
A BILL FOR AN ACT

RELATING TO PARENTAL PARITY.

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[+] in the best
11 interests of the child:

12 (1) Custody should be awarded to either parent or to both
13 parents according to the best interests of the child,
14 and the court also [~~may~~] shall consider frequent,
15 continuing, and meaningful contact of [~~each parent~~
16 ~~with~~] the child with each parent unless the court
17 finds that [~~a parent is~~] one or both parents are
18 unable to act in the best interest of the child;



- 1 (2) Custody may be awarded to persons other than the
- 2 father or mother whenever the award serves the best
- 3 interest of the child. Any person who has had de
- 4 facto custody of the child in a stable and wholesome
- 5 home and is a fit and proper person shall be entitled
- 6 prima facie to an award of custody;
- 7 (3) If a child is of sufficient age and capacity to
- 8 reason, so as to form an intelligent preference, the
- 9 child's wishes as to custody shall be considered and
- 10 be given due weight by the court;
- 11 (4) Whenever good cause appears therefor, the court may
- 12 require an investigation and report concerning the
- 13 care, welfare, and custody of any minor child of the
- 14 parties. When so directed by the court, investigators
- 15 or professional personnel attached to or assisting the
- 16 court, hereinafter referred to as child custody
- 17 evaluators, shall make investigations and reports that
- 18 shall be made available to all interested parties and
- 19 counsel before hearing, and the reports may be
- 20 received in evidence if no objection is made and, if
- 21 objection is made, may be received in evidence;
- 22 provided the person or persons responsible for the



1 report are available for cross-examination as to any
2 matter that has been investigated; and provided
3 further that the court shall define, in accordance
4 with section 571-46.4, the requirements to be a court-
5 appointed child custody evaluator, the standards of
6 practice, ethics, policies, and procedures required of
7 court-appointed child custody evaluators in the
8 performance of their duties for all courts, and the
9 powers of the courts over child custody evaluators to
10 effectuate the best interests of a child in a
11 contested custody dispute pursuant to this section.
12 Where there is no child custody evaluator available
13 that meets the requirements and standards, or any
14 child custody evaluator to serve indigent parties, the
15 court may appoint a person otherwise willing and
16 available in accordance with section 571-46.4;

17 (5) The court may hear the testimony of any person or
18 expert, produced by any party or upon the court's own
19 motion, whose skill, insight, knowledge, or experience
20 is such that the person's or expert's testimony is
21 relevant to a just and reasonable determination of
22 what is for the best physical, mental, moral, and



1 spiritual well-being of the child whose custody is at
2 issue;

3 (6) Any custody award shall be subject to modification or
4 change whenever the best interests of the child
5 require or justify the modification or change and,
6 wherever practicable, the same person who made the
7 original order shall hear the motion or petition for
8 modification of the prior award;

9 (7) Reasonable visitation rights shall be awarded to
10 parents, grandparents, siblings, and any person
11 interested in the welfare of the child in the
12 discretion of the court, unless it is shown that
13 rights of visitation are detrimental to the best
14 interests of the child;

15 (8) The court may appoint a guardian ad litem to represent
16 the interests of the child and may assess the
17 reasonable fees and expenses of the guardian ad litem
18 as costs of the action, payable in whole or in part by
19 either or both parties as the circumstances may
20 justify;

21 (9) In every proceeding where there is at issue a dispute
22 as to the custody of a child, a determination by the



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

- 11 (A) The court shall consider as the primary factor
12 the safety and well-being of the child and of the
13 parent who is the victim of family violence;
- 14 (B) The court shall consider the perpetrator's
15 history of causing physical harm, bodily injury,
16 or assault or causing reasonable fear of physical
17 harm, bodily injury, or assault to another
18 person; and
- 19 (C) If a parent is absent or relocates because of an
20 act of family violence by the other parent, the
21 absence or relocation shall not be a factor that



1 weighs against the parent in determining custody
2 or visitation;

3 (10) A court may award visitation to a parent who has
4 committed family violence only if the court finds that
5 adequate provision can be made for the physical safety
6 and psychological well-being of the child and for the
7 safety of the parent who is a victim of family
8 violence;

9 (11) In a visitation order, a court may:

10 (A) Order an exchange of a child to occur in a
11 protected setting;

12 (B) Order visitation supervised by another person or
13 agency;

14 (C) Order the perpetrator of family violence to
15 attend and complete, to the satisfaction of the
16 court, a program of intervention for perpetrators
17 or other designated counseling as a condition of
18 the visitation;

19 (D) Order the perpetrator of family violence to
20 abstain from possession or consumption of alcohol
21 or controlled substances during the visitation



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

22 SECTION 4. 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 HD2)

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

