

ACT 205

H. B. NO. 1800-70

A Bill for an Act Relating to Termination of Parental Rights and Amending Chapter 571, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to make Sec. 571-61(b) (1) and (2) of the Termination Statute consistent with Sec. 578-2(b) (1) through (6) of our Adoption law.

Act 183 of the 1969 Legislative Session eliminated the concept of abandonment from the adoption statute and replaced it with two alternative factual

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situations, namely, failure to communicate with a child for a period of two years when able to do so, or failing to support the child for at least one year when able to do so, as required by law or judicial decree (Sec. 578-2(b) (2)). Satisfactory proof by the petitioner of either factual situation would permit the court to grant the adoption notwithstanding the parent's refusal to consent. This also applies to subsections (1) & (3) - (6).

Termination proceedings are generally used to facilitate adoption and under our present statute the Family Court is empowered to terminate the parental rights of parents who have abandoned a minor child for a period of not less than six months.

In order to make our termination statute conform with our adoption statute and to preclude use of the termination proceeding to avoid compliance with the provisions of the adoption law, it would be desirable to delete the abandonment provisions of the termination statute and replace them with the language of the adoption law. This Act accomplishes this purpose.

SECTION 2. Section 571-61, Hawaii Revised Statutes, is hereby amended to read as follows:

“Sec. 571-61 Termination of parental rights; petition. (a) The legal parents or the surviving parent or the mother of a minor born out of wedlock who desire to relinquish parental rights to any natural or adopted minor and thus make the minor available for adoption or readoption, may petition the family court of the circuit in which they or he or she resides, or of the circuit in which the minor resides, for the entry of a judgment of termination of parental rights. The petition shall be verified and shall be substantially in such form as may be prescribed by the judge or senior judge of the family court. The petition may be filed by the legal parents or the surviving parent or the unmarried mother of a living minor, or by the legal parents or the surviving mother or the unmarried mother of an unborn child at any time following the sixth month of pregnancy; provided, that no judgment may be entered upon a petition concerning an unborn child until after the birth of the child, and until the petitioner or petitioners have filed in the termination proceeding a written reaffirmation of their desires as expressed in the petition or until the petitioner or petitioners have been given not less than ten days' notice of a proposal for the entry of judgment and an opportunity to be heard in connection with such proposal.

- (b) The family courts may terminate the parental rights in respect to any minor as to any legal parent;
- (1) Who has deserted the minor without affording means of identification for a period of at least 90 days or who has voluntarily surrendered the care and custody of the minor to another for a period of at least two years;
- (2) Who, when the minor is in the custody of another, has failed to communicate with the minor when able to do so for a period of at least two years, or has failed to provide for care and support of the minor when able to do so as required by law or judicial decree for a period of at least one year;

- (3) Who has neglected, ill-treated or abused the minor to such an extent that legally authorized judicial action has been taken pursuant to section 571-11(2) (A), which has resulted in the removal of the minor from the physical custody of the parent; or
- (4) Who is found to be mentally ill or mentally retarded to an extent requiring institutional care and therefore incapacitated from giving consent to the adoption of the minor.

Such authority may be exercised only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the minor in the family court of the circuit in which the parent or the minor resides and the court has conducted a hearing of the petition. A copy of the petition, together with notice of the time and place of the hearing thereof, shall be personally served at least twenty days prior to the hearing upon the parent whose rights are sought to be terminated. In the event that personal service cannot be effected within the State, service of the notice may be made as provided in section 634-59 or 634-60, whichever is applicable; or in lieu thereof, service of the notice may be made by certified or registered mail with request for a return receipt, which service, evidenced by such receipt signed by the parent whose rights are sought to be terminated, shall be equivalent to personal service.”

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect on July 1, 1970.
(Approved July 2, 1970.)

* Edited accordingly