
A BILL FOR AN ACT

RELATING TO FAMILY COURTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 571, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§571- Mandatory ongoing training in domestic violence
5 advocacy. The chief justice of the supreme court shall require
6 all judges and relevant professional personnel of the family
7 courts to complete ongoing training, at intervals of no more
8 than every three years, in the latest best practices and
9 research in domestic violence advocacy designed to improve the
10 ability of the family courts to recognize and respond to cases
11 involving domestic violence and to encourage the family courts
12 to seek out current and valid scientific research on the
13 matter."

14 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) In actions for divorce, separation, annulment,
17 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



1 child's wishes as to custody shall be considered and
2 be given due weight by the court;

3 (4) Whenever good cause appears therefor, the court may
4 require an investigation and report concerning the
5 care, welfare, and custody of any minor child of the
6 parties. When so directed by the court, investigators
7 or professional personnel attached to or assisting the
8 court, hereinafter referred to as child custody
9 evaluators, shall make investigations and reports that
10 shall be made available to all interested parties and
11 counsel before hearing, and the reports may be
12 received in evidence if no objection is made and, if
13 objection is made, may be received in evidence;
14 provided the person or persons responsible for the
15 report are available for cross-examination as to any
16 matter that has been investigated; and provided
17 further that the court shall define, in accordance
18 with section 571-46.4, the requirements to be a court-
19 appointed child custody evaluator, the standards of
20 practice, ethics, policies, and procedures required of
21 court-appointed child custody evaluators in the



H.B. NO. 1701

1 performance of their duties for all courts, and the
2 powers of the courts over child custody evaluators to
3 effectuate the best interests of a child in a
4 contested custody dispute pursuant to this section.
5 Where there is no child custody evaluator available
6 that meets the requirements and standards, or any
7 child custody evaluator to serve indigent parties, the
8 court may appoint a person otherwise willing and
9 available in accordance with section 571-46.4;

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

18 (6) Any custody award shall be subject to modification or
19 change whenever the best interests of the child
20 require or justify the modification or change and,
21 wherever practicable, the same person who made the



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

3 (7) Reasonable visitation rights shall be awarded to
4 parents, grandparents, siblings, and any person
5 interested in the welfare of the child in the
6 discretion of the court, unless it is shown that
7 rights of visitation are detrimental to the best
8 interests of the child;

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

15 (9) In every proceeding where there is at issue a dispute
16 as to the custody of a child[~~]~~ or visitation by a
17 parent, if the case involves allegations or a history
18 of family violence, the court shall first hold an
19 evidentiary hearing that shall be limited to evidence
20 related to the issue of family violence. Upon a



H.B. NO. 1701

1 determination by the court that family violence has
2 been committed by a parent [~~raises~~]:

3 (A) There shall be a rebuttable presumption that it
4 is detrimental to the child and not in the best
5 interest of the child to be placed in sole
6 custody, joint legal custody, or joint physical
7 custody with the perpetrator of family
8 violence ~~[~~; and

9 (B) In addition to other factors that [a] the court
10 shall consider in [a] the proceeding [~~in which~~
11 ~~the custody of a child or visitation by a parent~~
12 ~~is at issue, and in which the court has made a~~
13 ~~finding of family violence by a parent~~]:

14 [~~(A)~~] (i) The court shall consider as the primary
15 factor the safety and well-being of the child and
16 of the parent who is the victim of family
17 violence;

18 [~~(B)~~] (ii) The court shall consider the perpetrator's
19 history of causing physical harm, bodily injury,
20 or assault or causing reasonable fear of physical



H.B. NO. 1701

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



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

5 (I) Order the address of the child and the victim to
6 be kept confidential;

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

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

16 (14) A supervised visitation center shall provide a secure
17 setting and specialized procedures for supervised
18 visitation and the transfer of children for visitation
19 and supervision by a person trained in security and
20 the avoidance of family violence;



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

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

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



H.B. NO. 1701

- 1 (i) Circumstances exist that make a parent
- 2 seeking visitation unable to participate in
- 3 physical visitation, including military
- 4 deployment; or
- 5 (ii) Physical visitation may subject the child to
- 6 physical, or extreme psychological harm; or
- 7 (B) Justify or support the relocation of a custodial
- 8 parent; and
- 9 (17) Notwithstanding any provision to the contrary, no
- 10 natural parent shall be granted custody of or
- 11 visitation with a child if the natural parent has been
- 12 convicted in a court of competent jurisdiction in any
- 13 state of rape or sexual assault and the child was
- 14 conceived as a result of that offense; provided that:
- 15 (A) A denial of custody or visitation under this
- 16 paragraph shall not affect the obligation of the
- 17 convicted natural parent to support the child;
- 18 (B) The court may order the convicted natural parent
- 19 to pay child support;
- 20 (C) This paragraph shall not apply if subsequent to
- 21 the date of conviction, the convicted natural



H.B. NO. 1701

1 parent and custodial natural parent cohabituate
 2 and establish a mutual custodial environment for
 3 the child; and

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

10 SECTION 3. Section 571-46.4, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "[+]§571-46.4[+] Child custody evaluators; qualification;
 13 registry; complaints. (a) [A] Subject to subsection (c),
 14 person may be appointed as a child custody evaluator for
 15 purposes of section 571-46 if the person is actively licensed as
 16 a:

- 17 (1) Physician under chapter 453 and is a board certified
 18 psychiatrist or has completed a residency in
 19 psychiatry;
- 20 (2) Psychologist under chapter 465;
- 21 (3) Marriage and family therapist under chapter 451J; or



1 (4) Clinical social worker under section 467E-7(3).

2 (b) [A] Subject to subsection (c), person may be appointed
3 as a child custody evaluator in the absence of a license under
4 subsection (a) if:

5 (1) The individual has obtained education and training
6 that meet nationally recognized competencies and
7 standards of practice in child custody evaluation;
8 provided that there are no child custody evaluators
9 enumerated under subsection (a) who are willing and
10 available, within a reasonable period of time, to
11 perform child custody evaluations; or

12 (2) The parties stipulate to a person who does not qualify
13 as a child custody evaluator under subsection (a) and
14 the court approves that person as a fact-finding
15 investigator to the court.

16 (c) Notwithstanding subsections (a) and (b), in every
17 proceeding under section 571-46 involving an allegation or a
18 history of family violence, the appointment of a child custody
19 evaluator pursuant to section 571-46(4) shall be made in
20 accordance with the following requirements:



H.B. NO. 1701

- 1 (1) The person appointed shall have the specific knowledge
2 and training necessary to recognize and respond
3 effectively to cases of family violence, based on
4 nationally recognized competencies and standards of
5 practice;
- 6 (2) If the proceeding involves an allegation or a history
7 of sexual abuse of the child, the person appointed
8 shall have specific training and experience in the
9 subject of sexually abused minors that includes the
10 employment of practices designed to avoid
11 discouragement of a child's disclosure of sexual
12 abuse;
- 13 (3) If the court determines that the proceeding involves
14 no issue of mental health, a person shall not be
15 disqualified from appointment solely because the
16 person does not hold an academic degree in mental
17 health; and
- 18 (4) If the court has reason to believe that a party to the
19 proceeding suffers from a mental health issue, the
20 person appointed shall possess relevant qualifications



1 in mental health evaluation, as determined by the
2 court.

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

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



1 [~~e~~] (f) A complaint against a court-appointed child
2 custody evaluator not qualified under subsection (a) may be
3 resolved through civil litigation."

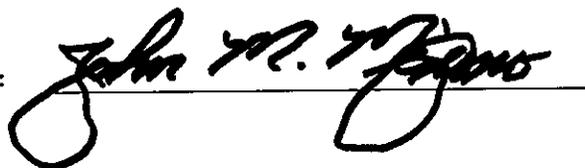
4 SECTION 4. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect ninety days after
10 its approval.

11

INTRODUCED BY:



JAN 21 2016



H.B. NO. 1701

Report Title:

Family Courts; Child Custody and Visitation; Domestic Violence

Description:

In child custody and visitation proceedings involving an allegation or history of family violence: 1) requires family courts to first hold an evidentiary hearing on the issue of family violence; 2) requires child custody evaluators to have qualifications relevant to the subject of family violence; and 3) if the proceeding does not involve mental health issues, prohibits disqualification of a person for appointment as a child custody evaluator solely because the person does not hold a degree relating to mental health. Prohibits use of a parent's good faith allegation of family violence as a factor that weighs against the parent in determining child custody or visitation. Requires family court judges and professional personnel to complete ongoing training in the latest best practices and research in domestic violence advocacy.

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