

HAWAII REVISED STATUTES
ハワイ州法

DIVISION 3. PROPERTY; FAMILY
TITLE 31 Family
CHAPTER 577 Children

第3部門 財産；家族
第31章 家族
第577章 子

<p>577 章は、子に関する一般規定を置くが、成年の定義の他、子の不法行為に関する責任、親の監督と義務等が規定されている。</p>	<p>§ 577-1. Age of majority. All persons residing in the State, who have attained the age of eighteen years, shall be regarded as of legal age and their period of minority to have ceased.</p>
<p>577-1 条 成人年齢</p>	<p>18 歳の年齢に達した本州に居住するすべての者は法定年齢とみなされ、未成年の期間が終了する。</p>
<p>577-3 条 親の子に対する権利について、父母間に差がないことが主に規定され、子に対する権利義務の内容については詳細に述べられていない。</p>	<p>§ 577-3. Natural guardian; liability for torts of child. The father and mother of an unmarried minor child are jointly the natural guardians of the child's person and property. They shall have equal powers and duties with respect to the child and neither shall have any right superior to that of the other concerning the child's custody or control or any other matter affecting the child; provided that if either parent dies or abandons the family or is incapable for any reason to act as guardian, the guardianship devolves upon the other parent, and that when the parents live apart, the court may award the guardianship to either of them, having special regard to the interests of the child. The father and mother of unmarried minor children shall jointly and severally be liable in damages for tortious acts committed by their children, and shall be jointly and severally entitled to prosecute and defend all actions in which the children or their individual property may be concerned.</p>
	<p>577-3 条 自然後見人；子の不法行為に対する責任 未婚の未成年子の父と母は、子の人及び財産の共同の自然後見人である。彼らは子に対して等しい権限と義務を有し、子の監護権若しくは監督、又はその他子に影響を与えることに關して、どちらも他方を優先する権利を持つものではない。どちらかの親が死亡するか若しくは家族を遺棄する、又は後見人として行動することが何らかの理由で不可能である場合、その後見は、他方親に委譲される。加えて、両親が生き別れた場合、裁判所は子の利益を特に配慮して彼らのいずれかに後見を付与することができる。未婚の子の父及び母は、その者たちの子が行った不法行為に対し損害賠償の責任を共同で及び各自に負うものとし、子若しくは子の特有の財産が関係するすべての訴訟において訴訟提起及び弁護権が共同でかつ各自に付与されるものとする。</p>
	<p>§ 577-6. Duty of minor children. All children during their minority shall obey the lawful commands of their parents, or, the lawful commands of their natural or adoptive parents, or of the guardians appointed according to law.</p>
	<p>§ 577-7. Parents' control and duties. (a) Parents or, in case they are both deceased, guardians, legally appointed, shall have control over the conduct and education of their minor children. They shall have the right, at all times, to recover the physical custody of their children by habeas corpus. All parents and guardians shall provide, to the best of their abilities, for the discipline, support, and education of their children. (b) To the extent that the minor child has a beneficial interest in the income or principal of any trust which is applied for such purposes, parents or guardians shall not be required to pay the costs of registration, tuition, books, room and board, and other expenses incurred in connection with the attendance of a minor child at any private grammar, secondary, industrial arts or trade school, or at any college or university, whether or not the college or university is a private institution or is maintained by a state or any subdivision thereof. The power of the family court under sections 580-47 and 580-74 to compel the parties to a divorce or separation to provide for the education of a minor or an adult child shall not be limited by any provision of this subsection.</p>
	<p>577-7 条 親の監督と義務</p>

	<p>(a) 両親、又は彼らが双方とも死亡した場合は法的に選任された後見人が、未成年子の行動と教育に関し監督を有するものとする。彼らはいかなる時においても、人身保護法により子の身上監護権を回復する権利を有するものとする。全ての親及び後見人は、彼らの能力の及ぶ限り、彼らの子のしつけ、扶養、及び教育を提供しなければならない。</p> <p>(b) (財産管理権一略)</p>
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CHAPTER 580 Annulment, Divorce, and Separation

PART I. General Provisions

第 580 章 婚姻の無効、離婚、及び別居

パート I 一般規定

	<p>§ 580-11. Care, custody, education, and maintenance of children pendente lite.</p> <p>During the pendency of any action for divorce or separation the court may make such orders concerning the care, custody, education, and maintenance of the minor children of the parties to the action as law and justice may require and may enforce the orders by summary process. The court may revise and amend the orders from time to time.</p> <p>580-11 条 訴訟中の子の世話、監護、教育、及び扶養</p> <p>離婚若しくは別居の訴訟継続中、法及び正義の求めに応じ、並びに略式手続で執行できる命令により、訴訟当事者の未成年子の世話、監護、教育、及び扶養に関する命令を出すことができる。</p>
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CHAPTER 571 Family Courts

PART I. Establishment; Personnel

第 571 章 家庭裁判所

パート 1 規定；人

<p>第 571 章において、子の監護権が規定される。</p> <p>571-2 条 定義</p>	<p>§ 571-2. Definitions.</p> <p>When used in this chapter, unless the context otherwise requires:</p> <p>"Adult" means a person eighteen years of age or older.</p> <p>"Board" means the board of family court judges.</p> <p>"Child" or "minor" means a person less than eighteen years of age.</p> <p>571-2条 定義</p> <p>本章において用いられる場合、その他求める事情がない限り、</p> <p>「成人」とは、18歳以上の者を意味する。</p> <p>「委員会」とは、家庭裁判所裁判官の委員会を意味する。</p> <p>「子」又は「未成年者」とは、18歳未満の者を意味する。</p> <p>"Commit" means to transfer legal custody.</p> <p>"Court" means one of the family courts as herein established.</p> <p>"Criminal history record check" means submission of an individual's fingerprints and other identifying information to the Federal Bureau of Investigation and to the Hawaii criminal justice data center in accordance with chapter 846.</p> <p>"Detention" means the temporary care of children who require custody in physically secure facilities:</p> <ol style="list-style-type: none"> (1) For their immediate welfare; (2) For the protection of the community; (3) While awaiting transfer to another jurisdiction; or (4) Because of violation of a family court order of probation or protective supervision. <p>"Electronic communication" means communication that is facilitated by any wired or wireless technology via the Internet or any other electronic media, including but not limited to communication by telephone, electronic mail, instant messaging, video conferencing, and web camera.</p> <p>"Family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:</p> <ol style="list-style-type: none"> (1) Attempting to cause or causing physical harm to another family or household member; (2) Placing a family or household member in fear of physical harm; or (3) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress. <p>"Guardianship of a minor" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about the minor's general welfare. It includes, but shall not necessarily be limited, in either number or kind to:</p> <ol style="list-style-type: none"> (1) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance; (2) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order; (3) The rights and responsibilities of legal custody when guardianship is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency,
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<p>法的監護とは、裁判所の判決により形成される関係と規定され、婚姻中父母が持つ権利とは区別される。</p> <p>法的監護権を委譲した後も、親としての権利・義務として残るのは、相当の面会交流の権利、養子縁組若しくは婚姻の同意、及び養育費に対する責任であるとする。</p>	<p>or institution; and</p> <p>(4) The authority to consent to the adoption of the minor and to make any other decision concerning the minor that the minor's parents could make, when the rights of the minor's parents, or only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of the minor's legal parents are deceased.</p> <p>"Informal adjustment" means the effort by intake officers, the courts, or others to provide a child referred to them or brought before them, and where appropriate that child's family, opportunity and aid before and in lieu of formally processing the child under this chapter. The objective of this effort is to afford opportunity and aid so that the child, and where appropriate the child's family, may realize voluntary adjustment of behavior and obtain counseling and edification so as to better allow the child's appropriate emergence into adult society.</p> <p>"Judge" means judge of the family court.</p> <p>"Legal custody" means the relationship created by the court's decree which imposes on the custodian the responsibility of physical possession of the minor and the duty to protect, train, and discipline the minor and to provide the minor with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities and the rights and responsibilities of any legally appointed guardian of the person.</p> <p>「法的監護」とは、未成年者の身体的占有についての責任、未成年者を保護し、教育し、しつける義務、未成年者に食物、住まい、教育、日常の医療を提供する義務、残りの親の権利と責任にあるもの全てと、法的に選任された人の後見人の権利と責任を監護権者に課す裁判所の判決により作り出される関係を意味する。</p> <p>"Meaningful contact" means parent and child interactions, activities, and experiences, performed together, which nurture the parent-child attachment and relationship, while contributing to the child's development in a positive and effective manner.</p> <p>「意味のある交流」とは、子の発達に寄与する期間、積極的及び効果的方法で、親子の愛着と関係をはぐくむ親と子の相互作用、活動、及び一緒に実行した経験を意味する。</p> <p>"Probation" means a legal status created by court order following adjudication in a case involving a violation of law whereby a minor is permitted to remain in the minor's home or in a community residential or nonresidential program subject to supervision by the court or an agency designated by the court and subject to return to the court for violation of probation at any time during the period of probation.</p> <p>"Protective supervision" means a legal status created by court order in proceedings not involving violations of law but where the legal custody of the minor is subject to change, whereby the minor is permitted to remain in the minor's home or in a community residential or nonresidential program under the supervision of the court or an agency designated by the court and subject to return to the court during the period of protective supervision.</p> <p>"Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, the right to reasonable visitation, consent to adoption or marriage, and the responsibility for support.</p> <p>「残りの親の権利と責任」とは、法的監護権、又は人の後見を委譲した後、親に残る権利と義務を意味する。これには、相当の面会交流の権利、養子縁組若しくは婚姻の同意、及び養育費に対する責任を含む。ただしこれらには制限されない。</p> <p>"Senior judge" means the judge so designated, as provided in this chapter.</p> <p>"Shelter" means the temporary care of children in physically unrestricting facilities pending court disposition.</p> <p>"Status offender" means any child coming within the family court's jurisdiction under section 571-11(2)(B), (C), or (D). Such child is distinguished from (A) a law violator under section 571-11(1) who comes into the family court upon allegations such person has committed an act which would constitute a crime if committed by an adult, and (B) a neglected child under section 571-11(2)(A) and (9) and chapter 587A.</p> <p>The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter.</p>
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PART V. Procedure and Decree

パート 5 手続きと判決

<p>571-46 条 監護権と面会交流 の付与の基準</p>	<p>§ 571-46. Criteria and procedure in awarding custody and visitation; best interest of the child.</p> <p>(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:</p>
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<p>婚姻外では、監護権は単独か共同監護が裁判所により付与される。ただし、いずれにおいても親子の交流は確保される。</p> <p>第三者による監護権も認められる。</p>	<p>571-46 条 監護権及び面会交流付与の基準と手続き：子の最善の利益</p> <p>(a)離婚、別居、無効、財産分与の訴訟において、又は未成年子の監護権に関して紛争のあるその他の手続きにおいて、裁判所は訴訟の手続きの間、最終審理において、又は子が未成年である間、必要若しくは適切と思われる未成年者の監護権について命令を下すことができる。監護権付与において、裁判所は以下の基準、考慮、及び手続により行われなければならない。</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(1)監護権は子の最善の利益に従い、どちらかの親又は双方の親に付与されなければならない。裁判所は親が子の最善の利益に従って行動できないことを認定しない限り、子とそれぞれの親との頻繁で継続した、及び有意義な交流をまた考慮することができる。</p> <p>(2)監護権は、子の最善の利益にかなうのであれば、父又は母以外の者に付与されることもできる。安定した健全な家庭で、及び適格かつ適切な子の事実上の監護権を持つ者は、監護権の付与に一応の権利を有するものとする。</p> <p>(3)子が理にかなった選好をまとめるのに十分な年齢でかつ能力があれば、監護権についての子の希望は裁判所において考慮されなければならない、相当の比重が与えられなければならない。</p> <p>(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 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;</p> <p>(4)そのために十分な理由があるときは、裁判所は当事者の未成年子の世話、福祉、及び監護に関して調査と報告を求めることができる。裁判所から直接指示されるときは、子の監護権評価者として下記に示される調査官、又は裁判所付属か若しくは裁判所補助の専門家は、調査し、報告しなければならない。これは、審理の前に関係当事者及び弁護士が利用できるものであり、その報告書は、反論がなされない場合、及び反論がなされた場合、証拠として受領される。なおそれは、報告書を担当する者は調査されたいかなるものについて、交差審問のために利用可能である。さらに、裁判所は次のことを定めなければならない。すなわち、裁判所選任の子の監護権評価者になる要件、実務の基準、倫理、政策、及びすべての裁判所の義務の執行につき裁判所が選任する子の監護権評価者に必要な手続き、そして、本条に従って監護権紛争にある子の最善の利益を実現するために子の監護権評価者に関する裁判所の権限、である。子の監護権評価者がその要件と基準に合わない場合、又は貧困な当事者に子の監護権評価が必要な場合、裁判所はそれ以外に利用可能な者を選任することができる。</p> <p>(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</p>
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<p>(7)面会交流は、親のみならず、親以外の第三者にも相当に認められなければならないと規定される。</p> <p>(9)監護権の問題で、ドメスティック・バイオレンスが考慮されなければならないと規定される。</p>	<p>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;</p> <p>(5) 裁判所は、当事者による手続き、又は裁判所による訴えに基づき、人又は専門家の証言を聞くことができる。その者たちのスキル、洞察、知識、若しくは経験は、その者、若しくは専門家の証言が、監護権が問題となっている子の最善の身体的、心理的、道徳的、及び精神的健全を正しくかつ合理的に決定するのに関連するからである。</p> <p>(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;</p> <p>(6)子の最善の利益により変更若しくは修正が求められ、それが正当化される場合、及び当初の命令を受けた者が先の付与の変更につき申請もしくは訴えで審問されなければならない場合、いかなる監護権付与も変更又は修正を受けなければならない。</p> <p>(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;</p> <p>(7)面会交流権が子の最善の利益に有害であると証明されない限り、親、祖父母、兄弟姉妹、及び子の福祉に関係のある者に、裁判所の裁量により相当の面会交流権が付与されなければならない。</p> <p>(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;</p> <p>(8)裁判所は子の利益を代理する後見人を選任でき、状況によりいずれか若しくは双方の当事者に、全部若しくは一部の訴訟費用として後見人の適切な報酬及び費用を査定することができる。</p> <p>(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:</p> <p>(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;</p> <p>(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</p> <p>(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;</p> <p>(9)子の監護権に関する紛争が問題となっている手続きで、裁判所により家族間暴力が親によりなされているという決定がされた場合は、家族間暴力の加害者に単独監護、共同監護、若しくは身上共同監護が付与されることは子に有害であり、かつ子の最善の利益にはかなわないという反証可能な推定を提起する。親による子の監護権若しくは面会交流が問題となっている手続き、及び裁判所が親による家族間暴力の認定を行う手続きにおいて、裁判所が考慮しなければならないその他の要件に加えて、</p> <p>(A)裁判所は、家族間暴力の被害者である子及び親の安全と福祉を主要な要件として考慮しなければならない。</p> <p>(B)裁判所は、身体的危害、身体への傷害、若しくは暴行を招いた加害者の経歴、又は他の者への身体的危害、身体への傷害、若しくはその他の者への暴行を招く相当な恐れを考慮しなければならない。</p> <p>(C)他方の親による家族間暴力の行為により、一方の親が不在若しくは転居している場合、不在若しくは転居は、監護権若しくは面会交流を決定する場合、その親に対し不利な要件とされるべきではない。</p>
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	<p>(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;</p> <p>(10)裁判所が子の身体的安全と精神的福祉のため、家族間暴力の被害者である親の安全のために適切な取決め条項を作成できることを認定する場合にのみ、家族間暴力を行った親に面会交流を付与することができる。</p> <p>(11) In a visitation order, a court may:</p> <p>(A) Order an exchange of a child to occur in a protected setting;</p> <p>(B) Order visitation supervised by another person or agency;</p> <p>(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;</p> <p>(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;</p> <p>(E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;</p> <p>(F) Prohibit overnight visitation;</p> <p>(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;</p> <p>(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</p> <p>(I) Order the address of the child and the victim to be kept confidential;</p> <p>(11) 面会交流の命令一略</p> <p>(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;</p> <p>(13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation;</p> <p>(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</p> <p>(15) The court may include in visitation awarded pursuant to this section visitation by electronic communication provided that the court shall additionally consider:</p> <p>(A) 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;</p> <p>(B) Whether the person seeking visitation has previously violated a temporary restraining order or protective order; and</p> <p>(C) 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.</p> <p>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:</p> <p>(A) Replace or substitute an award of custody or physical visitation except where:</p> <p>(i) Circumstances exist that make a parent seeking visitation unable to participate in physical visitation, including military deployment; or</p> <p>(ii) Physical visitation may subject the child to physical or extreme psychological harm; or</p> <p>(B) Justify or support the relocation of a custodial parent.</p> <p>(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:</p> <p>(1) Any history of sexual or physical abuse of a child by a parent;</p> <p>(2) Any history of neglect or emotional abuse of a child by a parent;</p> <p>(3) The overall quality of the parent-child relationship;</p> <p>(4) The history of care giving or parenting by each parent prior and subsequent to a marital or other type of separation;</p>
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	<p>(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;</p> <p>(6) The physical health needs of the child;</p> <p>(7) The emotional needs of the child;</p> <p>(8) The safety needs of the child;</p> <p>(9) The educational needs of the child;</p> <p>(10) The child's need for relationships with siblings;</p> <p>(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;</p> <p>(12) Each parent's actions demonstrating that they separate the child's needs from the parent's needs;</p> <p>(13) Any evidence of past or current drug or alcohol abuse by a parent;</p> <p>(14) The mental health of each parent;</p> <p>(15) The areas and levels of conflict present within the family; and</p> <p>(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.</p> <p>(b)本条において子の最善の利益を構成するものを判断する場合、裁判所は次のことを考慮しなければならない。ただし次のことに限られない。</p> <p>(1)親による性的又は身体的虐待の経歴、</p> <p>(2)親によるネグレクト又は情緒的虐待の経歴、</p> <p>(3)親子関係の総合的な質、</p> <p>(4)婚姻又はその他のタイプの離別の前後にそれぞれの親から受けた世話又は養育の経歴、</p> <p>(5)子の継続している必要性にかなう発展的で実行できる計画及びスケジュールに対するそれぞれの親の協力。ただし、裁判所が親により家族間暴力がなされていると判断したケースではこの要件は考慮されてはならない。</p> <p>(6)子の身体的健康の必要性、</p> <p>(7)子の情緒的必要性、</p> <p>(8)子の安全の必要性</p> <p>(9)子の教育の必要性</p> <p>(10)兄弟姉妹との関係に関する子の必要性</p> <p>(11)家族の行事及び活動を通して子が家族の関係を維持するよう働きかける各親の行動。ただしこの要件は、裁判所が家族間暴力が親により行われたと判断するケースにおいては考慮されてはならない。</p> <p>(12)親の必要性から子の必要性を切り離すよう働きかける各親の行動、</p> <p>(13)親による過去若しくは現在、薬物若しくはアルコール濫用の証拠、</p> <p>(14)各親の精神的健康、</p> <p>(15)家族内での現在の紛争の範囲と程度</p> <p>(16)未成年者の監護権決定に関する手続きで戦略的な優位を得るため、一方の親が事前に 586 章による虐待手続きからの保護を故意に悪用すること。このような故意の悪用は、明白かつ確信ある証拠により立証されるときのみ、及びさらに、明白かつ確信ある証拠により、個々の家族状態において将来、故意の悪用を働いた親が子の分担責任を他方の親とうまく共同して行えないことを証明する場合にのみ考慮されうる。裁判所は子の最善の利益を決定する部分としてこの要件に基づく場合はいつでも、事実の認定をはっきり述べなければならない。本条の目的のために、虐待からの保護の申立ての自発的な却下は、虐待手続きからの保護の故意の悪用が発生した一応の証拠として扱われてはならない。</p> <p>§ 571-46.1. Joint custody.</p>
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<p>571.46.1 条 共同監護</p> <p>共同監護は、裁判官の裁量により命じられる。</p> <p>法的共同監護を命じても、必ずしも身上共同監護が付与されるわけではない。</p>	<p>(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).</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>571-46.1 条 共同監護</p> <p>(a) どちらかの親の申立てに基づき、裁判所の裁量により共同監護が付与されることができる。共同監護の付与が適切か否かを裁判所が判断するのを補助するため、裁判所はどちらかの当事者の求めに応じ、571-46 条(a)項(4)号の規定に従って実施する調査官を指名しなければならない。</p> <p>(b) 本条の目的のために、「共同監護」は、未成年子の法的監護権を双方の親に付与すること、及び子が双方の親と頻繁に、継続して及び意義のある交流を確保する方法で、571-46.5 条に従って作り出した養育計画に従って、身上監護権が両親により分担されなければならないと規定する命令を意味する。しかし、このような命令は身上共同監護を付与せずに法的共同監護を付与することもできる。</p> <p>(c) 共同監護の命令は、子の最善の利益により、その命令の変更または終了が求められることが証明される場合、一方若しくは双方の申立て、又は裁判所による発議により、変更又は終了される。</p> <p>(d) 本州若しくはその他の州において裁判所により登録された婚姻から生まれた未成年子の監護権の命令は、583A-201 条から 583A-204 条の示す管轄条件に従って、本条に一致して共同監護の命令をいかなる場合も変更することができる。</p> <p>§ 571-46.2. Orders relating to custody and visitation cases.</p> <p>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.</p> <p>571-46.2 条 監護権及び面会交流事件に関する命令</p> <p>未成年子の監護権又は面会交流に関する訴訟において、裁判所は必要があれば、子の最善の利益にかなうと裁判所が判断するカウンセリング、養育学級、又はその他のタイプの教育活動を受けるよう、当事者及び未成年子に命じることができる。</p> <p>[§ 571-46.5.] Parenting plans.</p> <p>(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.</p> <p>(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.</p> <p>571-46.5 条 養育計画</p> <p>(a) 争われている子の監護権を含む訴訟のため、双方当事者若しくは双方の親は相互合意に基づく一般的養育計画、又は別々にそれぞれが望む養育計画のいずれかを作り出し、訴訟の初めにその計画書を提出しなければならない。</p> <p>(b) 養育計画は、親の責任と養育時間に関して一般的な概要を含むことができる。一般的な養育計画は、親たちが非公式に、より詳細に合意を発展させることができる。</p>
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	<p>(c) A detailed parenting plan may include, but is not limited to, provisions relating to:</p> <ol style="list-style-type: none"> (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. <p>(c) 詳細な養育計画には次に関する規定を含むことができる。ただし、これだけに限らない。</p> <ol style="list-style-type: none"> (1) 住居スケジュール、 (2) 休日、誕生日、及び休暇計画、 (3) 親の決定権と責任 (4) もし当てはまるようであれば、母乳育児、 (5) 情報の共有とアクセス、 (6) 親の転居、 (7) 電話による交流とその他の手段による会話、 (8) 手続きの優先的選択権、 (9) 移動手段、並びに (10) 養育計画の変更または執行の方法と紛争の解決方法。 <p>(d) If the parties cannot agree on a parenting plan, the court may:</p> <ol style="list-style-type: none"> (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. <p>(e) The court or the parties may revise and amend the parenting plan from time to time.</p> <p>(d) 当事者が養育計画に合意できない場合、裁判所は、</p> <ol style="list-style-type: none"> (1) 家族間暴力の事実がない限り、当事者に代替の紛争解決、及び子の監護若しくは養育問題の経験のあるプロが行うカウンセリングに参加するよう、又はその他の適切な教育を受けるよう命じることができる。 (2) 当事者のどちらか、又は両親により求められた場合、詳細な養育計画を発展させ、提出することができる。 <p>(e) 裁判所又は当事者は、適宜養育計画を修正及び改正することができる。</p> <p>§ 571-50. Modification of decree, rehearing.</p> <p>Except as otherwise provided by this chapter, any decree or order of the court may be modified at any time.</p> <p>At any time during supervision of a child the court may issue notice or other appropriate process to the child if the child is of sufficient age to understand the nature of the process, to the parents, and to any other necessary parties to appear at a hearing on a charge of violation of the terms of supervision, for any change in or modification of the decree or for discharge. The provisions of this chapter relating to process, custody, and detention at other stages of the proceeding shall be applicable.</p> <p>571-50条 判決の変更、再審理</p> <p>本章に規定されている場合を除き、いかなる判決又は裁判所命令もいかなる時でも変更することができる。子が手続きの性質、親について、及び監視の期間に違反した罪で審理に出廷しているその他必要な当事者について十分に理解できる年である場合、決定の修正若しくは変更に対し、又は無効に対し、子が監視されている期間、裁判所は子に関する通知又はその他適切な手続きを言い渡すことができる。</p> <p>A parent, guardian, custodian, or next friend of any child whose status has been adjudicated by the court, or any adult affected by a decree of the court, at any time may petition the court for a</p>
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	<p>rehearing on the ground that new evidence, which was not known or not available through the exercise of due diligence at the time of the original hearing and which might affect the decree, has been discovered. Upon a satisfactory showing of this evidence, the court shall order a new hearing and make any disposition of the case that the facts and the best interests of the child warrant.</p> <p>親、後見人、監護者、若しくは裁判所によりその地位が認められた子の近友、又は裁判所の判決により指示された大人は、いかなる時でも、決定に影響を与えるかもしれない当初の審理の時、相当な配慮をしてもわからない又は知りえない新たな証拠が発見されたという根拠に基づき再審理を裁判所に申し立てることができる。この証拠を十分証明することにより、裁判所は新たな審理を命じなければならず、かつ事実及び子の最善の利益を保証するケースの判断をなさなければならない。</p> <p>A parent, guardian, or next friend of a child whose legal custody has been transferred by the court to an institution, facility, agency, or person may petition the court for modification or revocation of the decree, on the ground that the legal custodian has wrongfully denied application for the release of the child or has failed to act upon it within a reasonable time, or has acted in an arbitrary manner not consistent with the welfare of the child or the public interest. An institution, facility, agency, or person vested with legal custody of a child may petition the court for a renewal, modification, or revocation of the custody order on the ground that the change is necessary for the welfare of the child or in the public interest. The court may dismiss the petition if on preliminary investigation it finds the petition without substance. If the court is of the opinion that the decree should be reviewed, it shall conduct a hearing on notice to all parties concerned, and may enter an order continuing, modifying, or terminating the decree.</p> <p>親、後見人、若しくは法的監護が裁判所により委譲された子の近友、すなわち団体、施設、機関、若しくは個人は、次のことを根拠に、決定の変更若しくは取り消しを裁判所に申し立てることができる。すなわち、法的監護者が子の解放に対する申請を不当に拒否したことを根拠として、若しくは相当な時間内に行動を起こさなかったことを根拠として、又は子の福祉若しくは公共の利益に合致しない方法で独断的な行動をとったことを根拠として。団体、施設、機関、若しくは子の法的監護権を付与された個人は、その変化が子の福祉若しくは公共の利益に必要であることを根拠に、監護権命令のやり直し、変更、若しくは取消しを裁判所に申し立てることができる。裁判所がその判決が再審理されるべきとの見解を持つ場合、裁判所は全ての関係する当事者に通知し、審問を開かなければならず、及び判決の継続、変更、若しくは終了の命令を言い渡すことができる。</p> <p>Notwithstanding the foregoing provisions of this section the court's authority with respect to the review, rehearing, renewal, modification, or revocation of decrees, judgments, or orders entered in the hereinbelow listed classes of proceedings shall be limited by any specific limitations set forth in the statutes governing these proceedings or in any other specifically applicable statutes or rules. These proceedings are as follows:</p> <ol style="list-style-type: none"> (1) Annulment, divorce, separation, and other proceedings under chapter 580; (2) Adoption proceedings under chapter 578; (3) Paternity proceedings under chapter 584; (4) Termination of parental rights proceedings under this chapter; and (5) State hospital commitment proceedings under chapter 334. <p>A decree, judgment, or order committing a child to the care of the director of human services shall be reviewable under this section at the instance of others other than duly authorized representatives of the department only after a lapse of thirty days following the date of the decree, judgment, or order, and thereafter only at intervals of not less than one year.</p> <p>Notwithstanding this section the court shall not conduct a rehearing of any petition, filed under section 571-11(1), which, following a hearing, has been denied or dismissed.</p> <p>本条の先の規定に拘わらず、以下に挙げられた訴訟の種類に入れられた判決、審判、若しくは命令の審理、再審理、やり直し、変更に関する裁判所の権限は、これらの手続きを定めている立法に規定されている特定の制限によって制限されなければならない、又は適用される他の特定の立法若しくは規則において制限されなければならない。</p> <ol style="list-style-type: none"> (1) 婚姻無効の宣言、離婚、別居、及び 580 章にあるその他の手続き、 (2) 578 章にある養子縁組手続き、 (3) 584 章にある親子関係手続き、 (4) 本章にある親の権利の終了の手続き、並びに (5) 334 章にある州病院収容の手続き。 <p>児童相談所サービスの所長の世話に子を委託する判決、審判、若しくは命令は、判決、審判、若しくは命令の日後、30 日の経過後、正式の権限を有する代表者以外の者の申立て</p>
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	<p>で、本条において再審理されなければならない。及びその後少なくとも 1 年の間隔でなければならない。</p> <p>本条に拘わらず、裁判所は 571-11 条(1)項に基づき提起され、否定され却下された申立ての再審理を執り行うことはできない。</p>
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