

ACT 228

H.B. NO. 568

A Bill for an Act Relating to Child Custody.

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

SECTION 1. Findings and purpose. The legislature finds that persons with a history of violence against that person's partner or children are likely to commit such violence again. It is the goal of the legislature to enact measures to assure meaningful protection to children in custody conflicts. In 1989 the legislature enacted section 571-46(9), Hawaii Revised Statutes, which requires a court to consider evidence of family violence in determining what the best interests of a child are in establishing custody and visitation rights. The purpose of this Act is to make more clear that it is not in the best interests of a child to be in the custody of a parent against whom there is evidence of family violence. The court shall be required to include in its written order the reasons for any deviation from this assumption.

SECTION 2. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

**“§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, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall 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 the 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 be entitled prima facie to an award of custody;

- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's 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 the 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 that has been investigated;
- (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 the person's or expert's testimony is relevant to a just and reasonable determination of what is for 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, grandparents, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that 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; and
- (9) The court shall consider evidence of family violence, including but not limited to spouse abuse, the determination regarding who was the primary aggressor, and the frequency and degree of family violence as [one of the] factors in determining the best interests of the child in establishing custody and visitation rights. If custody is given to a person against whom there is evidence of family violence, the court shall include, in its written order, the reasons for the decision. If there is evidence of family violence, an award of joint custody or any grant of visitation shall be arranged so as to best protect the child and the abused parent from further harm."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1993.)

Note

1. So in original.