

JAN 23 2015

A BILL FOR AN ACT

RELATING TO CHILD VISITATION.

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

1 SECTION 1. The legislature finds that there is immense
2 ethnic and cultural diversity in the State and there should be
3 an option to honor cultural practices associated with
4 caregiving. Many people throughout the State have hanai
5 relationships in which caregivers who have no biological
6 relationship with a child undertake duties of a parental nature.
7 These caregivers may have substantial relationships with
8 children that warrant preservation. Children also have the
9 right to maintain strong bonds with caregivers with whom they
10 have created a special, parent-like bond. In *Leong v. Takasaki*,
11 the Hawaii supreme court recognized hanai relationships and
12 acknowledged that the hanai system remains a strong custom in
13 the State.

14 The purpose of this Act is to provide primary caregivers
15 with child visitation rights under certain circumstances.



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

4 "§571- Primary caregivers' visitation rights; petition;
5 notice; order. (a) A primary caregiver of a minor child may
6 file a petition with the court for an order of reasonable
7 visitation rights.

8 (b) The court may award reasonable visitation rights;
9 provided that the following criteria are met:

10 (1) This State is the home state of the child at the time
11 of the commencement of the proceeding;

12 (2) Denial of reasonable visitation rights would cause
13 harm to the child; and

14 (3) The petitioner demonstrates that the person has been
15 the child's primary caregiver for a period of not less
16 than six consecutive months during the eighteen-month
17 period immediately preceding the filing of the
18 petition.

19 For purposes of this section, "primary caregiver" means a
20 relationship between a caregiver and a nonbiological child where
21 the caregiver cares for the child, regardless of whether the



1 child has been formally adopted by the caregiver under Hawaii
2 law.

3 (c) In any proceeding on a petition filed under this
4 section, there shall be a rebuttable presumption that the
5 parent's decision regarding visitation is in the best interests
6 of the child. The presumption may be rebutted by evidence that
7 denial of reasonable visitation rights would cause harm to the
8 child.

9 (d) In ruling on a petition filed under this section, the
10 court may consider factors including the following:

- 11 (1) The nature and extent of any pre-existing relationship
12 between the child and the petitioner;
- 13 (2) Whether the petitioner has previously been granted
14 visitation by the child's parent or custodian and, if
15 so, the nature and extent of the visitation;
- 16 (3) Whether the petitioner has previously been awarded
17 visitation rights or custody of the child by a court;
- 18 (4) Whether the child has resided with the petitioner,
19 either alone or with a parent and, if so, how recently
20 and for how long;



- 1 (5) Whether the petitioner has provided financial support
2 to the child, including the provision of food;
3 clothing; education; and medical, dental, or mental
4 health care;
- 5 (6) If the parent or custodian has denied the petitioner
6 visitation or has otherwise substantially restricted
7 visitation that had been previously granted, whether
8 the reason given, if any, bears on the petitioner's
9 ability to safely care for the child during visitation
10 or relates to an issue between the parent or custodian
11 and the petitioner; and
- 12 (7) Any relevant factor under section 587A-7.
- 13 (e) No hearing for an order of reasonable visitation
14 rights under this section shall be held unless each of the
15 living parents and the child's custodians shall have received
16 due notice, actual or constructive, of the allegations of the
17 petition and of the time and place of the hearing thereof.
- 18 (f) The court may place reasonable restrictions, including
19 time limitations, on visitation granted under this section.
- 20 (g) An order made pursuant to this section shall be
21 enforceable by the court, and the court may issue other orders



1 to carry out these enforcement powers if in the best interests
2 of the child."

3 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY:

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Report Title:

Child Visitation; Primary Caregiver Visitation

Description:

Permits family courts to award reasonable visitation to primary caregivers under certain circumstances, regardless of whether the child has been formally adopted by the caregiver under Hawaii law. Establishes presumption that a parent's decision regarding visitation is in the best interests of the child, which may be rebutted by evidence that denial would cause harm to the child. Identifies factors a court may consider in awarding visitation. Grants the court discretion to place reasonable restrictions, including time limitations, on visitation.

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

