
A BILL FOR AN ACT

RELATING TO THE FAMILY COURTS.

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[+]

11 ~~(1) Custody]~~ in the best interest of the child:

12 (1) If the parents live in the same county or school
13 district, custody and visitation shall be shared
14 equally, unless the court finds that a parent is
15 unable to provide for the best interests of the child
16 or there is sufficient evidence of any past or current



1 family violence between the parents or by a parent in
2 the presence of the child;

3 (2) If the parents do not live in the same county or
4 school district, but would otherwise qualify for
5 custody under the requirements of paragraph (1),
6 custody and visitation should be awarded to either
7 parent or to both parents according to the best
8 interests of the child, and the court also [~~may~~] shall
9 consider frequent, continuing, and meaningful contact
10 of [~~each parent with the child unless the court finds~~
11 ~~that a parent is unable to act in the best interest of~~
12 ~~the child,~~] the child with each parent;

13 (3) If the court is unable to determine custody under
14 paragraphs (1) and (2), custody shall be awarded to
15 either parent or to both parents according to the best
16 interests of the child, and the court also may
17 consider frequent, continuing, and meaningful contact
18 of the child with each parent;

19 [+2+] (4) Custody may be awarded to persons other than the
20 father or mother whenever the award serves the best
21 interest of the child. Any person who has had de



1 factio custody of the child in a stable and wholesome
2 home and is a fit and proper person shall be entitled
3 prima facie to an award of custody;

4 [~~3~~] (5) If a child is of sufficient age and capacity to
5 reason, so as to form an intelligent preference, the
6 child's wishes as to custody shall be considered and
7 be given due weight by the court;

8 [~~4~~] (6) Whenever good cause appears therefor, the court
9 may require an investigation and report concerning the
10 care, welfare, and custody of any minor child of the
11 parties. When so directed by the court, investigators
12 or professional personnel attached to or assisting the
13 court, hereinafter referred to as child custody
14 evaluators, shall make investigations and reports that
15 shall be made available to all interested parties and
16 counsel before hearing, and the reports may be
17 received in evidence if no objection is made and, if
18 objection is made, may be received in evidence;
19 provided the person or persons responsible for the
20 report are available for cross-examination as to any
21 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~~] (7) 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



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

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

9 ~~[(7)]~~ (9) 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)]~~ (10) The court may appoint a guardian ad litem to
16 represent the interests of the child and may assess
17 the reasonable fees and expenses of the guardian ad
18 litem as costs of the action, payable in whole or in
19 part by either or both parties as the circumstances
20 may justify;



1 [~~9~~] (11) In every proceeding where there is at issue a
2 dispute as to the custody of a child, a determination
3 by the court that family violence has been committed
4 by a parent raises a rebuttable presumption that it is
5 detrimental to the child and not in the best interest
6 of the child to be placed in sole custody, joint legal
7 custody, or joint physical custody with the
8 perpetrator of family violence. In addition to other
9 factors that a court shall consider in a proceeding in
10 which the custody of a child or visitation by a parent
11 is at issue, and in which the court has made a finding
12 of family violence by a parent:

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

16 (B) The court shall consider the perpetrator's
17 history of causing physical harm, bodily injury,
18 or assault or causing reasonable fear of physical
19 harm, bodily injury, or assault to another
20 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~~] (12) 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~~] (13) 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~~] (14) The court may refer but shall not order an adult
21 who is a victim of family violence to attend, either



1 individually or with the perpetrator of the family
2 violence, counseling relating to the victim's status
3 or behavior as a victim as a condition of receiving
4 custody of a child or as a condition of visitation;
5 ~~[(13)]~~ (15) If a court allows a family or household member to
6 supervise visitation, the court shall establish
7 conditions to be followed during visitation;
8 ~~[(14)]~~ (16) A supervised visitation center shall provide a
9 secure setting and specialized procedures for
10 supervised visitation and the transfer of children for
11 visitation and supervision by a person trained in
12 security and the avoidance of family violence;
13 ~~[(15)]~~ (17) The court may include in visitation awarded
14 pursuant to this section visitation by electronic
15 communication provided that the court shall
16 additionally consider the potential for abuse or
17 misuse of the electronic communication, including the
18 equipment used for the communication, by the person
19 seeking visitation or by persons who may be present
20 during the visitation or have access to the
21 communication or equipment; whether the person seeking



1 visitation has previously violated a temporary
2 restraining order or protective order; and whether
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 custodial parent;

6 ~~(16)~~ (18) The court may set conditions for visitation by
7 electronic communication under paragraph (15),
8 including visitation supervised by another person or
9 occurring in a protected setting. Visitation by
10 electronic communication shall not be used to:

11 (A) Replace or substitute an award of custody or
12 physical visitation except where:

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

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

19 (B) Justify or support the relocation of a custodial
20 parent; and



1 [~~(17)~~] (19) Notwithstanding any provision to the contrary, no
2 natural parent shall be granted custody of or
3 visitation with a child if the natural parent has been
4 convicted in a court of competent jurisdiction in any
5 state of rape or sexual assault and the child was
6 conceived as a result of that offense; provided that:
7 (A) A denial of custody or visitation under this
8 paragraph shall not affect the obligation of the
9 convicted natural parent to support the child;
10 (B) The court may order the convicted natural parent
11 to pay child support;
12 (C) This paragraph shall not apply if subsequent to
13 the date of conviction, the convicted natural
14 parent and custodial natural parent cohabit and
15 establish a mutual custodial environment for
16 the child; and
17 (D) A custodial natural parent may petition the court
18 to grant the convicted natural parent custody and
19 visitation denied pursuant to this paragraph, and
20 upon such petition the court may grant custody



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1 and visitation to the convicted natural parent
 2 where it is in the best interest of the child."

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

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

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INTRODUCED BY:

Tom Ben

J. Ford
 Cindy Evans
Gynda Yosten
Don
 Bill Kolyszki
Randy D. D. J.
 Beale

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Report Title:

Family Court; Custody; Parental Parity

Description:

Clarifies the factors under which the family awards custody and visitation of a minor child to ensure parental parity.

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