

JAN 18 2019

A BILL FOR AN ACT

RELATING TO PARENTAL RIGHTS.

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

1 SECTION 1. Chapter 571, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§571- Involuntary suspension of parental rights; sexual
5 assault criminal proceedings. (a) The family courts shall
6 suspend custody and visitation in respect to any child for any
7 parent or legal guardian who is charged in a criminal proceeding
8 for a sexual assault of the child's other parent or legal
9 guardian, or an equivalent offense under the laws of another
10 state, territory, possession, or Native American tribe where the
11 offense is alleged to have occurred, for the period of time
12 between when the parent or legal guardian is charged and a court
13 determination of the case, where such suspension is deemed in
14 the best interest of the child; provided that:

15 (1) The suspension of custody and visitation shall not
16 affect the obligation of the respondent to support the
17 child;



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1 (2) The court may order the respondent to pay child
2 support;

3 (3) It is presumed that the suspension of custody and
4 visitation is in the best interest of the child if the
5 respondent has been charged in a criminal proceeding
6 for a sexual assault of the petitioner; and

7 (4) A custodial petitioner may petition the court to
8 reinstate the respondent's custody and visitation that
9 was suspended pursuant to this section.

10 (b) Such authority may be exercised under this section
11 only when a verified petition, substantially in the form above
12 prescribed, has been filed by the petitioner on behalf of the
13 child in the family court of the circuit in which the respondent
14 resides or the child resides or was born, and the court has
15 conducted a hearing on the petition.

16 (c) If the petitioner files with the petition an affidavit
17 representing that the whereabouts of the respondent is unknown
18 to the petitioner or not ascertainable by the petitioner, or
19 that other good cause exists why notice cannot or should not be
20 given to the respondent, the court shall conduct a hearing to
21 determine whether notice is required.



1 (d) If the court finds that good cause exists why notice
2 cannot or should not be given to the respondent, the court may
3 suspend custody and visitation as described above without notice
4 to the respondent.

5 (e) For purposes of this section:

6 "Petitioner" means the parent or legal guardian:

7 (1) Of any child; and

8 (2) Who petitions the family court for an order to suspend
9 custody and visitation of the child.

10 "Respondent" means the parent or legal guardian:

11 (1) Of any child;

12 (2) Who is charged in a criminal proceeding for a sexual
13 assault or equivalent offense of the child's other
14 parent or legal guardian; and

15 (3) Is the subject of the petition for a court order to
16 suspend custody and visitation of the child."

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

19 "(b) Involuntary termination.

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



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- 1 (A) Who has deserted the child without affording
2 means of identification for a period of at least
3 ninety days;
- 4 (B) Who has voluntarily surrendered the care and
5 custody of the child to another for a period of
6 at least two years;
- 7 (C) Who, when the child is in the custody of another,
8 has failed to communicate with the child when
9 able to do so for a period of at least one year;
- 10 (D) Who, when the child is in the custody of another,
11 has failed to provide for care and support of the
12 child when able to do so for a period of at least
13 one year;
- 14 (E) Whose child has been removed from the parent's
15 physical custody pursuant to legally authorized
16 judicial action under section 571-11(9), and who
17 is found to be unable to provide now and in the
18 foreseeable future the care necessary for the
19 well-being of the child;
- 20 (F) Who is found by the court to be mentally ill or
21 intellectually disabled and incapacitated from



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1 giving consent to the adoption of or from
2 providing now and in the foreseeable future the
3 care necessary for the well-being of the child;
4 or

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

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

12 (A) Who falls within paragraph (1)(A), (B), (C), (D),
13 (E), or (F);

14 (B) Whose child is sought to be adopted by the
15 child's stepfather and the stepfather has lived
16 with the child and the child's legal mother for a
17 period of at least one year;

18 (C) Who is only a concerned father who has failed to
19 file a petition for the adoption of the child or
20 whose petition for the adoption of the child has
21 been denied; or



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

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

19 (4) The family courts may terminate the parental rights in
20 respect to any child as to any natural father who is



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1 not the child's legal, adjudicated, presumed or
2 concerned father under chapter 578.

3 (5) The family courts [~~may~~] shall terminate the parental
4 rights in respect to any child of any natural parent
5 upon a finding by clear and convincing evidence that
6 the natural parent committed sexual assault of the
7 other natural parent, or an equivalent offense under
8 the laws of another state, territory, possession, or
9 Native American tribe where the offense occurred[~~7~~
10 and]; the child was conceived as a result of the
11 sexual assault perpetrated by the parent whose rights
12 are sought to be terminated; and termination of
13 parental rights is in the best interests of the child;
14 provided that:

15 (A) The court shall accept, as conclusive proof of
16 the sexual assault, a guilty plea or conviction
17 of the child's natural parent for the sexual
18 assault, or an equivalent offense under the laws
19 of another state, territory, possession, or
20 Native American tribe where the offense occurred,
21 of the other natural parent;



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- 1 (B) Termination shall mean, when used with respect to
2 parental rights in this paragraph, a complete and
3 final termination of the parent's right to
4 custody of, guardianship of, visitation with,
5 access to, and inheritance from a child;
- 6 (C) The termination of parental rights shall not
7 affect the obligation of the child's natural
8 parent to support the child;
- 9 (D) The court may order the child's natural parent to
10 pay child support;
- 11 (E) It is presumed that termination of parental
12 rights is in the best interest of the child if
13 the child was conceived as a result of the sexual
14 assault;
- 15 (F) This paragraph shall not apply if subsequent to
16 the date of the sexual assault, the child's
17 natural parent and custodial natural parent
18 cohabitate and establish a mutual custodial
19 environment for the child; and
- 20 (G) The custodial natural parent may petition the
21 court to reinstate the child's natural parent's



1 parental rights terminated pursuant to this
2 paragraph.

3 Such authority may be exercised under this chapter only
4 when a verified petition, substantially in the form above
5 prescribed, has been filed by some responsible adult person on
6 behalf of the child in the family court of the circuit in which
7 the parent resides or the child resides or was born, and the
8 court has conducted a hearing [øf] on the petition.

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

15 If the court finds that good cause exists why notice cannot
16 or should not be given to the child's father, and that the
17 father is neither the legal nor adjudicated nor presumed father
18 of the child, nor has he demonstrated a reasonable degree of
19 interest, concern, or responsibility as to the existence or
20 welfare of the child, the court may enter an order authorizing



1 the termination of the father's parental rights and the
2 subsequent adoption of the child without notice to the father."

3 SECTION 3. Section 804-7.1, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§804-7.1 Conditions of release on bail, recognizance, or
6 supervised release. Upon a showing that there exists a danger
7 that the defendant will commit a serious crime or will seek to
8 intimidate witnesses, or will otherwise unlawfully interfere
9 with the orderly administration of justice, the judicial officer
10 named in section 804-5 may deny the defendant's release on bail,
11 recognizance, or supervised release.

12 Upon the defendant's release on bail, recognizance, or
13 supervised release, however, the court may enter an order:

14 (1) Prohibiting the defendant from approaching or
15 communicating with particular persons or classes of
16 persons, except that no such order should be deemed to
17 prohibit any lawful and ethical activity of
18 defendant's counsel;

19 (2) Prohibiting the defendant from going to certain
20 described geographical areas or premises;



- 1 (3) Prohibiting the defendant from possessing any
2 dangerous weapon, engaging in certain described
3 activities, or indulging in intoxicating liquors or
4 certain drugs;
- 5 (4) Requiring the defendant to report regularly to and
6 remain under the supervision of an officer of the
7 court;
- 8 (5) Requiring the defendant to maintain employment, or, if
9 unemployed, to actively seek employment, or attend an
10 educational or vocational institution;
- 11 (6) Requiring the defendant to comply with a specified
12 curfew;
- 13 (7) Requiring the defendant to seek and maintain mental
14 health treatment or testing, including treatment for
15 drug or alcohol dependency, or to remain in a
16 specified institution for that purpose;
- 17 (8) Requiring the defendant to remain in the jurisdiction
18 of the judicial circuit in which the charges are
19 pending unless approval is obtained from a court of
20 competent jurisdiction to leave the jurisdiction of
21 the court;



1 (9) Requiring the defendant to satisfy any other condition
 2 reasonably necessary to assure the appearance of the
 3 person as required and to assure the safety of any
 4 other person or community; [ø]

5 (10) Imposing any combination of conditions listed
 6 above[-]; or

7 (11) When a defendant has been charged with sexual assault,
 8 any prohibitions that restrict a defendant from
 9 approaching or communicating with the victim of sexual
 10 assault shall, at the victim's request, also apply
 11 with respect to the victim's minor children,
 12 regardless of the existence of a parental relationship
 13 between the defendant and the child of the victim.

14 The judicial officer may revoke a defendant's bail upon
 15 proof that the defendant has breached any of the conditions
 16 imposed."

17 SECTION 4. This Act does not affect rights and duties that
 18 matured, penalties that were incurred, and proceedings that were
 19 begun before its effective date.

20 SECTION 5. If any provision of this Act, or the
 21 application thereof to any person or circumstance, is held




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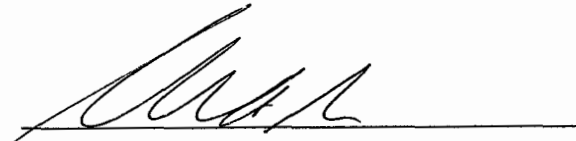
1 invalid, the invalidity does not affect other provisions or
 2 applications of the Act that can be given effect without the
 3 invalid provision or application, and to this end the provisions
 4 of this Act are severable.

5 SECTION 6. Statutory material to be repealed is bracketed
 6 and stricken. New statutory material is underscored.

7 SECTION 7. This Act shall take effect upon its approval.
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INTRODUCED BY:

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Report Title:

Involuntary Termination of Parental Rights; Involuntary
Suspension of Parental Rights; Sexual Assault

Description:

Requires the family court to terminate parental rights if the court determines, by clear and convincing evidence, that a natural parent committed sexual assault of the other natural parent; the child was conceived as a result of the sexual assault by the parent; and termination of parental rights is in the best interests of the child, under certain conditions. Requires the family court to suspend custody and visitation, after proper filing of a petition and a hearing, to any child whose parent or legal guardian is charged for a sexual assault or other offense, under certain conditions.

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

