
A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. Act 149, Session Laws of Hawaii 2008, requires
2 the court to define the requirements to be a court-appointed
3 child custody evaluator, the standards of practice, ethics,
4 policies, and procedures required of court-appointed child
5 custody evaluators in the performance of their duties for all
6 courts, and the powers of the courts over child custody
7 evaluators to effectuate the best interests of a child in a
8 contested custody dispute. Act 149 further provides that where
9 there is no child custody evaluator available that meets the
10 requirements and standards, or any child custody evaluator to
11 serve indigent parties, the court may appoint a person otherwise
12 willing and available.

13 Actions for divorce, separation, annulment, or separate
14 maintenance, or any other proceeding where there is at issue a
15 dispute as to the custody of a minor child, allow the family
16 court, during the pendency of the action, at the final hearing,
17 or at any time during the minority of the child, to make an
18 order for the custody of the minor child as may be necessary or



1 proper. For this purpose, section 571-46, Hawaii Revised
2 Statutes, allows the court to appoint a child custody evaluator
3 for an investigation and report concerning the care, welfare,
4 and custody of any minor child of the parties. The court may
5 also hear testimony from any person or expert whose skill,
6 insight, knowledge, or experience is such that the person's or
7 expert's testimony is relevant to a just and reasonable
8 determination of what is for the best physical, mental, moral,
9 and spiritual well-being of the child whose custody is at issue.

10 The legislature finds that Act 149 needs clarification to
11 expedite the establishment of a system of child custody
12 evaluators that ensures competent evidence and a fair
13 determination in child custody cases.

14 The purpose of this Act is to clarify the appointment
15 requirements and qualifications for child custody evaluators and
16 to require the judiciary to establish a referral process for
17 complaints regarding court-appointed child custody evaluators.

18 SECTION 2. Chapter 571, Hawaii Revised Statutes, is
19 amended by adding a new section to part V to be appropriately
20 designated and to read as follows:

21 "§571- Child custody evaluators; qualification;
22 registry; complaints. (a) A person may be appointed as a child



1 custody evaluator for purposes of section 571-46 if the person
2 is actively licensed as a:

3 (1) Physician under chapter 453 and is a board certified
4 psychiatrist or has completed a residency in
5 psychiatry;

6 (2) Psychologist under chapter 465;

7 (3) Marriage and family therapist under chapter 451J; or

8 (4) Clinical social worker under section 467E-7(3).

9 (b) A person may be appointed as a child custody evaluator
10 in the absence of a license under subsection (a) if:

11 (1) The individual has obtained education and training
12 that meet nationally recognized competencies and
13 standards of practice in child custody evaluation;
14 provided that there are no child custody evaluators
15 enumerated under subsection (a) who are willing and
16 available, within a reasonable period of time, to
17 perform child custody evaluations; or

18 (2) The parties stipulate to a person who does not qualify
19 as a child custody evaluator under subsection (a) and
20 the court approves that person as a fact-finding
21 investigator to the court.



1 (c) The judiciary shall maintain on its website a publicly
2 accessible registry of child custody evaluators who are
3 qualified pursuant to this section. Professionals who are
4 willing and available to perform child custody evaluations shall
5 be responsible for providing the judiciary with relevant
6 information, including contact information, evidence of
7 qualifications, and fees.

8 (d) The judiciary shall establish a referral process to
9 allow parties to file a complaint with the judiciary regarding a
10 court-appointed child custody evaluator. Upon notification by a
11 party of the party's intent to file a complaint against a child
12 custody evaluator appointed under subsection (a), the judiciary
13 may refer the complainant to the appropriate licensing
14 authority. The judiciary shall submit to the legislature an
15 annual report regarding the number of complaints against court-
16 appointed child custody evaluators that are processed through
17 the referral process.

18 (e) A complaint against a court-appointed child custody
19 evaluator not qualified under subsection (a) may be resolved
20 through civil litigation."

21 SECTION 3. Section 571-46, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



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

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

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

21 (3) If a child is of sufficient age and capacity to
22 reason, so as to form an intelligent preference, the



1 child's wishes as to custody shall be considered and
2 be given due weight by the court;

- 3 (4) Whenever good cause appears therefor, the court may
4 require an investigation and report concerning the
5 care, welfare, and custody of any minor child of the
6 parties. When so directed by the court, investigators
7 or professional personnel attached to or assisting the
8 court, hereinafter referred to as child custody
9 evaluators, shall make investigations and reports that
10 shall be made available to all interested parties and
11 counsel before hearing, and the reports may be
12 received in evidence if no objection is made and, if
13 objection is made, may be received in evidence;
14 provided the person or persons responsible for the
15 report are available for cross-examination as to any
16 matter that has been investigated; and provided
17 further that the court shall define, in accordance
18 with section 571- , the requirements to be a court-
19 appointed child custody evaluator, the standards of
20 practice, ethics, policies, and procedures required of
21 court-appointed child custody evaluators in the
22 performance of their duties for all courts, and the



1 powers of the courts over child custody evaluators to
2 effectuate the best interests of a child in a
3 contested custody dispute pursuant to this section.
4 Where there is no child custody evaluator available
5 that meets the requirements and standards, or any
6 child custody evaluator to serve indigent parties, the
7 court may appoint a person otherwise willing and
8 available[?] in accordance with section 571- ;

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

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



- 1 (7) Reasonable visitation rights shall be awarded to
2 parents, grandparents, siblings, and any person
3 interested in the welfare of the child in the
4 discretion of the court, unless it is shown that
5 rights of visitation are detrimental to the best
6 interests of the child;
- 7 (8) The court may appoint a guardian ad litem to represent
8 the interests of the child and may assess the
9 reasonable fees and expenses of the guardian ad litem
10 as costs of the action, payable in whole or in part by
11 either or both parties as the circumstances may
12 justify;
- 13 (9) In every proceeding where there is at issue a dispute
14 as to the custody of a child, a determination by the
15 court that family violence has been committed by a
16 parent 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. In addition to other
21 factors that a court shall consider in a proceeding in
22 which the custody of a child or visitation by a parent



1 is at issue, and in which the court has made a finding
2 of family violence by a parent:

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

6 (B) The court shall consider the perpetrator's
7 history of causing physical harm, bodily injury,
8 or assault or causing reasonable fear of physical
9 harm, bodily injury, or assault to another
10 person; and

11 (C) If a parent is absent or relocates because of an
12 act of family violence by the other parent, the
13 absence or relocation shall not be a factor that
14 weighs against the parent in determining custody
15 or visitation;

16 (10) A court may award visitation to a parent who has
17 committed family violence only if the court finds that
18 adequate provision can be made for the physical safety
19 and psychological well-being of the child and for the
20 safety of the parent who is a victim of family
21 violence;

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



- 1 (A) Order an exchange of a child to occur in a
2 protected setting;
- 3 (B) Order visitation supervised by another person or
4 agency;
- 5 (C) Order the perpetrator of family violence to
6 attend and complete, to the satisfaction of the
7 court, a program of intervention for perpetrators
8 or other designated counseling as a condition of
9 the visitation;
- 10 (D) Order the perpetrator of family violence to
11 abstain from possession or consumption of alcohol
12 or controlled substances during the visitation
13 and for twenty-four hours preceding the
14 visitation;
- 15 (E) Order the perpetrator of family violence to pay a
16 fee to defray the costs of supervised visitation;
- 17 (F) Prohibit overnight visitation;
- 18 (G) Require a bond from the perpetrator of family
19 violence for the return and safety of the child.
20 In determining the amount of the bond, the court
21 shall consider the financial circumstances of the
22 perpetrator of family violence;



- 1 (H) Impose any other condition that is deemed
2 necessary to provide for the safety of the child,
3 the victim of family violence, or other family or
4 household member; and
- 5 (I) Order the address of the child and the victim to
6 be kept confidential;
- 7 (12) The court may refer but shall not order an adult who
8 is a victim of family violence to attend, either
9 individually or with the perpetrator of the family
10 violence, counseling relating to the victim's status
11 or behavior as a victim as a condition of receiving
12 custody of a child or as a condition of visitation;
- 13 (13) If a court allows a family or household member to
14 supervise visitation, the court shall establish
15 conditions to be followed during visitation;
- 16 (14) A supervised visitation center shall provide a secure
17 setting and specialized procedures for supervised
18 visitation and the transfer of children for visitation
19 and supervision by a person trained in security and
20 the avoidance of family violence; and



1 (15) The court may include in visitation awarded pursuant
2 to this section visitation by electronic communication
3 provided that the court shall additionally consider[~~-~~
4 ~~(A) The~~] the potential for abuse or misuse of the
5 electronic communication, including the equipment
6 used for the communication, by the person seeking
7 visitation or by persons who may be present
8 during the visitation or have access to the
9 communication or equipment;
10 [~~(B) Whether~~] whether the person seeking visitation
11 has previously violated a temporary restraining
12 order or protective order; and
13 [~~(C) Whether~~] whether adequate provision can be made
14 for the physical safety and psychological well-
15 being of the child and for the safety of the
16 custodial parent.
17 The court may set conditions for visitation by
18 electronic communication, including visitation
19 supervised by another person or occurring in a
20 protected setting. Visitation by electronic
21 communication shall not be used to:



- 1 (A) Replace or substitute an award of custody or
- 2 physical visitation except where:
- 3 (i) Circumstances exist that make a parent
- 4 seeking visitation unable to participate in
- 5 physical visitation, including military
- 6 deployment; or
- 7 (ii) Physical visitation may subject the child to
- 8 physical or extreme psychological harm; or
- 9 (B) Justify or support the relocation of a custodial
- 10 parent."

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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



Report Title:

Family Court; Child Custody Evaluators

Description:

Clarifies the appointment requirements and qualifications for child custody evaluators. Requires the Judiciary to establish a referral process regarding a child custody evaluator appointed by the court. (HB1137 CD1)

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

