

JAN 25 2006

A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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- Court-appointed factfinders; compensation. (a)
5 When a factfinder is appointed by the court pursuant to section
6 571-46, the court-appointed factfinder shall receive reasonable
7 compensation for services rendered and be reimbursed for
8 necessary expenses; to be determined by the court. The court
9 shall determine compensation pursuant to subsection (b).
10 (b) The court shall determine the amount of reasonable
11 compensation for a court-appointed factfinder, based on the rate
12 of \$ an hour for out-of-court services and the rate of
13 \$ for in-court services with a total maximum fee of
14 \$.
15 (c) Prior to performing any services that would cause the
16 factfinder's compensation to exceed the maximum amount under
17 subsection (b), the court-appointed factfinder shall provide



1 notice and the following information to the court and the
2 parties:

3 (1) A detailed summary of all expenses incurred and
4 services rendered prior to the notice; and

5 (2) A detailed explanation of the proposed services for
6 compensation in excess of the maximum under subsection
7 (b) .

8 (d) Payments for compensation in excess of the maximum
9 amount under subsection (b) may be made if:

10 (1) The parties agree; or

11 (2) The court for which the services were rendered
12 certifies that the factfinder provided the information
13 required in subsection (c) and that the payment is
14 necessary to provide reasonable compensation. The
15 court shall make this determination based upon the
16 complexity of the case and the experience of the
17 court-appointed factfinder."

18 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§571-46 Criteria and procedure in awarding custody and**
21 **visitation.** In the actions for divorce, separation, annulment,
22 separate maintenance, or any other proceeding where there is at



1 issue a dispute as to the custody of a minor child, the court,
2 during the pendency of the action, at the final hearing, or any
3 time during the minority of the child, may make an order for the
4 custody of the minor child as may seem necessary or proper. In
5 awarding the custody, the court shall be guided by the following
6 standards, considerations, and procedures:

7 (1) Custody should be awarded to either parent or to both
8 parents according to the best interests of the child,
9 and the court may also consider frequent, continuing,
10 and meaningful contact of each parent with the child
11 unless the court finds that a parent is unable to act
12 in the best interest of the child;

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

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



1 (4) Whenever good cause appears therefor, the court may
2 require an investigation and report concerning the
3 care, welfare, and custody of any minor child of the
4 parties. When so directed by the court, investigators
5 or professional personnel attached to or assisting the
6 court shall make investigations and reports which
7 shall be made available to all interested parties and
8 counsel before hearing, and the reports may be
9 received in evidence if no objection is made and, if
10 objection is made, may be received in evidence;
11 provided the person or persons responsible for the
12 report are available for cross-examination as to any
13 matter that has been investigated[+]. The fees and
14 costs incurred by court-appointed factfinders in
15 producing a report or conducting an investigation
16 shall be determined pursuant to the fee schedule set
17 forth in section 571- ;

18 (5) The court may hear the testimony of any person or
19 expert, produced by any party or upon the court's own
20 motion, whose skill, insight, knowledge, or experience
21 is such that the person's or expert's testimony is
22 relevant to a just and reasonable determination of

1 what is for the best physical, mental, moral, and
2 spiritual well-being of the child whose custody is at
3 issue;

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

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

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



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

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

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

21 (C) If a parent is absent or relocates because of an
22 act of family violence by the other parent, the

1 absence or relocation shall not be a factor that
2 weighs against the parent in determining custody
3 or visitation;

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

10 (11) In a visitation order, a court may:

11 (A) Order an exchange of a child to occur in a
12 protected setting;

13 (B) Order visitation supervised by another person or
14 agency;

15 (C) Order the perpetrator of family violence to
16 attend and complete, to the satisfaction of the
17 court, a program of intervention for perpetrators
18 or other designated counseling as a condition of
19 the visitation;

20 (D) Order the perpetrator of family violence to
21 abstain from possession or consumption of alcohol
22 or controlled substances during the visitation



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

4 (14) A supervised visitation center must 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 SECTION 3. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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SB. NO. 3234

Report Title:

Family Court; Court-Appointed Factfinders; Fee Schedule

Description:

Establishes a fee schedule for court-appointed factfinders to assist family court judges in determining child custody and visitation arrangements.

