

ACT 160

H.B. NO. 210

A Bill for an Act Relating to Adoptions.

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

SECTION 1. Section 578-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [[Amendment effective January 1, 1993.]] Persons as to whom consent not required or whose consent may be dispensed with by order of the court.

(1) Persons as to whom consent not required:

- (A) A parent who has deserted a child without affording means of identification for a period of ninety days;
- (B) A parent who has voluntarily surrendered the care and custody of the child to another for a period of two years;
- (C) A parent of the child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so;
- (D) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to provide for the care and support of the child when able to do so;
- (E) A natural father who was not married to the child’s mother at the time of the child’s conception or birth and who does not fall within the provisions of subsection (a)(3), (4), or (5);
- (F) A parent whose parental rights have been judicially terminated under the provisions of sections 571-61 to 571-63, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take the action;
- (G) A parent judicially declared mentally ill or mentally retarded and who is found by the court to be incapacitated from giving consent to the adoption of the child;
- (H) 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 the person’s written reasons for withholding consent, is found by the court to be withholding the person’s consent unreasonably;
- (I) A parent of a child who has been in the custody of a petitioner under this chapter for a period of at least one year and who entered the United States of America as a consequence of extraordinary circumstances in the child’s country of origin, by reason of which extraordinary circumstances the existence, identity, or whereabouts of the child’s parents is not reasonably ascertainable or there is no reasonable means of obtaining suitable evidence of the child’s identity or availability for adoption;
- (J) Any parent of the individual to be adopted, if the individual is an adult eligible for adoption under subsection (b); and

- (K) A parent whose parental and custodial duties and rights have been divested by an award of permanent custody pursuant to section 587-73.
- (2) Persons whose consent may be dispensed with by order of the court. The court may dispense with the consent of a parent who comes within subsection (a)(3), (4), or (5) herein, upon finding that:
 - (A) The petitioner is the stepfather of the child and the child has lived with the child's legal mother and the petitioning stepfather for a period of at least one year;
 - (B) The [adjudicated, presumed or concerned] father is a concerned father as provided by subsection (a)(5), herein, and has not filed a petition to adopt the child, or the petition to adopt the child filed by the father has been denied; or
 - (C) The father is an adjudicated, presumed, or concerned father as provided by subsections (a)(3), (4), or (5), herein, and is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education."

SECTION 2. Section 571-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Involuntary termination.
- (1) The family courts may terminate the parental rights in respect to any child as to any legal parent:
 - (A) Who has deserted the child without affording means of identification for a period of at least ninety days;
 - (B) Who has voluntarily surrendered the care and custody of the child to another for a period of at least two years;
 - (C) Who, when the child is in the custody of another, has failed to communicate with the child when able to do so for a period of at least one year;
 - (D) Who, when the child is in the custody of another, has failed to provide for care and support of the child when able to do so for a period of at least one year;
 - (E) Whose child has been removed from the parent's physical custody pursuant to legally authorized judicial action under section 571-11(9), and who is found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the child;
 - (F) Who is found by the court to be mentally ill or mentally retarded and incapacitated from giving consent to the adoption of or from providing now and in the foreseeable future the care necessary for the well-being of the child;
 - (G) Who is found not to be the child's natural or adoptive father.
 - (2) The family courts may terminate the parental rights in respect to any minor of any natural but not legal father who is an adjudicated, presumed or concerned father under chapter 578, or who is named as the father on the child's birth certificate:
 - (A) Who falls within subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1);
 - (B) Whose child is sought to be adopted by the child's stepfather and the stepfather has lived with the child and the child's legal mother for a period of at least one year;

- (C) Who is only a concerned father who has failed to file a petition for the adoption of the child or whose petition for the adoption of the child has been denied; or
 - (D) Who is found to be an unfit or improper parent or to be financially or otherwise unable to give the child a proper home and education.
- (3) In respect to any proceedings under paragraphs (1) and (2), the authority to terminate parental rights may be exercised by the court only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born 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. If personal service cannot be effected within the State, service of the notice may be made as provided in section 634-23 or 634-24.
- (4) The family courts may terminate the parental rights in respect to any child as to any natural father who is not the child's legal, adjudicated, presumed or concerned father under chapter 578.

Such authority may be exercised under this chapter only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born, and the court has conducted a hearing of the petition.

If the mother of the child files with the petition an affidavit representing that the identity or whereabouts of the child's father is unknown to her or not ascertainable by her or that other good cause exists why notice cannot or should not be given to the father, the court shall conduct a hearing to determine whether notice is required.

If the court finds that good cause exists why notice cannot or should not be given to the child's father, and that the father is neither the legal nor adjudicated nor presumed father of the child, nor has he demonstrated a reasonable degree of interest, concern, or responsibility as to the existence or welfare of the child, the court may enter an order authorizing the termination of the father's parental rights and the subsequent adoption of the child without notice to the father."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved June 9, 1993.)