
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 has been a victim of sexual assault. This number is higher than
18 the national average, and the National Violence Against Women



1 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 natural parent with regard to a minor child who
14 was conceived as a result of rape or sexual assault perpetrated
15 by the natural parent.

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[-] 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 natural parent shall be granted custody of or
7 visitation with a child if the natural parent has been
8 convicted in a court of competent jurisdiction in any
9 state of rape or sexual assault and the child was
10 conceived as a result of that violation; provided
11 that:

12 (A) A denial of custody or visitation under this
13 paragraph shall not affect the obligation of the
14 convicted natural parent to support the minor
15 child;

16 (B) The court may order the convicted natural parent
17 to pay child support;

18 (C) This paragraph shall not apply if subsequent to
19 the date of conviction, the convicted natural
20 parent and custodial natural parent cohabitate
21 and establish a mutual custodial environment for
22 the child; and



1 (D) A custodial natural parent may petition the court
 2 to allow the convicted natural parent custody and
 3 visitation denied pursuant to this paragraph."

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

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 or

13 (G) Who is found not to be the child's natural or
14 adoptive father.

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

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

1 (B) Whose child is sought to be adopted by the
2 child's stepfather and the stepfather has lived
3 with the child and the child's legal mother for a
4 period of at least one year;

5 (C) Who is only a concerned father who has failed to
6 file a petition for the adoption of the child or
7 whose petition for the adoption of the child has
8 been denied; or

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

12 (3) In respect to any proceedings under paragraphs (1) and
13 (2), the authority to terminate parental rights may be
14 exercised by the court only when a verified petition,
15 substantially in the form above prescribed, has been
16 filed by some responsible adult person on behalf of
17 the child in the family court of the circuit in which
18 the parent resides or the child resides or was born
19 and the court has conducted a hearing of the petition.
20 A copy of the petition, together with notice of the
21 time and place of the hearing thereof, shall be
22 personally served at least twenty days prior to the



1 hearing upon the parent whose rights are sought to be
2 terminated. If personal service cannot be effected
3 within the State, service of the notice may be made as
4 provided in section 634-23 or 634-24.

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

9 (5) The family courts may terminate the parental rights in
10 respect to any child as to any natural parent upon a
11 finding that the natural parent has been convicted in
12 a court of competent jurisdiction in any state of rape
13 or sexual assault and the child was conceived as a
14 result of the rape or sexual assault perpetrated by
15 the parent whose rights are sought to be terminated;
16 provided that:

17 (A) A termination of parental rights shall not affect
18 the obligation of the convicted natural parent to
19 support the minor child;

20 (B) The court may order the convicted natural parent
21 to pay child support;



1 (C) This paragraph shall not apply if subsequent to
2 the date of conviction, the convicted natural
3 parent and custodial natural parent cohabitate
4 and establish a mutual custodial environment for
5 the child; and

6 (D) The custodial natural parent may petition the
7 court to reinstate the convicted natural parent's
8 parental rights terminated pursuant to this
9 paragraph.

10 Such authority may be exercised under this chapter only
11 when a verified petition, substantially in the form above
12 prescribed, has been filed by some responsible adult person on
13 behalf of the child in the family court of the circuit in which
14 the parent resides or the child resides or was born, and the
15 court has conducted a hearing of the petition.

16 If the mother of the child files with the petition an
17 affidavit representing that the identity or whereabouts of the
18 child's father is unknown to her or not ascertainable by her or
19 that other good cause exists why notice cannot or should not be
20 given to the father, the court shall conduct a hearing to
21 determine whether notice is required.



1 If the court finds that good cause exists why notice cannot
2 or should not be given to the child's father, and that the
3 father is neither the legal nor adjudicated nor presumed father
4 of the child, nor has he demonstrated a reasonable degree of
5 interest, concern, or responsibility as to the existence or
6 welfare of the child, the court may enter an order authorizing
7 the termination of the father's parental rights and the
8 subsequent adoption of the child without notice to the father."

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

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

12



Report Title:

Parental Rights; Rape; Sexual Assault

Description:

Prohibits family courts from awarding a natural parent custody of or visitation with a child if the natural parent has been convicted of rape or sexual assault and the child was conceived as a result of that offense. Authorizes the family courts to terminate parental rights, with respect to a child, of a convicted natural parent who has been convicted of rape or sexual assault and the child was conceived as a result of the rape or sexual assault. (SD1)

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