

JAN 20 2017

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 often a
2 strong bond between a grandparent and grandchild and which, in
3 some families, may run deeper than the relationship between
4 parent and child. Grandparents can be great role models and
5 influences, provide a sense of cultural heritage and family
6 history, and can further provide their grandchildren with love,
7 have their best interests at heart, can make them feel safe, and
8 encourage a child's healthy development.

9 Ten years ago, in Doe v. Doe, 116 Haw. 323, 172 P.3d 1067
10 (2007), the Hawaii supreme court struck down the State's
11 grandparent visitation statute as unconstitutional. The
12 statute, as written, allowed grandparent visitation to be
13 awarded if it is shown that the visitation is in the best
14 interest of the child. The court held that, due to the
15 fundamental right of a parent to control and direct the raising
16 of a child, a petition for visitation can only be granted if it
17 is not only in the best interest of the child, but also that



1 denial of the visitation would cause significant harm to the
2 child.

3 The purpose of this Act is to provide constitutionally-
4 sound standards for the court to consider in awarding visitation
5 rights to grandparents.

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

8 "(a) In actions for divorce, separation, annulment,
9 separate maintenance, or any other proceeding where there is at
10 issue a dispute as to the custody of a minor child, the court,
11 during the pendency of the action, at the final hearing, or any
12 time during the minority of the child, may make an order for the
13 custody of the minor child as may seem necessary or proper. In
14 awarding the custody, the court shall be guided by the following
15 standards, considerations, and procedures:

16 (1) Custody should be awarded to either parent or to both
17 parents according to the best interests of the child,
18 and the court also may consider frequent, continuing,
19 and meaningful contact of each parent with the child
20 unless the court finds that a parent is unable to act
21 in the best interest of the child;



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

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

11 (4) Whenever good cause appears therefor, the court may
12 require an investigation and report concerning the
13 care, welfare, and custody of any minor child of the
14 parties. When so directed by the court, investigators
15 or professional personnel attached to or assisting the
16 court, hereinafter referred to as child custody
17 evaluators, shall make investigations and reports that
18 shall be made available to all interested parties and
19 counsel before hearing, and the reports may be
20 received in evidence if no objection is made and, if
21 objection is made, may be received in evidence;



1 provided the person or persons responsible for the
2 report are available for cross-examination as to any
3 matter that has been investigated; and provided
4 further that the court shall define, in accordance
5 with section 571-46.4, the requirements to be a court-
6 appointed child custody evaluator, the standards of
7 practice, ethics, policies, and procedures required of
8 court-appointed child custody evaluators in the
9 performance of their duties for all courts, and the
10 powers of the courts over child custody evaluators to
11 effectuate the best interests of a child in a
12 contested custody dispute pursuant to this section.
13 Where there is no child custody evaluator available
14 that meets the requirements and standards, or any
15 child custody evaluator to serve indigent parties, the
16 court may appoint a person otherwise willing and
17 available in accordance with section 571-46.4;

- 18 (5) The court may hear the testimony of any person or
19 expert, produced by any party or upon the court's own
20 motion, whose skill, insight, knowledge, or experience
21 is such that the person's or expert's testimony is



1 relevant to a just and reasonable determination of
2 what is for the best physical, mental, moral, and
3 spiritual well-being of the child whose custody is at
4 issue;

5 (6) Any custody award shall be subject to modification or
6 change whenever the best interests of the child
7 require or justify the modification or change and,
8 wherever practicable, the same person who made the
9 original order shall hear the motion or petition for
10 modification of the prior award;

11 (7) Reasonable visitation rights shall be awarded to
12 parents, [~~grandparents~~] siblings, and any person
13 interested in the welfare of the child in the
14 discretion of the court, unless it is shown that
15 rights of visitation are detrimental to the best
16 interests of the child;

17 (8) The court may appoint a guardian ad litem to represent
18 the interests of the child and may assess the
19 reasonable fees and expenses of the guardian ad litem
20 as costs of the action, payable in whole or in part by



1 either or both parties as the circumstances may
2 justify;

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

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

18 (B) The court shall consider the perpetrator's
19 history of causing physical harm, bodily injury,
20 or assault or causing reasonable fear of physical



1 harm, bodily injury, or assault to another
2 person; and
3 (C) If a parent is absent or relocates because of an
4 act of family violence by the other parent, the
5 absence or relocation shall not be a factor that
6 weighs against the parent in determining custody
7 or visitation;

8 (10) A court may award visitation to a parent who has
9 committed family violence only if the court finds that
10 adequate provision can be made for the physical safety
11 and psychological well-being of the child and for the
12 safety of the parent who is a victim of family
13 violence;

14 (11) In a visitation order, a court may:
15 (A) Order an exchange of a child to occur in a
16 protected setting;
17 (B) Order visitation supervised by another person or
18 agency;
19 (C) Order the perpetrator of family violence to
20 attend and complete, to the satisfaction of the
21 court, a program of intervention for perpetrators



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



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

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

10 (14) A supervised visitation center shall provide a secure
11 setting and specialized procedures for supervised
12 visitation and the transfer of children for visitation
13 and supervision by a person trained in security and
14 the avoidance of family violence;

15 (15) The court may include in visitation awarded pursuant
16 to this section visitation by electronic communication
17 provided that the court shall additionally consider
18 the potential for abuse or misuse of the electronic
19 communication, including the equipment used for the
20 communication, by the person seeking visitation or by
21 persons who may be present during the visitation or



1 have access to the communication or equipment; whether
2 the person seeking visitation has previously violated
3 a temporary restraining order or protective order; and
4 whether adequate provision can be made for the
5 physical safety and psychological well-being of the
6 child and for the safety of the custodial parent;

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

12 (A) Replace or substitute an award of custody or
13 physical visitation except where:

14 (i) Circumstances exist that make a parent
15 seeking visitation unable to participate in
16 physical visitation, including military
17 deployment; or

18 (ii) Physical visitation may subject the child to
19 physical or extreme psychological harm; or

20 (B) Justify or support the relocation of a custodial
21 parent; and



1 (17) Notwithstanding any provision to the contrary, no
2 natural parent shall be granted custody of or
3 visitation with a child if the natural parent has been
4 convicted in a court of competent jurisdiction in any
5 state of rape or sexual assault and the child was
6 conceived as a result of that offense; provided that:
7 (A) A denial of custody or visitation under this
8 paragraph shall not affect the obligation of the
9 convicted natural parent to support the child;
10 (B) The court may order the convicted natural parent
11 to pay child support;
12 (C) This paragraph shall not apply if subsequent to
13 the date of conviction, the convicted natural
14 parent and custodial natural parent cohabitate
15 and establish a mutual custodial environment for
16 the child; and
17 (D) A custodial natural parent may petition the court
18 to grant the convicted natural parent custody and
19 visitation denied pursuant to this paragraph, and
20 upon such petition the court may grant custody



1 and visitation to the convicted natural parent
2 where it is in the best interest of the child."

3 SECTION 3. Section 571-46.3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§571-46.3 Grandparents' visitation rights; petition;
6 notice; order.** (a) A grandparent or the grandparents of a
7 minor child may file a petition with the court for an order of
8 reasonable visitation rights. The court may award reasonable
9 visitation rights provided that the following [~~eriteria are~~
10 ~~met:~~] findings are made:

11 (1) This State is the home state of the child at the time
12 of the commencement of the proceeding; [~~and~~

13 ~~(2) Reasonable visitation rights are in the best interests~~
14 ~~of the child.]~~

15 (2) Grandparent visitation is in the best interest of the
16 child; and

17 (3) Denial of reasonable grandparent visitation rights
18 would cause significant harm to the child.

19 (b) No hearing for an order of reasonable visitation
20 rights under this section shall be had unless each of the living
21 parents and the child's custodians shall have had due notice,



1 actual or constructive, of the allegations of the petition and
2 of the time and place of the hearing thereof.

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

9 (d) In awarding reasonable grandparent visitation, the
10 court shall be guided by all standards, considerations, and
11 procedures for parent visitation under section 571-46.

12 (e) When a finding of family violence between the parents
13 has been determined by the court, grandparents shall not misuse
14 any visitation granted to them by transferring their time to any
15 other party and shall be bound to the same court orders
16 maintained by the parents.

17 (f) An order made pursuant to this section shall be
18 enforceable by the court, and the court may issue other orders
19 to carry out these enforcement powers if in the best interests
20 of the child."



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1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2017.

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INTRODUCED BY:

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Report Title:

Child Custody; Grandparent Visitation

Description:

Adds as prerequisites to awarding visitation that the court finds that awarding visitation to grandparent is in the best interest of the child and that denial of reasonable grandparent visitation rights would cause significant harm to the child. Clarifies procedures for awarding visitation. Deletes duplicative provision of awarding grandparents reasonable visitation rights.

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

