

JAN 18 2019

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# A BILL FOR AN ACT

RELATING TO THE FAMILY COURT.

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

1           SECTION 1. The legislature finds that an argument could be  
2 made that delays experienced by parents and children while  
3 awaiting the disposition of appeals from family court decisions  
4 violate the due process clauses of both the state and federal  
5 constitutions. Indeed, delays conflict with the mission of the  
6 family court, which, as stated on the family court's website, is  
7 "to provide a fair, speedy, economical, and accessible forum for  
8 the resolution of matters involving families and children."

9           The legislature further finds that in recent years, parents  
10 and children have had to wait up to eight years for their cases  
11 to be resolved. For example, the delays between the filing of  
12 the family court order and the decision by the supreme court  
13 have lasted as long as:

- 14           (1) Four years and eleven months in *Brutsch v. Brutsch*,  
15           139 Hawaii 373 (2017);
- 16           (2) Two years and six months in *Tumaneng v. Tumaneng*, 138  
17           Hawaii 468, 382 P.3d 280 (Haw. 2016); and



1           (3) Seven years and eight months in *Cox v. Cox*, 138 Hawaii  
2           476 (2016).

3           Delays can result in unacceptable incongruities if the  
4 matter to be decided becomes moot while the appeal is pending,  
5 such as when a child reaches the age of majority before the  
6 child custody decision is finally made.

7           Therefore, the purpose of this Act is to expedite the  
8 appeals of family court orders by making the orders appealable  
9 to the supreme court instead of to the intermediate court of  
10 appeals.

11           SECTION 2. Section 571-54, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "**§571-54 Appeal.** (a) An interested party, aggrieved by  
14 any order or decree of the court, may appeal to the  
15 [~~intermediate appellate~~] supreme court for review of questions  
16 of law and fact upon the same terms and conditions as in other  
17 cases in the circuit court, and review shall be governed by  
18 chapter 602, except as hereinafter provided. Where the decree  
19 or order affects the custody of a child or minor, the appeal  
20 shall be heard at the earliest practicable time. In cases under  
21 section 571-11, the record on appeal shall be given a fictitious



1 title, to safeguard against publication of the names of the  
2 children or minors involved.

3       **(b)** The stay of enforcement of an order or decree, or the  
4 pendency of an appeal, shall not suspend the order or decree of  
5 the court regarding a child or minor, or discharge the child or  
6 minor from the custody of the court or of the person,  
7 institution, or agency to whose care the child or minor has been  
8 committed, unless otherwise ordered by the family court or by  
9 the [~~appellate~~] supreme court after an appeal is taken. Pending  
10 final disposition of the case, the family court or the  
11 [~~appellate~~] supreme court, after the appeal is taken, may make  
12 such order for temporary custody as is appropriate in the  
13 circumstances. If the [~~appellate~~] supreme court does not  
14 dismiss the proceedings and discharge the child or minor, it  
15 shall affirm or modify the order of the family court and remand  
16 the child or minor to the jurisdiction of the court for  
17 disposition not inconsistent with the appellate court's finding  
18 on the appeal.

19       **(c)** An order or decree entered in a proceeding based upon  
20 section 571-11(1), (2), or (6) shall be subject to appeal only  
21 as follows:



1           Within twenty days from the date of the entry of any such  
2 order or decree, any party directly affected thereby may file a  
3 motion for a reconsideration of the facts involved. The motion  
4 and any supporting affidavit shall set forth the grounds on  
5 which a reconsideration is requested and shall be sworn to by  
6 the movant or the movant's representative. The judge shall hold  
7 a hearing on the motion, affording to all parties concerned the  
8 full right of representation by counsel and presentation of  
9 relevant evidence. The findings of the judge upon the hearing  
10 of the motion and the judge's determination and disposition of  
11 the case thereafter, and any decision, judgment, order, or  
12 decree affecting the child and entered as a result of the  
13 hearing on the motion, shall be set forth in writing and signed  
14 by the judge. Any party aggrieved by [~~any such~~] the findings,  
15 judgment, order, or decree shall have the right to appeal  
16 therefrom to the [~~intermediate appellate~~] supreme court, upon  
17 the same terms and conditions as in other cases in the circuit  
18 court, and review shall be governed by chapter 602; provided  
19 that no [~~such~~] motion for reconsideration shall operate as a  
20 stay of [~~any such~~] the findings, judgment, order, or decree  
21 unless the judge of the family court so orders; and provided



# S.B. NO. 865

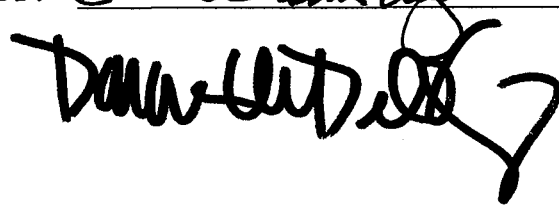
1 further that no informality or technical irregularity in the  
 2 proceedings prior to the hearing on the motion for  
 3 reconsideration shall constitute grounds for the reversal of  
 4 [~~any such~~] the findings, judgment, order, or decree by the  
 5 [~~appellate~~] supreme court."

6 SECTION 3. This Act does not affect rights and duties that  
 7 matured, penalties that were incurred, and proceedings that were  
 8 begun before its effective date.

9 SECTION 4. Statutory material to be repealed is bracketed  
 10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval.  
 12

INTRODUCED BY:

~~DC~~ with-App  




# S.B. NO. 865

**Report Title:**

Family Court; Supreme Court

**Description:**

Makes decisions of the family court appealable to the supreme court instead of the intermediate court of appeals.

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

