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

4           "§571-       Involuntary suspension of parental rights; sexual  
5 assault criminal proceedings. (a) The family courts shall  
6 suspend custody and visitation in respect to any child for any  
7 parent or legal guardian who is charged in a criminal proceeding  
8 for a sexual assault of the child's other parent or legal  
9 guardian, or an equivalent offense under the laws of another  
10 state, territory, possession, or Native American tribe where the  
11 offense is alleged to have occurred, for the period of time  
12 between when the parent or legal guardian is charged and a court  
13 determination of the case, where such suspension is deemed in  
14 the best interest of the child; provided that:

15           (1) The suspension of custody and visitation shall not  
16           affect the obligation of the respondent to support the  
17           child;



1       (2) The court may order the respondent to pay child  
2       support;

3       (3) It is presumed that the suspension of custody and  
4       visitation is in the best interest of the child if the  
5       respondent has been charged in a criminal proceeding  
6       for a sexual assault of the petitioner; and

7       (4) A custodial petitioner may petition the court to  
8       reinstate the respondent's custody and visitation that  
9       was suspended pursuant to this section.

10       (b) Such authority may be exercised under this section  
11       only when a verified petition, substantially in the form above  
12       prescribed, has been filed by the petitioner on behalf of the  
13       child in the family court of the circuit in which the respondent  
14       resides or the child resides or was born, and the court has  
15       conducted a hearing on the petition.

16       (c) If the petitioner files with the petition an affidavit  
17       representing that the whereabouts of the respondent is unknown  
18       to the petitioner or not ascertainable by the petitioner, or  
19       that other good cause exists why notice cannot or should not be  
20       given to the respondent, the court shall conduct a hearing to  
21       determine whether notice is required.



1        (d) If the court finds that good cause exists why notice  
2 cannot or should not be given to the respondent, the court may  
3 suspend custody and visitation as described pursuant to this  
4 section without notice to the respondent.

5        (e) For purposes of this section:

6        "Petitioner" means the parent or legal guardian:

7        (1) Of any child; and

8        (2) Who petitions the family court for an order to suspend  
9                custody and visitation of the child.

10       "Respondent" means the parent or legal guardian:

11       (1) Of any child;

12       (2) Who is charged in a criminal proceeding for a sexual  
13 assault or equivalent offense of the child's other  
14 parent or legal guardian; and

15       (3) Is the subject of the petition for a court order to  
16 suspend custody and visitation of the child."

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

19       "(b) Involuntary termination.

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



- 1 (A) Who has deserted the child without affording  
2 means of identification for a period of at least  
3 ninety days;
- 4 (B) Who has voluntarily surrendered the care and  
5 custody of the child to another for a period of  
6 at least two years;
- 7 (C) Who, when the child is in the custody of another,  
8 has failed to communicate with the child when  
9 able to do so for a period of at least one year;
- 10 (D) Who, when the child is in the custody of another,  
11 has failed to provide for care and support of the  
12 child when able to do so for a period of at least  
13 one year;
- 14 (E) Whose child has been removed from the parent's  
15 physical custody pursuant to legally authorized  
16 judicial action under section 571-11(9), and who  
17 is found to be unable to provide now and in the  
18 foreseeable future the care necessary for the  
19 well-being of the child;
- 20 (F) Who is found by the court to be mentally ill or  
21 intellectually disabled and incapacitated from



1 giving consent to the adoption of or from  
2 providing now and in the foreseeable future the  
3 care necessary for the well-being of the child;  
4 or

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

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

12 (A) Who falls within paragraph (1) (A), (B), (C), (D),  
13 (E), or (F);

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

18 (C) Who is only a concerned father who has failed to  
19 file a petition for the adoption of the child or  
20 whose petition for the adoption of the child has  
21 been denied; or



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

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

19 (4) The family courts may terminate the parental rights in  
20 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~~] shall terminate the parental  
4 rights in respect to any child of any natural parent  
5 upon a finding by clear and convincing evidence that  
6 the natural parent committed sexual assault of the  
7 other natural parent, or an equivalent offense under  
8 the laws of another state, territory, possession, or  
9 Native American tribe where the offense occurred[~~7~~  
10 and]; the child was conceived as a result of the  
11 sexual assault perpetrated by the parent whose rights  
12 are sought to be terminated; and termination of  
13 parental rights is in the best interests of the child;  
14 provided that:

15 (A) The court shall accept, as conclusive proof of  
16 the sexual assault, a guilty plea or conviction  
17 of the child's natural parent for the sexual  
18 assault, or an equivalent offense under the laws  
19 of another state, territory, possession, or  
20 Native American tribe where the offense occurred,  
21 of the other natural parent;



- 1 (B) Termination shall mean, when used with respect to
- 2 parental rights in this paragraph, a complete and
- 3 final termination of the parent's right to
- 4 custody of, guardianship of, visitation with,
- 5 access to, and inheritance from a child;
- 6 (C) The termination of parental rights shall not
- 7 affect the obligation of the child's natural
- 8 parent to support the child;
- 9 (D) The court may order the child's natural parent to
- 10 pay child support;
- 11 (E) It is presumed that termination of parental
- 12 rights is in the best interest of the child if
- 13 the child was conceived as a result of the sexual
- 14 assault;
- 15 (F) This paragraph shall not apply if subsequent to
- 16 the date of the sexual assault, the child's
- 17 natural parent and custodial natural parent
- 18 cohabituate and establish a mutual custodial
- 19 environment for the child; and
- 20 (G) The custodial natural parent may petition the
- 21 court to reinstate the child's 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 [øf] on 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



1 the termination of the father's parental rights and the  
2 subsequent adoption of the child without notice to the father."

3 SECTION 3. Section 571-63, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§571-63 Findings and judgment. No judgment of  
6 termination of parental rights entered under sections 571-61 to  
7 571-63 shall be valid or binding unless it contains a finding  
8 that the facts upon which the petition is based bring the child  
9 within such sections and have been proved by the evidence and  
10 that the adjudication of termination of parental rights is  
11 necessary for the protection and preservation of the best  
12 interests of the child concerned [~~and~~]. No judgment of  
13 termination of parental rights entered under sections 571-61 to  
14 571-63, with the exception of section 571-61(b) (5), shall be  
15 valid or binding unless it contains a finding that it will  
16 facilitate the legal adoption of the child.

17 In any judgment entered pursuant to sections 571-61 to 571-  
18 63 the court may terminate the parental rights of one or both of  
19 the parents of the child concerned, may transfer the care,  
20 custody and control of the child to any proper person not  
21 forbidden by law to place a child for adoption or to the



1 department of human services or to any child-placing  
2 organization approved by the department, may appoint a guardian  
3 of the child, and may authorize the person or the department or  
4 the agency or the guardian to consent to the legal adoption of  
5 the child.

6 No judgment of termination of parental rights entered under  
7 sections 571-61 to 571-63 shall operate to terminate the mutual  
8 rights of inheritance of the child and the parent or parents  
9 involved, or to terminate the legal duties and liabilities of  
10 the parent or parents, unless and until the child has been  
11 legally adopted.

12 Every such judgment of termination of parental rights when  
13 the procedural provisions of sections 571-61 to 571-63 have been  
14 followed shall become final and binding upon all of the parties  
15 concerned as of the date of its entry and filing, subject to the  
16 right of appeal. No such judgment shall be set aside for  
17 reasons other than the best interests and welfare of the child  
18 concerned, after the entry of a decree of adoption of the child  
19 concerned or during any period when the child is in an adoptive  
20 home in which the child has been placed by the department of  
21 human services or by a child-placing organization approved by



1 the department or by any person not forbidden by law to place a  
2 child for adoption. When any such child is placed for adoption,  
3 a sworn certificate evidencing the placement shall be filed in  
4 the termination proceeding by the agency or person making the  
5 placement. Upon the entry of a final decree of adoption of any  
6 such child, a certified copy of the decree shall be filed in the  
7 termination proceeding and notification of the entry of the  
8 decree, without disclosing the identity of the adopting parents,  
9 shall, unless waived by the court, be given to each person whose  
10 parental rights have been terminated by registered or certified  
11 mail addressed to the last known address of each such person;  
12 provided that at any time following the expiration of one year  
13 from the date of the entry of any such judgment of termination  
14 of parental rights, upon the motion of the parent or parents of  
15 the child or the department of human services or any child-  
16 placing organization approved by the department or any other  
17 proper person, based upon the fact that the child has not been  
18 adopted or placed in a prospective adoptive home, the court in  
19 which the judgment was entered shall review the same and shall  
20 consider the currently reported circumstances of the child and  
21 of the parent or parents and shall enter its findings as to



1 whether the circumstances, and the present best interests of the  
2 child, justify the continuance of the judgment. Upon such  
3 reconsideration, the court may either set aside the judgment or  
4 continue it in effect, as the circumstances may warrant. Upon  
5 the entry in the termination proceeding of a certified copy of  
6 the final decree of adoption of any such child and notification  
7 thereof to the person whose parental rights have been  
8 terminated, unless waived as herein provided, or upon the  
9 dismissal or discontinuance or other final disposition of the  
10 petition in the termination proceeding the clerk of the court  
11 shall seal all records in the termination proceeding and the  
12 seal shall not be broken and the records shall not be inspected  
13 by any person, including the parties to the termination  
14 proceeding, except upon order of the court."

15 SECTION 4. Section 804-7.1, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§804-7.1 Conditions of release on bail, recognizance, or**  
18 **supervised release.** Upon a showing that there exists a danger  
19 that the defendant will commit a serious crime or will seek to  
20 intimidate witnesses, or will otherwise unlawfully interfere  
21 with the orderly administration of justice, the judicial officer



1 named in section 804-5 may deny the defendant's release on bail,  
2 recognizance, or supervised release.

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

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



- 1           (6)    Requiring the defendant to comply with a specified
- 2                    curfew;
- 3           (7)    Requiring the defendant to seek and maintain mental
- 4                    health treatment or testing, including treatment for
- 5                    drug or alcohol dependency, or to remain in a
- 6                    specified institution for that purpose;
- 7           (8)    Requiring the defendant to remain in the jurisdiction
- 8                    of the judicial circuit in which the charges are
- 9                    pending unless approval is obtained from a court of
- 10                  competent jurisdiction to leave the jurisdiction of
- 11                  the court;
- 12           (9)    Requiring the defendant to satisfy any other condition
- 13                    reasonably necessary to assure the appearance of the
- 14                    person as required and to assure the safety of any
- 15                    other person or community; [~~or~~]
- 16           (10)   Imposing any combination of conditions listed
- 17                    above[-]; or
- 18           (11)    When a defendant has been charged with sexual assault,
- 19                    any prohibitions that restrict a defendant from
- 20                    approaching or communicating with the victim of sexual
- 21                    assault shall, at the victim's request, also apply



1           with respect to the victim's minor children,  
2           regardless of the existence of a parental relationship  
3           between the defendant and the child of the victim,  
4           where such prohibitions are in the best interest of  
5           the child.

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

9           SECTION 5. 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 6. If any provision of this Act, or the  
13 application thereof to any person or circumstance, is held  
14 invalid, the invalidity does not affect other provisions or  
15 applications of the Act that can be given effect without the  
16 invalid provision or application, and to this end the provisions  
17 of this Act are severable.

18           SECTION 7. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20           SECTION 8. This Act shall take effect upon its approval.

21





**Report Title:**

Involuntary Termination of Parental Rights; Involuntary  
Suspension of Parental Rights; Sexual Assault

**Description:**

Requires the family court to terminate parental rights if the court determines, by clear and convincing evidence, that a 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. Requires the family court to suspend custody and visitation, after proper filing of a petition and a hearing, to any child whose parent or legal guardian is charged for a sexual assault or other offense, under certain conditions. (SD1)

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

