

JAN 23 2015

A BILL FOR AN ACT

RELATING TO PARENTAL RIGHTS.

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

1 SECTION 1. Section 571-46, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 (1) Custody should be awarded to either parent or to both
4 parents according to the best interests of the child,
5 and the court also may consider frequent, continuing,
6 and meaningful contact of each parent with the child
7 unless the court finds that a parent is unable to act
8 in the best interest of the child;

9 (2) Custody may be awarded to persons other than the
10 father or mother whenever the award serves the best
11 interest of the child. Any person who has had de
12 facto custody of the child in a stable and wholesome
13 home and is a fit and proper person shall be entitled
14 prima facie to an award of custody;

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



1 (4) Whenever good cause appears therefore, the court may
2 require an investigation and report concerning the
3 care, welfare, and custody of any minor child of the
4 parties. When so directed by the court, investigators
5 or professional personnel attached to or assisting the
6 court, hereinafter referred to as child custody
7 evaluators, shall make investigations and reports that
8 shall be made available to all interested parties and
9 counsel before hearing, and the reports may be
10 received in evidence if no objection is made and, if
11 objection is made, may be received in evidence;
12 provided the person or persons responsible for the
13 report are available for cross-examination as to any
14 matter that has been investigated; and provided
15 further that the court shall define the requirements
16 to be a court-appointed child custody evaluator, the
17 standards of practice, ethics, policies, and
18 procedures required of court-appointed child custody
19 evaluators in the performance of their duties for all
20 courts, and the powers of the courts over child
21 custody evaluators to effectuate the best interests of
22 a child in a contested custody dispute pursuant to



1 this section. Where there is no child custody
2 evaluator available that meets the requirements and
3 standards, or any child custody evaluator to serve
4 indigent parties, the court may appoint a person
5 otherwise willing and available;

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

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

20 (7) Reasonable visitation rights shall be awarded to
21 parents, grandparents, siblings, and any person
22 interested in the welfare of the child in the



1 discretion of the court, unless it is shown that
2 rights of visitation are detrimental to the best
3 interests of the child;

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

10 (9) In every proceeding where there is at issue a dispute
11 as to the custody of a child, a determination by the
12 court that family violence has been committed by a
13 parent raises a rebuttable presumption that it is
14 detrimental to the child and not in the best interest
15 of the child to be placed in sole custody, joint legal
16 custody, or joint physical custody with the
17 perpetrator of family violence. In addition to other
18 factors that a court shall consider in a proceeding in
19 which the custody of a child or visitation by a parent
20 is at issue, and in which the court has made a finding
21 of family violence by a parent:



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

4 (B) The court shall consider the perpetrator's
5 history of causing physical harm, bodily injury,
6 or assault or causing reasonable fear of physical
7 harm, bodily injury, or assault to another
8 person; and

9 (C) If a parent is absent or relocates because of an
10 act of family violence by the other parent, the
11 absence or relocation shall not be a factor that
12 weighs against the parent in determining custody
13 or visitation;

14 (10) A court may award visitation to a parent who has
15 committed family violence only if the court finds that
16 adequate provision can be made for the physical safety
17 and psychological well-being of the child and for the
18 safety of the parent who is a victim of family
19 violence;

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

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



- 1 (B) Order visitation supervised by another person or
2 agency;
- 3 (C) Order the perpetrator of family violence to
4 attend and complete, to the satisfaction of the
5 court, a program of intervention for perpetrators
6 or other designated counseling as a condition of
7 the visitation;
- 8 (D) Order the perpetrator of family violence to
9 abstain from possession or consumption of alcohol
10 or controlled substances during the visitation
11 and for twenty-four hours preceding the
12 visitation;
- 13 (E) Order the perpetrator of family violence to pay a
14 fee to defray the costs of supervised visitation;
- 15 (F) Prohibit overnight visitation;
- 16 (G) Require a bond from the perpetrator of family
17 violence for the return and safety of the child.
18 In determining the amount of the bond, the court
19 shall consider the financial circumstances of the
20 perpetrator of family violence;
- 21 (H) Impose any other condition that is deemed
22 necessary to provide for the safety of the child,



1 the victim of family violence, or other family or
2 household member; and

3 (I) Order the address of the child and the victim to
4 be kept confidential;

5 (12) The court may refer but shall not order an adult who
6 is a victim of family violence to attend, either
7 individually or with the perpetrator of the family
8 violence, counseling relating to the victim's status
9 or behavior as a victim as a condition of receiving
10 custody of a child or as a condition of visitation;

11 (13) If a court allows a family or household member to
12 supervise visitation, the court shall establish
13 conditions to be followed during visitation;

14 (14) A supervised visitation center shall provide a secure
15 setting and specialized procedures for supervised
16 visitation and the transfer of children for visitation
17 and supervision by a person trained in security and
18 the avoidance of family violence;

19 (15) The court may include in visitation awarded pursuant
20 to this section visitation by electronic communication
21 provided that the court shall additionally consider:

1 (A) The potential for abuse or misuse of the
2 electronic communication, including the equipment
3 used for the communication, by the person seeking
4 visitation or by persons who may be present
5 during the visitation or have access to the
6 communication or equipment;

7 (B) Whether the person seeking visitation has
8 previously violated a temporary restraining order
9 or protective order; and

10 (C) Whether adequate provision can be made for the
11 physical safety and psychological well-being of
12 the child and for the safety of the custodial
13 parent;

14 (16) The court may set conditions for visitation by
15 electronic communication under paragraph (15),
16 including visitation supervised by another person or
17 occurring in a protected setting. Visitation by
18 electronic communication shall not be used to:

19 (A) Replace or substitute an award of custody or
20 physical visitation except where:

21 (i) Circumstances exist that make a parent
22 seeking visitation unable to participate in



1 physical visitation, including military
2 deployment; or
3 (ii) Physical visitation may subject the child to
4 physical or extreme psychological harm; or
5 (B) Justify or support the relocation of a custodial
6 parent; and
7 (17) Notwithstanding any provision to the contrary, no
8 natural parent shall be granted custody of or
9 visitation with a child if the natural parent has been
10 convicted in a court of competent jurisdiction in any
11 state of rape, incest, or sexual assault and the child
12 was conceived as a result of that offense; provided
13 that:
14 (A) A denial of custody or visitation under this
15 paragraph shall not affect the obligation of the
16 convicted natural parent to support the child;
17 (B) The court may order the convicted natural parent
18 to pay child support;
19 (C) This paragraph shall not apply if subsequent to
20 the date of conviction, the convicted natural
21 parent and custodial natural parent cohabitate



1 and establish a mutual custodial environment for
2 the child; and
3 (D) A custodial natural parent may petition the court
4 to grant the convicted natural parent custody and
5 visitation denied pursuant to this paragraph, and
6 upon such petition the court may grant custody
7 and visitation to the convicted natural parent
8 where it is in the best interest of the child."

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

11 "(b) Involuntary termination.

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

14 (A) Who has deserted the child without affording
15 means of identification for a period of at least
16 ninety days;

17 (B) Who has voluntarily surrendered the care and
18 custody of the child to another for a period of
19 at least two years;

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



1 (D) Who, when the child is in the custody of another,
2 has failed to provide for care and support of the
3 child when able to do so for a period of at least
4 one year;

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

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

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

19 (2) The family courts may terminate the parental rights in
20 respect to any minor of any natural but not legal
21 father who is an adjudicated, presumed or concerned

1 father under chapter 578, or who is named as the
2 father on the child's birth certificate:

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

5 (B) Whose child is sought to be adopted by the
6 child's stepfather and the stepfather has lived
7 with the child and the child's legal mother for a
8 period of at least one year;

9 (C) Who is only a concerned father who has failed to
10 file a petition for the adoption of the child or
11 whose petition for the adoption of the child has
12 been denied; or

13 (D) Who is found to be an unfit or improper parent or
14 to be financially or otherwise unable to give the
15 child a proper home and education.

16 (3) In respect to any proceedings under paragraphs (1) and
17 (2), the authority to terminate parental rights may be
18 exercised by the court only when a verified petition,
19 substantially in the form above prescribed, has been
20 filed by some responsible adult person on behalf of
21 the child in the family court of the circuit in which
22 the parent resides or the child resides or was born



1 and the court has conducted a hearing of the petition.
2 A copy of the petition, together with notice of the
3 time and place of the hearing thereof, shall be
4 personally served at least twenty days prior to the
5 hearing upon the parent whose rights are sought to be
6 terminated. If personal service cannot be effected
7 within the State, service of the notice may be made as
8 provided in section 634-23 or 634-24.

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

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



- 1 (A) The termination of parental rights shall not
- 2 affect the obligation of the convicted natural
- 3 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 cohabit
- 9 and establish a mutual custodial environment for
- 10 the child; and
- 11 (D) The custodial natural parent may petition the
- 12 court to reinstate the convicted natural parent's
- 13 parental rights terminated pursuant to this
- 14 paragraph.

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

21 If the mother of the child files with the petition an
22 affidavit representing that the identity or whereabouts of the



1 child's father is unknown to her or not ascertainable by her or
 2 that other good cause exists why notice cannot or should not be
 3 given to the father, the court shall conduct a hearing to
 4 determine whether notice is required.

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

13 SECTION 3. Statutory material to be repealed is bracketed.
 14 New statutory material is underscored.

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

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S.B. NO. 932

Report Title:

Termination of Parental Rights; Incest

Description:

Provides for involuntary termination of parental rights in cases of incest. Provides for denial of custody and visitation rights of convicted parent and preserves the custodial parent's right to court ordered child support.

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

