
A BILL FOR AN ACT

RELATING TO FAMILY COURTS.

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

1 SECTION 1. The legislature finds that every year, almost
2 seven hundred thousand children are neglected, physically
3 abused, and sexually abused in the United States. In ninety-
4 five per cent of these cases, the abuser is someone the child
5 knows and trusts. In seventy-eight per cent of child abuse
6 cases, the victim is harmed by a parent. An estimated one
7 thousand seven hundred children die every year from abuse and
8 neglect.

9 Children who survive physical or sexual abuse may
10 experience life-long trauma and are more vulnerable to mental
11 and physical illness. Survivors of child abuse are at higher
12 risk of developing mood disorders, anxiety disorders, substance
13 abuse disorders, and impulse control disorders. Survivors of
14 child abuse are also more likely to experience poor health as
15 adults and are at greater risk of diabetes, sexually transmitted
16 diseases, heart disease, and early death. Given these risks, it
17 is critically important that family courts protect children from



1 known violent and sexual offenders when making custody
2 decisions.

3 Accordingly, the purpose of this Act is to:

4 (1) Clarify that if a court determines that a parent has a
5 felony conviction for a violent or sexual offense in
6 which the victim was a minor, or if the parent is
7 required to register as a sex offender, the conviction
8 or classification shall raise a rebuttable presumption
9 that it is detrimental to the child and not in the
10 best interests of the child to grant that parent
11 custodial rights;

12 (2) Clarify that no child shall be placed in a home in
13 which a person resides who has committed family
14 violence, has a felony conviction for a violent or
15 sexual offense in which the victim was a minor, or is
16 required to register as a sex offender, nor have
17 unsupervised visitation with that person, unless the
18 court states the reasons for its findings in writing
19 or on the record;

20 (3) Establish that no person shall be granted physical or
21 legal custody of, or unsupervised visitation with, a



1 child if anyone residing in that person's household is
2 required to register as a sex offender, unless the
3 court finds there is no significant risk to the child
4 and states its reasons in writing or on the record;

5 (4) Require a court to consider registration as a sex
6 offender a presumption of risk that affects the burden
7 of producing evidence;

8 (5) Establish that no person shall be granted custody of,
9 or unsupervised visitation with, a child if the person
10 has been convicted of murder in the first degree and
11 the victim of the murder was the other parent of the
12 child, unless the court finds there is no risk to the
13 child's health, safety, and welfare, and states the
14 reasons for its findings in writing or on the record;
15 and

16 (6) Provide that no court shall disclose the custodial
17 parent's place of residence, place of employment, or
18 the child's school, unless the court finds that
19 disclosure would be in the best interests of the
20 child.



1 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) 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 should be awarded to either parent or to both
12 parents according to the best interests of the child,
13 and the court also may consider frequent, continuing,
14 and meaningful contact of each parent with the child
15 unless the court finds that a parent is unable to act
16 in the best interest of the child;

17 (2) Custody may be awarded to persons other than the
18 father or mother whenever the award serves the best
19 interest of the child. Any person who has had de
20 facto custody of the child in a stable and wholesome



1 home and is a fit and proper person shall be entitled
2 prima facie to an award of custody;

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

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



1 with section 571-46.4, the requirements to be a court-
2 appointed child custody evaluator, the standards of
3 practice, ethics, policies, and procedures required of
4 court-appointed child custody evaluators in the
5 performance of their duties for all courts, and the
6 powers of the courts over child custody evaluators to
7 effectuate the best interests of a child in a
8 contested custody dispute pursuant to this section.

9 Where there is no child custody evaluator available
10 that meets the requirements and standards, or any
11 child custody evaluator to serve indigent parties, the
12 court may appoint a person otherwise willing and
13 available in accordance with section 571-46.4;

- 14 (5) The court may hear the testimony of any person or
15 expert, produced by any party or upon the court's own
16 motion, whose skill, insight, knowledge, or experience
17 is such that the person's or expert's testimony is
18 relevant to a just and reasonable determination of
19 what is for the best physical, mental, moral, and
20 spiritual well-being of the child whose custody is at
21 issue;



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

7 (7) Reasonable visitation rights shall be awarded to
8 parents, grandparents, siblings, and any person
9 interested in the welfare of the child in the
10 discretion of the court, unless it is shown that
11 rights of visitation are detrimental to the best
12 interests of the child;

13 (8) The court may appoint a guardian ad litem to represent
14 the interests of the child and may assess the
15 reasonable fees and expenses of the guardian ad litem
16 as costs of the action, payable in whole or in part by
17 either or both parties as the circumstances may
18 justify;

19 (9) In every proceeding where there is at issue a dispute
20 as to the custody of a child, a determination by the
21 court that family violence has been committed by a



1 parent, a parent has a felony conviction for a violent
2 or sexual offense in which the victim was a minor, or
3 a parent is required to register as a sex offender
4 raises a rebuttable presumption that it is detrimental
5 to the child and not in the best interest of the child
6 to be placed in sole custody, joint legal custody, or
7 joint physical custody with the perpetrator of family
8 violence[-], the parent who has a felony conviction
9 for a violent or sexual offense in which the victim
10 was a minor, or the parent who is required to register
11 as a sex offender. In addition to other factors that
12 a court shall consider in a proceeding in which the
13 custody of a child or visitation by a parent is at
14 issue, and in which the court has made a finding of
15 family violence by a parent[+], that a parent has a
16 felony conviction for a violent or sexual offense in
17 which the victim was a minor, or that the parent is
18 required to register as a sex offender:

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; and

11 (D) A child shall not be placed in a home in which a
12 person resides who a court has determined has
13 committed family violence, has a felony
14 conviction for a violent or sexual offense in
15 which the victim was a minor, or is required to
16 register as a sex offender, nor have unsupervised
17 visitation with that person, unless the court
18 states the reasons for its findings in writing or
19 on the record;

20 (10) A court may award visitation to a parent who has
21 committed family violence or has a felony conviction



1 for a violent or sexual offense in which the victim
2 was a minor only if the court finds that there is no
3 significant risk to the child and that adequate
4 provision can be made for the physical safety and
5 psychological well-being of the child and for the
6 safety of the parent who is a victim of family
7 violence[+] and states the

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

9 (A) Order an exchange of a child to occur in a
10 protected setting;

11 (B) Order visitation supervised by another person or
12 agency;

13 (C) Order the perpetrator of family violence or a
14 parent who has a felony conviction for a violent
15 or sexual offense in which the victim was a minor
16 to attend and complete, to the satisfaction of
17 the court, a program of intervention for
18 perpetrators or other designated counseling as a
19 condition of the visitation;

20 (D) Order the perpetrator of family violence or a
21 parent who has a felony conviction for a violent



1 or sexual offense in which the victim was a minor
2 to abstain from possession or consumption of
3 alcohol or controlled substances during the
4 visitation and for twenty-four hours preceding
5 the visitation;

6 (E) Order the perpetrator of family violence or a
7 parent who has a felony conviction for a violent
8 or sexual offense in which the victim was a minor
9 to pay a fee to defray the costs of supervised
10 visitation;

11 (F) Prohibit overnight visitation;

12 (G) Require a bond from the perpetrator of family
13 violence or a parent with a felony conviction for
14 a violent or sexual offense in which the victim
15 was a minor for the return and safety of the
16 child. In determining the amount of the bond,
17 the court shall consider the financial
18 circumstances of the perpetrator of family
19 violence;

20 (H) Impose any other condition that is deemed
21 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



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

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

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

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

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

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



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]~~ the petition, the court may grant
5 custody and visitation to the convicted natural
6 parent where it is in the best interest of the
7 child;

8 (18) No person shall be granted physical or legal custody
9 of, or unsupervised visitation with, a child if anyone
10 residing in the household is required, as a result of
11 a felony conviction in which the victim was a minor,
12 to register as a sex offender unless the court finds
13 there is no significant risk to the child and states
14 its reasons in writing or on the record. When making
15 a determination regarding significant risk to the
16 child, the court shall deem that the requirement to
17 register as a sex offender resulting from a felony
18 conviction in which the victim was a minor constitutes
19 a presumption of risk that affects the burden of
20 producing evidence;



1 (19) No person shall be granted custody of, or unsupervised
2 visitation with, a child if the person has been
3 convicted of murder in the first degree and the victim
4 of the murder was the other parent of the child who is
5 the subject of the order unless the court finds that
6 there is no risk to the child's health, safety, and
7 welfare, and states the reasons for its findings in
8 writing or on the record. In making its findings
9 under this section, the court may consider, among
10 other things:

11 (A) The wishes of the child; provided that the child
12 is of sufficient age and capacity to form an
13 intelligent preference;

14 (B) Credible evidence that the convicted parent was
15 the victim of intimate partner violence committed
16 by the deceased parent; provided that the
17 evidence may include but shall not be limited to
18 written reports from:

19 (i) Law enforcement agencies;

20 (ii) Child protective services or other social
21 welfare agencies;



1 (iii) Courts;

2 (iv) Medical facilities; or

3 (v) Other public agencies or private non-profit

4 organizations that provide services to

5 victims of domestic violence; or

6 (C) Testimony from a qualified expert witness that

7 the convicted parent was the victim of intimate

8 partner violence;

9 (20) Unless and until a custody or visitation order is

10 issued pursuant to this subsection, no person shall

11 permit or cause the child to visit or remain in the

12 custody of the convicted parent without the consent of

13 the child's custodian or legal guardian; and

14 (21) The court shall not disclose, or cause to be

15 disclosed, the custodial parent's place of residence,

16 place of employment, or the child's school, unless the

17 court finds that the disclosure would be in the best

18 interest of the child.

19 (b) In determining what constitutes the best interest of

20 the child under this section, the court shall consider, but not

21 be limited to, the following:



- 1 (1) Any history of sexual or physical abuse of a child by
- 2 a parent;
- 3 (2) Any history of neglect or emotional abuse of a child
- 4 by a parent;
- 5 (3) The overall quality of the parent-child relationship;
- 6 (4) The history of caregiving or parenting by each parent
- 7 prior and subsequent to a marital or other type of
- 8 separation;
- 9 (5) Each parent's cooperation in developing and
- 10 implementing a plan to meet the child's ongoing needs,
- 11 interests, and schedule; provided that this factor
- 12 shall not be considered in any case where the court
- 13 has determined that family violence has been committed
- 14 by a parent;
- 15 (6) The physical health needs of the child;
- 16 (7) The emotional needs of the child;
- 17 (8) The safety needs of the child;
- 18 (9) The educational needs of the child;
- 19 (10) The child's need for relationships with siblings;
- 20 (11) Each parent's actions demonstrating that they allow
- 21 the child to maintain family connections through



1 family events and activities; provided that this
2 factor shall not be considered in any case where the
3 court has determined that family violence has been
4 committed by a parent;

5 (12) Each parent's actions demonstrating that they separate
6 the child's needs from the parent's needs;

7 (13) Any evidence of past or current drug or alcohol abuse
8 by a parent;

9 (14) The mental health of each parent;

10 (15) The areas and levels of conflict present within the
11 family; [and]

12 (16) A parent's prior wilful misuse of the protection from
13 abuse process under chapter 586 to gain a tactical
14 advantage in any proceeding involving the custody
15 determination of a minor. [~~Such-wilful~~] Wilful misuse
16 may be considered only if it is established by clear
17 and convincing evidence, and if it is further found by
18 clear and convincing evidence that in the particular
19 family circumstance the wilful misuse tends to show
20 that, in the future, the parent who engaged in the
21 wilful misuse will not be able to cooperate



1 successfully with the other parent in their shared
2 responsibilities for the child. The court shall
3 articulate findings of fact whenever relying upon this
4 factor as part of its determination of the best
5 interests of the child. For the purposes of this
6 section, when taken alone, the voluntary dismissal of
7 a petition for protection from abuse shall not be
8 treated as prima facie evidence that a wilful misuse
9 of the protection from abuse process has occurred[-];
10 and

11 (17) Whether the parent has a felony conviction for a
12 violent or sexual offense in which the victim was a
13 minor."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.

20
INTRODUCED BY:



JAN 25 2021



H.B. NO. 792

Report Title:

Family Courts; Sex Offenders; Violent Crime; Custody Orders; Visitation Orders

Description:

Amends the criteria and procedures used by family courts in determining child custody and visitation rights. Addresses the considerations and factors a family court shall consider in determining custody or visitation if one parent has a felony conviction for a violent or sexual offense in which the victim was a minor, is required to register as a sex offender, or has been convicted of murdering the other parent. Requires the family court to state its reasons in writing or on the record when it finds there is no risk to the child's health, safety, and welfare. Prohibits the family court from disclosing the custodial parent's place of residence, place of employment, or the child's school unless disclosure is in the child's best interests.

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