
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 with the child
15 unless the court finds that a parent is unable to act
16 in the best interest of the child;

17 (2) Custody may be awarded to persons other than the
18 father or mother whenever the award serves the best



1 interest of the child. Any person who has had de
2 facto custody of the child in a stable and wholesome
3 home and is a fit and proper person shall be entitled
4 prima facie to an award of custody;

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

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



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

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



- 1 (6) Any custody award shall be subject to modification or
2 change whenever the best interests of the child
3 require or justify the modification or change and,
4 wherever practicable, the same person who made the
5 original order shall hear the motion or petition for
6 modification of the prior award;
- 7 (7) Reasonable visitation rights shall be awarded to
8 parents, grandparents, siblings, and any person
9 interested in the welfare of the child in the
10 discretion of the court, unless it is shown that
11 rights of visitation are detrimental to the best
12 interests of the child;
- 13 (8) The court may appoint a guardian ad litem to represent
14 the interests of the child and may assess the
15 reasonable fees and expenses of the guardian ad litem
16 as costs of the action, payable in whole or in part by
17 either or both parties as the circumstances may
18 justify;
- 19 (9) In every proceeding where there is at issue a dispute
20 as to the custody of a child, and a guardian ad litem
21 has been appointed to represent the interests of the
22 child, the guardian ad litem shall fairly assess each



1 parent's ability to care for and parent the child. If
2 both parents are found to be capable and willing to
3 share in parenting responsibilities, and if it is in
4 the best interests of the child, the guardian ad litem
5 shall make a recommendation for joint custody to the
6 court. For purposes of this section, "joint custody"
7 shall have the same meaning as provided in section
8 571-46.1(b);

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



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

4 (B) The court shall consider the perpetrator's
5 history of causing physical harm, bodily injury,
6 or assault or causing reasonable fear of physical
7 harm, bodily injury, or assault to another
8 person; and

9 (C) If a parent is absent or relocates because of an
10 act of family violence by the other parent, the
11 absence or relocation shall not be a factor that
12 weighs against the parent in determining custody
13 or visitation;

14 [~~10~~] (11) A court may award visitation to a parent who has
15 committed family violence only if the court finds that
16 adequate provision can be made for the physical safety
17 and psychological well-being of the child and for the
18 safety of the parent who is a victim of family
19 violence;

20 [~~11~~] (12) In a visitation order, a court may:

21 (A) Order an exchange of a child to occur in a
22 protected setting;



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

1 the victim of family violence, or other family or
2 household member; and

3 (I) Order the address of the child and the victim to
4 be kept confidential;

5 [~~(12)~~] (13) The court may refer but shall not order an adult
6 who is a victim of family violence to attend, either
7 individually or with the perpetrator of the family
8 violence, counseling relating to the victim's status
9 or behavior as a victim as a condition of receiving
10 custody of a child or as a condition of visitation;

11 [~~(13)~~] (14) If a court allows a family or household member
12 to supervise visitation, the court shall establish
13 conditions to be followed during visitation;

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

19 [~~(15)~~] (16) The court may include in visitation awarded
20 pursuant to this section visitation by electronic
21 communication provided that the court shall
22 additionally consider:



1 (A) The potential for abuse or misuse of the
2 electronic communication, including the equipment
3 used for the communication, by the person seeking
4 visitation or by persons who may be present
5 during the visitation or have access to the
6 communication or equipment;

7 (B) Whether the person seeking visitation has
8 previously violated a temporary restraining order
9 or protective order; and

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

14 The court may set conditions for visitation by
15 electronic communication, including visitation
16 supervised by another person or occurring in a
17 protected setting. Visitation by electronic
18 communication shall not be used to:

19 (A) Replace or substitute an award of custody or
20 physical visitation except where:

21 (i) Circumstances exist that make a parent
22 seeking visitation unable to participate in



1 physical visitation, including military
2 deployment; or
3 (ii) Physical visitation may subject the child to
4 physical or extreme psychological harm; or
5 (B) Justify or support the relocation of a custodial
6 parent."

7 SECTION 2. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: *Fuzanne Chun Oakland*
By Request



Report Title:

Child Custody; Family Court; Guardian Ad Litem; Joint Custody

Description:

Requires a guardian ad litem to fairly assess each parent's ability to care for and parent a child in contested custody cases. Requires a guardian ad litem to make a recommendation for joint custody to the family court if both parents are found to be capable and willing to share in parenting responsibilities, and if it is in the best interests of the child.

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

