
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;



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

4 (A) The parents or parties, at the time the action
5 was initiated, exercised joint custody over the
6 child whose custody is contested;

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

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

11 (D) There is no determination by the court pursuant
12 to paragraph (11) that family violence has been
13 committed by either parent or party;

14 (E) The parents or parties requesting joint custody
15 have filed with the court a parenting plan
16 pursuant to section 571-46.5 that is sufficiently
17 detailed to support an award of joint custody;

18 and

19 (F) No court finding or conclusion exists that shows
20 joint custody is not in the best interests of the
21 child or that the parents or parties requesting



1 joint custody are unable to act in the best
2 interests of the child;

3 ~~[(+2)]~~ (3) Custody may be awarded to persons other than the
4 father or mother whenever the award serves the best
5 ~~[interest]~~ interests of the child. Any person who has
6 had de facto custody of the child in a stable and
7 wholesome home and is a fit and proper person shall be
8 entitled prima facie to an award of custody;

9 ~~[(+3)]~~ (4) 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)]~~ (5) Whenever good cause appears therefor, the court
14 may 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)~~ (6) 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)]~~ (7) Any custody award shall be subject to
5 modification or change whenever the best interests of
6 the child require or justify the modification or
7 change and, wherever practicable, the same person who
8 made the original order shall hear the motion or
9 petition for modification of the prior award;

10 ~~[(7)]~~ (8) 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 (9) In any proceeding to determine the visitation rights
17 of a noncustodial parent, there shall be a rebuttable
18 presumption that the custodial parent's decision
19 regarding visitation is in the best interests of the
20 child. The presumption may be rebutted by evidence
21 that denial of reasonable visitation rights would
22 cause significant demonstrable harm to the child. In



1 determining the noncustodial parent's visitation
2 rights, the court shall consider factors including the
3 following:

4 (A) The nature and extent of any preexisting
5 relationship between the child and the
6 noncustodial parent;

7 (B) Whether the noncustodial parent has previously
8 been granted visitation by the custodial parent
9 or the child's custodian and, if so, the nature
10 and extent of the visitation;

11 (C) Whether the noncustodial parent has previously
12 been awarded visitation rights or custody of the
13 child by a court;

14 (D) Whether the child has resided with the
15 noncustodial parent and, if so, how recently and
16 for how long;

17 (E) Whether the noncustodial parent has provided
18 financial support to the child, including support
19 for food, clothing, education, or medical,
20 dental, or mental health care;

21 (F) If the custodial parent or custodian has denied
22 the noncustodial parent visitation or



1 substantially restricted visitation previously
 2 granted and whether the reason given, if any,
 3 bears on the noncustodial parent's ability to
 4 safely care for the child during visitation or
 5 relates to an issue between the noncustodial
 6 parent and custodial parent not directly related
 7 to the safe care of the child during visitation;

8 (G) All relevant elements of the safe family home
 9 factors under section 587A-7;

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

13 (I) Whether the noncustodial parent has previously
 14 violated a temporary restraining order or
 15 protective order;

16 [~~(8)~~] (10) The court may appoint a guardian ad litem to
 17 represent the interests of the child and may assess
 18 the reasonable fees and expenses of the guardian ad
 19 litem as costs of the action, payable in whole or in
 20 part by either or both parties as the circumstances
 21 may justify;



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

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

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



1 (C) If a parent is absent or relocates because of an
2 act of family violence by the other parent, the
3 absence or relocation shall not be a factor that
4 weighs against the parent in determining custody
5 or visitation;

6 [~~10~~] (12) A court may award visitation to a parent who has
7 committed family violence only if the court finds that
8 adequate provision can be made for the physical safety
9 and psychological well-being of the child and for the
10 safety of the parent who is a victim of family
11 violence;

12 [~~11~~] (13) In a visitation order, a court may:

13 (A) Order an exchange of a child to occur in a
14 protected setting;

15 (B) Order visitation supervised by another person or
16 agency;

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



- 1 (D) Order the perpetrator of family violence to
2 abstain from possession or consumption of alcohol
3 or controlled substances during the visitation
4 and for twenty-four hours preceding the
5 visitation;
- 6 (E) Order the perpetrator of family violence to pay a
7 fee to defray the costs of supervised visitation;
- 8 (F) Prohibit overnight visitation;
- 9 (G) Require a bond from the perpetrator of family
10 violence for the return and safety of the child.
11 In determining the amount of the bond, the court
12 shall consider the financial circumstances of the
13 perpetrator of family violence;
- 14 (H) Impose any other condition that is deemed
15 necessary to provide for the safety of the child,
16 the victim of family violence, or other family or
17 household member; and
- 18 (I) Order the address of the child and the victim to
19 be kept confidential;
- 20 [~~12~~] (14) The court may refer but shall not order an adult
21 who is a victim of family violence to attend, either
22 individually or with the perpetrator of the family



1 violence, counseling relating to the victim's status
2 or behavior as a victim as a condition of receiving
3 custody of a child or as a condition of visitation;
4 ~~[(13)]~~ (15) If a court allows a family or household member to
5 supervise visitation, the court shall establish
6 conditions to be followed during visitation;
7 ~~[(14)]~~ (16) A supervised visitation center shall provide a
8 secure setting and specialized procedures for
9 supervised visitation and the transfer of children for
10 visitation and supervision by a person trained in
11 security and the avoidance of family violence; and
12 ~~[(15)]~~ (17) The court may include in visitation awarded
13 pursuant to this section visitation by electronic
14 communication provided that the court shall
15 additionally consider:
16 (A) The potential for abuse or misuse of the
17 electronic communication, including the equipment
18 used for the communication, by the person seeking
19 visitation or by persons who may be present
20 during the visitation or have access to the
21 communication or equipment;



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

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

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

13 (A) Replace or substitute an award of custody or
14 physical visitation except where:

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

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

21 (B) Justify or support the relocation of a custodial
22 parent."



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

3 SECTION 3. This Act shall take effect on July 1, 2050.



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. Establishes a rebuttable presumption that joint custody should be awarded if certain factors exist. Effective July 1, 2050. (HB2725 HD1)

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

