
A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. The legislature finds that the current system
2 for awarding custody in divorce and other similar actions may
3 encourage parents to engage in unnecessarily adversarial,
4 prolonged litigation, and to develop entrenched, highly
5 conflicted positions that are not based on the child's best
6 interests. The purpose of this Act is to give certain divorcing
7 parents a procedural option that is in the best interests of
8 their children. In specific controlled cases where there is a
9 pre-existing shared custody relationship, no finding of family
10 violence, and the parents have filed a parenting plan with the
11 court, this Act creates a rebuttable presumption in favor of
12 joint custody, or "shared parenting".

13 For the presumption to exist, the divorcing or separating
14 parents must develop parental plans together, and make decisions
15 and agreements on how to best parent their children during the
16 critical transition to divorce. These procedures may assist
17 parents in using more effective interaction techniques with one
18 another, and may help to improve their parenting skills.



1 The shared parenting option is intended to minimize
 2 unnecessary harmful conflict and needless litigation, maintain
 3 the continuity of the pre-existing custody relationship, and
 4 provide for the child's psychological stability and well-being
 5 at the outset of a contested custody action. It creates an
 6 environment that continues joint custody of the children and
 7 keeps both parents involved in their children's lives to the
 8 maximum extent possible.

9 The purpose of this Act is to give divorcing parents in
 10 custody disputes, a procedural option that is in the best
 11 interests of their children, by creating in cases where there is
 12 no finding of family violence and joint custody is in the best
 13 interests of the child, a rebuttable presumption of joint
 14 custody at the outset of a divorce.

15 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "**§571-46 Criteria and procedure in awarding custody and**
 18 **visitation.** In the actions for divorce, separation, annulment,
 19 separate maintenance, or any other proceeding where there is at
 20 issue a dispute as to the custody of a minor child, the court,
 21 during the pendency of the action, at the final hearing, or any
 22 time during the minority of the child, may make an order for the



1 custody of the minor child as may seem necessary or proper. In
2 awarding the custody, the court shall be guided by the following
3 standards, considerations, and procedures:

4 (1) Custody should be awarded to either parent or to both
5 parents according to the best interests of the child,
6 and the court may also consider frequent, continuing,
7 and meaningful contact of each parent with the child
8 unless the court finds that a parent is unable to act
9 in the best interest of the child;

10 (2) There shall be a rebuttable presumption that joint
11 custody should be awarded if each of the following
12 elements exist:

13 (A) The parents or parties, at the time the action
14 was initiated, exercised joint custody over the
15 child whose custody is contested;

16 (B) Both parents or parties have, or had prior to the
17 action, a "meaningful contact" relationship with
18 the child;

19 (C) Either or both parents or parties request or
20 apply for joint custody of the child;



1 (D) There is no determination by the court pursuant
2 to section 571-46(9) that family violence has
3 been committed by either parent or party;

4 (E) The parents or parties requesting joint custody
5 have filed with the court a parenting plan
6 pursuant to section 571-46.5 that is sufficiently
7 detailed to support an award of joint custody;
8 and

9 (F) No court finding or conclusions exist that show
10 joint custody is not in the best interest of the
11 child or that the parents or parties requesting
12 joint custody are unable to act in the best
13 interest of the child;

14 [~~+2~~] (3) Custody may be awarded to persons other than the
15 father or mother whenever the award serves the best
16 interest of the child. Any person who has had de
17 facto custody of the child in a stable and wholesome
18 home and is a fit and proper person shall be entitled
19 prima facie to an award of custody;

20 [~~+3~~] (4) If a child is of sufficient age and capacity to
21 reason, so as to form an intelligent preference, the



1 child's wishes as to custody shall be considered and
2 be given due weight by the court;

3 [~~4~~] (5) Whenever good cause appears therefor, the court may
4 require an investigation and report concerning the
5 care, welfare, and custody of any minor child of the
6 parties. When so directed by the court, investigators
7 or professional personnel attached to or assisting the
8 court shall make investigations and reports which
9 shall be made available to all interested parties and
10 counsel before hearing, and the reports may be
11 received in evidence if no objection is made and, if
12 objection is made, may be received in evidence;
13 provided the person or persons responsible for the
14 report are available for cross-examination as to any
15 matter that has been investigated;

16 [~~5~~] (6) The court may hear the testimony of any person or
17 expert, produced by any party or upon the court's own
18 motion, whose skill, insight, knowledge, or experience
19 is such that the person's or expert's testimony is
20 relevant to a just and reasonable determination of
21 what is for the best physical, mental, moral, and



1 spiritual well-being of the child whose custody is at
2 issue;

3 [~~6~~] (7) Any custody award shall be subject to modification
4 or change whenever the best interests of the child
5 require or justify the modification or change and,
6 wherever practicable, the same person who made the
7 original order shall hear the motion or petition for
8 modification of the prior award;

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

15 [~~8~~] (9) The court may appoint a guardian ad litem to
16 represent the interests of the child and may assess
17 the reasonable fees and expenses of the guardian ad
18 litem as costs of the action, payable in whole or in
19 part by either or both parties as the circumstances
20 may justify;

21 [~~9~~] (10) In every proceeding where there is at issue a
22 dispute as to the custody of a child, a determination



1 by the court that family violence has been committed
2 by a parent raises a rebuttable presumption that it is
3 detrimental to the child and not in the best interest
4 of the child to be placed in sole custody, joint legal
5 custody, or joint physical custody with the
6 perpetrator of family violence. In addition to other
7 factors that a court must consider in a proceeding in
8 which the custody of a child or visitation by a parent
9 is at issue, and in which the court has made a finding
10 of family violence by a parent:

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

14 (B) The court shall consider the perpetrator's
15 history of causing physical harm, bodily injury,
16 or assault or causing reasonable fear of physical
17 harm, bodily injury, or assault to another
18 person; and

19 (C) If a parent is absent or relocates because of an
20 act of family violence by the other parent, the
21 absence or relocation shall not be a factor that



1 weighs against the parent in determining custody
2 or visitation;

3 [~~10~~] (11) A court may award visitation to a parent who
4 committed family violence only if the court finds that
5 adequate provision can be made for the physical safety
6 and psychological well-being of the child and for the
7 safety of the parent who is a victim of family
8 violence;

9 [~~11~~] (12) In a visitation order, a court may:

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

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

14 (C) Order the perpetrator of family violence to
15 attend and complete, to the satisfaction of the
16 court, a program of intervention for perpetrators
17 or other designated counseling as a condition of
18 the visitation;

19 (D) Order the perpetrator of family violence to
20 abstain from possession or consumption of alcohol
21 or controlled substances during the visitation



- 1 and for twenty-four hours preceding the
- 2 visitation;
- 3 (E) Order the perpetrator of family violence to pay a
- 4 fee to defray the costs of supervised visitation;
- 5 (F) Prohibit overnight visitation;
- 6 (G) Require a bond from the perpetrator of family
- 7 violence for the return and safety of the child.
- 8 In determining the amount of the bond, the court
- 9 shall consider the financial circumstances of the
- 10 perpetrator of family violence;
- 11 (H) Impose any other condition that is deemed
- 12 necessary to provide for the safety of the child,
- 13 the victim of family violence, or other family or
- 14 household member; and
- 15 (I) Order the address of the child and the victim to
- 16 be kept confidential;
- 17 [~~(12)~~] (13) The court may refer but shall not order an adult
- 18 who is a victim of family violence to attend, either
- 19 individually or with the perpetrator of the family
- 20 violence, counseling relating to the victim's status
- 21 or behavior as a victim as a condition of receiving
- 22 custody of a child or as a condition of visitation;



1 [~~(13)~~] (14) If a court allows a family or household member to
2 supervise visitation, the court shall establish
3 conditions to be followed during visitation; and
4 [~~(14)~~] (15) A supervised visitation center must provide: a
5 secure setting and specialized procedures for
6 supervised visitation and the transfer of children for
7 visitation and supervision by a person trained in
8 security and the avoidance of family violence. "

9 SECTION 3. Section 571-46.1, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Upon the application of either parent, joint custody
12 may be awarded pursuant to section 571-46(2) at the outset of
13 the contested custody action, or later, in the discretion of the
14 court. For the purpose of assisting the court in making a
15 determination whether an award of joint custody should continue,
16 or is appropriate, the court shall, upon the request of either
17 party, direct that an investigation be conducted pursuant to the
18 provisions of section [~~571-46(4).~~] 571-46(5). If such an
19 investigation is ordered, a joint custody award pursuant to
20 section 571-46(2) shall not be delayed for investigation
21 purposes, and the investigation shall be conducted in parallel
22 with existing custody awards."



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

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

4

INTRODUCED BY: Josh M. —
JAN 23 2007



Report Title:

Presumption of Joint Custody in Divorce Cases

Description:

Creates a presumption in favor of joint custody, or "shared parenting" in divorce child custody cases where parents have an existing joint custody relationship and there is no finding of family violence or other question regarding the child's well-being.

