

JAN 22 2021

A BILL FOR AN ACT

RELATING TO CHILDHOOD SEXUAL ABUSE.

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

1 SECTION 1. The legislature finds that the child welfare
2 system requires ongoing reform to uphold the best interests of
3 children who have been seriously abused by one or both custodial
4 parents. The legislature has identified two significant areas
5 for policy changes that lie within the purview of legislators
6 for the safety of children statewide:

7 (1) Allowing the consideration of harm to comport with the
8 threshold of harm in other states that have addressed
9 the problem of child safety; and

10 (2) Prohibiting the use of parental alienation syndrome in
11 determining child safety or custodial issues when
12 child sexual abuse or domestic violence by the
13 offending parent or custodian has been reported.

14 The legislature further finds the State is only allowed to
15 intervene in abuse cases to keep children safe if there is
16 imminent harm to a child. Many abusers commonly avoid this
17 situation by stopping their child abuse temporarily during



1 investigations, only to continue the abuse after they have been
2 awarded custody of the child. Other states have addressed this
3 issue by expanding the scenarios wherein the State may intervene
4 to protect children.

5 The legislature further finds that parental alienation
6 syndrome has been widely discredited by the mental-health and
7 legal communities. According to several studies on the
8 phenomenon, including a study from the University of Michigan
9 school of law and the former president of the American
10 Psychiatric Association, parental alienation syndrome is "junk
11 science" that fails the standard for evidentiary admissibility.

12 In addition, a call for nationwide reform was urged,
13 resulting from a 2020 longitudinal study--funded by the United
14 States Department of Justice--which also confirmed that parental
15 alienation syndrome lacked any scientific basis and courts'
16 consideration of parental alienation syndrome disproportionately
17 affected mothers reporting child abuse or child sexual abuse of
18 their children by their children's fathers. The result was that
19 mothers lost custody of their children through the fathers'
20 retaliatory-yet-successful counter-arguments in support of
21 parental alienation syndrome. Essentially, this common,



1 widespread phenomenon exemplifies systemic bias at its worst,
2 demonstrating the tacit rule that mothers should not report
3 child sexual abuse for fear of losing custody of their children
4 through the sexist application of the junk science of parental
5 alienation syndrome.

6 Although fathers'-rights organizations may argue in favor
7 of the validity of parental alienation syndrome, no organization
8 thus far has put forth a valid scientific study refuting the
9 findings of the numerous scientific and legal studies calling
10 for the abolition of the consideration of parental alienation
11 syndrome in determining child custody.

12 Furthermore, the legislature finds that the founder of the
13 concept of parental alienation syndrome developed his theory
14 without using any empirical evidence. However, because of a
15 longstanding problem with systemic sexism in the courts, his
16 scientifically baseless theory flourished to the detriment of
17 protective mothers.

18 The purpose of this Act is to:

19 (1) Prohibit courts from considering the allegation of
20 parental alienation syndrome in determining child



1 custody where sexual abuse or domestic violence has
2 been reported; and

3 (2) Allow for the consideration of "harm" and "probable
4 harm", rather than just "imminent harm", in Child
5 Protective Act determinations.

6 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§571-46 Criteria and procedure in awarding custody and**
9 **visitation; best interest of the child.** (a) In actions for
10 divorce, separation, annulment, separate maintenance, or any
11 other proceeding where there is at issue a dispute as to the
12 custody of a minor child, the court, during the pendency of the
13 action, at the final hearing, or any time during the minority of
14 the child, may make an order for the custody of the minor child
15 as may seem necessary or proper. In awarding the custody, the
16 court shall be guided by the following standards,
17 considerations, and procedures:

18 (1) Custody should be awarded to either parent or to both
19 parents according to the best interests of the child,
20 and the court also may consider frequent, continuing,
21 and meaningful contact of each parent with the child



1 unless the court finds that a parent is unable to act
2 in the best interest of the child;

3 (2) Custody may be awarded to persons other than the
4 father or mother whenever the award serves the best
5 interest of the child. Any person who has had de
6 facto custody of the child in a stable and wholesome
7 home and is a fit and proper person shall be entitled
8 prima facie to an award of custody;

9 (3) If a child is of sufficient age and capacity to
10 reason, so as to form an intelligent preference, the
11 child's wishes as to custody shall be considered and
12 be given due weight by the court;

13 (4) Whenever good cause appears therefor, the court may
14 require an investigation and report concerning the
15 care, welfare, and custody of any minor child of the
16 parties. When so directed by the court, investigators
17 or professional personnel attached to or assisting the
18 court, hereinafter referred to as child custody
19 evaluators, shall make investigations and reports that
20 shall be made available to all interested parties and
21 counsel before hearing, and the reports may be



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

20 (5) The court may hear the testimony of any person or
21 expert, produced by any party or upon the court's own



1 motion, whose skill, insight, knowledge, or experience
2 is such that the person's or expert's testimony is
3 relevant to a just and reasonable determination of
4 what is for the best physical, mental, moral, and
5 spiritual well-being of the child whose custody is at
6 issue;

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

13 (7) Reasonable visitation rights shall be awarded to
14 parents, grandparents, siblings, and any person
15 interested in the welfare of the child in the
16 discretion of the court, unless it is shown that
17 rights of visitation are detrimental to the best
18 interests of the child;

19 (8) The court may appoint a guardian ad litem to represent
20 the interests of the child and may assess the
21 reasonable fees and expenses of the guardian ad litem



1 as costs of the action, payable in whole or in part by
2 either or both parties as the circumstances may
3 justify;

4 (9) In every proceeding where there is at issue a dispute
5 as to the custody of a child, a determination by the
6 court that family violence has been committed by a
7 parent raises a rebuttable presumption that it is
8 detrimental to the child and not in the best interest
9 of the child to be placed in sole custody, joint legal
10 custody, or joint physical custody with the
11 perpetrator of family violence. In addition to other
12 factors that a court shall consider in a proceeding in
13 which the custody of a child or visitation by a parent
14 is at issue, and in which the court has made a finding
15 of family violence by a parent:

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

19 (B) The court shall consider the perpetrator's
20 history of causing physical harm, bodily injury,
21 or assault or causing reasonable fear of physical



- 1 harm, bodily injury, or assault to another
2 person; and
- 3 (C) If a parent is absent or relocates because of an
4 act of family violence by the other parent, the
5 absence or relocation shall not be a factor that
6 weighs against the parent in determining custody
7 or visitation;
- 8 (10) A court may award visitation to a parent who has
9 committed family violence only if the court finds that
10 adequate provision can be made for the physical safety
11 and psychological well-being of the child and for the
12 safety of the parent who is a victim of family
13 violence;
- 14 (11) In a visitation order, a court may:
- 15 (A) Order an exchange of a child to occur in a
16 protected setting;
- 17 (B) Order visitation supervised by another person or
18 agency;
- 19 (C) Order the perpetrator of family violence to
20 attend and complete, to the satisfaction of the
21 court, a program of intervention for perpetrators



- 1 or other designated counseling as a condition of
2 the visitation;
- 3 (D) Order the perpetrator of family violence to
4 abstain from possession or consumption of alcohol
5 or controlled substances during the visitation
6 and for twenty-four hours preceding the
7 visitation;
- 8 (E) Order the perpetrator of family violence to pay a
9 fee to defray the costs of supervised visitation;
- 10 (F) Prohibit overnight visitation;
- 11 (G) Require a bond from the perpetrator of family
12 violence for the return and safety of the child.
13 In determining the amount of the bond, the court
14 shall consider the financial circumstances of the
15 perpetrator of family violence;
- 16 (H) Impose any other condition that is deemed
17 necessary to provide for the safety of the child,
18 the victim of family violence, or other family or
19 household member; and
- 20 (I) Order the address of the child and the victim to
21 be kept confidential;



- 1 (12) The court may refer but shall not order an adult who
2 is a victim of family violence to attend, either
3 individually or with the perpetrator of the family
4 violence, counseling relating to the victim's status
5 or behavior as a victim as a condition of receiving
6 custody of a child or as a condition of visitation;
- 7 (13) If a court allows a family or household member to
8 supervise visitation, the court shall establish
9 conditions to be followed during visitation;
- 10 (14) A supervised visitation center shall provide a secure
11 setting and specialized procedures for supervised
12 visitation and the transfer of children for visitation
13 and supervision by a person trained in security and
14 the avoidance of family violence;
- 15 (15) The court may include in visitation awarded pursuant
16 to this section visitation by electronic communication
17 provided that the court shall additionally consider
18 the potential for abuse or misuse of the electronic
19 communication, including the equipment used for the
20 communication, by the person seeking visitation or by
21 persons who may be present during the visitation or



1 have access to the communication or equipment; whether
2 the person seeking visitation has previously violated
3 a temporary restraining order or protective order; and
4 whether adequate provision can be made for the
5 physical safety and psychological well-being of the
6 child and for the safety of the custodial parent;

7 (16) The court may set conditions for visitation by
8 electronic communication under paragraph (15),
9 including visitation supervised by another person or
10 occurring in a protected setting. Visitation by
11 electronic communication shall not be used to:

12 (A) Replace or substitute an award of custody or
13 physical visitation except where:

14 (i) Circumstances exist that make a parent
15 seeking visitation unable to participate in
16 physical visitation, including military
17 deployment; or

18 (ii) Physical visitation may subject the child to
19 physical or extreme psychological harm; or

20 (B) Justify or support the relocation of a custodial
21 parent; and



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1 (17) Notwithstanding any provision to the contrary, no
2 natural parent shall be granted custody of or
3 visitation with a child if the natural parent has been
4 convicted in a court of competent jurisdiction in any
5 state of rape or sexual assault and the child was
6 conceived as a result of that offense; provided that:
7 (A) A denial of custody or visitation under this
8 paragraph shall not affect the obligation of the
9 convicted natural parent to support the child;
10 (B) The court may order the convicted natural parent
11 to pay child support;
12 (C) This paragraph shall not apply if subsequent to
13 the date of conviction, the convicted natural
14 parent and custodial natural parent cohabituate
15 and establish a mutual custodial environment for
16 the child; and
17 (D) A custodial natural parent may petition the court
18 to grant the convicted natural parent custody and
19 visitation denied pursuant to this paragraph, and
20 upon such petition the court may grant custody



1 and visitation to the convicted natural parent
2 where it is in the best interest of the child.

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

6 (1) Any history of sexual or physical abuse of a child by
7 a parent;

8 (2) Any history of neglect or emotional abuse of a child
9 by a parent;

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

11 (4) The history of caregiving or parenting by each parent
12 prior and subsequent to a marital or other type of
13 separation;

14 (5) Each parent's cooperation in developing and
15 implementing a plan to meet the child's ongoing needs,
16 interests, and schedule; provided that this factor
17 shall not be considered in any case where the court
18 has determined that family violence has been committed
19 by a parent;

20 (6) The physical health needs of the child;

21 (7) The emotional needs of the child;



- 1 (8) The safety needs of the child;
- 2 (9) The educational needs of the child;
- 3 (10) The child's need for relationships with siblings;
- 4 (11) Each parent's actions demonstrating that they allow
- 5 the child to maintain family connections through
- 6 family events and activities; provided that this
- 7 factor shall not be considered in any case where the
- 8 court has determined that family violence has been
- 9 committed by a parent;
- 10 (12) Each parent's actions demonstrating that they separate
- 11 the child's needs from the parent's needs;
- 12 (13) Any evidence of past or current drug or alcohol abuse
- 13 by a parent;
- 14 (14) The mental health of each parent;
- 15 (15) The areas and levels of conflict present within the
- 16 family; and
- 17 (16) A parent's prior wilful misuse of the protection from
- 18 abuse process under chapter 586 to gain a tactical
- 19 advantage in any proceeding involving the custody
- 20 determination of a minor. Such wilful misuse may be
- 21 considered only if it is established by clear and



1 convincing evidence, and if it is further found by
2 clear and convincing evidence that in the particular
3 family circumstance the wilful misuse tends to show
4 that, in the future, the parent who engaged in the
5 wilful misuse will not be able to cooperate
6 successfully with the other parent in their shared
7 responsibilities for the child. The court shall
8 articulate findings of fact whenever relying upon this
9 factor as part of its determination of the best
10 interests of the child. For the purposes of this
11 section, when taken alone, the voluntary dismissal of
12 a petition for protection from abuse shall not be
13 treated as prima facie evidence that a wilful misuse
14 of the protection from abuse process has occurred.

15 (c) In no case shall the court consider parental
16 alienation syndrome as a defense where sexual assault or abuse
17 of a family or household member, or any threat thereof, has been
18 reported when making its determination under subsection (b)(1).
19 As used in this section, "parental alienation syndrome" means
20 the widely discredited idea that one parent may interfere with
21 the love that the child may have for the other parent by



1 preventing, or attempting to prevent, the child from maintaining
2 an ongoing relationship with the other parent during or after a
3 separation or divorce."

4 SECTION 3. Section 587A-4, Hawaii Revised Statutes, is
5 amended by adding a new definition to be appropriately inserted
6 and to read as follows:

7 "Probable harm" means that without intervention there is
8 reasonable cause to believe that harm to the child is more
9 likely than not to occur."

10 SECTION 4. Section 587A-5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§587A-5 Jurisdiction.** Pursuant to section 571-11(9), the
13 court shall have exclusive original jurisdiction:

14 (1) In a child protective proceeding concerning any child
15 who is or was found within the State at the time
16 specified facts and circumstances occurred, are
17 discovered, or are reported to the department. These
18 facts and circumstances constitute the basis for the
19 court's finding that the child's physical or
20 psychological health or welfare is subject to harm or
21 imminent harm, has been harmed, may suffer probable



1 harm, or is subject to threatened harm by the acts or
2 omissions of the child's family; and

3 (2) In any prior child protective proceeding under chapter
4 587, the former Child Protective Act."

5 SECTION 5. Section 587A-8, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) A police officer shall assume protective custody of a
8 child without a court order and without the consent of the
9 child's family, if in the discretion of the police officer, the
10 officer determines that:

11 (1) The child is subject to harm or imminent harm while in
12 the custody of the child's family;

13 (2) The child's parent has subjected, or may subject, the
14 child to probable harm;

15 [~~(2)~~] (3) The child has no parent, as defined in this
16 chapter, who is willing and able to provide a safe
17 family home for the child;

18 [~~(3)~~] (4) The child has no caregiver, as defined in this
19 chapter, who is willing and able to provide a safe and
20 appropriate placement for the child; or



1 [~~4~~] (5) The child's parent has subjected the child to
2 harm or threatened harm and the parent is likely to
3 flee with the child."

4 SECTION 6. Section 587A-9, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) When the department receives protective custody of a
7 child from the police, the department shall:

8 (1) Assume temporary foster custody of the child if, in
9 the discretion of the department, the department
10 determines that the child is subject to harm or
11 imminent harm while in the custody of the child's
12 family;

13 (2) Assume temporary foster custody of the child if, in
14 the discretion of the department, the child's parent
15 has subjected, or may subject, the child to probable
16 harm;

17 [~~2~~] (3) Make every reasonable effort to inform the
18 child's parents of the actions taken, unless doing so
19 would put another person at risk of harm;

20 [~~3~~] (4) Unless the child is admitted to a hospital or
21 similar institution, place the child in emergency



1 foster care while the department conducts an
2 appropriate investigation, with placement preference
3 being given to an approved relative;
4 ~~[(4)]~~ (5) With authorized agencies, make reasonable efforts
5 to identify and notify all relatives within thirty
6 days of assuming temporary foster custody of the
7 child; and
8 ~~[(5)]~~ (6) Within three days, excluding Saturdays, Sundays,
9 and holidays:
10 (A) Relinquish temporary foster custody, return the
11 child to the child's parents, and proceed
12 pursuant to section 587A-11(4), (5), or (6);
13 (B) Secure a voluntary placement agreement from the
14 child's parents to place the child in foster
15 care, and proceed pursuant to section 587A-11(6)
16 or (8); or
17 (C) File a petition with the court."

18 SECTION 7. Section 587A-11, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§587A-11 Investigation; department powers.** Upon
21 receiving a report that a child is subject to harm or imminent



1 harm, has been harmed, may suffer probable harm, or is subject
2 to threatened harm, and when an assessment is required by this
3 chapter, the department shall cause such investigation to be
4 made as it deems to be appropriate. In conducting the
5 investigation, the department may:

- 6 (1) Enlist the cooperation and assistance of appropriate
7 state and federal law enforcement authorities, who may
8 conduct an investigation and, if an investigation is
9 conducted, shall provide the department with all
10 preliminary findings, including the results of a
11 criminal history record check of an alleged
12 perpetrator of harm or threatened harm to the child;
- 13 (2) Conduct a criminal history record check of an alleged
14 perpetrator and all adults living in the family home,
15 with or without consent, to ensure the safety of the
16 child;
- 17 (3) Interview the child without the presence or prior
18 approval of the child's family and temporarily assume
19 protective custody of the child for the purpose of
20 conducting the interview;



- 1 (4) Resolve the matter in an informal fashion that it
- 2 deems appropriate under the circumstances;
- 3 (5) Close the matter if the department finds, after an
- 4 assessment, that the child is residing with a
- 5 caregiver who is willing and able to meet the child's
- 6 needs and provide a safe and appropriate placement for
- 7 the child;
- 8 (6) Immediately enter into a service plan:
 - 9 (A) To safely maintain the child in the family home;
 - 10 or
 - 11 (B) To place the child in voluntary foster care
 - 12 pursuant to a written agreement with the child's
 - 13 parent.
- 14 If the child is placed in voluntary foster care and
- 15 the family does not successfully complete the service
- 16 plan within three months after the date on which the
- 17 department assumed physical custody of the child, the
- 18 department shall file a petition. The department is
- 19 not required to file a petition if the parents agree
- 20 to adoption or legal guardianship of the child and the
- 21 child's safety is ensured; provided that the adoption



1 or legal guardianship hearing is conducted within six
2 months of the date on which the department assumed
3 physical custody of the child;

4 (7) Assume temporary foster custody of the child and file
5 a petition with the court within three days, excluding
6 Saturdays, Sundays, and holidays, after the date on
7 which the department assumes temporary foster custody
8 of the child, with placement preference being given to
9 an approved relative; or

10 (8) File a petition or ensure that a petition is filed by
11 another appropriate authorized agency in court under
12 this chapter."

13 SECTION 8. Section 587A-12, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) If the court determines that the child is subject to
16 harm, probable harm, or imminent harm while in the custody of
17 the child's family, the court shall order that a police officer
18 immediately take the child into protective custody and that the
19 department immediately assume temporary foster custody of the
20 child."



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1 SECTION 9. Section 587A-21, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) In deciding in temporary foster custody hearings
4 whether there is reasonable cause to believe that a child is
5 subject to harm, probable harm, or imminent harm the court may
6 consider relevant hearsay evidence when direct testimony is
7 unavailable or when it is impractical to subpoena witnesses who
8 will be able to testify to facts based on personal knowledge."

9 SECTION 10. Section 587A-26, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) After reviewing the petition and any reports
12 submitted by the department and considering all information
13 pertaining to the safe family home factors, the court shall
14 order:

15 (1) That the child be immediately released from the
16 department's temporary foster custody, placed in
17 temporary family supervision, and returned to the
18 child's family home with the assistance of services,
19 upon finding that the child's family is able to
20 provide a safe family home with services; or



1 (2) That the child continue in the department's temporary
2 foster custody, upon finding that there is reasonable
3 cause to believe that continued placement in foster
4 care is necessary to protect the child from harm,
5 probable harm, or imminent harm; provided that in
6 making this determination, the court shall consider
7 whether:

8 (A) The department made reasonable efforts to prevent
9 or eliminate the need for removing the child from
10 the child's family home before the child was
11 placed in foster care;

12 (B) The alleged or potential perpetrator of imminent
13 harm, harm, or threatened harm should be removed
14 from the family home rather than continuing the
15 child's placement in foster care. The child's
16 family shall have the burden of establishing that
17 it is in the child's best interests to remove the
18 child, rather than the alleged or potential
19 perpetrator, from the family home; and

20 (C) Every reasonable effort has been or is being made
21 to place siblings or psychologically-bonded



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1 children together, unless such placement is not
2 in the children's best interests."

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

6 SECTION 12. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 13. This Act shall take effect upon its approval.

9

INTRODUCED BY: *Thomas Mercado R.*



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Report Title:

Child Welfare; Custody; Visitation; Parental Alienation Syndrome; Child Protective Act; Harm; Probable Harm

Description:

Prohibits courts from considering parental alienation syndrome in determining child custody. Allows for the consideration of "harm" and "probable harm", rather than just "imminent harm", in Child Protective Act determinations.

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

