

**CHAPTER 578**  
**ADOPTION**

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## **Cross References**

Adoption assistance compact, see chapter 350C.

Adoption assistance program, see §§346-301 to 305.

Interstate compact on placement of children, see chapter 350E.

Medicaid-related mandates, see chapter 431L.

## **Attorney General Opinions**

Rights attendant to status of adoption require compliance with statutory procedures; rights of hanai children discussed. Att. Gen. Op. 93-1.

## **Law Journals and Reviews**

Privacy v. Secrecy: The Open Adoption Records Movement and Its Impact on Hawai'i. 15 UH L. Rev. 483.

The "Hawaiianess" of Same-Sex Adoption. 30 UH L. Rev. 517 (2008).

" **§578-1 Who may adopt; jurisdiction; venue.** Any proper adult person, not married, or any person married to the legal father or mother of a minor child, or a husband and wife jointly, may petition the family court of the circuit in which the person or persons reside or are in military service or the family court of the circuit in which the individual to be adopted resides or was born or in which a child placing organization approved by the department of human services under the provisions of section 346-17 having legal custody (as defined in section 571-2) of the child is located, for leave to adopt an individual toward whom the person or persons do not sustain the legal relationship of parent and child and for a change of the name of the individual. When adoption is the goal of a permanent plan recommended by the department of human services and ordered pursuant to section 587A-31, the department may petition for adoption on behalf of the proposed adoptive parents. The petition shall be in such form and shall include such information and exhibits as may be prescribed by the family court. [RL 1945, pt of §12271; am L 1947, c 47, §1; am L 1953, c 115, pt of §1; RL 1955, §331-1; am imp L 1965, c 232, §1; HRS §578-1; am L 1969, c 183, §2; am L 1973, c 211, §3(a); am L 1976, c 194, §1(1); am L 1992, c 190, §3; am L 2010, c 135, §4]

## **Rules of Court**

Pleadings, see HFCR rule 103.

## Case Notes

Family court had jurisdiction over adoption of children residing in Philippines since petitioners were Hawaii residents. 421 F. Supp. 80.

In the absence of an adoption in writing parents are presumed not to have parted with the right of custody over their child. 6 H. 386.

Until legally adopted parent not precluded by surrender of child from asserting parental rights. 31 H. 328.

Child not "surrendered" by one parent when custody awarded by divorce decree to other parent, consent of such parent must be obtained for adoption of child. 32 H. 443.

Child not "abandoned" by mother who lives apart from husband. 32 H. 479.

"Abandoned" defined. 37 H. 532.

Adoption proceedings are wholly statutory. 45 H. 69, 361 P.2d 1054.

Cited: 42 H. 129, 137; 42 H. 640, 655.

## Law Journals and Reviews

The "Hawaiianess" of Same-Sex Adoption. 30 UH L. Rev. 517.

" **§578-1.5 Adoption.** Any person may be adopted under this chapter; provided that an adult to be adopted must give written consent to the adoption. [L 1976, c 194, §1(11); gen ch 1985; am L 1986, c 166, §1]

" **§578-2 Consent to adoption.** (a) Persons required to consent to adoption. Unless consent is not required or is dispensed with under subsection (c) hereof, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by:

- (1) The mother of the child;
- (2) A legal father as to whom the child is a legitimate child;
- (3) An adjudicated father whose relationship to the child has been determined by a court;
- (4) A presumed father under section 578-2(d);
- (5) A concerned natural father who is not the legal, adjudicated, or presumed father but who has demonstrated a reasonable degree of interest, concern or responsibility as to the welfare of a child, either:
  - (A) During the first thirty days after such child's birth; or

- (B) Prior to the execution of a valid consent by the mother of the child; or
- (C) Prior to the placement of the child with adoptive parents;

whichever period of time is greater;

- (6) Any person or agency having legal custody of the child or legally empowered to consent;
- (7) The court having jurisdiction of the custody of the child, if the legal guardian or legal custodian of the person of the child is not empowered to consent to adoption;
- (8) The child to be adopted if more than ten years of age, unless the court in the best interest of the child dispenses with the child's consent.

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse, if the adult is married.

(c) Persons as to whom consent not required or whose consent may be dispensed with by order of the court.

(1) Persons as to whom consent not required:

- (A) A parent who has deserted a child without affording means of identification for a period of ninety days;
- (B) A parent who has voluntarily surrendered the care and custody of the child to another for a period of two years;
- (C) A parent of the child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so;
- (D) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to provide for the care and support of the child when able to do so;
- (E) A natural father who was not married to the child's mother at the time of the child's conception or birth and who does not fall within the provisions of subsection (a)(3), (4), or (5);
- (F) A parent whose parental rights have been judicially terminated under the provisions of sections 571-61 to 571-63, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take the action;
- (G) A parent judicially declared mentally ill or intellectually disabled and who is found by the

- court to be incapacitated from giving consent to the adoption of the child;
- (H) Any legal guardian or legal custodian of the child sought to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of the person's written reasons for withholding consent, is found by the court to be withholding the person's consent unreasonably;
  - (I) A parent of a child who has been in the custody of a petitioner under this chapter for a period of at least one year and who entered the United States of America as a consequence of extraordinary circumstances in the child's country of origin, by reason of which extraordinary circumstances the existence, identity, or whereabouts of the child's parents is not reasonably ascertainable or there is no reasonable means of obtaining suitable evidence of the child's identity or availability for adoption;
  - (J) Any parent of the individual to be adopted, if the individual is an adult eligible for adoption under subsection (b); and
  - (K) A parent whose parental and custodial duties and rights have been divested by an award of permanent custody pursuant to section 587A-33;
- (2) Persons whose consent may be dispensed with by order of the court. The court may dispense with the consent of a parent who comes within subsection (a)(3), (4), or (5) herein, upon finding that:
- (A) The petitioner is the stepfather of the child and the child has lived with the child's legal mother and the petitioning stepfather for a period of at least one year;
  - (B) The father is a concerned father as provided by subsection (a)(5), herein, and has not filed a petition to adopt the child, or the petition to adopt the child filed by the father has been denied; or
  - (C) The father is an adjudicated, presumed, or concerned father as provided by subsections (a)(3), (4), or (5), herein, and is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education.

(d) Presumption of paternity. A man is presumed to be the natural father of a child if:

- (1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
- (2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
  - (A) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or
  - (B) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;
- (3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; and
  - (A) He has acknowledged his paternity of the child in writing filed with the department of health;
  - (B) With his consent he is named as the child's father on the child's birth certificate; or
  - (C) He is obligated to support the child under a written voluntary promise or by court order;
- (4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or
- (5) He acknowledges his paternity of the child in writing filed with the department of health, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. If the acknowledgment

is filed and not disputed by the mother and if another man is not presumed under this section to be the child's father, the department of health shall prepare a new certificate of birth in accordance with chapter 338.

(e) Notice of hearing; minor parent; consent authorizing selection of adoptive parents. No hearing of a petition for adoption shall be had unless each of the living parents of the child who falls within the provisions of subsection (a) and who has not consented to the proposed adoption, but who is alleged to come within the provisions of subsection (c)(1)(A), (B), (C) and (D) or (c)(2) of this section, and any man whose name appears as father on the child's birth certificate, shall have had due notice, actual or constructive, of the allegations of the petition and of the time and place of the hearing thereof. Such notice need not be given to any parent whose parental rights have been legally terminated as hereinabove provided or whose consent has been filed with the court.

The minority of a child's parent shall not be a bar to the right of such parent to execute a valid and binding consent to the adoption of such child.

Any parental consent required hereunder shall be valid and binding even though it does not designate any specific adoptive parent or parents, if it clearly authorizes the department of human services, or a child placing organization approved by the department under the provisions of section 346-17 or some proper person not forbidden by law to place a child for adoption, to select and approve an adoptive parent or parents for the child.

(f) Withdrawal of consent. A consent to adoption which has been filed or received in evidence in an adoption proceeding or which has been given to the department of human services or to a child placing organization approved by the department under section 346-17, or to any other proper person not forbidden by law to place or receive an individual for adoption, may not be withdrawn or repudiated after the individual has been placed for adoption, without the express approval of the court based upon a written finding that such action will be for the best interests of the individual to be adopted.

(g) Maintenance of action based on medical or surgical treatment of child barred when. A person who consents to adoption, or on whose behalf a consent to adoption is signed, and a nonconsenting parent whose consent is not required or is dispensed with hereunder shall be barred from maintaining any action based upon medical or surgical care or treatment given to the child with the permission of the petitioner or petitioners or the person or agency authorized by the parental consent to select and approve an adoptive parent or parents; provided that

nothing herein contained shall be construed to alienate or impair any cause of action accruing to the child for personal injury which may be sustained as a result of such medical or surgical care or treatment. [RL 1945, pt of §12271; am L 1951, c 42, §1 and c 330, §1; am L 1953, c 115, pt of §1; am L 1955, c 132, §1; RL 1955, §331-2; am L Sp 1959 2d, c 1, §20; am L 1965, c 108, §1; HRS §578-2; am L 1969, c 183, §3; am L 1970, c 105, §5; am L 1973, c 211, §3(b); am L 1975, c 117, §1(1); am L 1976, c 16, §§1, 2 and c 194, §1(2); am L 1980, c 56, §1; am L 1986, c 166, §2 and c 201, §1; am L 1987, c 339, §4; am L 1992, c 190, §4; am L 1993, c 160, §1; am L 2010, c 135, §5; am L 2011, c 220, §17]

### Rules of Court

Hearings, see Hawaii Family Court Rules, part C(II).

### Case Notes

Mother who in divorce case consents to provision awarding care, custody and control of child to husband and reserving visiting rights has not thereby surrendered to another the care and custody of the child within the meaning of this section. 32 H. 443. Voluntary surrender. 42 H. 250.

Appointment of guardian ad litem is within sound discretion of judge. 42 H. 250; 45 H. 69, 361 P.2d 1054.

Nonsupport not synonymous with abandonment. 50 H. 255, 438 P.2d 398.

"Has failed to communicate", as used in subsection (c), means failure, when able, to maintain contact which would show parental love and concern; actual visit is communication. 56 H. 412, 539 P.2d 467.

"Placed for adoption" under subsection (f) discussed. 73 H. 314, 832 P.2d 265.

Consent to adoption must be acknowledged under Hawaii family court rule 103(F)(5). 1 H. App. 364, 619 P.2d 1092.

On issue of whether court's allowance of withdrawal of consent to adoption under subsection (f) will be for the child's best interest, §§571-46(1) and 587-1 do not apply. 85 H. 165 (App.), 938 P.2d 1184.

" **§578-3 Custody of child pendente lite.** At any stage of the proceeding subsequent to the filing of the petition and prior to the entry of a decree, the court, upon a showing that the best interests of the child will be served thereby, may order that the petitioner or petitioners shall be entitled to retain the custody and control of the child and shall be



responsible for the care, maintenance and support of the child including any necessary medical or surgical treatment, pending the further order of the court. Such order may also authorize and legally obligate the petitioner or petitioners to arrange for the burial of the child if the child shall die prior to the entry of the decree. [RL 1945, pt of §12271; am L 1953, c 115, pt of §1; am L 1955, c 132, §1; RL 1955, §331-3; HRS §578-3; am L 1969, c 183, §4; am L 1973, c 211, §3(c)]

" **§578-4 Notice to resident nonconsenting legal parent whose rights have not been terminated.** If a legal parent to whom notice must be given as aforesaid is within the State, a summons issuing under the seal of the court and containing a notification as to the time and place of hearing, shall be served by the sheriff or the sheriff's deputy, any police officer, or any person authorized by court rule, upon such parent by the delivery to the parent of a certified copy thereof, and of the petition for adoption; or in case the parent cannot be found, by leaving copies of the summons and petition with some agent or person transacting the business of the parent, or by leaving such copies at the parent's last known place of residence. When service is made pursuant to this section, the time appointed for the hearing of the petition shall be not less than ten days subsequent to the date of service as herein provided. [L 1919, c 3, pt of §1; RL 1925, §3035; RL 1935, §4521; RL 1945, §12272; am L 1953, c 115, pt of §1; RL 1955, §331-4; am L 1963, c 85, §3; HRS §578-4; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 1994, c 8, §1]

#### **Cross References**

Sheriff, etc., see §26-14.6.

#### **Rules of Court**

Summons, see HFCR rule 4.

" **§578-5 Same; proof of.** A return of service of the summons shall be made by the serving officer in the manner prescribed by section 634-22, and be similarly effective. [L 1919, c 3, pt of §1; RL 1925, §3036; RL 1935, §4522; RL 1945, §12273; RL 1955, §331-5; HRS §578-5]

#### **Revision Note**

Section "634-22" substituted for "634-58".

" **§578-6 Notice to nonresident or unlocated nonconsenting legal parent whose rights have not been terminated.** If a legal parent to whom notice must be given as aforesaid was never an inhabitant of the State, or has removed therefrom, or if, after due diligence, the parent cannot be found within the State, and the fact appears by affidavit to the satisfaction of the court, it may be ordered by the court that the service be made under section 578-7. [L 1919, c 3, pt of §1; RL 1925, §3037; RL 1935, §4523; RL 1945, §12274; am L 1953, c 115, pt of §1; RL 1955, §331-6; HRS §578-6; am L 1973, c 211, §3(d)]

" **§578-7 Substituted or constructive service.** Upon the filing of the affidavit referred to in section 578-6, the court may order service of the notice prescribed in sections 578-2 and 578-4 to be made as follows:

- (1) Personal service or service by registered mail without the State. If the residence of a nonresident legal parent is known or is ascertained at any stage of the proceeding prior to the filing of a return of service pursuant to section 578-5, the court may order that service of notice of the time and place of hearing of the petition and of a copy thereof and of a copy of the court's order be made upon such parent (A) by personal service thereof, without the State, by such person and in such manner as the court may direct, or (B) by sending certified copies of the petition and of the notice of the time and place of the hearing thereof and of the court's order, by registered mail, addressed to such parent, with request for return receipt, which service, evidenced by such receipt signed by the parent and returned to the clerk of the court, shall be regarded as equivalent to service by publication or in lieu thereof. When service is made pursuant to this paragraph, the time appointed for the hearing of the petition shall be not less than twenty-one days subsequent to the date of service as herein provided.
- (2) Service by publication. If the residence of such parent is not known and cannot be ascertained, or if an attempt to effect service by either of the methods authorized in paragraph (1) hereof is unsuccessful, the court may order that service shall be made by publication. The order shall direct that publication of notice of the pendency of the petition and of the time and place of the hearing thereof be made in a newspaper or newspapers suitable for the advertisement

of notices of judicial proceedings once in each week for not less than four successive weeks as the court may prescribe, the last publication to be not less than twenty-one days prior to the time appointed for the hearing of the petition. The court may, in addition to ordering publication, direct that a copy of the petition and notice be forthwith deposited in the post office, addressed to such parent at the parent's last known place of residence. The service of the notice required by section 578-2 shall be deemed complete at the expiration of the time prescribed by the order of publication. [L 1919, c 3, pt of §1; RL 1925, §3038; am L 1931, c 74, §1; RL 1935, §4524; RL 1945, §12275; am L 1953, c 115, pt of §1; RL 1955, §331-7; HRS §578-7; am L 1973, c 211, §3(e); gen ch 1985]

### **Cross References**

Service by certified mail, see §1-28.

" **§578-8 Hearing; investigation; decree.** (a) No decree of adoption shall be entered unless a hearing has been held at which the petitioner or petitioners, and any legal parent married to a petitioner, and any subject of the adoption whose consent is required, have personally appeared before the court, unless expressly excused by the court. After considering the petition and such evidence as the petitioners and any other properly interested person may wish to present, the court may enter a decree of adoption if it is satisfied (1) that the individual is adoptable under sections 578-1 and 578-2, (2) that the individual is physically, mentally, and otherwise suitable for adoption by the petitioners, (3) that the petitioners are fit and proper persons and financially able to give the individual a proper home and education, if the individual is a child, and (4) that the adoption will be for the best interests of the individual, which decree shall take effect upon such date as may be fixed therein by the court, such date to be not earlier than the date of the filing of the petition and not later than six months after the date of the entry of the decree.

(b) Before entering the decree, the court shall notify the director of human services of the pendency of such petition for adoption and allow a reasonable time for the director to make such investigation as the director may deem proper as to the fitness of the petitioners to adopt the individual, however, the physical disability of the petitioners shall not of itself be determinant of unfitness for purposes of this section, and as to

whether the best interest of the individual will be subserved by the adoption; provided that the court may, if it finds that the best interests of the individual to be adopted so require, by written order waive the requirement for notification and investigation above set forth, and enter its decree solely on the basis of the evidence adduced at the hearing. The director shall have the right to intervene in any adoption proceeding for the purpose of protecting the interests of the individual to be adopted or of any legal parent of the individual, and shall have the same rights of appeal as any party to the proceeding. The attorney general, upon the request of the director, shall represent the director in any such proceeding. The director, when notified as above set forth, or when the director has intervened without notification, shall make a report to the court within the time required, reporting the facts disclosed and the director's recommendation; provided that the director, if the director determines that the best interests of the individual to be adopted will be served thereby, may refer any such notification to a child placing organization approved by the department under section 346-17, and the report and recommendation of such organization, when forwarded by the director, shall be considered by the court in lieu of a report and recommendation by the director. If the court determines that any such report discloses facts adverse to the petitioners or indicates that the best interests of the individual to be adopted will not be subserved by the proposed adoption, it shall thereupon give notice of the determination to the petitioners and afford them a reasonable opportunity to rebut the report.

(c) In cases where a child is adopted from a foreign country and is brought into the State, the court, in its discretion, may dispense with a hearing upon receipt of a sworn affidavit, ex-parte, from the adoptive parents requesting that the hearing be dispensed with, and upon a finding that the issues it would have reviewed have received full consideration by the country from which the child was adopted and the United States Citizenship and Immigration Services. [RL 1945, pt of §12276; am L 1945, c 40, pt of §1; am L 1953, c 115, pt of §1; RL 1955, §331-8; am L Sp 1959 2d, c 1, §20; HRS §578-8; am L 1973, c 211, §3(f); am L 1976, c 194, §1(3); am L 1979, c 65, §2; gen ch 1985; am L 1987, c 339, §4; am L 1990, c 34, §35 and c 74, §1; am L 1995, c 37, §2; am L 2005, c 22, §41]

### **Cross References**

Prospective adoptive parents; standards and home studies, see §346-19.7.

## Rules of Court

Decrees and orders, see Hawaii Family Court Rules, part A(VII).

Hearings, see HFRC rule 106; intervention, see HFRC rule 24.

## Case Notes

Decree of adoption not subject to collateral attack where court had jurisdiction of parties and subject matter. 11 H. 450; 26 H. 439, 515.

Decree of adoption refused when petitioners not proper persons to have care and custody of child. 29 H. 238.

Appeal from decree, who may. 45 H. 69, 361 P.2d 1054.

Attorney's fees may not ordinarily be awarded in absence of statute or agreement. 56 H. 543, 544 P.2d 728.

Responsibility of department of human services discussed, where family court erred in concluding that adoption agreement, which allowed termination of foster board payments prior to completion of adoption process, violated public policy. 74 H. 409, 849 P.2d 55.

Cited: 26 H. 433, 443; 32 H. 443, 445.

" **§578-9 Custody of minor child after decree and before adoption.** The decree may provide that, during the period, if any, between the entry thereof and the effective date of adoption, the care, custody, and control of a minor child be given to the petitioner or petitioners, who, in such event, shall be liable during such period for the care, maintenance, and support of the minor child and for its torts in the same manner as legal parents, and may further provide for the supervision and visitation of the minor child by the director of human services or the director's agent during such period and for such reports in connection therewith as the court may require. [RL 1945, pt of §12276; am L 1945, c 40, pt of §1; am L 1953, c 115, pt of §1; RL 1955, §331-9; am L Sp 1959 2d, c 1, §20; HRS §578-9; am L 1973, c 211, §3(g); am L 1976, c 194, §1(4); gen ch 1985; am L 1987, c 339, §4]

" **§578-10 Disposition of minor child on discontinuance, withdrawal or denial of petition.** Upon the discontinuance or withdrawal or denial of any petition for adoption, the court may make appropriate temporary orders concerning the care, custody and control of a minor child involved and may refer the minor child to the department of human services or to another appropriate agency or officer for action as in the case of a minor subject to section 571-11(1). [RL 1945, pt of §12276; am L

1953, c 115, pt of §1; RL 1955, §331-10; am L Sp 1959 2d, c 1, §20; am imp L 1965, c 232, §1; HRS §578-10; am L 1973, c 211, §3(h); am L 1976, c 194, §1(5); am L 1987, c 339, §4]

### **Rules of Court**

Disposition of minor child on dismissal, etc., see HFCR rule 115.

" **§578-11 Disposition in case of death of petitioners.** Notwithstanding the death of a petitioner or the petitioners during the pendency of the petition, the court, if it finds that the best interests of the individual to be adopted will be served thereby, and, in the case of a surviving petitioner, that such petitioner so desires, may enter a decree of adoption as prayed for in the petition, effective as of the date of the filing of the petition. [RL 1945, pt of §12276; am L 1953, c 115, pt of §1; RL 1955, §331-11; HRS §578-11; am L 1973, c 211, §3(i); am L 1976, c 194, §1(6)]

" **§578-12 Setting aside or modifying decree.** At any time within one year from the date of entry of any decree of adoption, the court may, for good cause, set aside or modify the decree and, in connection therewith, may make appropriate orders, concerning the custody of the minor child and the disposition and handling of the record of adoption by the department of health. The setting aside or modification of any decree of adoption shall not affect any property rights which have become vested between the date of the entry of the decree or the effective date of the decree and the effective date of any order setting aside or modifying the decree of adoption.

No decree of adoption shall be subject to attack in any collateral proceeding, and, after the expiration of one year from the date of its entry, no decree of adoption shall be subject to direct attack upon any ground other than fraud rendering the decree void as of the time of its entry. [RL 1945, pt of §12276; am L 1945, c 40, pt of §1; am L 1947, c 47, §2; am L 1953, c 115, pt of §1; RL 1955, §331-12; am L Sp 1959 2d, c 1, §19; HRS §578-12; am L 1973, c 211, §3(j)]

### **Case Notes**

Review of decree: Persons entitled to petition for review, and to appeal from court's determination. 45 H. 69, 361 P.2d 1054.

Decree may not be attacked after one year except on the ground of fraud. 1 H. App. 364, 619 P.2d 1092.

" **§578-13 Change of name.** The court may fix or change the given name and the family name of an adoptive minor child to the name stipulated by the adoptive parents or that name which is in the best interest of the child.

The court may fix or change the given name and family name of an adoptive individual who is an adult at the time of the filing of the petition for adoption to the name stipulated by the adoptive parents or that name which is in the best interest of the adult. [RL 1945, pt of §12276; am L 1945, c 40, pt of §1; am L 1953, c 115, pt of §1; RL 1955, §331-13; HRS §578-13; am L 1973, c 211, §3(k); am L 1976, c 194, §1(7); am L 1987, c 278, §2]

#### Case Notes

Change of family name is mandatory. 45 H. 69, 361 P.2d 1054.

" **§578-14 Record of adoption.** (a) A certified copy of the decree of adoption, or a certified abstract thereof on a form approved by the department of health, after the decree has become effective, shall be sent to the department. The department shall cause to be made a new record of the birth in the name of the individual, as fixed or changed by the decree, with the names of the adoptive parents and, upon request of both adoptive parents, or the sole adoptive parent if there is only one, that the name or names of either or both of the natural parents appear on the certificate, with the name of a natural parent who consents to be named on the certificate.

(b) If a new birth certificate is issued, the original birth certificate shall be sealed and filed with the decree or the abstract thereof, and the sealed package shall be opened only as provided in section 578-15(b).

(c) If the birth of the individual occurred outside of the State and a record of birth exists, the certified copy of the decree or the abstract thereof, shall be transmitted by the department of health to the birth registration authorities of the place of the individual's birth with a request that those authorities take appropriate action with respect to the record of the individual's birth. If the birth of the individual occurred outside of the State, or if the birth of an individual born in the State has not been registered with the department of health, or if other good cause exists, the clerk of the court, upon request, and with the approval of the family court, upon the finding of the court that the action is for the best interests of the individual involved, shall furnish to the adoptive parents, or to the individual, or to any proper person

acting in their behalf, a certified copy or abstract of the decree of adoption or a certificate of adoption in a form approved by the court. If the parental rights of a parent or the parents of a minor child have been judicially terminated under chapter 571 prior to the entry of the decree, a certified copy of the decree shall be filed in the termination proceeding. [L 1945, c 40, pt of §2; am L 1947, c 47, §3; am L 1949, c 328, §1; am L 1953, c 115, pt of §1; RL 1955, §331-14; am L Sp 1959 2d, c 1, §19; HRS §578-14; am L 1973, c 211, §3(1); am L 1976, c 194, §1(8); am L 1980, c 153, §7; am L 1990, c 338, §4]

### **Cross References**

Records and documents, see §338-20.

### **Rules of Court**

New birth certificates, see HFCR rule 112.

### **Law Journals and Reviews**

Privacy v. Secrecy: The Open Adoption Records Movement and Its Impact on Hawai'i. 15 UH L. Rev. 483.

### **Case Notes**

Agreement of adoption not recorded, of no validity. 7 H. 273. Provision for new record cited. 49 H. 273, 276, 283, 414 P.2d 925.

Cited: 45 H. 69, 80, 361 P.2d 1054.

" **§578-14.5 Medical information on the natural parents of the adopted minor child.** (a) The department of health shall prepare a standard form entitled, "medical information form", for the purpose of perpetuating medical information on the natural parents of the adopted minor child. This form shall include a request for any information relating to the adopted child's potential genetic or other inheritable diseases or afflictions, including but not limited to known genetic disorders, inheritable diseases, and similar medical histories, if known, of the parents of the natural parents. The department of health shall make these forms available to all affected public agencies, all child placing organizations approved by the department of human services under section 346-17, attorneys, and other private individuals assisting the natural or adoptive parents in the adoption process, and the family court.



(b) All affected public agencies and all child placing organizations approved by the department of human services under section 346-17 shall make reasonable efforts to complete this form with medical information on both natural parents, to obtain from the natural parents written consent to the release of this information to or for the benefit of the adopted child, and whenever possible, to obtain from the natural mother a signed release to receive a copy of all of her medical records, relating to the birth of the adopted child, which are within the possession of the hospital or other facility at which the child was born. When applicable, the family court may require the petitioner or the petitioner's agent in the adoption proceeding to obtain this completed form from the natural parents with their consents and the signed release from the natural mother.

(c) Whenever possible, a completed form with the required information on each natural parent shall accompany any document, to be filed with the family court, which requests the relinquishment, termination, or divestiture of parental rights, as provided under sections 571-61 and 587A-31, and the petition for adoption under this chapter. If available, a copy of the hospital or other facility's medical records under subsection (b) shall also accompany the document to be filed in the family court. This copy shall not be disseminated to the parties and shall be sealed by the family court pending transmittal to the department of health.

(d) For good cause shown, the family court may waive the requirement in subsection (c).

(e) If the natural parents have been court ordered to complete the forms required in subsection (c) pursuant to section 587A-28(e)(6), and have either failed to complete the forms or have failed to return the completed forms to the department of human services, the requirement in subsection (c) shall be waived.

(f) The completed forms shall be made a part of the records of the department of health.

(g) The completed forms and, if applicable, the previously sealed copy of the natural mother's medical records shall be forwarded to the department of health. The department shall extract from the medical records pertinent information relating to inheritable diseases and genetic disorders and shall retain this information in an abstract. The completed forms and the abstract, if available, shall be included in the department's adoption records.

(h) An adopted child upon reaching the age of majority, the adoptive parent, guardian, or custodian on behalf of a minor adopted child, or an authorized designee of the adult adopted child or of the minor's adoptive parent may file a written

application with the department of health for access to the information described in subsection (g).

(i) Upon the filing of the application in subsection (h), the department of health shall furnish the applicant with a copy of the completed forms and, if available, the abstract of pertinent information from the natural mother's medical records. The department is authorized to disclose the information under this subsection without prior court approval, notwithstanding section 338-20(e).

Nothing in this section shall be construed or applied in any manner to require any public agency or child placing organization to reveal the identities of the natural parents without their consents. [L 1988, c 274, §1; am L 1991, c 148, §§1, 2; am L 2001, c 67, §1; am L 2010, c 135, §6]

" **§578-15 Secrecy of proceedings and records.** (a) The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of human services or the director's agent, or by any proper person on a showing of good cause therefor, upon order of the court. Except in the case of an individual being adopted by a person married to the legal father or mother of the individual or unless authorized by the court, no petition for adoption shall set forth the name of the individual sought to be adopted or the name of either of the parents of the individual; provided that the legal name of the individual and the name of each of the individual's legal parents may be added to the petition by amendment during the course of the hearing thereof and shall be included in the decree. The hearing of the petition shall be in chambers and shall not be open to the public.

(b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except:

- (1) Upon order of the family court upon a showing of good cause;
- (2) After the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or the adoptive parents;

- (3) After the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the natural parents;
- (4) Upon request by the adopted individual or the adoptive parents for information contained in the records concerning ethnic background and necessary medical information; or
- (5) Upon request by a natural parent for a copy of the original birth certificate.

As used in this subsection, "natural parent" means a biological mother or father, or a legal parent who is not also the biological parent.

(c) The clerk of the court shall keep a docket of all adoption proceedings, which may be inspected only by order of the family court. [L 1945, c 40, pt of §2; am L 1953, c 115, pt of §1; RL 1955, §331-15; am L Sp 1959 2d, c 1, §20; HRS §578-15; am L 1973, c 211, §3(m); am L 1976, c 194, §1(9); gen ch 1985; am L 1987, c 339, §4; am L 1990, c 338, §5; am L 1991, c 45, §1; am L 2016, c 80, §2]

### **Rules of Court**

Confidentiality, see HFCR rule 79.

### **Law Journals and Reviews**

Privacy v. Secrecy: The Open Adoption Records Movement and Its Impact on Hawai'i. 15 UH L. Rev. 483.

### **Case Notes**

Cited: 45 H. 69, 79, 361 P.2d 1054.

" **§578-16 Effect of adoption.** (a) A legally adopted individual shall be considered to be a natural child of the whole blood of the adopting parent or parents as provided in the Uniform Probate Code, relating to the descent of property.

(b) The former legal parent or parents of an adopted individual and any other former legal kindred shall not be considered to be related to the individual as provided in the Uniform Probate Code except as provided in this section.

(c) An adopted individual and the individual's adopting parent or parents shall sustain towards each other the legal relationship of parents and child and shall have all the rights and be subject to all the duties of that relationship, including the rights of inheritance from and through each other and the legal kindred of the adoptive parent or parents, the same as if

the individual were the natural child of the adopting parent or parents.

(d) Except as provided in subsection (e), all legal duties and rights between the individual and the individual's former legal parent or parents shall cease from the time of the adoption; provided that if the individual is adopted by a person married to a legal parent of the individual, the full reciprocal rights and duties which theretofore existed between the legal parent and the individual, and the rights of inheritance as between the individual and the legal parent and the legal relatives of the parent, as provided in chapter 560, shall continue, notwithstanding the adoption, subject only to the rights acquired by and the duties imposed upon the adoptive parents by reason of the adoption.

(e) Notwithstanding subsections (b) and (d), if an individual is adopted before that individual attains the age of majority and:

- (1) The individual is adopted by a spouse of a natural parent of the individual; or
- (2) The individual is adopted by a natural grandparent, aunt, uncle, or sibling of the individual or the spouse of a natural grandparent, aunt, uncle, or sibling;

then for the purposes of interpretation or construction of a disposition in any will, trust, or other lifetime instrument, whether executed before or after the order of adoption, and for purposes of determining heirs at law, the rights of the adopted individual and the individual's descendants with respect to the individual's natural family shall not be affected by the adoption, and they shall be included in any determination of heirs or members of any class, unless specifically excluded by name or class.

(f) An adopted individual, who by reason of subsection (e) would be a member of two or more designations or classes pursuant to a single instrument, both by relationship through a natural parent and through an adoptive parent, shall be entitled to benefit by membership in only one of these designations or classes, which shall be the larger share.

(g) For purposes of this section, if a person has been adopted more than once, the term "natural parent" includes an adopting parent by an earlier adoption.

(h) An individual legally adopted under the laws of any state or territory of the United States or under the laws of any nation shall be accorded the same rights and benefits in all respects as an individual adopted under this chapter. [L 1905, c 83, §1; am L 1915, c 47, §3; am L 1919, c 3, §1; RL 1925, §3041; RL 1935, §4527; RL 1945, §12278; am L 1953, c 115, pt of §1; RL

1955, §331-16; HRS §578-16; am L 1976, c 194, §1(10) and c 200, pt of §1; gen ch 1985; am L 1992, c 148, §2]

### Attorney General Opinions

Natural first cousins who by adoption become uncle and niece not disqualified to intermarry. Att. Gen. Op. 62-49.

For vital statistics purposes, an adoption has no effect on the race of the adopted individual. Att. Gen. Op. 83-3.

Subsection (a) cited in discussion of hanai children. Att. Gen. Op. 93-1.

### Case Notes

Agreement of adoption not recorded, of no validity. 2 H. 660; 7 H. 273; 23 H. 241.

L 1905, c 83 conferred right of inheritance on one adopted by agreement prior to statute. 21 H. 304. Adoptive child inherits through its adoptive parent's father. 26 H. 439. Adopted child can inherit through adoptive parents and may be an heir of ancestor of adoptive parent. 42 H. 129. Review of decisions on inheritance by adopted children. 42 H. 640. Had testator not desired the adopted child to be a natural child he could have so drawn his will. Id. Presumed testator intended to follow the policy of the law to treat adopted children as natural children, when such policy had its origin before the will was executed. 49 H. 273, 414 P.2d 925. Adopted child "issue" of testator's child. Id.

Adoption of adults is not authorized by statute. 24 H. 643.

Adopted child is "lawful issue". 35 H. 104, aff'd 115 F.2d 956.

Adoption decree severs relationship between child and nonconsenting parent. 56 H. 462, 541 P.2d 13.

" **§578-17 Guardian ad litem.** Upon a finding by the court, in any stage of a proceeding under this chapter, that the best interests of a child whose adoption is sought herein will be served by the appointment of a guardian ad litem for said child, the court may appoint a guardian ad litem to preserve, protect and promote the best interests of the child. [L 1975, c 117, §1(2)]

### Rules of Court

Guardians ad litem, see HFCR rule 17(c).