

JAN 27 2016

A BILL FOR AN ACT

RELATING TO PARENTAL RIGHTS.

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

1 SECTION 1. Prior to the termination of parental rights of
2 a child conceived as a result of a rape or sexual assault,
3 Hawaii requires that the natural parent has been convicted in a
4 court of competent jurisdiction in any state of the rape or
5 sexual assault. A "clear and convincing" standard is being
6 sought in the termination of parental rights to allow a judge to
7 terminate the alleged perpetrator's rights to the child in a
8 civil proceeding with a lower burden of proof than the "beyond a
9 reasonable doubt" standard required in criminal court. In May
10 2015, President Obama signed the Rape Survivor Child Custody Act
11 (Act), Public Law No. 114-22, that boosts funding for states
12 that allow women to petition for the termination of parental
13 rights based on clear and convincing evidence that a child was
14 conceived through rape. The reasons cited for the passage of
15 the Act included: rape is one of the most under-prosecuted
16 serious crimes, with estimates of criminal conviction occurring
17 in less than five per cent of rapes; the Supreme Court
18 established that the clear and convincing evidence standard

1 satisfies due process for allegations to terminate or restrict
2 parental rights in Santosky v. Kramer, 455 U.S. 745 (1982); the
3 clear and convincing evidence standard is the most common
4 standard for termination of parental rights among the fifty
5 States, the territories, and the District of Columbia; and the
6 rapist may use the threat of pursuing custody or parental rights
7 to coerce survivors into not prosecuting rape, or otherwise
8 harass, intimidate, or manipulate them.

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

11 "(b) Involuntary termination.

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

14 (A) Who has deserted the child without affording
15 means of identification for a period of at least
16 ninety days;

17 (B) Who has voluntarily surrendered the care and
18 custody of the child to another for a period of
19 at least two years;

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

23 (D) Who, when the child is in the custody of another,

1 has failed to provide for care and support of the
2 child when able to do so for a period of at least
3 one year;

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

10 (F) Who is found by the court to be mentally ill or
11 intellectually disabled and incapacitated from
12 giving consent to the adoption of or from
13 providing now and in the foreseeable future the
14 care necessary for the well-being of the child;
15 or

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

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

23 (A) Who falls within subparagraph (A), (B), (C), (D),

S.B. NO. 2811

- 1 (E), or (F) of paragraph (1);
- 2 (B) Whose child is sought to be adopted by the
- 3 child's stepfather and the stepfather has lived
- 4 with the child and the child's legal mother for a
- 5 period of at least one year;
- 6 (C) Who is only a concerned father who has failed to
- 7 file a petition for the adoption of the child or
- 8 whose petition for the adoption of the child has
- 9 been denied; or
- 10 (D) Who is found to be an unfit or improper parent or
- 11 to be financially or otherwise unable to give the
- 12 child a proper home and education.
- 13 (3) In respect to any proceedings under paragraphs (1) and
- 14 (2), the authority to terminate parental rights may be
- 15 exercised by the court only when a verified petition,
- 16 substantially in the form above prescribed, has been
- 17 filed by some responsible adult person on behalf of
- 18 the child in the family court of the circuit in which
- 19 the parent resides or the child resides or was born
- 20 and the court has conducted a hearing of the petition.
- 21 A copy of the petition, together with notice of the
- 22 time and place of the hearing thereof, shall be
- 23 personally served at least twenty days prior to the

1 hearing upon the parent whose rights are sought to be
2 terminated. If personal service cannot be effected
3 within the State, service of the notice may be made as
4 provided in section 634-23 or 634-24.

5 (4) The family courts may terminate the parental rights in
6 respect to any child as to any natural father who is
7 not the child's legal, adjudicated, presumed or
8 concerned father under chapter 578.

9 (5) The family courts may terminate the parental rights in
10 respect to any child of any natural parent upon a
11 finding by clear convincing evidence that the natural
12 parent ~~[has been convicted in a court of competent~~
13 ~~jurisdiction in any state of]~~ committed rape or sexual
14 assault or pursuant to a similar law of another state,
15 territory, possession, or Native American tribe where
16 the offense occurred and the child was conceived as a
17 result of the rape or sexual assault perpetrated by
18 the parent whose rights are sought to be terminated;
19 provided that:

20 (A) The court shall accept a guilty plea or
21 conviction of the child's natural parent for the
22 rape or sexual assault or as pursuant to similar
23 laws in another state, territory, possession, or

1 Native American tribe where the offense occurred
2 as conclusive proof that the child was conceived
3 by rape or sexual assault;

4 [~~A~~] (B) The termination of parental rights shall
5 not affect the obligation of the [~~convicted~~]
6 child's natural parent to support the child;

7 [~~B~~] (C) The court may order the [~~convicted~~] child's
8 natural parent to pay child support;

9 (D) It is presumed that termination of parental
10 rights is in the best interest of the child if
11 the child was conceived as a result of the sexual
12 assault or rape;

13 [~~C~~] (E) This paragraph shall not apply if
14 subsequent to the date of conviction, the
15 [~~convicted~~] child's natural parent and custodial
16 natural parent cohabitate and establish a mutual
17 custodial environment for the child; and

18 [~~D~~] (F) The custodial natural parent may petition
19 the court to reinstate the convicted natural
20 parent's parental rights terminated pursuant to
21 this paragraph.

22 Such authority may be exercised under this chapter only
23 when a verified petition, substantially in the form above

1 prescribed, has been filed by some responsible adult person on
2 behalf of the child in the family court of the circuit in which
3 the parent resides or the child resides or was born, and the
4 court has conducted a hearing of the petition.

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

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

19 SECTION 3. Statutory material to be repealed is bracketed

S.B. NO. 2811

1 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: MM D-M

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BY REQUEST

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Report Title:

Involuntary Termination of Parental Rights

Description:

Provides that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of rape or sexual assault creating a presumption that termination of parental rights is in the best interest of the child.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO PARENTAL RIGHTS.

PURPOSE: Provide that parental rights of an alleged perpetrator may be terminated if the court determines, by clear and convincing evidence that the child was conceived during an act of rape or sexual assault creating a presumption that termination of parental rights is in the best interest of the child.

MEANS: Amend section 571-61(b), Hawaii Revised Statutes.

JUSTIFICATION: Rape is one of the most under-prosecuted serious crimes, with estimates of criminal conviction occurring in less than five per cent of rapes. The Supreme Court established that the clear and convincing evidence standard satisfies due process for allegations to terminate or restrict parental rights in Santosky v. Kramer, 455 U.S. 745 (1982). The clear and convincing evidence standard is the most common standard for termination of parental rights among the fifty States, the territories, and the District of Columbia. The rapist may use the threat of pursuing custody or parental rights to coerce survivors into not prosecuting rape, or otherwise harass, intimidate, or manipulate them.

Impact on the public: Victims of rape or sexual assault that choose to raise their child conceived through rape or sexual assault, and as result may face custody battles with their rapists should not have to share with their rapists custody of, guardianship of, visitation with, and access to her child. The revised statute will

better protect these victims from further trauma or harassment by rapists seeking parental rights.

Impact on the department and other agencies:
Provides the courts with a revised standard that also satisfies the due process for allegations to terminate or restrict parental rights. If the State has in place a law that allows the mother of any child that was conceived through rape to seek court-ordered termination of the parental rights of her rapist with regard to that child, based upon clear and convincing evidence of rape, then the Department of the Attorney General can seek an increase in federal funding from the Violence Against Women Act, covered formula grant programs.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	ATG 100.
OTHER AFFECTED AGENCIES:	Department of Human Services, Judiciary.
EFFECTIVE DATE:	Upon approval.