
A BILL FOR AN ACT

RELATING TO PARENTAL PARITY.

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

1 SECTION 1. The legislature finds that shared parenting has
2 been extensively studied and proven to produce the most positive
3 outcomes for children with divorced parents. Oftentimes,
4 parenting is delegated to the mother. In this context, the
5 primary goal of shared parenting is to maintain and strengthen
6 the father-child relationship and to increase the emotional
7 stability of the child by increasing the amount of time that
8 fathers and their children live together.

9 Longitudinal studies and an analysis of sixty-three studies
10 from the 1980s found that the amount of time fathers spent with
11 their children was strongly related to how close they felt to
12 one another (Amato & Gilbreth, 1999). More recent studies
13 confirm this strong relationship between the time that fathers
14 spend with their children in the years immediately following a
15 divorce and the kind of bond they have thereafter.

16 Unfortunately, the prevailing arrangement of residing
17 solely with the mother has had a profound negative impact on
18 most children's relationships with their fathers. The large



1 majority of children of divorced parents are not spending
2 extensive or consistent time with their fathers. Studies have
3 shown that vast numbers of fathers are willing, but are often
4 denied the opportunity, to share the responsibility of raising
5 their children.

6 Shared parenting not only produces better adult outcomes
7 for children with divorced parents, but also reduces the overall
8 risk profile during childhood. Behavior risk factors such as
9 substance abuse, juvenile delinquency, and teen pregnancy are
10 appreciably diminished and incidents of violent behaviors, such
11 as rape, suicide, and murder are significantly reduced by shared
12 parenting.

13 Most parents in the shared parenting arrangement are
14 satisfied with the arrangement. These parents retain a higher
15 level of cooperation and goodwill over time, are less likely to
16 engage in high conflict post-decree litigation, and are also
17 less likely to require financial subsidies, thus reducing the
18 dependency on social programs. This is not only beneficial to
19 children and parents, but it also benefits our State
20 economically and socially.

21 The purpose of this Act is to help eliminate any preference
22 in child custody decisions that unfairly favors one parent of a



1 child more than the other parent; provided that nothing in this
2 Act is intended to negatively affect the child.

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

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 ~~[+]~~ in the best
13 interests of the child:

- 14 (1) Custody should be awarded to either parent or to both
15 parents according to the best interests of the child,
16 and the court also ~~[may]~~ shall consider frequent,
17 continuing, and meaningful contact of ~~[each parent~~
18 ~~with]~~ the child with each parent unless the court
19 finds that ~~[a parent is]~~ one or both parents are
20 unable to act in the best interest of the child;
- 21 (2) Custody may be awarded to persons other than the
22 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, in accordance
2 with section 571-46.4, the requirements to be a court-
3 appointed child custody evaluator, the standards of
4 practice, ethics, policies, and procedures required of
5 court-appointed child custody evaluators in the
6 performance of their duties for all courts, and the
7 powers of the courts over child custody evaluators to
8 effectuate the best interests of a child in a
9 contested custody dispute pursuant to this section.
10 Where there is no child custody evaluator available
11 that meets the requirements and standards, or any
12 child custody evaluator to serve indigent parties, the
13 court may appoint a person otherwise willing and
14 available in accordance with section 571-46.4;

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



1 detrimental to the child and not in the best interest
2 of the child to be placed in sole custody, joint legal
3 custody, or joint physical custody with the
4 perpetrator of family violence. In addition to other
5 factors that a court shall consider in a proceeding in
6 which the custody of a child or visitation by a parent
7 is at issue, and in which the court has made a finding
8 of family violence by a parent:

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

12 (B) The court shall consider the perpetrator's
13 history of causing physical harm, bodily injury,
14 or assault or causing reasonable fear of physical
15 harm, bodily injury, or assault to another
16 person; and

17 (C) If a parent is absent or relocates because of an
18 act of family violence by the other parent, the
19 absence or relocation shall not be a factor that
20 weighs against the parent in determining custody
21 or visitation;



- 1 (10) A court may award visitation to a parent who has
2 committed family violence only if the court finds that
3 adequate provision can be made for the physical safety
4 and psychological well-being of the child and for the
5 safety of the parent who is a victim of family
6 violence;
- 7 (11) In a visitation order, a court may:
- 8 (A) Order an exchange of a child to occur in a
9 protected setting;
- 10 (B) Order visitation supervised by another person or
11 agency;
- 12 (C) Order the perpetrator of family violence to
13 attend and complete, to the satisfaction of the
14 court, a program of intervention for perpetrators
15 or other designated counseling as a condition of
16 the visitation;
- 17 (D) Order the perpetrator of family violence to
18 abstain from possession or consumption of alcohol
19 or controlled substances during the visitation
20 and for twenty-four hours preceding the
21 visitation;



- 1 (E) Order the perpetrator of family violence to pay a
2 fee to defray the costs of supervised visitation;
- 3 (F) Prohibit overnight visitation;
- 4 (G) Require a bond from the perpetrator of family
5 violence for the return and safety of the child.
6 In determining the amount of the bond, the court
7 shall consider the financial circumstances of the
8 perpetrator of family violence;
- 9 (H) Impose any other condition that is deemed
10 necessary to provide for the safety of the child,
11 the victim of family violence, or other family or
12 household member; and
- 13 (I) Order the address of the child and the victim to
14 be kept confidential;
- 15 (12) The court may refer but shall not order an adult who
16 is a victim of family violence to attend, either
17 individually or with the perpetrator of the family
18 violence, counseling relating to the victim's status
19 or behavior as a victim as a condition of receiving
20 custody of a child or as a condition of visitation;



- 1 (13) If a court allows a family or household member to
2 supervise visitation, the court shall establish
3 conditions to be followed during visitation;
- 4 (14) A supervised visitation center shall provide a secure
5 setting and specialized procedures for supervised
6 visitation and the transfer of children for visitation
7 and supervision by a person trained in security and
8 the avoidance of family violence;
- 9 (15) The court may include in visitation awarded pursuant
10 to this section visitation by electronic communication
11 provided that the court shall additionally consider
12 the potential for abuse or misuse of the electronic
13 communication, including the equipment used for the
14 communication, by the person seeking visitation or by
15 persons who may be present during the visitation or
16 have access to the communication or equipment; whether
17 the person seeking visitation has previously violated
18 a temporary restraining order or protective order; and
19 whether adequate provision can be made for the
20 physical safety and psychological well-being of the
21 child and for the safety of the custodial parent;



1 (16) The court may set conditions for visitation by
2 electronic communication under paragraph (15),
3 including visitation supervised by another person or
4 occurring in a protected setting. Visitation by
5 electronic communication shall not be used to:
6 (A) Replace or substitute an award of custody or
7 physical visitation except where:
8 (i) Circumstances exist that make a parent
9 seeking visitation unable to participate in
10 physical visitation, including military
11 deployment; or
12 (ii) Physical visitation may subject the child to
13 physical or extreme psychological harm; or
14 (B) Justify or support the relocation of a custodial
15 parent; and
16 (17) Notwithstanding any provision to the contrary, no
17 natural parent shall be granted custody of or
18 visitation with a child if the natural parent has been
19 convicted in a court of competent jurisdiction in any
20 state of rape or sexual assault and the child was
21 conceived as a result of that offense; provided that:

- 1 (A) A denial of custody or visitation under this
2 paragraph shall not affect the obligation of the
3 convicted natural parent to support the child;
- 4 (B) The court may order the convicted natural parent
5 to pay child support;
- 6 (C) This paragraph shall not apply if subsequent to
7 the date of conviction, the convicted natural
8 parent and custodial natural parent cohabitate
9 and establish a mutual custodial environment for
10 the child; and
- 11 (D) A custodial natural parent may petition the court
12 to grant the convicted natural parent custody and
13 visitation denied pursuant to this paragraph, and
14 upon such petition the court may grant custody
15 and visitation to the convicted natural parent
16 where it is in the best interest of the child."

17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

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

22 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Minors; Joint Custody

Description:

Requires the court to consider frequent, continuing, and meaningful contact with each parent when awarding custody of a minor child, unless the court finds that one or both parents are unable to act in the best interests of the child. Effective July 1, 2050. (HB2163 HD1)

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

