

ACT 52

S.B. NO. 2419-80

A Bill for an Act Relating to Family Courts.

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

SECTION 1. **Findings.** The Legislature finds that it is the public policy of this State to assure minor children of close and continuing contact with both parents after the parents have separated or dissolved their marriage. The Legislature further finds that it is the public policy of this State that there exists no preference in law that the custody of minor children be ordered or awarded to one parent because of that parent's sex.

SECTION 2. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section 571-46.1 to read as follows:

“Sec. 571-46.1 Joint custody. (a) Upon the application of either parent, joint custody may be awarded in the discretion of the court. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court shall, upon the request of either party, direct that an investigation be conducted pursuant to the provisions of section 571-46(4).

(b) For the purposes of this section, “joint custody” means an order awarding legal custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of continuing contact with both parents; provided, however, that such order may award joint legal custody without awarding joint physical custody.

(c) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court’s own motion if it is shown that the best interests of the child require modification or termination of the order.

(d) Any order for the custody of the minor child or children of a marriage entered by a court in this State or any other state may, subject to the jurisdictional requirements set forth in section 583-3, be modified at any time to an order of joint custody in accordance with the provisions of this section.”

SECTION 3. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 571-46 Criteria and procedure in awarding custody. In the actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court may, during the pendency of the action, at the final hearing or any time during the minority of the child, make such order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court is to be guided by the following standards, considerations and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child.
- (2) Custody may be awarded to persons other than the father or mother whenever such award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall prima facie be entitled to an award of custody.
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, his wishes as to custody shall be considered and be given due weight by the court.
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports which shall be made available to all interested parties and counsel before hearing, and such reports may [be]† received in evidence if no objection is made and, if objection is made, may be received in evidence provided the person or persons responsible for the report are available for cross-examination as to any matter which has been investigated.

†“Be” substituted for “by” to correct obvious clerical error.

- (5) The court may hear the testimony of any person or expert produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that his testimony is relevant to a just and reasonable determination of what is to the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue.
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award.
- (7) Reasonable visitation rights shall be awarded to parents and to any person interested in the welfare of the child in the discretion of the court, unless it is shown that such rights of visitation are detrimental to the best interests of the child.
- (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify."

SECTION 4. New statutory material is underscored.*

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

(Approved April 25, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.