

JAN 20 2010

A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. Existing law in actions for divorce,
2 separation, annulment, separate maintenance, or any other
3 proceeding where there is at issue a dispute as to the custody
4 of a minor child, allows the family court, during the pendency
5 of the action, at the final hearing, or any time during the
6 minority of the child, to make an order for the custody of the
7 minor child as may seem necessary or proper. For this purpose,
8 section 571-46, Hawaii Revised Statutes, allows the court to
9 appoint a child custody evaluator to investigate and report
10 concerning the care, welfare, and custody of any minor child of
11 the parties, or any party to produce an expert, whose skill,
12 insight, knowledge, or experience is such that the person's or
13 expert's testimony is relevant to a just and reasonable
14 determination of what is for the best physical, mental, moral,
15 and spiritual well-being of the child whose custody is at issue.
16 However, there are no provisions in current law that require



1 child custody evaluators or experts to have specific
2 professional qualifications.

3 The purpose of this Act is to develop standards of practice
4 and to establish a registry of child custody evaluators or
5 experts appointed by the family court or produced by a party to
6 assist the court in awarding custody in child custody cases.

7 SECTION 2. Chapter 571, Hawaii Revised Statutes, is
8 amended by adding a new part to be appropriately designated and
9 to read as follows:

10 "PART . CHILD CUSTODY EVALUATORS

11 §571-A Definitions. As used in this part:

12 "Board" means the board of family court judges under
13 section 571-5.

14 "Child custody evaluator" means an investigator or
15 professional, appointed by the court, to investigate and report
16 concerning the care, welfare, and custody of any minor child of
17 the parties under section 571-46(a)(4).

18 "Eligible training providers" includes the administrative
19 office of the courts and may include educational institutions,
20 professional associations, professional continuing education
21 groups, public or private for-profit or not-for-profit groups,
22 court-connected groups, and any entity that provides a course or



1 seminar that qualifies for child custody evaluator continuing
2 training or education.

3 **§571-B Duties of board in child custody cases; registry;**
4 **standards of practice; appointment and certification of child**
5 **custody evaluators.** (a) The board shall establish a child
6 custody evaluator registry. The board shall establish and
7 maintain this registry on or before January 1, 2011.

8 (b) The board shall maintain and update the child custody
9 evaluation registry annually, or as new information is received.
10 The child custody evaluator registry shall be made available
11 without charge to any party to the proceeding. The child
12 custody evaluator registry shall contain, at a minimum, the
13 information in the child custody evaluator annual declaration
14 under section 571-C.

15 (c) To remove any appearance of impropriety, an
16 appropriate disclaimer regarding the use of the child custody
17 evaluator registry may be included as part of the registry.

18 (d) No person shall be appointed by the court as a child
19 custody evaluator or shall otherwise testify as an expert on
20 behalf of a party to the proceedings to render an opinion on
21 awarding custody pursuant to section 571-46, unless the child



1 custody evaluator or expert is included in the child custody
2 evaluator registry.

3 (e) Child custody evaluator annual declarations under
4 section 571-C shall be retained and made available to parties to
5 a child custody case as part of the registry for not less than
6 twelve years from the date of filing of the initial current
7 child custody evaluator annual declaration.

8 **§571-C Child custody evaluator annual declaration. (a)**

9 Prior to appointment as a child custody evaluator, the child
10 custody evaluator shall have a current child custody evaluator
11 annual declaration on file with the court as provided in
12 subsection (b).

13 (b) A child custody evaluator shall file annually with the
14 board, in writing upon forms provided by the board, the
15 following information, under penalty of perjury:

16 (1) The child custody evaluator's contact information,
17 professional license, and professional license
18 expiration date;

19 (2) The circuit, jurisdiction, or state where the child
20 custody evaluator is eligible to perform child custody
21 evaluations;



- 1 (3) Any certification or custody evaluator qualifications
2 from any other state or jurisdiction held by the child
3 custody evaluator;
- 4 (4) Training relevant to child custody evaluations;
5 provided that the training shall extend back beyond
6 the immediately preceding calendar year;
- 7 (5) Experience relevant to child custody evaluations,
8 including total number of investigations and reports
9 performed and appointments as a child custody
10 evaluator in the immediately preceding calendar year;
- 11 (6) Continuing specialized training, relevant to child
12 custody evaluations, received in the immediately
13 preceding calendar year, including the course, date of
14 the course, sponsoring organization, and continuing
15 education credits earned from the course;
- 16 (7) Any criminal convictions, pending criminal charges,
17 civil actions to which the child custody evaluator was
18 a party, complaints about the child custody evaluator
19 to a professional licensing agency or ethics
20 enforcement body resulting in public discipline, and
21 orders for protection issued against the child custody
22 evaluator;



- 1 (8) Any discipline action taken against the child custody
2 evaluator by the appropriate licensing authority with
3 jurisdiction over the professional license of the
4 child custody evaluator that is relevant to child
5 custody evaluations;
- 6 (9) References from other relevant professionals or
7 clients of the child custody evaluator;
- 8 (10) The specific services provided by the child custody
9 evaluator and the associated cost or fee structure;
- 10 (11) Formal education, including academic degrees earned by
11 the child custody evaluator; provided that a
12 curriculum vitae may be provided as an attachment; and
- 13 (12) Any other qualifications or information deemed
14 relevant by the board to child custody evaluations, as
15 contained in the child custody evaluator annual
16 declaration written form.
- 17 (c) A current child custody evaluator annual declaration
18 on file with the board shall be a prerequisite for a child
19 custody evaluator or expert to be qualified to testify in family
20 court on the issue of custody pursuant to section 571-46. The
21 board shall not accept for filing any incomplete child custody
22 evaluator annual declaration.



1 **§571-D Child custody evaluator certification.** The board
2 may adopt a child custody evaluator certification program,
3 including but not limited to requirements for licensing
4 criteria, academic education, professional experience, and
5 continuing specialized training in child custody evaluations.
6 Certification criteria may include policies related to
7 complaints, ethical violations, disciplinary actions, and the
8 certification of child custody evaluators by other states.

9 **§571-E Child custody evaluation standards.** The board
10 shall establish child custody evaluation standards for child
11 custody evaluators to apply in recommending an award of custody
12 of a child, including best practices, benchbooks, and
13 guidelines, based upon the type and extent of the custody
14 investigation and report to the court."

15 SECTION 3. Section 571-5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§571-5 Board of family court judges.** A board of family
18 court judges, which shall consist of all the State's family
19 court judges and district family judges is hereby created. The
20 board shall annually elect from among its members a chairperson
21 who shall preside at meetings of the board. The chairperson
22 shall have no other authority not specifically authorized under



1 this chapter, or any applicable rule of the supreme court, or
2 specifically delegated by a majority of the board. The board
3 shall meet at stated times to be fixed by it but not less often
4 than once every six months, and on call of the chairperson.

5 The board shall discuss and shall attempt to achieve
6 agreement upon general policies for the conduct of the family
7 courts and forms for use in such courts. The board shall
8 recommend, for adoption by the supreme court, rules of court
9 governing procedure and practices in such courts[-], including
10 but not limited to the appointment and certification of child
11 custody evaluators under part _____. The board may, within the
12 limitations of the facilities available to the family courts of
13 the State, seek the consolidation of the statistical and other
14 data on the work and services of such courts and research
15 studies that may be made of the problems of families and
16 children dealt with by such courts to the end that the treatment
17 of children and families subject to the jurisdiction of such
18 courts shall achieve the highest possible degree of uniformity
19 throughout the State and to the further end that knowledge of
20 treatment, methods and therapeutic practices be shared among
21 such courts. The board may also formulate recommendations for
22 remedial legislation. All actions by the board shall be subject



1 to the regulatory supervision of the chief justice of the
2 supreme court."

3 SECTION 4. In codifying this Act, the revisor shall
4 substitute appropriate section numbers for letter designations
5 used in this Act.

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

8 SECTION 6. This Act shall take effect upon its approval.

9

INTRODUCED BY: *Therese Chun Cabland*



Report Title:

Family Court; Custody; Child Custody Evaluators

Description:

Establishes a program in the family court for the registration of child custody evaluators. Allows board of family court judges to adopt certification of child custody evaluators.

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

