
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]~~. In the event
15 parents cannot agree on visitation, the court shall
16 award visitation with the child to both parents to the
17 greatest degree practicable unless the court finds



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

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

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

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

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

13 (D) There is no determination by the court pursuant
14 to paragraph (10) or (11) that family violence
15 has been committed by either parent or party;

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

20 and

21 (F) No court finding or conclusion exists that shows
22 joint custody is not in the best interests of the



1 child or that the parents or parties requesting
2 joint custody are unable to act in the best
3 interests of the child;

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

10 ~~[-3-]~~ (4) If a child is of sufficient age and capacity to
11 reason, so as to form an intelligent preference, the
12 child's wishes as to custody shall be considered and
13 be given due weight by the court;

14 ~~[-4-]~~ (5) Whenever good cause appears therefore, the court
15 may require an investigation and report concerning the
16 care, welfare, and custody of any minor child of the
17 parties. When so directed by the court, investigators
18 or professional personnel attached to or assisting the
19 court, hereinafter referred to as child custody
20 evaluators, shall make investigations and reports that
21 shall be made available to all interested parties and
22 counsel before hearing, and the reports may be



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

19 ~~(5)~~ (6) The court may hear the testimony of any person or
20 expert, produced by any party or upon the court's own
21 motion, whose skill, insight, knowledge, or experience
22 is such that the person's or expert's testimony is



1 relevant to a just and reasonable determination of
2 what is for the best physical, mental, moral, and
3 spiritual well-being of the child whose custody is at
4 issue;

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

11 ~~[(7)]~~ (8) Reasonable visitation rights shall be awarded to
12 parents, grandparents, siblings, and any person
13 interested in the welfare of the child in the
14 discretion of the court, unless it is shown that
15 rights of visitation are detrimental to the best
16 interests of the child;

17 ~~[(8)]~~ (9) The court may appoint a guardian ad litem to
18 represent the interests of the child and may assess
19 the reasonable fees and expenses of the guardian ad
20 litem as costs of the action, payable in whole or in
21 part by either or both parties as the circumstances
22 may justify;



1 [~~(9)~~] (10) 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 interest
6 of the child to be placed in sole custody, joint legal
7 custody, or joint physical custody with the
8 perpetrator of family violence. In addition to other
9 factors that a court shall consider in a proceeding in
10 which the custody of a child or visitation by a parent
11 is at issue, and in which the court has made a finding
12 of family violence by a parent:

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

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

21 (C) If a parent is absent or relocates because of an
22 act of family violence by the other parent, the



1 absence or relocation shall not be a factor that
2 weighs against the parent in determining custody
3 or visitation;

4 ~~[(10)]~~ (11) A court may award visitation to a parent who has
5 committed family violence only if the court finds that
6 adequate provision can be made for the physical safety
7 and psychological well-being of the child and for the
8 safety of the parent who is a victim of family
9 violence;

10 ~~[(11)]~~ (12) In a visitation order, a court may:

- 11 (A) Order an exchange of a child to occur in a
12 protected setting;
- 13 (B) Order visitation supervised by another person or
14 agency;
- 15 (C) Order the perpetrator of family violence to
16 attend and complete, to the satisfaction of the
17 court, a program of intervention for perpetrators
18 or other designated counseling as a condition of
19 the visitation;
- 20 (D) Order the perpetrator of family violence to
21 abstain from possession or consumption of alcohol
22 or controlled substances during the visitation



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



1 ~~[(13)]~~ (14) If a court allows a family or household member
2 to supervise visitation, the court shall establish
3 conditions to be followed during visitation;

4 ~~[(14)]~~ (15) A supervised visitation center shall provide a
5 secure setting and specialized procedures for
6 supervised visitation and the transfer of children for
7 visitation and supervision by a person trained in
8 security and the avoidance of family violence; and

9 ~~[(15)]~~ (16) The court may include in visitation awarded
10 pursuant to this section visitation by electronic
11 communication provided that the court shall
12 additionally consider:

13 (A) The potential for abuse or misuse of the
14 electronic communication, including the equipment
15 used for the communication, by the person seeking
16 visitation or by persons who may be present
17 during the visitation or have access to the
18 communication or equipment;

19 (B) Whether the person seeking visitation has
20 previously violated a temporary restraining order
21 or protective order; and



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

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

10 (A) Replace or substitute an award of custody or
11 physical visitation except where:

12 (i) Circumstances exist that make a parent
13 seeking visitation unable to participate in
14 physical visitation, including military
15 deployment; or

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

18 (B) Justify or support the relocation of a custodial
19 parent."

20 SECTION 2. Section 571-46.3, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§571-46.3 Grandparents' visitation rights; petition;
2 notice; order. (a) A grandparent or the grandparents of a
3 minor child may file a petition with the court for an order of
4 reasonable visitation rights. The court may award reasonable
5 visitation rights; provided that the following criteria are met:

6 (1) This State is the home state of the child at the time
7 of the commencement of the proceeding; and

8 (2) [Reasonable] Denial of reasonable visitation rights
9 ~~[are in the best interests of]~~ would cause significant
10 demonstrable harm to the child.

11 (b) In any proceeding on a petition filed pursuant to this
12 section, there shall be a rebuttable presumption that a parent's
13 decision regarding grandparents' visitation is in the best
14 interest of the child. The presumption may be rebutted by
15 evidence that denial of reasonable grandparents' visitation
16 rights would cause significant demonstrable harm to the child.
17 In ruling on the petition, the court shall consider factors
18 including the following:

19 (1) The nature and extent of any pre-existing relationship
20 between the child and the grandparent;



- 1 (2) Whether the grandparent has previously been granted
2 visitation by the child's parent or custodian and, if
3 so, the nature and extent of the visitation;
- 4 (3) Whether the grandparent has previously been awarded
5 visitation rights or custody of the child by a court;
- 6 (4) Whether the child has resided with the grandparent,
7 either alone or with a parent and if so, how recently
8 and for how long;
- 9 (5) Whether the grandparent has provided financial support
10 to the child, including for food, clothing, education,
11 or medical, dental, or mental health care;
- 12 (6) Whether the child's parent or custodian has denied the
13 grandparent visitation or substantially restricted
14 visitation previously granted and whether the reason
15 given, if any, bears on the grandparent's ability to
16 safely care for the child during visitation or relates
17 to an issue between the grandparent and parent not
18 directly related to the safe care of the child during
19 visitation;
- 20 (7) All relevant elements of the safe family home factors
21 under section 587A-7;

1 (8) All relevant factors under section 571-46(a) (10),
2 (11), and (12) as they pertain to family violence
3 committed by the grandparent or grandparents; and
4 (9) Whether the grandparent or grandparents have
5 previously violated or assisted a parent of the child
6 in violating a temporary restraining order or
7 protective order.

8 (c) No hearing for an order of reasonable visitation
9 rights under this section shall be had unless each of the living
10 parents and the child's custodians shall have had due notice,
11 actual or constructive, of the allegations of the petition and
12 of the time and place of the hearing thereof.

13 (d) An order made pursuant to this section shall be
14 enforceable by the court, and the court may issue other orders
15 to carry out these enforcement powers if in the best interests
16 of the child."

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

19 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Child Visitation; Parental Visitation Rights; Grandparent
Visitation Rights

Description:

Establishes a rebuttable presumption that joint custody should be awarded if certain factors exist. Permits the family court to award reasonable visitation rights to grandparents of a minor child if denial of visitation would cause significant demonstrable harm to the child. Establishes a rebuttable presumption that a parent's decision regarding grandparent visitation is in the best interests of a child; sets forth factors for the family court to consider. (SD1)

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