

ACT 224

H.B. NO. 1891

A Bill for an Act Relating to Parentage.

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

SECTION 1. Section 584-6, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§584-6]] Determination of father and child relationship; who may bring action; when action may be brought; process, warrant, bond, etc.~~ (a) A child, or [personal representative] guardian ad litem of the child, the child’s natural mother, [including a mother who is an unmarried woman or a mother who is a married woman who was separated from and was not living with her husband prior to and at the time the child was conceived,] whether married or unmarried at the time the child was conceived, or her personal representative or parent if the mother has died; or a man alleged or alleging himself to be the natural father, or his personal representative or parent if the father has died; or a presumed father as defined in section 584-4, or his personal representative or parent if the presumed father has died; or the child support enforcement agency [if the department of human services is providing or has provided public assistance for the support or maintenance of the child under chapter 346], may bring an action for the purpose of declaring the existence or nonexistence of the father and child relationship within the following time periods:**

- (1) If the child is the subject of an adoption proceeding,
  - (A) Within thirty days after the date of the child's birth in any case when the mother relinquishes the child for adoption during the thirty-day period; or
  - (B) Any time prior to the date of execution by the mother of a valid consent to the child's adoption, or prior to placement of the child with adoptive parents, but in no event later than three years after the [child's birth; or] child reaches the age of majority; or
- (2) If the child has not become the subject of an adoption proceeding, within three years after the [child's birth;] child reaches the age of majority; provided that any period of time during which the man alleged or alleging himself to be the natural father of the child is absent from the State or is openly cohabitating with the mother of the child or is contributing to the support of the child, shall not be computed.
- (3) Section 584-6 shall not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.
- (4) A personal representative in this Section 584-6 may be appointed by the court upon a filing of an ex parte motion by one of the parties entitled to file a paternity action. Probate requirements need not be met. However, appointment of the personal representative in this section is limited to representation in Chapter 584 proceedings.

(b) When an action is brought under this section, process shall issue in the form of a summons and an order directed to the alleged or presumed father, the mother or both, requiring each to appear and to show cause why the action should not be brought.

If, at any stage of the proceedings, there appears probable cause to believe that the alleged or presumed father, the mother, or both, 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, deputy sheriff, or any police officer within the circuit, requiring the alleged or presumed father, the mother, or both, to be arrested and brought for pre-trial proceedings before the family court. Upon such pre-trial proceedings, the court may require the alleged or presumed father, the mother, or both, to enter into bond with good sureties to the State in a sum to be fixed by the court for each person's appearance and the trial of the proceeding in the family court. If the alleged or presumed father, the mother, or both, fails to give the bond required, the court may forthwith commit that person to the custody of the chief of police of the county, there to remain until that person enters into the required bond or otherwise is discharged by due process of law. If the alleged or presumed father, the mother, or both, fails to appear in any proceeding under this chapter, any bond for that person's appearance shall be forfeited; but the trial of, or other proceedings in, the action shall, nevertheless, proceed as though that person were present; and upon the findings of the court it shall make such orders as it deems proper as though that person were in court.

In case of forfeiture of any appearance bond, the money collected upon the forfeiture shall be applied in payment of the judgment against the parent whose parent-child relationship is established under this chapter.

(c) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 584-13(b), between the alleged or

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presumed father and the mother or child, shall not bar an action under this section.

(d) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

(e) Subject to the requirements of 584-4(b), where a married woman has not had sexual contact with her spouse or resided in the same house with the spouse for at least three hundred days prior to the birth of the child and the spouse cannot be contacted after due diligence, the court may accept an affidavit by the married woman, attesting to her diligent efforts to contact her spouse and providing clear and convincing evidence to rebut the presumption of his paternity of the subject child, and upon the court's satisfaction, notice to the spouse may be waived and the spouse need not be made a party in the paternity proceedings. The court, after receiving evidence, may also enter a finding of non-paternity of the spouse."

SECTION 2. Section 584-9, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~584-9] Parties; guardian ad litem for minor presumed or alleged father; county attorney or corporation counsel to represent custodial parent or agency; notice to parents.** (a) The child may be made a party to the action and may be represented by the child's general guardian or a guardian ad litem appointed by the court. The child's mother or father shall not represent the child as guardian or otherwise. Subject to the provisions in section 584-6(e), [The] the natural mother, each man presumed to be the father under section 584-4, and each man alleged to be the natural father, shall be made parties, or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.

(b) If it appears to the satisfaction of the court that a man alleged or presumed to be the father 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 cannot be found, the notice may be served in such manner as the court may direct pursuant to sections 634-21 to 634-24. The court may align the parties.

(c) The county attorney or corporation counsel shall represent the child's custodial parent, or the custodial parent's personal representative or parent if the custodial parent has died, or any agency authorized to seek the determination and establishment of paternity or maternity under chapter 346, if an application for services is made. Fees may be charged of the applicant as provided for by the provisions of chapter 346."

SECTION 3. Section 584-7, Hawaii Revised Statutes is repealed.

SECTION 4. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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

(Approved June 6, 1991.)

### Note

1. Edited pursuant to HRS §23G-16.5.