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# 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



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[~~7~~  
19 and]; the child was conceived as a result of the  
20 sexual assault perpetrated by the parent whose rights  
21 are sought to be terminated; and termination of



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



1                   the child was conceived as a result of the sexual  
2                   assault;

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

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

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

18                 If the mother of the child files with the petition an  
19 affidavit representing that the identity or whereabouts of the  
20 child's father is unknown to her or not ascertainable by her or  
21 that other good cause exists why notice cannot or should not be



1 given to the father, the court shall conduct a hearing to  
2 determine whether notice is required.

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

11 SECTION 2. Chapter 571, Hawaii Revised Statutes, is  
12 amended by adding a new section to be appropriately designated  
13 and to read as follows:

14 "§571- Involuntary suspension of parental rights; sexual  
15 assault criminal court proceedings. (a) The family courts  
16 shall suspend custody and visitation in respect to any child for  
17 any parent or legal guardian who is charged in a criminal court  
18 proceeding for a sexual assault of the child's other parent or  
19 legal guardian, or an equivalent offense under the laws of  
20 another state, territory, possession, or Native American tribe  
21 where the offense is alleged to have occurred, for the period of



1 time between the charging and a criminal court determination in  
2 the case, where such suspension is deemed in the best interest  
3 of the child; provided that:

4 (1) The suspension of custody and visitation shall not  
5 affect the obligation of the child's charged parent or  
6 legal guardian to support the child;

7 (2) The court may order the child's charged parent or  
8 legal guardian to pay child support;

9 (3) It is presumed that the suspension of custody and  
10 visitation is in the best interest of the child if the  
11 charged parent or legal guardian has been charged in a  
12 criminal court proceeding for a sexual assault of the  
13 child's other parent or legal guardian; and

14 (4) A custodial non-charged parent or legal guardian may  
15 petition the court to reinstate the child's charged  
16 parent's or legal guardian's custody and visitation  
17 that was suspended pursuant to this section.

18 (b) Such authority may be exercised under this section  
19 only when a verified petition, substantially in the form above  
20 prescribed, has been filed by the non-charged parent or legal  
21 guardian on behalf of the child in the family court of the



1 circuit in which the charged parent or legal guardian resides or  
2 the child resides or was born, and the court has conducted a  
3 hearing of the petition.

4 (c) If the child's non-charged parent or legal guardian  
5 files with the petition an affidavit representing that the  
6 whereabouts of the charged parent or legal guardian is unknown  
7 to them or not ascertainable by them, or that other good cause  
8 exists why notice cannot or should not be given to the indicted  
9 parent or indicted legal guardian, the court shall conduct a  
10 hearing to determine whether notice is required.

11 (d) If the court finds that good cause exists why notice  
12 cannot or should not be given to the child's charged parent or  
13 legal guardian, the court may suspend custody and visitation as  
14 described above without notice to the charged parent or legal  
15 guardian."

16 SECTION 3. Section 804-7.1, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§804-7.1 Conditions of release on bail, recognizance, or**  
19 **supervised release.** Upon a showing that there exists a danger  
20 that the defendant will commit a serious crime or will seek to  
21 intimidate witnesses, or will otherwise unlawfully interfere



1 with the orderly administration of justice, the judicial officer  
2 named in section 804-5 may deny the defendant's release on bail,  
3 recognizance, or supervised release.

4 Upon the defendant's release on bail, recognizance, or  
5 supervised release, however, the court may enter an order:

- 6 (1) Prohibiting the defendant from approaching or  
7 communicating with particular persons or classes of  
8 persons, except that no such order should be deemed to  
9 prohibit any lawful and ethical activity of  
10 defendant's counsel;
- 11 (2) Prohibiting the defendant from going to certain  
12 described geographical areas or premises;
- 13 (3) Prohibiting the defendant from possessing any  
14 dangerous weapon, engaging in certain described  
15 activities, or indulging in intoxicating liquors or  
16 certain drugs;
- 17 (4) Requiring the defendant to report regularly to and  
18 remain under the supervision of an officer of the  
19 court;



- 1 (5) Requiring the defendant to maintain employment, or, if  
2 unemployed, to actively seek employment, or attend an  
3 educational or vocational institution;
- 4 (6) Requiring the defendant to comply with a specified  
5 curfew;
- 6 (7) Requiring the defendant to seek and maintain mental  
7 health treatment or testing, including treatment for  
8 drug or alcohol dependency, or to remain in a  
9 specified institution for that purpose;
- 10 (8) Requiring the defendant to remain in the jurisdiction  
11 of the judicial circuit in which the charges are  
12 pending unless approval is obtained from a court of  
13 competent jurisdiction to leave the jurisdiction of  
14 the court;
- 15 (9) Requiring the defendant to satisfy any other condition  
16 reasonably necessary to assure the appearance of the  
17 person as required and to assure the safety of any  
18 other person or community; [~~or~~]
- 19 (10) Imposing any combination of conditions listed above  
20 [~~-~~]; or



1       (11) When a defendant has been charged with sexual assault,  
2       any prohibitions that restrict a defendant from  
3       approaching or communicating with the victim of sexual  
4       assault shall, at the victim's request, also apply  
5       with respect to the victim's minor children,  
6       regardless of the existence of a parental relationship  
7       between the defendant and the child of the victim.

8       The judicial officer may revoke a defendant's bail upon  
9 proof that the defendant has breached any of the conditions  
10 imposed."

11       SECTION 4. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14       SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16       SECTION 6. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.



1 SECTION 7. This Act shall take effect on July 1, 3000.



**Report Title:**

Involuntary Termination of Parental Rights; Sexual Assault

**Description:**

Requires the family court to terminate parental rights if the court determines, by clear and convincing evidence, that the natural parent committed sexual assault of the other natural parent, the child was conceived as a result of the sexual assault by the parent, and termination of parental rights is in the best interests of the child, under certain conditions.

(SB1062 HD1)

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