
A BILL FOR AN ACT

RELATING TO CHILD CUSTODY.

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

1 SECTION 1. The purpose of this Act is to help eliminate
2 any preference in child custody decisions that unfairly favors
3 one parent more than the other parent of a child; provided that
4 nothing in this Act is intended to negatively affect the child.

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

7 "(a) In actions for divorce, separation, annulment,
8 separate maintenance, or any other proceeding where there is at
9 issue a dispute as to the custody of a minor child, the court,
10 during the pendency of the action, at the final hearing, or any
11 time during the minority of the child, may make an order for the
12 custody of the minor child as may seem necessary or proper. In
13 awarding the custody, the court shall be guided by the following
14 standards, considerations, and procedures:

15 (1) Custody should be awarded to [~~either parent or to~~
16 ensure the inclusion of both parents [~~according to the~~
17 ~~best interests~~] in the raising of the child, to ensure
18 maximum continuing, physical, emotional, [~~and the~~



1 ~~court also may consider frequent, continuing,] and~~
2 meaningful contact [~~of each parent with the child]~~
3 with both parents unless the court finds that a parent
4 is unable to act in the best interest of the child;

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

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

15 (4) Whenever good cause appears therefor, the court may
16 require an investigation and report concerning the
17 care, welfare, and custody of any minor child of the
18 parties. When so directed by the court, investigators
19 or professional personnel attached to or assisting the
20 court, hereinafter referred to as child custody
21 evaluators, shall make investigations and reports that
22 shall be made available to all interested parties and



H.B. NO. 477

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

- 20 (5) The court may hear the testimony of any person or
21 expert, produced by any party or upon the court's own
22 motion, whose skill, insight, knowledge, or experience



1 is such that the person's or expert's testimony is
2 relevant to a just and reasonable determination of
3 what is for the best physical, mental, moral, and
4 spiritual well-being of the child whose custody is at
5 issue;

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

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

18 (8) The court may appoint a guardian ad litem to represent
19 the interests of the child and may assess the
20 reasonable fees and expenses of the guardian ad litem
21 as costs of the action, payable in whole or in part by



1 either or both parties as the circumstances may
2 justify;

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

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

18 (B) The court shall consider the perpetrator's
19 history of causing physical harm, bodily injury,
20 or assault or causing reasonable fear of physical
21 harm, bodily injury, or assault to another
22 person; and



H.B. NO. 477

1 (C) If a parent is absent or relocates because of an
2 act of family violence by the other parent, the
3 absence or relocation shall not be a factor that
4 weighs against the parent in determining custody
5 or visitation;

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

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

13 (A) Order an exchange of a child to occur in a
14 protected setting;

15 (B) Order visitation supervised by another person or
16 agency;

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



H.B. NO. 477

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



1 violence, counseling relating to the victim's status
2 or behavior as a victim as a condition of receiving
3 custody of a child or as a condition of visitation;

4 (13) If a court allows a family or household member to
5 supervise visitation, the court shall establish
6 conditions to be followed during visitation;

7 (14) A supervised visitation center shall provide a secure
8 setting and specialized procedures for supervised
9 visitation and the transfer of children for visitation
10 and supervision by a person trained in security and
11 the avoidance of family violence; and

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

15 (A) The potential for abuse or misuse of the
16 electronic communication, including the equipment
17 used for the communication, by the person seeking
18 visitation or by persons who may be present
19 during the visitation or have access to the
20 communication or equipment;



1 (B) Whether the person seeking visitation has
2 previously violated a temporary restraining order
3 or protective order; and

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

8 The court may set conditions for visitation by
9 electronic communication, including visitation
10 supervised by another person or occurring in a
11 protected setting. Visitation by electronic
12 communication shall not be used to:

13 (A) Replace or substitute an award of custody or
14 physical visitation except where:

15 (i) Circumstances exist that make a parent
16 seeking visitation unable to participate in
17 physical visitation, including military
18 deployment; or

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

21 (B) Justify or support the relocation of a custodial
22 parent."



H.B. NO. 477

1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.
4

INTRODUCED BY:

Cindy Evons
John M. [Signature]

JAN 18 2013



H.B. NO. 477

Report Title:

Minors; Joint Custody;

Description:

Provides that in awarding custody and visitation of a minor child, the court shall award custody to both parents to ensure maximum continuing physical, emotional, and meaningful contact with both parents.

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

