ACT 211 H. B. NO. 2021

A Bill for an Act Relating to Family Court Proceedings, Amending Chapters 571, 577, 578, 579 and 580, Hawaii Revised Statutes.

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

SECTION 1. Chapter 571, Hawaii Revised Statutes, is amended as follows:

(a) Section 571-3 is amended to read as follows:

"**Sec. 571-3 Family courts, divisions of circuit courts.** The family courts shall be divisions of the circuit courts of the State and shall not be deemed to be inferior courts as that term is used in the State Constitution. A family court shall be held at the courthouse in each circuit, or other duly designated place, by the judge or judges of the respective family courts as herein defined. The chief justice of the supreme court may temporarily assign a family court judge to preside in another circuit when the urgency of one or more cases requires him to do so. In any case in which it has jurisdiction the court shall exercise general equity powers as authorized by law."

(b) Section 571-5 is amended to read as follows:

"**Sec. 571-5 Board of family court judges.** A board of family court judges, which shall consist of all the State's family court judges, is hereby created. The board shall annually elect from among its members a chairman who shall preside at meetings of the board. The chairman shall have no other authority not specifically authorized under this chapter, or any applicable rule of the supreme court, or specifically delegated by a majority of the board. The board shall meet at stated times to be fixed by it but not less often than once every six months, and on call of the chairman.

The board shall discuss and shall attempt to achieve agreement upon general policies for the conduct of the family courts and forms for use in such courts. The board shall recommend, for adoption by the supreme court, rules of court governing procedure and practices in such courts. The board may, within the limitations of the facilities available to the family courts of the State, seek the consolidation of the statistical and other data on the work and services of such courts and research studies that may be made of the problems of families and children dealt with by such courts to the end that the treatment of children and families subject to the jurisdiction of such courts shall achieve the highest possible degree of uniformity throughout the State and to the further end that knowledge of treatment, methods and therapeutic practices be shared among such courts. The board may also formulate recommendations for remedial legislation. All actions by the board shall be subject to the regulatory supervision of the chief justice of the supreme court."

(c) Section 571-7 is amended to read as follows:

"**Sec. 571-7 Appointment of referees, duties.** The judge or senior judge, if there is more than one, may appoint attorneys licensed to practice before the supreme court of Hawaii to act as referees, who shall hold office during the pleasure of the senior judge or judge. Referees shall not engage in the practice

of law while they hold office. The compensation of the referees shall be the same as a full time district judge's salary. The senior judge or judge may direct that any case coming within the jurisdictional provisions of this chapter, or all cases of a class or within a district to be designated by him, shall be heard in the first instance by a referee in the manner provided for the hearing of cases by the court, but any party may, upon request, have a hearing before a judge in the first instance. At the conclusion of a hearing the referee shall transmit promptly to the senior judge or judge all papers relating to the case, together with his findings and recommendations in writing.

The referees may administer oaths; take testimony under the rules of court and the orders of the family court; make orders with respect to the taking of depositions in controversies pending before them; grant continuances of proceedings before them; subpoena and compel the attendance of witnesses within their respective circuits; and punish contempts according to law.

Written notice of the referee's findings and recommendations shall be given to the minor if he is of sufficient age to understand the nature of the notice, and to the parent, guardian, or custodian of the minor, in all cases heard by a referee coming within section 571-11, except uncontested cases coming within section 571-11(3) to (8), and to all parties in contested adoption cases and in contested cases coming within section 571-14.

A hearing by a judge shall be allowed if any of such persons files with the court a request for review, provided that the request is filed within five days after the referee's written notice which shall apprise the persons of their right to request such review. If a hearing de novo is not requested by any party or ordered by the court, the hearing shall be upon the same evidence heard by the referee and reported in his findings, provided that new evidence may be admitted in the discretion of the judge. If a hearing before a judge is not requested or the right to the review is waived, the findings and recommendations of the referee, when confirmed by an order of a judge, become the decree of the court."

(d) Subsection 571-21(e) is amended to read as follows:

"(e) The family courts may, by suitable orders, provide regulations concerning the titles, filing, investigation, and the form and content of petitions and other pleadings in cases under this chapter, or these matters may be governed by the rules of court."

(e) Section 571-41 is amended to read as follows:

"Sec. 571-41 Procedure in children's and minors' cases. Cases of children and minors in proceedings under section 571-11(1) and (2) shall be heard by the court separate from hearings of adult cases and without a jury. Stenographic notes or mechanical recordings shall be required as in other civil cases in the circuit courts, unless the parties waive the right of such record or the court so orders. The hearings may be conducted in an informal manner and may be adjourned from time to time. The general public shall be excluded and only such persons admitted whose presence is requested by the parent or guardian or as the judge or referee finds to have a direct interest in the case or in the work of the court from the standpoint of the best interests of the child or minor involved. Prior to the start of a hearing, the parents, guardian, legal

custodian, and, when appropriate, the minor shall be notified of the right to be represented by counsel.

Findings of fact by the judge or referee of the validity of the allegations in the petition shall be based upon a preponderance of evidence admissible under the rules applicable to the trial of civil causes, provided, that no minor who is before the court under section 571-11(1) shall be required to testify against himself over the objection of his parents, guardian, or counsel. In the discretion of the judge or referee the child may be excluded from the hearing at any time. When more than one minor is alleged to have been involved in the same act, the hearing may be held jointly for the purpose of making a finding as to the allegations in the petition and then shall be heard separately for the purpose of disposition except in cases where the minors involved have one common parent.

In the disposition part of the hearing any relevant and material information, including that contained in a written report, study, or examination, shall be admissible, and may be relied upon to the extent of its probative value; provided, that the maker of the written report, study, or examination shall be subject to both direct and cross-examination upon demand and when he is reasonably available. The disposition shall be based only upon the admitted evidence, and findings adverse to the minor as to disputed issues of fact shall be based upon a preponderance of such evidence.

Upon a final adverse disposition, if the parent or guardian is without counsel the court shall inform the parent or guardian of his right to appeal as provided for in section 571-54.

By rule of court there may be established appropriate special procedures for the hearing and disposition of cases involving violation of traffic laws or ordinances by children or minors."

(f) Section 571-45 is amended to read as follows:

"**Sec. 571-45 Investigation prior to disposition.** Except where the requirement is waived by the judge a social study and a report in writing shall be made in the case of a minor concerning whom a petition has been filed under subsection 571-11(1) and (2). The study shall be initiated upon the filing of a petition except in petitions filed under 571-11(1) when it is ascertained that the minor denies the allegations set forth in the petition. In such case the study shall proceed only after the court after hearing has made a finding as to the allegations of the petition.

Except where the requirement is waived by the judge, social studies shall also be made in proceedings to decide disputed or undetermined legal custody and in custody disputes arising out of a divorce action. In all other awards of custody arising out of a divorce action, including those where an agreement with respect to custody has been made by the parties, and in any other case or class of cases, the judge may order a social study when he has reason to believe such action is necessary to assure adequate protection of the minor or of any other person involved in the case. By special order of the judge or by rule of court a social study may be required in support cases covering financial ability and other matters pertinent to making an order of support. The use of such studies in custody and support hearings shall be subject to

the applicable provisions of section 571-41.

Social studies required by this section shall be presented to and considered by the judge prior to making disposition.

The judge may order and use a presentence investigation with respect to any criminal action under the jurisdiction of the court in accordance with the existing provisions of the law with respect to the making and use of such studies."

(g) Section 571-54 is amended to read as follows:

"**Sec. 571-54 Appeal.** An interested party aggrieved by any order or decree of the court may appeal to the supreme court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court except as hereinafter provided. Where the decree or order affects the custody of a child or minor the appeal shall be heard at the earliest practicable time. In cases under section 571-11 the record on appeal shall be given a fictitious title, to safeguard against publication of the names of the children or minors involved.

The stay of enforcement of an order or decree, or the pendency of an appeal, shall not suspend the order or decree of the court regarding a child or minor or discharge the child or minor from the custody of the court or of the person, institution, or agency to whose care he has been committed, unless otherwise ordered by the family court, or by the supreme court after an appeal is taken. Pending final disposition of the case the family court, or the supreme court after an appeal is taken, may make such order for temporary custody as is appropriate in the circumstances. If the supreme court does not dismiss the proceedings and discharge the child or minor, it shall affirm or modify the order of the family court and remand the child or minor to the jurisdiction of the court for disposition not inconsistent with the supreme court's finding on the appeal.

An order or decree entered in a proceeding based upon section 571-11(1), (2), or (6) shall be subject to appeal to the supreme court only as follows:

Within ten days from the date of the entry of any such order or decree, any party directly affected thereby, including a parent or legal custodian of any child or minor involved, may petition the judge for a rehearing and reconsideration of the facts involved. The petition shall set forth the grounds on which a rehearing is requested and shall be sworn to by the petitioner. A copy thereof shall be served upon the attorney general, who shall represent the interests of the State at the rehearing and in connection with any subsequent appeal. As soon thereafter as may be practicable, the judge shall proceed with the rehearing of the case, affording to all parties concerned the full right of representation by counsel and presentation of relevant evidence. The findings of the judge upon the rehearing and his determination and disposition of the case thereafter, and any decision, judgment, order, or decree affecting the child and entered as a result of the rehearing shall be set forth in writing and signed by the judge. Any party deeming himself aggrieved by any such judgment, order, or decree, entered following a rehearing as in this section provided, shall have the right to appeal therefrom to the supreme court upon the same terms and conditions as in other cases in the circuit court; provided,

that no such petition for rehearing shall operate as a stay of any such judgment, order, or decree unless the judge of the family court so orders; provided, further, that no informality or technical irregularity in the proceedings prior to the rehearing hereinabove provided for shall constitute grounds for the reversal of any such judgment, order, or decree by the supreme court."

(h) Section 571-61 is 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 affirmation 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;

(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; or

(5) When it is shown to the satisfaction of the court that the legal father of a child is not his natural father.

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."

(i) Section 571-63 is amended to read as follows:

"Sec. 571-63 Findings and judgment. No judgment of termination of parental rights entered under sections 571-61 to 571-63 shall be valid or binding unless it contains a finding that the facts upon which the petition is based bring the minor within such sections and have been proved by the evidence and that the adjudication of termination of parental rights is necessary for the protection and preservation of the best interests of the minor concerned and will facilitate the legal adoption of the minor.

In any judgment entered pursuant to sections 571-61 to 571-63 the court may terminate the parental rights of one or both of the parents of the minor concerned, may transfer the care, custody, and control of the minor to any proper person not forbidden by law to place a child for adoption or to the department of social services and housing or to any child-placing organization approved by the department, may appoint a guardian of the person of the minor, and may authorize the person or the department or the agency or the guardian to consent to the legal adoption of the minor.

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

Every such judgment of termination of parental rights when the procedural provisions of sections 571-61 to 571-63 have been followed shall become final and binding upon all of the parties concerned as of the date of its entry and filing, subject to the right of appeal. No such judgment shall be set aside for reasons other than the best interests and welfare of the minor concerned, after the entry of a decree of adoption of the minor concerned or during any period when the minor is in an adoptive home in which the minor has been placed by the department of social services and housing or by a child-placing organization approved by the department or by any person not forbidden by law to place a minor for adoption. When any such minor is placed for adoption, a sworn certificate evidencing the placement shall be filed in the termination proceeding by the agency or person making the placement. Upon the entry of a final decree of adoption of any such minor, a certified copy of the decree shall be filed in the termination proceeding and notification of the entry of the decree, without disclosing the identity of the adopting parents, shall be given to each person whose parental rights have been terminated by registered mail addressed to the last known address of each such person; provided, that at any time following the expiration of one year from the date of the entry of any such judgment of termination of parental rights, upon the motion of the parent or parents of the minor or the department of social services and housing or

any child-placing organization approved by the department or any other proper person, based upon the fact that the minor has not been adopted or placed in a prospective adoptive home, the court in which the judgment was entered shall review the same and shall consider the currently reported circumstances of the minor and of the parent or parents and shall enter its finding as to whether the circumstances, and the present best interests of the child, justify the continuance of the judgment. Upon such reconsideration, the court may either set aside the judgment or continue it in effect, as the circumstances may warrant. Upon the entry in the termination proceeding of a certified copy of the final decree of adoption of any such minor and notification thereof to the person whose parental rights have been terminated, or upon the dismissal or discontinuance or other final disposition of the petition in the termination proceeding the clerk of the court shall seal all records in the termination proceeding and the seal shall not be broken and the records shall not be inspected by any person, including the parties to the termination proceeding, except upon order of the court."

(j) Section 571-82 is amended to read as follows:

"**Sec. 571-82 Court sessions; quarters.** Sessions of the court shall be held at such places as the court shall determine, subject to section 603-14."

(k) Section 571-84 is amended to read as follows:

"**Sec. 571-84 Records.** The court shall maintain records of all cases brought before it. In proceedings under section 571-11, and in paternity proceedings under chapter 579, the following records shall be withheld from public inspection: the court docket, petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be open to inspection by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings from the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, or treatment of the minor.

Reports of social and clinical studies or examinations made pursuant to this chapter shall be withheld from public inspection, except that information from such reports may be furnished, in a manner determined by the judge, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare, and treatment of the minor.

No information obtained or social records prepared in the discharge of official duty by an employee of the court shall be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive such information, unless and until otherwise ordered by the judge.

Without the consent of the judge, neither the fingerprints nor a photograph shall be taken of any child in police custody, unless the case is trans-

ferred for criminal proceedings. Except for the immediate use in such criminal case, any photograph or fingerprint taken upon such transfer shall not be used or circulated for any other purpose and shall be subject to all rules and standards provided for in section 571-74.

The records of any police department, and of any juvenile crime prevention bureau thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection only by persons whose official duties are concerned with the provisions of this chapter, except as otherwise ordered by the court. Any such police records concerning traffic accidents in which a child or minor coming within section 571-11(1) is involved shall, after the termination of any proceeding under section 571-11(1) arising out of any such accident, or in any event after six months from the date of the accident, be available for inspection by the parties directly concerned in the accident, or their duly licensed attorneys acting under written authority signed by either party. Any person who may sue because of death resulting from any such accident shall be deemed a party concerned.

Evidence given in proceedings under section 571-11(1) or (2) shall not in any civil, criminal, or other cause be lawful or proper evidence against the child or minor therein involved for any purpose whatever, except in subsequent proceedings involving the same child under section 571-11(1) or (2)."

(1) Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 571-14 Jurisdiction; adults.** The court shall have exclusive original jurisdiction:

(1) To try any offense committed against a minor by his parent or guardian or by any other person having his legal or physical custody, and any violation of section 709-902, 709-903, 709-904, or 709-905, whether or not included in other provisions of this paragraph or paragraph (2).
(2) To try any adult charged with:
    (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
    (B) An offense, other than a felony, against the person of the defendant's husband or wife.

    In any case within paragraph (1) or (2) of this section the court may, in its discretion, waive its jurisdiction over the offense charged.
(3) In all proceedings under chapter 580, and in all proceedings under chapter 579.
(4) In proceedings under chapter 575, the Uniform Desertion and Nonsupport Act, and under chapter 576, the Uniform Reciprocal Enforcement of Support Act.
(5) For commitment of an adult alleged to be mentally defective or mentally ill.
(6) In all proceedings for support between parent and child or between husband and wife, and in all proceedings to appoint a guardian of the person of an adult."

SECTION 2. Chapter 577, Hawaii Revised Statutes, is amended as follows:

(a) Section 577-9, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 577-9 Jury trial, when.** In trials against any person over the age of majority arising under sections 709-902, 709-903, 709-904, and 709-905, the person proceeded against shall have the right to a trial by jury which shall be granted as in other cases, unless waived. If the finding of the jury is against the person tried their verdict shall so state, in which event the court, in its discretion, may enter such judgment as it seems needful in the premises."

(b) Section 577-10, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 577-10 Court having jurisdiction.** The family courts shall have exclusive jurisdiction of all cases coming within sections 709-902, 709-903, 709-904, and 709-905; provided, that upon complaint made to any prosecuting officer of the commission of any offense coming within sections 709-902, 709-903, 709-904, and 709-905, the district judge within whose circuit the offense is alleged to have been committed may issue his warrant for the arrest of the person accused of such offense, and commit the accused to the family court for the required proceedings."

(c) Section 577-11, Hawaii Revised Statutes, is repealed.

(d) Section 577-13, Hawaii Revised Statutes, is repealed.

SECTION 3. Chapter 578, Hawaii Revised Statutes, is amended as follows:

(a) Section 578-1 is amended to read as follows:

"**Sec. 578-1 Who may adopt; jurisdiction; venue.** Any proper adult person, not married, or any person married to the legal father or mother of a minor child, or a husband and wife jointly, may petition the family court of the circuit in which he or they reside or are in military service or the family court of the circuit in which the child resides or was born or in which a child placing organization approved by the department under the provisions of section 346-17 having legal custody (as defined in section 572-2(11)) of the child is located, for leave to adopt a minor child toward whom he or they do not sustain the legal relationship of parent and child and for a change of the name of the child. The petition shall be in such form and shall include such information and exhibits as may be prescribed by the family court."

(b) Section 578-2 is amended to read as follows:

"**Sec. 578-2 Consent to adoption.** (a) Persons required to consent to adoption. Unless consent is not required under paragraph (b) hereof, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by:

(1) Each living parent of a legitimate child;

(2) The mother of an illegitimate child;

(3) Any person or agency having legal custody of the child or legally empowered to consent;

(4) The court having jurisdiction of the custody of the child, if the legal guardian or legal custodian of the person of the child is not empowered to consent to adoption;

(5) The child to be adopted if more than ten years of age, unless the court in the best interest of the child dispenses with the child's consent.

(b) Persons as to whom consent not required. Consent to adoption is not required of:

(1) A parent who has deserted a child without affording means of identification for a period of ninety days or who has voluntarily surrendered the care and custody of the child to another for a period of two years;

(2) A parent of a child in the custody of another, if the parent for a period of at least two years has failed to communicate with the child when able to do so, or for a period of at least one year has failed to provide for care and support of the child when able to do so, as required by law or judicial decree;

(3) The natural father of an illegitimate child who has not legally been legitimated either prior to the placement of the child with adoptive parents or prior to the execution of a valid consent by the mother of the child;

(4) A parent whose parental rights have been judicially terminated under the provisions of chapter 572, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take such action;

(5) A parent judicially declared mentally incompetent or mentally retarded if the court dispenses with such parent's consent;

(6) Any legal guardian or legal custodian of the child sought to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably.

(c) Notice of hearing; minor parent; consent authorizing selection of adoptive parents. No hearing of a petition for adoption shall be had unless each of the living parents of the child who has not consented to the proposed adoption, but who is alleged to come within the provisions of paragraph (b)(1) or (b)(2) of this section, shall have had due notice, actual or constructive, of the allegations of the petition and of the time and place of the hearing thereof. Such notice need not be given to any parent whose parental rights have been legally terminated as hereinabove provided or whose consent has been filed with the petition.

The minority of a child's parent shall not be a bar to the right of such parent to execute a valid and binding consent to the adoption of such child.

Any parental consent required hereunder shall be valid and binding even though it does not designate any specific adoptive parent or parents, if it clearly authorizes the department of social services and housing, or a child placing organization approved by the department under the provisions of section 346-17 or some proper person not forbidden by law to place a child for adoption, to

select and approve an adoptive parent or parents for the child.

(d) Withdrawal of consent. A consent to adoption which has been filed or received in evidence in an adoption proceeding or which has been given to the department of social services and housing or to a child placing organization approved by the department under the provisions of section 346-17, or to any other proper person not forbidden by law to place or receive a child for adoption, may not be withdrawn or repudiated after the child has been placed for adoption, without the express approval of the court based upon a written finding that such action will be for the best interests of the child.

(e) Maintenance of action based on medical or surgical treatment of child barred when. A person who consents to adoption, or on whose behalf a consent to adoption is signed, and a nonconsenting parent whose consent is not required hereunder shall be barred from maintaining any action based upon medical or surgical care or treatment given to the child with the permission of the petitioner or petitioners or the person or agency authorized by the parental consent to select and approve an adoptive parent or parents; provided, that nothing herein contained shall be construed to alienate or impair any cause of action accruing to the child for personal injury which may be sustained as a result of such medical or surgical care or treatment."

(c) Section 578-3 is amended to read as follows:

"**Sec. 578-3 Custody of child pendente lite.** At any stage of the proceeding subsequent to the filing of the petition and prior to the entry of a decree, the court, upon a showing that the best interests of the child will be served thereby, may order that the petition or petitioners shall be entitled to retain the custody and control of the child and shall be responsible for the care, maintenance and support of the child including any necessary medical or surgical treatment, pending the further order of the court. Such order may also authorize and legally obligate the petitioner or petitioners to arrange for the burial of the child if the child shall die prior to the entry of the decree."

(d) Section 578-6 is amended to read as follows:

"**Sec. 578-6 Notice to nonresident or unlocated nonconsenting legal parent whose rights have not been terminated.** If a legal parent to whom notice must be given as aforesaid was never an inhabitant of the State, or has removed therefrom, or if, after due diligence, the parent cannot be found within the State, and the fact appears by affidavit to the satisfaction of the court, it may be ordered by the court that the service be made under section 578-7."

(e) Section 578-7 is amended to read as follows:

"**Sec. 578-7 Substituted or constructive service.** Upon the filing of the affidavit referred to in section 578-6, the court may order service of the notice prescribed in sections 578-2 and 578-4 to be made as follows:

(1) Personal service or service by registered mail without the State. If the residence of a nonresident legal parent is known or is ascertained at any stage of the proceeding prior to the filing of a return of service pursuant to section 578-5, the court may order that service of notice of the time and place of hearing of the petition and of a copy thereof and of a copy of the court's order be made upon such parent

(A) by personal service thereof, without the State, by such person and in such manner as the court may direct, or (B) by sending certified copies of the petition and of the notice of the time and place of the hearing thereof and of the court's order, by registered mail, addressed to such parent, with request for return receipt, which service, evidenced by such receipt signed by the parent and returned to the clerk of the court, shall be regarded as equivalent to service by publication or in lieu thereof. When service is made pursuant to this paragraph, the time appointed for the hearing of the petition shall be not less than twenty-one days subsequent to the date of service as herein provided.

(2) Service by publication. If the residence of such parent is not known and cannot be ascertained, or if an attempt to effect service by either of the methods authorized in paragraph (1) hereof is unsuccessful, the court may order that service shall be made by publication. The order shall direct that publication of notice of the pendency of the petition and of the time and place of the hearing thereof be made in a newspaper or newspapers suitable for the advertisement of notices of judicial proceedings once in each week for not less than four successive weeks as the court may prescribe, the last publication to be not less than twenty-one days prior to the time appointed for the hearing of the petition. The court may, in addition to ordering publication, direct that a copy of the petition and notice be forthwith deposited in the post office, addressed to such parent at his last known place of residence. The service of the notice required by section 578-2 shall be deemed complete at the expiration of the time prescribed by the order of publication."

(f) Section 578-8 is amended to read as follows:

"**Sec. 578-8 Hearing; investigation; decree.** No decree of adoption shall be entered unless a hearing has been held at which the petitioner or petitioners, and any legal parent married to a petitioner, and any child whose consent is required, have personally appeared before the court, unless expressly excused by the court. After considering the petition and such evidence as the petitioners and any other properly interested person may wish to present, the court may enter a decree of adoption if it is satisfied (1) that the child is adoptable under sections 578-1 and 578-2, (2) that the child is physically, mentally, and otherwise suitable for adoption by the petitioners, (3) that the petitioners are fit and proper persons and financially able to give the child a proper home and education, and (4) that the adoption will be for the best interests of the child, which decree shall take effect upon such date as may be fixed therein by the court, such date to be not earlier than the date of the filing of the petition and not later than six months after the date of the entry of the decree.

Before entering the decree, the court shall notify the director of social services and housing or the nearest county administrator of the department of social services and housing of the pendency of such petition for adoption and allow a reasonable time for the director or such county administrator to make such investigation as he may deem proper as to the fitness of the petitioners

to adopt the child, and as to whether the best interests of the child will be subserved by the adoption; provided, that the court may, if it finds that the best interests of the child so require, by written order waive the requirement for notification and investigation above set forth, and enter its decree solely on the basis of the evidence adduced at the hearing. The director shall have the right to intervene in any adoption proceeding for the purpose of protecting the interests of the child or of any legal parent of the child, and shall have the same rights of appeal as any party to the proceeding. The attorney general, upon the request of the director, shall represent the director in any such proceeding. The director, when notified as above set forth, or when he has intervened without notification, shall make a report to the court within the time required, reporting the facts disclosed and his recommendation; provided, that the director, if he determines that the best interests of the child will be served thereby, may refer any such notification to a child placing organization approved by the department under section 346-17, and the report and recommendation of such organization, when forwarded by the director, shall be considered by the court in lieu of a report and recommendation by the director. If the court determines that any such report discloses facts adverse to the petitioners or indicates that the best interests of the child will not be subserved by the proposed adoption, it shall thereupon give notice of the determination to the petitioners and afford them a reasonable opportunity to rebut the report.

(g) Section 578-9 is amended to read as follows:

"**Sec. 578-9 Custody of child after decree and before adoption.** The decree may provide that, during the period, if any, between the entry thereof and the effective date of adoption, the care, custody, and control of the child be given to the petitioner or petitioners, who, in such event, shall be liable during such period for the care, maintenance, and support of the child and for its torts in the same manner as legal parents, and may further provide for the supervision and visitation of the child by the director of social services and housing or his agent during such period and for such reports in connection therewith as the court may require."

(h) Section 578-10 is amended to read as follows:

"**Sec. 578-10 Disposition of child on discontinuance, withdrawal or denial of petition.** Upon the discontinuance or withdrawal or denial of any petition for adoption, the court may make appropriate temporary orders concerning the care, custody and control of the child involved and may refer the child to the department of social services and housing or to another appropriate agency or officer for action as in the case of a minor subject to section 571-11(1)."

(i) Section 578-11 is amended to read as follows:

"**Sec. 578-11 Disposition in case of death of petitioners.** Notwithstanding the death of a petitioner or the petitioners during the pendency of the petition, the court, if it finds that the best interests of the child will be served thereby, and, in the case of a surviving petitioner, that such petitioner so desires, may enter a decree of adoption as prayed for in the petition, effective as of the date of the filing of the petition."

(j) Section 578-12 is amended to read as follows:

"**Sec. 578-12 Setting aside or modifying decree.** At any time within one year from the date of entry of any decree of adoption, the court may, for good cause, set aside or modify the decree and, in connection therewith, may make appropriate orders, concerning the custody of the minor child and the disposition and handling of the record of adoption by the department of health. The setting aside or modification of any decree of adoption shall not affect any property rights which have become vested between the date of the entry of the decree or the effective date of the decree and the effective date of any order setting aside or modifying the decree of adoption.

No decree of adoption shall be subject to attack in any collateral proceeding, and, after the expiration of one year from the date of its entry, no decree of adoption shall be subject to direct attack upon any ground other than fraud rendering the decree void as of the time of its entry."

(k) Section 578-13 is amended to read as follows:

"**Sec. 578-13 Change of name.** The family name of the adoptive child shall be changed to that of the adoptive parent or parents and the given name of the child may be fixed or changed at the same time."

(l) Section 578-14 is amended to read as follows:

"**Sec. 578-14 Record of adoption.** A certified copy of the decree of adoption, or a certified abstract thereof on a form approved by the department of health shall, after such decree has become effective, be sent to the department. The department shall cause to be made a new record of the birth in the name of the child, as fixed or changed by the decree, with the names of the adoptive parents, and shall then cause to be sealed and filed the original birth certificate of the child with the decree or the abstract thereof, and such sealed package shall be opened only by order of a court of record. If the birth of the child occurred outside of the State, and a record of such birth exists, the certified copy of the decree or the abstract thereof, shall be transmitted by the department of health to the birth registration authorities of the place of the child's birth with a request that such authorities take appropriate action with respect to the record of the child's birth. If the birth of the child occurred outside of the State, or if the birth of a child born in the State has not been registered with the department of health, or if other good cause exists, the clerk of the court shall, upon request, and with the approval of the family court, upon the finding of the court that such action is for the best interests of the child involved, furnish to the adoptive parents, or to the child, or to any proper person acting in their behalf, a certified copy or abstract of the decree of adoption, or a certificate of adoption in such form as is approved by the court. If the parental rights of a parent or the parents of the child have been judicially terminated under chapter 571 prior to the entry of the decree, a certified copy of the decree shall be filed in the termination proceeding."

(m) Section 578-15 is amended to read as follows:

"**Sec. 578-15 Secrecy of proceedings and records.** The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of social services and housing or his agent, or by any proper person on a show-

ing of good cause therefor, upon order of the court. Except in the case of a child being adopted by a person married to the legal father or mother of such child or unless authorized by the court, no petition for adoption shall set forth the name of the child sought to be adopted or the name of either of the parents of the child; provided, that the legal name of the child and the name of each of the child's legal parents may be added to the petition by amendment during the course of the hearing thereof and shall be included in the decree. The hearing of the petition shall be in chambers and shall not be open to the public. Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided, that, upon the written request of the petitioner or petitioners, the court may waive the requirement that such records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except upon order of the family court.

The clerk of the court shall keep a docket of all adoption proceedings, which may be inspected only by order of the family court."

SECTION 4. Chapter 579, Hawaii Revised Statutes, is amended as follows:

(a) Section 579-1 is amended to read as follows:

"Sec. 579-1 Petition against alleged father; time limit; preliminary examination. Any unmarried woman or any married woman who was separated from and was not living with her husband prior to and at the time her child was conceived, when her pregnancy can be determined by competent medical evidence, or within two years after the delivery of her child, may petition the family court of the circuit in which she or the alleged father of the child resides, or in which she was delivered of the child, for an adjudication of paternity and for other relief under this chapter against the person whom she alleges is the father of the child.

The petition may also be filed by either of the parents or a guardian of the mother, or by any person as the next friend of the child, or by any public officer or employee concerned with the welfare of the child, within two years after the date of the child's birth. If, after the petition has been filed either by the mother or by any one as above specified, the mother dies or refuses or neglects to prosecute the same, any of such persons may prosecute the case to final judgment for the benefit of the parent, guardian, or the child, or any public or private agency supporting or contributing to the support of the child.

The fact that a child is born dead or dies at a later date prior to the filing of a petition as above provided, or during the pendency of the proceedings, shall not operate as a bar to the issuance of process and the entry of a judgment under this chapter."

(b) Section 579-2 is amended to read as follows:

"Sec. 579-2 Issuance of process; warrant, when; preliminary hearing; bond; jury trial, when. Upon the filing of a petition pursuant to section 579-1, process shall issue in the form of a summons and an order directed to the de-

fendant requiring him to appear and to show cause why the prayer of the petition should not be granted.

If, at any stage of the proceedings, there appears probable cause to believe that the defendant will evade the service of process, or will fail to appear in response thereto, or will flee the jurisdiction of the court, the court may issue a warrant directed to the sheriff, his deputy, or any police officer within the circuit, requiring the accused to be arrested and brought for preliminary hearing before the family court. Upon such preliminary hearing, or at any time subsequent to the preliminary examination of the petitioner, the court may require the defendant to enter into bond with good sureties to the State in a sum to be fixed by the court for his appearance and the trial of the proceeding in the family court. If the defendant fails to give the bond required of him, the court may forthwith commit him to the custody of the chief of police of the county, there to remain until he enters into the required bond or otherwise is discharged by due process of law.

In all proceedings under this chapter, the defendant shall, upon his written demand therefor, filed at the time of his appearance or within such time thereafter as the court may allow, and if he appears at the time set for the trial, be entitled to a trial by jury; otherwise the trial shall be by the court. No such trial shall take place prior to the birth of the child involved."

(c) Section 579-3 is amended to read as follows:

"**Sec. 579-3 Guardian ad litem for minor defendant; notice to parents.** If, at any stage of the proceeding, it appears to the satisfaction of the family court that the defendant is a minor, the court shall cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the legal parents or guardian of the minor and may appoint a guardian ad litem to represent the minor in the proceedings. If the legal parents or guardian of any such minor accused cannot be found, the notice above provided for may be served in such manner as the court may direct, pursuant to sections 634-56 to 634-60."

(d) Section 579-4 is amended to read as follows:

"**Sec. 579-4 Trial; judgment.** If the defendant fails to appear, any bond for his appearance shall be forfeited; but the trial of, or other proceedings in, the cause shall, nevertheless, proceed as though he were present; and upon the findings of the court it shall make such orders as it deems proper as though the defendant were in court.

If the defendant acknowledges in writing or orally before the court the paternity of the child, or if at the trial the finding of the court or jury be against the defendant, the court, in rendering judgment thereon, may make an order for the payment of or reimbursement for all expenses resulting from or incident to the mother's pregnancy and the birth of the child in such amount or amounts as may be deemed reasonable by the court. It shall also make an order that the defendant pay for the support, maintenance, and education of the child, until the child reaches eighteen years of age, unless the child, prior thereto, is adopted, emancipated, or becomes self-supporting, such sums of money, in such installments, and in such manner, as the court deems just, taking into consideration the financial standing of the defendant, his income,

earning capacity, and those of his family who are dependent upon him for their support, maintenance, and education.

If the child dies before reaching eighteen years of age, the judgment may include, or may be amended to include, reasonable funeral expenses. The judgment may also include a reasonable fee for any guardian ad litem appointed under section 579-3.

In case of forfeiture of any appearance bond, the money collected upon the forfeiture shall be applied in payment of the judgment against the defendant."

(e) Section 579-5 is amended to read as follows:

"**Sec. 579-5 Security for and enforcement of judgment.** A judgment, or any order, entered pursuant to this chapter may be enforced by summary punishment for contempt. The court may also require the defendant to give reasonable security, by way of bond or otherwise, for performance of the terms of the judgment. Upon neglect or refusal to give such security, or upon default of the defendant or his surety in compliance with the terms of the judgment, the court may order the forfeiture of any such security and the application of the proceeds thereof toward the payment of any sums due under the terms of the judgment and may also sequester the defendant's personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and may cause the defendant's personal estate, including any salaries, wages, commissions, or other moneys owed to him, and the rents and profits of his real estate, to be applied toward the meeting of the terms of the judgment, to the extent that the court, from time to time, deems just and reasonable."

(f) Section 579-8 is amended to read as follows:

"**Sec. 579-8 Nature and title of proceedings; secrecy of proceedings and records.** The records in proceedings under this chapter, which shall be deemed to be civil proceedings and shall be entitled "Paternity Proceedings," shall be open to inspection only by the parties or their attorneys, or by any proper person on a showing of good cause therefor, upon order of the court. All preliminary examinations and preliminary hearings shall be conducted in chambers and the court may exclude from any trial any person whose presence it may deem to be prejudicial to the best interests of the child concerned."

SECTION 5. Chapter 580, Hawaii Revised Statutes, is amended as follows:

(a) Section 580-1 is amended to read as follows:

"**Sec. 580-1 Jurisdiction; hearing.** Exclusive original jurisdiction in matters of annulment, divorce, and separation, subject to section 603-37 as to change of venue, and subject also to appeal according to law, is conferred upon the family court of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor. No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least one year next preceding the application therefor. A person who may be residing on any military or federal base, installation, or reservation

within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section."

(b) Section 580-5 is amended to read as follows:

"**Sec. 580-5 Proof.** Upon the hearing of every complaint for annulment, divorce, or separation, the court shall require exact legal proof upon every point, notwithstanding the consent of the parties."

(c) Section 580-7 is amended to read as follows:

"**Sec. 580-7 Examination of parties to prevent collusion.** Upon the hearing of any complaint for a divorce or separation, the court may examine either or both of the parties, upon oath, in order to prevent collusion."

(d) Section 580-8 is amended to read as follows:

"**Sec. 580-8 Procedure when collusion suspected.** If there is any reason to suspect collusion, or that important testimony can be procured which has not been produced, the court shall continue the cause from time to time while such reason for suspicion continues. The attorney general or other prosecuting officer and parties not of record shall be heard, to establish the fact of collusion or of the existence of testimony not produced."

(e) Section 580-9 is amended to read as follows:

"**Sec. 580-9 Temporary support, etc.** After the filing of a complaint for divorce or separation the court may make such orders relative to the personal liberty and support of the wife pending the complaint as he may deem fair and reasonable and may enforce the orders by summary process. The court may also compel the husband to advance reasonable amounts for the compensation of witnesses and other expenses of the trial, including attorney's fees, to be incurred by the wife and may from time to time amend and revise the orders."

(f) Section 580-10 is amended to read as follows:

"**Sec. 580-10 Restraining order.** Whenever it is made to appear to the court after the filing of any complaint, that a party thereto may dispose or encumber property, or any part thereof, the court may issue a restraining order to prevent such disposal or encumbrance, and shall enjoy in respect thereof the powers pertaining to a court of equity."

(g) Section 580-11 is amended to read as follows:

"**Sec. 580-11 Care, custody, education, and maintenance of children pendente lite.** During the pendency of any action for divorce or separation the court may make such orders concerning the care, custody, education, and maintenance of the minor children of the parties to the action as law and justice may require and may enforce the orders by summary process. The court may revise and amend the orders from time to time."

(h) Section 580-13 is amended to read as follows:

"**Sec. 580-13 Security and enforcement of maintenance and alimony.** Whenever the court makes an order or decree requiring a husband to provide for the care, maintenance, and education of his children, or for an allowance to his wife, the court may require him to give reasonable security for such maintenance and allowance. Upon neglect or refusal to give the security, or upon default of him and his surety to provide the maintenance and allowance,

the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof and cause his personal estate and the rents and profits of his real estate to be applied towards such maintenance and allowance, as to the court shall from time to time seem just and reasonable."

(i) Section 580-15 is amended to read as follows:

"**Sec. 580-15 County attorneys to represent court.** The county attorneys of Maui and Kauai and the corporation counsels of the city and county of Honolulu and the county of Hawaii, within their respective counties, shall when and to the extent authorized by their respective county governing bodies and upon request of the family court represent the court in any contempt proceeding for the enforcement of any order or decree for wife support or child support or both."

(j) Section 580-22 is amended to read as follows:

"**Sec. 580-22 Nonage.** An action to annul a marriage on the ground that one of the parties was under legal age, may be brought by the parent or guardian entitled to the custody of the minor, or by any person admitted by the court to prosecute as the friend of the minor. In no case shall the marriage be annulled on the application of a party who was of legal age at the time it was contracted; nor when it appears that the parties, after they attained the legal age, had for any time freely cohabited as man and wife."

(k) Section 580-24 is amended to read as follows:

"**Sec. 580-24 Allowance for woman and family.** Every woman who is deceived into contracting an illegal marriage with a man having another wife living, under the belief that he was an unmarried man, shall be entitled to a just allowance for the support of herself and family out of his property, which she may obtain at any time after action commenced upon application to the family court having jurisdiction; provided, that the allowance shall not exceed one-third of his real and personal estate. In addition to the allowance, the court may also compel the defendant to advance reasonable amounts for the compensation of witnesses and other reasonable expenses of trial to be incurred by the plaintiff."

(l) Section 580-26 is amended to read as follows:

"**Sec. 580-26 Insanity.** The marriage of an idiot or insane person may be annulled on the application of the sane party, or any relative of the idiot or lunatic, or on application of any person admitted by the court to prosecute as the next friend of the idiot or lunatic, or upon the application of the lunatic himself after restoration to reason; but in such case, no sentence of nullity shall be pronounced if it appears that the parties freely cohabited as husband and wife after the lunatic was restored to a sound mind."

(m) Section 580-28 is amended to read as follows:

"**Sec. 580-28 Physical incapacity.** An action to annul the marriage on the ground of physical incapacity of one of the parties at the time of marriage, shall only be maintained by the injured party, against the party whose incapacity is alleged, and shall in all cases be brought within two years from the solemnization of the marriage."

(n) Section 580-29 is amended to read as follows:

"**Sec. 580-29 No annulment solely on confessions.** No sentence of nullity of marriage shall be pronounced solely on the declarations or confessions of the parties. The court shall, in all cases, require other satisfactory evidence of the facts on which the allegation of nullity is founded."

(o) Section 580-42 is amended to read as follows:

"**Sec. 580-42 Irretrievable breakdown.** (a) If both of the parties by complaint or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing shall make a finding whether the marriage is irretrievably broken.

(b) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall

(1) Make a finding whether the marriage is irretrievably broken, or

(2) Continue the matter for further hearing not less than thirty or more than sixty days later, or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken."

(p) Section 580-45 is amended to read as follows:

"**Sec. 580-45 Decree.** If after a full hearing, the court is of opinion that a divorce ought to be granted from the bonds of matrimony a decree shall be signed, filed and entered, which shall take effect from and after such time as may be fixed by the court in the decree. In case of a decree dissolving the bonds of matrimony, such time so fixed shall not be more than one month from and after the date of the decree."

(q) Section 580-49 is amended to read as follows:

"**Sec. 580-49 Support of insane spouse after divorce.** In every action for divorce where a decree is granted to the plaintiff and the defendant is insane at the time of the decree, the court may, at any time after entering the decree, revise and alter the same so far as the support and maintenance of the insane person is concerned, and may provide for such maintenance by the plaintiff out of any property or earnings acquired by the plaintiff subsequently, as well as previously, to the decree of divorce. The court making the order for maintenance, may, in its discretion, require the plaintiff to give security to the satisfaction of the court for the faithful execution of the same."

(r) Section 580-51 is amended to read as follows:

"**Sec. 580-51 Modification of alimony on remarriage.** Upon remarriage of a wife in whose favor a final decree or order for support and maintenance has been made, the family court in the circuit in which the final decree or order was made, shall, upon application of any party in interest, or of any one on his behalf, and proof of the remarriage of the wife, after such notice to the wife as the court may direct, rescind, and annul such decree or order as to support and maintenance of the wife."

(s) Section 580-71 is amended to read as follows:

"Sec. 580-71 Grounds for separation. A separation from bed and board for a period not to exceed two years may be decreed by the family court, for any of the causes for which an absolute divorce from the bonds of matrimony may be granted."

(t) Section 580-72 is amended to read as follows:

"Sec. 580-72 Wife may bring action in own name. Whenever any married woman has the right to sue for separate maintenance, she may bring the action therefor in her own name."

(u) Section 580-74 is amended to read as follows:

"Sec. 580-74 Support of wife and children. Upon decreeing a separation, the court may make such further decree for the support and maintenance of the wife and her children, by the husband, or out of his property, as may appear just and proper."

(v) Section 580-76 is amended to read as follows:

"Sec. 580-76 Revocation or modification of separation decrees. Where a decree of separation from bed and board has been entered, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation. The court may also, for good cause shown from time to time, increase or decrease the period of separation decreed, provided that the maximum period of separation does not exceed two years from the effective date of the original decree of separation."

SECTION 6. Statutory 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 7. This Act shall take effect on July 1, 1973.

(Approved May 31, 1973.)

*Edited accordingly.