

JAN 21 2011

S.B. NO. 944

A BILL FOR AN ACT

RELATING TO CHILDREN.

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

1 SECTION 1. The legislature finds that children benefit
2 from positive relationships with their parents, and it is widely
3 recognized that children are more likely to thrive with support,
4 guidance, and nurturing from both parents. In divorce,
5 paternity, or custody actions, the term "visitation" is used
6 throughout the Hawaii Revised Statutes. Rather than promoting
7 meaningful and involved parenting, the term "visitation" limits
8 parents to fill temporary and limited roles. Hawaii's children
9 are better served by referring to and promoting "parenting time"
10 rather than "visitation". This sets a more positive and
11 optimistic approach to parenting situations where the child does
12 not live with both parents.

13 The purpose of this Act is to replace the term "visitation"
14 with the term "parenting time" only within those sections that
15 pertain to child custody, care, and maintenance between children
16 and their parents, and to add the term "parenting time" to those
17 sections that reference the term "visitation" and pertain to
18 child custody, care, and maintenance between children and any



1 other appropriate parties. This Act is not meant to replace the
2 term "visitation" with the term "parenting time" in chapter
3 583A, Hawaii Revised Statutes, the Uniform Child-Custody
4 Jurisdiction and Enforcement Act.

5 SECTION 2. Section 571-2, Hawaii Revised Statutes, is
6 amended by amending the definitions of "guardianship of a minor"
7 and "residual parental rights and responsibilities" to read as
8 follows:

9 "Guardianship of a minor" means the duty and authority to
10 make important decisions in matters having a permanent effect on
11 the life and development of the minor and to be concerned about
12 the minor's general welfare. It includes [7] but shall not
13 necessarily be limited [7] in either number or kind to:

14 (1) The authority to consent to marriage, to enlistment in
15 the armed forces of the United States, or to major
16 medical, psychiatric, and surgical treatment; to
17 represent the minor in legal actions; to make other
18 decisions concerning the minor of substantial legal
19 significance;

20 (2) The authority and duty of reasonable visitation [7] or
21 parenting time, except to the extent that the right of



1 visitation or parenting time has been limited by court
2 order;

3 (3) The rights and responsibilities of legal custody when
4 guardianship is exercised by the natural or adoptive
5 parent, except where legal custody has been vested in
6 another individual, agency, or institution; and

7 (4) The authority to consent to the adoption of the minor
8 and to make any other decision concerning the minor
9 that the minor's parents could make, when the rights
10 of the minor's parents, or only living parent, have
11 been judicially terminated as provided for in the
12 statutes governing termination of parental rights to
13 facilitate legal adoption, or when both of the minor's
14 legal parents are deceased.

15 "Residual parental rights and responsibilities" means those
16 rights and responsibilities remaining with the parent after the
17 transfer of legal custody or guardianship of the person,
18 including[7] but not necessarily limited to[7] the right to
19 reasonable [~~visitation,~~] parenting time, consent to adoption or
20 marriage, and the responsibility for support."

21 SECTION 3. Section 571-46, Hawaii Revised Statutes, is
22 amended as follows:



1 1. By amending its title to read:

2 "§571-46 Criteria and procedure in awarding custody [~~and~~],
3 visitation[~~+~~], or parenting time; best interest of the child."

4 2. By amending subsection (a) to read:

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

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

19 (2) Custody may be awarded to persons other than the
20 father or mother whenever the award serves the best
21 interest of the child. Any person who has had de
22 facto custody of the child in a stable and wholesome



1 home and is a fit and proper person shall be entitled
2 prima facie to an award of custody;

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

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



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

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

20 (6) Any custody award shall be subject to modification or
21 change whenever the best interests of the child
22 require or justify the modification or change and,



1 wherever practicable, the same person who made the
2 original order shall hear the motion or petition for
3 modification of the prior award;

4 (7) Reasonable visitation or parenting time rights shall
5 be awarded to parents, grandparents, siblings, and any
6 person interested in the welfare of the child in the
7 discretion of the court, unless it is shown that
8 rights of visitation or parenting time are detrimental
9 to the best interests of the child;

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

16 (9) In every proceeding where there is at issue a dispute
17 as to the custody of a child, a determination by the
18 court that family violence has been committed by a
19 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]~~ parenting
4 time by a parent is at issue, and in which the court
5 has made a finding 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,]~~ parenting time;

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



- 1 the child and for the safety of the parent who is a
2 victim of family violence;
- 3 (11) In a [~~visitation~~] parenting time order, a court may:
- 4 (A) Order an exchange of a child to occur in a
5 protected setting;
- 6 (B) Order [~~visitation~~] parenting time supervised by
7 another person or 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~~] parenting time;
- 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 parenting time and for twenty-four hours
17 preceding the [~~visitation~~] parenting time;
- 18 (E) Order the perpetrator of family violence to pay a
19 fee to defray the costs of supervised
20 [~~visitation~~] parenting time;
- 21 (F) Prohibit overnight [~~visitation~~] parenting time;



1 (G) Require a bond from the perpetrator of family
2 violence for the return and safety of the child.
3 In determining the amount of the bond, the court
4 shall consider the financial circumstances of the
5 perpetrator of family violence;

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

10 (I) Order the address of the child and the victim to
11 be kept confidential;

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

19 (13) If a court allows a family or household member to
20 supervise [~~visitation,~~] parenting time, the court
21 shall establish conditions to be followed during
22 [~~visitation,~~] parenting time; and



1 (14) A supervised [~~visitation~~] parenting time center shall
2 provide a secure setting and specialized procedures
3 for supervised [~~visitation~~] parenting time and the
4 transfer of children for [~~visitation~~] parenting time
5 and supervision by a person trained in security and
6 the avoidance of family violence."

7 SECTION 4. Section 571-96, Hawaii Revised Statutes, is
8 amended by amending its title to read as follows:

9 "~~[§571-96]~~ Parenting time and contact."

10 SECTION 5. Section 587A-15, Hawaii Revised Statutes, is
11 amended by amending subsection (c) to read as follows:

12 "(c) Unless otherwise provided in this section or as
13 otherwise ordered by the court, a child's family shall retain
14 the following rights and responsibilities after a transfer of
15 temporary foster custody or foster custody, to the extent that
16 the family possessed the rights and responsibilities prior to
17 the transfer of temporary foster custody or foster custody:

18 (1) The right of reasonable supervised or unsupervised
19 visitation or parenting time at the discretion of the
20 authorized agency or the court;

21 (2) The right to consent to adoption, to marriage, or to
22 major medical or psychological care or treatment; and



1 (3) The continuing responsibility to support the child,
2 including repayment for the cost of any care,
3 treatment, or other service provided by the authorized
4 agency or the court for the child's benefit."

5 SECTION 6. Section 587A-26, Hawaii Revised Statutes, is
6 amended by amending subsection (e) to read as follows:

7 "(e) The court may further order that:

8 (1) Any party undergo a physical, developmental,
9 psychological, or psychiatric evaluation and that a
10 written or oral report be submitted or communicated to
11 the court and all parties before the next court
12 hearing;

13 (2) The child's family members who are parties provide the
14 department or another authorized agency the names and
15 addresses of other relatives and friends who are
16 potential visitation or parenting time supervisors or
17 resource families for the child;

18 (3) The child's family members who are parties be
19 permitted reasonable supervised or unsupervised
20 visitation or parenting time with the child at the
21 discretion of the child's guardian ad litem, the
22 department, or another authorized agency;



- 1 (4) The court and the parties view a video or listen to an
- 2 audio recording of the child's statements at such time
- 3 and in such manner as the court deems appropriate;
- 4 (5) A criminal history record check be conducted by the
- 5 department or another authorized agency on a party who
- 6 is an alleged or potential perpetrator of imminent
- 7 harm, harm, or threatened harm to the child;
- 8 (6) A protective order be entered;
- 9 (7) The department or another authorized agency prepare a
- 10 written supplemental report;
- 11 (8) The child's guardian ad litem visit the child's family
- 12 home and resource family home, be present during
- 13 supervised visitation[7] or parenting time, and
- 14 prepare a written report that includes specific
- 15 recommendations concerning services and assistance to
- 16 the family; and
- 17 (9) Any other orders be entered that the court deems
- 18 necessary and in the best interests of the child."

19 SECTION 7. Section 587A-30, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

21 "(b) At each periodic review hearing, the court shall
22 review the status of the case to determine whether the child is



1 receiving appropriate services and care, whether the case plan
2 is being properly implemented, and whether the department's or
3 authorized agency's activities are directed toward a permanent
4 placement for the child. At the hearing, the court shall:

- 5 (1) Determine whether the child is safe;
- 6 (2) Determine the continued need for and appropriateness
7 of the out-of-home placement;
- 8 (3) Determine the extent to which each party has complied
9 with the case plan and the family's progress in making
10 their home safe for the child;
- 11 (4) Determine the family's progress in resolving the
12 problems that caused the child harm or to be
13 threatened with harm and, if applicable, the necessity
14 for continued out-of-home placement of the child;
- 15 (5) Project a likely date for:
 - 16 (A) The child's return to a safe family home; or
 - 17 (B) The child's permanent placement out of the family
18 home in the following order of preference:
 - 19 (i) Adoption;
 - 20 (ii) Legal guardianship; or
 - 21 (iii) Other permanent out-of-home placement;



1 (6) Evaluate visitation or parenting time arrangements;
2 and

3 (7) Issue such further or other appropriate orders as it
4 deems to be in the best interests of the child."

5 SECTION 8. Sections 346-55.1, 571-46.2, 571-51.5, 571-93,
6 571-95, 576B-305, 580-41.5, 584-15, 586-4, 586-5, 586-5.5,
7 587A-28, and 707-726, Hawaii Revised Statutes, are amended by
8 substituting the term "parenting time" wherever the term
9 "visitation" appears, as the context requires.

10 SECTION 9. This Act is not intended to change the
11 coverage, eligibility, rights, responsibilities, or definitions
12 referred to in the amended provisions.

13 SECTION 10. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 11. This Act shall take effect upon its approval.

16

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Report Title:

Children; Family Court

Description:

Substitutes "parenting time" wherever the term "visitation" appears in the Hawaii Revised Statutes, but only within the sections that pertain directly to relationships between children and their parents. Adds the term "parenting time" to sections that reference "visitation" between children and other parties. Does not apply to the Uniform Child-Custody Jurisdiction and Enforcement Act, chapter 583A, Hawaii Revised Statutes.

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

