

JAN 22 2016

A BILL FOR AN ACT

RELATING TO CHILD VISITATION.

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

1 SECTION 1. The legislature finds that many grandparents
2 today are stepping in to raise their grandchildren when the
3 children's own parents, many of whom are minors themselves, are
4 not able or willing to do so. The high cost of living in Hawaii
5 often necessitates that one or both parents work full-time or
6 part-time jobs, some while also attending school, college, or
7 vocational education, to provide for their family and thus
8 require grandparents to raise their grandchildren while the
9 parents are at work or in school or both. The financial impact
10 of raising a family in Hawaii is further compounded for single-
11 parent households who often have to work two jobs to support
12 their family. In addition, grandparents sometimes take on the
13 responsibility to raise their grandchildren when the child's own
14 parents abandon them or when the children can no longer live
15 with them because of the parent's mental disorder, substance
16 abuse, or incarceration. Grandparents may have the added burden
17 of caring for children who suffered from abuse or neglect from



1 their own parents. These children may feel insecure and afraid,
2 and may be angry at their situation and even embarrassed by it.

3 Raising a second generation brings many rewards for
4 grandparents, including the fulfillment of giving grandchildren
5 a sense of security, developing a deeper relationship, and
6 keeping the family together. The bond between a grandparent and
7 grandchild may run deeper than the relationship between parent
8 and child. Hawaiian and non-Hawaiian grandparents can be great
9 role models and influences for children, and they can provide a
10 sense of cultural heritage and family history. Hawaiian and
11 non-Hawaiian grandparents can also educate their grandchildren
12 about Hawaii and Hawaiian culture and traditions. Grandparents
13 can further provide their grandchildren with love, have their
14 best interests at heart, and can make them feel safe.
15 Grandparents also encourage a child's healthy development.
16 Overnight trips to Grandma's house, for example, may be less
17 traumatic than sleepovers with peers and can help children
18 develop independence. Grandparents may have lots of time to
19 spend playing and reading to their grandchildren. Such
20 dedicated attention only improves a child's developmental and
21 learning skills.



1 The purpose of this Act is to provide guidelines for the
2 court to consider in awarding visitation rights to grandparents.

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:

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

19 (2) 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) 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) Whenever good cause appears therefor, the court may
9 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) 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) 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;



1 (9) In every proceeding where there is at issue a dispute
2 as to the custody of a child, a determination by the
3 court that family violence has been committed by a
4 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

S.B. NO. 2409

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

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

13 (15) The court may include in visitation awarded pursuant
14 to this section visitation by electronic communication
15 provided that the court shall additionally consider
16 the potential for abuse or misuse of the electronic
17 communication, including the equipment used for the
18 communication, by the person seeking visitation or by
19 persons who may be present during the visitation or
20 have access to the communication or equipment; whether
21 the person seeking visitation has previously violated



1 a temporary restraining order or protective order; and
2 whether adequate provision can be made for the
3 physical safety and psychological well-being of the
4 child and for the safety of the custodial parent;

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

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

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

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

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

20 (17) Notwithstanding any provision to the contrary, no
21 natural parent shall be granted custody of or



S.B. NO. 2409

1 visitation with a child if the natural parent has been
2 convicted in a court of competent jurisdiction in any
3 state of rape or sexual assault and the child was
4 conceived as a result of that offense; provided that:

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

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

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

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



1 SECTION 3. Section 571-46.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§571-46.3 Grandparents' visitation rights; petition;
4 notice; order. (a) A grandparent or the grandparents of a
5 minor child may file a petition with the court for an order of
6 reasonable visitation rights. The court may award reasonable
7 visitation rights provided that the following [~~criteria are~~
8 ~~met;~~] findings are made:

9 (1) This State is the home state of the child at the time
10 of the commencement of the proceeding; [~~and~~

11 ~~(2) Reasonable visitation rights are in the best interests~~
12 ~~of the child.]~~

13 (2) Grandparent visitation is in the best interest of the
14 child; and

15 (3) Denial of reasonable grandparent visitation rights
16 would cause actual or potential harm to the child.

17 (b) No hearing for an order of reasonable visitation
18 rights under this section shall be had unless each of the living
19 parents and the child's custodians shall have had due notice,
20 actual or constructive, of the allegations of the petition and
21 of the time and place of the hearing thereof.



S.B. NO. 2409

1 (c) In any proceeding on a petition filed under this
 2 section, there shall be a rebuttable presumption that a parent's
 3 decision regarding visitation is in the best interest of the
 4 child. The presumption may be rebutted by a preponderance of
 5 the evidence that denial of reasonable grandparent visitation
 6 rights would cause actual or potential harm to the child.

7 (d) In awarding reasonable grandparent visitation, the
 8 court shall be guided by all standards, considerations, and
 9 procedures for parent visitation under section 571-46.

10 (e) An order made pursuant to this section shall be
 11 enforceable by the court, and the court may issue other orders
 12 to carry out these enforcement powers if in the best interests
 13 of the child."

14 SECTION 4. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 2016.

17

INTRODUCED BY:

Resalgh Baker
Verene A. Michale
Glenn T. Hill
Suzanne Q. Procop

Michelle Kalami



S.B. NO. 2409

Report Title:

Child Custody; Grandparent Visitation

Description:

Deletes duplicative provision of awarding grandparents reasonable visitation rights. Adds as prerequisites to awarding visitation that the court find that awarding custody to a grandparent is in the best interest of the child and that denial of reasonable grandparent visitation rights would cause actual or potential harm to the child. Clarifies procedures for awarding visitation.

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

