
A BILL FOR AN ACT

RELATING TO CHILD CUSTODY.

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

1 SECTION 1. Section 571-46, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

11 (1) Custody should be awarded to either parent or to both
12 parents according to the best interests of the child,
13 and the court also may consider frequent, continuing,
14 and meaningful contact of each parent with the child
15 unless the court finds that a parent is unable to act
16 in the best interest of the child;

17 (2) Custody may be awarded to persons other than the
18 father or mother whenever the award serves the best



1 interest of the child. Any person who has had de
2 facto custody of the child in a stable and wholesome
3 home and is a fit and proper person shall be entitled
4 prima facie to an award of custody;

5 (3) If a child is of sufficient age and capacity to
6 reason, so as to form an intelligent preference, the
7 child's wishes as to custody shall be considered and
8 be given due weight by the court;

9 (4) Whenever good cause appears therefor, the court may
10 require an investigation and report concerning the
11 care, welfare, and custody of any minor child of the
12 parties. When so directed by the court, investigators
13 or professional personnel attached to or assisting the
14 court, hereinafter referred to as child custody
15 evaluators, shall make investigations and reports that
16 shall be made available to all interested parties and
17 counsel before hearing, and the reports may be
18 received in evidence if no objection is made and, if
19 objection is made, may be received in evidence;
20 provided the person or persons responsible for the
21 report are available for cross-examination as to any
22 matter that has been investigated; and provided



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

- 14 (5) The court may hear the testimony of any person or
15 expert, produced by any party or upon the court's own
16 motion, whose skill, insight, knowledge, or experience
17 is such that the person's or expert's testimony is
18 relevant to a just and reasonable determination of
19 what is for the best physical, mental, moral, and
20 spiritual well-being of the child whose custody is at
21 issue;



- 1 (6) Any custody award shall be subject to modification or
2 change whenever the best interests of the child
3 require or justify the modification or change and,
4 wherever practicable, the same person who made the
5 original order shall hear the motion or petition for
6 modification of the prior award;
- 7 (7) Reasonable visitation rights shall be awarded to
8 parents, grandparents, siblings, and any person
9 interested in the welfare of the child in the
10 discretion of the court, unless it is shown that
11 rights of visitation are detrimental to the best
12 interests of the child;
- 13 (8) In any proceeding to determine the visitation rights
14 of a parent, there shall be a rebuttable presumption
15 that the custodial parent's decision regarding
16 visitation is in the best interests of the child. The
17 presumption may be rebutted by evidence that denial of
18 reasonable visitation rights would cause significant
19 demonstrable harm to the child. In determining the
20 parent's visitation rights, the court shall consider
21 factors including the following:



- 1 (A) The nature and extent of any preexisting
2 relationship between the child and the parent;
- 3 (B) Whether the parent has previously been granted
4 visitation by the custodial parent or the child's
5 custodian and, if so, the nature and extent of
6 the visitation;
- 7 (C) Whether the parent has previously been awarded
8 visitation rights or custody of the child by a
9 court;
- 10 (D) Whether the child has resided with the parent
11 and, if so, how recently and for how long;
- 12 (E) Whether the parent has provided financial support
13 to the child, including support for food,
14 clothing, education, or medical, dental, or
15 mental health care;
- 16 (F) If the custodial parent or custodian has denied
17 the parent visitation or substantially restricted
18 visitation previously granted and whether the
19 reason given, if any, bears on the parent's
20 ability to safely care for the child during
21 visitation or relates to an issue between the



1 parent and custodial parent not directly related
2 to the safe care of the child during visitation;

3 (G) All relevant factors in the safe family home
4 factors under section 587A-7;

5 (H) All relevant factors under paragraphs (10) and
6 (11) as they pertain to family violence committed
7 by the parent; and

8 (I) Whether the parent has previously violated a
9 temporary restraining order or protective order;

10 [~~+8~~] (9) The court may appoint a guardian ad litem to
11 represent the interests of the child and may assess
12 the reasonable fees and expenses of the guardian ad
13 litem as costs of the action, payable in whole or in
14 part by either or both parties as the circumstances
15 may justify;

16 [~~+9~~] (10) In every proceeding where there is at issue a
17 dispute as to the custody of a child, a determination
18 by the court that family violence has been committed
19 by a parent raises a rebuttable presumption that it is
20 detrimental to the child and not in the best interest
21 of the child to be placed in sole custody, joint legal
22 custody, or joint physical custody with the



1 perpetrator of family violence. In addition to other
2 factors that a court shall consider in a proceeding in
3 which the custody of a child or visitation by a parent
4 is at issue, and in which the court has made a finding
5 of family violence by a parent:

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

9 (B) The court shall consider the perpetrator's
10 history of causing physical harm, bodily injury,
11 or assault or causing reasonable fear of physical
12 harm, bodily injury, or assault to another
13 person; and

14 (C) If a parent is absent or relocates because of an
15 act of family violence by the other parent, the
16 absence or relocation shall not be a factor that
17 weighs against the parent in determining custody
18 or visitation;

19 [~~(10)~~] (11) A court may award visitation to a parent who has
20 committed family violence only if the court finds that
21 adequate provision can be made for the physical safety
22 and psychological well-being of the child and for the



1 safety of the parent who is a victim of family
2 violence;

3 [~~(11)~~] (12) In a visitation order, a court may:

4 (A) Order an exchange of a child to occur in a
5 protected setting;

6 (B) Order visitation supervised by another person or
7 agency;

8 (C) Order the perpetrator of family violence to
9 attend and complete, to the satisfaction of the
10 court, a program of intervention for perpetrators
11 or other designated counseling as a condition of
12 the visitation;

13 (D) Order the perpetrator of family violence to
14 abstain from possession or consumption of alcohol
15 or controlled substances during the visitation
16 and for twenty-four hours preceding the
17 visitation;

18 (E) Order the perpetrator of family violence to pay a
19 fee to defray the costs of supervised visitation;

20 (F) Prohibit overnight visitation;

21 (G) Require a bond from the perpetrator of family
22 violence for the return and safety of the child.



1 In determining the amount of the bond, the court
2 shall consider the financial circumstances of the
3 perpetrator of family violence;

4 (H) Impose any other condition that is deemed
5 necessary to provide for the safety of the child,
6 the victim of family violence, or other family or
7 household member; and

8 (I) Order the address of the child and the victim to
9 be kept confidential;

10 [~~(12)~~] (13) The court may refer but shall not order an adult
11 who is a victim of family violence to attend, either
12 individually or with the perpetrator of the family
13 violence, counseling relating to the victim's status
14 or behavior as a victim as a condition of receiving
15 custody of a child or as a condition of visitation;

16 [~~(13)~~] (14) If a court allows a family or household member to
17 supervise visitation, the court shall establish
18 conditions to be followed during visitation;

19 [~~(14)~~] (15) A supervised visitation center shall provide a
20 secure setting and specialized procedures for
21 supervised visitation and the transfer of children for



1 visitation and supervision by a person trained in
2 security and the avoidance of family violence; and
3 ~~(15)~~ (16) The court may include in visitation awarded
4 pursuant to this section visitation by electronic
5 communication provided that the court shall
6 additionally consider:

7 (A) The potential for abuse or misuse of the
8 electronic communication, including the equipment
9 used for the communication, by the person seeking
10 visitation or by persons who may be present
11 during the visitation or have access to the
12 communication or equipment;

13 (B) Whether the person seeking visitation has
14 previously violated a temporary restraining order
15 or protective order; and

16 (C) Whether adequate provision can be made for the
17 physical safety and psychological well-being of
18 the child and for the safety of the custodial
19 parent.

20 The court may set conditions for visitation by
21 electronic communication, including visitation
22 supervised by another person or occurring in a



1 protected setting. Visitation by electronic
2 communication shall not be used to:

3 (A) Replace or substitute an award of custody or
4 physical visitation except where:

5 (i) Circumstances exist that make a parent
6 seeking visitation unable to participate in
7 physical visitation, including military
8 deployment; or

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

11 (B) Justify or support the relocation of a custodial
12 parent."

13 SECTION 2. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act shall take effect upon its approval.

16 INTRODUCED BY:

Cindy Evans
John M. [Signature]

JAN 25 2012



H.B. NO. 2725

Report Title:

Child Custody; Parental Visitation Rights

Description:

For determinations of parental visitation rights, establishes a rebuttable presumption that the custodial parent's decision regarding visitation is in the best interests of the child. Requires the court to consider various factors in awarding parental visitation rights.

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

