



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 8, 2014

**GOV. MSG. NO. 1305**

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

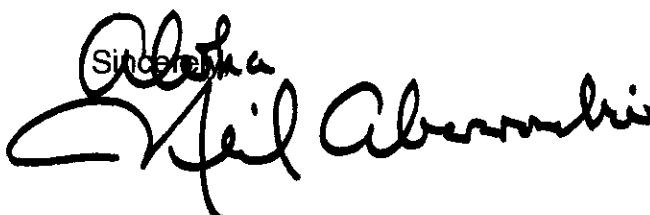
The Honorable Joseph M. Souki,  
Speaker and Members of  
the House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

I am transmitting herewith HB2163 HD2 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB2163 HD2 SD1 CD1

RELATING TO PARENTAL PARITY

*Sincerely,*  


NEIL ABERCROMBIE  
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2014

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2163

Honorable Members  
Twenty-Seventh Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2163, entitled "A Bill for an Act Relating to Parental Parity."

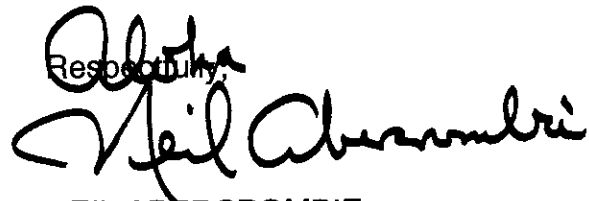
The purpose of this bill is to require the court to balance the interests of parents involved in divorce proceedings when issuing orders related to custody, spousal support and maintenance, and the division of property. The bill would require a court, in awarding child custody, to consider frequent, 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 such child. In addition, a court would be required to consider whether there is a necessary reduction of a parent's employment due to caring for a dependent child and whether there is a wasting of assets by a parent in determining spousal support and maintenance. Finally, this bill creates a rebuttable presumption that the value given to a joint investment or asset given to a parent is a joint gift, excluding inheritance assets.

This bill is objectionable because the rebuttable presumption that an asset given to a parent is a joint gift is vague, ambiguous, and inconsistent with well-established principles guiding the parties and the courts in divorce matters. This amendment would likely create additional litigation in an area of law already burdened with litigation.

Furthermore, the practitioners in the family law area have not had an opportunity to comment on this bill because this change was made by the conference committee. As a result, several letters have been submitted to me expressing strong opposition to enacting this bill as law.

STATEMENT OF OBJECTIONS  
HOUSE BILL NO. 2163  
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For the foregoing reasons, I am returning House Bill No. 2163 without my approval.

*Respectfully,*  


NEIL ABERCROMBIE  
Governor of Hawaii

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## A BILL FOR AN ACT

RELATING TO PARENTAL PARITY.

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

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

3           "(a) In actions for divorce, separation, annulment,  
4 separate maintenance, or any other proceeding where there is at  
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  
7 time during the minority of the child, may make an order for the  
8 custody of the minor child as may seem necessary or proper. In  
9 awarding the custody, the court shall be guided by the following  
10 standards, considerations, and procedures[+] in the best  
11 interests of the child:

12           (1) Custody should be awarded to either parent or to both  
13 parents according to the best interests of the child,  
14 and the court also [~~may~~] shall consider frequent,  
15 continuing, and meaningful contact of [~~each parent~~  
16 ~~with~~] the child with each parent unless the court  
17 finds that [~~a parent is~~] one or both parents are  
18 unable to act in the best interest of the child;



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



1 report are available for cross-examination as to any  
2 matter that has been investigated; and provided  
3 further that the court shall define, in accordance  
4 with section 571-46.4, the requirements to be a court-  
5 appointed child custody evaluator, the standards of  
6 practice, ethics, policies, and procedures required of  
7 court-appointed child custody evaluators in the  
8 performance of their duties for all courts, and the  
9 powers of the courts over child custody evaluators to  
10 effectuate the best interests of a child in a  
11 contested custody dispute pursuant to this section.  
12 Where there is no child custody evaluator available  
13 that meets the requirements and standards, or any  
14 child custody evaluator to serve indigent parties, the  
15 court may appoint a person otherwise willing and  
16 available in accordance with section 571-46.4;

- 17 (5) The court may hear the testimony of any person or  
18 expert, produced by any party or upon the court's own  
19 motion, whose skill, insight, knowledge, or experience  
20 is such that the person's or expert's testimony is  
21 relevant to a just and reasonable determination of  
22 what is for the best physical, mental, moral, and



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



1 court that family violence has been committed by a  
2 parent raises a rebuttable presumption that it is  
3 detrimental to the child and not in the best interest  
4 of the child to be placed in sole custody, joint legal  
5 custody, or joint physical custody with the  
6 perpetrator of family violence. In addition to other  
7 factors that a court shall consider in a proceeding in  
8 which the custody of a child or visitation by a parent  
9 is at issue, and in which the court has made a finding  
10 of family violence by a parent:

11 (A) The court shall consider as the primary factor  
12 the safety and well-being of the child and of the  
13 parent who is the victim of family violence;

14 (B) The court shall consider the perpetrator's  
15 history of causing physical harm, bodily injury,  
16 or assault or causing reasonable fear of physical  
17 harm, bodily injury, or assault to another  
18 person; and

19 (C) If a parent is absent or relocates because of an  
20 act of family violence by the other parent, the  
21 absence or relocation shall not be a factor that





1 weighs against the parent in determining custody  
2 or visitation;

3 (10) A court may award visitation to a parent who has  
4 committed family violence only if the court finds that  
5 adequate provision can be made for the physical safety  
6 and psychological well-being of the child and for the  
7 safety of the parent who is a victim of family  
8 violence;

9 (11) In a visitation order, a court may:

10 (A) Order an exchange of a child to occur in a  
11 protected setting;

12 (B) Order visitation supervised by another person or  
13 agency;

14 (C) Order the perpetrator of family violence to  
15 attend and complete, to the satisfaction of the  
16 court, a program of intervention for perpetrators  
17 or other designated counseling as a condition of  
18 the visitation;

19 (D) Order the perpetrator of family violence to  
20 abstain from possession or consumption of alcohol  
21 or controlled substances during the visitation



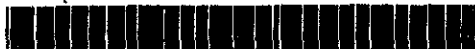
- 1                   and for twenty-four hours preceding the  
2                   visitation;
- 3           (E)   Order the perpetrator of family violence to pay a  
4                   fee to defray the costs of supervised visitation;
- 5           (F)   Prohibit overnight visitation;
- 6        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



- 1 (13) If a court allows a family or household member to  
2 supervise visitation, the court shall establish  
3 conditions to be followed during visitation;
- 4 (14) A supervised visitation center shall provide a secure  
5 setting and specialized procedures for supervised  
6 visitation and the transfer of children for visitation  
7 and supervision by a person trained in security and  
8 the avoidance of family violence;
- 9 (15) The court may include in visitation awarded pursuant  
10 to this section visitation by electronic communication  
11 provided that the court shall additionally consider  
12 the potential for abuse or misuse of the electronic  
13 communication, including the equipment used for the  
14 communication, by the person seeking visitation or by  
15 persons who may be present during the visitation or  
16 have access to the communication or equipment; whether  
17 the person seeking visitation has previously violated  
18 a temporary restraining order or protective order; and  
19 whether adequate provision can be made for the  
20 physical safety and psychological well-being of the  
21 child and for the safety of the custodial parent;



1           (16) The court may set conditions for visitation by  
2           electronic communication under paragraph (15),  
3           including visitation supervised by another person or  
4           occurring in a protected setting. Visitation by  
5           electronic communication shall not be used to:  
6           (A) Replace or substitute an award of custody or  
7           physical visitation except where:  
8                 (i) Circumstances exist that make a parent  
9                 seeking visitation unable to participate in  
10                physical visitation, including military  
11                deployment; or  
12                (ii) Physical visitation may subject the child to  
13                physical or extreme psychological harm; or  
14           (B) Justify or support the relocation of a custodial  
15           parent; and  
16           (17) Notwithstanding any provision to the contrary, no  
17           natural parent shall be granted custody of or  
18           visitation with a child if the natural parent has been  
19           convicted in a court of competent jurisdiction in any  
20           state of rape or sexual assault and the child was  
21           conceived as a result of that offense; provided that:



1 (A) A denial of custody or visitation under this  
2 paragraph shall not affect the obligation of the  
3 convicted natural parent to support the child;

4 (B) The court may order the convicted natural parent  
5 to pay child support;

6 (C) This paragraph shall not apply if subsequent to  
7 the date of conviction, the convicted natural  
8 parent and custodial natural parent cohabit  
9 and establish a mutual custodial environment for  
10 the child; and

11 (D) A custodial natural parent may petition the court  
12 to grant the convicted natural parent custody and  
13 visitation denied pursuant to this paragraph, and  
14 upon such petition the court may grant custody  
15 and visitation to the convicted natural parent  
16 where it is in the best interest of the child."

17 SECTION 2. Section 580-47, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§580-47 Support orders; division of property. (a) Upon  
20 granting a divorce, or thereafter if, in addition to the powers  
21 granted in subsections [~~(e)~~] (d) and [~~(d)~~] (e), jurisdiction of  
22 those matters is reserved under the decree by agreement of both

1 parties or by order of court after finding that good cause  
2 exists, the court may make any further orders as shall appear  
3 just and equitable (1) compelling the parties or either of them  
4 to provide for the support, maintenance, and education of the  
5 children of the parties; (2) compelling either party to provide  
6 for the support and maintenance of the other party; (3) finally  
7 dividing and distributing the estate of the parties, real,  
8 personal, or mixed, whether community, joint, or separate; and  
9 (4) allocating, as between the parties, the responsibility for  
10 the payment of the debts of the parties whether community,  
11 joint, or separate, and the attorney's fees, costs, and expenses  
12 incurred by each party by reason of the divorce. In making  
13 these further orders, the court shall take into consideration:  
14 the respective merits of the parties, the relative abilities of  
15 the parties, the condition in which each party will be left by  
16 the divorce, the burdens imposed upon either party for the  
17 benefit of the children of the parties, the concealment of or  
18 failure to disclose income or an asset, or violation of a  
19 restraining order issued under section 580-10(a) or (b), if any,  
20 by either party, and all other circumstances of the case. In  
21 establishing the amounts of child support, the court shall use  
22 the guidelines established under section 576D-7. Provision may



1 be made for the support, maintenance, and education of an adult  
2 or minor child and for the support, maintenance, and education  
3 of an incompetent adult child whether or not the petition is  
4 made before or after the child has attained the age of majority.  
5 In those cases where child support payments are to continue due  
6 to the adult child's pursuance of education, the agency, three  
7 months prior to the adult child's nineteenth birthday, shall  
8 send notice by regular mail to the adult child and the custodial  
9 parent that prospective child support will be suspended unless  
10 proof is provided by the custodial parent or adult child to the  
11 child support enforcement agency, prior to the child's  
12 nineteenth birthday, that the child is presently enrolled as a  
13 full-time student in school or has been accepted into and plans  
14 to attend as a full-time student for the next semester a post-  
15 high school university, college, or vocational school. If the  
16 custodial parent or adult child fails to do so, prospective  
17 child support payments may be automatically suspended by the  
18 child support enforcement agency, hearings officer, or court  
19 upon the child reaching the age of nineteen years. In addition,  
20 if applicable, the agency, hearings officer, or court may issue  
21 an order terminating existing assignments against the  
22 responsible parent's income and income assignment orders.



1           In addition to any other relevant factors considered, the  
2 court, in ordering spousal support and maintenance, shall  
3 consider the following factors:

- 4           (1) Financial resources of the parties;
- 5           (2) Ability of the party seeking support and maintenance  
6           to meet his or her needs independently;
- 7           (3) Duration of the marriage;
- 8           (4) Standard of living established during the marriage;
- 9           (5) Age of the parties;
- 10          (6) Physical and emotional condition of the parties;
- 11          (7) Usual occupation of the parties during the marriage;
- 12          (8) Vocational skills and employability of the party  
13          seeking support and maintenance;
- 14          (9) Needs of the parties;
- 15          (10) Custodial and child support responsibilities;
- 16          (11) Ability of the party from whom support and maintenance  
17          is sought to meet his or her own needs while meeting  
18          the needs of the party seeking support and  
19          maintenance;
- 20          (12) Other factors which measure the financial condition in  
21          which the parties will be left as the result of the





1 action under which the determination of maintenance is  
2 made; [and]

3 (13) Probable duration of the need of the party seeking  
4 support and maintenance[-];

5 (14) Any necessary reduction in employment due to the needs  
6 of a dependent child of the marriage or the  
7 circumstances of the marriage; and

8 (15) Wasting of assets by a parent.

9 The court may order support and maintenance to a party for  
10 an indefinite period or until further order of the court;  
11 provided that in the event the court determines that support and  
12 maintenance shall be ordered for a specific duration wholly or  
13 partly based on competent evidence as to the amount of time  
14 which will be required for the party seeking support and  
15 maintenance to secure adequate training, education, skills, or  
16 other qualifications necessary to qualify for appropriate  
17 employment, whether intended to qualify the party for a new  
18 occupation, update or expand existing qualification, or  
19 otherwise enable or enhance the employability of the party, the  
20 court shall order support and maintenance for a period  
21 sufficient to allow completion of the training, education,



1 skills, or other activity, and shall allow, in addition,  
2 sufficient time for the party to secure appropriate employment.

3 (b) There shall be a rebuttable presumption that any value  
4 given for a joint investment or asset given to a parent is a  
5 joint gift. This subsection shall not apply to inheritance  
6 assets.

7 ~~[(b)]~~ (c) An order as to the custody, management, and  
8 division of property and as to the payment of debts and the  
9 attorney's fees, costs and expenses incurred in the divorce  
10 shall be final and conclusive as to both parties subject only to  
11 appeal as in civil cases. The court shall at all times,  
12 including during the pendency of any appeal, have the power to  
13 grant any and all orders that may be necessary to protect and  
14 provide for the support and maintenance of the parties and any  
15 children of the parties to secure justice, to compel either  
16 party to advance reasonable amounts for the expenses of the  
17 appeal including attorney's fees to be incurred by the other  
18 party, and to amend and revise such orders from time to time.

19 ~~[(e)]~~ (d) No order entered under the authority of  
20 subsection (a) or entered thereafter revising so much of such an  
21 order as provides for the support, maintenance, and education of  
22 the children of the parties shall impair the power of the court



1 from time to time to revise its orders providing for the  
2 support, maintenance, and education of the children of the  
3 parties upon a showing of a change in the circumstances of  
4 either party or any child of the parties since the entry of any  
5 prior order relating to the support, maintenance, and education.  
6 The establishment of the guidelines or the adoption of any  
7 modifications made to the guidelines set forth in section 576D-7  
8 may constitute a change in circumstances sufficient to permit  
9 review of the support order. A material change of circumstances  
10 will be presumed if support as calculated pursuant to the  
11 guidelines is either ten per cent greater or less than the  
12 support amount in the outstanding support order. The need to  
13 provide for the child's health care needs through health  
14 insurance or other means shall be a basis for petitioning for a  
15 modification of the support order. The most current guidelines  
16 shall be used to calculate the amount of the child support  
17 obligation.

18       ~~(d)~~ (e) Upon the motion of either party supported by an  
19 affidavit setting forth in particular a material change in the  
20 physical or financial circumstances of either party, or upon a  
21 showing of other good cause, the moving party, in the discretion  
22 of the court, and upon adequate notice to the other party, may



1 be granted a hearing. The fact that the moving party is in  
2 default or arrears in the performance of any act or payment of  
3 any sums theretofore ordered to be done or paid by the party  
4 shall not necessarily constitute a bar to the granting of the  
5 hearing. The court, upon such hearing, for good cause shown may  
6 amend or revise any order and shall consider all proper  
7 circumstances in determining the amount of the allowance, if  
8 any, which shall thereafter be ordered.

9 ~~(e)~~ (f) The responsible parent or the custodial parent  
10 shall have a right to petition the family court or the child  
11 support enforcement agency not more than once every three years  
12 for review and adjustment of the child support order without  
13 having to show a change in circumstances. The responsible or  
14 custodial parent shall not be precluded from petitioning the  
15 family court or the child support enforcement agency for review  
16 and adjustment more than once in any three-year period if the  
17 second or subsequent request is supported by proof of a  
18 substantial or material change of circumstances.

19 ~~(f)~~ (g) Attorney's fees and costs. The court hearing  
20 any motion for orders either revising an order for the custody,  
21 support, maintenance, and education of the children of the  
22 parties, or an order for the support and maintenance of one



1 party by the other, or a motion for an order to enforce any such  
2 order or any order made under subsection (a) of this section,  
3 may make such orders requiring either party to pay or contribute  
4 to the payment of the attorney's fees, costs, and expenses of  
5 the other party relating to such motion and hearing as shall  
6 appear just and equitable after consideration of the respective  
7 merits of the parties, the relative abilities of the parties,  
8 the economic condition of each party at the time of the hearing,  
9 the burdens imposed upon either party for the benefit of the  
10 children of the parties, the concealment of or failure to  
11 disclose income or an asset, or violation of a restraining order  
12 issued under section 580-10(a) or (b), if any, by either party,  
13 and all other circumstances of the case."

14 SECTION 3. Section 580-74, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§580-74 Support of spouse and children.** Upon decreeing a  
17 separation, the court may make such further decree for the  
18 support and maintenance of either spouse and for the support,  
19 maintenance, and education of minor children, by either spouse,  
20 or out of the property of either spouse, as may appear just and  
21 proper; provided that the court shall apply the considerations  
22 required by section 580-47(a) in formulation of any support



1 decree in any action under this part; and provided further that  
2 the court may amend or revise any such decree in the same manner  
3 and under the same circumstances as provided for by section  
4 ~~[580-47(d)-]~~ 580-47(e)."

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

8 SECTION 5. If any provision of this Act, or the  
9 application thereof to any person or circumstance, is held  
10 invalid, the invalidity does not affect other provisions or  
11 applications of the Act that can be given effect without the  
12 invalid provision or application, and to this end the provisions  
13 of this Act are severable.

14 SECTION 6. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.

APPROVED this            day of            , 2014

GOVERNOR OF THE STATE OF HAWAII

