



GOV. MSG. NO. 791

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 6, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 6, 2008, the following bill was signed into law:

SB2055 SD2 HD2 CD1

A BILL FOR AN ACT RELATING TO FAMILY
COURT.
(ACT 149)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. Existing law allows the court to order an
2 investigation and report concerning the care, welfare, and
3 custody of a minor child of the parties in a contested custody
4 case. In such a case, investigators or professional personnel
5 attached to or assisting the court conduct investigations and
6 prepare reports that are made available to all interested
7 parties and counsel before the hearing.

8 The purpose of this Act is to define the requirements of
9 court-appointed investigators and professional personnel that
10 assist the courts with child custody evaluations who shall
11 hereafter be referred to as "child custody evaluators".

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

14 "**§571-46 Criteria and procedure in awarding custody and**
15 **visitation.** In the actions for divorce, separation, annulment,
16 separate maintenance, or any other proceeding where there is at
17 issue a dispute as to the custody of a minor child, the court,



1 during the pendency of the action, at the final hearing, or any
2 time during the minority of the child, may make an order for the
3 custody of the minor child as may seem necessary or proper. In
4 awarding the custody, the court shall be guided by the following
5 standards, considerations, and procedures:

- 6 (1) Custody should be awarded to either parent or to both
7 parents according to the best interests of the child,
8 and the court may also consider frequent, continuing,
9 and meaningful contact of each parent with the child
10 unless the court finds that a parent is unable to act
11 in the best interest of the child;
- 12 (2) Custody may be awarded to persons other than the
13 father or mother whenever the award serves the best
14 interest of the child. Any person who has had de
15 facto custody of the child in a stable and wholesome
16 home and is a fit and proper person shall be entitled
17 prima facie to an award of custody;
- 18 (3) If a child is of sufficient age and capacity to
19 reason, so as to form an intelligent preference, the
20 child's wishes as to custody shall be considered and
21 be given due weight by the court;



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



1 this section. Where there is no child custody
2 evaluator available that meets the requirements and
3 standards, or any child custody evaluator to serve
4 indigent parties, the court may appoint a person
5 otherwise willing and available.

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
22 interested in the welfare of the child in the



1 discretion of the court, unless it is shown that
2 rights of visitation are detrimental to the best
3 interests of the child;

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

10 (9) In every proceeding where there is at issue a dispute
11 as to the custody of a child, a determination by the
12 court that family violence has been committed by a
13 parent raises a rebuttable presumption that it is
14 detrimental to the child and not in the best interest
15 of the child to be placed in sole custody, joint legal
16 custody, or joint physical custody with the
17 perpetrator of family violence. In addition to other
18 factors that a court must consider in a proceeding in
19 which the custody of a child or visitation by a parent
20 is at issue, and in which the court has made a finding
21 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 committed
- 15 family violence only if the court finds that adequate
- 16 provision can be made for the physical safety and
- 17 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; and

14 (14) A supervised visitation center must 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."

19 SECTION 3. (a) The judiciary shall submit to the
20 legislature no later than twenty days prior to the convening of
21 the regular session of 2009, a report of its findings,



1 recommendations, and resource requirements to implement the
2 following:

- 3 (1) Appointment of child custody evaluators who meet
4 education, experience, training, professional
5 licensing, continuing education, and other
6 requirements;
- 7 (2) Enforcement of comprehensive standards of practice and
8 ethics for investigations, evaluations, and reporting,
9 as related to child custody;
- 10 (3) Monitoring and administrative practice and procedures
11 as applicable, to process complaints against child
12 custody evaluators and to take appropriate action; and
- 13 (4) An administrative appeal process for both parties and
14 child custody evaluators.

15 (b) The judiciary shall convene and obtain assistance from
16 a child custody advisory task force to review and make findings
17 and recommendations relating to standards, education, and
18 regulatory oversight and control. Members of the task force
19 shall be representatives from the following organizations:

- 20 (1) National Association of Social Workers-Hawaii Chapter;
- 21 (2) Hawaii Association of Marriage & Family Therapists;
- 22 (3) Hawaii Psychological Association;



- 1 (4) Hawaii Psychiatric Medical Association;
- 2 (5) Hawaii Nurses Association;
- 3 (6) Family Law Section of the Hawaii State Bar
4 Association;
- 5 (7) Child Law Section of the Hawaii State Bar Association;
- 6 (8) Honolulu Family Court Professionals;
- 7 (9) Department of the attorney general;
- 8 (10) Child welfare division of the department of human
9 services;
- 10 (11) Professional and vocational licensing division of the
11 department of commerce and consumer affairs;
- 12 (12) Educational institutions with child and family
13 expertise; and
- 14 (13) Other organizations deemed appropriate by the
15 judiciary.
- 16 (c) Task force meetings shall be open to the public but
17 public testimony shall be allowed only upon request of the task
18 force. The task force shall terminate upon the submittal of the
19 judiciary's report to the legislature pursuant to this section.
- 20 SECTION 4. New statutory material is underscored.
- 21 SECTION 5. This Act shall take effect upon its approval.



S.B. NO.

2055
S.D. 2
H.D. 2
C.D.1

APPROVED this 6 day of JUN, 2008



GOVERNOR OF THE STATE OF HAWAII