

JAN 17 2014

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. The primary goal of
5 shared parenting is to maintain and strengthen the father-child
6 relationship and to increase the emotional stability of the
7 child by increasing the amount of time that fathers and their
8 children live together.
9 Longitudinal studies and an analysis of sixty-three studies from
10 the 1980's 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 the
15 divorce and the kind of bond they have thereafter.
16 Unfortunately, the prevailing arrangement of residing solely
17 with the mother has had a profound negative impact on most
18 children's relationships with their fathers. The large majority



1 of children of divorce are not spending extensive or consistent
2 time with their fathers. Studies have shown that there are vast
3 numbers of fathers who are willing, but are often denied the
4 opportunity, to share the responsibility of raising their
5 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 are satisfied with the shared parenting
14 arrangement and retain a higher level of cooperation and
15 goodwill over time, are less likely to engage in high conflict
16 post-decree litigation, and are also less likely to require
17 financial subsidies, thus reducing the dependency on social
18 programs. This is not only beneficial to children and parents,
19 but it also benefits our State economically and socially.

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



1 than the other parent of a child; 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]~~ Where the parents are unable to agree and
15 unless the court finds that it is not in the best
16 interests of the child, based upon clear and
17 convincing evidence, custody should be awarded to
18 ~~[either parent or to]~~ ensure the inclusion of both
19 ~~parents [according to the best interests]~~ in the
20 raising of the child[, and the court also may consider
21 frequent, continuing,] and equal continuing physical,
22 emotional, and meaningful contact [of each parent with



1 ~~the child unless the court finds that a parent is~~
2 ~~unable to act in the best interest of the child,] with~~
3 both parents;

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

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

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



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

- 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



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;



- 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;

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 the potential for abuse or misuse of the electronic
16 communication, including the equipment used for the
17 communication, by the person seeking visitation or by
18 persons who may be present during the visitation or
19 have access to the communication or equipment; whether
20 the person seeking visitation has previously violated
21 a temporary restraining order or protective order; and
22 whether adequate provision can be made for the



1 physical safety and psychological well-being of the
2 child and for the safety of the custodial parent;

3 (16) The court may set conditions for visitation by
4 electronic communication under paragraph (15),
5 including visitation supervised by another person or
6 occurring in a protected setting. Visitation by
7 electronic communication shall not be used to:

8 (A) Replace or substitute an award of custody or
9 physical visitation except where:

10 (i) Circumstances exist that make a parent
11 seeking visitation unable to participate in
12 physical visitation, including military
13 deployment; or

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

16 (B) Justify or support the relocation of a custodial
17 parent; and

18 (17) Notwithstanding any provision to the contrary, no
19 natural parent shall be granted custody of or
20 visitation with a child if the natural parent has been
21 convicted in a court of competent jurisdiction in any



1 state of rape or sexual assault and the child was
2 conceived as a result of that offense; provided that:

3 (A) A denial of custody or visitation under this
4 paragraph shall not affect the obligation of the
5 convicted natural parent to support the child;

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

8 (C) This paragraph shall not apply if subsequent to
9 the date of conviction, the convicted natural
10 parent and custodial natural parent cohabitate
11 and establish a mutual custodial environment for
12 the child; and

13 (D) A custodial natural parent may petition the court
14 to grant the convicted natural parent custody and
15 visitation denied pursuant to this paragraph, and
16 upon such petition the court may grant custody
17 and visitation to the convicted natural parent
18 where it is in the best interest of the child."

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

S.B. NO. 2600

1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY: Will Zygo



S.B. NO. 2600

Report Title:

Minors; Joint Custody

Description:

Provides that in awarding custody and visitation of a minor child in situations where the parents are unable to agree and unless it's not in the best interest of the child, the court shall ensure the inclusion of both parents and equal 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.

