

JAN 25 2012

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# A BILL FOR AN ACT

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RELATING TO CHILD CUSTODY.

**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:

11       (1) Custody should be awarded to either parent or to both  
12 parents according to the best interests of the child,  
13 and the court also may consider frequent, continuing,  
14 and meaningful contact of each parent with the child  
15 unless the court finds that a parent is unable to act  
16 in the best interest of the child;

17       (2) Custody may be awarded to persons other than the  
18 father or mother whenever the award serves the best



1 interest of the child. Any person who has had de  
2 facto custody of the child in a stable and wholesome  
3 home and is a fit and proper person shall be entitled  
4 prima facie to an award of custody;

5 (3) If a child is of sufficient age and capacity to  
6 reason, so as to form an intelligent preference, the  
7 child's wishes as to custody shall be considered and  
8 be given due weight by the court;

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



1 further that the court shall define the requirements  
2 to be a court-appointed child custody evaluator, the  
3 standards of practice, ethics, policies, and  
4 procedures required of court-appointed child custody  
5 evaluators in the performance of their duties for all  
6 courts, and the powers of the courts over child  
7 custody evaluators to effectuate the best interests of  
8 a child in a contested custody dispute pursuant to  
9 this section. Where there is no child custody  
10 evaluator available that meets the requirements and  
11 standards, or any child custody evaluator to serve  
12 indigent parties, the court may appoint a person  
13 otherwise willing and available;

- 14 (5) The court may hear the testimony of any person or  
15 expert, produced by any party or upon the court's own  
16 motion, whose skill, insight, knowledge, or experience  
17 is such that the person's or expert's testimony is  
18 relevant to a just and reasonable determination of  
19 what is for the best physical, mental, moral, and  
20 spiritual well-being of the child whose custody is at  
21 issue;



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

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

13          (8) In any proceeding to determine the visitation rights  
14          of a parent, there shall be a rebuttable presumption  
15          that the custodial parent's decision regarding  
16          visitation is in the best interests of the child. The  
17          presumption may be rebutted by evidence that denial of  
18          reasonable visitation rights would cause significant  
19          demonstrable harm to the child. In determining the  
20          parent's visitation rights, the court shall consider  
21          factors including the following:



- 1           (A) The nature and extent of any preexisting  
2           relationship between the child and the parent;
- 3           (B) Whether the parent has previously been granted  
4           visitation by the custodial parent or the child's  
5           custodian and, if so, the nature and extent of  
6           the visitation;
- 7           (C) Whether the parent has previously been awarded  
8           visitation rights or custody of the child by a  
9           court;
- 10          (D) Whether the child has resided with the parent  
11          and, if so, how recently and for how long;
- 12          (E) Whether the parent has provided financial support  
13          to the child, including support for food,  
14          clothing, education, or medical, dental, or  
15          mental health care;
- 16          (F) If the custodial parent or custodian has denied  
17          the parent visitation or substantially restricted  
18          visitation previously granted and whether the  
19          reason given, if any, bears on the parent's  
20          ability to safely care for the child during  
21          visitation or relates to an issue between the



1 parent and custodial parent not directly related  
2 to the safe care of the child during visitation;

3 (G) All relevant factors in the safe family home  
4 factors under section 587A-7;

5 (H) All relevant factors under paragraphs (10) and  
6 (11) as they pertain to family violence committed  
7 by the parent; and

8 (I) Whether the parent has previously violated a  
9 temporary restraining order or protective order;

10 ~~[-8-]~~ (9) The court may appoint a guardian ad litem to  
11 represent the interests of the child and may assess  
12 the reasonable fees and expenses of the guardian ad  
13 litem as costs of the action, payable in whole or in  
14 part by either or both parties as the circumstances  
15 may justify;

16 ~~[-9-]~~ (10) In every proceeding where there is at issue a  
17 dispute as to the custody of a child, a determination  
18 by the court that family violence has been committed  
19 by a parent raises a rebuttable presumption that it is  
20 detrimental to the child and not in the best interest  
21 of the child to be placed in sole custody, joint legal  
22 custody, or joint physical custody with the



1 perpetrator of family violence. In addition to other  
2 factors that a court shall consider in a proceeding in  
3 which the custody of a child or visitation by a parent  
4 is at issue, and in which the court has made a finding  
5 of family violence by a parent:

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

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

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

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



1 safety of the parent who is a victim of family  
2 violence;

3 ~~[(11)]~~ (12) In a visitation order, a court may:

4 (A) Order an exchange of a child to occur in a  
5 protected setting;

6 (B) Order visitation supervised by another person or  
7 agency;

8 (C) Order the perpetrator of family violence to  
9 attend and complete, to the satisfaction of the  
10 court, a program of intervention for perpetrators  
11 or other designated counseling as a condition of  
12 the visitation;

13 (D) Order the perpetrator of family violence to  
14 abstain from possession or consumption of alcohol  
15 or controlled substances during the visitation  
16 and for twenty-four hours preceding the  
17 visitation;

18 (E) Order the perpetrator of family violence to pay a  
19 fee to defray the costs of supervised visitation;

20 (F) Prohibit overnight visitation;

21 (G) Require a bond from the perpetrator of family  
22 violence for the return and safety of the child.





1           In determining the amount of the bond, the court  
2           shall consider the financial circumstances of the  
3           perpetrator of family violence;

4           (H) Impose any other condition that is deemed  
5           necessary to provide for the safety of the child,  
6           the victim of family violence, or other family or  
7           household member; and

8           (I) Order the address of the child and the victim to  
9           be kept confidential;

10       ~~[-(12)-]~~ (13) The court may refer but shall not order an adult  
11       who is a victim of family violence to attend, either  
12       individually or with the perpetrator of the family  
13       violence, counseling relating to the victim's status  
14       or behavior as a victim as a condition of receiving  
15       custody of a child or as a condition of visitation;

16       ~~[-(13)-]~~ (14) If a court allows a family or household member to  
17       supervise visitation, the court shall establish  
18       conditions to be followed during visitation;

19       ~~[-(14)-]~~ (15) A supervised visitation center shall provide a  
20       secure setting and specialized procedures for  
21       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; and  
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:

7           (A) The potential for abuse or misuse of the  
8           electronic communication, including the equipment  
9           used for the communication, by the person seeking  
10          visitation or by persons who may be present  
11          during the visitation or have access to the  
12          communication or equipment;

13          (B) Whether the person seeking visitation has  
14          previously violated a temporary restraining order  
15          or protective order; and

16          (C) Whether adequate provision can be made for the  
17          physical safety and psychological well-being of  
18          the child and for the safety of the custodial  
19          parent.

20          The court may set conditions for visitation by  
21          electronic communication, including visitation  
22          supervised by another person or occurring in a



protected setting. Visitation by electronic communication shall not be used to:

(A) Replace or substitute an award of custody or physical visitation except where:

(i) Circumstances exist that make a parent seeking visitation unable to participate in physical visitation, including military deployment; or

(ii) Physical visitation may subject the child to physical or extreme psychological harm; or

(B) Justify or support the relocation of a custodial parent."

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

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

INTRODUCED BY:

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# S.B. NO. 3057

**Report Title:**

Child Custody; Parental Visitation Rights

**Description:**

For determinations of parental visitation rights, establishes a rebuttable presumption that the custodial parent's decision regarding visitation is in the best interests of the child. Requires the court to consider various factors in awarding parental visitation rights.

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

