

CHAPTER 577
CHILDREN

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Cross References

Commission on fatherhood, see chapter 577E.

Interstate compact and commission on educational opportunity for military children, see chapter 311D.

Law Journals and Reviews

Consent for Testing and Treatment of Minors in Hawaii. 13 HBJ, no. 13, at 165 (2009).

" **§577-1 Age of majority.** All persons residing in the State, who have attained the age of eighteen years, shall be regarded as of legal age and their period of minority to have ceased. [CC 1859, §1487; am L 1919, c 116, §1; RL 1925, §3032; RL 1935, §4510; RL 1945, §12261; RL 1955, §330-1; HRS §577-1; am L 1972, c 2, §1; am L 1975, c 77, §1(1)]

Case Notes

Under common law consensual incapacity of minor was absolute, except as to contracts for necessities. 256 F.2d 208.

Disaffirmance of contract of minor must be made within reasonable time after reaching majority. 1 H. 421, 422; 19 H. 474.

Legal age at which person becomes bound by contract, law of place where contract made governs. 2 H. 168.

Disaffirmance of acts or proceedings done or taken on behalf of minor must be made within reasonable time after coming to majority. 6 H. 485; 7 H. 421; 8 H. 93; 14 H. 460.

Where statute makes no exception in favor of infants, courts can make none. 7 H. 421.

Engagement to marry contracted during minority held ratified when at majority youth wrote fiancée engagement is terminated. 8 H. 544.

Disability of female infant to bring suit not removed by marriage. 20 H. 596. Mother may recover illegitimate child by habeas corpus. 27 H. 158; 31 H. 328.

Cited: 127 F. 920; 47 H. 605, 393 P.2d 645.

" **§577-2 Minority of veteran or of the veteran's spouse, no bar when.** The disability of minority of any person who is otherwise eligible for guaranty or insurance of a loan pursuant to the Servicemen's Readjustment Act of 1944 (P.L. 346, 78th Cong.), as amended, or as the same may be amended or supplemented, and of the minor spouse of any eligible veteran in connection with any transaction entered into pursuant to such

act, is hereby removed, for all purposes in connection with such transaction including, but not limited to, incurring of indebtedness or obligations and acquiring, encumbering, selling, releasing, or conveying property, or any interest therein, and litigating or settling controversies arising therefrom, if all or part of any obligations incident to such transaction is guaranteed or insured by the Administrator of Veterans Affairs pursuant to such act; provided that this section shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such spouse were under no such disability. [L 1947, c 9, §1; RL 1955, §330-2; HRS §577-2; gen ch 1985]

" **§577-3 Natural guardian; liability for torts of child.**

The father and mother of an unmarried minor child are jointly the natural guardians of the child's person and property. They shall have equal powers and duties with respect to the child and neither shall have any right superior to that of the other concerning the child's custody or control or any other matter affecting the child; provided that if either parent dies or abandons the family or is incapable for any reason to act as guardian, the guardianship devolves upon the other parent, and that when the parents live apart, the court may award the guardianship to either of them, having special regard to the interests of the child. The father and mother of unmarried minor children shall jointly and severally be liable in damages for tortious acts committed by their children, and shall be jointly and severally entitled to prosecute and defend all actions in which the children or their individual property may be concerned. [CC 1859, §1288; RL 1925, §3033; am L 1931, c 77, §1; RL 1935, §4511; RL 1945, §12262; RL 1955, §330-3; HRS §577-3; am L 1972, c 144, §1; gen ch 1985]

Cross References

Custody, see §571-46.
Minor as employee of State, see §662-17.
Promoting intoxicating liquor, see §712-1250.5.
Proof of financial responsibility of motor vehicle operator, see §287-20.
School property damages, see §302A-1153.
Torts, who may sue, see §663-1.

Law Journals and Reviews

Tort and Insurance "Reform" in a Common Law Court. 14 UH L. Rev. 55.

Case Notes

Constitutionality of section upheld. 529 F. Supp. 394.

Support of child, father not liable for necessities furnished minor on latter's own credit. 2 H. 168. Father liable to support minor children even though custody awarded divorced wife (decree being silent as to support). 23 H. 281. Adoptive father liable for necessities furnished child. 23 H. 115. Father though natural guardian may not be entitled to certain reimbursement from his child's estate, he being life tenant and she the remainderman. 24 H. 388, 391. One standing in loco parentis cannot recover from natural parents for necessities, in absence of contract. 5 H. 370. Right to service and duty to support under §577-7 reciprocal and correlative. 27 H. 671.

Legitimacy of child fixed by law existing at time of birth. 3 H. 459; 4 H. 548. Presumption is in favor of legitimacy of offspring born in wedlock. 4 H. 650; 6 H. 338. Presumption of legitimacy may be rebutted. 16 H. 377 overruled on other grounds, 25 H. 405; 17 H. 577; 30 H. 574. Testimony of mother not admissible to bastardize issue born after marriage. 17 H. 577; 30 H. 574, 584.

Father as natural guardian of property of child has no authority to lease land. 6 H. 485; 16 H. 432. Nor to receive legacy to child. 31 H. 705. Rights of father prior to enactment of statute, see 2 H. 118; 7 H. 421. Act of guardian binds infant. 7 H. 421.

Infant held not liable for damages resulting from his wilfully careless and immoderate use of chattel under a contract. 8 H. 237. A six-year old child may be capable of contributory negligence; a minor's standard of care. 47 H. 281, 386 P.2d 872.

Liability of parent for torts of child: Parent not liable when child not liable. 8 H. 715; 15 H. 127; 23 H. 541.

Custody of child: Statutory provision that court may award custody to either parent not unconstitutional. 32 H. 479. Right of father to custody not absolute but controlled by welfare and best interest of child. 6 H. 386; 32 H. 479; 32 H. 608. Where mother suitable person to have care and custody, it is not error to award custody to mother even though father is of good character and otherwise without fault. 33 H. 90. Children born out of wedlock, law presumes it is for the best interests of the children and of society that during minority they remain in the custody of their mother. 35 H. 756. Pending divorce, rights of mother to custody of child is superior to that of distant relative. 32 H. 731. In case of death section confers custody of children upon surviving parent. 33 H. 106. Parents

of child have a natural as well as legal, paramount right to custody of minor offspring. 33 H. 872.

Nothing in statute prohibits suits by parents against their children. 51 H. 74, 450 P.2d 998.

Parents cannot avoid liability under this section, and absent a legislative mandate, an insurer is not obligated to insure their liability unless coverage can be grounded on the terms of the subject policy itself; auto insurance policy thus did not violate public policy. 90 H. 478 (App.), 979 P.2d 74.

Where defendant did not live with mother and was thus not a relative as that term was defined under auto insurance policy, non-owned car endorsement in auto policy did not impose duty on insurer to defend or indemnify mother for mother's liability under this section. 90 H. 478 (App.), 979 P.2d 74.

Cited: 351 F. Supp. 185, 187; 23 H. 241, 244.

" **§577-3.5 Property damage, parental responsibility.** (a) The parents or legal guardians of a minor child shall be jointly and severally liable for graffiti damage caused by the minor to real or personal property, whether publicly or privately owned. As used in this section, "graffiti" means any unauthorized drawing, inscription, figure, or marking created by paint, ink, chalk, dye, or similar substances.

(b) In addition to any other lawful orders, if a minor is found under chapter 571 to have committed an act constituting graffiti, the court shall:

- (1) Require the minor, the parents, or the legal guardians to remove the graffiti from the affected property within sixty days of the order and pay for the cost of paint and materials; or if appropriate, pay for the actual cost of having the damaged property repaired or replaced; and
- (2) Order the minor to perform a minimum of eighty hours of community service to remove graffiti from other properties.

(c) Nothing in this section shall affect the right of any person to maintain a civil action arising out of graffiti damage to property. [L 1995, c 227, §1; am L 2007, c 196, §1]

Cross References

Graffiti.

County property, see §46-1.5.

Criminal property damage, see §§708-820 to 708-823.6.

" **§577-4 Stepparent; when required to support stepchild.** A stepparent who acts in loco parentis is bound to provide,

maintain, and support the stepparent's stepchild during the residence of the child with the stepparent if the legal parents desert the child or are unable to support the child, thereby reducing the child to destitute and necessitous circumstances. [L 1957, c 79, §1; Supp, §330-3.5; HRS §577-4; gen ch 1985]

Case Notes

Legal duty to support includes reasonably necessary and available medical services. 8 H. App. 506, 810 P.2d 672.

" **§577-5 REPEALED.** L 1969, c 169, §1.

" **§577-6 Duty of minor children.** All children during their minority shall obey the lawful commands of their parents, or, the lawful commands of their natural or adoptive parents, or of the guardians appointed according to law. [PC 1869, c 79, §5; RL 1925, §3044; am L 1931, c 77, §2; RL 1935, §4512; RL 1945, §12263; RL 1955, §330-4; HRS §577-6; am L 1975, c 77, §1(2)]

Case Notes

A child adopted by law is bound to obey the lawful and moral commands of the parents by adoption. 8 H. 40.

" **§577-7 Parents' control and duties.** (a) Parents or, in case they are both deceased, guardians, legally appointed, shall have control over the conduct and education of their minor children. They shall have the right, at all times, to recover the physical custody of their children by habeas corpus. All parents and guardians shall provide, to the best of their abilities, for the discipline, support, and education of their children.

(b) To the extent that the minor child has a beneficial interest in the income or principal of any trust which is applied for such purposes, parents or guardians shall not be required to pay the costs of registration, tuition, books, room and board, and other expenses incurred in connection with the attendance of a minor child at any private grammar, secondary, industrial arts or trade school, or at any college or university, whether or not the college or university is a private institution or is maintained by a state or any subdivision thereof. The power of the family court under sections 580-47 and 580-74 to compel the parties to a divorce or separation to provide for the education of a minor or an adult child shall not be limited by any provision of this subsection. [L 1864, p 47; RL 1925, §3045; am L 1931, c 77, §3; RL 1935,

§4513; RL 1945, §12264; RL 1955, §330-5; HRS §577-7; am L 1975, c 77, §1(2); am L 1982, c 84, §1]

Case Notes

Applied in allocating to the mother damages for child's loss of support. 245 F. Supp. 981, 1014, aff'd 381 F.2d 965.

Where parents voluntarily parted and later seek recovery of their child, the reasonable wishes of the child will have controlling influence. 6 H. 386.

Parents are legal, proper and sole custodians of their children until right forfeited. 26 H. 433.

In deciding question between divorced parents as to custody of child, paramount consideration is welfare of child, technical rights not controlling. 26 H. 465; 27 H. 742; 29 H. 85. See 32 H. 731.

Duty to support and right to service under §577-3 reciprocal and correlative. 27 H. 671; 32 H. 608.

Wrongful death action of death of child, services, recovery. 37 H. 571.

Court has jurisdiction in equity to award support to child in child's action against parent. 49 H. 200, 412 P.2d 638 (decided before family court established by chapter 571).

Obligation enforceable in equitable action by child against parent. 49 H. 200, 209, 412 P.2d 638.

Duty imposed on parents by section to provide for support of their children includes reasonably necessary and available medical services. 73 H. 236, 831 P.2d 924.

The "physical harm" encompassed in the definition of family violence in §571-2 would not preclude a parent's right to use force to discipline a child as permitted by §703-309(1), and duty to discipline a child under subsection (a). 88 H. 200 (App.), 965 P.2d 133.

Cited: 45 H. 69, 72, 361 P.2d 1054.

" **§577-7.5 Parental preferences in government contracts, programs, and services.** (a) The purpose of this section is to help to eliminate any preference in a state or county executive agency or judiciary contract, program, or service that favors one parent over the other in terms of child-rearing; provided that nothing in this section is intended to affect maternity benefits. This section shall not serve as a legal basis to invalidate any state, county, or judiciary contract, program, or service.

(b) All state and county executive agencies and the judiciary shall review their respective contracts, programs, and services that affect parental roles in children's health,

welfare, and education and, in the sole discretion of the agency or judiciary, determine whether a preference exists that favors one parent over another in the raising of their children. If a determination in the sole discretion of the agency or the judiciary is made that a preference exists, it shall direct its staff to analyze the preference and determine whether it unfairly precludes a parent from participating in child-rearing. If so, the state or county agency or the judiciary shall seek to eliminate that preference by encouraging modifications to ensure the inclusion of both parents in all contracts, programs, and services designed to assist in the raising of children; provided that this provision shall in no instance be interpreted to reduce or negatively impact maternity leave benefits or require any changes in personnel programs or work force policies.

(c) This section shall not apply to a preference that:

- (1) The state or county agency or the judiciary determines to be in the best interest of the child;
- (2) Would impose an unreasonable burden on the State, a county, or the judiciary by removing a preference from existing contracts, programs, or services; or
- (3) Conflicts with existing collective bargaining contracts.

(d) Each state and county executive agency and the judiciary under subsection (b) shall report to the legislature on the implementation of this section no later than twenty days before the beginning of the regular session of 2003, and annually thereafter. [L 2001, c 301, §2; am L 2002, c 162, §1]

" **§577-8 REPEALED.** L 1972, c 9, pt of §1.

" **§577-9 Jury trial, when.** In trials of any person over the age of majority arising under sections 709-902, 709-903, 709-904, and 709-905, the person proceeded against shall have the right to a trial by jury which shall be granted as in other cases, unless waived. If the finding of the jury is against the person tried their verdict shall so state, in which event the court, in its discretion, may enter such judgment as it deems proper in the premises. [L 1925, c 167, pt of §1; RL 1935, §4516; RL 1945, §12266; RL 1955, §330-7; HRS §577-9; am L 1973, c 211, §2(a); am L 1975, c 77, §1(3)]

" **§577-10 Court having jurisdiction.** The family courts shall have exclusive jurisdiction of all cases coming within sections 709-902, 709-903, 709-904, and 709-905; provided that upon complaint made to any prosecuting officer of the commission of any offense coming within sections 709-902, 709-903, 709-904, and 709-905, the district judge within whose circuit the offense

is alleged to have been committed may issue the judge's warrant for the arrest of the person accused of such offense, and commit the accused to the family court for the required proceedings. [L 1925, c 167, pt of §1; am L 1929, c 126, §1; RL 1935, §4517; am L 1943, c 223, §1; RL 1945, §12267; am L 1945, c 142, §5; RL 1955, §330-8; am imp L 1965, c 232, §1; HRS §577-10; am L 1973, c 211, §2(b); gen ch 1985]

" **§577-11 REPEALED.** L 1973, c 211, §2(c).

" **§577-12 REPEALED.** L 1972, c 9, pt of §1.

" **§577-13 REPEALED.** L 1973, c 211, §2(d).

" **§577-14 Children born to parents not married to each other; support.** Except as otherwise provided by law, children whose parents have not been legally married, in contemplation of chapter 572, shall be designated as children whose parents have not been married to each other at the time of the children's birth, provided that any person, who in writing duly acknowledged before an officer authorized to take acknowledgments declares himself to be the father of those children, shall be compellable to provide those children with necessary maintenance and support and to pay the expenses of the mother's pregnancy and confinement. The mothers in all cases shall be compellable to maintain and support them during their minority. [CC 1859, §1289; RL 1925, §3042; RL 1935, §4528; RL 1945, §12279; am L 1953, c 103, §1; RL 1955, §330-12; HRS §577-14; am L 1976, c 200, pt of §1; am L 1997, c 52, §7; am L 1998, c 11, §31]

Cross References

Descent of property to child born to parents not married to each other, see §532-6.

From persons born to parents not married to each other, see §532-7.

Inheritance by children, see §§560:2-114 and 580-25.

Case Notes

Illegitimate child does not inherit from grandfather. 20 H. 722.

Mother of illegitimate child entitled to custody as against stranger to whom child surrendered or given, but not adopted. 27 H. 158.

Oral statement to person that he may have custody and adopt may be revoked any time before adoption. 31 H. 328.

Parent-child relationship, evidence of; presumption. 48 H. 193, 397 P.2d 552.

Cited: 16 H. 502, 505.

" **§577-15 Children deemed to be orphans.** For the purpose of taking, or determining eligibility to take, any benefit under any law or under any private instrument by the terms of which orphans are eligible to receive benefits, a child born of parents not married to each other and not adopted shall be deemed an orphan; provided that nothing in this section shall be construed (1) to deprive any such child of any rights of inheritance, or to support, or any other rights, to which the child would be entitled, or (2) to affect the liabilities of any other person with respect to any such child to which the person would be subject, if this section had not been enacted. [L 1941, c 263, §1; RL 1945, §12281; RL 1955, §330-13; HRS §577-15; am L 1975, c 77, §1(4)]

" **§577-16 Curfew; children in public streets, prohibited when; penalty.** Any child under sixteen years of age, who, except in case of necessity, or except when permitted so to do in writing by a judge of the family court, goes or remains on any public street, highway, public place, or private place held open to the public after ten o'clock in the evening and before four o'clock in the morning, unaccompanied by either a parent or guardian, or an adult person duly authorized by a parent or guardian to accompany the child, is subject to adjudication under section 571-11(2). [L 1896, c 29, §1; am L 1907, c 34, §1; am L 1913, c 124, §1; am L 1915, c 44, §1; RL 1925, §3049; RL 1935, §4530; am L 1943, c 78, pt of §1; RL 1945, §12282; am L 1949, c 279, §1; RL 1955, §330-14; am imp L 1965, c 232, §1; HRS §577-16; am L 1975, c 77, §1(5); am L 1980, c 303, §6]

" **[§577-16.5] Sentencing for the violation of curfew.** In addition to any other penalties established by law, rule, or ordinance in the State, any child found in violation of section 577-16 and their parents or guardians may be required to participate in such counseling, as the court deems to be appropriate in each case. [L 1991, c 330, §2]

" **§577-17 REPEALED.** L 1975, c 77, §1(6).

" **§577-18 Parents allowing children in street, prohibited when; penalty.** Any parent or guardian having the care, custody, and control of a child under sixteen years of age, who, except

in case of necessity, knowingly, and voluntarily suffers or permits such child to go or remain on any public street, highway or public place after ten o'clock in the evening and before four o'clock in the morning, unaccompanied by an adult person thereto authorized by such parent or guardian, shall be fined not more than \$100 or imprisoned not more than twenty days. [L 1896, c 29, §2; RL 1925, §3050; RL 1935, §4532; am L 1943, c 78, pt of §1; RL 1945, §12284; RL 1955, §330-16; HRS §577-18; am L 1975, c 77, §1(7)]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§577-19 Children prohibited in certain places, when; penalty.** Any keeper of a coffee shop, ice cream parlor, victualing or billiard saloon, bowling alley, skating rink, theater, show house, or premises in which any show, moving picture, or other like public entertainment is given, who permits any child under the age of sixteen years to be or remain upon the premises or in the saloon, rink, theater, show house, or premises, or in whose premises such child may be found between the hours of ten in the evening and six in the morning, unless the child is accompanied by the child's parent or guardian, or some other adult person thereto authorized by such parent or guardian, shall be fined not more than \$100. [L 1870, c 23, §1; am L 1915, c 44, §2; RL 1925, §3051; RL 1935, §4533; am L 1943, c 78, pt of §1; RL 1945, §12285; RL 1955, §330-17; HRS §577-19; am L 1975, c 77, §1(7); gen ch 1985]

Cross References

Purchasing and consumption of alcoholic beverages by minors, see §281-101.5.

Promoting drugs and intoxicating compounds to minors, see §§712-1241, 712-1244, 712-1249.5, 712-1249.6, 712-1250, and 712-1250.5.

Sale of tobacco products to minors, see §709-908.

" **§577-20 Arrest, when in such places.** If any keeper of any of the public places enumerated in section 577-19 finds difficulty in clearing the keeper's premises of school children, the keeper may call in the assistance of the police, who shall first order all such school children to return to their homes; and, if the order is not obeyed by the children, the police shall, subject to chapter 571, proceed to apprehend all children

who have not proceeded to their homes. [L 1870, c 23, §2; RL 1925, §3052; RL 1935, §4534; RL 1945, §12286; RL 1955, §330-18; am imp L 1965, c 232, §1; HRS §577-20; gen ch 1985]

" **§577-21 Curfew ordinances, effect.** Each of the counties may enact and enforce ordinances regulating the presence of children in public places and on public streets and roads during certain hours at night.

Upon each of the counties enacting an ordinance pertaining to curfew for children, then so far as that county is concerned, the ordinance shall have full force and effect, and shall supersede sections 577-16, 577-18, 577-19 and 577-20 until the ordinance is repealed or otherwise made invalid. [L 1963, c 63, §2; Supp, §330-18.5; HRS §577-21; am L 1975, c 77, §1(8)]

" **§577-22 Dancing partners, patrons, age limit.** It shall be unlawful for any unmarried minor to frequent, be, or remain upon, in, or around the premises of any dance hall where persons receive any remuneration or compensation, either directly or indirectly, for acting as dancing partners to the patrons of the dance hall. The acceptance or receipt of any of the proceeds of the sale of any article to any patron of the dance hall by any such person under eighteen, or by anyone acting on such person's behalf, constitutes receiving [of] remuneration or compensation within the meaning of this section. Any minor violating this section is subject to adjudication under section 571-11(1). [L 1927, c 224, pt of §1; RL 1935, §4535; RL 1945, §12287; RL 1955, §330-19; am L 1957, c 281, §1; am imp L 1965, c 232, §1; HRS §577-22; am L 1975, c 77, §1(8); am L 1980, c 170, §1]

" **§577-23 Parent et al. responsibility, penalty.** Any parent, guardian, or other person having the care, custody, or control of an unmarried minor, who knowingly permits such minor to violate section 577-22, shall be fined not more than \$50 or imprisoned not more than thirty days. [L 1927, c 224, pt of §1; RL 1935, §4536; RL 1945, §12288; RL 1955, §330-20; HRS §577-23; am L 1975, c 77, §1(8)]

" **§577-24 Escort's responsibility; penalty.** Any person who knowingly takes, escorts, or accompanies any unmarried minor to a dance hall which the minor is prohibited from attending by section 577-22, or who invites or encourages the minor to attend such dance hall, shall be fined not more than \$100 or imprisoned not more than ninety days. [L 1927, c 224, pt of §1; RL 1935, §4537; RL 1945, §12289; RL 1955, §330-21; HRS §577-24; am L 1975, c 77, §1(8)]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **[\$577-25] Emancipation of certain minors.** Any law to the contrary notwithstanding, a minor who has been married pursuant to chapter 572 shall be deemed to be emancipated and shall be regarded as though he or she were of legal age and shall have all the rights, duties, privileges, and responsibilities provided by the civil law to a person who has reached the age of majority under civil law; provided that:

- (1) Nothing in this section shall be deemed to confer upon such person the right to vote in any federal, state, or county election or the right to purchase, possess, or sell alcoholic beverages; and
- (2) Nothing in this section shall change the status of such persons as minors in connection with any criminal law, nor affect the exclusive original jurisdiction of the family court over such persons under section 571-11(1).

For purposes of this section, "minor" means a person under the age of majority. [L 1976, c 164, §1]

" **§577-26 Alcohol or drug abuse relating to minors; diagnosis, counseling, and related activities.** (a) A counselor, certified, licensed, or otherwise authorized by law to engage in the practice of counseling services in either or both the public and private sector, may inform the spouse, parent, custodian, or guardian of any minor who requests, is referred for, or received counseling services relating to alcohol or drug abuse.

(b) If a minor consents to receive counseling services for alcohol or drug abuse, the spouse, parent, custodian, or guardian of the minor shall not be liable for the legal obligations resulting from the furnishing of such counseling services provided by the counselor. A minor who consents to the provision of counseling services under this section shall assume financial responsibility for the costs of such services, if any.

(c) Notwithstanding any other law to the contrary, no spouse, parent, custodian, or guardian, whose consent has not been obtained or who has no prior knowledge that the minor has consented to the provision of such counseling services for alcohol or drug abuse shall be liable for the costs incurred by virtue of the minor's consent.

(d) Notwithstanding any other law to the contrary, any action to recover any debt founded upon any contract, obligation

or liability under this section shall not commence until a minor has reached the age of majority; provided that said action shall commence within two years of date a minor reaches the age of majority.

(e) The consent to the provision of furnishing counseling services for alcohol or drug abuse by the counselor when executed by a minor who is or professes to suffer from alcohol or drug abuse, shall be valid and binding as if the minor had achieved the minor's majority; that is, the minor who is or professes to suffer from alcohol or drug abuse, shall be deemed to have, and shall have the same legal capacity, the infancy of the minor and any contrary provisions of law notwithstanding, and such consent shall not be subject to later disaffirmance by reason of such minority; and the consent of no other person (including but not limited to a spouse, parent, custodian, or guardian) shall be necessary in order to authorize such counseling services to such a minor.

(f) In the provision of counseling services for alcohol or drug abuse, the counselor shall seek to open the lines of communication between the minor and the spouse, parent, custodian, or guardian; provided such action is deemed beneficial in achieving the desired counseling objectives. [L 1978, c 179, §1; am L 1982, c 147, §25; gen ch 1993]

" **[§577-27] Missing children; reporting.** (a) Upon the filing of a police report that a child is missing by the parent or guardian, the law enforcement agency receiving notification shall:

- (1) Immediately inform all on-duty law enforcement officers of the existence of the missing child report;
- (2) Report pertinent information about the missing child to any other law enforcement agency having jurisdiction in the county; and
- (3) Immediately transmit pertinent information on the missing child for inclusion within the state juvenile justice information system, and, if it appears that the juvenile has left the State or may leave the State, the National Crime Information Center system.

(b) A missing child report filed with a law enforcement agency which has jurisdiction is sufficient documentation for entering a juvenile in the missing persons' files of the juvenile justice information system, the National Crime Information Center, or both. Law enforcement agencies having jurisdiction over the missing child shall comply with any information required by the National Crime Information Center to effectuate the purpose of this [section].

(c) In the case of a parental kidnapping, the law enforcement agency shall obtain from the reporting parent or guardian a certified copy of the custody papers. [L 1994, c 244, §1]

Cross References

Missing child center-Hawaii, see §28-121.

" **§577-28 Affidavit of caregiver consent for minor's health care.** (a) Except for children placed under the custody of the department of human services, pursuant to proceedings under chapter 587A, a caregiver who possesses and presents a notarized affidavit of caregiver consent for a minor's health care under subsection (b) may consent on behalf of a minor to primary and preventive medical and dental care and diagnostic testing, and other medically necessary health care and treatment. Examination and treatment shall be prescribed by or under the supervision of a physician, advanced practice nurse, dentist, or mental health professional licensed to practice in the State.

(b) An affidavit of caregiver consent for a minor's health care shall include the following:

- (1) The caregiver's name and current home address;
- (2) The caregiver's birthdate;
- (3) The number of the caregiver's Hawaii driver's license or state identification card;
- (4) The relationship of the caregiver to the minor;
- (5) The minor's name;
- (6) The minor's birthdate;
- (7) The length of time the minor has resided with the caregiver;
- (8) The caregiver's signature under oath affirming the truth of the matter asserted in the affidavit;
- (9) The signature of the minor's parent, guardian, or legal custodian consenting to the caregiver's authority over the minor's health care; provided that the signature of the minor's parent, guardian, or legal custodian shall not be necessary if the affidavit states that the caregiver has been unable to obtain the signature of the minor's parent, guardian, or legal custodian, and includes a statement by the caregiver documenting the attempts to obtain the signature of the minor's parent, guardian, or legal custodian; and
- (10) A statement, as follows:

"General Notices:

This declaration does not affect the rights of the minor's parent, guardian, or legal custodian regarding the care, custody, and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor.

The minor's parent or legal custodian may at any time rescind this affidavit of caregiver consent for a minor's health care by providing written notification of the rescission to the appropriate health care professional.

A person who relies in good faith on this affidavit of caregiver consent for a minor's health care has no obligation to conduct any further inquiry or investigation and shall not be subject to civil or criminal liability or to professional disciplinary action because of that reliance."

(c) The affidavit of caregiver consent for a minor's health care shall be superseded by written notification from the minor's parent, guardian, or legal custodian to the health care professionals providing services to the minor that the affidavit has been rescinded.

(d) Any person who relies in good faith on the affidavit of caregiver consent for a minor's health care shall:

- (1) Have no obligation to conduct any further inquiry or investigation; and
- (2) Not be subject to civil or criminal liability or to professional disciplinary action because of such reliance.

(e) The consent authorized by this section shall not be applicable for purposes of the Individuals with Disabilities Education Act (20 U.S.C. section 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 791).

(f) The caregiver consent for a minor's health care is a separate document and shall serve a purpose distinct from the affidavit for caregiver consent under section 302A-482.

(g) As used in this section, "caregiver" means any person who is at least eighteen years of age and:

- (1) Is related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section 571-46(a)(2) but who is not the legal custodian or guardian of the minor; or
- (2) Has resided with the minor continuously during the immediately preceding period of six months or more. [L 2005, c 208, §1; am L 2008, c 114, §4; am L 2010, c 135, §7]

Law Journals and Reviews

Consent for Testing and Treatment of Minors in Hawaii. 13
HBJ, no. 13, at 165 (2009).

" **[\$577-29] Mental health services relating to minors; diagnosis, counseling, and related activities.** (a)

Notwithstanding any other law to the contrary, a minor who is fourteen years of age or older may consent to mental health treatment or counseling services provided by a licensed mental health professional if, in the opinion of the licensed mental health professional, the minor is mature enough to participate intelligently in the mental health treatment or counseling services; provided that the consent of the minor's parent or legal guardian shall be required to prescribe medication to the minor or to place the minor into an out-of-home or residential treatment program.

(b) The mental health treatment or counseling services provided to a minor as authorized by this section shall include involvement of the minor's parent or legal guardian, unless the licensed mental health professional, after consulting with the minor, determines that the involvement would be inappropriate. The licensed mental health professional shall state in the client record whether and when the treating clinician attempted to contact the minor's parent or legal guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the treating licensed mental health professional's opinion, it would be inappropriate to contact the minor's parent or guardian.

(c) A minor may not abrogate consent provided by a parent or legal guardian on the minor's behalf. A parent or legal guardian may not abrogate consent given by the minor on the minor's own behalf.

(d) If a minor consents to receive mental health treatment or counseling services pursuant to this section, the minor shall not be liable for payment.

(e) The minor's parent or legal guardian is not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling services, and then only for services rendered with the participation of the parent or guardian.

(f) As used in this section:

"Licensed mental health professional" means any of the following:

- (1) A person licensed as a mental health counselor pursuant to chapter 453D;

- (2) A person licensed as a marriage and family therapist pursuant to chapter 451J;
- (3) A clinical social worker licensed pursuant to chapter 467E;
- (4) A person licensed as a psychologist pursuant to chapter 465; or
- (5) A board certified, or board eligible, licensed psychiatrist.

"Mental health treatment or counseling services" means the provision of outpatient mental health treatment or counseling by a licensed mental health professional. [L 2016, c 181, §1]

Revision Note

In subsection (f), definitions rearranged pursuant to §23G-15.