



GOV. MSG. NO. 1315

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 6, 2016, the following bill was signed into law:

SB2811 SD2 HD1

RELATING TO PARENTAL RIGHTS
ACT 213 (16)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

on _____

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

ACT 213
S.B. NO.

2811
S.D. 2
H.D. 1

A BILL FOR AN ACT

RELATING TO PARENTAL RIGHTS.

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

1 SECTION 1. Prior to the termination of parental rights
2 with respect to a child who was conceived as a result of a
3 sexual assault perpetrated by that parent, Hawaii requires the
4 natural parent to have been convicted of the rape or sexual
5 assault in a court of competent jurisdiction in any state. In
6 May 2015, President Obama signed the Rape Survivor Child Custody
7 Act (Act), Public Law No. 114-22, which provides increased
8 funding to states that allow women to petition for the
9 termination of parental rights upon a finding supported by clear
10 and convincing evidence that the child was conceived as a result
11 of an act of sexual assault. In the Act, Congress found that
12 sexual assault is one of the most under-prosecuted serious
13 crimes and, even when prosecuted, criminal conviction occurs in
14 less than five per cent of prosecutions. Congress also noted
15 that the Supreme Court has established that the clear and
16 convincing evidence standard satisfies due process rights for
17 proceedings to terminate or restrict parental rights, *Santosky*



1 v. *Kramer*, 455 U.S. 745 (1982) and the clear and convincing
2 evidence standard is the most common standard for the
3 termination of parental rights among all United States
4 jurisdictions. Finally, Congress found that a perpetrator of
5 sexual assault may attempt to avoid prosecution by coercing the
6 survivor with threats to obtain custody of the child or to
7 assert parental rights, or may use the issue of parental rights
8 to otherwise harass, intimidate, or manipulate the survivor.

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;



- 1 (C) Who, when the child is in the custody of another,
2 has failed to communicate with the child when
3 able to do so for a period of at least one year;
- 4 (D) Who, when the child is in the custody of another,
5 has failed to provide for care and support of the
6 child when able to do so for a period of at least
7 one year;
- 8 (E) Whose child has been removed from the parent's
9 physical custody pursuant to legally authorized
10 judicial action under section 571-11(9), and who
11 is found to be unable to provide now and in the
12 foreseeable future the care necessary for the
13 well-being of the child;
- 14 (F) Who is found by the court to be mentally ill or
15 intellectually disabled and incapacitated from
16 giving consent to the adoption of or from
17 providing now and in the foreseeable future the
18 care necessary for the well-being of the child;
19 or
- 20 (G) Who is found not to be the child's natural or
21 adoptive father.



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

6 (A) Who falls within [~~subparagraph (A),~~] paragraph
7 (1)(A), (B), (C), (D), (E), or (F) [~~of paragraph~~
8 ~~(1)~~];

9 (B) Whose child is sought to be adopted by the
10 child's stepfather and the stepfather has lived
11 with the child and the child's legal mother for a
12 period of at least one year;

13 (C) Who is only a concerned father who has failed to
14 file a petition for the adoption of the child or
15 whose petition for the adoption of the child has
16 been denied; or

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

20 (3) In respect to any proceedings under paragraphs (1) and
21 (2), the authority to terminate parental rights may be



1 exercised by the court only when a verified petition,
2 substantially in the form above prescribed, has been
3 filed by some responsible adult person on behalf of
4 the child in the family court of the circuit in which
5 the parent resides or the child resides or was born
6 and the court has conducted a hearing of the petition.
7 A copy of the petition, together with notice of the
8 time and place of the hearing thereof, shall be
9 personally served at least twenty days prior to the
10 hearing upon the parent whose rights are sought to be
11 terminated. If personal service cannot be effected
12 within the State, service of the notice may be made as
13 provided in section 634-23 or 634-24.

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

18 (5) The family courts may terminate the parental rights in
19 respect to any child of any natural parent upon a
20 finding by clear and convincing evidence that the
21 natural parent ~~[has been convicted in a court of~~



1 ~~competent jurisdiction in any state of rape or]~~
 2 committed sexual assault of the other natural parent,
 3 or an equivalent offense under the laws of another
 4 state, territory, possession, or Native American tribe
 5 where the offense occurred, and the child was
 6 conceived as a result of the [~~rape or~~] sexual assault
 7 perpetrated by the parent whose rights are sought to
 8 be terminated; provided that:

9 (A) The court shall accept, as conclusive proof of
 10 the sexual assault, a guilty plea or conviction
 11 of the child's natural parent for the sexual
 12 assault, or an equivalent offense under the laws
 13 of another state, territory, possession, or
 14 Native American tribe where the offense occurred,
 15 of the other natural parent;

16 (B) Termination shall mean, when used with respect to
 17 parental rights in this paragraph, a complete and
 18 final termination of the parent's right to
 19 custody of, guardianship of, visitation with,
 20 access to, and inheritance from a child;



1 ~~[(A)]~~ (C) The termination of parental rights shall not
2 affect the obligation of the ~~[convicted]~~ child's
3 natural parent to support the child;

4 ~~[(B)]~~ (D) The court may order the ~~[convicted]~~ child's
5 natural parent to pay child support;

6 (E) It is presumed that termination of parental
7 rights is in the best interest of the child if
8 the child was conceived as a result of the sexual
9 assault;

10 ~~[(C)]~~ (F) This paragraph shall not apply if subsequent
11 to the date of ~~[conviction,]~~ the sexual assault,
12 the ~~[convicted]~~ child's natural parent and
13 custodial natural parent cohabit and establish
14 a mutual custodial environment for the child; and

15 ~~[(D)]~~ (G) The custodial natural parent may petition
16 the court to reinstate the ~~[convicted]~~ child's
17 natural parent's parental rights terminated
18 pursuant to this paragraph.

19 Such authority may be exercised under this chapter only
20 when a verified petition, substantially in the form above
21 prescribed, has been filed by some responsible adult person on



1 behalf of the child in the family court of the circuit in which
2 the parent resides or the child resides or was born, and the
3 court has conducted a hearing of the petition.

4 If the mother of the child files with the petition an
5 affidavit representing that the identity or whereabouts of the
6 child's father is unknown to her or not ascertainable by her or
7 that other good cause exists why notice cannot or should not be
8 given to the father, the court shall conduct a hearing to
9 determine whether notice is required.

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

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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

APPROVED this 6 day of JUL , 2016



GOVERNOR OF THE STATE OF HAWAII