



GOV. MSG. NO. 1295

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 6, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 6, 2011, the following bill was signed into law:

HB616 HD2 SD2 CD1

RELATING TO CHILD CUSTODY.
Act 191 (11)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

on JUL 6 2011

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 191
H.B. NO. 616
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO CHILD CUSTODY.

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

1 SECTION 1. Section 571-2, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Electronic communication" means communication that is
5 facilitated by any wired or wireless technology via the Internet
6 or any other electronic media, including but not limited to
7 communication by telephone, electronic mail, instant messaging,
8 video conferencing, and web camera."

9 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

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



- 1 (1) Custody should be awarded to either parent or to both
2 parents according to the best interests of the child,
3 and the court also may consider frequent, continuing,
4 and meaningful contact of each parent with the child
5 unless the court finds that a parent is unable to act
6 in the best interest of the child;
- 7 (2) Custody may be awarded to persons other than the
8 father or mother whenever the award serves the best
9 interest of the child. Any person who has had de
10 facto custody of the child in a stable and wholesome
11 home and is a fit and proper person shall be entitled
12 prima facie to an award of custody;
- 13 (3) If a child is of sufficient age and capacity to
14 reason, so as to form an intelligent preference, the
15 child's wishes as to custody shall be considered and
16 be given due weight by the court;
- 17 (4) Whenever good cause appears therefor, the court may
18 require an investigation and report concerning the
19 care, welfare, and custody of any minor child of the
20 parties. When so directed by the court, investigators
21 or professional personnel attached to or assisting the
22 court, hereinafter referred to as child custody



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



- 1 (5) The court may hear the testimony of any person or
2 expert, produced by any party or upon the court's own
3 motion, whose skill, insight, knowledge, or experience
4 is such that the person's or expert's testimony is
5 relevant to a just and reasonable determination of
6 what is for the best physical, mental, moral, and
7 spiritual well-being of the child whose custody is at
8 issue;
- 9 (6) Any custody award shall be subject to modification or
10 change whenever the best interests of the child
11 require or justify the modification or change and,
12 wherever practicable, the same person who made the
13 original order shall hear the motion or petition for
14 modification of the prior award;
- 15 (7) Reasonable visitation rights shall be awarded to
16 parents, grandparents, siblings, and any person
17 interested in the welfare of the child in the
18 discretion of the court, unless it is shown that
19 rights of visitation are detrimental to the best
20 interests of the child;
- 21 (8) The court may appoint a guardian ad litem to represent
22 the interests of the child and may assess the



1 reasonable fees and expenses of the guardian ad litem
2 as costs of the action, payable in whole or in part by
3 either or both parties as the circumstances may
4 justify;

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

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

20 (B) The court shall consider the perpetrator's
21 history of causing physical harm, bodily injury,
22 or assault or causing reasonable fear of physical



- 1 harm, bodily injury, or assault to another
2 person; and
- 3 (C) If a parent is absent or relocates because of an
4 act of family violence by the other parent, the
5 absence or relocation shall not be a factor that
6 weighs against the parent in determining custody
7 or visitation;
- 8 (10) A court may award visitation to a parent who has
9 committed family violence only if the court finds that
10 adequate provision can be made for the physical safety
11 and psychological well-being of the child and for the
12 safety of the parent who is a victim of family
13 violence;
- 14 (11) In a visitation order, a court may:
- 15 (A) Order an exchange of a child to occur in a
16 protected setting;
- 17 (B) Order visitation supervised by another person or
18 agency;
- 19 (C) Order the perpetrator of family violence to
20 attend and complete, to the satisfaction of the
21 court, a program of intervention for perpetrators



- 1 or other designated counseling as a condition of
2 the visitation;
- 3 (D) Order the perpetrator of family violence to
4 abstain from possession or consumption of alcohol
5 or controlled substances during the visitation
6 and for twenty-four hours preceding the
7 visitation;
- 8 (E) Order the perpetrator of family violence to pay a
9 fee to defray the costs of supervised visitation;
- 10 (F) Prohibit overnight visitation;
- 11 (G) Require a bond from the perpetrator of family
12 violence for the return and safety of the child.
13 In determining the amount of the bond, the court
14 shall consider the financial circumstances of the
15 perpetrator of family violence;
- 16 (H) Impose any other condition that is deemed
17 necessary to provide for the safety of the child,
18 the victim of family violence, or other family or
19 household member; and
- 20 (I) Order the address of the child and the victim to
21 be kept confidential;



- 1 (12) The court may refer but shall not order an adult who
2 is a victim of family violence to attend, either
3 individually or with the perpetrator of the family
4 violence, counseling relating to the victim's status
5 or behavior as a victim as a condition of receiving
6 custody of a child or as a condition of visitation;
- 7 (13) If a court allows a family or household member to
8 supervise visitation, the court shall establish
9 conditions to be followed during visitation; ~~and~~
- 10 (14) A supervised visitation center shall provide a secure
11 setting and specialized procedures for supervised
12 visitation and the transfer of children for visitation
13 and supervision by a person trained in security and
14 the avoidance of family violence~~[+]~~; and
- 15 (15) The court may include in visitation awarded pursuant
16 to this section visitation by electronic communication
17 provided that the court shall additionally consider:
- 18 (A) The potential for abuse or misuse of the
19 electronic communication, including the equipment
20 used for the communication, by the person seeking
21 visitation or by persons who may be present



1 during the visitation or have access to the
2 communication or equipment;

3 (B) Whether the person seeking visitation has
4 previously violated a temporary restraining order
5 or protective order; and

6 (C) Whether adequate provision can be made for the
7 physical safety and psychological well-being of
8 the child and for the safety of the custodial
9 parent.

10 The court may set conditions for visitation by
11 electronic communication, including visitation
12 supervised by another person or occurring in a
13 protected setting. Visitation by electronic
14 communication shall not be used to:

15 (A) Replace or substitute an award of custody or
16 physical visitation except where:

17 (i) Circumstances exist that make a parent
18 seeking visitation unable to participate in
19 physical visitation, including military
20 deployment; or

21 (ii) Physical visitation may subject the child to
22 physical or extreme psychological harm; or



1 (B) Justify or support the relocation of a custodial
2 parent."

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

5 SECTION 4. This Act shall take effect on July 1, 2011.

APPROVED this 6 day of JUL , 2011



GOVERNOR OF THE STATE OF HAWAII

