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# 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.



**Report Title:**

Involuntary Termination of Parental Rights

**Description:**

Provides that parental rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived as a result of a sexual assault. Creates a presumption that termination of parental rights is in the best interest of the child if the child was conceived as a result of the sexual assault. (SB2811 HD1)

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

