

ACT 177

H.B. NO. 2061

A Bill for an Act Relating to Children.

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

SECTION 1. Hawaii has approximately fifty thousand active-duty military personnel and sixty-one thousand associated family members. Additionally, Hawaii has approximately twelve thousand Reserve and National Guard members. According to the 2000 United States Census, Hawaii has the highest percentage of people ages sixteen to sixty-four in the armed forces.

The issues surrounding military duty which separate parents from children have a significant effect on the military readiness of the parents and the well-being of the children.

The purpose of this Act, therefore, is to require special consideration in custody matters involving deploying parents.

SECTION 2. Chapter 571, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . MILITARY DEPLOYMENT PROVISIONS**§571-A Definitions.** As used in this part:

“Deployment” or “deployed” means military services performed in compliance with a valid order received by an active duty or reserve member of the armed forces of the United States or National Guard to report for combat operations, contingency operations, peacekeeping operations, temporary duty greater than sixty days, a remote tour of duty, or other active service for which the deploying parent reports unaccompanied by any family member.

“Deploying parent” or “deployed parent” means a legal parent or a legal guardian of a child under the age of eighteen, who is deployed, will likely deploy within the next sixty days, or who has received written orders to deploy.

“Military service” includes the period from which the deployed parent receives and is subject to deployment orders and the period in which the parent is awaiting travel or remains deployed because of sickness, wounds, leave, or other lawful cause.

“Other parent” means the legal parent or legal guardian other than the deploying parent.

§571-B Application. This part shall only apply to actions under chapters 580 and 584. Nothing in this part shall supersede any provision of any existing state or federal law. The provisions in this part shall be interpreted consistently with other relevant laws and the standard of “best interest of the child” shall remain paramount.

§571-C Duty to cooperate and disclose information. (a) Both the deploying parent and other parent shall cooperate with and provide information to each other in an effort to reach a mutually agreeable resolution regarding custody of and visitation with the child.

(b) A deploying parent shall provide a copy of the deploying parent’s orders to the other parent promptly before deployment. Notification to the other parent shall be made at least sixty days prior to the likely start of the deployment if known, or within ten days of the deploying parent’s receipt of the deploying parent’s deployment orders. If fewer than ten days’ notice is received by the deploying parent, then notice shall be given immediately upon receipt of the deployment orders.

(c) The court may consider the deploying parent’s timeliness in disclosing an impending deployment under this section to the other parent when making any orders under this part, unless a delay or failure to disclose was necessitated by valid military or operational security concerns.

§571-D Hearings; electronic participation. Upon reasonable advance notice to the court and the other parent and for good cause shown, the court may expedite custody hearings involving deploying parents and may allow an already-deployed parent to participate in a custody hearing by electronic means, including telephone, video conference, and any other means available to and deemed reliable by the court.

§571-E Sole factor; effect on existing orders. (a) Deployment or the potential for future deployment shall not be the sole factor in awarding custody and must be considered in relation to all of the factors in section 571-46.

(b) If deployment or the potential for future deployment results in the modification of the custody or visitation terms established by a prior order, the court order shall include, without limitation, the following conditions:

- (1) A specific transition schedule to facilitate return to the prior order over the shortest reasonable time period after the deployment ends, taking into consideration the best interest of the child;
 - (2) A specific date at which time the prior order will return to full force and effect; and
 - (3) If the deployment is extended or shortened, then:
 - (A) The deployed parent has a duty to inform the other parent of the change as soon as the information is available;
 - (B) The other parent has the responsibility to return to court to change the effective date of the modification of the prior order made pursuant to this subsection; and
 - (C) The transition schedule shall take effect at the end of the modified deployment.
- (c) Upon request of either parent the court may set a review hearing to occur within thirty days of the deployed parent's return from deployment at which time the court may make such orders as are in the best interest of the child.

§571-F Visitation and contact. Unless otherwise ordered by the court and consistent with the best interest of the child, including safety considerations in cases involving a finding of domestic violence, any order that anticipates deployment may require that:

- (1) The other parent shall make the child reasonably available to the deploying parent when the deploying parent has leave;
- (2) The deployed parent shall provide timely information regarding the deployed parent's leave schedule;
- (3) Both parents shall facilitate opportunities for telephonic and electronic contact, appropriate for each child, between the deployed parent and the child during deployment; and
- (4) Each parent shall provide immediate notification to the other parent of a change of address or contact information, or both.

§571-G Delegation of the deployed parent's contact rights to another. (a) Upon motion of the deploying parent and consistent with the best interest of the child, including safety considerations in cases involving a finding of domestic violence, the court may delegate the deploying parent's parent-child contact rights, or a portion thereof, to a family member, whether biological or by adoption, or to a person to whom the deploying parent is married or with whom the deploying parent cohabitates; provided that the family member or person has an existing close and substantial relationship with the child.

(b) Any delegated parent-child contact under this section shall not create separate rights of or standing to assert any rights to parent-child contact or any other contact for the family member or person. Any parent-child contact delegated under this section shall cease pursuant to court order, upon the return of the deployed parent, or upon the deployed parent's death."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. In codifying the new part added to chapter 571, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect on August 1, 2010.

(Approved June 25, 2010.)