

JAN 24 2013

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 courts 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 court shall maintain a registry of potential child
2 custody evaluators who are qualified pursuant to this section
3 and are willing to perform child custody evaluations on an on-
4 call basis from time to time.

5 (d) The court shall establish a complaint process so that
6 parties may file a grievance with the court regarding a child
7 custody evaluator appointed by the court."

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

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

18 (1) Custody should be awarded to either parent or to both
19 parents according to the best interests of the child,
20 and the court also may consider frequent, continuing,
21 and meaningful contact of each parent with the child



1 unless the court finds that a parent is unable to act
2 in the best interest of the child;

3 (2) Custody may be awarded to persons other than the
4 father or mother whenever the award serves the best
5 interest of the child. Any person who has had de
6 facto custody of the child in a stable and wholesome
7 home and is a fit and proper person shall be entitled
8 prima facie to an award of custody;

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

13 (4) Whenever good cause appears therefor, the court may
14 require an investigation and report concerning the
15 care, welfare, and custody of any minor child of the
16 parties. When so directed by the court, investigators
17 or professional personnel attached to or assisting the
18 court, hereinafter referred to as child custody
19 evaluators, shall make investigations and reports that
20 shall be made available to all interested parties and
21 counsel before hearing, and the reports may be
22 received in evidence if no objection is made and, if



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



1 the child with regard to disputed custody and
2 visitation issues in complex cases, where the risk to
3 children is possible. A court shall not order such an
4 evaluation unless there is credible information
5 regarding possible harm to the child or impairment of
6 parental abilities;

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 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 the person seeking visitation has
8 previously violated a temporary restraining order
9 or protective order; and

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

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INTRODUCED BY: Ermani Chun Oakes

Heidi...
[Signature]



S.B. NO. 1226

Report Title:

Family Court; Child Custody Evaluators

Description:

Clarifies the appointment requirements and qualifications for child custody evaluators. Requires the courts to establish a complaint process. Reserves the appointment of a child custody evaluator for the conducting of an investigation and analysis of the best interest of the child regarding disputed custody and visitation issues in complex cases, where there is a possible risk to children, and that the court shall not order such an evaluation unless there is credible information regarding possible harm to the child or impairment of parental duties.

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