

**ACT 103**

H.B. NO. 1137

A Bill for an Act Relating to Family Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

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

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

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

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

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

**“§571- Child custody evaluators; qualification; registry; complaints. (a)**

A person may be appointed as a child custody evaluator for purposes of section 571-46 if the person is actively licensed as a:

- (1) Physician under chapter 453 and is a board certified psychiatrist or has completed a residency in psychiatry;
- (2) Psychologist under chapter 465;
- (3) Marriage and family therapist under chapter 451J; or
- (4) Clinical social worker under section 467E-7(3).

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

- (1) The individual has obtained education and training that meet nationally recognized competencies and standards of practice in child custody evaluation; provided that there are no child custody evaluators enumerated under subsection (a) who are willing and available, within a reasonable period of time, to perform child custody evaluations; or
- (2) The parties stipulate to a person who does not qualify as a child custody evaluator under subsection (a) and the court approves that person as a fact-finding investigator to the court.

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

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

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

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

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

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court also may consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child;
- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child’s wishes as to custody shall be considered and be given due weight by the court;
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court, hereinafter referred to as child custody evaluators, shall make investigations and reports that shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated; and provided further that the court shall define, in accordance with section 571- , the requirements to be a court-appointed child custody evaluator, the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts, and the powers of the courts over child custody evaluators to effectuate the best interests of a child in a contested custody dispute pursuant to this section. Where there is no child custody evaluator available that meets the requirements and standards, or any child custody evaluator to serve indigent parties, the court may appoint a person otherwise willing and available<sup>[5]</sup> in accordance with section 571- ;
- (5) The court may hear the testimony of any person or expert, produced by any party or upon the court’s own motion, whose skill, insight, knowledge, or experience is such that the person’s or expert’s testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the

original order shall hear the motion or petition for modification of the prior award;

- (7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;
- (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;
- (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court shall consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:
  - (A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;
  - (B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and
  - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;
- (10) A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;
- (11) In a visitation order, a court may:
  - (A) Order an exchange of a child to occur in a protected setting;
  - (B) Order visitation supervised by another person or agency;
  - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
  - (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
  - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
  - (F) Prohibit overnight visitation;
  - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;

- (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
  - (I) Order the address of the child and the victim to be kept confidential;
- (12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim's status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;
- (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation;
- (14) A supervised visitation center shall provide a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence; and
- (15) The court may include in visitation awarded pursuant to this section visitation by electronic communication provided that the court shall additionally consider[:
- (A) ~~The~~ the potential for abuse or misuse of the electronic communication, including the equipment used for the communication, by the person seeking visitation or by persons who may be present during the visitation or have access to the communication or equipment;
  - (B) ~~Whether~~ whether the person seeking visitation has previously violated a temporary restraining order or protective order; and
  - (C) ~~Whether~~ whether adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the custodial parent.

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

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

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved June 14, 2013.)

#### Note

1. Edited pursuant to HRS §23G-16.5.