
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 family
3 members. Additionally, Hawaii has approximately twelve thousand
4 Reserve and National Guard members. According to the 2000
5 United States Census, at 4.95 per cent, Hawaii topped all other
6 states with the highest percentage of people ages sixteen to
7 sixty-four in the armed forces.

8 In fiscal year 2008-2009, the judiciary reported 5,622
9 marital actions (primarily divorces) filed and 2,021 parental
10 proceedings filed. Many of these cases involved military
11 parents. Also, single military parents and previously divorced
12 families where one parent is a military member constitute a
13 significant part of Hawaii's population. It has been reported
14 that approximately eight per cent of military service members
15 are single parents and that approximately ten thousand single-
16 parent service members have been deployed overseas for more than
17 six months. These numbers do not include divorced service
18 member parents who have remarried, where a custodial or non-



1 custodial parent must still deal with deployments and the
2 children. The issues surrounding military duty which separate
3 parents from children have a significant effect on the military
4 readiness of the parents and the well-being of the children.

5 The purpose of this Act is to require special family court
6 procedures in child custody disputes involving service members
7 who are deployed.

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

11 "§571- Military dependent; child custody procedures.

12 (a) Where there is an existing judgment, order, or decree
13 addressing what shall occur with respect to custody and
14 visitation of a minor child in the event of the deployment of
15 either or both parents, the court shall enforce the provisions
16 of that judgment, order, or decree, upon application by either
17 parent, unless the court finds that to do so would not be in the
18 best interests of the child.

19 (b) Upon a motion by either parent seeking to establish or
20 modify custody or visitation orders which alleges that a parent
21 has deployed or will likely deploy within the next sixty days,
22 the court shall set the motion for an expedited hearing. The



1 hearing shall be set within fourteen days of the filing of the
2 motion and, whenever possible, prior to the parent's deployment.

3 Any motion under this subsection shall specify the factual
4 basis upon which the movant claims that a parent has deployed or
5 is likely to deploy. The motion shall specify when and how the
6 deploying or deployed parent notified the nondeploying parent of
7 the deployment. The court may consider the deploying parent's
8 timeliness in disclosing an impending deployment to the other
9 parent in making any orders under this section, unless a delay
10 or failure to disclose was necessitated by valid military or
11 operational security concerns.

12 Following the hearing, the court shall enter a temporary
13 order valid for a period no longer than thirty days after the
14 parent's return from deployment.

15 (c) If the deploying parent is the custodial parent and,
16 unless the parties have agreed to other custodial arrangements
17 or the court finds the nondeploying parent to be unfit, the
18 court shall award temporary custody and temporary child support
19 to the nondeploying parent.

20 (d) Any temporary order shall provide for visitation to
21 the deployed parent, affording priority to the deployed parent's
22 pre-deployment, mid-tour, post-deployment, or other leave;



1 provided that the court may require visitation to occur in a
2 location that does not interfere with the child's schooling or
3 other specified activities. The temporary order shall also
4 provide for visitation by way of electronic means and surface
5 mail between the deployed parent and child. The temporary order
6 may also provide for visitation between the child and the
7 child's siblings who may be separated as a result of the
8 temporary order.

9 Upon request of the deployed parent, the court may order
10 visitation that the deployed parent might otherwise exercise in
11 the absence of deployment to be exercised by the deployed
12 parent's delegate.

13 The temporary order may authorize the temporary relocation
14 of the child outside of the State.

15 (e) Notwithstanding any other law to the contrary, having
16 made a temporary order under this section, the court shall
17 retain continuing exclusive jurisdiction until a post-deployment
18 review hearing is held.

19 (f) Upon entering a temporary custody order, the court
20 shall set the matter for a review hearing within thirty days
21 after the deploying parent's anticipated return from deployment.
22 The date of the review hearing may be advanced if the deployed



1 parent returns from deployment sooner than anticipated or
2 continued if the deployed parent remains deployed longer than
3 anticipated.

4 (g) Following the review hearing, the court may set the
5 matter for further evidentiary hearing, if appropriate, and make
6 any further orders necessary in the best interests of the child.

7 (h) In addition to any other method prescribed by law,
8 service of process on a deploying or deployed parent may be made
9 by first class mail addressed to the individual through the Army
10 Post Office or Fleet Post Office address, or addressed to the
11 service member at the service member's unit or military
12 installation. The court may allow service by any other means if
13 the court is satisfied that the deploying or deployed parent
14 received or will receive actual notice, including by electronic
15 means.

16 Any motion seeking an expedited hearing shall be served
17 upon the other party not less than forty-eight hours prior to
18 the hearing.

19 (i) The court may permit alternative methods of
20 participation and testimony by electronic means in any hearing
21 conducted under this section, for either parent for whom
22 physical attendance is impractical or would impose undue



1 hardship. A parent's affidavit or declaration under penalty of
2 perjury shall be admissible, and a facsimile, electronic mail,
3 or scanned copy of the affidavit, declaration, or any other
4 relevant document may be admitted in the same manner as an
5 original document unless there is a genuine issue as to its
6 authenticity.

7 (j) This section shall not create or confer a separate
8 right of action. Any person seeking a court order under this
9 section must initiate or have a pending proceeding in the court
10 or meet the requirements for filing a proceeding under chapter
11 580, chapter 583A, chapter 584, or any other statute authorizing
12 an action in which the custody and visitation of a child may be
13 established or modified. This section does not confer child
14 custody jurisdiction or child support jurisdiction upon the
15 court where it would not otherwise exist under chapter 583A or
16 chapter 576B. This section is not intended to supersede,
17 modify, or constitute a waiver of any rights or protections
18 provided by the Servicemembers Civil Relief Act, P.L. 108-189,
19 and shall be construed in conformity therewith.

20 (k) As used in this section:

21 "Deployed parent" means a parent who is a service member
22 and is deployed.



1 "Deploying parent" means a parent who is a service member
2 and is likely to deploy within the next sixty days.

3 "Deployment" means the absence of a service member from his
4 or her usual place of residence or duty station pursuant to
5 military orders, whether:

6 (1) For a period of at least sixty days;

7 (2) In support of a specified military operation; and

8 (3) Under conditions that preclude a child from
9 accompanying the service member,

10 and from which the service member is expected to return to his
11 or her usual place of residence or the duty station from which
12 deployed.

13 "Electronic means" means communication by telephone,
14 radiotelephone, video teleconference, webcam, facsimile,
15 electronic mail, or other available electronic communication
16 systems.

17 "Parent" means a person who is the natural, legal, adoptive
18 parent, or legal guardian of a child under the age of eighteen
19 or a person who has commenced legal proceedings to establish
20 such relationship and whose parental rights have not been
21 terminated.



1 "Return from deployment" means the date upon which the
2 deployed parent:

3 (1) Returns to the prior place of residence or duty
4 station; or

5 (2) Arrives at a new duty station for an indefinite period
6 or a period that will exceed ninety days, not
7 including periods of leave during which the deployed
8 parent may return to the location from which the
9 parent was deployed, nor to periods of temporary duty
10 during deployment.

11 "Service member" means an active duty member of the Armed
12 Forces of the United States Army, Navy, Marine Corps, Air Force,
13 or Coast Guard, including members of the reserve components or
14 national guard when serving on active duty under Title 10,
15 United States Code and, in the case of a member of the national
16 guard, includes service under a call to active service
17 authorized by the President of the United States or the United
18 States Secretary of Defense for a period of more than thirty
19 consecutive days under Title 32 of the United States Code
20 section 502(f). The term "service member" does not include
21 members of the reserve components in inactive duty, active duty
22 other than under Title 10 or Title 32 of the United States Code,



1 or members of the national guard serving on active service
2 pursuant to section 121-30."

3 SECTION 3. Section 571-46, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) In actions for divorce, separation, annulment,
6 separate maintenance, or any other proceeding where there is at
7 issue a dispute as to the custody of a minor child, the court,
8 during the pendency of the action, at the final hearing, or any
9 time during the minority of the child, may make an order for the
10 custody of the minor child as may seem necessary or proper. In
11 awarding the custody, the court shall be guided by the following
12 standards, considerations, and procedures:

13 (1) Custody should be awarded to either parent or to both
14 parents according to the best interests of the child,
15 and the court also may consider frequent, continuing,
16 and meaningful contact of each parent with the child
17 unless the court finds that a parent is unable to act
18 in the best interest of the child; provided that the
19 custody award shall be made in accordance with section
20 571- , if applicable;

21 (2) Custody may be awarded to persons other than the
22 father or mother whenever the award serves the best



1 interest of the child. Any person who has had de
2 facto custody of the child in a stable and wholesome
3 home and is a fit and proper person shall be entitled
4 prima facie to an award of custody;

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

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



1 further that the court shall define the requirements
2 to be a court-appointed child custody evaluator, the
3 standards of practice, ethics, policies, and
4 procedures required of court-appointed child custody
5 evaluators in the performance of their duties for all
6 courts, and the powers of the courts over child
7 custody evaluators to effectuate the best interests of
8 a child in a contested custody dispute pursuant to
9 this section. Where there is no child custody
10 evaluator available that meets the requirements and
11 standards, or any child custody evaluator to serve
12 indigent parties, the court may appoint a person
13 otherwise willing and available[+];[+]

- 14 (5) The court may hear the testimony of any person or
15 expert, produced by any party or upon the court's own
16 motion, whose skill, insight, knowledge, or experience
17 is such that the person's or expert's testimony is
18 relevant to a just and reasonable determination of
19 what is for the best physical, mental, moral, and
20 spiritual well-being of the child whose custody is at
21 issue;



- 1 (6) Any custody award shall be subject to modification or
2 change whenever the best interests of the child
3 require or justify the modification or change and,
4 wherever practicable, the same person who made the
5 original order shall hear the motion or petition for
6 modification of the prior award; provided that the
7 custody award shall be made in accordance with section
8 571- , if applicable;
- 9 (7) Reasonable visitation rights shall be awarded to
10 parents, grandparents, siblings, and any person
11 interested in the welfare of the child in the
12 discretion of the court, unless it is shown that
13 rights of visitation are detrimental to the best
14 interests of the child;
- 15 (8) The court may appoint a guardian ad litem to represent
16 the interests of the child and may assess the
17 reasonable fees and expenses of the guardian ad litem
18 as costs of the action, payable in whole or in part by
19 either or both parties as the circumstances may
20 justify;
- 21 (9) In every proceeding where there is at issue a dispute
22 as to the custody of a child, a determination by the



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

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

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

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



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

3 (10) A court may award visitation to a parent who has
4 committed family violence only if the court finds that
5 adequate provision can be made for the physical safety
6 and psychological well-being of the child and for the
7 safety of the parent who is a victim of family
8 violence;

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

10 (A) Order an exchange of a child to occur in a
11 protected setting;

12 (B) Order visitation supervised by another person or
13 agency;

14 (C) Order the perpetrator of family violence to
15 attend and complete, to the satisfaction of the
16 court, a program of intervention for perpetrators
17 or other designated counseling as a condition of
18 the visitation;

19 (D) Order the perpetrator of family violence to
20 abstain from possession or consumption of alcohol
21 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 SECTION 4. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

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

14 SECTION 6. This Act shall take effect on September 14,
15 2047.

16



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 September 14, 2047. (SD2)

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