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# 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, 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 any time during the minority of the child, to make an order  
18 for the custody of the minor child as may seem necessary or



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

10 The legislature finds that Act 149 needs clarification in  
11 the interests of expediting the establishment of a system of  
12 child custody evaluators in order to ensure competent evidence  
13 and a fair determination of awarding child custody.

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 complaint process.

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

20 **"§571- Child custody evaluators; qualification;**  
21 **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) A child custody evaluator with specialized knowledge  
12 and training as evidenced by qualifications enumerated  
13 under subsection (a) certifies that the person has  
14 prior experience as a court custody evaluator;  
15 provided that there are no child custody evaluators  
16 enumerated under subsection (a) who are willing and  
17 available, within a reasonable period of time, to  
18 perform child custody evaluations; or

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



1        (c) The judiciary shall maintain a publicly accessible  
2 registry of child custody evaluators who are qualified pursuant  
3 to this section. Professionals who are willing and available to  
4 perform child custody evaluations are responsible for providing  
5 the judiciary with relevant information, including but not  
6 limited to contact information, qualifications, and fees.

7        (d) The judiciary shall establish a complaint process so  
8 that parties may file a complaint with the judiciary regarding a  
9 child custody evaluator appointed by the court. The judiciary  
10 shall refer the complaint to the appropriate licensing or  
11 certifying authority. The judiciary shall submit to the  
12 legislature and annual report on complaints received."

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

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



- 1           (1) Custody should be awarded to either parent or to both  
2           parents according to the best interests of the child,  
3           and the court also may consider frequent, continuing,  
4           and meaningful contact of each parent with the child  
5           unless the court finds that a parent is unable to act  
6           in the best interest of the child;
- 7           (2) Custody may be awarded to persons other than the  
8           father or mother whenever the award serves the best  
9           interest of the child. Any person who has had de  
10          facto custody of the child in a stable and wholesome  
11          home and is a fit and proper person shall be entitled  
12          prima facie to an award of custody;
- 13          (3) If a child is of sufficient age and capacity to  
14          reason, so as to form an intelligent preference, the  
15          child's wishes as to custody shall be considered and  
16          be given due weight by the court;
- 17          (4) Whenever good cause appears therefor, the court may  
18          require an investigation and report concerning the  
19          care, welfare, and custody of any minor child of the  
20          parties. When so directed by the court, investigators  
21          or professional personnel attached to or assisting the  
22          court, hereinafter referred to as child custody



1 evaluators, shall make investigations and reports that  
2 shall be made available to all interested parties and  
3 counsel before hearing, and the reports may be  
4 received in evidence if no objection is made and, if  
5 objection is made, may be received in evidence;  
6 provided the person or persons responsible for the  
7 report are available for cross-examination as to any  
8 matter that has been investigated; and provided  
9 further that the court shall define, in accordance  
10 with section 571- , the requirements to be a court-  
11 appointed child custody evaluator, the standards of  
12 practice, ethics, policies, and procedures required of  
13 court-appointed child custody evaluators in the  
14 performance of their duties for all courts, and the  
15 powers of the courts over child custody evaluators to  
16 effectuate the best interests of a child in a  
17 contested custody dispute pursuant to this section.  
18 Where there is no child custody evaluator available  
19 that meets the requirements and standards, or any  
20 child custody evaluator to serve indigent parties, the  
21 court may appoint a person otherwise willing and  
22 available[+] in accordance with section 571- ;



- 1           (5) The court may hear the testimony of any person or  
2           expert, produced by any party or upon the court's own  
3           motion, whose skill, insight, knowledge, or experience  
4           is such that the person's or expert's testimony is  
5           relevant to a just and reasonable determination of  
6           what is for the best physical, mental, moral, and  
7           spiritual well-being of the child whose custody is at  
8           issue;
- 9           (6) Any custody award shall be subject to modification or  
10          change whenever the best interests of the child  
11          require or justify the modification or change and,  
12          wherever practicable, the same person who made the  
13          original order shall hear the motion or petition for  
14          modification of the prior award;
- 15          (7) Reasonable visitation rights shall be awarded to  
16          parents, grandparents, siblings, and any person  
17          interested in the welfare of the child in the  
18          discretion of the court, unless it is shown that  
19          rights of visitation are detrimental to the best  
20          interests of the child;
- 21          (8) The court may appoint a guardian ad litem to represent  
22          the interests of the child and may assess the



1 reasonable fees and expenses of the guardian ad litem  
2 as costs of the action, payable in whole or in part by  
3 either or both parties as the circumstances may  
4 justify;

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

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

20 (B) The court shall consider the perpetrator's  
21 history of causing physical harm, bodily injury,  
22 or assault or causing reasonable fear of physical





1                   harm, bodily injury, or assault to another  
2                   person; and

3           (C) If a parent is absent or relocates because of an  
4           act of family violence by the other parent, the  
5           absence or relocation shall not be a factor that  
6           weighs against the parent in determining custody  
7           or visitation;

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

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

15           (A) Order an exchange of a child to occur in a  
16           protected setting;

17           (B) Order visitation supervised by another person or  
18           agency;

19           (C) Order the perpetrator of family violence to  
20           attend and complete, to the satisfaction of the  
21           court, a program of intervention for perpetrators



- 1 or other designated counseling as a condition of  
2 the visitation;
- 3 (D) Order the perpetrator of family violence to  
4 abstain from possession or consumption of alcohol  
5 or controlled substances during the visitation  
6 and for twenty-four hours preceding the  
7 visitation;
- 8 (E) Order the perpetrator of family violence to pay a  
9 fee to defray the costs of supervised visitation;
- 10 (F) Prohibit overnight visitation;
- 11 (G) Require a bond from the perpetrator of family  
12 violence for the return and safety of the child.  
13 In determining the amount of the bond, the court  
14 shall consider the financial circumstances of the  
15 perpetrator of family violence;
- 16 (H) Impose any other condition that is deemed  
17 necessary to provide for the safety of the child,  
18 the victim of family violence, or other family or  
19 household member; and
- 20 (I) Order the address of the child and the victim to  
21 be kept confidential;



- 1           (12) The court may refer but shall not order an adult who  
2           is a victim of family violence to attend, either  
3           individually or with the perpetrator of the family  
4           violence, counseling relating to the victim's status  
5           or behavior as a victim as a condition of receiving  
6           custody of a child or as a condition of visitation;
- 7           (13) If a court allows a family or household member to  
8           supervise visitation, the court shall establish  
9           conditions to be followed during visitation;
- 10          (14) A supervised visitation center shall provide a secure  
11          setting and specialized procedures for supervised  
12          visitation and the transfer of children for visitation  
13          and supervision by a person trained in security and  
14          the avoidance of family violence; and
- 15          (15) The court may include in visitation awarded pursuant  
16          to this section visitation by electronic communication  
17          provided that the court shall additionally consider:
- 18                (A) The potential for abuse or misuse of the  
19                electronic communication, including the equipment  
20                used for the communication, by the person seeking  
21                visitation or by persons who may be present



1                   during the visitation or have access to the  
2                   communication or equipment;

3                   (B) Whether the person seeking visitation has  
4                   previously violated a temporary restraining order  
5                   or protective order; and

6                   (C) Whether adequate provision can be made for the  
7                   physical safety and psychological well-being of  
8                   the child and for the safety of the custodial  
9                   parent.

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

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

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

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



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

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

5           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 complaint process regarding a child custody evaluator appointed by the court. (HB1137 HD1)

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

