
A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. Section 302A-481, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§302A-481[+] **Definitions.** As used in this
4 [+]subpart[+], unless the context otherwise requires:

5 "Caregiver" means any person who is at least eighteen years
6 of age and:

- 7 (1) Related by blood, marriage, or adoption to the minor,
8 including a person who is entitled to an award of
9 custody pursuant to section [~~571-46(2)~~] 571-46(a)(2)
10 but is not the legal custodian or guardian of the
11 minor; or
12 (2) Has resided with the minor for a continuous immediate
13 preceding period of six months or more."

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

16 "§571-46 **Criteria and procedure in awarding custody and**
17 **visitation[-]; best interest of the child.** (a) In the actions



1 for divorce, separation, annulment, separate maintenance, or any
2 other proceeding where there is at issue a dispute as to the
3 custody of a minor child, the court, during the pendency of the
4 action, at the final hearing, or any time during the minority of
5 the child, may make an order for the custody of the minor child
6 as may seem necessary or proper. In awarding the custody, the
7 court shall be guided by the following standards,
8 considerations, and procedures:

9 (1) Custody should be awarded to either parent or to both
10 parents according to the best interests of the child,
11 and the court may also consider frequent, continuing,
12 and meaningful contact of each parent with the child
13 unless the court finds that a parent is unable to act
14 in the best interest of the child;

15 (2) Custody may be awarded to persons other than the
16 father or mother whenever the award serves the best
17 interest of the child. Any person who has had de
18 facto custody of the child in a stable and wholesome
19 home and is a fit and proper person shall be entitled
20 prima facie to an award of custody;

21 (3) If a child is of sufficient age and capacity to
22 reason, so as to form an intelligent preference, the



1 child's wishes as to custody shall be considered and
2 be given due weight by the court;

3 (4) Whenever good cause appears therefor, the court may
4 require an investigation and report concerning the
5 care, welfare, and custody of any minor child of the
6 parties. When so directed by the court, investigators
7 or professional personnel attached to or assisting the
8 court shall make investigations and reports [~~which~~
9 that shall be made available to all interested parties
10 and counsel before hearing, and the reports may be
11 received in evidence if no objection is made and, if
12 objection is made, may be received in evidence;
13 provided the person or persons responsible for the
14 report are available for cross-examination as to any
15 matter that has been investigated;

16 (5) The court may hear the testimony of any person or
17 expert, produced by any party or upon the court's own
18 motion, whose skill, insight, knowledge, or experience
19 is such that the person's or expert's testimony is
20 relevant to a just and reasonable determination of
21 what is for the best physical, mental, moral, and



1 spiritual well-being of the child whose custody is at
2 issue;

3 (6) Any custody award shall be subject to modification or
4 change whenever the best interests of the child
5 require or justify the modification or change and,
6 wherever practicable, the same person who made the
7 original order shall hear the motion or petition for
8 modification of the prior award;

9 (7) Reasonable visitation rights shall be awarded to
10 parents, grandparents, siblings, and any person
11 interested in the welfare of the child in the
12 discretion of the court, unless it is shown that
13 rights of visitation are detrimental to the best
14 interests of the child;

15 (8) The court may appoint a guardian ad litem to represent
16 the interests of the child and may assess the
17 reasonable fees and expenses of the guardian ad litem
18 as costs of the action, payable in whole or in part by
19 either or both parties as the circumstances may
20 justify;

21 (9) 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 family violence has been committed by a
2 parent raises a rebuttable presumption that it is
3 detrimental to the child and not in the best interest
4 of the child to be placed in sole custody, joint legal
5 custody, or joint physical custody with the
6 perpetrator of family violence. In addition to other
7 factors that a court must consider in a proceeding in
8 which the custody of a child or visitation by a parent
9 is at issue, and in which the court has made a finding
10 of family violence by a parent:

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

14 (B) The court shall consider the perpetrator's
15 history of causing physical harm, bodily injury,
16 or assault or causing reasonable fear of physical
17 harm, bodily injury, or assault to another
18 person; and

19 (C) If a parent is absent or relocates because of an
20 act of family violence by the other parent, the
21 absence or relocation shall not be a factor that



1 weighs against the parent in determining custody
2 or visitation;

3 (10) A court may award visitation to a parent who committed
4 family violence only if the court finds that adequate
5 provision can be made for the physical safety and
6 psychological well-being of the child and for the
7 safety of the parent who is a victim of family
8 violence;

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

10 (A) Order an exchange of a child to occur in a
11 protected setting;

12 (B) Order visitation supervised by another person or
13 agency;

14 (C) Order the perpetrator of family violence to
15 attend and complete, to the satisfaction of the
16 court, a program of intervention for perpetrators
17 or other designated counseling as a condition of
18 the visitation;

19 (D) Order the perpetrator of family violence to
20 abstain from possession or consumption of alcohol
21 or controlled substances during the visitation



- 1 and for twenty-four hours preceding the
2 visitation;
- 3 (E) Order the perpetrator of family violence to pay a
4 fee to defray the costs of supervised visitation;
- 5 (F) Prohibit overnight visitation;
- 6 (G) Require a bond from the perpetrator of family
7 violence for the return and safety of the child.
8 In determining the amount of the bond, the court
9 shall consider the financial circumstances of the
10 perpetrator of family violence;
- 11 (H) Impose any other condition that is deemed
12 necessary to provide for the safety of the child,
13 the victim of family violence, or other family or
14 household member; and
- 15 (I) Order the address of the child and the victim to
16 be kept confidential;
- 17 (12) The court may refer but shall not order an adult who
18 is a victim of family violence to attend, either
19 individually or with the perpetrator of the family
20 violence, counseling relating to the victim's status
21 or behavior as a victim as a condition of receiving
22 custody of a child or as a condition of visitation;



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

4 (14) A supervised visitation center [~~must~~] shall provide:
5 a secure setting and specialized procedures for
6 supervised visitation and the transfer of children for
7 visitation and supervision by a person trained in
8 security and the avoidance of family violence.

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

12 (1) Any history of sexual or physical abuse of a child by
13 a parent;

14 (2) Any history of neglect or emotional abuse of a child
15 by a parent;

16 (3) The overall quality of the parent-child relationship;

17 (4) The history of care giving or parenting by each parent
18 prior and subsequent to marital separation;

19 (5) Each parent's cooperation in developing and
20 implementing a plan to meet the child's ongoing
21 schedule, needs, and interests; except that this
22 factor shall be excluded if a determination has been



- 1 made by the court that family violence has been
- 2 committed by a parent, pursuant to section 571-
- 3 46(a)(9);
- 4 (6) The physical health needs of the child;
- 5 (7) The emotional needs of the child;
- 6 (8) The safety needs of the child;
- 7 (9) The educational needs of the child;
- 8 (10) The child's need for relationships with siblings;
- 9 (11) Each parent's willingness to allow the child to
- 10 maintain family connections through family events and
- 11 activities;
- 12 (12) Each parent's ability to separate the child's needs
- 13 from their own;
- 14 (13) Any history of or evidence of current drug or alcohol
- 15 abuse by a parent;
- 16 (14) The mental health and psychological adjustment of the
- 17 parent;
- 18 (15) The areas and levels of conflict present within the
- 19 family; and
- 20 (16) Any parent's prior wilful misuse of the protection
- 21 from abuse process under chapter 586 to gain a
- 22 tactical advantage in any proceeding involving the



1 determination of custody of a minor. Such wilful
2 misuse may only be considered if established by clear
3 and convincing evidence, and if it is further found by
4 clear and convincing evidence that in the particular
5 circumstances of the parents and child that wilful
6 misuse tend to show that the acting parent will in the
7 future have lessened ability and willingness to
8 cooperate and work with the other parent in their
9 shared responsibilities for the child. The court
10 shall articulate findings of fact wherever relying
11 upon this factor as part of its determination of a
12 child's best interests. The voluntary dismissal of a
13 protection from abuse petition may not, taken alone,
14 be treated as evidence of the wilful misuse of the
15 protection from abuse process."

16 SECTION 3. Section 571-46.1, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Upon the application of either parent, joint custody
19 may be awarded in the discretion of the court. For the purpose
20 of assisting the court in making a determination whether an
21 award of joint custody is appropriate, the court shall, upon the
22 request of either party, direct that an investigation be



1 conducted pursuant to the provisions of section [~~571-46(4).~~]
2 571-46(a)(4)."

3 SECTION 4. Section 577-28, Hawaii Revised Statutes, is
4 amended by amending subsection (g) to read as follows:

5 "(g) As used in this section, "caregiver" means any person
6 who is at least eighteen years of age and:

7 (1) Is related by blood, marriage, or adoption to the
8 minor, including a person who is entitled to an award
9 of custody pursuant to section [~~571-46(2),~~] 571-
10 46(a)(2), but who is not the legal custodian or
11 guardian of the minor; or

12 (2) Has resided with the minor continuously during the
13 immediately preceding period of six months or more."

14 SECTION 5. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

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



Report Title:

Family Court; Custody

Description:

Amends custody and visitation criteria and procedures to specify what criteria the courts shall consider in determining the best interest of the child. (HB2042 HD1)

