

JAN 19 2007

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# A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1           SECTION 1. Section 571-46, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§571-46 Criteria and procedure in awarding custody and**  
4 **visitation[-]; best interest of the child.** (a) In the actions  
5 for divorce, separation, annulment, separate maintenance, or any  
6 other proceeding where there is at issue a dispute as to the  
7 custody of a minor child, the court, during the pendency of the  
8 action, at the final hearing, or any time during the minority of  
9 the child, may make an order for the custody of the minor child  
10 as may seem necessary or proper. In awarding the custody, the  
11 court shall be guided by the following standards,  
12 considerations, and procedures:

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



1 unless the court finds that a parent is unable to act  
2 in the best interest of the child;

3 (2) Custody may be awarded to persons other than the  
4 father or mother whenever the award serves the best  
5 interest of the child. Any person who has had de  
6 facto custody of the child in a stable and wholesome  
7 home and is a fit and proper person shall be entitled  
8 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 shall make investigations and reports which  
19 shall be made available to all interested parties and  
20 counsel before hearing, and the reports may be  
21 received in evidence if no objection is made and, if  
22 objection is made, may be received in evidence;



1 provided the person or persons responsible for the  
2 report are available for cross-examination as to any  
3 matter that has been investigated;

4 (5) The court may hear the testimony of any person or  
5 expert, produced by any party or upon the court's own  
6 motion, whose skill, insight, knowledge, or experience  
7 is such that the person's or expert's testimony is  
8 relevant to a just and reasonable determination of  
9 what is for the best physical, mental, moral, and  
10 spiritual well-being of the child whose custody is at  
11 issue;

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

18 (7) Reasonable visitation rights shall be awarded to  
19 parents, grandparents, siblings, and any person  
20 interested in the welfare of the child in the  
21 discretion of the court, unless it is shown that



1 rights of visitation are detrimental to the best  
2 interests of the child;

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

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



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

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

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

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

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

21 (A) Order an exchange of a child to occur in a  
22 protected setting;



- 1 (B) Order visitation supervised by another person or  
2 agency;
- 3 (C) Order the perpetrator of family violence to  
4 attend and complete, to the satisfaction of the  
5 court, a program of intervention for perpetrators  
6 or other designated counseling as a condition of  
7 the visitation;
- 8 (D) Order the perpetrator of family violence to  
9 abstain from possession or consumption of alcohol  
10 or controlled substances during the visitation  
11 and for twenty-four hours preceding the  
12 visitation;
- 13 (E) Order the perpetrator of family violence to pay a  
14 fee to defray the costs of supervised visitation;
- 15 (F) Prohibit overnight visitation;
- 16 (G) Require a bond from the perpetrator of family  
17 violence for the return and safety of the child.  
18 In determining the amount of the bond, the court  
19 shall consider the financial circumstances of the  
20 perpetrator of family violence;
- 21 (H) Impose any other condition that is deemed  
22 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; and

14          (14) A supervised visitation center must 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          (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        either parent;
- 3        (2) Any history of neglect or emotional abuse of the child
- 4        by either parent;
- 5        (3) The overall quality of the parent-child relationship;
- 6        (4) The parents' history of shared parenting before,
- 7        during, and after their separation;
- 8        (5) A parent's new partner's contribution to the parenting
- 9        of the child;
- 10       (6) The parents' affection for the child;
- 11       (7) The willingness of each parent to allow the child to
- 12       maintain contact with the other parent;
- 13       (8) The parents' cooperation in developing and
- 14       implementing a plan to meet the child's schedule,
- 15       needs, and interests;
- 16       (9) The physical health needs of the child;
- 17       (10) The emotional needs of the child;
- 18       (11) Any fears the child has about the current family
- 19       situation;
- 20       (12) The educational needs of the child;
- 21       (13) The child's affection for each parent;





- 1        (14) Preservation of assets so a parent can financially  
2        provide for the child following the issuance of the  
3        divorce decree;
- 4        (15) Each parent's support of teaching the child  
5        age-appropriate life skills;
- 6        (16) The child's views and preferences;
- 7        (17) The child's need for relationship with sibling(s);
- 8        (18) Each parent's ability to provide an age-appropriate  
9        safe environment for the child;
- 10       (19) Each parent's willingness to allow the child to  
11       maintain family connections through family events and  
12       activities;
- 13       (20) Each parent's ability to separate the child's needs  
14       from their own;
- 15       (21) Any drug or alcohol abuse by either of the parents;
- 16       (22) The mental health and psychological adjustment of each  
17       parent;
- 18       (23) Each parent's willingness to protect the child from  
19       inter-parental conflict; and
- 20       (24) A parent's criminal history, where the parent has been  
21       convicted of or has entered a plea of no contest to  
22       crimes that would pose a threat to the child."



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

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

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INTRODUCED BY: Inzanne Chun O'Neil and  
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**Report Title:**

Family Court; Custody

**Description:**

Amends custody and visitation criteria and procedure to specify what courts shall consider in determining the best interest of the child.

