

JAN 23 2015

A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

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

1 SECTION 1. The legislature finds that rape and sexual
2 assault are heinous crimes committed against women, and that
3 victims of these crimes deserve the utmost mental, emotional,
4 and physical protection. The legislature also finds that family
5 court judges are permitted, but not required, to terminate the
6 parental rights of those convicted of rape or sexual assault
7 when their crime results in the conception of a child.

8 The legislature further finds that sexual assault victims
9 who have children as a result of the crime perpetrated against
10 them face additional struggles. These mothers should not be
11 faced with the possibility of their attacker remaining in their
12 life because he retained his parental rights to the child.
13 Accordingly, the legislature finds that anyone convicted of rape
14 or sexual assault should not have any parental rights relating
15 to a child conceived as a result of their crime.

16 The purpose of this Act is to ensure that family courts in
17 the State terminate the parental rights of natural parents



1 convicted of rape or sexual assault with respect to children who
2 were conceived as a result of the rape or sexual assault.

3 SECTION 2. Section 571-61, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Involuntary termination.

6 (1) The family courts may terminate the parental rights in
7 respect to any child as to any legal parent:

8 (A) Who has deserted the child without affording
9 means of identification for a period of at least
10 ninety days;

11 (B) Who has voluntarily surrendered the care and
12 custody of the child to another for a period of
13 at least two years;

14 (C) Who, when the child is in the custody of another,
15 has failed to communicate with the child when
16 able to do so for a period of at least one year;

17 (D) Who, when the child is in the custody of another,
18 has failed to provide for care and support of the
19 child when able to do so for a period of at least
20 one year;



1 (E) Whose child has been removed from the parent's
2 physical custody pursuant to legally authorized
3 judicial action under section 571-11(9), and who
4 is found to be unable to provide now and in the
5 foreseeable future the care necessary for the
6 well-being of the child;

7 (F) Who is found by the court to be mentally ill or
8 intellectually disabled and incapacitated from
9 giving consent to the adoption of or from
10 providing now and in the foreseeable future the
11 care necessary for the well-being of the child;
12 or

13 (G) Who is found not to be the child's natural or
14 adoptive father.

15 (2) The family courts may terminate the parental rights in
16 respect to any minor of any natural but not legal
17 father who is an adjudicated, presumed or concerned
18 father under chapter 578, or who is named as the
19 father on the child's birth certificate:

20 (A) Who falls within subparagraph (A), (B), (C), (D),
21 (E), or (F) of paragraph (1);



- 1 (B) Whose child is sought to be adopted by the
2 child's stepfather and the stepfather has lived
3 with the child and the child's legal mother for a
4 period of at least one year;
- 5 (C) Who is only a concerned father who has failed to
6 file a petition for the adoption of the child or
7 whose petition for the adoption of the child has
8 been denied; or
- 9 (D) Who is found to be an unfit or improper parent or
10 to be financially or otherwise unable to give the
11 child a proper home and education.
- 12 (3) In respect to any proceedings under paragraphs (1) and
13 (2), the authority to terminate parental rights may be
14 exercised by the court only when a verified petition,
15 substantially in the form above prescribed, has been
16 filed by some responsible adult person on behalf of
17 the child in the family court of the circuit in which
18 the parent resides or the child resides or was born
19 and the court has conducted a hearing of the petition.
20 A copy of the petition, together with notice of the
21 time and place of the hearing thereof, shall be



1 personally served at least twenty days prior to the
2 hearing upon the parent whose rights are sought to be
3 terminated. If personal service cannot be effected
4 within the State, service of the notice may be made as
5 provided in section 634-23 or 634-24.

6 (4) The family courts may terminate the parental rights in
7 respect to any child as to any natural father who is
8 not the child's legal, adjudicated, presumed or
9 concerned father under chapter 578.

10 (5) The family courts [~~may~~] shall terminate the parental
11 rights in respect to any child of any natural parent
12 upon a finding that the natural parent has been
13 convicted in a court of competent jurisdiction in any
14 state of rape or sexual assault and the child was
15 conceived as a result of the rape or sexual assault
16 perpetrated by the parent whose rights are sought to
17 be terminated; provided that:

18 (A) The termination of parental rights shall not
19 affect the obligation of the convicted natural
20 parent to support the child;



1 (B) The court may order the convicted natural parent
2 to pay child support;

3 (C) This paragraph shall not apply if subsequent to
4 the date of conviction, the convicted natural
5 parent and custodial natural parent cohabituate
6 and establish a mutual custodial environment for
7 the child; and

8 (D) The custodial natural parent may petition the
9 court to reinstate the convicted natural parent's
10 parental rights terminated pursuant to this
11 paragraph.

12 Such authority may be exercised under this chapter only
13 when a verified petition, substantially in the form above
14 prescribed, has been filed by some responsible adult person on
15 behalf of the child in the family court of the circuit in which
16 the parent resides or the child resides or was born, and the
17 court has conducted a hearing of the petition.

18 If the mother of the child files with the petition an
19 affidavit representing that the identity or whereabouts of the
20 child's father is unknown to her or not ascertainable by her or
21 that other good cause exists why notice cannot or should not be



1 given to the father, the court shall conduct a hearing to
2 determine whether notice is required.

3 If the court finds that good cause exists why notice cannot
4 or should not be given to the child's father, and that the
5 father is neither the legal nor adjudicated nor presumed father
6 of the child, nor has he demonstrated a reasonable degree of
7 interest, concern, or responsibility as to the existence or
8 welfare of the child, the court may enter an order authorizing
9 the termination of the father's parental rights and the
10 subsequent adoption of the child without notice to the father."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

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

17

INTRODUCED BY: *Shianne Chun Oakland*



S.B. NO. 922

Report Title:

Parental Rights; Rape; Sexual Assault

Description:

Mandates instead of permits a family court to terminate the parental rights to any child of a natural parent if the natural parent is convicted of rape or sexual assault and that rape or sexual assault resulted in the conception of the child.

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

