

JAN 17 2020

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# 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]~~ When 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,]



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1           and to ensure continuing physical, emotional, and  
2           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           on an equal basis;

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

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

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



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



1 court may appoint a person otherwise willing and  
2 available in accordance with section 571-46.4;

3 (5) The court may hear the testimony of any person or  
4 expert, produced by any party or upon the court's own  
5 motion, whose skill, insight, knowledge, or experience  
6 is such that the person's or expert's testimony is  
7 relevant to a just and reasonable determination of  
8 what is for the best physical, mental, moral, and  
9 spiritual well-being of the child whose custody is at  
10 issue;

11 (6) Any custody award shall be subject to modification or  
12 change whenever the best interests of the child  
13 require or justify the modification or change and,  
14 wherever practicable, the same person who made the  
15 original order shall hear the motion or petition for  
16 modification of the prior award;

17 (7) Reasonable visitation rights shall be awarded to  
18 parents, grandparents, siblings, and any person  
19 interested in the welfare of the child in the  
20 discretion of the court, unless it is shown that



1           rights of visitation are detrimental to the best  
2           interests of the child;

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

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



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

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

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

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

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



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- 1           (A) Order an exchange of a child to occur in a
- 2                     protected setting;
- 3           (B) Order visitation supervised by another person or
- 4                     agency;
- 5           (C) Order the perpetrator of family violence to
- 6                     attend and complete, to the satisfaction of the
- 7                     court, a program of intervention for perpetrators
- 8                     or other designated counseling as a condition of
- 9                     the visitation;
- 10          (D) Order the perpetrator of family violence to
- 11                     abstain from possession or consumption of alcohol
- 12                     or controlled substances during the visitation
- 13                     and for twenty-four hours preceding the
- 14                     visitation;
- 15          (E) Order the perpetrator of family violence to pay a
- 16                     fee to defray the costs of supervised visitation;
- 17          (F) Prohibit overnight visitation;
- 18          (G) Require a bond from the perpetrator of family
- 19                     violence for the return and safety of the child.
- 20                     In determining the amount of the bond, the court



1 shall consider the financial circumstances of the  
2 perpetrator of family violence;

3 (H) Impose any other condition that is deemed  
4 necessary to provide for the safety of the child,  
5 the victim of family violence, or other family or  
6 household member; and

7 (I) Order the address of the child and the victim to  
8 be kept confidential;

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

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

18 (14) A supervised visitation center shall provide a secure  
19 setting and specialized procedures for supervised  
20 visitation and the transfer of children for visitation





1 and supervision by a person trained in security and  
2 the avoidance of family violence;

3 (15) The court may include in visitation awarded pursuant  
4 to this section visitation by electronic communication  
5 provided that the court shall additionally consider  
6 the potential for abuse or misuse of the electronic  
7 communication, including the equipment used for the  
8 communication, by the person seeking visitation or by  
9 persons who may be present during the visitation or  
10 have access to the communication or equipment; whether  
11 the person seeking visitation has previously violated  
12 a temporary restraining order or protective order; and  
13 whether adequate provision can be made for the  
14 physical safety and psychological well-being of the  
15 child and for the safety of the custodial parent;

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



- 1           (A) Replace or substitute an award of custody or
- 2           physical visitation except where:
- 3           (i) Circumstances exist that make a parent
- 4           seeking visitation unable to participate in
- 5           physical visitation, including military
- 6           deployment; or
- 7           (ii) Physical visitation may subject the child to
- 8           physical or extreme psychological harm; or
- 9           (B) Justify or support the relocation of a custodial
- 10          parent; and
- 11       (17) Notwithstanding any provision to the contrary, no
- 12       natural parent shall be granted custody of or
- 13       visitation with a child if the natural parent has been
- 14       convicted in a court of competent jurisdiction in any
- 15       state of rape or sexual assault and the child was
- 16       conceived as a result of that offense; provided that:
- 17       (A) A denial of custody or visitation under this
- 18       paragraph shall not affect the obligation of the
- 19       convicted natural parent to support the child;
- 20       (B) The court may order the convicted natural parent
- 21       to pay child support;



1 (C) This paragraph shall not apply if subsequent to  
2 the date of conviction, the convicted natural  
3 parent and custodial natural parent cohabituate  
4 and establish a mutual custodial environment for  
5 the child; and

6 (D) A custodial natural parent may petition the court  
7 to grant the convicted natural parent custody and  
8 visitation denied pursuant to this paragraph, and  
9 upon such petition the court may grant custody  
10 and visitation to the convicted natural parent  
11 where it is in the best interest of the child."

12 SECTION 2. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

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

15

INTRODUCED BY: 



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**Report Title:**

Child Custody; Parental Parity

**Description:**

Amends provisions relating to the award of child custody to ensure the 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.*

