
A BILL FOR AN ACT

RELATING TO CHILDREN.

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

1 SECTION 1. Hawaii has approximately fifty thousand active-
2 duty military personnel, and sixty-one thousand associated
3 family members. Additionally, Hawaii has approximately twelve
4 thousand Reserve and National Guard members. According to the
5 2000 U.S. Census, at 4.95 per cent, Hawaii topped all other
6 states with the highest percentage of people ages sixteen to
7 sixty-four in the armed forces.

8 In fiscal year 2008-2009, the Judiciary reported 5,622
9 marital actions (primarily divorces) filed and 2,021 parental
10 proceedings filed. Many of these cases involved military
11 parents. Also, single military parents and previously divorced
12 families where one parent is a military member are a significant
13 population. It has been reported that approximately eight per
14 cent of military service members are single parents and that
15 approximately ten thousand single-parent service members have
16 been deployed overseas for more than six months. These numbers
17 do not include divorced service member parents who have
18 remarried, where a custodial or non-custodial parent must still



1 deal with deployments and the children. The issues surrounding
2 military duty which separate parents from children have a
3 significant effect on the military readiness of the parents and
4 the well-being of the children.

5 The purpose of this Act is to require special family court
6 procedures in child custody disputes involving servicemembers
7 who are deployed.

8 SECTION 2. Chapter 571, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§571- Military dependent; child custody procedures.

12 (a) Enforcement of existing judgments, orders, and decrees.

13 Where there is an existing judgment, order, or decree addressing
14 what shall occur with respect to custody and visitation of a
15 minor child in the event of the deployment of either or both
16 parents, the court shall enforce the provisions of that
17 judgment, order, or decree, upon application by either parent,
18 unless the court finds
19 that to do so would not be in the best interests of the child.

20 (b) Upon a motion by either parent seeking to establish or
21 modify custody or visitation orders and alleging that a parent
22 has deployed or will likely deploy within the next sixty days,



1 the court shall set the motion for an expedited hearing. The
2 hearing shall be set within fourteen days of the filing of the
3 motion and, whenever possible, prior to the
4 parent's deployment.

5 Any motion under this section shall specify the factual
6 basis upon which the movant claims that a parent has deployed or
7 is likely to deploy. The motion shall specify when and how the
8 deploying or deployed parent notified the nondeploying parent of
9 the deployment. The court may consider the deploying parent's
10 timeliness in disclosing an impending deployment to the other
11 parent in making any orders under this section, unless a delay
12 or failure to disclose was necessitated by valid military or
13 operational security concerns.

14 Following the hearing, the court shall enter a temporary
15 order valid for a period not to exceed thirty days after the
16 parent's return from deployment.

17 (c) If the deploying parent is the custodial parent, and
18 unless the parties have agreed to other custodial arrangements
19 or the court finds the non-deploying parent to be unfit, the
20 court shall award temporary custody and temporary child support
21 to the non-deploying parent.



1 (d) Any temporary order shall provide for visitation to
2 the deployed parent, affording priority to the deployed parent's
3 pre-deployment, mid-tour, post-deployment, or other leave;
4 provided that the court may require visitation to occur in a
5 location that does not interfere with the child's schooling or
6 other specified activities. The temporary order shall also
7 provide for visitation by way of electronic means and surface
8 mail between the deployed parent and child. The temporary order
9 may also provide for visitation between the child and the
10 child's siblings who may be separated as a result of the
11 temporary order.

12 Upon request of the deployed parent, the court may order
13 visitation that the deployed parent might otherwise exercise in
14 the absence of deployment to be exercised by the deployed
15 parent's
16 delegate.

17 (e) The temporary order may authorize the temporary
18 relocation of the child outside of the State. Notwithstanding
19 any other law to the contrary, having made a temporary order
20 under this section, the court shall retain continuing exclusive
21 jurisdiction until a post-deployment review hearing is held.



1 (f) Upon entering a temporary custody order, the court
2 shall set the matter for a review hearing within thirty days
3 after the deploying parent's anticipated return from deployment.
4 The date of the review hearing may be advanced if the deployed
5 parent returns from deployment sooner than anticipated, or
6 continued if the deployed parent remains deployed longer than
7 anticipated.

8 (g) Following the review hearing, the court may set the
9 matter for further evidentiary hearing, if appropriate, and make
10 any further orders necessary in the best interests of the child.

11 (h) In addition to any other method prescribed by law,
12 service of process on a deploying or deployed parent may be made
13 by first class mail addressed to the individual through the APO
14 or FPO address, or addressed to the servicemember at the
15 servicemember's unit or military installation. The court may
16 accept service by any other means if the court is satisfied that
17 the deploying or deployed parent received actual notice,
18 including by electronic means.

19 Any motion seeking an expedited hearing shall be served
20 upon the other party not less than forty-eight hours prior to
21 the hearing.



1 (i) The court may permit alternative methods of
2 participation and testimony by electronic means in any hearing
3 conducted under this section, for either parent for whom
4 physical attendance is impractical or would impose undue
5 hardship. A parent's affidavit or declaration under penalty of
6 perjury shall be admissible, and a fax, email, or
7 scanned copy of the same or any other relevant document may be
8 admitted in the same manner as an original document unless there
9 is a genuine issue as to its authenticity.

10 (j) This section shall not create or confer a separate
11 right of action. Any person seeking a court order under this
12 section must initiate or have a pending proceeding in the
13 Hawaii family court or meet the requirements for filing a
14 proceeding under chapter 580, 583A, or 584, or any other statute
15 authorizing an action in which the custody and visitation of a
16 child may be established or modified.

17 This section does not confer child custody jurisdiction or
18 child support jurisdiction upon the Hawaii family court where it
19 would not otherwise exist under chapter 583A or 576B.

20 This section is not intended to supersede, modify, or
21 constitute a waiver of any rights or protections provided by the



1 Servicemembers Civil Relief Act of 2000, and shall be construed
2 in conformity therewith.

3 (k) As used in this section:

4 "Deployed parent" means a parent who is a servicemember and
5 is deployed.

6 "Deploying parent" means a parent who is a servicemember
7 and is likely to deploy within the next sixty days.

8 "Deployment" means the absence of a servicemember from his
9 or her usual place of residence or duty station pursuant to
10 military orders, whether:

11 (1) For a period of at least sixty days;

12 (2) In support of a specified military operation; and

13 (3) Under conditions that preclude a child from
14 accompanying the servicemember,

15 and from which the servicemember is expected to return to his or
16 her usual place of residence or the duty station from which
17 deployed.

18 "Electronic means" means communication by telephone,
19 radiotelephone, video teleconference, webcam, fax, email, or
20 other available electronic communication systems.

21 "Parent" means a person who is the natural, legal, adoptive
22 parent or legal guardian or a child under the age of eighteen or



1 a person who has commenced legal proceedings to establish such
2 relationship and whose parental rights have not been terminated.

3 "Return from deployment" means the date upon which the
4 deployed parent:

- 5 (1) Returns to the prior place of residence or duty
6 station; or
7 (2) Arrives at a new duty station for an indefinite period
8 or a period that will exceed ninety days, not
9 including periods of leave during which the deployed
10 parent may return to the location from which the
11 parent was deployed, nor to periods of temporary duty
12 during deployment.

13 "Servicemember" means an active duty member of the Armed
14 Forces of the United States Army, Navy, Marine Corps, Air Force,
15 or Coast Guard, including members of the reserve components or
16 National Guard when serving on active duty under Title 10,
17 United States Code, and in the case of a member of the National
18 Guard, includes service under a call to active service
19 authorized by the President or the Secretary of Defense for a
20 period of more than thirty consecutive days under section 502(f)
21 of Title 32, United States Code. The term "servicemember" does
22 not include members of the reserve components in inactive duty,



1 active duty other than under Title 10 or Title 32, United States
2 Code, or members of the National Guard serving on active service
3 pursuant to section 121-30."

4 SECTION 3. Section 571-46, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

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

14 (1) Custody should be awarded to either parent or to both
15 parents according to the best interests of the child,
16 and the court also may consider frequent, continuing,
17 and meaningful contact of each parent with the child
18 unless the court finds that a parent is unable to act
19 in the best interest of the child; provided that the
20 custody award shall be made in accordance with section
21 571- , if applicable;



- 1 (2) Custody may be awarded to persons other than the
2 father or mother whenever the award serves the best
3 interest of the child. Any person who has had de
4 facto custody of the child in a stable and wholesome
5 home and is a fit and proper person shall be entitled
6 prima facie to an award of custody;
- 7 (3) If a child is of sufficient age and capacity to
8 reason, so as to form an intelligent preference, the
9 child's wishes as to custody shall be considered and
10 be given due weight by the court;
- 11 (4) Whenever good cause appears therefor, the court may
12 require an investigation and report concerning the
13 care, welfare, and custody of any minor child of the
14 parties. When so directed by the court, investigators
15 or professional personnel attached to or assisting the
16 court, hereinafter referred to as child custody
17 evaluators, shall make investigations and reports that
18 shall be made available to all interested parties and
19 counsel before hearing, and the reports may be
20 received in evidence if no objection is made and, if
21 objection is made, may be received in evidence;
22 provided the person or persons responsible for the



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

- 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; provided that the
9 custody award shall be made in accordance with section
10 571- , if applicable;
- 11 (7) Reasonable visitation rights shall be awarded to
12 parents, grandparents, siblings, and any person
13 interested in the welfare of the child in the
14 discretion of the court, unless it is shown that
15 rights of visitation are detrimental to the best
16 interests of the child;
- 17 (8) The court may appoint a guardian ad litem to represent
18 the interests of the child and may assess the
19 reasonable fees and expenses of the guardian ad litem
20 as costs of the action, payable in whole or in part by
21 either or both parties as the circumstances may
22 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 SECTION 4. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on July 1, 2050.

15



Report Title:

Child Custody; Military Deployment

Description:

Statutorily establishes a process by which the Family Court can resolve matters regarding custody and visitation for service members of the United States armed forces, armed forces reserves, and National Guard whose military duties require temporary absences. Effective July 1, 2050. (SD1)

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