
A BILL FOR AN ACT

RELATING TO PARENTAL RIGHTS.

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

1 SECTION 1. Prior to the termination of parental rights of
2 a child conceived as a result of a rape or sexual assault,
3 Hawaii requires that the natural parent has been convicted in a
4 court of competent jurisdiction in any state of the rape or
5 sexual assault. A "clear and convincing evidence standard" is
6 being sought in the termination of parental rights to allow a
7 judge to terminate the alleged perpetrator's rights to the child
8 in a civil proceeding with a lower burden of proof than the
9 "beyond a reasonable doubt" standard required in criminal court.
10 In May 2015, President Obama signed the Rape Survivor Child
11 Custody Act (Act), Public Law No. 114-22, that boosts funding
12 for states that allow women to petition for the termination of
13 parental rights based on clear and convincing evidence that a
14 child was conceived through rape. The reasons cited for the
15 passage of the Act included: rape is one of the most under-
16 prosecuted serious crimes, with estimates of criminal conviction
17 occurring in less than five per cent of rapes; the Supreme Court



1 established that the clear and convincing evidence standard
 2 satisfies due process for allegations to terminate or restrict
 3 parental rights in Santosky v. Kramer, 455 U.S. 745 (1982); the
 4 clear and convincing evidence standard is the most common
 5 standard for termination of parental rights among the fifty
 6 States, the territories, and the District of Columbia; and the
 7 rapist may use the threat of pursuing custody or parental rights
 8 to coerce survivors into not prosecuting rape, or otherwise
 9 harass, intimidate, or manipulate them.

10 SECTION 2. Section 571-61, Hawaii Revised Statutes, is
 11 amended by amending subsection (b) to read as follows:

12 "(b) Involuntary termination.

13 (1) The family courts may terminate the parental rights in
 14 respect to any child as to any legal parent:

15 (A) Who has deserted the child without affording
 16 means of identification for a period of at least
 17 ninety days;

18 (B) Who has voluntarily surrendered the care and
 19 custody of the child to another for a period of
 20 at least two years;



- 1 (C) Who, when the child is in the custody of another,
2 has failed to communicate with the child when
3 able to do so for a period of at least one year;
- 4 (D) Who, when the child is in the custody of another,
5 has failed to provide for care and support of the
6 child when able to do so for a period of at least
7 one year;
- 8 (E) Whose child has been removed from the parent's
9 physical custody pursuant to legally authorized
10 judicial action under section 571-11(9), and who
11 is found to be unable to provide now and in the
12 foreseeable future the care necessary for the
13 well-being of the child;
- 14 (F) Who is found by the court to be mentally ill or
15 intellectually disabled and incapacitated from
16 giving consent to the adoption of or from
17 providing now and in the foreseeable future the
18 care necessary for the well-being of the child;
19 or
- 20 (G) Who is found not to be the child's natural or
21 adoptive father.



- 1 (2) The family courts may terminate the parental rights in
2 respect to any minor of any natural but not legal
3 father who is an adjudicated, presumed or concerned
4 father under chapter 578, or who is named as the
5 father on the child's birth certificate:
- 6 (A) Who falls within subparagraph (A), (B), (C), (D),
7 (E), or (F) of paragraph (1);
- 8 (B) Whose child is sought to be adopted by the
9 child's stepfather and the stepfather has lived
10 with the child and the child's legal mother for a
11 period of at least one year;
- 12 (C) Who is only a concerned father who has failed to
13 file a petition for the adoption of the child or
14 whose petition for the adoption of the child has
15 been denied; or
- 16 (D) Who is found to be an unfit or improper parent or
17 to be financially or otherwise unable to give the
18 child a proper home and education.
- 19 (3) In respect to any proceedings under paragraphs (1) and
20 (2), the authority to terminate parental rights may be
21 exercised by the court only when a verified petition,



1 substantially in the form above prescribed, has been
 2 filed by some responsible adult person on behalf of
 3 the child in the family court of the circuit in which
 4 the parent resides or the child resides or was born
 5 and the court has conducted a hearing of the petition.
 6 A copy of the petition, together with notice of the
 7 time and place of the hearing thereof, shall be
 8 personally served at least twenty days prior to the
 9 hearing upon the parent whose rights are sought to be
 10 terminated. If personal service cannot be effected
 11 within the State, service of the notice may be made as
 12 provided in section 634-23 or 634-24.

13 (4) The family courts may terminate the parental rights in
 14 respect to any child as to any natural father who is
 15 not the child's legal, adjudicated, presumed or
 16 concerned father under chapter 578.

17 (5) The family courts may terminate the parental rights in
 18 respect to any child of any natural parent upon a
 19 finding by clear and convincing evidence that the
 20 natural parent [~~has been convicted in a court of~~
 21 ~~competent jurisdiction in any state of~~] committed rape



1 or sexual assault or pursuant to a similar law of
2 another state, territory, possession, or Native
3 American tribe where the offense occurred and the
4 child was conceived as a result of the rape or sexual
5 assault perpetrated by the parent whose rights are
6 sought to be terminated; provided that:

7 (A) The court shall accept a guilty plea or
8 conviction of the child's natural parent for the
9 rape or sexual assault or as pursuant to similar
10 laws in another state, territory, possession, or
11 Native American tribe where the offense occurred
12 as conclusive proof that the child was conceived
13 by rape or sexual assault;

14 ~~[(A)]~~ (B) The termination of parental rights shall not
15 affect the obligation of the ~~[convicted]~~ child's
16 natural parent to support the child;

17 ~~[(B)]~~ (C) The court may order the ~~[convicted]~~ child's
18 natural parent to pay child support;

19 (D) It is presumed that termination of parental
20 rights is in the best interest of the child if



1 the child was conceived as a result of the sexual
2 assault or rape;

3 ~~[(C)]~~ (E) This paragraph shall not apply if subsequent
4 to the date of conviction, the ~~[convicted]~~
5 child's natural parent and custodial natural
6 parent cohabit and establish a mutual
7 custodial environment for the child; and

8 ~~[(D)]~~ (F) The custodial natural parent may petition
9 the court to reinstate the convicted natural
10 parent's parental rights terminated pursuant to
11 this paragraph.

12 Such authority may be exercised under this chapter only
13 when a verified petition, substantially in the form above
14 prescribed, has been filed by some responsible adult person on
15 behalf of the child in the family court of the circuit in which
16 the parent resides or the child resides or was born, and the
17 court has conducted a hearing of the petition.

18 If the mother of the child files with the petition an
19 affidavit representing that the identity or whereabouts of the
20 child's father is unknown to her or not ascertainable by her or
21 that other good cause exists why notice cannot or should not be

1 given to the father, the court shall conduct a hearing to
2 determine whether notice is required.

3 If the court finds that good cause exists why notice cannot
4 or should not be given to the child's father, and that the
5 father is neither the legal nor adjudicated nor presumed father
6 of the child, nor has he demonstrated a reasonable degree of
7 interest, concern, or responsibility as to the existence or
8 welfare of the child, the court may enter an order authorizing
9 the termination of the father's parental rights and the
10 subsequent adoption of the child without notice to the father."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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



Report Title:

Involuntary Termination of Parental Rights

Description:

Provides that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of rape or sexual assault creating a presumption that termination of parental rights is in the best interest of the child. (HB2282 HD1)

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