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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 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 is not certified  
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 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 referral process so  
8 that parties may file a complaint with the judiciary regarding a  
9 child custody evaluator appointed by the court. Upon  
10 notification by a party of an intent to file a complaint against  
11 a court-ordered child custody evaluator under subsection (a),  
12 the judiciary may refer the complainant to the appropriate  
13 licensing authority. The judiciary shall submit to the  
14 legislature an annual report regarding the number of complaints  
15 processed through the referral process.

16       (e) A complaint against a child custody evaluator not  
17 qualified under subsection (a) may be resolved through civil  
18 litigation."

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

21       "(a) In 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 also may 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, hereinafter referred to as child custody  
7           evaluators, shall make investigations and reports that  
8           shall be made available to all interested parties and  
9           counsel before hearing, and the reports may be  
10          received in evidence if no objection is made and, if  
11          objection is made, may be received in evidence;  
12          provided the person or persons responsible for the  
13          report are available for cross-examination as to any  
14          matter that has been investigated; and provided  
15          further that the court shall define, in accordance  
16          with section 571- , the requirements to be a court-  
17          appointed child custody evaluator, the standards of  
18          practice, ethics, policies, and procedures required of  
19          court-appointed child custody evaluators in the  
20          performance of their duties for all courts, and the  
21          powers of the courts over child custody evaluators to  
22          effectuate the best interests of a child in a



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

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

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

21          (7) Reasonable visitation rights shall be awarded to  
22          parents, grandparents, siblings, and any person



1 interested in the welfare of the child in the  
2 discretion of the court, unless it is shown that  
3 rights of visitation are detrimental to the best  
4 interests of the child;

5 (8) The court may appoint a guardian ad litem to represent  
6 the interests of the child and may assess the  
7 reasonable fees and expenses of the guardian ad litem  
8 as costs of the action, payable in whole or in part by  
9 either or both parties as the circumstances may  
10 justify;

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





- 1 (A) The court shall consider as the primary factor
- 2 the safety and well-being of the child and of the
- 3 parent who is the victim of family violence;
- 4 (B) The court shall consider the perpetrator's
- 5 history of causing physical harm, bodily injury,
- 6 or assault or causing reasonable fear of physical
- 7 harm, bodily injury, or assault to another
- 8 person; and
- 9 (C) If a parent is absent or relocates because of an
- 10 act of family violence by the other parent, the
- 11 absence or relocation shall not be a factor that
- 12 weighs against the parent in determining custody
- 13 or visitation;
- 14 (10) A court may award visitation to a parent who has
- 15 committed family violence only if the court finds that
- 16 adequate provision can be made for the physical safety
- 17 and psychological well-being of the child and for the
- 18 safety of the parent who is a victim of family
- 19 violence;
- 20 (11) In a visitation order, a court may:
- 21 (A) Order an exchange of a child to occur in a
- 22 protected setting;



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



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



1           ~~(A)~~ ~~The]~~ the potential for abuse or misuse of the  
2           electronic communication, including the equipment  
3           used for the communication, by the person seeking  
4           visitation or by persons who may be present  
5           during the visitation or have access to the  
6           communication or equipment;

7           ~~[(B) Whether]~~ whether the person seeking visitation  
8           has previously violated a temporary restraining  
9           order or protective order; and

10          ~~[(C) Whether]~~ whether adequate provision can be made  
11          for the physical safety and psychological well-  
12          being of the child and for the safety of the  
13          custodial parent.

14                The court may set conditions for visitation by  
15          electronic communication, including visitation  
16          supervised by another person or occurring in a  
17          protected setting. Visitation by electronic  
18          communication shall not be used to:

19                (A) Replace or substitute an award of custody or  
20                physical visitation except where:

21                   (i) Circumstances exist that make a parent  
22                   seeking visitation unable to participate in



1 physical visitation, including military  
2 deployment; or  
3 (ii) Physical visitation may subject the child to  
4 physical or extreme psychological harm; or  
5 (B) Justify or support the relocation of a custodial  
6 parent."

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

9 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. (SD1)

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

