

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO TERMINATION OF PARENTAL RIGHTS.

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

1           SECTION 1. Section 571-61, Hawaii Revised Statutes, is  
2 amended to read as follows:

3                           **"PART VI. TERMINATION OF PARENTAL RIGHTS**

4           **§571-61 Termination of parental rights; petition. (a)**

5 Relinquishment. The parents or either parent or the surviving  
6 parent who desire to relinquish parental rights to any natural  
7 or adopted child and thus make the child available for adoption  
8 or readoption, may petition the family court of the circuit in  
9 which they or he or she resides, or of the circuit in which the  
10 child resides, or was born, for the entry of a judgment of  
11 termination of parental rights. The petition shall be verified  
12 and shall be substantially in such form as may be prescribed by  
13 the judge or senior judge of the family court. The petition may  
14 be filed at any time following the mother's sixth month of  
15 pregnancy; provided that no judgment may be entered upon a  
16 petition concerning an unborn child until after the birth of the  
17 child and in respect to a legal parent or parents until the  
18 petitioner or petitioners have filed in the termination



1 proceeding a written reaffirmation of their desires as expressed  
2 in the petition or in respect to a legal parent or parents until  
3 the petitioner or petitioners have been given not less than ten  
4 days' notice of a proposal for the entry of judgment and an  
5 opportunity to be heard in connection with such proposal.

6 (b) Involuntary termination.

7 (1) The family courts may terminate the parental rights in  
8 respect to any child as to any legal parent:

9 (A) Who has deserted the child without affording  
10 means of identification for a period of at least  
11 ninety days;

12 (B) Who has voluntarily surrendered the care and  
13 custody of the child to another for a period of  
14 at least two years;

15 (C) Who, when the child is in the custody of another,  
16 has failed to communicate with the child when  
17 able to do so for a period of at least one year;

18 (D) Who, when the child is in the custody of another,  
19 has failed to provide for care and support of the  
20 child when able to do so for a period of at least  
21 one year;



- 1 (E) Whose child has been removed from the parent's  
2 physical custody pursuant to legally authorized  
3 judicial action under section 571-11(9), and who  
4 is found to be unable to provide now and in the  
5 foreseeable future the care necessary for the  
6 well-being of the child;
- 7 (F) Who is found by the court to be mentally ill or  
8 intellectually disabled and incapacitated from  
9 giving consent to the adoption of or from  
10 providing now and in the foreseeable future the  
11 care necessary for the well-being of the child;
- 12 (G) Who is found not to be the child's natural or  
13 adoptive father.
- 14 (H) Who has been found by a court to be a parent of a  
15 child as a result of sexual assault pursuant to  
16 Sections 707-730, 707-731, or 707-732, an act  
17 committed outside of this state which would  
18 constitute sexual assault pursuant to Sections  
19 707-730, 707-731, or 707-732, or incest pursuant  
20 to Section 707-741. This paragraph shall only  
21 apply to the natural parent who committed the  
22 sexual assault, act, or incest. Conception as a



1           result of sexual assault may be proved by a final  
2           judgment of conviction or other evidence produced  
3           at a fact-finding hearing indicating that the  
4           parent whose rights are sought to be terminated  
5           committed a sexual assault or act, or incest,  
6           against the mother of the child during a possible  
7           time of conception.

8           (2) The family courts may terminate the parental rights in  
9           respect to any minor of any natural but not legal  
10          father who is an adjudicated, presumed or concerned  
11          father under chapter 578, or who is named as the  
12          father on the child's birth certificate:

13          (A) Who falls within subparagraph (A), (B), (C), (D),  
14             (E), [or] (F), or (H) of paragraph (1);

15          (B) Whose child is sought to be adopted by the  
16             child's stepfather and the stepfather has lived  
17             with the child and the child's legal mother for a  
18             period of at least one year;

19          (C) Who is only a concerned father who has failed to  
20             file a petition for the adoption of the child or  
21             whose petition for the adoption of the child has  
22             been denied; or



1 (D) Who is found to be an unfit or improper parent or  
2 to be financially or otherwise unable to give the  
3 child a proper home and education.

4 (3) In respect to any proceedings under paragraphs (1) and  
5 (2), the authority to terminate parental rights may be  
6 exercised by the court only when a verified petition,  
7 substantially in the form above prescribed, has been  
8 filed by some responsible adult person on behalf of  
9 the child in the family court of the circuit in which  
10 the parent resides or the child resides or was born  
11 and the court has conducted a hearing of the petition.  
12 A copy of the petition, together with notice of the  
13 time and place of the hearing thereof, shall be  
14 personally served at least twenty days prior to the  
15 hearing upon the parent whose rights are sought to be  
16 terminated[.], except in the case where rights are to  
17 be terminated pursuant to paragraph (1)(H). If  
18 personal service cannot be effected within the State,  
19 service of the notice may be made as provided in  
20 section 634-23 or 634-24.

21 (4) In the case where rights are sought to be terminated  
22 pursuant to paragraph (1)(H), notice shall not be



1           given to the person whose rights are sought to be  
2           terminated if a physician attests to his or her belief  
3           that a sexual assault, act, or incest has occurred as  
4           set forth in this subsection, or if the person whose  
5           rights are sought to be terminated has been convicted  
6           of sexual assault as specified in this subsection for  
7           conduct which may have led to the child's conception.  
8           A person who under this paragraph is not given notice  
9           does not have standing to appear and contest a  
10           petition for the termination of his parental rights,  
11           present evidence relevant to the issue of disposition,  
12           or make alternative dispositional recommendations.

13           [(4)] (5) The family courts may terminate the parental  
14           rights in respect to any child as to any natural  
15           father who is not the child's legal, adjudicated,  
16           presumed or concerned father under chapter 578.

17           Such authority may be exercised under this chapter only  
18           when a verified petition, substantially in the form above  
19           prescribed, has been filed by some responsible adult person on  
20           behalf of the child in the family court of the circuit in which  
21           the parent resides or the child resides or was born, and the  
22           court has conducted a hearing of the petition.



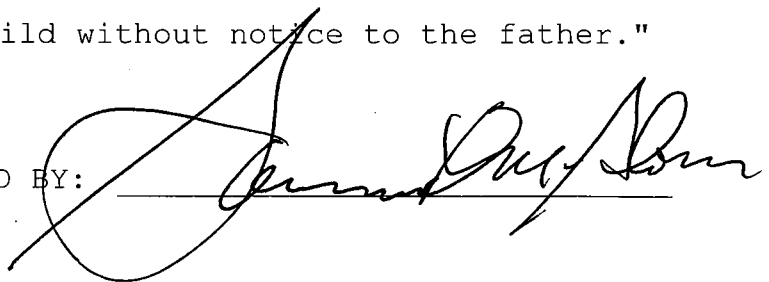
1 If the mother of the child files with the petition an  
2 affidavit representing that the identity or whereabouts of the  
3 child's father is unknown to her or not ascertainable by her or  
4 that other good cause exists why notice cannot or should not be  
5 given to the father, the court shall conduct a hearing to  
6 determine whether notice is required.

7 If the court finds that notice shall not be provided under  
8 paragraph (4), the court shall enter an order authorizing the  
9 termination of the father's parental rights and any subsequent  
10 adoption of the child without notice to the father.

11 If the court finds that good cause exists why notice cannot  
12 or should not be given to the child's father, and that the  
13 father is neither the legal nor adjudicated nor presumed father  
14 of the child, nor has he demonstrated a reasonable degree of  
15 interest, concern, or responsibility as to the existence or  
16 welfare of the child, the court may enter an order authorizing  
17 the termination of the father's parental rights and the  
18 subsequent adoption of the child without notice to the father."

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INTRODUCED BY:



# S.B. NO. 295

**Report Title:**

Termination of Parental Rights; Sexual Assault or Incest

**Description:**

Provides for involuntary termination of parental rights in cases of sexual assault or incest. Provides that upon conviction or physician's attestation of physical evaluation, notice of proceeding to terminate rights shall not be provided to person who committed sexual assault or incest resulting in birth.

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

