
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]~~



1 actions for divorce, separation, annulment, separate
2 maintenance, or any other proceeding where there is at issue a
3 dispute as to the custody of a minor child, the court, during
4 the pendency of the action, at the final hearing, or any time
5 during the minority of the child, may make an order for the
6 custody of the minor child as may seem necessary or proper. In
7 awarding the custody, the court shall be guided by the following
8 standards, 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 also may [~~alse~~] consider frequent,
12 continuing, and meaningful contact of each parent with
13 the child unless the court finds that a parent is
14 unable to act 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~~] shall consider in a
8 proceeding in which the custody of a child or
9 visitation by a parent is at issue, and in which the
10 court has made a finding of family violence by a
11 parent:

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

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

20 (C) If a parent is absent or relocates because of an
21 act of family violence by the other parent, the
22 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 has
4 committed family violence only if the court finds that
5 adequate provision can be made for the physical safety
6 and 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 caregiving or parenting by each parent
18 prior and subsequent to a marital or other type of
19 separation;

20 (5) Each parent's cooperation in developing and
21 implementing a plan to meet the child's ongoing needs,
22 interests, and schedule; provided that this factor



1 shall not be considered in any case where the court
2 has determined that family violence has been committed
3 by a parent;
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 actions demonstrating that they allow
10 the child to maintain family connections through
11 family events and activities; provided that this
12 factor shall not be considered in any case where the
13 court has determined that family violence has been
14 committed by a parent;
15 (12) Each parent's actions demonstrating that they separate
16 the child's needs from the parent's needs;
17 (13) Any evidence of past or current drug or alcohol abuse
18 by a parent;
19 (14) The mental health of each parent;
20 (15) The areas and levels of conflict present within the
21 family; and



1 (16) A parent's prior wilful misuse of the protection from
2 abuse process under chapter 586 to gain a tactical
3 advantage in any proceeding involving the custody
4 determination of a minor. Such wilful misuse may be
5 considered only if it is established by clear and
6 convincing evidence, and if it is further found by
7 clear and convincing evidence that in the particular
8 family circumstance the wilful misuse tends to show
9 that, in the future, the parent who engaged in the
10 wilful misuse will not be able to cooperate
11 successfully with the other parent in their shared
12 responsibilities for the child. The court shall
13 articulate findings of fact whenever relying upon this
14 factor as part of its determination of the best
15 interests of the child. For the purposes of this
16 section, when taken alone, the voluntary dismissal of
17 a petition for protection from abuse shall not be
18 treated as prima facie evidence that a wilful misuse
19 of the protection from abuse process has occurred."

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



1 "**§571-46.1 Joint custody.** (a) Upon the application of
2 either parent, joint custody may be awarded in the discretion of
3 the court. For the purpose of assisting the court in making a
4 determination whether an award of joint custody is appropriate,
5 the court shall, upon the request of either party, direct that
6 an investigation be conducted pursuant to the provisions of
7 section [~~571-46(4).~~] 571-46(a)(4)."

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

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

12 (1) Is related by blood, marriage, or adoption to the
13 minor, including a person who is entitled to an award
14 of custody pursuant to section [~~571-46(2).~~] 571-
15 46(a)(2) but who is not the legal custodian or
16 guardian of the minor; or

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

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect on July 1, 2008.



S.B. NO. 2054
S.D. 2
H.D. 2
C.D. 1

Report Title:

Family Court; Custody

Description:

Establishes criteria for the best interests of the child, to specify what factors the courts shall consider in making a custody or visitation determination concerning a minor child.
(CD1)

