

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO PARENTAL RIGHTS.

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

1           SECTION 1. The legislature finds that state law does not  
2 prevent a natural father from claiming paternity rights and  
3 obtaining custody or visitation of a child conceived as a result  
4 of sexual assault or rape. The father is afforded the same  
5 rights as any other father despite the sexual assault against  
6 the victim-mother, because Hawaii does not have a law  
7 restricting or terminating those rights. Consequently, a  
8 natural father may assert paternity rights, including custody  
9 and visitation, forcing a victim-mother to confront the natural  
10 father on a recurring basis while raising a child conceived from  
11 a sexual assault.

12           The legislature finds that approximately twenty-five  
13 thousand women become pregnant as a result of rape each year in  
14 the United States. According to a 2003 report by the National  
15 Violence Against Women Prevention Research Center, one out of  
16 every seven adult women in Hawaii, or about fifteen per cent,  
17 have been a victim of sexual assault. This number is higher  
18 than the national average, and the National Violence Against



1 Women Prevention Research Center found that ethnicity may be a  
2 contributing factor to the statistical difference. A 2004  
3 report by the department of the attorney general crime  
4 prevention and justice assistance division and the Sex Abuse  
5 Treatment Center in Honolulu detailed that Hawaiian or part-  
6 Hawaiian women make up the largest category of sexual assault  
7 victims. The legislature further finds that, generally, eight  
8 out of ten rapes are committed by a person that the victim  
9 knows, so the consequences can be extreme for a woman raising a  
10 child from rape with no legal protections.

11 The purpose of this Act is to authorize the family courts  
12 to prohibit custody and visitation, or terminate parental rights  
13 altogether, of a person with regard to a minor child who was  
14 conceived as a result of rape or sexual assault perpetrated by  
15 the person.

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

18 "(a) In actions for divorce, separation, annulment,  
19 separate maintenance, or any other proceeding where there is at  
20 issue a dispute as to the custody of a minor child, the court,  
21 during the pendency of the action, at the final hearing, or any  
22 time during the minority of the child, may make an order for the



1 custody of the minor child as may seem necessary or proper. In  
2 awarding the custody, the court shall be guided by the following  
3 standards, considerations, and procedures:

4 (1) Custody should be awarded to either parent or to both  
5 parents according to the best interests of the child,  
6 and the court also may consider frequent, continuing,  
7 and meaningful contact of each parent with the child  
8 unless the court finds that a parent is unable to act  
9 in the best interest of the child;

10 (2) Custody may be awarded to persons other than the  
11 father or mother whenever the award serves the best  
12 interest of the child. Any person who has had de  
13 facto custody of the child in a stable and wholesome  
14 home and is a fit and proper person shall be entitled  
15 prima facie to an award of custody;

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

20 (4) Whenever good cause appears therefor, the court may  
21 require an investigation and report concerning the  
22 care, welfare, and custody of any minor child of the



1 parties. When so directed by the court, investigators  
2 or professional personnel attached to or assisting the  
3 court, hereinafter referred to as child custody  
4 evaluators, shall make investigations and reports that  
5 shall be made available to all interested parties and  
6 counsel before hearing, and the reports may be  
7 received in evidence if no objection is made and, if  
8 objection is made, may be received in evidence;  
9 provided the person or persons responsible for the  
10 report are available for cross-examination as to any  
11 matter that has been investigated; and provided  
12 further that the court shall define the requirements  
13 to be a court-appointed child custody evaluator, the  
14 standards of practice, ethics, policies, and  
15 procedures required of court-appointed child custody  
16 evaluators in the performance of their duties for all  
17 courts, and the powers of the courts over child  
18 custody evaluators to effectuate the best interests of  
19 a child in a contested custody dispute pursuant to  
20 this section. Where there is no child custody  
21 evaluator available that meets the requirements and  
22 standards, or any child custody evaluator to serve



1 indigent parties, the court may appoint a person  
2 otherwise willing and available;

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

11 (6) Any custody award shall be subject to modification or  
12 change whenever the best interests of the child  
13 require or justify the modification or change and,  
14 wherever practicable, the same person who made the  
15 original order shall hear the motion or petition for  
16 modification of the prior award;

17 (7) Reasonable visitation rights shall be awarded to  
18 parents, grandparents, siblings, and any person  
19 interested in the welfare of the child in the  
20 discretion of the court, unless it is shown that  
21 rights of visitation are detrimental to the best  
22 interests of the child;



1 (8) The court may appoint a guardian ad litem to represent  
2 the interests of the child and may assess the  
3 reasonable fees and expenses of the guardian ad litem  
4 as costs of the action, payable in whole or in part by  
5 either or both parties as the circumstances may  
6 justify;

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

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



- 1 (B) The court shall consider the perpetrator's
- 2 history of causing physical harm, bodily injury,
- 3 or assault or causing reasonable fear of physical
- 4 harm, bodily injury, or assault to another
- 5 person; and
- 6 (C) If a parent is absent or relocates because of an
- 7 act of family violence by the other parent, the
- 8 absence or relocation shall not be a factor that
- 9 weighs against the parent in determining custody
- 10 or visitation;
- 11 (10) A court may award visitation to a parent who has
- 12 committed family violence only if the court finds that
- 13 adequate provision can be made for the physical safety
- 14 and psychological well-being of the child and for the
- 15 safety of the parent who is a victim of family
- 16 violence;
- 17 (11) In a visitation order, a court may:
- 18 (A) Order an exchange of a child to occur in a
- 19 protected setting;
- 20 (B) Order visitation supervised by another person or
- 21 agency;



- 1 (C) Order the perpetrator of family violence to  
2 attend and complete, to the satisfaction of the  
3 court, a program of intervention for perpetrators  
4 or other designated counseling as a condition of  
5 the visitation;
- 6 (D) Order the perpetrator of family violence to  
7 abstain from possession or consumption of alcohol  
8 or controlled substances during the visitation  
9 and for twenty-four hours preceding the  
10 visitation;
- 11 (E) Order the perpetrator of family violence to pay a  
12 fee to defray the costs of supervised visitation;
- 13 (F) Prohibit overnight visitation;
- 14 (G) Require a bond from the perpetrator of family  
15 violence for the return and safety of the child.  
16 In determining the amount of the bond, the court  
17 shall consider the financial circumstances of the  
18 perpetrator of family violence;
- 19 (H) Impose any other condition that is deemed  
20 necessary to provide for the safety of the child,  
21 the victim of family violence, or other family or  
22 household member; and





1 (I) Order the address of the child and the victim to  
2 be kept confidential;

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

9 (13) If a court allows a family or household member to  
10 supervise visitation, the court shall establish  
11 conditions to be followed during visitation;

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

17 (15) The court may include in visitation awarded pursuant  
18 to this section visitation by electronic communication  
19 provided that the court shall additionally consider:

20 (A) The potential for abuse or misuse of the  
21 electronic communication, including the equipment  
22 used for the communication, by the person seeking



1           visitation or by persons who may be present  
2           during the visitation or have access to the  
3           communication or equipment;

4           (B) Whether the person seeking visitation has  
5           previously violated a temporary restraining order  
6           or protective order; and

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

11        (16) The court may set conditions for visitation by  
12        electronic communication<sup>[7]</sup> under paragraph (15),  
13        including visitation supervised by another person or  
14        occurring in a protected setting. Visitation by  
15        electronic communication shall not be used to:

16        (A) Replace or substitute an award of custody or  
17        physical visitation except where:

18           (i) Circumstances exist that make a parent  
19           seeking visitation unable to participate in  
20           physical visitation, including military  
21           deployment; or



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

3 (B) Justify or support the relocation of a custodial  
4 parent[-]; and

5 (17) Notwithstanding any provision to the contrary, no  
6 person shall be granted custody of, or visitation  
7 with, a child if the person has been convicted, in a  
8 court of competent jurisdiction in any state, of rape  
9 or sexual assault and the child was conceived as a  
10 result of that violation."

11 SECTION 3. Section 571-61, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) Involuntary termination.

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

16 (A) Who has deserted the child without affording  
17 means of identification for a period of at least  
18 ninety days;

19 (B) Who has voluntarily surrendered the care and  
20 custody of the child to another for a period of  
21 at least two years;



- 1 (C) Who, when the child is in the custody of another,  
2 has failed to communicate with the child when  
3 able to do so for a period of at least one year;
  - 4 (D) Who, when the child is in the custody of another,  
5 has failed to provide for care and support of the  
6 child when able to do so for a period of at least  
7 one year;
  - 8 (E) Whose child has been removed from the parent's  
9 physical custody pursuant to legally authorized  
10 judicial action under section 571-11(9), and who  
11 is found to be unable to provide now and in the  
12 foreseeable future the care necessary for the  
13 well-being of the child;
  - 14 (F) Who is found by the court to be mentally ill or  
15 intellectually disabled and incapacitated from  
16 giving consent to the adoption of or from  
17 providing now and in the foreseeable future the  
18 care necessary for the well-being of the child;
  - 19 (G) Who is found not to be the child's natural or  
20 adoptive father.
- 21 (2) The family courts may terminate the parental rights in  
22 respect to any minor of any natural but not legal



1 father who is an adjudicated, presumed or concerned  
2 father under chapter 578, or who is named as the  
3 father on the child's birth certificate:

4 (A) Who falls within subparagraph (A), (B), (C), (D),  
5 (E), or (F) of paragraph (1);

6 (B) Whose child is sought to be adopted by the  
7 child's stepfather and the stepfather has lived  
8 with the child and the child's legal mother for a  
9 period of at least one year;

10 (C) Who is only a concerned father who has failed to  
11 file a petition for the adoption of the child or  
12 whose petition for the adoption of the child has  
13 been denied; or

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

17 (3) In respect to any proceedings under paragraphs (1) and  
18 (2), the authority to terminate parental rights may be  
19 exercised by the court only when a verified petition,  
20 substantially in the form above prescribed, has been  
21 filed by some responsible adult person on behalf of  
22 the child in the family court of the circuit in which



1 the parent resides or the child resides or was born  
2 and the court has conducted a hearing of the petition.  
3 A copy of the petition, together with notice of the  
4 time and place of the hearing thereof, shall be  
5 personally served at least twenty days prior to the  
6 hearing upon the parent whose rights are sought to be  
7 terminated. If personal service cannot be effected  
8 within the State, service of the notice may be made as  
9 provided in section 634-23 or 634-24.

10 (4) The family courts may terminate the parental rights in  
11 respect to any child as to any natural father who is  
12 not the child's legal, adjudicated, presumed or  
13 concerned father under chapter 578.

14 (5) The family courts may terminate the parental rights in  
15 respect to any child as to any natural father upon a  
16 finding that the natural father has been convicted, in  
17 a court of competent jurisdiction in any state, of  
18 rape or sexual assault and the child was conceived as  
19 a result of the rape or sexual assault perpetrated by  
20 the parent whose rights are sought to be terminated.

21 Such authority may be exercised under this chapter only  
22 when a verified petition, substantially in the form above



1 prescribed, has been filed by some responsible adult person on  
2 behalf of the child in the family court of the circuit in which  
3 the parent resides or the child resides or was born, and the  
4 court has conducted a hearing of the petition.

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

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."

19 SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



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

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**Report Title:**

Parental Rights

**Description:**

Prohibits family courts from awarding a person custody of or visitation with a child if the person has been convicted of rape or sexual assault and the child was conceived as a result of that violation. Authorizes the family courts to terminate parental rights, with respect to a child, of a natural father who has been convicted of rape or sexual assault and the child was conceived as a result of the rape or sexual assault.

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