

A Bill for an Act Relating to Parental Rights.

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

SECTION 1. Prior to the termination of parental rights with respect to a child who was conceived as a result of a sexual assault perpetrated by that parent, Hawaii requires the natural parent to have been convicted of the rape or sexual assault in a court of competent jurisdiction in any state. In May 2015, President Obama signed the Rape Survivor Child Custody Act (Act), Public Law No. 114-22, which provides increased funding to states that allow women to petition for the termination of parental rights upon a finding supported by clear and convincing evidence that the child was conceived as a result of an act of sexual assault. In the Act, Congress found that sexual assault is one of the most under-prosecuted serious crimes and, even when prosecuted, criminal conviction occurs in less than five per cent of prosecutions. Congress also noted that the Supreme Court has established that the clear and convincing evidence standard satisfies due process rights for proceedings to terminate or restrict parental rights, *Santosky v. Kramer*, 455 U.S. 745 (1982) and the clear and convincing evidence standard is the most common standard for the termination of parental rights among all United States jurisdictions. Finally, Congress found that a perpetrator of sexual assault may attempt to avoid prosecution by coercing the survivor with threats to obtain custody of the child or to assert parental rights, or may use the issue of parental rights to otherwise harass, intimidate, or manipulate the survivor.

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 intellectually disabled 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; or
 - (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);~~ paragraph (1)(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.
- (5) The family courts may terminate the parental rights in respect to any child of any natural parent upon a finding by clear and convincing evidence that the natural parent ~~[has been convicted in a court of competent jurisdiction in any state of rape or]~~ committed sexual assault of the other natural parent, or an equivalent offense under the laws of another state, territory, possession, or Native American tribe where the offense occurred, and the child was conceived as a result of the ~~[rape or]~~ sexual assault perpetrated by the parent whose rights are sought to be terminated; provided that:
- (A) The court shall accept, as conclusive proof of the sexual assault, a guilty plea or conviction of the child's natural parent for the sexual assault, or an equivalent offense under the laws of another state, territory, possession, or Native American tribe where the offense occurred, of the other natural parent;
 - (B) Termination shall mean, when used with respect to parental rights in this paragraph, a complete and final termination of the parent's right to custody of, guardianship of, visitation with, access to, and inheritance from a child;
- ~~(A)~~ (C) The termination of parental rights shall not affect the obligation of the ~~[convicted]~~ child's natural parent to support the child;
- ~~(B)~~ (D) The court may order the ~~[convicted]~~ child's natural parent to pay child support;
- (E) It is presumed that termination of parental rights is in the best interest of the child if the child was conceived as a result of the sexual assault;

~~[(C)]~~ (F) This paragraph shall not apply if subsequent to the date of ~~[conviction.] the sexual assault,~~ the ~~[convicted]~~ child's natural parent and custodial natural parent cohabit and establish a mutual custodial environment for the child; and

~~[(D)]~~ (G) The custodial natural parent may petition the court to reinstate the ~~[convicted]~~ child's natural parent's parental rights terminated pursuant to this paragraph.

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 and stricken. New statutory material is underscored.

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

(Approved July 6, 2016.)