
A BILL FOR AN ACT

RELATING TO CHILDREN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Hawaii has approximately fifty thousand active-
2 duty military personnel, and sixty-one thousand associated
3 family members. Hawaii has approximately twelve thousand
4 Reserve and National Guard members. The federal government is
5 the second major source of revenue to the state -- second only
6 to tourism. The total spending by the armed services in Hawaii
7 in 2008 was \$6.8 billion, which results in direct and indirect
8 effects totaling \$10.1 billion to Hawaii's economy, and
9 accounting for more than ninety-two thousand jobs and \$6.4
10 billion in household earnings. In addition to the above, there
11 were additional expenditures totaling about \$450 million by
12 military non-appropriated programs. This includes military
13 exchange stores and defense commissaries, and base morale,
14 welfare and recreation activities, such as golf courses, bowling
15 centers, child development centers, fitness centers, and other
16 similar activities that are operated by funds provided by
17 service members and their families.



1 According to the 2000 U.S. Census, Hawaii topped all other
2 states with the highest percentage of people ages sixteen to
3 sixty-four in the armed forces at 4.95 per cent. It is
4 imperative, therefore, that the unique nature of military
5 employment be taken into consideration by Hawaii's family court
6 system.

7 In fiscal year 2008-2009, the Judiciary reported five
8 thousand six hundred and twenty-two marital actions (primarily
9 divorces) filed and two thousand and twenty-one parental
10 proceedings filed. A portion of these include military parents.
11 Also, single military parents and previously divorced families
12 where one parent is a military member are a significant
13 population.

14 The issues surrounding a military deployment or temporary
15 duty, which separates a parent from his or her children, have a
16 significant effect on the military readiness of the parent and
17 on the well-being of the child.

18 It has been reported that approximately eight per cent of
19 military service members are single parents and that
20 approximately ten thousand single-parent service members have
21 been deployed overseas for more than six months. These numbers
22 do not include divorced service-member parents who have



1 remarried, where a custodial or non-custodial parent must still
2 deal with deployments and the children.

3 Nationwide, a number of family court judges use a military
4 service member's absence from home while serving the United
5 States in countries such as Iraq and Afghanistan to take away
6 child-custody and visitation rights. A CBS News analysis of
7 child custody laws found that only five states automatically
8 return children after deployment; five states prohibit
9 deployment from being used in court; fourteen states have weaker
10 protections; and the remaining states provide United States
11 service members with no additional protections. Hawaii has no
12 laws regarding military deployment and custody, yet both a
13 custodial parent and non-custodial parent face difficulties when
14 they deploy -- they can lose total contact with their children.

15 The magnitude of this problem was noted in 2004 by
16 Lieutenant Colonel Francine I. Swan, Legal Advisor to the
17 Adjutant General, New Hampshire National Guard, in her comments
18 to an inquiry by the American Bar Association's Working Group on
19 Protecting the Rights of Service Members:

20 Child custody/visitation: This is the
21 single greatest area of concern -- when the
22 servicemember is the non-custodial parent



1 and visitation is not allowed to any other
2 members of the non-custodial parent's family
3 (to include siblings, step-parent and
4 grandparents). In some cases this
5 effectively cuts off any and all
6 communication between the child and the
7 non-custodial parent for the duration of the
8 deployment. Our service members are risking
9 their lives; they should not have to risk
10 their families as well.

11 As states recognize these concerns, several of these issues
12 are being addressed. Currently, there are eighteen bills active
13 in eleven states which will ensure that the best interests of
14 military children are protected while also providing protections
15 to service members who are parents.

16 The purpose of this Act is to ensure that protections exist
17 for service-member parents' custody and visitation rights when
18 their military duties require an extended absence from home.

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



1 "PART . MILITARY DEPLOYMENT

2 §571- **Purpose.** The purpose of this part is to provide a
3 means by which to facilitate a fair, efficient, and swift
4 process to resolve matters regarding custody and visitation for
5 a deploying parent.

6 §571- **Definitions.** As used in this part:

7 "Deploying parent" means a service member who is on
8 deployment or temporary duty, or who has been notified by
9 military leadership of an impending deployment or temporary
10 duty, and is a natural, adoptive, or legal parent or guardian of
11 a child under the age of eighteen, and whose parental rights
12 have not been terminated by a court of competent jurisdiction.

13 "Deployment" means the temporary transfer of a service
14 member serving in an active-duty status to another location in
15 support of combat or some other military operation.

16 "Electronic means" includes communication via telephone,
17 video teleconference, or other available electronic
18 communication system.

19 "Mobilization" or "mobilized" means the call of a member of
20 the national guard or reserve component of the United States
21 armed forces to extended active-duty status. Mobilization does



1 not include national guard or reserve annual training, inactive
2 duty days, or drill weekends.

3 "Party" means the deploying parent or non-deploying parent.

4 "Service member" means an active-duty member of the United
5 States armed forces, a member of a reserve component of the
6 United States armed forces, or a member of the national guard,
7 who has been mobilized.

8 "Temporary duty" means the transfer of a service member
9 from the service member's military base, or the service member's
10 home, to a different location, usually another military base,
11 for a limited period of time to accomplish training or to assist
12 in the performance of a non-combat mission.

13 **§571- Duty to cooperate and disclose information. (a)**

14 Because military necessity may preclude court adjudication
15 before deployment, the parties shall cooperate with each other
16 in an effort to reach a mutually agreeable resolution of
17 custody, visitation, and child support. Each party shall
18 provide information to one another in an effort to facilitate
19 agreement on these issues.

20 (b) Within fourteen days of receiving notification of
21 deployment or temporary duty from a deploying parent's military
22 leadership, the deploying parent shall provide written notice of



1 the same, to the other parent. If less than fourteen days'
2 notice is received by the deploying parent, then notice must be
3 given immediately, upon receipt of notice, to the other parent.

4 §571- No existing custody or visitation order. (a) If
5 there is no existing order establishing the terms of custody or
6 visitation for a deploying parent, upon motion by either parent,
7 the court may expedite a temporary hearing to establish
8 temporary custody or visitation to ensure that the deploying
9 parent has access to the child, to ensure disclosure of
10 information, to grant other rights and duties set forth herein,
11 and to provide other appropriate relief.

12 (b) Any initial pleading filed to establish custody or
13 visitation for a child of a deploying parent shall state in the
14 text of the pleading the specific facts related to the
15 deployment or temporary duty and develop a parenting plan
16 pursuant to section 571-46.5.

17 §571- Permanent custody or visitation order. (a) If a
18 deploying parent is required to be separated from a child, the
19 court shall not enter a permanent custody order until ninety
20 days after the deployment or temporary duty ends and the
21 deploying parent returns to the deploying parent's permanent



1 residence, unless such modification is agreed to by the
2 deploying parent.

3 (b) A service member's deployment or temporary duty, or
4 the potential for future deployment or temporary duty, and the
5 associated ramifications, shall not be the sole factor
6 supporting a change in circumstance or grounds sufficient to
7 result in a permanent modification of an existing custody or
8 visitation order, if a motion is filed to transfer custody away
9 from the service member.

10 (c) Nothing in this section shall preclude the court from
11 hearing a motion for a permanent change of custody or visitation
12 prior to, or upon the return of, the deploying parent.

13 §571- Temporary custody or visitation order. (a) An
14 existing order establishing the terms of custody or visitation,
15 in place at the time a service member parent is deployed or on
16 temporary duty, may be temporarily modified to make reasonable
17 accommodations for the parties and child because of the
18 deployment or temporary duty.

19 (b) A temporary modification order issued pursuant to this
20 section, based on the best interests of the child, shall provide
21 for:



1 (1) The deploying parent's reasonable visitation during
2 any leave periods granted to the deploying parent;
3 provided that the deploying parent shall provide
4 timely information regarding his or her leave schedule
5 to the non-deploying parent, subject to actual leave
6 dates' changing with little notice due to military
7 necessity; and

8 (2) The non-deploying parent's facilitating communication
9 opportunities between the child and the deploying
10 parent, including communication via electronic means
11 and letters, during the deploying parent's absence.

12 (c) Any court order modifying previously ordered custody
13 or visitation due to deployment or temporary duty shall specify
14 that the deployment or temporary duty is the basis for the order
15 and shall be entered by the court as a temporary order. Any
16 such custody or visitation order shall further require the non-
17 deploying parent to provide the court and the deploying parent
18 with thirty days' advance written notice of any change of
19 address or telephone number.

20 (d) Upon motion of a deploying parent, and upon reasonable
21 advance notice and for good cause shown, the court may hold an
22 expedited hearing in any custody or visitation matters



1 instituted under this part, pursuant to section 571-46 when the
2 military duties of the deploying parent have a material effect
3 on his or her ability, or anticipated ability, to appear in
4 person at a regularly scheduled hearing.

5 §571- Delegation of parental visitation rights. Upon
6 motion of the deploying parent, the court may delegate the
7 parent's visitation rights, or a portion thereof, to a family
8 member who has had continual meaningful contact with the child,
9 for the duration of the parent's absence, if delegating
10 visitation rights is in the child's best interest. Such
11 delegated visitation does not create an entitlement or standing
12 to assert separate rights to visitation for any person other
13 than a parent and shall terminate by operation of law upon the
14 end of the deploying parent's absence, as set forth in this
15 part.

16 §571- Termination of temporary custody or visitation
17 orders. (a) All temporary custody and visitation modification
18 orders, pursuant to this part, shall include a specific
19 transition plan and schedule, over the shortest reasonable time
20 period after the deploying parent returns, to facilitate a
21 reinstatement of the original terms of the custody or visitation
22 order in place prior to the service member's notice of



1 deployment or temporary duty, taking into consideration the
2 child's best interests. All temporary custody and visitation
3 modification orders, pursuant to this part, shall expire upon
4 the completion of this transition, and the original terms of the
5 custody or visitation order in place prior to the service
6 member's notice of deployment or temporary duty shall be
7 reinstated.

8 (b) Nothing in this section shall limit the discretion of
9 the court to conduct an expedited hearing regarding custody or
10 visitation upon the return of the deploying parent and the
11 filing of a motion alleging an immediate danger of irreparable
12 harm to the child if the original terms of the custody or
13 visitation order in place prior to the service member's notice
14 of deployment or temporary duty are reinstated.

15 (c) The non-deploying parent shall bear the burden of
16 proof showing that this transition plan and reinstatement of the
17 original terms of the custody or visitation order in place prior
18 to the service member's notice of deployment or temporary duty
19 are no longer in the child's best interests.

20 §571- Testimony and evidence. Upon motion of a
21 deploying parent, provided reasonable advance notice is given
22 and for good cause shown, the court shall allow the deploying



1 parent to present testimony and evidence by affidavit or
2 electronic means with respect to custody and visitation matters
3 instituted under this part when the military duties of that
4 parent have a material effect on his or her ability to appear in
5 person at a regularly scheduled hearing.

6 §571- Appointment of a guardian ad litem. In any action
7 brought under this section, whenever the court declines to grant
8 or extend a stay of proceedings under the Servicemembers Civil
9 Relief Act, 50 United States Code Appendix Section 521-522, and
10 decides to proceed in the absence of the deploying parent, the
11 court shall appoint, at the request of the deploying parent, or
12 on its own motion, a guardian ad litem to represent the minor
13 child's interests.

14 §571- Service of process. Service of process on a non-
15 deploying parent whose whereabouts are unknown may be
16 accomplished by certified mail, return receipt requested, to the
17 non-deploying parent's last known address based on an affidavit
18 of the deploying parent.

19 §571- Removal of the child from the state. Once an
20 order for custody has been entered in Hawaii, any absence of a
21 child from this state, during the absence of a deploying parent,
22 shall be denominated a temporary absence for the purposes of the



1 application of chapter 583A. For the duration of the deploying
2 parent's absence, Hawaii shall retain exclusive, continuing
3 jurisdiction pursuant to section 583A-202, and the deploying
4 parent's deployment or temporary duty may not be used as a basis
5 to assert inconvenience of the forum under section 583A-207.

6 **§571- Attorney's fees.** In making determinations
7 pursuant to this section, the court may award attorney's fees
8 and costs based on the court's consideration of:

- 9 (1) The failure of either party to reasonably accommodate
10 the other party in custody or visitation matters
11 related to a deploying parent's military duties;
- 12 (2) An excessive delay caused by either party unreasonably
13 addressing or not complying with custody or visitation
14 matters related to a deploying parent;
- 15 (3) The failure of either party to timely provide military
16 orders, leave dates, income or financial information,
17 housing or educational information, or information
18 about the physical location of the child, to the other
19 party; or
- 20 (4) Other factors as the court may consider appropriate
21 and as may be required by law.



1 §571- Modification or waiver of rights. Nothing in this
2 section shall be considered as a modification or waiver of any
3 rights or protections contained in the Servicemembers Civil
4 Relief Act or any other federal law."

5 SECTION 3. Section 571-46, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§571-46 Criteria and procedure in awarding custody and
8 visitation; best interest of the child. (a) In actions for
9 divorce, separation, annulment, separate maintenance, or any
10 other proceeding where there is at issue a dispute as to the
11 custody of a minor child, the court, during the pendency of the
12 action, at the final hearing, or any time during the minority of
13 the child, may make an order for the custody of the minor child
14 as may seem necessary or proper. In awarding the custody, the
15 court shall be guided by the following standards,
16 considerations, and procedures:

17 (1) Custody should be awarded to either parent or to both
18 parents according to the best interests of the child,
19 and the court [~~also~~] may also consider frequent,
20 continuing, and meaningful contact of each parent with
21 the child unless the court finds that a parent is
22 unable to act in the best interest of the child;



1 provided that the custody award shall be made in
2 accordance with part ;

3 (2) Custody may be awarded to persons other than [~~the~~
4 ~~father or mother~~] a parent whenever the award serves
5 the best interest of the child. Any person who has
6 had de facto custody of the child in a stable and
7 wholesome home and is a fit and proper person shall be
8 entitled prima facie to an award of custody;

9 (3) If a child is of sufficient age and capacity to
10 reason, so as to form an intelligent preference, the
11 child's wishes as to custody shall be considered and
12 be given due weight by the court;

13 (4) Whenever good cause appears therefor, the court may
14 require an investigation and report concerning the
15 care, welfare, and custody of any minor child of the
16 parties. When so directed by the court, investigators
17 or professional personnel attached to or assisting the
18 court, hereinafter referred to as child custody
19 evaluators, shall make investigations and reports that
20 shall be made available to all interested parties and
21 counsel before hearing, and the reports may be
22 received in evidence if no objection is made and, if



1 objection is made, may be received in evidence;
2 provided the person or persons responsible for the
3 report are available for cross-examination as to any
4 matter that has been investigated; and provided
5 further that the court shall define the requirements
6 to be a court-appointed child custody evaluator, the
7 standards of practice, ethics, policies, and
8 procedures required of court-appointed child custody
9 evaluators in the performance of their duties for all
10 courts, and the powers of the courts over child
11 custody evaluators to effectuate the best interests of
12 a child in a contested custody dispute pursuant to
13 this section. Where there is no child custody
14 evaluator available that meets the requirements and
15 standards, or any child custody evaluator to serve
16 indigent parties, the court may appoint a person
17 otherwise willing and available[+]; [+]

- 18 (5) The court may hear the testimony of any person or
19 expert, produced by any party or upon the court's own
20 motion, whose skill, insight, knowledge, or experience
21 is such that the person's or expert's testimony is
22 relevant to a just and reasonable determination of



1 what is for the best physical, mental, moral, and
2 spiritual well-being of the child whose custody is at
3 issue;

4 (6) Any custody award shall be subject to modification or
5 change whenever the best interests of the child
6 require or justify the modification or change and,
7 wherever practicable, the same person who made the
8 original order shall hear the motion or petition for
9 modification of the prior award; provided that the
10 modification shall be made in accordance with part ;

11 (7) Reasonable visitation rights shall be awarded to
12 parents, grandparents, siblings, and any person
13 interested in the welfare of the child in the
14 discretion of the court, unless it is shown that
15 rights of visitation are detrimental to the best
16 interests of the child;

17 (8) The court may appoint a guardian ad litem to represent
18 the interests of the child and may assess the
19 reasonable fees and expenses of the guardian ad litem
20 as costs of the action, payable in whole or in part by
21 either or both parties as the circumstances may
22 justify;



1 (9) In every proceeding where there is at issue a dispute
2 as to the custody of a child, a determination by the
3 court that family violence has been committed by a
4 parent raises a rebuttable presumption that it is
5 detrimental to the child and not in the best interest
6 of the child to be placed in sole custody, joint legal
7 custody, or joint physical custody with the
8 perpetrator of family violence. In addition to other
9 factors that a court shall consider in a proceeding in
10 which the custody of a child or visitation by a parent
11 is at issue, and in which the court has made a finding
12 of family violence by a parent:

13 (A) The court shall consider as the primary factor
14 the safety and well-being of the child and of the
15 parent who is the victim of family violence;

16 (B) The court shall consider the perpetrator's
17 history of causing physical harm, bodily injury,
18 or assault or causing reasonable fear of physical
19 harm, bodily injury, or assault to another
20 person; and

21 (C) If a parent is absent or relocates because of an
22 act of family violence by the other parent, the



- 1 absence or relocation shall not be a factor that
2 weighs against the parent in determining custody
3 or visitation;
- 4 (10) A court may award visitation to a parent who has
5 committed family violence only if the court finds that
6 adequate provision can be made for the physical safety
7 and psychological well-being of the child and for the
8 safety of the parent who is a victim of family
9 violence;
- 10 (11) In a visitation order, a court may:
- 11 (A) Order an exchange of a child to occur in a
12 protected setting;
- 13 (B) Order visitation supervised by another person or
14 agency;
- 15 (C) Order the perpetrator of family violence to
16 attend and complete, to the satisfaction of the
17 court, a program of intervention for perpetrators
18 or other designated counseling as a condition of
19 the visitation;
- 20 (D) Order the perpetrator of family violence to
21 abstain from possession or consumption of alcohol
22 or controlled substances during the visitation



- 1 and for twenty-four hours preceding the
2 visitation;
- 3 (E) Order the perpetrator of family violence to pay a
4 fee to defray the costs of supervised visitation;
- 5 (F) Prohibit overnight visitation;
- 6 (G) Require a bond from the perpetrator of family
7 violence for the return and safety of the child.
8 In determining the amount of the bond, the court
9 shall consider the financial circumstances of the
10 perpetrator of family violence;
- 11 (H) Impose any other condition that is deemed
12 necessary to provide for the safety of the child,
13 the victim of family violence, or other family or
14 household member; and
- 15 (I) Order the address of the child and the victim to
16 be kept confidential;
- 17 (12) The court may refer but shall not order an adult who
18 is a victim of family violence to attend, either
19 individually or with the perpetrator of the family
20 violence, counseling relating to the victim's status
21 or behavior as a victim as a condition of receiving
22 custody of a child or as a condition of visitation;



1 (13) If a court allows a family or household member to
2 supervise visitation, the court shall establish
3 conditions to be followed during visitation; and

4 (14) A supervised visitation center shall provide a secure
5 setting and specialized procedures for supervised
6 visitation and the transfer of children for visitation
7 and supervision by a person trained in security and
8 the avoidance of family violence.

9 (b) In determining what constitutes the best interest of
10 the child under this section, the court shall consider[7] but
11 not be limited to[7] the following:

12 (1) Any history of sexual or physical abuse of a child by
13 a parent;

14 (2) Any history of neglect or emotional abuse of a child
15 by a parent;

16 (3) The overall quality of the parent-child relationship;

17 (4) The history of caregiving or parenting by each parent
18 prior and subsequent to a marital or other type of
19 separation;

20 (5) Each parent's cooperation in developing and
21 implementing a plan to meet the child's ongoing needs,
22 interests, and schedule; provided that this factor



- 1 shall not be considered in any case where the court
2 has determined that family violence has been committed
3 by a parent;
- 4 (6) The physical health needs of the child;
- 5 (7) The emotional needs of the child;
- 6 (8) The safety needs of the child;
- 7 (9) The educational needs of the child;
- 8 (10) The child's need for relationships with siblings;
- 9 (11) Each parent's actions demonstrating that they allow
10 the child to maintain family connections through
11 family events and activities; provided that this
12 factor shall not be considered in any case where the
13 court has determined that family violence has been
14 committed by a parent;
- 15 (12) Each parent's actions demonstrating that they separate
16 the child's needs from the parent's needs;
- 17 (13) Any evidence of past or current drug or alcohol abuse
18 by a parent;
- 19 (14) The mental health of each parent;
- 20 (15) The areas and levels of conflict present within the
21 family; and



1 (16) A parent's prior wilful misuse of the protection from
2 abuse process under chapter 586 to gain a tactical
3 advantage in any proceeding involving the custody
4 determination of a minor. [~~Sueh~~] The wilful misuse
5 may be considered only if it is established by clear
6 and convincing evidence, and if it is further found by
7 clear and convincing evidence that in the particular
8 family circumstance the wilful misuse tends to show
9 that, in the future, the parent who engaged in the
10 wilful misuse will not be able to cooperate
11 successfully with the other parent in their shared
12 responsibilities for the child. The court shall
13 articulate findings of fact whenever relying upon this
14 factor as part of its determination of the best
15 interests of the child. For the purposes of this
16 section, when taken alone, the voluntary dismissal of
17 a petition for protection from abuse shall not be
18 treated as prima facie evidence that a wilful misuse
19 of the protection from abuse process has occurred."

20 SECTION 4. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun before its effective date.



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

3 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Child Custody; Military Deployment

Description:

Statutorily establishes a process by which the Family Court can resolve matters regarding custody and visitation for service members of the United States armed forces, armed forces reserves, and National Guard whose military duties require temporary absences. Effective July 1, 2050. (HB2061 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

