

LATE TESTIMONY

-----Original Message-----

From: Dara Carlin, M.A. [mailto:breaking-the-silence@hotmail.com]
Sent: Monday, March 10, 2008 10:58 PM
To: HSHtestimony
Subject: SB2055 SD2 to be heard Tuesday, 03/11/08 at 8:30am by the HSH
Committee
Importance: High

> TO: Representative Maile Shimabukuro, Chair
> Representative Karl Rhoads, Vice Chair
> Health & Human Services Committee Members
>
> FROM: Dara Carlin, M.A.
> Oahu VOICES
> 716 Umi Street, Suite 210
> Honolulu, HI 96819
>
> DATE: March 11, 2008
>
> RE: Support for SB2055 SD2, Relating To Family Court
>
>
>

The Formerly Battered Womens Caucus, VOICES, stands in support of SB2055 SD2 pertaining to the training and certification of Custody Evaluators. What has been proposed in this measure makes sense and is long overdue: everyone should be properly and adequately trained to do the job they're in and if they work with children and families at-risk, the public should have some assurance that this professional does not have any history or record of being a perpetrator of harm towards children and families (especially their own). The time frame given to get Custody Evaluators "up and running" in terms of their training is also a fair amount of time that should not produce hardship on those who would pursue this avenue of work.

>
> Thank you for your time and consideration.

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>
> Respectfully,
>
> Dara Carlin, M.A.
> Oahu VOICES Representative

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LATE TESTIMONY

Date: March 11, 2008

To: Representative Karen Leinani Awana
Representative Della Au Belatti
Representative Joe Bertram
Representative Rida T.R. Cabanilla
Representative Josh Green
Representative John Mizuno
Representative James Kunane Tokioka
Representative Gene Ward

Human Services & Housing Committee

From: Chris Lethem

Subj: Testimony **IN STRONG SUPPORT** of **SB2055 SD1** re procedures and requirements for child custody evaluator training and certification

Hearing: Tuesday, March 11, 2008; 8:30 a.m.; Room 329, State Capitol

First, I am very gratified that this bill, which is decisive to improving family court custody decisions, is being given a hearing.

I strongly support **SB2055 SD2**. With some caveats as to the recent changes made to the language which adversely affects the intent of this bill.

There is a reason this bill has come into being. Custody evaluators and attorneys have had free reign to make custody recommendations to the court based on hearsay, half truths and hidden agendas, without consequence or accountability. Unfortunately, parents have had little recourse, except further litigation. We the parents have not had any kind of definitive, complaint process for unethical behavior by court appointed custody evaluators. Nor has there ever been a formalized review process for unethical conduct.

This has resulted in not only fantastically expensive but also emotionally frustrating, and destructive litigation for parents. Even worse our children suffer substantially higher adverse childhood events (ACEs), such as neglect,

hunger, homelessness these (ACEs) often lead to further negative outcomes for our children as they reach the age of majority.

Some of the most obvious problems with bad behavior stem from the family courts own "Custody Investigation Unit". The very reason this bill is before you today stems from the unprofessional and unethical conduct by the personnel in this unit. Giving them a bye makes no sense. Also this means that parents who can afford to pay for a custody evaluator, gets the benefit of an evaluator that is certified, properly educated and held to a standard of ethical conduct. But if you can't afford a CE, you'll get someone who has not met the educational requirements and nor will you have recourse if they do their job poorly or unethically.

The bad conduct of attorneys acting as custody evaluators is another reason this bill is before you today. Attorneys have historically used a tactic known as "Sharp Shooting" when acting as custody evaluators.

Sharp shooting is where an attorney acting as a custody evaluator will slur one parent viciously in an attempt to persuade the attacked parent to capitulate custody. This tactic is akin to playing judge, jury and executioner. This tactic leads to the worst possible outcomes and guarantees increased long term conflict between parents. Whereas, the conflict may have been low, the conflict level will now increase exponentially. This kind of irresponsible behavior is why education and a certification and ethics component are so important.

As a member of the Family Court Models Committee and SR10 Family Court Legal Interventions Working Group (FCLIWG) that developed this bill, the need for such legislation was identified, professionals were brought together to collaborate on solutions to the issues, and this bill was tailored to complement an already existing Family Court memo dealing with this very subject. This collaboration included family law attorneys, psychologists specializing in child custody cases, social workers, marriage and family therapists performing custody evaluations, advocates involved with domestic violence issues and children's issues, legal service providers and others.

The Committee started with the Family Court Custody Evaluation Standards and Procedures memo, issued June 1, 2007, and also examined California (and some other states) related rules, procedures and legislative language. This resulting bill balances creating statutory requirements, with giving discretion to the Board of Family Court Judges, and Family Court, in

developing custody evaluator standards and procedures. The language and intent is consistent with, and builds upon, the family court Custody Evaluation memo, which is already in place.

These custody evaluator standards, procedures, training and certification requirements are needed to ensure standards of excellence in performing custody evaluations. A lack of consistent standards leads to unpredictable and incongruent outcomes, which adversely affect children and families. This bill has requirements for training and certification which can bring together the various professionals who perform custody evaluations, resulting in cross-training, collaboration and a wider knowledge base and level of understanding for custody evaluators. The certification requirements will ensure that we have qualified custody evaluators who have met the minimum licensing, education, training and experience requirements. This will help make sure that Hawaii's Family Courts focus on the needs children, in contested custody cases, not only with consistently high standards, but with respect for the adverse outcomes that can occur if children are caught in long term custody litigation and what began as low conflict is inextricably turned into a high conflict case because of the inadequate performance of the custody evaluator.

This bill, coupled with SB2054 (factors the courts shall consider in determining the best interest of the child), make a powerful positive impact on how child custody decisions shall be performed and demonstrate the importance the Legislature places on children in these vulnerable situations.

Your consideration of this bill, and outstanding support for the FCLIWG is very appreciated!

Best Regards,

Chris Lethem

March 10, 2008

To: Rep. Maile S. L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair
Committee on Human Services and Housing

From: Tom Marzec

Subj: Testimony **IN STRONG SUPPORT** of, and **offering Amendments** to **SB2055 SD2** re procedures and requirements for child custody evaluator training and certification

Hearing: Tuesday, March 11, 2008; 8:30 a.m.; Room 329, State Capitol

I strongly support **SB2055 SD2**, and request the below **Amendment** be incorporated into this bill and that this bill be rereferred to not include the House Finance Committee, for the reasons explained below.

As a member of the Family Court Models Committee and SR10 Family Court Legal Interventions Working Group (FCLIWG) that developed this bill, the need for such legislation was identified, professionals were brought together to collaborate on solutions to the issues, and this bill was tailored to complement an already existing Family Court memo dealing with this very subject. This collaboration included family law attorneys, psychologists specializing in child custody cases, social workers, marriage and family therapists performing custody evaluations, advocates involved with domestic violence issues and children's issues, legal service providers and others.

The Committee started with the Family Court Custody Evaluation Standards and Procedures memo, issued June 1, 2007, and also examined California (and some other states) related rules, procedures and legislative language. This resulting bill balances creating statutory requirements, with giving discretion to the Board of Family Court Judges, and Family Court, in developing custody evaluator standards and procedures. The language and intent is consistent with, and builds upon, the family court Custody Evaluation memo, which is already in place.

These custody evaluator standards, procedures, training and certification requirements are needed to ensure we consistently and effectively perform custody evaluations. A lack of standards leads to unpredictable and disparate results, which negatively affect children and families. This bill has requirements for training and certification which can bring together the various professionals who perform custody evaluations, resulting in cross-training, collaboration and a wider knowledge base and level of understanding for custody evaluators. The certification requirements will ensure that we have qualified custody evaluators who have met the minimum licensing, education, training and experience requirements. This will help ensure that our courts address children, in contested custody cases, with consistently high standards.

Amendment:

► Page 2, lines 3-6, delete the stricken language

"Child custody evaluator" means all court-appointed investigators or professional persons directed by the court to make investigations and reports pursuant to section 571-46, excluding social workers employed by the judiciary.

► Page 5, line 11, add a new subsection (b), relabel the now subsection (c)

(b) The licensing requirements of this section shall not apply to social workers employed by the judiciary, who are performing as child custody evaluators.

(bC) A child custody evaluator who is licensed shall be subject to disciplinary action by the board or the director of commerce and consumer affairs for unprofessional conduct as defined in the applicable licensing law.

Rationale: This Judiciary-driven amendment is misplaced here, in the definition section. HRS 476E-6 states, in relevant part regarding social workers:

§467E-6 Exemptions. Licensure shall not be required of:

- (1) Any licensed person doing work within the scope of practice or duties of the person's profession that overlaps with the practice of social work; provided the person does not purport to be a social worker;
- (2) Any person employed by a federal, state, or county government agency in a social worker position, but only at those times when that person is carrying out the duties and responsibilities as a social worker in governmental employment;

This exemption applies ONLY to licensure -- which is just one component of custody evaluator standards. By "excluding social workers employed by the judiciary" in the definition of child custody evaluator, then such social workers are also excluded from the other relevant parts of this bill to include: investigation standards; education, experience and training requirements; complaints and administrative appeals procedures; disqualification and decertification standards, ethical guidelines, etc.

Such an overbroad exclusion, based on only licensing issues, is totally unacceptable and may very well harm children through substandard and poorly performed child custody evaluations by individuals who are potentially untrained, unexperienced and lack the required education requirements. Also, accountability for such individuals would be lacking as they would be excluded from the intended complaint and administrative appeals process based on standards and ethical guidelines.

This judiciary social worker exclusion should only apply to licensure, and should be placed appropriately in the licensing section of these requirements.

Next, the current bill, as written, does not require implementation until January 1, 2010. Coordination will be required between the Judiciary, Family Court, the Board of Family Court Judges (Board), the Department of Commerce and Consumer Affairs (DCCA), associated professionals, and the public to establish and maintain the required state-wide policies and procedures. This bill requires annual judiciary reports to the legislature, in order to ensure that the necessary resources are understood and provided or the requirements are modified. Since only policy development will occur in the next year, allowing this bill to go forward will not require significant resources and in 2009 the legislature will have more and better information with which to make decisions. For example, the sharing of responsibilities (both in developing policies and ongoing administration) between family court, the Board and DCCA is an area that requires further exploration and evaluation.

The major difference between SB2055 SD2 and the House version which was previously heard by this Committee (HB2037 HD1), is that this bill does not assign all responsibilities to the DCCA and requires the Judiciary to make reports to the Legislature prior to the 2009 session. These reports are intended to address the potential responsibilities recommended for the DCCA, in the process of addressing resource and implementation requirements. I firmly believe that keeping the Judiciary as the lead entity in these issues, and allowing the DCCA to play a supporting role based on their expertise, is a more effective proposition. This balancing of responsibilities, expertise and resources is best determined, evaluated and achieved via the Judiciary reporting requirements.

For these reasons, I also request that this bill be rereferred to not include the House Finance Committee. As the implementation date is almost two years into the future, and the resource requirements will not be known fully until the Judiciary reports back to the Legislature, a referral to House Finance now may be premature.

This bill, coupled with SB2054 (factors the courts shall consider in determining the best interest of the child), make a powerful positive impact on how child custody decisions shall be performed and demonstrate the importance the Legislature places on children in these vulnerable situations.

Your consideration of this bill, and outstanding support for the FCLIWG is very appreciated!

Sincerely,



Thomas A. Marzec

Custody Evaluator's Annual Training Certification

For Calendar Year: _____ Date Submitted: _____
(submit by January 31st)

I, _____, wish to continue to serve as a court appointed custody evaluator. My current contact information:

Address: _____

Phone No. _____ Cell No. _____ Fax No. _____

E-mail Address: _____

I am licensed to practice in the field of _____ in the State of Hawai'i. My license expires on _____.

During the past year to date, the following complaints/criminal charges were filed/lodged against me (please list disposition, if any): _____

I have received _____ appointment orders and I have performed the following pro bono services as a custody evaluator in the past calendar year:

I have taken the following specialized training this past calendar year (list name of course, date, sponsoring organization, whether and how many continuing education credits were earned—for a course or program outside the purview of the CE's profession and the Family Law Section's annual program, note the date of CIU's approval):

Course #1: _____

Course #2: _____

Course #3: _____

INSTRUCTIONS: This form should be **typewritten** and submitted to Family Court, Custody Investigation Unit, P. O. Box 3498, Honolulu, HI, 96811-3498.

The above courses were relevant to the following topics in the area of child custody and access (check all that apply):

Courses		
#1	#2	#3
		Child and family development
		Child and family mental health or psychopathology
		Family systems/family dynamics
		Parenting (including assessment of parenting ability, constructing appropriate and successful parenting plans)
		Effects of divorce, separation (or parents who never married/never lived together), and/or remarriage/blended families on children
		Family law
		Family/domestic violence dynamics, including: impact on children, impact of witnessing such violence, safety planning
		Child abuse and neglect, child sex abuse
		Substance abuse
		Safety issues that arise during the legal and evaluation processes
		Legal, psychosocial, mental health research regarding "high conflict" couples or "toxic litigants" (with and without domestic violence dynamics)
		Cultural and religious diversity
		Formal and informal community resources
		Information/data collection, assessment, and evaluation
		Interview techniques
		Evaluator bias, observer effects, and maintaining neutrality and objectivity
		Ethical considerations in the CE's respective profession, particularly in the context of custody evaluations
		Other topics relevant to the area of child custody and access (please list the topics):

DATED: Honolulu, Hawai'i, _____.

Signature