
A BILL FOR AN ACT

RELATING TO PARENTAL RIGHTS.

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, in accordance
2 with section 571-46.4, the requirements to be a court-
3 appointed child custody evaluator, the standards of
4 practice, ethics, policies, and procedures required of
5 court-appointed child custody evaluators in the
6 performance of their duties for all courts, and the
7 powers of the courts over child custody evaluators to
8 effectuate the best interests of a child in a
9 contested custody dispute pursuant to this section.

10 Where there is no child custody evaluator available
11 that meets the requirements and standards, or any
12 child custody evaluator to serve indigent parties, the
13 court may appoint a person otherwise willing and
14 available in accordance with section 571-46.4;

- 15 (5) The court may hear the testimony of any person or
16 expert, produced by any party or upon the court's own
17 motion, whose skill, insight, knowledge, or experience
18 is such that the person's or expert's testimony is
19 relevant to a just and reasonable determination of
20 what is for the best physical, mental, moral, and
21 spiritual well-being of the child whose custody is at
22 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) The court may appoint a guardian ad litem to represent
14 the interests of the child and may assess the
15 reasonable fees and expenses of the guardian ad litem
16 as costs of the action, payable in whole or in part by
17 either or both parties as the circumstances may
18 justify;

19 (9) In every proceeding where there is at issue a dispute
20 as to the custody of a child, a determination by the
21 court that family violence has been committed by a
22 parent raises a rebuttable presumption that it is



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

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

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

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



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

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

8 (A) Order an exchange of a child to occur in a
9 protected setting;

10 (B) Order visitation supervised by another person or
11 agency;

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

17 (D) Order the perpetrator of family violence to
18 abstain from possession or consumption of alcohol
19 or controlled substances during the visitation
20 and for twenty-four hours preceding the
21 visitation;



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

3 (F) Prohibit overnight visitation;

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

6 In determining the amount of the bond, the court
7 shall consider the financial circumstances of the
8 perpetrator of family violence;

9 (H) Impose any other condition that is deemed
10 necessary to provide for the safety of the child,
11 the victim of family violence, or other family or
12 household member; and

13 (I) Order the address of the child and the victim to
14 be kept confidential;

15 (12) The court may refer but shall not order an adult who
16 is a victim of family violence to attend, either
17 individually or with the perpetrator of the family
18 violence, counseling relating to the victim's status
19 or behavior as a victim as a condition of receiving
20 custody of a child or as a condition of visitation;



1 (13) If a court allows a family or household member to
2 supervise visitation, the court shall establish
3 conditions to be followed during visitation;

4 (14) A supervised visitation center shall provide a secure
5 setting and specialized procedures for supervised
6 visitation and the transfer of children for visitation
7 and supervision by a person trained in security and
8 the avoidance of family violence;

9 (15) The court may include in visitation awarded pursuant
10 to this section visitation by electronic communication
11 provided that the court shall additionally consider
12 ~~[the]~~:

13 (A) The potential for abuse or misuse of the
14 electronic communication, including the equipment
15 used for the communication, by the person seeking
16 visitation or by persons who may be present
17 during the visitation or have access to the
18 communication or equipment; ~~[whether]~~

19 (B) Whether the person seeking visitation has
20 previously violated a temporary restraining order
21 or protective order; and ~~[whether]~~



1 (C) Whether adequate provision can be made for the
2 physical safety and psychological well-being of
3 the child and for the safety of the custodial
4 parent;

5 (16) The court may set conditions for visitation by
6 electronic communication under paragraph (15),
7 including visitation supervised by another person or
8 occurring in a protected setting. Visitation by
9 electronic communication shall not be used to:

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

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

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

18 (B) Justify or support the relocation of a custodial
19 parent; and

20 (17) Notwithstanding any provision to the contrary, no
21 natural parent shall be granted custody of or
22 visitation with a child if the natural parent has been



1 convicted in a court of competent jurisdiction in any
2 state of rape, incest, or sexual assault and the child
3 was conceived as a result of that offense; provided
4 that:

5 (A) A denial of custody or visitation under this
6 paragraph shall not affect the obligation of the
7 convicted natural parent to support the child;

8 (B) The court may order the convicted natural parent
9 to pay child support;

10 (C) This paragraph shall not apply if subsequent to
11 the date of conviction, the convicted natural
12 parent and custodial natural parent cohabituate
13 and establish a mutual custodial environment for
14 the child; and

15 (D) A custodial natural parent may petition the court
16 to grant the convicted natural parent custody and
17 visitation denied pursuant to this paragraph, and
18 upon such petition the court may grant custody
19 and visitation to the convicted natural parent
20 where it is in the best interest of the child."

21 SECTION 2. Section 571-61, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) Involuntary termination.

2 (1) The family courts may terminate the parental rights in
3 respect to any child as to any legal parent:

4 (A) Who has deserted the child without affording
5 means of identification for a period of at least
6 ninety days;

7 (B) Who has voluntarily surrendered the care and
8 custody of the child to another for a period of
9 at least two years;

10 (C) Who, when the child is in the custody of another,
11 has failed to communicate with the child when
12 able to do so for a period of at least one year;

13 (D) Who, when the child is in the custody of another,
14 has failed to provide for care and support of the
15 child when able to do so for a period of at least
16 one year;

17 (E) Whose child has been removed from the parent's
18 physical custody pursuant to legally authorized
19 judicial action under section 571-11(9), and who
20 is found to be unable to provide now and in the
21 foreseeable future the care necessary for the
22 well-being of the child;



1 (F) Who is found by the court to be mentally ill or
2 intellectually disabled and incapacitated from
3 giving consent to the adoption of or from
4 providing now and in the foreseeable future the
5 care necessary for the well-being of the child;
6 or

7 (G) Who is found not to be the child's natural or
8 adoptive father.

9 (2) The family courts may terminate the parental rights in
10 respect to any minor of any natural but not legal
11 father who is an adjudicated, presumed or concerned
12 father under chapter 578, or who is named as the
13 father on the child's birth certificate:

14 (A) Who falls within subparagraph (A), (B), (C), (D),
15 (E), or (F) of paragraph (1);

16 (B) Whose child is sought to be adopted by the
17 child's stepfather and the stepfather has lived
18 with the child and the child's legal mother for a
19 period of at least one year;

20 (C) Who is only a concerned father who has failed to
21 file a petition for the adoption of the child or



1 whose petition for the adoption of the child has
2 been denied; or

3 (D) Who is found to be an unfit or improper parent or
4 to be financially or otherwise unable to give the
5 child a proper home and education.

6 (3) In respect to any proceedings under paragraphs (1) and
7 (2), the authority to terminate parental rights may be
8 exercised by the court only when a verified petition,
9 substantially in the form above prescribed, has been
10 filed by some responsible adult person on behalf of
11 the child in the family court of the circuit in which
12 the parent resides or the child resides or was born
13 and the court has conducted a hearing of the petition.
14 A copy of the petition, together with notice of the
15 time and place of the hearing thereof, shall be
16 personally served at least twenty days prior to the
17 hearing upon the parent whose rights are sought to be
18 terminated. If personal service cannot be effected
19 within the State, service of the notice may be made as
20 provided in section 634-23 or 634-24.

21 (4) The family courts may terminate the parental rights in
22 respect to any child as to any natural father who is



1 not the child's legal, adjudicated, presumed or
2 concerned father under chapter 578.

3 (5) The family courts may terminate the parental rights in
4 respect to any child of any natural parent upon a
5 finding that the natural parent has been convicted in
6 a court of competent jurisdiction in any state of
7 rape, incest, or sexual assault and the child was
8 conceived as a result of the rape, incest, or sexual
9 assault perpetrated by the parent whose rights are
10 sought to be terminated; provided that:

11 (A) The termination of parental rights shall not
12 affect the obligation of the convicted natural
13 parent to support the child;

14 (B) The court may order the convicted natural parent
15 to pay child support;

16 (C) This paragraph shall not apply if subsequent to
17 the date of conviction, the convicted natural
18 parent and custodial natural parent cohabitate
19 and establish a mutual custodial environment for
20 the child; and

21 (D) The custodial natural parent may petition the
22 court to reinstate the convicted natural parent's



1 parental rights terminated pursuant to this
2 paragraph.

3 Such authority may be exercised under this chapter only
4 when a verified petition, substantially in the form above
5 prescribed, has been filed by some responsible adult person on
6 behalf of the child in the family court of the circuit in which
7 the parent resides or the child resides or was born, and the
8 court has conducted a hearing of the petition.

9 If the mother of the child files with the petition an
10 affidavit representing that the identity or whereabouts of the
11 child's father is unknown to her or not ascertainable by her or
12 that other good cause exists why notice cannot or should not be
13 given to the father, the court shall conduct a hearing to
14 determine whether notice is required.

15 If the court finds that good cause exists why notice cannot
16 or should not be given to the child's father, and that the
17 father is neither the legal nor adjudicated nor presumed father
18 of the child, nor has he demonstrated a reasonable degree of
19 interest, concern, or responsibility as to the existence or
20 welfare of the child, the court may enter an order authorizing
21 the termination of the father's parental rights and the
22 subsequent adoption of the child without notice to the father."



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

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

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

7



Report Title:

Termination of Parental Rights; Incest; Custody; Visitation

Description:

Provides for involuntary termination of parental rights with a child conceived by incest. Provides for denial of custody and visitation rights to a natural parent convicted of incest.
(SD1)

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

