
A BILL FOR AN ACT

RELATING TO CHILDREN.

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

1 SECTION 1. Certain jobs require parents to be separated
2 from their children for extended periods of time. This fact is
3 especially prevalent among families with parents who serve in
4 the United States armed forces.

5 It has been reported that approximately eight per cent of
6 military service members are single parents and that
7 approximately ten thousand single-parent service members have
8 been deployed overseas for more than six months.

9 Nationwide, a number of family court judges use a military
10 service member's absence away from home while serving the United
11 States in countries such as Iraq and Afghanistan to take away
12 child custody and visitation rights. A CBS News analysis of
13 child custody laws found that only five states automatically
14 return children after deployment; five states prohibit
15 deployment from being used in court; fourteen states have weaker
16 protections; and the remaining states provide United States
17 service members with no additional protections.



1 The purpose of this Act is to prevent courts from using a
2 parent's extended absence due to military service or other
3 public duties to alter or affect awards of child custody and
4 visitation.

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

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

17 (1) Custody should be awarded to either parent or to both
18 parents according to the best interests of the child,
19 and the court also may consider frequent, continuing,
20 and meaningful contact of each parent with the child
21 unless the court finds that a parent is unable to act
22 in the best interest of the child; provided that the



1 custody award shall be made in accordance with
2 subsection (c);

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, hereinafter referred to as child custody
19 evaluators, shall make investigations and reports that
20 shall be made available to all interested parties and
21 counsel before hearing, and the reports may be
22 received in evidence if no objection is made and, if



1 objection is made, may be received in evidence;
2 provided the person or persons responsible for the
3 report are available for cross-examination as to any
4 matter that has been investigated; and provided
5 further that the court shall define the requirements
6 to be a court-appointed child custody evaluator, the
7 standards of practice, ethics, policies, and
8 procedures required of court-appointed child custody
9 evaluators in the performance of their duties for all
10 courts, and the powers of the courts over child
11 custody evaluators to effectuate the best interests of
12 a child in a contested custody dispute pursuant to
13 this section. Where there is no child custody
14 evaluator available that meets the requirements and
15 standards, or any child custody evaluator to serve
16 indigent parties, the court may appoint a person
17 otherwise willing and available[+]; [+]

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



1 what is for the best physical, mental, moral, and
2 spiritual well-being of the child whose custody is at
3 issue;

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

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

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



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

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

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

21 (C) If a parent is absent or relocates because of an
22 act of family violence by the other parent, the



1 absence or relocation shall not be a factor that
2 weighs against the parent in determining custody
3 or visitation;

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

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

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

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

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

20 (D) Order the perpetrator of family violence to
21 abstain from possession or consumption of alcohol
22 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 shall provide a secure
5 setting and specialized procedures for supervised
6 visitation and the transfer of children for visitation
7 and supervision by a person trained in security and
8 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~~] The 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 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 (c) In awarding custody or visitation pursuant to this
21 section, the court shall not consider absences due to a parent's
22 service in the United States armed forces or duties as a public

1 official that require the parent to be a substantial distance
2 away from the child for an extended period of time.

3 (d) Where at least one parent is a member of the United
4 States armed forces or is a public official, and the parent's
5 service or duties requires the parent to be a substantial
6 distance away from the court at the time of a scheduled hearing
7 or other proceeding brought under this section, the court shall
8 make a reasonable effort to expedite the hearing or other
9 proceeding or to use an available electronic communication
10 system to facilitate the parent's participation in the hearing
11 or proceeding."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

15

INTRODUCED BY: 
JAN 19 2010



Report Title:

Child Custody

Description:

Provides that in child custody proceedings, courts shall not give undue weight to a parent's absence away from the child, when such absence is due to service in the military or duties as a public official. Requires courts to make a reasonable effort to expedite proceedings or use electronic communication systems to facilitate a parent's participation in a proceeding when the parent is a substantial distance away from the court.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

