
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 natural
2 relationship between parents and their children is a basic and
3 fundamental right. When a parent's legal custody of their child
4 is denied or terminated, there are serious, and irrevocable
5 consequences for the entire family.

6 The intent of this Act is to appropriately protect the
7 right of both parents and children to the integrity of the
8 family unit by ensuring that the drastic remedy of denying or
9 terminating parental legal custody is adequately justified. In
10 particular, when a parent has not been determined to have
11 committed family violence, there must be clear and convincing
12 evidence to justify that custody should be denied, other than
13 the court's preference of one parent over the other.

14 The purpose of this Act is to require the denial of joint
15 custody to be based on specific findings and clear and
16 convincing evidence.



1 SECTION 2. Section 571-46.1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§571-46.1 Joint custody.** (a) Upon the application of
4 either parent, joint custody may be awarded in the discretion of
5 the court. For the purpose of assisting the court in making a
6 determination whether an award of joint custody is appropriate,
7 the court shall, upon the request of either party, direct that
8 an investigation be conducted pursuant to the provisions of
9 section 571-46(4).

10 (b) In any actions for divorce, separation, annulment,
11 separate maintenance, or any other proceeding where there is at
12 issue a dispute as to the custody of a minor child, the court's
13 denial of a parent's request for joint custody at any stage of
14 the action shall not be valid or binding unless justified by
15 specific findings and conclusions and clear and convincing
16 evidence that joint custody is not in the best interests of the
17 child; provided that if the court determines that family
18 violence has been committed by the parent requesting joint
19 custody, section 571-46(9) shall apply.

20 [~~b~~] (c) For the purposes of this section, "joint
21 custody" means an order awarding legal custody of the minor
22 child or children to both parents and providing that physical



1 custody shall be shared by the parents, pursuant to a parenting
 2 plan developed pursuant to section 571-46.5, in such a way as to
 3 assure the child or children of frequent, continuing, and
 4 meaningful contact with both parents; provided, however, that
 5 such order may award joint legal custody without awarding joint
 6 physical custody.

7 ~~[(d)]~~ (d) Any order for joint custody may be modified or
 8 terminated upon the petition of one or both parents or on the
 9 court's own motion if it is shown that the best interests of the
 10 child require modification or termination of the order.

11 ~~[(e)]~~ (e) Any order for the custody of the minor child or
 12 children of a marriage entered by a court in this State or any
 13 other state may, subject to the jurisdictional requirements set
 14 forth in sections 583A-201 to 583A-204, be modified at any time
 15 to an order of joint custody in accordance with this section."

16 SECTION 3. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

19

INTRODUCED BY:



JAN 23 2007



Report Title:

Family Court; Joint Custody

Description:

Provides that a court's denial of a request for joint custody of a child must be justified by specific findings and conclusions and clear and convincing evidence.

