

JAN 16 2008

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."



S.B. NO. 2054

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: *Suzanne Chun Oakland*

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.

