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# A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1           SECTION 1. The legislature finds that ninety-five per cent  
2 of sexually abused children are abused by someone they know and  
3 trust. Seventy-three percent of child victims do not tell  
4 anyone about the abuse for at least one year, while forty-five  
5 per cent do not tell anyone for five years. Some never disclose  
6 having been or being abused at all. In light of these  
7 compelling statistics, more restrictive standards must be  
8 established to help courts determine the best interests of  
9 children while making custody decisions.

10           Therefore, the purpose of this Act is to:

11           (1) Clarify that if a court determines a parent has a  
12           felony conviction for a violent or sexual offense in  
13           which the victim was a minor, or if a parent is  
14           required to register as a sex offender, such  
15           classification raises a rebuttable presumption that it  
16           is detrimental to the child and not in the best



1 interest of the child to grant that parent custodial  
2 rights;

3 (2) Clarify that no child shall be placed in a home in  
4 which a person resides who has committed family  
5 violence, has a felony conviction for a violent or  
6 sexual offense in which the victim was a minor, or is  
7 required to register as a sex offender, nor have  
8 unsupervised visitation with that person, unless the  
9 court states the reasons for its findings in writing  
10 or on the record;

11 (3) Establish that no person shall be granted physical or  
12 legal custody of, or unsupervised visitation with, a  
13 child if anyone residing in that person's household is  
14 required to register as a sex offender unless the  
15 court finds there is no significant risk to the child  
16 and states its reasons in writing or on the record;

17 (4) Require a court to consider registration as a sex  
18 offender a presumption of risk that affects the burden  
19 of producing evidence;

20 (5) Establish that no person shall be granted custody of,  
21 or unsupervised visitation with, a child if the person



1 has been convicted of murder in the first degree and  
2 the victim of the murder was the other parent of the  
3 child, unless the court finds there is no risk to the  
4 child's health, safety, and welfare, and states the  
5 reasons for its findings in writing or on the record;  
6 and

7 (6) Clarify that no court shall disclose the custodial  
8 parent's place of residence, place of employment, or  
9 the child's school, unless the court finds disclosure  
10 would be in the best interests of the child.

11 SECTION 2. Section 571-46, Hawaii Revised Statutes, is  
12 amended by amending subsections (a) and (b) to read as follows:

13 "(a) In actions for divorce, separation, annulment,  
14 separate maintenance, or any other proceeding where there is at  
15 issue a dispute as to the custody of a minor child, the court,  
16 during the pendency of the action, at the final hearing, or any  
17 time during the minority of the child, may make an order for the  
18 custody of the minor child as may seem necessary or proper. In  
19 awarding the custody, the court shall be guided by the following  
20 standards, considerations, and procedures:



- 1           (1) Custody should be awarded to either parent or to both  
2           parents according to the best interests of the child,  
3           and the court also may consider frequent, continuing,  
4           and meaningful contact of each parent with the child  
5           unless the court finds that a parent is unable to act  
6           in the best interest of the child;
- 7           (2) Custody may be awarded to persons other than the  
8           father or mother whenever the award serves the best  
9           interest of the child. Any person who has had de  
10          facto custody of the child in a stable and wholesome  
11          home and is a fit and proper person shall be entitled  
12          prima facie to an award of custody;
- 13          (3) If a child is of sufficient age and capacity to  
14          reason, so as to form an intelligent preference, the  
15          child's wishes as to custody shall be considered and  
16          be given due weight by the court;
- 17          (4) Whenever good cause appears therefor, the court may  
18          require an investigation and report concerning the  
19          care, welfare, and custody of any minor child of the  
20          parties. When so directed by the court, investigators  
21          or professional personnel attached to or assisting the



1 court, hereinafter referred to as child custody  
2 evaluators, shall make investigations and reports that  
3 shall be made available to all interested parties and  
4 counsel before hearing, and the reports may be  
5 received in evidence if no objection is made and, if  
6 objection is made, may be received in evidence;  
7 provided the person or persons responsible for the  
8 report are available for cross-examination as to any  
9 matter that has been investigated; and provided  
10 further that the court shall define, in accordance  
11 with section 571-46.4, the requirements to be a court-  
12 appointed child custody evaluator, the standards of  
13 practice, ethics, policies, and procedures required of  
14 court-appointed child custody evaluators in the  
15 performance of their duties for all courts, and the  
16 powers of the courts over child custody evaluators to  
17 effectuate the best interests of a child in a  
18 contested custody dispute pursuant to this section.  
19 Where there is no child custody evaluator available  
20 that meets the requirements and standards, or any  
21 child custody evaluator to serve indigent parties, the



1 court may appoint a person otherwise willing and  
2 available in accordance with section 571-46.4;

3 (5) The court may hear the testimony of any person or  
4 expert, produced by any party or upon the court's own  
5 motion, whose skill, insight, knowledge, or experience  
6 is such that the person's or expert's testimony is  
7 relevant to a just and reasonable determination of  
8 what is for the best physical, mental, moral, and  
9 spiritual well-being of the child whose custody is at  
10 issue;

11 (6) Any custody award shall be subject to modification or  
12 change whenever the best interests of the child  
13 require or justify the modification or change and,  
14 wherever practicable, the same person who made the  
15 original order shall hear the motion or petition for  
16 modification of the prior award;

17 (7) Reasonable visitation rights shall be awarded to  
18 parents, grandparents, siblings, and any person  
19 interested in the welfare of the child in the  
20 discretion of the court, unless it is shown that



1 rights of visitation are detrimental to the best  
2 interests of the child;

3 (8) The court may appoint a guardian ad litem to represent  
4 the interests of the child and may assess the  
5 reasonable fees and expenses of the guardian ad litem  
6 as costs of the action, payable in whole or in part by  
7 either or both parties as the circumstances may  
8 justify;

9 (9) In every proceeding where there is at issue a dispute  
10 as to the custody of a child, a determination by the  
11 court that family violence has been committed by a  
12 parent, a parent has a felony conviction for a violent  
13 or sexual offense in which the victim was a minor, or  
14 a parent is required to be registered as a sex  
15 offender raises a rebuttable presumption that it is  
16 detrimental to the child and not in the best interest  
17 of the child to be placed in sole custody, joint legal  
18 custody, or joint physical custody with the  
19 perpetrator of family violence[-], the parent who has  
20 a felony conviction for a violent or sexual offense in  
21 which the victim was a minor, or the parent who is



1           required to register as a sex offender. In addition  
2           to other factors that a court shall consider in a  
3           proceeding in which the custody of a child or  
4           visitation by a parent is at issue, and in which the  
5           court has made a finding of family violence by a  
6           parent[+]; that a parent has a felony conviction for a  
7           violent or sexual offense in which the victim was a  
8           minor; or that the parent is required to register as a  
9           sex offender:

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

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

18           (C) If a parent is absent or relocates because of an  
19           act of family violence by the other parent, the  
20           absence or relocation shall not be a factor that





1 weighs against the parent in determining custody  
2 or visitation;

3 A child shall not be placed in a home in which a  
4 person resides who has committed family violence, has  
5 a felony conviction for a violent or sexual offense in  
6 which the victim was a minor, or is required to  
7 register as a sex offender, nor have unsupervised  
8 visitation with that person, unless the court states  
9 the reasons for its findings in writing or on the  
10 record;

11 (10) A court may award visitation to a parent who has  
12 committed family violence or has a felony conviction  
13 for a violent or sexual offense in which the victim  
14 was a minor only if the court finds that there is no  
15 significant risk to the child and adequate provision  
16 can be made for the physical safety and psychological  
17 well-being of the child and for the safety of the  
18 parent who is a victim of family violence;

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

20 (A) Order an exchange of a child to occur in a  
21 protected setting;



- 1 (B) Order visitation supervised by another person or  
2 agency;
- 3 (C) Order the perpetrator of family violence or a  
4 parent who has a felony conviction for a violent  
5 or sexual offense in which the victim was a minor  
6 to attend and complete, to the satisfaction of  
7 the court, a program of intervention for  
8 perpetrators or other designated counseling as a  
9 condition of the visitation;
- 10 (D) Order the perpetrator of family violence or a  
11 parent who has a felony conviction for a violent  
12 or sexual offense in which the victim was a minor  
13 to abstain from possession or consumption of  
14 alcohol or controlled substances during the  
15 visitation and for twenty-four hours preceding  
16 the visitation;
- 17 (E) Order the perpetrator of family violence or a  
18 parent who has a felony conviction for a violent  
19 or sexual offense in which the victim was a minor  
20 to pay a fee to defray the costs of supervised  
21 visitation;



- 1 (F) Prohibit overnight visitation;
- 2 (G) Require a bond from the perpetrator of family
- 3 violence or a parent with a felony conviction for
- 4 a violent or sexual offense in which the victim
- 5 was a minor for the return and safety of the
- 6 child. In determining the amount of the bond,
- 7 the court shall consider the financial
- 8 circumstances of the perpetrator of family
- 9 violence;
- 10 (H) Impose any other condition that is deemed
- 11 necessary to provide for the safety of the child,
- 12 the victim of family violence, or other family or
- 13 household member; and
- 14 (I) Order the address of the child and the victim to
- 15 be kept confidential;
- 16 (12) The court may refer but shall not order an adult who
- 17 is a victim of family violence to attend, either
- 18 individually or with the perpetrator of the family
- 19 violence, counseling relating to the victim's status
- 20 or behavior as a victim as a condition of receiving
- 21 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 potential for abuse or misuse of the electronic  
13 communication, including the equipment used for the  
14 communication, by the person seeking visitation or by  
15 persons who may be present during the visitation or  
16 have access to the communication or equipment; whether  
17 the person seeking visitation has previously violated  
18 a temporary restraining order or protective order; and  
19 whether adequate provision can be made for the  
20 physical safety and psychological well-being of the  
21 child and for the safety of the custodial parent;



1           (16) The court may set conditions for visitation by  
2           electronic communication under paragraph (15),  
3           including visitation supervised by another person or  
4           occurring in a protected setting. Visitation by  
5           electronic communication shall not be used to:  
6           (A) Replace or substitute an award of custody or  
7           physical visitation except where:  
8                 (i) Circumstances exist that make a parent  
9                 seeking visitation unable to participate in  
10                physical visitation, including military  
11                deployment; or  
12                (ii) Physical visitation may subject the child to  
13                physical or extreme psychological harm; or  
14           (B) Justify or support the relocation of a custodial  
15           parent; ~~and~~  
16           (17) Notwithstanding any provision to the contrary, no  
17           natural parent shall be granted custody of or  
18           visitation with a child if the natural parent has been  
19           convicted in a court of competent jurisdiction in any  
20           state of rape or sexual assault and the child was  
21           conceived as a result of that offense; provided that:



- 1 (A) A denial of custody or visitation under this  
2 paragraph shall not affect the obligation of the  
3 convicted natural parent to support the child;
- 4 (B) The court may order the convicted natural parent  
5 to pay child support;
- 6 (C) This paragraph shall not apply if subsequent to  
7 the date of conviction, the convicted natural  
8 parent and custodial natural parent cohabituate  
9 and establish a mutual custodial environment for  
10 the child; and
- 11 (D) A custodial natural parent may petition the court  
12 to grant the convicted natural parent custody and  
13 visitation denied pursuant to this paragraph, and  
14 upon such petition the court may grant custody  
15 and visitation to the convicted natural parent  
16 where it is in the best interest of the child[-];
- 17 (18) No person shall be granted physical or legal custody  
18 of, or unsupervised visitation with, a child if anyone  
19 residing in the person's household is required, as a  
20 result of a felony conviction in which the victim was  
21 a minor, to register as a sex offender unless the



1 court finds there is no significant risk to the child  
2 and states its reasons in writing or on the record.  
3 The child may not be placed in a home in which that  
4 person resides, nor permitted to have unsupervised  
5 visitation with that person, unless the court states  
6 the reasons for its findings in writing or on the  
7 record. When making a determination regarding  
8 significant risk to the child, the court shall deem  
9 that the requirement to register as a sex offender as  
10 a result of a felony conviction in which the victim  
11 was a minor shall constitute a presumption of risk,  
12 affecting the burden of producing evidence;  
13 (19) No person shall be granted custody of, or unsupervised  
14 visitation with, a child if the person has been  
15 convicted of murder in the first degree and the victim  
16 of the murder was the other parent of the child who is  
17 the subject of the order, unless the court finds that  
18 there is no risk to the child's health, safety, and  
19 welfare, and states the reasons for its findings in  
20 writing or on the record. In making its findings, the  
21 court may consider, among other things:



1           (A) The wishes of the child, if the child is of  
2           sufficient age and capacity to reason so as to  
3           form an intelligent preference;

4           (B) Credible evidence that the convicted parent was a  
5           victim of abuse committed by the deceased parent;  
6           provided that the evidence may include but shall  
7           not be limited to written reports by law  
8           enforcement agencies, child protective services  
9           or other social welfare agencies, courts, medical  
10          facilities, or other public agencies or private  
11          nonprofit organizations providing services to  
12          victims of domestic violence; or

13          (C) Testimony of a qualified expert witness that the  
14          convicted parent experiences intimate partner  
15          violence;

16          Unless and until a custody or visitation order is  
17          issued pursuant to this paragraph, no person shall  
18          permit or cause the child to visit or remain in the  
19          custody of the convicted parent without the consent of  
20          the child's custodian or legal guardian; and





1       (20) If the court makes a finding under subparagraph (9)  
2       against a parent, the court shall not disclose, or  
3       cause to be disclosed, the custodial parent's place of  
4       residence, place of employment, or the child's school,  
5       unless the court finds that the disclosure would be in  
6       the best interest of the child.

7       (b) In determining what constitutes the best interest of  
8 the child under this section, the court shall consider, but not  
9 be limited to, the following:

10       (1) Any history of sexual or physical abuse of a child by  
11 a parent;

12       (2) Any history of neglect or emotional abuse of a child  
13 by a parent;

14       (3) The overall quality of the parent-child relationship;

15       (4) The history of caregiving or parenting by each parent  
16 prior and subsequent to a marital or other type of  
17 separation;

18       (5) Each parent's cooperation in developing and  
19 implementing a plan to meet the child's ongoing needs,  
20 interests, and schedule; provided that this factor  
21 shall not be considered in any case where the court



- 1           has determined that family violence has been committed  
2           by a parent;
- 3           (6) The physical health needs of the child;
- 4           (7) The emotional needs of the child;
- 5           (8) The safety needs of the child;
- 6           (9) The educational needs of the child;
- 7           (10) The child's need for relationships with siblings;
- 8           (11) Each parent's actions demonstrating that they allow  
9           the child to maintain family connections through  
10           family events and activities; provided that this  
11           factor shall not be considered in any case where the  
12           court has determined that family violence has been  
13           committed by a parent;
- 14           (12) Each parent's actions demonstrating that they separate  
15           the child's needs from the parent's needs;
- 16           (13) Any evidence of past or current drug or alcohol abuse  
17           by a parent;
- 18           (14) The mental health of each parent;
- 19           (15) The areas and levels of conflict present within the  
20           family; [~~and~~]



1           (16) A parent's prior wilful misuse of the protection from  
2           abuse process under chapter 586 to gain a tactical  
3           advantage in any proceeding involving the custody  
4           determination of a minor. Such wilful misuse may be  
5           considered only if it is established by clear and  
6           convincing evidence, and if it is further found by  
7           clear and convincing evidence that in the particular  
8           family circumstance the wilful misuse tends to show  
9           that, in the future, the parent who engaged in the  
10          wilful misuse will not be able to cooperate  
11          successfully with the other parent in their shared  
12          responsibilities for the child. The court shall  
13          articulate findings of fact whenever relying upon this  
14          factor as part of its determination of the best  
15          interests of the child. For the purposes of this  
16          section, when taken alone, the voluntary dismissal of  
17          a petition for protection from abuse shall not be  
18          treated as prima facie evidence that a wilful misuse  
19          of the protection from abuse process has occurred[-];  
20          and



1        (17) Whether the parent has a felony conviction for a  
2        violent or sexual offense in which the victim was a  
3        minor or is required to register as a sex offender."

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

7        SECTION 4. Statutory material to be repealed is bracketed  
8        and stricken. New statutory material is underscored.

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



**Report Title:**

Family Courts; Sex Offenders; Murderers; Custody and Visitation; Significant Risk; Rebuttable Presumption; Disclosure of Information; Best Interests of the Child

**Description:**

Amends provisions relating to criteria and procedures in family court determinations regarding custody and visitation rights. Clarifies that a parent's felony conviction for a violent or sexual offense in which the victim was a minor, or requirement to register as a sex offender, raises a rebuttable presumption that custody or visitation by that parent is not in the best interest of the child. Requires courts to consider registration as a sex offender a presumption of risk that affects the burden of producing evidence. Requires courts to state reasons for findings in writing or on the record, including specific findings that there is no risk to the child's health, safety, and welfare. Requires nondisclosure of certain information when a court makes a finding of abuse or domestic violence against a parent. (SD1)

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

