
A BILL FOR AN ACT

RELATING TO CHILD CUSTODY.

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

1 SECTION 1. Section 571-46, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) In actions for divorce, separation, annulment,
4 separate maintenance, or any other proceeding where there is at
5 issue a dispute as to the custody of a minor child, the court,
6 during the pendency of the action, at the final hearing, or any
7 time during the minority of the child, may make an order for the
8 custody of the minor child as may seem necessary or proper. In
9 awarding the custody, the court shall be guided by the following
10 standards, considerations, and procedures:

11 (1) ~~[Custody]~~ Where the parents are unable to agree, and
12 unless the court finds that it is not in the best
13 interests of the child based upon clear and convincing
14 evidence, custody should be awarded to [either parent
15 or to] ensure the inclusion of both parents [according
16 to the best interests] in the raising of the child[,
17 and the court also may consider frequent, continuing,



1 and to ensure maximum continuing physical, emotional,
2 and meaningful contact [~~of each parent with the child~~
3 ~~unless the court finds that a parent is unable to act~~
4 ~~in the best interest of the child,~~] with both parents;

5 (2) Custody may be awarded to persons other than the
6 father or mother whenever the award serves the best
7 interest of the child. Any person who has had de
8 facto custody of the child in a stable and wholesome
9 home and is a fit and proper person shall be entitled
10 prima facie to an award of custody;

11 (3) If a child is of sufficient age and capacity to
12 reason, so as to form an intelligent preference, the
13 child's wishes as to custody shall be considered and
14 be given due weight by the court;

15 (4) Whenever good cause appears therefor, the court may
16 require an investigation and report concerning the
17 care, welfare, and custody of any minor child of the
18 parties. When so directed by the court, investigators
19 or professional personnel attached to or assisting the
20 court, hereinafter referred to as child custody
21 evaluators, shall make investigations and reports that



1 shall be made available to all interested parties and
2 counsel before hearing, and the reports may be
3 received in evidence if no objection is made and, if
4 objection is made, may be received in evidence;
5 provided the person or persons responsible for the
6 report are available for cross-examination as to any
7 matter that has been investigated; and provided
8 further that the court shall define, in accordance
9 with section 571-46.4, the requirements to be a court-
10 appointed child custody evaluator, the standards of
11 practice, ethics, policies, and procedures required of
12 court-appointed child custody evaluators in the
13 performance of their duties for all courts, and the
14 powers of the courts over child custody evaluators to
15 effectuate the best interests of a child in a
16 contested custody dispute pursuant to this section.
17 Where there is no child custody evaluator available
18 that meets the requirements and standards, or any
19 child custody evaluator to serve indigent parties, the
20 court may appoint a person otherwise willing and
21 available in accordance with section 571-46.4;



H.B. NO. 2179

- 1 (5) The court may hear the testimony of any person or
2 expert, produced by any party or upon the court's own
3 motion, whose skill, insight, knowledge, or experience
4 is such that the person's or expert's testimony is
5 relevant to a just and reasonable determination of
6 what is for the best physical, mental, moral, and
7 spiritual well-being of the child whose custody is at
8 issue;
- 9 (6) Any custody award shall be subject to modification or
10 change whenever the best interests of the child
11 require or justify the modification or change and,
12 wherever practicable, the same person who made the
13 original order shall hear the motion or petition for
14 modification of the prior award;
- 15 (7) Reasonable visitation rights shall be awarded to
16 parents, grandparents, siblings, and any person
17 interested in the welfare of the child in the
18 discretion of the court, unless it is shown that
19 rights of visitation are detrimental to the best
20 interests of the child;



1 (8) The court may appoint a guardian ad litem to represent
2 the interests of the child and may assess the
3 reasonable fees and expenses of the guardian ad litem
4 as costs of the action, payable in whole or in part by
5 either or both parties as the circumstances may
6 justify;

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

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



1 (B) The court shall consider the perpetrator's
2 history of causing physical harm, bodily injury,
3 or assault or causing reasonable fear of physical
4 harm, bodily injury, or assault to another
5 person; and

6 (C) If a parent is absent or relocates because of an
7 act of family violence by the other parent, the
8 absence or relocation shall not be a factor that
9 weighs against the parent in determining custody
10 or visitation;

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

17 (11) In a visitation order, a court may:

18 (A) Order an exchange of a child to occur in a
19 protected setting;

20 (B) Order visitation supervised by another person or
21 agency;



H.B. NO. 2179

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



1 the victim of family violence, or other family or
2 household member; and

3 (I) Order the address of the child and the victim to
4 be kept confidential;

5 (12) The court may refer but shall not order an adult who
6 is a victim of family violence to attend, either
7 individually or with the perpetrator of the family
8 violence, counseling relating to the victim's status
9 or behavior as a victim as a condition of receiving
10 custody of a child or as a condition of visitation;

11 (13) If a court allows a family or household member to
12 supervise visitation, the court shall establish
13 conditions to be followed during visitation;

14 (14) A supervised visitation center shall provide a secure
15 setting and specialized procedures for supervised
16 visitation and the transfer of children for visitation
17 and supervision by a person trained in security and
18 the avoidance of family violence;

19 (15) The court may include in visitation awarded pursuant
20 to this section visitation by electronic communication
21 provided that the court shall additionally consider



1 the potential for abuse or misuse of the electronic
2 communication, including the equipment used for the
3 communication, by the person seeking visitation or by
4 persons who may be present during the visitation or
5 have access to the communication or equipment; whether
6 the person seeking visitation has previously violated
7 a temporary restraining order or protective order; and
8 whether adequate provision can be made for the
9 physical safety and psychological well-being of the
10 child and for the safety of the custodial parent;

11 (16) The court may set conditions for visitation by
12 electronic communication under paragraph (15),
13 including visitation supervised by another person or
14 occurring in a protected setting. Visitation by
15 electronic communication shall not be used to:

16 (A) Replace or substitute an award of custody or
17 physical visitation except where:

18 (i) Circumstances exist that make a parent
19 seeking visitation unable to participate in
20 physical visitation, including military
21 deployment; or



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



H.B. NO. 2179

1 (D) A custodial natural parent may petition the court
2 to grant the convicted natural parent custody and
3 visitation denied pursuant to this paragraph, and
4 upon such petition the court may grant custody
5 and visitation to the convicted natural parent
6 where it is in the best interest of the child."

7 SECTION 2. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

10

INTRODUCED BY:  _____

JAN 21 2020



H.B. NO. 2179

Report Title:

Child Custody; Shared Parenting

Description:

Amends provisions relating to the award of child custody to ensure the maximum inclusion of both parents in the raising of the child, unless not in the child's best interests.

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

