

JAN 22 2021

A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. The legislature finds that ninety-five per cent
2 of sexually abused children are abused by someone they know and
3 trust. Seventy-three percent of child victims do not tell
4 anyone about the abuse for at least one year, while forty-five
5 per cent do not tell anyone for five years. Some never disclose
6 having been or being abused at all. In light of these
7 compelling statistics, more restrictive standards must be
8 established to help courts determine the best interests of
9 children while making custody decisions.

10 Therefore, the purpose of this Act is to:

11 (1) Clarify that if a court determines a parent has a
12 felony conviction for a violent or sexual offense in
13 which the victim was a minor, or if a parent is
14 required to register as a sex offender, such
15 classification raises a rebuttable presumption that it
16 is detrimental to the child and not in the best



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1 interest of the child to grant that parent custodial
2 rights;

3 (2) Clarify that no child shall be placed in a home in
4 which a person resides who has committed family
5 violence, has a felony conviction for a violent or
6 sexual offense in which the victim was a minor, or is
7 required to register as a sex offender, nor have
8 unsupervised visitation with that person, unless the
9 court states the reasons for its findings in writing
10 or on the record;

11 (3) Establish that no person shall be granted physical or
12 legal custody of, or unsupervised visitation with, a
13 child if anyone residing in that person's household is
14 required to register as a sex offender unless the
15 court finds there is no significant risk to the child
16 and states its reasons in writing or on the record;

17 (4) Require a court to consider registration as a sex
18 offender a presumption of risk that affects the burden
19 of producing evidence;

20 (5) Establish that no person shall be granted custody of,
21 or unsupervised visitation with, a child if the person



1 has been convicted of murder in the first degree and
2 the victim of the murder was the other parent of the
3 child, unless the court finds there is no risk to the
4 child's health, safety, and welfare, and states the
5 reasons for its findings in writing or on the record;
6 and

7 (6) Clarify that no court shall disclose the custodial
8 parent's place of residence, place of employment, or
9 the child's school, unless the court finds disclosure
10 would be in the best interests of the child.

11 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
12 amended by amending subsections (a) and (b) to read as follows:

13 "(a) In actions for divorce, separation, annulment,
14 separate maintenance, or any other proceeding where there is at
15 issue a dispute as to the custody of a minor child, the court,
16 during the pendency of the action, at the final hearing, or any
17 time during the minority of the child, may make an order for the
18 custody of the minor child as may seem necessary or proper. In
19 awarding the custody, the court shall be guided by the following
20 standards, considerations, and procedures:



- 1 (1) Custody should be awarded to either parent or to both
2 parents according to the best interests of the child,
3 and the court also may consider frequent, continuing,
4 and meaningful contact of each parent with the child
5 unless the court finds that a parent is unable to act
6 in the best interest of the child;
- 7 (2) Custody may be awarded to persons other than the
8 father or mother whenever the award serves the best
9 interest of the child. Any person who has had de
10 facto custody of the child in a stable and wholesome
11 home and is a fit and proper person shall be entitled
12 prima facie to an award of custody;
- 13 (3) If a child is of sufficient age and capacity to
14 reason, so as to form an intelligent preference, the
15 child's wishes as to custody shall be considered and
16 be given due weight by the court;
- 17 (4) Whenever good cause appears therefor, the court may
18 require an investigation and report concerning the
19 care, welfare, and custody of any minor child of the
20 parties. When so directed by the court, investigators
21 or professional personnel attached to or assisting the



1 court, hereinafter referred to as child custody
2 evaluators, shall make investigations and reports that
3 shall be made available to all interested parties and
4 counsel before hearing, and the reports may be
5 received in evidence if no objection is made and, if
6 objection is made, may be received in evidence;
7 provided the person or persons responsible for the
8 report are available for cross-examination as to any
9 matter that has been investigated; and provided
10 further that the court shall define, in accordance
11 with section 571-46.4, the requirements to be a court-
12 appointed child custody evaluator, the standards of
13 practice, ethics, policies, and procedures required of
14 court-appointed child custody evaluators in the
15 performance of their duties for all courts, and the
16 powers of the courts over child custody evaluators to
17 effectuate the best interests of a child in a
18 contested custody dispute pursuant to this section.
19 Where there is no child custody evaluator available
20 that meets the requirements and standards, or any
21 child custody evaluator to serve indigent parties, the



1 court may appoint a person otherwise willing and
2 available in accordance with section 571-46.4;

3 (5) The court may hear the testimony of any person or
4 expert, produced by any party or upon the court's own
5 motion, whose skill, insight, knowledge, or experience
6 is such that the person's or expert's testimony is
7 relevant to a just and reasonable determination of
8 what is for the best physical, mental, moral, and
9 spiritual well-being of the child whose custody is at
10 issue;

11 (6) Any custody award shall be subject to modification or
12 change whenever the best interests of the child
13 require or justify the modification or change and,
14 wherever practicable, the same person who made the
15 original order shall hear the motion or petition for
16 modification of the prior award;

17 (7) Reasonable visitation rights shall be awarded to
18 parents, grandparents, siblings, and any person
19 interested in the welfare of the child in the
20 discretion of the court, unless it is shown that



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1 rights of visitation are detrimental to the best
2 interests of the child;

3 (8) The court may appoint a guardian ad litem to represent
4 the interests of the child and may assess the
5 reasonable fees and expenses of the guardian ad litem
6 as costs of the action, payable in whole or in part by
7 either or both parties as the circumstances may
8 justify;

9 (9) In every proceeding where there is at issue a dispute
10 as to the custody of a child, a determination by the
11 court that family violence has been committed by a
12 parent, a parent has a felony conviction for a violent
13 or sexual offense in which the victim was a minor, or
14 a parent is required to be registered as a sex
15 offender raises a rebuttable presumption that it is
16 detrimental to the child and not in the best interest
17 of the child to be placed in sole custody, joint legal
18 custody, or joint physical custody with the
19 perpetrator of family violence[-], the parent who has
20 a felony conviction for a violent or sexual offense in
21 which the victim was a minor, or the parent who is



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1 required to register as a sex offender. In addition
2 to other factors that a court shall consider in a
3 proceeding in which the custody of a child or
4 visitation by a parent is at issue, and in which the
5 court has made a finding of family violence by a
6 parent[+]; that a parent has a felony conviction for a
7 violent or sexual offense in which the victim was a
8 minor; or that the parent is required to register as a
9 sex offender:

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

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

18 (C) If a parent is absent or relocates because of an
19 act of family violence by the other parent, the
20 absence or relocation shall not be a factor that



1 weighs against the parent in determining custody
2 or visitation;

3 A child shall not be placed in a home in which a
4 person resides who has committed family violence, has
5 a felony conviction for a violent or sexual offense in
6 which the victim was a minor, or is required to
7 register as a sex offender, nor have unsupervised
8 visitation with that person, unless the court states
9 the reasons for its findings in writing or on the
10 record;

11 (10) A court may award visitation to a parent who has
12 committed family violence or has a felony conviction
13 for a violent or sexual offense in which the victim
14 was a minor only if the court finds that there is no
15 significant risk to the child and adequate provision
16 can be made for the physical safety and psychological
17 well-being of the child and for the safety of the
18 parent who is a victim of family violence;

19 (11) In a visitation order, a court may:

20 (A) Order an exchange of a child to occur in a
21 protected setting;



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- 1 (B) Order visitation supervised by another person or
2 agency;
- 3 (C) Order the perpetrator of family violence or a
4 parent who has a felony conviction for a violent
5 or sexual offense in which the victim was a minor
6 to attend and complete, to the satisfaction of
7 the court, a program of intervention for
8 perpetrators or other designated counseling as a
9 condition of the visitation;
- 10 (D) Order the perpetrator of family violence or a
11 parent who has a felony conviction for a violent
12 or sexual offense in which the victim was a minor
13 to abstain from possession or consumption of
14 alcohol or controlled substances during the
15 visitation and for twenty-four hours preceding
16 the visitation;
- 17 (E) Order the perpetrator of family violence or a
18 parent who has a felony conviction for a violent
19 or sexual offense in which the victim was a minor
20 to pay a fee to defray the costs of supervised
21 visitation;



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- 1 (F) Prohibit overnight visitation;
- 2 (G) Require a bond from the perpetrator of family
3 violence or a parent with a felony conviction for
4 a violent or sexual offense in which the victim
5 was a minor for the return and safety of the
6 child. In determining the amount of the bond,
7 the court shall consider the financial
8 circumstances of the perpetrator of family
9 violence;
- 10 (H) Impose any other condition that is deemed
11 necessary to provide for the safety of the child,
12 the victim of family violence, or other family or
13 household member; and
- 14 (I) Order the address of the child and the victim to
15 be kept confidential;
- 16 (12) The court may refer but shall not order an adult who
17 is a victim of family violence to attend, either
18 individually or with the perpetrator of the family
19 violence, counseling relating to the victim's status
20 or behavior as a victim as a condition of receiving
21 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;
- 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 (15) The court may include in visitation awarded pursuant
10 to this section visitation by electronic communication
11 provided that the court shall additionally consider
12 the potential for abuse or misuse of the electronic
13 communication, including the equipment used for the
14 communication, by the person seeking visitation or by
15 persons who may be present during the visitation or
16 have access to the communication or equipment; whether
17 the person seeking visitation has previously violated
18 a temporary restraining order or protective order; and
19 whether adequate provision can be made for the
20 physical safety and psychological well-being of the
21 child and for the safety of the custodial parent;



1 (16) The court may set conditions for visitation by
2 electronic communication under paragraph (15),
3 including visitation supervised by another person or
4 occurring in a protected setting. Visitation by
5 electronic communication shall not be used to:
6 (A) Replace or substitute an award of custody or
7 physical visitation except where:
8 (i) Circumstances exist that make a parent
9 seeking visitation unable to participate in
10 physical visitation, including military
11 deployment; or
12 (ii) Physical visitation may subject the child to
13 physical or extreme psychological harm; or
14 (B) Justify or support the relocation of a custodial
15 parent; ~~and~~
16 (17) Notwithstanding any provision to the contrary, no
17 natural parent shall be granted custody of or
18 visitation with a child if the natural parent has been
19 convicted in a court of competent jurisdiction in any
20 state of rape or sexual assault and the child was
21 conceived as a result of that offense; provided that:



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- 1 (A) A denial of custody or visitation under this
- 2 paragraph shall not affect the obligation of the
- 3 convicted natural parent to support the child;
- 4 (B) The court may order the convicted natural parent
- 5 to pay child support;
- 6 (C) This paragraph shall not apply if subsequent to
- 7 the date of conviction, the convicted natural
- 8 parent and custodial natural parent cohabituate
- 9 and establish a mutual custodial environment for
- 10 the child; and
- 11 (D) A custodial natural parent may petition the court
- 12 to grant the convicted natural parent custody and
- 13 visitation denied pursuant to this paragraph, and
- 14 upon such petition the court may grant custody
- 15 and visitation to the convicted natural parent
- 16 where it is in the best interest of the child[-];
- 17 (18) No person shall be granted physical or legal custody
- 18 of, or unsupervised visitation with, a child if anyone
- 19 residing in the person's household is required, as a
- 20 result of a felony conviction in which the victim was
- 21 a minor, to register as a sex offender unless the



1 court finds there is no significant risk to the child
2 and states its reasons in writing or on the record.
3 The child may not be placed in a home in which that
4 person resides, nor permitted to have unsupervised
5 visitation with that person, unless the court states
6 the reasons for its findings in writing or on the
7 record. When making a determination regarding
8 significant risk to the child, the court shall deem
9 that the requirement to register as a sex offender as
10 a result of a felony conviction in which the victim
11 was a minor shall constitute a presumption of risk,
12 affecting the burden of producing evidence;
13 (19) No person shall be granted custody of, or unsupervised
14 visitation with, a child if the person has been
15 convicted of murder in the first degree and the victim
16 of the murder was the other parent of the child who is
17 the subject of the order, unless the court finds that
18 there is no risk to the child's health, safety, and
19 welfare, and states the reasons for its findings in
20 writing or on the record. In making its findings, the
21 court may consider, among other things:



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1 (A) The wishes of the child, if the child is of
2 sufficient age and capacity to reason so as to
3 form an intelligent preference;

4 (B) Credible evidence that the convicted parent was a
5 victim of abuse committed by the deceased parent;
6 provided that the evidence may include but shall
7 not be limited to written reports by law
8 enforcement agencies, child protective services
9 or other social welfare agencies, courts, medical
10 facilities, or other public agencies or private
11 nonprofit organizations providing services to
12 victims of domestic violence; or

13 (C) Testimony of a qualified expert witness that the
14 convicted parent experiences intimate partner
15 violence;

16 Unless and until a custody or visitation order is
17 issued pursuant to this paragraph, no person shall
18 permit or cause the child to visit or remain in the
19 custody of the convicted parent without the consent of
20 the child's custodian or legal guardian; and



1 (20) The court shall not disclose, or cause to be
2 disclosed, the custodial parent's place of residence,
3 place of employment, or the child's school, unless the
4 court finds that the disclosure would be in the best
5 interest of the child.

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

9 (1) Any history of sexual or physical abuse of a child by
10 a parent;

11 (2) Any history of neglect or emotional abuse of a child
12 by a parent;

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

14 (4) The history of caregiving or parenting by each parent
15 prior and subsequent to a marital or other type of
16 separation;

17 (5) Each parent's cooperation in developing and
18 implementing a plan to meet the child's ongoing needs,
19 interests, and schedule; provided that this factor
20 shall not be considered in any case where the court



1 has determined that family violence has been committed
2 by a parent;

3 (6) The physical health needs of the child;

4 (7) The emotional needs of the child;

5 (8) The safety needs of the child;

6 (9) The educational needs of the child;

7 (10) The child's need for relationships with siblings;

8 (11) Each parent's actions demonstrating that they allow
9 the child to maintain family connections through
10 family events and activities; provided that this
11 factor shall not be considered in any case where the
12 court has determined that family violence has been
13 committed by a parent;

14 (12) Each parent's actions demonstrating that they separate
15 the child's needs from the parent's needs;

16 (13) Any evidence of past or current drug or alcohol abuse
17 by a parent;

18 (14) The mental health of each parent;

19 (15) The areas and levels of conflict present within the
20 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. Such wilful misuse may be
5 considered only if it is established by clear and
6 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 and



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1 (17) Whether the parent has a felony conviction for a
2 violent or sexual offense in which the victim was a
3 minor or is required to register as a sex offender."

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

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect upon its approval.

10

INTRODUCED BY: *Bill Ruwien*



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Report Title:

Family Courts; Sex Offenders; Murderers; Custody and Visitation; Significant Risk; Rebuttable Presumption; Disclosure of Information; Best Interests of the Child

Description:

Amends provisions relating to criteria and procedures in family court determinations regarding custody and visitation rights. Clarifies that a parent's felony conviction for a violent or sexual offense in which the victim was a minor, or requirement to register as a sex offender, raises a rebuttable presumption that custody or visitation by that parent is not in the best interest of the child. Requires courts to consider registration as a sex offender a presumption of risk that affects the burden of producing evidence. Requires courts to state reasons for findings in writing or on the record, including specific findings that there is no risk to the child's health, safety, and welfare.

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

