2            parent;
- 3        (15) The areas and levels of conflict present within the  
4            family; and
- 5        (16) Any parent's prior wilful misuse of the protection  
6            from abuse process under chapter 586 in order to gain  
7            a tactical advantage in any proceeding involving the  
8            determination of custody of a minor. Such wilful  
9            misuse may only be considered if established by clear  
10           and convincing evidence, and if it is further found by  
11           clear and convincing evidence that in the particular  
12           circumstances of the parents and child that wilful  
13           misuse tend to show that the acting parent will in the  
14           future have lessened ability and willingness to  
15           cooperate and work with the other parent in their  
16           shared responsibilities for the child. The court  
17           shall articulate findings of fact wherever relying  
18           upon this factor as part of its determination of a  
19           child's best interests. The voluntary dismissal of a  
20           protection from abuse petition may not, taken alone,  
21           be treated as evidence of the wilful misuse of the  
22           protection from abuse process."



1 SECTION 2. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 3. This Act shall take effect upon its approval.

4

INTRODUCED BY:

*John M. Nguyen*  
*Karen Chuang*

JAN 11 2008

5



**Report Title:**

Family Court; Custody

**Description:**

Amends custody and visitation criteria and procedures to specify what factors the courts shall consider in determining the best interest of the child.

