

West's Hawai'i Revised Statutes Annotated
Division 3. Property; Family
Title 31. Family
Chapter 571. Family Courts (Refs & Annos)
Part V. Procedure and Decree

HRS § 571-46

§ 571-46. Criteria and procedure in awarding custody and visitation; best interest of the child

Currentness

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

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court also may consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child;
- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court, hereinafter referred to as child custody evaluators, shall make investigations and reports that shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated; and provided further that the court shall define, in accordance with section 571- , the requirements to be a court-appointed child custody evaluator, the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts, and the powers of the courts over child custody evaluators to effectuate the best interests of a child in a contested custody dispute pursuant to this section. Where there is no child custody evaluator available that meets the requirements and standards, or any child custody evaluator to serve indigent parties, the court may appoint a person otherwise willing and available in accordance with section 571 ;
- (5) The court may hear the testimony of any person or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;

- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award;
- (7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;
- (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;
- (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court shall consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:
- (A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;
 - (B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and
 - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;
- (10) A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;
- (11) In a visitation order, a court may:
- (A) Order an exchange of a child to occur in a protected setting;
 - (B) Order visitation supervised by another person or agency;
 - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;

- (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
 - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
 - (F) Prohibit overnight visitation;
 - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;
 - (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
 - (I) Order the address of the child and the victim to be kept confidential;
- (12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim's status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;
- (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation;
- (14) A supervised visitation center shall provide a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence; and
- (15) The court may include in visitation awarded pursuant to this section visitation by electronic communication provided that the court shall additionally consider the potential for abuse or misuse of the electronic communication, including the equipment used for the communication, by the person seeking visitation or by persons who may be present during the visitation or have access to the communication or equipment;

whether the person seeking visitation has previously violated a temporary restraining order or protective order; and

whether adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the custodial parent.

The court may set conditions for visitation by electronic communication, including visitation supervised by another person or occurring in a protected setting. Visitation by electronic communication shall not be used to:

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

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

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

(B) Justify or support the relocation of a custodial parent.

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

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

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

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

(4) The history of caregiving or parenting by each parent prior and subsequent to a marital or other type of separation;

(5) Each parent's cooperation in developing and implementing a plan to meet the child's ongoing needs, interests, and schedule; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;

(6) The physical health needs of the child;

(7) The emotional needs of the child;

(8) The safety needs of the child;

(9) The educational needs of the child;

(10) The child's need for relationships with siblings;

(11) Each parent's actions demonstrating that they allow the child to maintain family connections through family events and activities; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;

(12) Each parent's actions demonstrating that they separate the child's needs from the parent's needs;

(13) Any evidence of past or current drug or alcohol abuse by a parent;

(14) The mental health of each parent;

(15) The areas and levels of conflict present within the family; and

(16) A parent's prior wilful misuse of the protection from abuse process under chapter 586 to gain a tactical advantage in any proceeding involving the custody determination of a minor. Such wilful misuse may be considered only if it is established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular family circumstance the wilful misuse tends to show that, in the future, the parent who engaged in the wilful misuse will not be able to cooperate successfully with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of the best interests of the child. For the purposes of this section, when taken alone, the voluntary dismissal of a petition for protection from abuse shall not be treated as prima facie evidence that a wilful misuse of the protection from abuse process has occurred.

Credits

Laws 1965, ch. 83, § 1; 1965 Supp., § 333-23.5; Laws 1967, ch. 56, § 4; H.R.S. § 571-46; Laws 1980, ch. 52, § 3; Laws 1984, ch. 90, § 1; Laws 1984, ch. 274, § 1; Laws 1989, ch. 132, § 1; [Laws 1993, ch. 228, § 2](#); [Laws 1996, ch. 198, § 3](#); [Laws 1999, ch. 201, § 1](#); [Laws 2002, ch. 78, § 1](#); [Laws 2005, ch. 244, § 2](#); [Laws 2008, ch. 114, § 2](#), eff. July 1, 2008; [Laws 2008, ch. 149, § 2](#), eff. June 6, 2008; [Laws 2011, ch. 191, § 2](#), eff. July 1, 2011; [Laws 2013, ch. 103, § 3](#), eff. June 14, 2013.

[Notes of Decisions \(124\)](#)

H R S § 571-46, HI ST § 571-46

Current with amendments through Act 140 of the 2013 Regular Session. For research tips relating to newly added undesignated material, see scope.

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

West's Hawai'i Revised Statutes Annotated
Division 3. Property; Family
Title 31. Family
Chapter 571. Family Courts (Refs & Annos)
Part V. Procedure and Decree

HRS § 571-46.1

§ 571-46.1. Joint custody

Currentness

(a) Upon the application of either parent, joint custody may be awarded in the discretion of the court. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court shall, upon the request of either party, direct that an investigation be conducted pursuant to the provisions of [section 571-46\(a\)\(4\)](#).

(b) For the purposes of this section, “joint custody” means an order awarding legal custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents, pursuant to a parenting plan developed pursuant to section 571-46.5, in such a way as to assure the child or children of frequent, continuing, and meaningful contact with both parents; provided, however, that such order may award joint legal custody without awarding joint physical custody.

(c) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order.

(d) Any order for the custody of the minor child or children of a marriage entered by a court in this State or any other state may, subject to the jurisdictional requirements set forth in [sections 583A-201 to 583A-204](#), be modified at any time to an order of joint custody in accordance with this section.

Credits

Laws 1980, ch. 52, § 2; [Laws 2002, ch. 124, § 3](#); [Laws 2005, ch. 244, § 4](#); [Laws 2008, ch. 114, § 3](#), eff. July 1, 2008.

HRS § 571-46.1, HI ST § 571-46.1

Current with amendments through Act 140 of the 2013 Regular Session. For research tips relating to newly added undesignated material, see scope.

West's Hawai'i Revised Statutes Annotated
Division 3. Property; Family
Title 31. Family
Chapter 571. Family Courts (Refs & Annos)
Part V. Procedure and Decree

HRS § 571-46.2

[§ 571-46.2]. Orders relating to custody and visitation cases

[Currentness](#)

In any action involving the custody or visitation of a minor child, the court may order any party and the minor child, as needed, to attend counseling, parenting classes or any other type of educational activity, as the court deems appropriate to meet the best interests of the child.

Credits

Laws 1988, ch. 180, § 1.

HRS § 571-46.2, HI ST § 571-46.2

Current with amendments through Act 140 of the 2013 Regular Session. For research tips relating to newly added undesignated material, see scope.

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

West's Hawai'i Revised Statutes Annotated
Division 3. Property; Family
Title 31. Family
Chapter 571. Family Courts (Refs & Annos)
Part V. Procedure and Decree

HRS § 571-46.3

§ 571-46.3. Grandparents' visitation rights; petition; notice; order

[Currentness](#)

A grandparent or the grandparents of a minor child may file a petition with the court for an order of reasonable visitation rights. The court may award reasonable visitation rights provided that the following criteria are met:

- (1) This State is the home state of the child at the time of the commencement of the proceeding; and
- (2) Reasonable visitation rights are in the best interests of the child.

No hearing for an order of reasonable visitation rights under this section shall be had unless each of the living parents and the child's custodians shall have had due notice, actual or constructive, of the allegations of the petition and of the time and place of the hearing thereof.

An order made pursuant to this section shall be enforceable by the court, and the court may issue other orders to carry out these enforcement powers if in the best interests of the child.

Credits

Laws 1993, ch. 166, § 1; Laws 1998, ch. 20, § 2.

Editors' Notes

VALIDITY

For validity of section, see [Doe v. Doe, 2007, 172 P.3d 1067, 116 Hawai'i 323.](#)

[Notes of Decisions \(15\)](#)

HRS § 571-46.3, HI ST § 571-46.3

Current with amendments through Act 140 of the 2013 Regular Session. For research tips relating to newly added undesignated material, see scope.

West's Hawai'i Revised Statutes Annotated
Division 3. Property; Family
Title 31. Family
Chapter 571. Family Courts (Refs & Annos)
Part V. Procedure and Decree

HRS § 571-46.5

[§ 571-46.5]. Parenting plans

Currentness

(a) For every action that includes a contested custody of children, both parties or both parents shall develop either a mutually agreed-upon general parenting plan or separate individually-desired parenting plan, and file the plan at the outset of the action.

(b) A parenting plan may include a general outline relating to parental responsibilities and parenting time. A general parenting plan may also allow the parents to develop a more detailed agreement on an informal basis.

(c) A detailed parenting plan may include, but is not limited to, provisions relating to:

- (1) Residential schedule;
- (2) Holiday, birthday, and vacation planning;
- (3) Parental decision-making and responsibility;
- (4) Breastfeeding, if applicable;
- (5) Information sharing and access;
- (6) Relocation of parents;
- (7) Telephone access and other means of communication;
- (8) Right of first refusal procedures;
- (9) Transportation; and
- (10) Methods for changing or enforcing the parenting plan and for resolving disputes.

(d) If the parties cannot agree on a parenting plan, the court may:

(1) Order the parties to participate in alternative dispute resolution and in counseling with a person with professional experience in child custody or parenting issues, or with other appropriate education, unless there is a finding of family violence; and

(2) Develop and file a detailed parenting plan when requested by either of the parties or parents.

(e) The court or the parties may revise and amend the parenting plan from time to time.

Credits

[Laws 2005, ch. 244, § 1.](#)

H R S § 571-46.5, HI ST § 571-46.5

Current with amendments through Act 140 of the 2013 Regular Session. For research tips relating to newly added undesignated material, see scope.

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.