

ACT 79

H.B. NO. 349

A Bill for an Act Relating to Children.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-11, Hawaii Revised Statutes, is amended to read as follows:

“§571-11 Jurisdiction; children. Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings:

- (1) Concerning any person who is alleged to have committed an act [~~prior to~~] before achieving eighteen years of age that would constitute a violation or attempted violation of any federal, state, or local law or county ordinance. Regardless of where the violation

- occurred, jurisdiction may be taken by the court of the circuit where the person resides, is living, or is found, or in which the offense is alleged to have occurred;
- (2) Concerning any child living or found within the circuit[?] who is:
 - (A) [~~Who is neglected~~] Neglected as to or deprived of educational services because of the failure of any person or agency to exercise that degree of care for which it is legally responsible;
 - (B) [~~Who is beyond~~] Beyond the control of the child's parent or other custodian or whose behavior is injurious to the child's own or others' welfare;
 - (C) [~~Who is neither~~] Neither attending school nor receiving educational services required by law whether through the child's own misbehavior or nonattendance or otherwise; or
 - (D) [~~Who is in~~] In violation of curfew;
 - (3) To determine the custody of any child or appoint a guardian of any child;
 - (4) For the adoption of a person under chapter 578;
 - (5) For the termination of parental rights under sections 571-61 through 571-63;
 - (6) For judicial consent to the marriage, employment, or enlistment of a child, when consent is required by law;
 - (7) For the treatment or commitment of a mentally defective or mentally ill child, or a child with an intellectual disability;
 - (8) Under the Interstate Compact on Juveniles under chapter 582 or the Interstate Compact for Juveniles under chapter 582D;
 - (9) For the protection of any child under chapter 587A;
 - (10) For a change of name as provided in section 574-5(a)(2)(C); [~~and~~]
 - (11) Concerning custody or guardianship of an immigrant child pursuant to a motion for special immigrant juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of eighteen years for purposes of section 101(a)(27)(J) of the federal Immigration and Nationality Act. For the purposes of this paragraph, "child" means an unmarried individual under the age of twenty-one years[?]; and
 - (12) Concerning emancipation of a minor pursuant to section 577-25."

SECTION 2. Section 577-25, Hawaii Revised Statutes, is amended to read as follows:

~~“[§577-25]~~ **Emancipation of certain minors.** (a) Any law to the contrary notwithstanding, a minor [who has been married pursuant to chapter 572] shall be deemed to be emancipated [~~and shall be regarded as though he or she were of legal age and shall have all the rights, duties, privileges, and responsibilities provided by the civil law to a person who has reached the age of majority under civil law;~~ provided that:

- (1) ~~Nothing in this section shall be deemed to confer upon such person the right to vote in any federal, state, or county election or the right to purchase, possess, or sell alcoholic beverages; and~~
- (2) ~~Nothing in this section shall change the status of such persons as minors in connection with any criminal law, nor affect the exclusive original jurisdiction of the family court over such persons under section 571-11(1).~~

For purposes of this section, "minor" means a person under the age of majority:] if the minor has:

- (1) Entered into a valid marriage pursuant to chapter 572; or

(2) Received a declaration of emancipation issued by the family court pursuant to this section.

(b) An emancipated minor shall be considered to have the rights and responsibilities of an adult; provided that nothing in this section shall:

(1) Be deemed to confer upon an emancipated minor the right to vote in any federal, state, or county election, or the right to purchase, possess, consume, or sell alcoholic beverages, tobacco products, or electronic smoking devices;

(2) Prevent the petitioning minor from continuing to receive educational, mental health, or other services the minor is receiving solely due to the minor's age; or

(3) Change the status of the emancipated minor to be deemed a minor in connection with any criminal law or affect the exclusive original jurisdiction of the family court over such persons under sections 571-11(1) and (12).

(c) A minor shall be considered emancipated for the purposes of, but not limited to the right to:

(1) Enter into enforceable contracts, including apartment leases;

(2) Sue or be sued in the minor's own name;

(3) Retain the minor's personal earnings;

(4) Establish a separate domicile;

(5) Act autonomously, and with the rights and responsibilities of an adult, in all business relationships, including property transactions and obtaining accounts for utilities, except for estate or property matters that a court determines may require a conservator or guardian ad litem;

(6) Earn a living, subject only to the health and safety regulations designed to protect individuals under the age of majority regardless of their legal status;

(7) File the minor's own tax returns and pay taxes pursuant to applicable personal income tax laws;

(8) Authorize the minor's own preventive health care, medical care, dental care, mental health care, and substance abuse treatment without knowledge or liability of the minor's parents or guardian;

(9) Apply for a driver's license or other state licenses for which the minor may be eligible;

(10) Register for school;

(11) Marry;

(12) Apply to medical and other public assistance programs administered by the State or its political subdivisions;

(13) If the minor is a parent, make decisions and give authority in caring for the minor's child; and

(14) Execute a will and other estate planning documents, including trust documents, durable power of attorney, and an advance health care directive.

(d) A minor who has reached the age of sixteen years who seeks to be emancipated may file a petition for a declaration of emancipation with the family court in the circuit in which the minor resides. The petition shall be filed on behalf of the minor seeking emancipation by any state agency or an attorney of the minor, and a parent or guardian of a minor shall not, in their individual capacity or as a representative or agent of the minor, petition for emancipation of the minor.

(e) The petition for a declaration of emancipation shall be signed and verified by the petitioning minor, and shall include:

- (1) The minor's full name and birth date;
- (2) A certified copy of the minor's birth certificate, if available;
- (3) The name and last known address of the minor's parents or guardian;
- (4) The minor's present address and duration of the minor's residency at that address;
- (5) A declaration by the minor attesting that:
 - (A) The minor resides separately and apart from the minor's parents or guardian at the minor's own will;
 - (B) The minor is managing or has the ability to manage the minor's financial affairs, including supporting documentation of the minor's income and expenses;
 - (C) The minor is managing or has the ability to manage the minor's personal and social affairs, including supporting documentation on proof of housing; and
 - (D) The source of the minor's income is not derived from any activity in violation of any laws of the State or the United States; and
- (6) Any other information deemed necessary by the court.

The judiciary shall prepare and make available to the public forms that may be used for emancipation proceedings.

- (f) Upon receipt of the petition, the court shall:
 - (1) Set a date for hearing on the petition as soon as practicable;
 - (2) Issue a summons requiring the appearance of the minor's parents or guardian and any other person deemed necessary by the court unless the parents or guardian and the person deemed necessary by the court promise in writing to appear voluntarily; and
 - (3) Appoint a guardian ad litem to represent the interest of the minor throughout the pendency of the minor's emancipation proceedings.

Nothing in this subsection shall be construed to prevent the petitioning minor from obtaining the minor's own legal counsel to represent the minor in the emancipation proceeding.

(g) The fees and costs of a guardian ad litem appointed pursuant to subsection (f) may be paid for by the court, unless the minor or the minor's parents or guardian have sufficient funds.

(h) Proceedings for a petition for declaration of emancipation shall be heard by the court separately from hearings of adult cases and without a jury. The court shall grant the petition and issue a declaration of emancipation if it finds clear and convincing evidence that:

- (1) The minor is at least sixteen years of age;
- (2) The minor is a resident of the State;
- (3) The minor resides separately and apart from the minor's parents or guardian at the minor's own will, with or without the parents' or guardian's consent, and in absence of undue influence or coercion by a third party;
- (4) The minor is managing or has the ability to manage the minor's financial affairs;
- (5) The minor is managing or has the ability to manage the minors' personal and social affairs;
- (6) The source of the minor's income is not derived from any activity in violation of any laws of the State or the United States;
- (7) The minor understands the minor's rights and responsibilities as an emancipated minor in the State, and has been given the time and

opportunity to consider alternatives to emancipation, if any, before conclusion of the hearing:

- (8) The minor is not seeking emancipation under duress, including by coercion of a parent, guardian, or any other third party; and
- (9) Emancipation is in the best interest of the minor.

A declaration of emancipation issued by the court shall be conclusive evidence that the minor is emancipated and shall terminate the rights of the minor's parents to the custody, control, services, and earnings of the minor.

(i) A declaration of emancipation obtained by fraud or by the withholding of material information shall be voidable. A petition to void a declaration of emancipation on the ground that the declaration was obtained by fraud or by the withholding of material information may be filed by any person with the family court that issued the declaration of emancipation.

(j) A declaration of emancipation of a minor who has subsequently become indigent with no means of support shall be subject to rescission. A petition to rescind a declaration of emancipation on the ground that the minor has become indigent may be filed by:

- (1) The minor declared emancipated;
- (2) The minor's parents or former guardian; or
- (3) The corporation counsel or county attorney of the county in which the minor resides,

with a family court in the circuit in which the minor or the parents or former guardian resides.

(k) Upon filing of a petition to void or rescind a declaration of emancipation pursuant to subsection (i) or (j), the court shall:

- (1) Set a date for hearing on the petition as soon as practicable; and
- (2) Issue a summons requiring the appearance of the minor if the minor is not the petitioner, the minor's parents or former guardian, and any other person deemed necessary by the court unless the minor, the minor's parents or former guardian, and the person deemed necessary by the court promise in writing to appear voluntarily. Summons issued to the parents or former guardian of the minor shall be accompanied by a statement that they may be liable to provide support to the minor, including provision of medical insurance coverage, if the declaration of emancipation is voided or rescinded. Liability shall not accrue to a parent or guardian of a minor whose emancipation has been voided or rescinded until the parent or guardian has actual notice of the voidance or rescission.

(l) Proceedings for a petition to void or rescind a declaration of emancipation shall be heard by the court separately from hearings of adult cases and without a jury. The court shall grant the petition and issue an order:

- (1) Voiding the declaration of emancipation if the court finds clear and convincing evidence that the declaration was obtained by fraud or by the withholding of material information; or
- (2) Rescinding the declaration of emancipation if the court finds clear and convincing evidence that the rescission of the declaration of emancipation will be in the best interest of the minor.

The voiding or rescission of a declaration of emancipation shall not alter any contractual obligation or right or any property right or interest that arose during the period that the declaration was in effect.

(m) Service of summons issued pursuant to this section shall be made personally by the delivery of a copy thereof, together with a copy of the relevant petition, to the person summoned; provided that if a judge determines that personal service of the summons is impracticable, the judge may order service by certified or registered mail addressed to the last known address or by publica-

tion, or both. Service effected no less than forty-eight hours before the time fixed in the summons for the return thereof shall be sufficient to confer jurisdiction; provided that jurisdiction shall be conferred if any person who might be so summoned appears voluntarily at the time and place appointed and waives the service and the notice.

Service of summons, process, or any notice required by this section may be made by any suitable person under the direction of the court and upon request of the court shall be made by any police officer.

(n) Notwithstanding any other law to the contrary, and except as otherwise provided in this section, the court shall order reasonable fees for counsel, experts, and other costs of services required in relation to a petition for declaration of emancipation, including reasonable fees for service of process of the petition, summons, and notice of hearing, to be paid by the minor's parents or guardian, regardless of whether the fees were incurred by the minor or other parties or ordered by the court.

(o) The petitioner or any other person admitted as party to a petition hearing concerning emancipation of a minor pursuant to this section may file an appeal from the court's issuance of or denial of a declaration of emancipation, an order voiding a declaration of emancipation, or an order rescinding a declaration of emancipation pursuant to section 571-54.

(p) As used in this section:

"Emancipation" means termination of the rights of the parents of a minor to the custody, control, services, and earnings of a minor.

"Guardian" means a person appointed or qualified by a court as a guardian of an individual and includes a limited guardian, but excludes a person who is merely a guardian ad litem.

"Minor" means a person under the age of majority."

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

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

SECTION 5. This Act shall take effect on January 1, 2024.

(Approved June 14, 2023.)