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# 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 [~~also~~] 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 care giving 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 and psychological adjustment of the

20           parent;

21           (15) The areas and levels of conflict present within the

22           family; and



1       (16) Any parent's prior wilful misuse of the protection  
2       from abuse process under chapter 586 to gain a  
3       tactical advantage in any proceeding involving the  
4       custody determination of a minor. Such wilful misuse  
5       may be considered only if it is established by clear  
6       and 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 acting parent will not be  
10       able to cooperate successfully with the other parent  
11       in their shared responsibilities for the child. The  
12       court shall articulate findings of fact whenever  
13       relying upon this factor as part of its determination  
14       of the best interests of the child. For the purposes  
15       of this section, when taken alone, the voluntary  
16       dismissal of a petition for protection from abuse may  
17       not be treated as prima facie evidence that a wilful  
18       misuse of the protection from abuse process has  
19       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, 2050.



**Report Title:**

Family Court; Custody

**Description:**

Amends best interest of the child criteria and procedures to specify what factors the courts shall consider in making a custody or visitation determination concerning a minor child. Effective 7/1/2050. (SB2054 HD1)

