
A BILL FOR AN ACT

RELATING TO CHILD CUSTODY.

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

1 SECTION 1. Section 302A-481, Hawaii Revised Statutes, is
2 amended by amending the definition of "caregiver" to read as
3 follows:

4 "Caregiver" means any person who is at least eighteen
5 years of age and:

- 6 (1) Related by blood, marriage, or adoption to the minor,
7 including a person who is entitled to an award of
8 custody pursuant to section [~~571-46(a)(2)~~] 571-
9 46(a)(5) but is not the legal custodian or guardian of
10 the minor; or
11 (2) Has resided with the minor for a continuous immediate
12 preceding period of six months or more."

13 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) In actions for divorce, separation, annulment,
16 separate maintenance, or any other proceeding where there is at
17 issue a dispute as to the custody of a minor child, the court,



1 during the pendency of the action, at the final hearing, or any
2 time during the minority of the child, may make an order for the
3 custody of the minor child as may seem necessary or proper. In
4 awarding the custody, the court shall be guided by the following
5 standards, considerations, and procedures:

- 6 (1) [Custody] There shall be a presumption, rebuttable by
7 a preponderance of the evidence, that joint custody
8 and equally shared parenting time is in the best
9 interests of the child. If a deviation from equal
10 parenting time is warranted, the court shall construct
11 a parenting time schedule that maximizes the time each
12 parent or de facto custodian has with the child,
13 consistent with ensuring the child's welfare;
- 14 (2) If the parents live in the same county, custody and
15 visitation shall be shared equally, unless the court
16 finds that one or more parents is unable to provide
17 for the best interests of the child or the court
18 considers the issue of family violence pursuant to
19 paragraph (13);
- 20 (3) If the parents do not live in the same county, but
21 would otherwise qualify for shared custody and



1 visitation pursuant to paragraph (2), custody and
2 visitation may be awarded to either parent or to both
3 parents according to the best interests of the child,
4 and the court [~~also may~~] shall consider the frequent,
5 continuing, and meaningful contact of [each parent
6 ~~with the child unless the court finds that a parent is~~
7 ~~unable to act in the best interest of the child;]~~ the
8 child with each parent;

9 (4) If the court is unable to determine custody pursuant
10 to paragraphs (2) and (3), custody may be awarded to
11 either parent or to both parents according to the best
12 interests of the child, and the court shall consider
13 the frequent, continuing, and meaningful contact of
14 the child with each parent;

15 [~~(2)~~] (5) Custody may be awarded to persons other than the
16 father or mother whenever the award serves the best
17 interests of the child. Any person who has had de
18 facto custody of the child in a stable and wholesome
19 home and is a fit and proper person shall be entitled
20 prima facie to an award of custody;



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1 [~~(3)~~] (6) If a child is of sufficient age and capacity to
2 reason, so as to form an intelligent preference, the
3 child's wishes as to custody shall be considered and
4 be given due weight by the court;

5 (7) The motivations of the adults involved shall be
6 considered when determining the best interests of the
7 child;

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



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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~~] (9) 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)~~] (10) Any custody award shall be subject to
4 modification or change whenever the best interests of
5 the child require or justify the modification or
6 change and, wherever practicable, the same person who
7 made the original order shall hear the motion or
8 petition for modification of the prior award;

9 [~~(7)~~] (11) 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)~~] (12) The court may appoint a guardian ad litem to
16 represent the interests of the child and may assess
17 the reasonable fees and expenses of the guardian ad
18 litem as costs of the action, payable in whole or in
19 part by either or both parties as the circumstances
20 may justify;



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1 ~~[(9)]~~ (13) In every proceeding where there is at issue a
2 dispute as to the custody of a child, a determination
3 by the court that family violence has been committed
4 by a parent raises a rebuttable presumption that it is
5 detrimental to the child and not in the best interest
6 of the child to be placed in sole custody, joint legal
7 custody, or joint physical custody with the
8 perpetrator of family violence. In addition to other
9 factors that a court shall consider in a proceeding in
10 which the custody of a child or visitation by a parent
11 is at issue, and in which the court has made a finding
12 of family violence by a parent:

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

16 (B) The court shall consider the effect of incidents
17 of family violence on the relationship between
18 the child and each parent;

19 ~~[(B)]~~ (C) The court shall consider the perpetrator's
20 history of causing physical harm, bodily injury,
21 or assault or causing reasonable fear of physical



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1 harm, bodily injury, or assault to another
2 person; and

3 ~~[(C)]~~ (D) If a parent is absent or relocates because
4 of an act of family violence by the other parent,
5 the absence or relocation shall not be a factor
6 that weighs against the parent in determining
7 custody or visitation;

8 ~~[(10)]~~ (14) A court may award visitation to a parent who has
9 committed family violence only if the court finds that
10 adequate provision can be made for the physical safety
11 and psychological well-being of the child and for the
12 safety of the parent who is a victim of family
13 violence;

14 ~~[(11)]~~ (15) In a visitation order, a court may:

15 (A) Order an exchange of a child to occur in a
16 protected setting;

17 (B) Order visitation supervised by another person or
18 agency;

19 (C) Order the perpetrator of family violence to
20 attend and complete, to the satisfaction of the
21 court, a program of intervention for perpetrators



- 1 or other designated counseling as a condition of
2 the visitation;
- 3 (D) Order the perpetrator of family violence to
4 abstain from possession or consumption of alcohol
5 or controlled substances during the visitation
6 and for twenty-four hours preceding the
7 visitation;
- 8 (E) Order the perpetrator of family violence to pay a
9 fee to defray the costs of supervised visitation;
- 10 (F) Prohibit overnight visitation;
- 11 (G) Require a bond from the perpetrator of family
12 violence for the return and safety of the child.
13 In determining the amount of the bond, the court
14 shall consider the financial circumstances of the
15 perpetrator of family violence;
- 16 (H) Impose any other condition that is deemed
17 necessary to provide for the safety of the child,
18 the victim of family violence, or other family or
19 household member; and
- 20 (I) Order the address of the child and the victim to
21 be kept confidential;



1 during the visitation or have access to the
2 communication or equipment; whether the person seeking
3 visitation has previously violated a temporary
4 restraining order or protective order; and whether
5 adequate provision can be made for the physical safety
6 and psychological well-being of the child and for the
7 safety of the custodial parent;

8 ~~[(16)]~~ (20) The court may set conditions for visitation by
9 electronic communication under paragraph ~~[(15),]~~ (19),
10 including visitation supervised by another person or
11 occurring in a protected setting. Visitation by
12 electronic communication shall not be used to:

13 (A) Replace or substitute an award of custody or
14 physical visitation except where:

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

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



1 (B) Justify or support the relocation of a custodial
2 parent; and

3 [~~17~~] (21) Notwithstanding any provision to the contrary,
4 no natural parent shall be granted custody of or
5 visitation with a child if the natural parent has been
6 convicted in a court of competent jurisdiction in any
7 state of rape or sexual assault and the child was
8 conceived as a result of that offense; provided that:

9 (A) A denial of custody or visitation under this
10 paragraph shall not affect the obligation of the
11 convicted natural parent to support the child;

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

14 (C) This paragraph shall not apply if subsequent to
15 the date of conviction, the convicted natural
16 parent and custodial natural parent cohabitate
17 and establish a mutual custodial environment for
18 the child; and

19 (D) A custodial natural parent may petition the court
20 to grant the convicted natural parent custody and
21 visitation denied pursuant to this paragraph, and



1 upon such petition the court may grant custody
 2 and visitation to the convicted natural parent
 3 where it is in the best interest of the child."

4 SECTION 3. Section 571-46.1, Hawaii Revised Statutes, is
 5 amended by amending subsection (a) to read as follows:

6 "(a) Upon the application of either parent, joint custody
 7 may be awarded in the discretion of the court. For the purpose
 8 of assisting the court in making a determination whether an
 9 award of joint custody is appropriate, the court shall, upon the
 10 request of either party, direct that an investigation be
 11 conducted pursuant to the provisions of section [~~571-46(a)(4)~~.]
 12 571-46(a)(8)."

13 SECTION 4. Section 577-28, Hawaii Revised Statutes, is
 14 amended by amending subsection (g) to read as follows:

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

- 17 (1) Is related by blood, marriage, or adoption to the
- 18 minor, including a person who is entitled to an award
- 19 of custody pursuant to section [~~571-46(a)(2)~~] 571-
- 20 46(a)(5) but who is not the legal custodian or
- 21 guardian of the minor; or



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Report Title:

Family Court; Child Custody; Parental Parity

Description:

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

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