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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. The legislature finds that parents have a  
2 constitutionally protected right to direct the care, custody,  
3 and control of their children, including children experiencing  
4 gender dysphoria. The purpose of this Act is to exclude a  
5 parent's affirmation of their child's gender identity or  
6 expression from the list of factors courts consider in  
7 determining what constitutes the best interest of the child when  
8 awarding custody and visitation rights.

9           SECTION 2. Section 571-46, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "**§571-46 Criteria and procedure in awarding custody and**  
12 **visitation; best interest of the child.** (a) In actions for  
13 divorce, separation, annulment, separate maintenance, or any  
14 other proceeding where there is at issue a dispute as to the  
15 custody of a minor child, the court, during the pendency of the  
16 action, at the final hearing, or any time during the minority of  
17 the child, may make an order for the custody of the minor child



1 as may seem necessary or proper. In awarding the custody, the  
2 court shall be guided by the following standards,  
3 considerations, and procedures:

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

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

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

20 (4) Whenever good cause appears therefor, the court may  
21 require an investigation and report concerning the



1 care, welfare, and custody of any minor child of the  
2 parties. When so directed by the court, investigators  
3 or professional personnel attached to or assisting the  
4 court, hereinafter referred to as child custody  
5 evaluators, shall make investigations and reports that  
6 shall be made available to all interested parties and  
7 counsel before hearing, and the reports may be  
8 received in evidence if no objection is made and, if  
9 objection is made, may be received in evidence;  
10 provided the person or persons responsible for the  
11 report are available for cross-examination as to any  
12 matter that has been investigated; and provided  
13 further that the court shall define, in accordance  
14 with section 571-46.4, the requirements to be a court-  
15 appointed child custody evaluator, the standards of  
16 practice, ethics, policies, and procedures required of  
17 court-appointed child custody evaluators in the  
18 performance of their duties for all courts, and the  
19 powers of the courts over child custody evaluators to  
20 effectuate the best interests of a child in a  
21 contested custody dispute pursuant to this section.



1           Where there is no child custody evaluator available  
2           that meets the requirements and standards, or any  
3           child custody evaluator to serve indigent parties, the  
4           court may appoint a person otherwise willing and  
5           available in accordance with section 571-46.4;

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

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

20          (7) Reasonable visitation rights shall be awarded to  
21          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

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;



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



1 shall consider the financial circumstances of the  
2 perpetrator of family violence;

3 (H) Impose any other condition that is deemed  
4 necessary to provide for the safety of the child,  
5 the victim of family violence, or other family or  
6 household member; and

7 (I) Order the address of the child and the victim to  
8 be kept confidential;

9 (12) The court may refer but shall not order an adult who  
10 is a victim of family violence to attend, either  
11 individually or with the perpetrator of the family  
12 violence, counseling relating to the victim's status  
13 or behavior as a victim as a condition of receiving  
14 custody of a child or as a condition of visitation;

15 (13) If a court allows a family or household member to  
16 supervise visitation, the court shall establish  
17 conditions to be followed during visitation;

18 (14) A supervised visitation center shall provide a secure  
19 setting and specialized procedures for supervised  
20 visitation and the transfer of children for visitation





1 and supervision by a person trained in security and  
2 the avoidance of family violence;

3 (15) The court may include in visitation awarded pursuant  
4 to this section visitation by electronic communication  
5 provided that the court shall additionally consider  
6 the potential for abuse or misuse of the electronic  
7 communication, including the equipment used for the  
8 communication, by the person seeking visitation or by  
9 persons who may be present during the visitation or  
10 have access to the communication or equipment; whether  
11 the person seeking visitation has previously violated  
12 a temporary restraining order or protective order; and  
13 whether adequate provision can be made for the  
14 physical safety and psychological well-being of the  
15 child and for the safety of the custodial parent;

16 (16) The court may set conditions for visitation by  
17 electronic communication under paragraph (15),  
18 including visitation supervised by another person or  
19 occurring in a protected setting. Visitation by  
20 electronic 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; and
- 11       (17) Notwithstanding any provision to the contrary, no
- 12          natural parent shall be granted custody of or
- 13          visitation with a child if the natural parent has been
- 14          convicted in a court of competent jurisdiction in any
- 15          state of rape or sexual assault and the child was
- 16          conceived as a result of that offense; provided that:
- 17          (A) A denial of custody or visitation under this
- 18          paragraph shall not affect the obligation of the
- 19          convicted natural parent to support the child;
- 20          (B) The court may order the convicted natural parent
- 21          to pay child support;



1 (C) This paragraph shall not apply if subsequent to  
2 the date of conviction, the convicted natural  
3 parent and custodial natural parent cohabit  
4 and establish a mutual custodial environment for  
5 the child; and

6 (D) A custodial natural parent may petition the court  
7 to grant the convicted natural parent custody and  
8 visitation denied pursuant to this paragraph, and  
9 upon such petition the court may grant custody  
10 and visitation to the convicted natural parent  
11 where it is in the best interest of the child.

12 (b) In determining what constitutes the best interest of  
13 the child under this section, the court shall consider, but not  
14 be limited to, the following:

- 15 (1) Any history of sexual or physical abuse of a child by  
16 a parent;
- 17 (2) Any history of neglect or emotional abuse of a child  
18 by a parent;
- 19 (3) The overall quality of the parent-child relationship;



- 1           (4) The history of caregiving or parenting by each parent
- 2                   prior and subsequent to a marital or other type of
- 3                   separation;
- 4           (5) Each parent's cooperation in developing and
- 5                   implementing a plan to meet the child's ongoing needs,
- 6                   interests, and schedule; provided that this factor
- 7                   shall not be considered in any case where the court
- 8                   has determined that family violence has been committed
- 9                   by a parent;
- 10          (6) The physical health needs of the child;
- 11          (7) The emotional needs of the child;
- 12          (8) The safety needs of the child;
- 13          (9) The educational needs of the child;
- 14          (10) The child's need for relationships with siblings;
- 15          (11) Each parent's actions demonstrating that they allow
- 16                   the child to maintain family connections through
- 17                   family events and activities; provided that this
- 18                   factor shall not be considered in any case where the
- 19                   court has determined that family violence has been
- 20                   committed by a parent;



- 1           (12) Each parent's actions demonstrating that they separate  
2           the child's needs from the parent's needs;
- 3           (13) Any evidence of past or current drug or alcohol abuse  
4           by a parent;
- 5           (14) The mental health of each parent;
- 6           (15) The areas and levels of conflict present within the  
7           family; and
- 8           (16) A parent's prior wilful misuse of the protection from  
9           abuse process under chapter 586 to gain a tactical  
10          advantage in any proceeding involving the custody  
11          determination of a minor. Such wilful misuse may be  
12          considered only if it is established by clear and  
13          convincing evidence, and if it is further found by  
14          clear and convincing evidence that in the particular  
15          family circumstance the wilful misuse tends to show  
16          that, in the future, the parent who engaged in the  
17          wilful misuse will not be able to cooperate  
18          successfully with the other parent in their shared  
19          responsibilities for the child. The court shall  
20          articulate findings of fact whenever relying upon this  
21          factor as part of its determination of the best



1 interests of the child. For the purposes of this  
 2 section, when taken alone, the voluntary dismissal of  
 3 a petition for protection from abuse shall not be  
 4 treated as prima facie evidence that a wilful misuse  
 5 of the protection from abuse process has occurred.

6 (c) In determining what constitutes the best interest of  
 7 the child under this section, the court shall not consider  
 8 whether a parent affirms their child's gender identity or  
 9 expression that does not align with the sex assigned at birth.  
 10 For purposes of this section, "gender identity or expression"  
 11 has the same meaning as provided in section 489-2."

12 SECTION 3. This Act does not affect rights and duties that  
 13 matured, penalties that were incurred, and proceedings that were  
 14 begun before its effective date.

15 SECTION 4. New statutory material is underscored.

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

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INTRODUCED BY: *D. [Signature]*

JAN 23 2024



# H.B. NO. 2603

**Report Title:**

Family Court; Parent; Child Custody; Gender Affirmation

**Description:**

Amends provisions relating to criteria in family court determinations regarding custody and visitation rights. Clarifies that no court shall consider a parent's affirmation of their child's gender identity or expression in a custody determination.

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

