HOUSE OF REPRESENTATIVES TWENTY-EIGHTH LEGISLATURE, 2015 STATE OF HAWAII

H.B. NO. **U24**

A BILL FOR AN ACT

RELATING TO THE FAMILY COURTS.

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

SECTION 1. Section 571-46, Hawaii Revised Statutes, is
 amended by amending subsection (a) to read as follows:

3 "(a) In actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at 4 5 issue a dispute as to the custody of a minor child, the court, 6 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 7 8 custody of the minor child as may seem necessary or proper. Ιn awarding the custody, the court shall be guided by the following 9 10 standards, considerations, and procedures [+

11 (1) Custody] in the best interest of the child:
12 (1) If the parents live in the same county or school
13 district, custody and visitation shall be shared
14 equally, unless the court finds that a parent is
15 unable to provide for the best interests of the child
16 or there is sufficient evidence of any past or current



1		family violence between the parents or by a parent in
2		the presence of the child;
3	(2)	If the parents do not live in the same county or
4		school district, but would otherwise qualify for
5		custody under the requirements of paragraph (1),
6		custody and visitation should be awarded to either
7		parent or to both parents according to the best
8		interests of the child, and the court also $[may]$ shall
9		consider frequent, continuing, and meaningful contact
10		of [each parent with the child unless the court finds
11		that a parent is unable to act in the best interest of
12		the child;] the child with each parent;
13	(3)	If the court is unable to determine custody under
14		paragraphs (1) and (2), custody shall be awarded to
15	X	either parent or to both parents according to the best
16		interests of the child, and the court also may
17		consider frequent, continuing, and meaningful contact
18		of the child with each parent;
19	[-(2·)-]	(4) Custody may be awarded to persons other than the
20		father or mother whenever the award serves the best
21		interest of the child. Any person who has had de



Page 2

H.B. NO. 624

1 facto custody of the child in a stable and wholesome 2 home and is a fit and proper person shall be entitled 3 prima facie to an award of custody; [(3)] (5) If a child is of sufficient age and capacity to 4 5 reason, so as to form an intelligent preference, the 6 child's wishes as to custody shall be considered and 7 be given due weight by the court; 8 [-(4)-] (6) Whenever good cause appears therefor, the court 9 may require an investigation and report concerning the 10 care, welfare, and custody of any minor child of the 11 parties. When so directed by the court, investigators 12 or professional personnel attached to or assisting the 13 court, hereinafter referred to as child custody 14 evaluators, shall make investigations and reports that 15 shall be made available to all interested parties and 16 counsel before hearing, and the reports may be 17 received in evidence if no objection is made and, if objection is made, may be received in evidence; 18 19 provided the person or persons responsible for the 20 report are available for cross-examination as to any 21 matter that has been investigated; and provided



H.B. NO. 624

1 further that the court shall define, in accordance 2 with section 571-46.4, the requirements to be a courtappointed child custody evaluator, the standards of 3 practice, ethics, policies, and procedures required of 4 court-appointed child custody evaluators in the 5 performance of their duties for all courts, and the 6 7 powers of the courts over child custody evaluators to 8 effectuate the best interests of a child in a 9 contested custody dispute pursuant to this section. 10 Where there is no child custody evaluator available 11 that meets the requirements and standards, or any 12 child custody evaluator to serve indigent parties, the 13 court may appoint a person otherwise willing and 14 available in accordance with section 571-46.4; 15 $[\frac{(5)}{(7)}]$ The court may hear the testimony of any person or 16 expert, produced by any party or upon the court's own 17 motion, whose skill, insight, knowledge, or experience 18 is such that the person's or expert's testimony is 19 relevant to a just and reasonable determination of 20 what is for the best physical, mental, moral, and

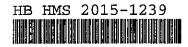


1 spiritual well-being of the child whose custody is at 2 issue: 3 [(6)] (8) Any custody award shall be subject to 4 modification or change whenever the best interests of 5 the child require or justify the modification or 6 change and, wherever practicable, the same person who 7 made the original order shall hear the motion or 8 petition for modification of the prior award; 9 [(-7)] (9) Reasonable visitation rights shall be awarded to 10 parents, grandparents, siblings, and any person 11 interested in the welfare of the child in the discretion of the court, unless it is shown that 12 13 rights of visitation are detrimental to the best 14 interests of the child; 15 [+(3)] (10) The court may appoint a guardian ad litem to 16 represent the interests of the child and may assess 17 the reasonable fees and expenses of the guardian ad 18 litem as costs of the action, payable in whole or in 19 part by either or both parties as the circumstances 20 may justify;

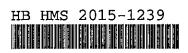


H.B. NO. 624

1 [(9)] (11) In every proceeding where there is at issue a 2 dispute as to the custody of a child, a determination 3 by the court that family violence has been committed 4 by a parent raises a rebuttable presumption that it is 5 detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal 6 7 custody, or joint physical custody with the 8 perpetrator of family violence. In addition to other 9 factors that a court shall consider in a proceeding in 10 which the custody of a child or visitation by a parent 11 is at issue, and in which the court has made a finding 12 of family violence by a parent: 13 (A) The court shall consider as the primary factor 14 the safety and well-being of the child and of the 15 parent who is the victim of family violence; 16 The court shall consider the perpetrator's (B) 17 history of causing physical harm, bodily injury, 18 or assault or causing reasonable fear of physical 19 harm, bodily injury, or assault to another 20 person; and



1		(C)	If a parent is absent or relocates because of an				
2			act of family violence by the other parent, the				
3			absence or relocation shall not be a factor that				
4			weighs against the parent in determining custody				
5			or visitation;				
6	[(10)]	(12)	A court may award visitation to a parent who has				
7		committed family violence only if the court finds that					
8		adequate provision can be made for the physical safety					
9		and p	and psychological well-being of the child and for the				
10		safe	safety of the parent who is a victim of family				
11		violence;					
12	[(11)]	(13)	In a visitation order, a court may:				
13		(A)	Order an exchange of a child to occur in a				
14			protected setting;				
15		(B)	Order visitation supervised by another person or				
16			agency;				
17		(C)	Order the perpetrator of family violence to				
18			attend and complete, to the satisfaction of the				
19			court, a program of intervention for perpetrators				
20			or other designated counseling as a condition of				
21			the visitation;				



1		(D)	Order the perpetrator of family violence to
2			abstain from possession or consumption of alcohol
3			or controlled substances during the visitation
4			and for twenty-four hours preceding the
5			visitation;
6		(E)	Order the perpetrator of family violence to pay a
7			fee to defray the costs of supervised visitation;
8		(F)	Prohibit overnight visitation;
9		(G)	Require a bond from the perpetrator of family
10			violence for the return and safety of the child.
11			In determining the amount of the bond, the court
12			shall consider the financial circumstances of the
13			perpetrator of family violence;
14		(H)	Impose any other condition that is deemed
15			necessary to provide for the safety of the child,
16			the victim of family violence, or other family or
17			household member; and
18		(I)	Order the address of the child and the victim to
19			be kept confidential;
20	[-(12) -]	(14)	The court may refer but shall not order an adult
21		who	is a victim of family violence to attend, either



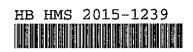
individually or with the perpetrator of the family 1 2 violence, counseling relating to the victim's status 3 or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation; 4 [(13)] (15) If a court allows a family or household member to 5 6 supervise visitation, the court shall establish 7 conditions to be followed during visitation: 8 [(14)] (16) A supervised visitation center shall provide a 9 secure setting and specialized procedures for supervised visitation and the transfer of children for 10 11 visitation and supervision by a person trained in 12 security and the avoidance of family violence; 13 [(15)] (17) The court may include in visitation awarded 14 pursuant to this section visitation by electronic 15 communication provided that the court shall 16 additionally consider the potential for abuse or 17 misuse of the electronic communication, including the 18 equipment used for the communication, by the person 19 seeking visitation or by persons who may be present 20 during the visitation or have access to the communication or equipment; whether the person seeking 21



Page 9

H.B. NO. 624

1		visi	ltatio	n has previously violated a temporary				
2		rest	raini	ng order or protective order; and whether				
3		adeq	quate	provision can be made for the physical safety				
4		and	and psychological well-being of the child and for the					
5		safe	safety of the custodial parent;					
6	[(16)]	(18)	(18) The court may set conditions for visitation by					
7		elec	electronic communication under paragraph (15),					
8		incl	including visitation supervised by another person or					
9		occu	occurring in a protected setting. Visitation by					
10		elec	electronic communication shall not be used to:					
11		(A)	Repl	ace or substitute an award of custody or				
12			phys	ical visitation except where:				
13			(i)	Circumstances exist that make a parent				
14				seeking visitation unable to participate in				
15				physical visitation, including military				
16				deployment; or				
17			(ii)	Physical visitation may subject the child to				
18				physical or extreme psychological harm; or				
19		(B)	Just	ify or support the relocation of a custodial				
20		parent; and						



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1 [(17)] (19) Notwithstanding any provision to the contrary, no 2 natural parent shall be granted custody of or 3 visitation with a child if the natural parent has been 4 convicted in a court of competent jurisdiction in any state of rape or sexual assault and the child was 5 conceived as a result of that offense; provided that: 6 A denial of custody or visitation under this 7 (A) 8 paragraph shall not affect the obligation of the 9 convicted natural parent to support the child; 10 The court may order the convicted natural parent (B) 11 to pay child support; 12 (C) This paragraph shall not apply if subsequent to 13 the date of conviction, the convicted natural 14 parent and custodial natural parent cohabitate 15 and establish a mutual custodial environment for 16 the child; and 17 A custodial natural parent may petition the court (D) 18 to grant the convicted natural parent custody and 19 visitation denied pursuant to this paragraph, and 20 upon such petition the court may grant custody



Page 11

and visitation to the convicted natural parent
 where it is in the best interest of the child."
 SECTION 2. Statutory material to be repealed is bracketed
 and stricken. New statutory material is underscored.
 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

JAN 2 3 2015



H.B. NO. 624

Report Title:

Family Court; Custody; Parental Parity

Description:

Clarifies the factors under which the family awards custody and visitation of a minor child to ensure parental parity.

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

