

JAN 17 2020

A BILL FOR AN ACT

RELATING TO FAMILY COURTS.

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

1 SECTION 1. The legislature finds that ninety-five per cent
2 of sexually abused children are abused by someone they know and
3 trust. Seventy-three percent of child victims do not tell
4 anyone about the abuse for at least one year, while forty-five
5 per cent do not tell anyone for five years. Some never disclose
6 at all. In light of these compelling statistics, more
7 restrictive standards must be established to help courts
8 determine the best interests of children while making custody
9 decisions.

10 Therefore, the purpose of this Act is to:

11 (1) Clarify that if a court determines a parent has a
12 felony conviction for a violent or sexual offense in
13 which the victim was a minor, or if a parent is
14 required to register as a sex offender, such
15 classification raises a rebuttable presumption that it
16 is detrimental to the child and not in the best



1 interest of the child to grant that parent custodial
2 rights;

3 (2) Clarify that no child shall be placed in a home in
4 which a person resides who has committed family
5 violence, has a felony conviction for a violent or
6 sexual offense in which the victim was a minor, or is
7 required to register as a sex offender, nor have
8 unsupervised visitation with that person, unless the
9 court states the reasons for its findings in writing
10 or on the record;

11 (3) Establish that no person shall be granted physical or
12 legal custody of, or unsupervised visitation with, a
13 child if anyone residing in that person's household is
14 required to register as a sex offender unless the
15 court finds there is no significant risk to the child
16 and states its reasons in writing or on the record;

17 (4) Establish that a person who is required to register as
18 a sex offender as a result of a felony conviction in
19 which the victim was a minor shall be prima facie
20 evidence that the child is at significant risk;



1 (5) Establish that no person shall be granted custody of,
2 or unsupervised visitation with, a child if the person
3 has been convicted of murder in the first degree and
4 the victim of the murder was the other parent of the
5 child, unless the court finds there is no risk to the
6 child's health, safety, and welfare, and states the
7 reasons for its findings in writing or on the record;
8 and

9 (6) Clarify that no court shall disclose the custodial
10 parent's place of residence, place of employment, or
11 the child's school, unless the court finds disclosure
12 would be in the best interests of the child.

13 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) In actions for divorce, separation, annulment,
16 separate maintenance, or any other proceeding where there is at
17 issue a dispute as to the custody of a minor child, the court,
18 during the pendency of the action, at the final hearing, or any
19 time during the minority of the child, may make an order for the
20 custody of the minor child as may seem necessary or proper. In



1 awarding the custody, the court shall be guided by the following
2 standards, considerations, and procedures:

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;

19 (4) Whenever good cause appears therefor, the court may
20 require an investigation and report concerning the
21 care, welfare, and custody of any minor child of the



1 parties. When so directed by the court, investigators
2 or professional personnel attached to or assisting the
3 court, hereinafter referred to as child custody
4 evaluators, shall make investigations and reports that
5 shall be made available to all interested parties and
6 counsel before hearing, and the reports may be
7 received in evidence if no objection is made and, if
8 objection is made, may be received in evidence;
9 provided the person or persons responsible for the
10 report are available for cross-examination as to any
11 matter that has been investigated; and provided
12 further that the court shall define, in accordance
13 with section 571-46.4, the requirements to be a court-
14 appointed child custody evaluator, the standards of
15 practice, ethics, policies, and procedures required of
16 court-appointed child custody evaluators in the
17 performance of their duties for all courts, and the
18 powers of the courts over child custody evaluators to
19 effectuate the best interests of a child in a
20 contested custody dispute pursuant to this section.
21 Where there is no child custody evaluator available



1 that meets the requirements and standards, or any
2 child custody evaluator to serve indigent parties, the
3 court may appoint a person otherwise willing and
4 available in accordance with section 571-46.4;

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

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

19 (7) Reasonable visitation rights shall be awarded to
20 parents, grandparents, siblings, and any person
21 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, a parent has a felony conviction for a violent
14 or sexual offense in which the victim was a minor, or
15 a parent is required to be registered as a sex
16 offender raises a rebuttable presumption that it is
17 detrimental to the child and not in the best interest
18 of the child to be placed in sole custody, joint legal
19 custody, or joint physical custody with the
20 perpetrator of family violence[-], a parent that has a
21 felony conviction for a violent or sexual offense in



1 which the victim was a minor, or a parent that is
2 required to register as a sex offender. In addition
3 to other factors that a court shall consider in a
4 proceeding in which the custody of a child or
5 visitation by a parent is at issue, and in which the
6 court has made a finding of family violence by a
7 parent[+], a finding that a parent has a felony
8 conviction for a violent or sexual offense in which
9 the victim was a minor, or a finding that the parent
10 is required to register as a sex offender:

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

14 (B) The court shall consider the perpetrator's
15 history of causing physical harm, bodily injury,
16 or assault or causing reasonable fear of physical
17 harm, bodily injury, or assault to another
18 person; and

19 (C) If a parent is absent or relocates because of an
20 act of family violence by the other parent, the
21 absence or relocation shall not be a factor that



1 weighs against the parent in determining custody
2 or visitation;

3 A child shall not be placed in a home in which a
4 person resides who has committed family violence, has
5 a felony conviction for a violent or sexual offense in
6 which the victim was a minor, or is required to
7 register as a sex offender, nor have unsupervised
8 visitation with that person, unless the court states
9 the reasons for its findings in writing or on the
10 record;

11 (10) A court may award visitation to a parent who has
12 committed family violence or has a felony conviction
13 for a violent or sexual offense in which the victim
14 was a minor only if the court finds that there is no
15 significant risk to the child, adequate provision can
16 be made for the physical safety and psychological
17 well-being of the child, and for the safety of the
18 parent who is a victim of family violence;

19 (11) In a visitation order, a court may:
20 (A) Order an exchange of a child to occur in a
21 protected setting;



- 1 (B) Order visitation supervised by another person or
- 2 agency;
- 3 (C) Order the perpetrator of family violence or a
- 4 parent that has a felony conviction for a violent
- 5 or sexual offense in which the victim was a minor
- 6 to attend and complete, to the satisfaction of
- 7 the court, a program of intervention for
- 8 perpetrators or other designated counseling as a
- 9 condition of the visitation;
- 10 (D) Order the perpetrator of family violence or a
- 11 parent that has a felony conviction for a violent
- 12 or sexual offense in which the victim was a minor
- 13 to abstain from possession or consumption of
- 14 alcohol or controlled substances during the
- 15 visitation and for twenty-four hours preceding
- 16 the visitation;
- 17 (E) Order the perpetrator of family violence or a
- 18 parent that has a felony conviction for a violent
- 19 or sexual offense in which the victim was a minor
- 20 to pay a fee to defray the costs of supervised
- 21 visitation;



- 1 (F) Prohibit overnight visitation;
- 2 (G) Require a bond from the perpetrator of family
- 3 violence or a parent with a felony conviction for
- 4 a violent or sexual offense in which the victim
- 5 was a minor for the return and safety of the
- 6 child. In determining the amount of the bond,
- 7 the court shall consider the financial
- 8 circumstances of the perpetrator of family
- 9 violence;
- 10 (H) Impose any other condition that is deemed
- 11 necessary to provide for the safety of the child,
- 12 the victim of family violence, or other family or
- 13 household member; and
- 14 (I) Order the address of the child and the victim to
- 15 be kept confidential;
- 16 (12) The court may refer but shall not order an adult who
- 17 is a victim of family violence to attend, either
- 18 individually or with the perpetrator of the family
- 19 violence, counseling relating to the victim's status
- 20 or behavior as a victim as a condition of receiving
- 21 custody of a child or as a condition of visitation;



- 1 (13) If a court allows a family or household member to
2 supervise visitation, the court shall establish
3 conditions to be followed during visitation;
- 4 (14) A supervised visitation center shall provide a secure
5 setting and specialized procedures for supervised
6 visitation and the transfer of children for visitation
7 and supervision by a person trained in security and
8 the avoidance of family violence;
- 9 (15) The court may include in visitation awarded pursuant
10 to this section visitation by electronic communication
11 provided that the court shall additionally consider
12 the potential for abuse or misuse of the electronic
13 communication, including the equipment used for the
14 communication, by the person seeking visitation or by
15 persons who may be present during the visitation or
16 have access to the communication or equipment; whether
17 the person seeking visitation has previously violated
18 a temporary restraining order or protective order; and
19 whether adequate provision can be made for the
20 physical safety and psychological well-being of the
21 child and for the safety of the custodial parent;



1 (16) The court may set conditions for visitation by
2 electronic communication under paragraph (15),
3 including visitation supervised by another person or
4 occurring in a protected setting. Visitation by
5 electronic communication shall not be used to:
6 (A) Replace or substitute an award of custody or
7 physical visitation except where:
8 (i) Circumstances exist that make a parent
9 seeking visitation unable to participate in
10 physical visitation, including military
11 deployment; or
12 (ii) Physical visitation may subject the child to
13 physical or extreme psychological harm; or
14 (B) Justify or support the relocation of a custodial
15 parent; [~~and~~]
16 (17) Notwithstanding any provision to the contrary, no
17 natural parent shall be granted custody of or
18 visitation with a child if the natural parent has been
19 convicted in a court of competent jurisdiction in any
20 state of rape or sexual assault and the child was
21 conceived as a result of that offense; provided that:



- 1 (A) A denial of custody or visitation under this
2 paragraph shall not affect the obligation of the
3 convicted natural 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 cohabituate
9 and establish a mutual custodial environment for
10 the child; and
- 11 (D) A custodial natural parent may petition the court
12 to grant the convicted natural parent custody and
13 visitation denied pursuant to this paragraph, and
14 upon such petition the court may grant custody
15 and visitation to the convicted natural parent
16 where it is in the best interest of the child[-];
- 17 (18) No person shall be granted physical or legal custody
18 of, or unsupervised visitation with, a child if anyone
19 residing in the person's household is required, as a
20 result of a felony conviction in which the victim was
21 a minor, to register as a sex offender unless the



1 court finds there is no significant risk to the child
2 and states its reasons in writing or on the record.
3 The child may not be placed in a home in which that
4 person resides, nor permitted to have unsupervised
5 visitation with that person, unless the court states
6 the reasons for its findings in writing or on the
7 record;

8 (19) The fact that a child is permitted unsupervised
9 contact with a person who is required, as a result of
10 a felony conviction in which the victim was a minor,
11 to register as a sex offender shall be prima facie
12 evidence that the child is at significant risk. When
13 making a determination regarding significant risk to
14 the child, the prima facie evidence shall constitute a
15 presumption affecting the burden of producing
16 evidence; provided that the presumption shall not
17 apply if there are factors mitigating against its
18 application, including whether a party seeking custody
19 or visitation is also required, as the result of a
20 felony conviction in which the victim was a minor, to
21 register as a sex offender;



1 (20) No person shall be granted custody of, or unsupervised
2 visitation with, a child if the person has been
3 convicted of murder in the first degree and the victim
4 of the murder was the other parent of the child who is
5 the subject of the order, unless the court finds that
6 there is no risk to the child's health, safety, and
7 welfare, and states the reasons for its findings in
8 writing or on the record. In making its findings, the
9 court may consider, among other things:

10 (A) The wishes of the child, if the child is of
11 sufficient age and capacity to reason so as to
12 form an intelligent preference;

13 (B) Credible evidence that the convicted parent was a
14 victim of abuse committed by the deceased parent;
15 provided that the evidence may include but shall
16 not be limited to written reports by law
17 enforcement agencies, child protective services,
18 or other social welfare agencies, courts, medical
19 facilities, or other public agencies or private
20 nonprofit organizations providing services to
21 victims of domestic violence; or



1 (C) Testimony of a qualified expert witness that the
2 convicted parent experiences intimate partner
3 battering;

4 Unless and until a custody or visitation order is
5 issued pursuant to this paragraph, no person shall
6 permit or cause the child to visit or remain in the
7 custody of the convicted parent without the consent of
8 the child's custodian or legal guardian; and

9 (21) The court shall not disclose, or cause to be
10 disclosed, the custodial parent's place of residence,
11 place of employment, or the child's school, unless the
12 court finds that the disclosure would be in the best
13 interest of the child.

14 (b) In determining what constitutes the best interest of
15 the child under this section, the court shall consider, but not
16 be limited to, the following:

17 (1) Any history of sexual or physical abuse of a child by
18 a parent;

19 (2) Any history of neglect or emotional abuse of a child
20 by a parent;

21 (3) The overall quality of the parent-child relationship;



- 1 (4) The history of caregiving or parenting by each parent
- 2 prior and subsequent to a marital or other type of
- 3 separation;
- 4 (5) Each parent's cooperation in developing and
- 5 implementing a plan to meet the child's ongoing needs,
- 6 interests, and schedule; provided that this factor
- 7 shall not be considered in any case where the court
- 8 has determined that family violence has been committed
- 9 by a parent;
- 10 (6) The physical health needs of the child;
- 11 (7) The emotional needs of the child;
- 12 (8) The safety needs of the child;
- 13 (9) The educational needs of the child;
- 14 (10) The child's need for relationships with siblings;
- 15 (11) Each parent's actions demonstrating that they allow
- 16 the child to maintain family connections through
- 17 family events and activities; provided that this
- 18 factor shall not be considered in any case where the
- 19 court has determined that family violence has been
- 20 committed by a parent;



- 1 (12) Each parent's actions demonstrating that they separate
2 the child's needs from the parent's needs;
- 3 (13) Any evidence of past or current drug or alcohol abuse
4 by a parent;
- 5 (14) The mental health of each parent;
- 6 (15) The areas and levels of conflict present within the
7 family; [~~and~~]
- 8 (16) A parent's prior wilful misuse of the protection from
9 abuse process under chapter 586 to gain a tactical
10 advantage in any proceeding involving the custody
11 determination of a minor. Such wilful misuse may be
12 considered only if it is established by clear and
13 convincing evidence, and if it is further found by
14 clear and convincing evidence that in the particular
15 family circumstance the wilful misuse tends to show
16 that, in the future, the parent who engaged in the
17 wilful misuse will not be able to cooperate
18 successfully with the other parent in their shared
19 responsibilities for the child. The court shall
20 articulate findings of fact whenever relying upon this
21 factor as part of its determination of the best



1 interests of the child. For the purposes of this
2 section, when taken alone, the voluntary dismissal of
3 a petition for protection from abuse shall not be
4 treated as prima facie evidence that a wilful misuse
5 of the protection from abuse process has occurred[-];
6 and

7 (17) Whether the parent has a felony conviction for a
8 violent or sexual offense in which the victim was a
9 minor."

10 SECTION 3. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

16

INTRODUCED BY:

Silvia Riviere



S.B. NO. 2603

Report Title:

Family Courts; Sex Offenders; Murderers; Custody and Visitation; Significant Risk; Rebuttable Presumption; Disclosure of Information; Best Interests

Description:

Amends provisions relating to criteria and procedures in family court determinations regarding custody and visitation rights. Clarifies that a parent's felony conviction for a violent or sexual offense in which the victim was a minor, or requirement to register as a sex offender, raises a rebuttable presumption that custody or visitation by that parent is not in the best interest of the child. Establishes that a person who is granted unsupervised contact with a child and who is required to register as a sex offender as a result of a felony conviction in which the victim was a minor constitutes prima facie evidence that the child is at significant risk. Requires courts to state reasons for findings in writing or on the record, including specific findings that there is no risk to the child's health, safety, and welfare.

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

