

ACT 114

S.B. NO. 2054

A Bill for an Act Relating to Family Court.

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

SECTION 1. Section 302A-481, Hawaii Revised Statutes, is amended to read as follows:

“~~§302A-481~~ **Definitions.** As used in this ~~[ ]~~subpart~~[ ]~~, unless the context otherwise requires:

- “Caregiver” means any person who is at least eighteen years of age and:
  - (1) Related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section ~~[571-46(2)]~~ 571-46(a)(2) but is not the legal custodian or guardian of the minor; or
  - (2) Has resided with the minor for a continuous immediate preceding period of six months or more.”

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

**§571-46 Criteria and procedure in awarding custody and visitation[-]; best interest of the child.** (a) 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, and the court also may [~~also~~] consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest 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~~] that 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, siblings, 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;
- (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court [~~must~~] shall consider in a proceeding in which the custody of a child or visita-

tion by a parent is at issue, and in which the court has made a finding of family violence by a parent:

- (A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;
  - (B) The court shall consider the perpetrator’s history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and
  - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;
- (10) A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;
- (11) In a visitation order, a court may:
- (A) Order an exchange of a child to occur in a protected setting;
  - (B) Order visitation supervised by another person or agency;
  - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
  - (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
  - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
  - (F) Prohibit overnight visitation;
  - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;
  - (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
  - (I) Order the address of the child and the victim to be kept confidential;
- (12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim’s status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;
- (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and
- (14) A supervised visitation center [~~must~~] shall provide[?] a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence.

(b) In determining what constitutes the best interest of the child under this section, the court shall consider, but not be limited to, the following:

- (1) Any history of sexual or physical abuse of a child by a parent;
- (2) Any history of neglect or emotional abuse of a child by a parent;

- (3) The overall quality of the parent-child relationship;
- (4) The history of caregiving or parenting by each parent prior and subsequent to a marital or other type of separation;
- (5) Each parent's cooperation in developing and implementing a plan to meet the child's ongoing needs, interests, and schedule; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;
- (6) The physical health needs of the child;
- (7) The emotional needs of the child;
- (8) The safety needs of the child;
- (9) The educational needs of the child;
- (10) The child's need for relationships with siblings;
- (11) Each parent's actions demonstrating that they allow the child to maintain family connections through family events and activities; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;
- (12) Each parent's actions demonstrating that they separate the child's needs from the parent's needs;
- (13) Any evidence of past or current drug or alcohol abuse by a parent;
- (14) The mental health of each parent;
- (15) The areas and levels of conflict present within the family; and
- (16) A parent's prior wilful misuse of the protection from abuse process under chapter 586 to gain a tactical advantage in any proceeding involving the custody determination of a minor. Such wilful misuse may be considered only if it is established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular family circumstance the wilful misuse tends to show that, in the future, the parent who engaged in the wilful misuse will not be able to cooperate successfully with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of the best interests of the child. For the purposes of this section, when taken alone, the voluntary dismissal of a petition for protection from abuse shall not be treated as prima facie evidence that a wilful misuse of the protection from abuse process has occurred."

SECTION 3. Section 571-46.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§571-46.1 Joint custody.<sup>1</sup>** (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)-] 571-46(a)(4)."

SECTION 4. Section 577-28, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) As used in this section, "caregiver" means any person who is at least eighteen years of age and:

- (1) Is related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section [571-46(2),] 571-46(a)(2) but who is not the legal custodian or guardian of the minor; or

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- (2) Has resided with the minor continuously during the immediately preceding period of six months or more.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2008.

(Approved May 27, 2008.)

**Note**

1. So in original.