

JAN 25 2017

A BILL FOR AN ACT

RELATING TO PARENTAL RIGHTS.

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

- 1 SECTION 1. Section 571-61, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:
- 3 "(b) Involuntary termination.
- 4 (1) The family courts may terminate the parental rights in
5 respect to any child as to any legal parent:
- 6 (A) Who has deserted the child without affording
7 means of identification for a period of at least
8 ninety days;
- 9 (B) Who has voluntarily surrendered the care and
10 custody of the child to another for a period of
11 at least two years;
- 12 (C) Who, when the child is in the custody of another,
13 has failed to communicate with the child when
14 able to do so for a period of at least one year;
- 15 (D) Who, when the child is in the custody of another,
16 has failed to provide for care and support of the



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1 child when able to do so for a period of at least
2 one year;

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

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

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

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



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



1 A copy of the petition, together with notice of the
2 time and place of the hearing thereof, shall be
3 personally served at least twenty days prior to the
4 hearing upon the parent whose rights are sought to be
5 terminated. If personal service cannot be effected
6 within the State, service of the notice may be made as
7 provided in section 634-23 or 634-24.

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

12 (5) The family courts [~~may~~] shall terminate the parental
13 rights in respect to any child of any natural parent
14 upon a finding by clear and convincing evidence that
15 the natural parent committed sexual assault of the
16 other natural parent, or an equivalent offense under
17 the laws of another state, territory, possession, or
18 Native American tribe where the offense occurred, and
19 the child was conceived as a result of the sexual
20 assault perpetrated by the parent whose rights are
21 sought to be terminated; provided that:



- 1 (A) The court shall accept, as conclusive proof of
2 the sexual assault, a guilty plea or conviction
3 of the child's natural parent for the sexual
4 assault, or an equivalent offense under the laws
5 of another state, territory, possession, or
6 Native American tribe where the offense occurred,
7 of the other natural parent;
- 8 (B) Termination shall mean, when used with respect to
9 parental rights in this paragraph, a complete and
10 final termination of the parent's right to
11 custody of, guardianship of, visitation with,
12 access to, and inheritance from a child;
- 13 (C) The termination of parental rights shall not
14 affect the obligation of the child's natural
15 parent to support the child;
- 16 (D) The court may order the child's natural parent to
17 pay child support;
- 18 (E) It is presumed that termination of parental
19 rights is in the best interest of the child if
20 the child was conceived as a result of the sexual
21 assault;



1 (F) This paragraph shall not apply if subsequent to
2 the date of the sexual assault, the child's
3 natural parent and custodial natural parent
4 cohabituate and establish a mutual custodial
5 environment for the child; and

6 (G) The custodial natural parent may petition the
7 court to reinstate the child's natural parent's
8 parental rights terminated pursuant to this
9 paragraph.

10 Such authority may be exercised under this chapter only
11 when a verified petition, substantially in the form above
12 prescribed, has been filed by some responsible adult person on
13 behalf of the child in the family court of the circuit in which
14 the parent resides or the child resides or was born, and the
15 court has conducted a hearing of the petition.

16 If the mother of the child files with the petition an
17 affidavit representing that the identity or whereabouts of the
18 child's father is unknown to her or not ascertainable by her or
19 that other good cause exists why notice cannot or should not be
20 given to the father, the court shall conduct a hearing to
21 determine whether notice is required.



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1 If the court finds that good cause exists why notice cannot
2 or should not be given to the child's father, and that the
3 father is neither the legal nor adjudicated nor presumed father
4 of the child, nor has he demonstrated a reasonable degree of
5 interest, concern, or responsibility as to the existence or
6 welfare of the child, the court may enter an order authorizing
7 the termination of the father's parental rights and the
8 subsequent adoption of the child without notice to the father."

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

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

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

15

INTRODUCED BY:





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Report Title:

Involuntary Termination of Parental Rights

Description:

Requires the family court to terminate parental rights if the court determines, by clear and convincing evidence, that the child was conceived during an act of sexual assault by the parent.

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

