

JAN 20 2023

A BILL FOR AN ACT

RELATING TO PARENTAL PARITY.

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[+] in the best
11 interests of the child:

12 (1) Custody should be awarded to either parent or to both
13 parents according to the best interests of the child,
14 and the court also [~~may~~] shall consider frequent,
15 continuing, and meaningful contact of [~~each parent~~
16 ~~with~~] the child with each parent unless the court



1 finds that [~~a parent is~~] one or both parents are
2 unable to act in the best interest of the child;
3 (2) Custody may be awarded to persons other than the
4 [~~father or mother~~] parents whenever the award serves
5 the best interest of the child. Any person who has
6 had de facto custody of the child in a stable and
7 wholesome home and is a fit and proper person shall be
8 entitled prima facie to an award of custody;
9 (3) If a child is of sufficient age and capacity to
10 reason, so as to form an intelligent preference, the
11 child's wishes as to custody shall be considered and
12 be given due weight by the court;
13 (4) Whenever good cause appears therefor, the court may
14 require an investigation and report concerning the
15 care, welfare, and custody of any minor child of the
16 parties. When so directed by the court, investigators
17 or professional personnel attached to or assisting the
18 court, hereinafter referred to as child custody
19 evaluators, shall make investigations and reports that
20 shall be made available to all interested parties and
21 counsel before hearing, and the reports may be



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

- 20 (5) The court may hear the testimony of any person or
21 expert, produced by any party or upon the court's own



1 motion, whose skill, insight, knowledge, or experience
2 is such that the person's or expert's testimony is
3 relevant to a just and reasonable determination of
4 what is for the best physical, mental, moral, and
5 spiritual well-being of the child whose custody is at
6 issue;

7 (6) If the court determines that, upon clear and
8 convincing evidence, physical custody should not be
9 awarded equally to both parents, the court shall set
10 forth the determining evidence in the written custody
11 order; provided that no person shall add to, modify,
12 nor exclude the documented evidence from the written
13 order;

14 [~~6~~] (7) Any custody award shall be subject to
15 modification or change whenever the best interests of
16 the child require or justify the modification or
17 change and, wherever practicable, the same person who
18 made the original order shall hear the motion or
19 petition for modification of the prior award;

20 [~~7~~] (8) Reasonable visitation rights shall be awarded to
21 parents, grandparents, siblings, and any person



1 interested in the welfare of the child in the
2 discretion of the court, unless it is shown that
3 rights of visitation are detrimental to the best
4 interests of the child;

5 ~~(8)~~ (9) The court may appoint a guardian ad litem to
6 represent the interests of the child and may assess
7 the reasonable fees and expenses of the guardian ad
8 litem as costs of the action, payable in whole or in
9 part by either or both parties as the circumstances
10 may justify;

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



1 is at issue, and in which the court has made a finding
2 of family violence by a parent:

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

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

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

16 [~~10~~] (11) A court may award visitation to a parent who has
17 committed family violence only if the court finds that
18 adequate provision can be made for the physical safety
19 and psychological well-being of the child and for the
20 safety of the parent who is a victim of family
21 violence;



- 1 [~~11~~] (12) In a visitation order, a court may:
- 2 (A) Order an exchange of a child to occur in a
- 3 protected setting;
- 4 (B) Order visitation supervised by another person or
- 5 agency;
- 6 (C) Order the perpetrator of family violence to
- 7 attend and complete, to the satisfaction of the
- 8 court, a program of intervention for perpetrators
- 9 or other designated counseling as a condition of
- 10 the visitation;
- 11 (D) Order the perpetrator of family violence to
- 12 abstain from possession or consumption of alcohol
- 13 or controlled substances during the visitation
- 14 and for twenty-four hours preceding the
- 15 visitation;
- 16 (E) Order the perpetrator of family violence to pay a
- 17 fee to defray the costs of supervised visitation;
- 18 (F) Prohibit overnight visitation;
- 19 (G) Require a bond from the perpetrator of family
- 20 violence for the return and safety of the child.
- 21 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)]~~ (13) The court may refer but shall not order an adult
10 who 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)]~~ (14) If a court allows a family or household member
16 to supervise visitation, the court shall establish
17 conditions to be followed during visitation;

18 ~~[(14)]~~ (15) A supervised visitation center shall provide a
19 secure setting and specialized procedures for
20 supervised visitation and the transfer of children for



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

3 ~~[(15)]~~ (16) The court may include in visitation awarded
4 pursuant to this section visitation by electronic
5 communication provided that the court shall
6 additionally consider the potential for abuse or
7 misuse of the electronic communication, including the
8 equipment used for the communication, by the person
9 seeking visitation or by persons who may be present
10 during the visitation or have access to the
11 communication or equipment; whether the person seeking
12 visitation has previously violated a temporary
13 restraining order or protective order; and whether
14 adequate provision can be made for the physical safety
15 and psychological well-being of the child and for the
16 safety of the custodial parent;

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



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- 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~~] (18) Notwithstanding any provision to the contrary,
12 no 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 cohabitate
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. Section 580-47, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§580-47 Support orders; division of property.** (a) Upon
15 granting a divorce, or thereafter if, in addition to the powers
16 granted in subsections [~~(e)~~] (d) and [~~(d)~~], (e), jurisdiction of
17 those matters is reserved under the decree by agreement of both
18 parties or by order of court after finding that good cause
19 exists, the court may make any further orders as shall appear
20 just and equitable (1) compelling the parties or either of them
21 to provide for the support, maintenance, and education of the



1 children of the parties; (2) compelling either party to provide
2 for the support and maintenance of the other party; (3) finally
3 dividing and distributing the estate of the parties, real,
4 personal, or mixed, whether community, joint, or separate; and
5 (4) allocating, as between the parties, the responsibility for
6 the payment of the debts of the parties whether community,
7 joint, or separate, and the attorney's fees, costs, and expenses
8 incurred by each party by reason of the divorce. In making
9 these further orders, the court shall take into consideration:
10 the respective merits of the parties, the relative abilities of
11 the parties, the condition in which each party will be left by
12 the divorce, the burdens imposed upon either party for the
13 benefit of the children of the parties, the concealment of or
14 failure to disclose income or an asset, or violation of a
15 restraining order issued under section 580-10(a) or (b), if any,
16 by either party, and all other circumstances of the case. In
17 establishing the amounts of child support, the court shall use
18 the guidelines established under section 576D-7. Provision may
19 be made for the support, maintenance, and education of an adult
20 or minor child and for the support, maintenance, and education
21 of an incompetent adult child whether or not the petition is



1 made before or after the child has attained the age of majority.
2 In those cases where child support payments are to continue due
3 to the adult child's pursuance of education, the agency, three
4 months prior to the adult child's nineteenth birthday, shall
5 send notice by regular mail to the adult child and the custodial
6 parent that prospective child support will be suspended unless
7 proof is provided by the custodial parent or adult child to the
8 child support enforcement agency, prior to the child's
9 nineteenth birthday, that the child is presently enrolled as a
10 full-time student in school or has been accepted into and plans
11 to attend as a full-time student for the next semester a post-
12 high school university, college, or vocational school. If the
13 custodial parent or adult child fails to do so, prospective
14 child support payments may be automatically suspended by the
15 child support enforcement agency, hearings officer, or court
16 upon the child reaching the age of nineteen years. In addition,
17 if applicable, the agency, hearings officer, or court may issue
18 an order terminating existing assignments against the
19 responsible parent's income and income assignment orders.



1 In addition to any other relevant factors considered, the
2 court, in ordering spousal support and maintenance, shall
3 consider the following factors:

- 4 (1) Financial resources of the parties;
- 5 (2) Ability of the party seeking support and maintenance
6 to meet his or her needs independently;
- 7 (3) Duration of the marriage;
- 8 (4) Standard of living established during the marriage;
- 9 (5) Age of the parties;
- 10 (6) Physical and emotional condition of the parties;
- 11 (7) Usual occupation of the parties during the marriage;
- 12 (8) Vocational skills and employability of the party
13 seeking support and maintenance;
- 14 (9) Needs of the parties;
- 15 (10) Custodial and child support responsibilities;
- 16 (11) Ability of the party from whom support and maintenance
17 is sought to meet his or her own needs while meeting
18 the needs of the party seeking support and
19 maintenance;
- 20 (12) Other factors which measure the financial condition in
21 which the parties will be left as the result of the



1 action under which the determination of maintenance is
2 made; [~~and~~]

3 (13) Probable duration of the need of the party seeking
4 support and maintenance[~~-~~];

5 (14) Any necessary reduction in employment due to the needs
6 of a dependent child of the marriage or the
7 circumstances of the marriage; and

8 (15) Wasting of assets by a parent.

9 The court may order support and maintenance to a party for
10 an indefinite period or until further order of the court;
11 provided that in the event the court determines that support and
12 maintenance shall be ordered for a specific duration wholly or
13 partly based on competent evidence as to the amount of time
14 which will be required for the party seeking support and
15 maintenance to secure adequate training, education, skills, or
16 other qualifications necessary to qualify for appropriate
17 employment, whether intended to qualify the party for a new
18 occupation, update or expand existing qualification, or
19 otherwise enable or enhance the employability of the party, the
20 court shall order support and maintenance for a period
21 sufficient to allow completion of the training, education,



1 skills, or other activity, and shall allow, in addition,
2 sufficient time for the party to secure appropriate employment.

3 (b) Any value given for a joint investment or asset is
4 presumed to be a joint gift. This subsection shall not apply to
5 inheritance assets.

6 [~~(b)~~] (c) An order as to the custody, management, and
7 division of property and as to the payment of debts and the
8 attorney's fees, costs and expenses incurred in the divorce
9 shall be final and conclusive as to both parties subject only to
10 appeal as in civil cases. The court shall at all times,
11 including during the pendency of any appeal, have the power to
12 grant any and all orders that may be necessary to protect and
13 provide for the support and maintenance of the parties and any
14 children of the parties to secure justice, to compel either
15 party to advance reasonable amounts for the expenses of the
16 appeal including attorney's fees to be incurred by the other
17 party, and to amend and revise such orders from time to time.

18 [~~(e)~~] (d) No order entered under the authority of
19 subsection (a) or entered thereafter revising so much of such an
20 order as provides for the support, maintenance, and education of
21 the children of the parties shall impair the power of the court



1 from time to time to revise its orders providing for the
2 support, maintenance, and education of the children of the
3 parties upon a showing of a change in the circumstances of
4 either party or any child of the parties since the entry of any
5 prior order relating to the support, maintenance, and education.
6 The establishment of the guidelines or the adoption of any
7 modifications made to the guidelines set forth in section 576D-7
8 may constitute a change in circumstances sufficient to permit
9 review of the support order. A material change of circumstances
10 will be presumed if support as calculated pursuant to the
11 guidelines is either ten per cent greater or less than the
12 support amount in the outstanding support order. The need to
13 provide for the child's health care needs through health
14 insurance or other means shall be a basis for petitioning for a
15 modification of the support order. The most current guidelines
16 shall be used to calculate the amount of the child support
17 obligation.

18 ~~(d)~~ (e) Upon the motion of either party supported by an
19 affidavit setting forth in particular a material change in the
20 physical or financial circumstances of either party, or upon a
21 showing of other good cause, the moving party, in the discretion



1 of the court, and upon adequate notice to the other party, may
2 be granted a hearing. The fact that the moving party is in
3 default or arrears in the performance of any act or payment of
4 any sums theretofore ordered to be done or paid by the party
5 shall not necessarily constitute a bar to the granting of the
6 hearing. The court, upon such hearing, for good cause shown may
7 amend or revise any order and shall consider all proper
8 circumstances in determining the amount of the allowance, if
9 any, which shall thereafter be ordered.

10 [~~e~~] (f) The responsible parent or the custodial parent
11 shall have a right to petition the family court or the child
12 support enforcement agency not more than once every three years
13 for review and adjustment of the child support order without
14 having to show a change in circumstances. The responsible or
15 custodial parent shall not be precluded from petitioning the
16 family court or the child support enforcement agency for review
17 and adjustment more than once in any three-year period if the
18 second or subsequent request is supported by proof of a
19 substantial or material change of circumstances.

20 [~~f~~] (g) Attorney's fees and costs. The court hearing
21 any motion for orders either revising an order for the custody,



1 support, maintenance, and education of the children of the
2 parties, or an order for the support and maintenance of one
3 party by the other, or a motion for an order to enforce any such
4 order or any order made under subsection (a) of this section,
5 may make such orders requiring either party to pay or contribute
6 to the payment of the attorney's fees, costs, and expenses of
7 the other party relating to such motion and hearing as shall
8 appear just and equitable after consideration of the respective
9 merits of the parties, the relative abilities of the parties,
10 the economic condition of each party at the time of the hearing,
11 the burdens imposed upon either party for the benefit of the
12 children of the parties, the concealment of or failure to
13 disclose income or an asset, or violation of a restraining order
14 issued under section 580-10(a) or (b), if any, by either party,
15 and all other circumstances of the case."

16 SECTION 3. Section 580-74, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§580-74 Support of spouse and children. Upon decreeing a
19 separation, the court may make [~~such~~] further decree for the
20 support and maintenance of either spouse and for the support,
21 maintenance, and education of minor children, by either spouse,



1 or out of the property of either spouse, as may appear just and
 2 proper; provided that the court shall apply the considerations
 3 required by section 580-47(a) in formulation of any support
 4 decree in any action under this part; and provided further that
 5 the court may amend or revise any [~~such~~] decree in the same
 6 manner and under the same circumstances as provided for by
 7 section [~~580-47(d).~~] 580-47(e)."

8 SECTION 4. This Act does not affect rights and duties that
 9 matured, penalties that were incurred, and proceedings that were
 10 begun before its effective date.

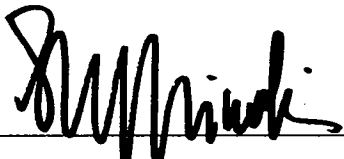
11 SECTION 5. If any provision of this Act, or the
 12 application thereof to any person or circumstance, is held
 13 invalid, the invalidity does not affect other provisions or
 14 applications of the Act that can be given effect without the
 15 invalid provision or application, and to this end the provisions
 16 of this Act are severable.

17 SECTION 6. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect upon its approval.

20

INTRODUCED BY:





S.B. NO. 721

Report Title:

Minors; Child Custody; Best Interests of the Child; Spousal Support Orders

Description:

Requires the court to consider frequent, continuing, and meaningful contact with each parent when awarding custody of a minor child, unless the court finds that one or both parents are unable to act in the best interests of the child, and to make certain findings in the custody order. Requires the court to consider any necessary reduction in employment due to the needs of a dependent child and wasting of assets when ordering spousal support and maintenance. Establishes that in the division and distribution of property as a result of a divorce, any value given for a joint investment or asset is presumed to be a joint gift except for inheritance assets.

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

