

JAN 26 2011

S.B. NO. 1354

A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. The legislature finds that the current system
2 for awarding custody in divorce and other similar actions may
3 encourage parents to engage in unnecessarily adversarial,
4 prolonged litigation, and develop entrenched, highly conflicted
5 positions that are not based on a child's best interests.

6 The legislature also finds that creating a rebuttable
7 presumption in favor of joint custody is intended to minimize
8 unnecessary harmful conflict and needless litigation, maintain
9 the continuity of a preexisting custody relationship, and
10 provide for a child's psychological stability and well-being at
11 the outset of a contested custody action.

12 The purpose of this Act is to give divorcing parents in
13 custody disputes a procedural option that is in the best
14 interests of their children by creating, in cases where there is
15 no finding of family violence and where joint custody is in the
16 best interests of the child, a rebuttable presumption of joint
17 custody at the outset of a divorce.



1 SECTION 2. Section 302A-481, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§302A-481 Definitions. As used in this subpart, unless
4 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(a)(2)~~] 571-
10 46(a)(3) but is not the legal custodian or guardian of
11 the minor; or
12 (2) Has resided with the minor for a continuous immediate
13 preceding period of six months or more."

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

16 "(a) In actions for divorce, separation, annulment,
17 separate maintenance, or any other proceeding where there is at
18 issue a dispute as to the custody of a minor child, the court,
19 during the pendency of the action, at the final hearing, or any
20 time during the minority of the child, may make an order for the
21 custody of the minor child as may seem necessary or proper. In



1 awarding the custody, the court shall be guided by the following
2 standards, considerations, and procedures:

3 (1) Custody should be awarded to either parent or to both
4 parents according to the best interests of the child,
5 and the court also may consider frequent, continuing,
6 and meaningful contact of each parent with the child
7 unless the court finds that a parent is unable to act
8 in the best interest of the child;

9 (2) There shall be a rebuttable presumption that joint
10 custody should be awarded if each of the following
11 elements exist:

12 (A) The parents or parties, at the time the action
13 was initiated, exercised joint custody over the
14 child whose custody is contested;

15 (B) Both parents or parties have or had prior to the
16 action meaningful contact with the child;

17 (C) Either parent or party or both parents or parties
18 request or apply for joint custody of the child;

19 (D) There is no determination by the court pursuant
20 to section 571-46(a)(10) that family violence has
21 been committed by either parent or party;



1 (E) The parents or parties requesting joint custody
2 have filed with the court a parenting plan
3 pursuant to section 571-46.5 that is sufficiently
4 detailed to support an award of joint custody;
5 and

6 (F) No court finding or conclusion exists that shows
7 joint custody is not in the best interest of the
8 child or that the parents or parties requesting
9 joint custody are unable to act in the best
10 interest of the child;

11 ~~[(2)]~~ (3) Custody may be awarded to persons other than the
12 father or mother whenever the award serves the best
13 interest of the child. Any person who has had de
14 facto custody of the child in a stable and wholesome
15 home and is a fit and proper person shall be entitled
16 prima facie to an award of custody;

17 ~~[(3)]~~ (4) If a child is of sufficient age and capacity to
18 reason, so as to form an intelligent preference, the
19 child's wishes as to custody shall be considered and
20 be given due weight by the court;

21 ~~[(4)]~~ (5) Whenever good cause appears therefor, the court
22 may require an investigation and report concerning the



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



1 standards, or any child custody evaluator to serve
2 indigent parties, the court may appoint a person
3 otherwise willing and available[+]; [+]

4 [~~+5~~] (6) 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~~] (7) Any custody award shall be subject to
13 modification or change whenever the best interests of
14 the child require or justify the modification or
15 change and, wherever practicable, the same person who
16 made the original order shall hear the motion or
17 petition for modification of the prior award;

18 [~~+7~~] (8) 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~~] (9) The court may appoint a guardian ad litem to
4 represent the interests of the child and may assess
5 the reasonable fees and expenses of the guardian ad
6 litem as costs of the action, payable in whole or in
7 part by either or both parties as the circumstances
8 may justify;

9 [~~9~~] (10) In every proceeding where there is at issue a
10 dispute as to the custody of a child, a determination
11 by the court that family violence has been committed
12 by a 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 shall 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)~~] (11) A court may award visitation to a parent who has
15 committed family violence only if the court finds that
16 adequate provision can be made for the physical safety
17 and psychological well-being of the child and for the
18 safety of the parent who is a victim of family
19 violence;

20 [~~(11)~~] (12) 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)]~~ (13) The court may refer but shall not order an adult
6 who 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)]~~ (14) If a court allows a family or household member
12 to supervise visitation, the court shall establish
13 conditions to be followed during visitation; and

14 ~~[(14)]~~ (15) A supervised visitation center shall provide a
15 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 SECTION 4. Section 571-46.1, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Upon the application of either parent, joint custody
22 may be awarded pursuant to section 571-46(a) (2) at the outset of



1 the contested custody action, or later, in the discretion of the
2 court. For the purpose of assisting the court in making a
3 determination whether an award of joint custody is appropriate,
4 the court shall, upon the request of either party, direct that
5 an investigation be conducted pursuant to the provisions of
6 section [~~571-46(a)(4).~~] 571-46(a)(5)."

7 SECTION 5. Section 577-28, Hawaii Revised Statutes, is
8 amended by amending subsection (g) to read as follows:

9 "(g) As used in this section, "caregiver" means any person
10 who is at least eighteen years of age and:

11 (1) Is related by blood, marriage, or adoption to the
12 minor, including a person who is entitled to an award
13 of custody pursuant to section [~~571-46(a)(2)~~] 571-
14 46(a)(3) but who is not the legal custodian or
15 guardian of the minor; or

16 (2) Has resided with the minor continuously during the
17 immediately preceding period of six months or more."

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20



1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: Sharonne Chun Oakland

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Report Title:

Family Court; Joint Custody; Divorce

Description:

Creates a rebuttable presumption in favor of joint custody in divorce child custody cases where parents have an existing joint custody relationship, there has been no finding of family violence, and joint custody is in the best interests of the child.

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

