

JAN 26 2011

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 that wastes financial assets and diminishes
5 goodwill necessary for collaborative parenting. Such litigation
6 develops entrenched, highly conflicted positions that exacerbate
7 the children's long-term risks and is not in the best interests
8 of the child.

9 Joint custody and making collaborative decisions and
10 agreements on how to best parent children during the critical
11 transition to divorce is important for the well-being and
12 healthy development of children. Building on shared parenting
13 provides for the child's psychological stability and well-being
14 at the outset of a contested custody action. Continuing an
15 environment of joint custody of the children keeps both parents
16 involved in their children's lives to the maximum extent
17 possible.



1 The purpose of this Act is to have a joint custody
2 procedural option for certain divorcing parents. In specific
3 controlled cases where there is a pre-existing shared custody
4 relationship, no finding of family violence, and the parents
5 have filed a parenting plan with the court, creating a
6 rebuttable presumption in favor of joint custody or "shared
7 parenting" is in the child's best interests.

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

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

18 (1) Custody should be awarded to either parent or to both
19 parents according to the best interests of the child,
20 and the court also may consider frequent, continuing,
21 and meaningful contact of each parent with the child



1 unless the court finds that a parent is unable to act
2 in the best interest of the child;

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

9 (3) If, prior to the action, the parents or parties
10 exercised the equivalent of joint custody over the
11 child, had meaningful contact with the child, and
12 there is no finding of family violence, then if either
13 or both parents or parties request or apply for joint
14 custody of the child, there shall be a rebuttable
15 presumption that joint custody of the child should
16 continue pursuant to section 571-46.1, unless the
17 court makes detailed findings and conclusions that
18 joint custody of the child is not in their best
19 interests;

20 [~~3~~] (4) If a child is of sufficient age and capacity to
21 reason, so as to form an intelligent preference, the



1 child's wishes as to custody shall be considered and
2 be given due weight by the court;

3 [~~(4)~~] (5) Whenever good cause appears therefor, the court
4 may require an investigation and report concerning the
5 care, welfare, and custody of any minor child of the
6 parties. When so directed by the court, investigators
7 or professional personnel attached to or assisting the
8 court, hereinafter referred to as child custody
9 evaluators, shall make investigations and reports that
10 shall be made available to all interested parties and
11 counsel before hearing, and the reports may be
12 received in evidence if no objection is made and, if
13 objection is made, may be received in evidence;
14 provided the person or persons responsible for the
15 report are available for cross-examination as to any
16 matter that has been investigated; and provided
17 further that the court shall define the requirements
18 to be a court-appointed child custody evaluator, the
19 standards of practice, ethics, policies, and
20 procedures required of court-appointed child custody
21 evaluators in the performance of their duties for all
22 courts, and the powers of the courts over child



1 custody evaluators to effectuate the best interests of
2 a child in a contested custody dispute pursuant to
3 this section. Where there is no child custody
4 evaluator available that meets the requirements and
5 standards, or any child custody evaluator to serve
6 indigent parties, the court may appoint a person
7 otherwise willing and available[+];[+]

8 [~~+5~~] (6) The court may hear the testimony of any person or
9 expert, produced by any party or upon the court's own
10 motion, whose skill, insight, knowledge, or experience
11 is such that the person's or expert's testimony is
12 relevant to a just and reasonable determination of
13 what is for the best physical, mental, moral, and
14 spiritual well-being of the child whose custody is at
15 issue;

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



1 [~~(7)~~] (8) Reasonable visitation rights shall be awarded to
2 parents, grandparents, siblings, and any person
3 interested in the welfare of the child in the
4 discretion of the court, unless it is shown that
5 rights of visitation are detrimental to the best
6 interests of the child;

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

13 [~~(9)~~] (10) In every proceeding where there is at issue a
14 dispute as to the custody of a child, a determination
15 by the court that family violence has been committed
16 by a parent raises a rebuttable presumption that it is
17 detrimental to the child and not in the best interest
18 of the child to be placed in sole custody, joint legal
19 custody, or joint physical custody with the
20 perpetrator of family violence. In addition to other
21 factors that a court shall consider in a proceeding in
22 which the custody of a child or visitation by a parent



1 is at issue, and in which the court has made a finding
2 of family violence by a parent:

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

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

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

16 [~~(10)~~] (11) A court may award visitation to a parent who has
17 committed family violence only if the court finds that
18 adequate provision can be made for the physical safety
19 and psychological well-being of the child and for the
20 safety of the parent who is a victim of family
21 violence;

22 [~~(11)~~] (12) In a visitation order, a court may:



- 1 (A) Order an exchange of a child to occur in a
2 protected setting;
- 3 (B) Order visitation supervised by another person or
4 agency;
- 5 (C) Order the perpetrator of family violence to
6 attend and complete, to the satisfaction of the
7 court, a program of intervention for perpetrators
8 or other designated counseling as a condition of
9 the visitation;
- 10 (D) Order the perpetrator of family violence to
11 abstain from possession or consumption of alcohol
12 or controlled substances during the visitation
13 and for twenty-four hours preceding the
14 visitation;
- 15 (E) Order the perpetrator of family violence to pay a
16 fee to defray the costs of supervised visitation;
- 17 (F) Prohibit overnight visitation;
- 18 (G) Require a bond from the perpetrator of family
19 violence for the return and safety of the child.
20 In determining the amount of the bond, the court
21 shall consider the financial circumstances of the
22 perpetrator of family violence;



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

5 (I) Order the address of the child and the victim to
6 be kept confidential;

7 [~~(12)~~] (13) The court may refer but shall not order an adult
8 who is a victim of family violence to attend, either
9 individually or with the perpetrator of the family
10 violence, counseling relating to the victim's status
11 or behavior as a victim as a condition of receiving
12 custody of a child or as a condition of visitation;

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

16 [~~(14)~~] (15) A supervised visitation center shall provide a
17 secure setting and specialized procedures for
18 supervised visitation and the transfer of children for
19 visitation and supervision by a person trained in
20 security and the avoidance of family violence."

21 SECTION 3. Section 571-46.1, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) Upon the application of either parent, joint custody
2 may be awarded in the discretion of the court. For the purpose
3 of assisting the court in making a determination whether an
4 award of joint custody is appropriate, the court [~~shall~~], upon
5 the request of either party, shall direct that an investigation
6 be conducted pursuant to the provisions of section [~~571-~~
7 ~~46(a)(4).~~] 571-46(a)(5). If an investigation is ordered, a
8 joint custody award pursuant to section 571-46(a)(3) shall not
9 be delayed for investigation purposes, and the investigation
10 shall be conducted in parallel with existing custody orders."

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

13 SECTION 5. This Act shall take effect upon its approval.

14

INTRODUCED BY:

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Report Title:

Family Court; Custody

Description:

Creates a presumption in favor of joint custody where parents have an existing joint custody equivalent relationship with the child and there is no finding of family violence.

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

