

SPEC. COM. REP. NO. 2

Honolulu, Hawaii

JAN 02 2008

RE: S.R. No. 10
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam President:

Your Senate Committee on Human Services and Public Housing to which was referred S.R. No. 10, S.D. 1, entitled:

"SENATE RESOLUTION REQUESTING THE SENATE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING TO CONVENE A WORKING GROUP TO FURTHER STUDY RECOMMENDATIONS MADE BY THE SCR 52 TASK FORCE COMMITTEES,"

begs leave to report as follows:

PART I. BACKGROUND

During the Regular Session of 2006 of the Twenty-Third State Legislature, the Legislature adopted S.C.R. No. 52, S.D. 1, which requested the Senate and House of Representatives Committees on Human Services to continue addressing issues relating to the Hawaii Family Court, including the legal interventions available to the Family Court and to establish one or more task forces to facilitate its work, as recommended by an earlier task force established during the previous session. See S.R. No. 40 (2004).

Pursuant to S.C.R. No. 52, S.D. 1 (2006), a task force was established ("SCR 52 Task Force"), which developed and submitted its findings and recommendations to the Legislature prior to the convening of the Regular Session of 2007 of the Twenty-Fourth State Legislature. The Senate determined that unresolved issues and proposals required additional work and continuing attention.



Accordingly, the Senate adopted S.R. No. 10, S.D. 1, during the Regular Session of 2007 of the Twenty-Fourth State Legislature, requesting the Senate Committee on Human Services and Public Housing to convene a working group, to be known as the Family Court Legal Interventions Working Group, to further study the recommendations of the four committees convened pursuant to S.C.R. No. 52, S.D. 1, during the Regular Session of 2006 of the Twenty-Third State Legislature. The four committees were: (1) Best Interest of the Child Committee; (2) Family Court Models Committee; (3) Family Court Sunshine and Accountability Committee; and (4) Temporary Restraining Orders Committee. S.R. No. 10, S.D. 1 (2007), also requested the Family Court Legal Interventions Working Group to submit a report to the Legislature of its findings and recommendations during its two-year term, including any proposed legislation, with an interim report prior to the convening of the Regular Session of 2008.

The Chair of the Senate Committee on Human Services and Public Housing, Senator Suzanne Chun Oakland, convened the Family Court Legal Interventions Working Group, comprised of representatives of the organizations recommended in S.R. No. 10, S.D. 1 (2007).

The Family Court Legal Interventions Working Group held public meetings on July 18, 2007; August 30, 2007; September 20, 2007; November 16, 2007; and December 14, 2007. The Working Group established committees to continue to address the four subject areas under S.C.R. 52, S.D. 1 (2006), namely: (1) Best Interest of the Child; (2) Family Court Models; (3) Family Court Sunshine and Accountability; and (4) Temporary Restraining Orders.

Presentations were made to the Working Group by Judge Frances Q.F. Wong on the Hawaii Family Court and Moya Gray, Volunteer Legal Services of Hawaii, on the Hawaii Parenting Plan pilot project.

PART II. WORKING GROUP FINDINGS

The Working Group received a presentation made by Judge Frances Q.F. Wong wherein she provided information on the Hawaii Family Court's efforts to improve standards and services to parties. One issue that was raised during this presentation was the need for building community capacity to assist individuals participating in family court proceedings and throughout the



community. Judge Wong also responded to a request for further clarification of her statement on the need for building community capacity to assist the court. She provided twelve recommendations for services in the community to improve the family court process, and also assist individuals in the community prior and subsequent to involvement in family court proceedings, which include the following services:

- (1) Communications for before-married/just-married couples;
- (2) Parenting programs for various age/developmental groups;
- (3) Services for domestic violence victims and their children;
- (4) Awareness and assistance of executive agencies regarding harm to children exposed to domestic violence;
- (5) Supervised visitation centers;
- (6) Legal services to the poor and the gap group;
- (7) Expanding resources to advocate groups;
- (8) Primary prevention services;
- (9) Evidence-based training on domestic violence for faith-based institutions;
- (10) Improving access to mental health services for adults and children;
- (11) Attention and involvement of schools of medicine, psychology, and social work with the court systems as adequately trained custody investigators/evaluators; and
- (12) Growing the court's own custody unit to include social workers, mediators, and mental health professionals.

The Working Group will continue to explore these issues and work toward incorporating methods for building community capacity to support the Hawaii Family Court, as appropriate.

The following reflects the work and findings of each committee of the Working Group.



A. Best Interest of the Child Committee

The Best Interest of the Child Committee held meetings on September 11, 2007; October 10, 2007; and November 14, 2007.

The Best Interest of the Child Committee continued to examine the need for and proposed criteria necessary in establishing a "best interest of the child" standard for the courts to consider in making custody determinations. The Committee considered the criteria included in H.B. No. 690 and S.B. No. 1160, introduced in 2007, the different statutes enacted in other jurisdictions throughout the country, including Alabama, Indiana, Maine, and Nevada, and a list of proposed standards prepared by the national organization of the Hawaii State Coalition Against Domestic Violence. The Committee determined that the applicable statutes in other jurisdictions, such as Georgia, may warrant further consideration in establishing the most appropriate and effective standard for Hawaii. However, it agreed to proceed with proposed legislation to establish a standard that includes sixteen different factors for the courts to consider. The proposed legislation to be submitted to the 2008 Legislature is attached as Exhibit A.

Finally, the Committee determined that further discussion and refinement of the best interest of the child standard and criteria may be necessary, and, therefore, the Committee will continue its efforts in the coming year.

B. Family Court Models Committee

The Family Court Models Committee held meetings on August 21, 2007; September 11, 2007; October 9, 2007; November 6, 2007; November 16, 2007; and December 3, 2007.

The Family Court Models Committee examined the memorandum prepared by Judge Frances Q.F. Wong regarding standards, certification, and training requirements for custody evaluators. It adopted Judge Wong's recommendations regarding the minimum professional requirements for custody evaluators and agreed that these requirements should be applicable in all circuits.

The Committee also agreed that certification and training should be required of all custody evaluators, including those who are court employees, as well as those appointed by the court.



Discussion was entertained regarding the necessity of administrative support for certification requirements to ensure appropriate oversight of curricula and training programs, consistency in the application of standards, record keeping accuracy, and ongoing assessment of curricula and training and certification requirements. The Committee also developed an approach for ensuring consistency of standards, certification, and training for custody evaluators by identifying custody evaluators as those who investigate and report on the care, welfare, and custody of any minor child of the parties; defining the term "custody evaluator"; providing minimum professional standards; requiring certification; and requiring training, including a grace period of two years for current custody evaluators who do not meet the minimum professional standards. Proposed legislation to reflect the Committee's recommendation to address the need for statewide standards for custody evaluator training and certification is attached as Exhibit B.

The Committee determined that it will continue to explore the issues of the location for a certification or training program for custody evaluators, whether training and certification programs can be conducted by the same organization or separate entities, and the need to examine various models, the establishment of an Association of Family and Conciliation Courts chapter, existing programs, and the utilization of citizen advisory committees.

C. Family Court Sunshine and Accountability Committee

The Family Court, Sunshine and Accountability Committee held meetings on August 6, 2007 and October 30, 2007.

This Committee examined the issues of confidentiality of records and the provision of equal access to justice in the family courts. Such discussion encompassed the issue of the balance between the need for confidentiality, the security of personal information, and completely sealed records versus the need for access to information, including financial information, with regard to divorce and paternity cases, as well as the potential for establishing a family advisory committee or ombudsman as a means for addressing concerns.

No proposed legislation is being offered at this time; however, the Committee will continue to address these issues throughout the next year.



D. Temporary Restraining Order Committee

The Temporary Restraining Order Committee held meetings on August 16, 2007; October 1, 2007; and November 14, 2007.

The Temporary Restraining Order Committee examined issues related to the temporary restraining order process. It reviewed the First Circuit Court's new temporary restraining order forms and its success in addressing many formerly discussed issues. The Committee established a list of issues to continue to discuss and address.

Information was a key issue, including necessary information to be provided to the courts; information necessary for petitioners and respondents concerning their rights, procedures, and the implications of temporary restraining orders; who will disseminate such information; and the best methods for providing access to such information. The Committee did not have any recommendations for proposed legislation at this time. However, it will continue to work toward addressing remaining issues, including but not limited to the following, which will likely result in future legislation:

- (1) Ensuring parties involved in the temporary restraining order cases receive necessary information regarding the process, which will include working in conjunction with the Honolulu Police Department and the Judiciary in formulating a brochure, website, or other means for ensuring access to such information;
- (2) Exploring the need for additional funding for the collection or dissemination of data available; and
- (3) Examining the Hawaii's Opportunity for Probation with Enforcement (HOPE) project and its possible expansion to encompass extreme temporary restraining order violators.



PART III. WORKING GROUP RECOMMENDATIONS

The Working Group considered the work of each its four committees and prepared proposed legislation, attached, for introduction during the Regular Session of 2008. Accordingly, the Working Group recommends the following:

- (1) Legislative support for the adoption of a "best interest of the child" standard for the courts to observe in making custody determinations as attached in Exhibit A; and
- (2) Legislative support for the adoption of a measure to establish statewide custody evaluator certification and training standards as attached in Exhibit B.

The Working Group, and committees, will continue to explore the aforementioned issues throughout the duration of their term. Final findings and recommendations of the committees and the Working Group will be submitted to the Twenty-Fifth State Legislature prior to the Regular Session of 2009.

PART IV. CONCLUSION

After a majority vote of the members, the Working Group recommends that legislation as outlined and attached be introduced during the Regular Session of 2008 to implement the findings and recommendations of the Working Group contained herein. The convener of the Working Group, Senator Suzanne Chun Oakland, will sponsor introduction of the necessary legislation.

Respectfully submitted on
behalf of the members of the
Committee on Human Services and
Public Housing of the Senate,


SENATOR SUZANNE CHUN OAKLAND,
Chair



DRAFT

Report Title:

Family Court; Custody

Description:

Amends custody and visitation criteria and procedures to specify what factors the courts shall consider in determining the best interest of the child.



A BILL FOR AN ACT

RELATING TO FAMILY COURT.

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

1 SECTION 1. Section 571-46, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§571-46 Criteria and procedure in awarding custody and**
4 **visitation[-]; best interest of the child.** (a) In the actions
5 for divorce, separation, annulment, separate maintenance, or any
6 other proceeding where there is at issue a dispute as to the
7 custody of a minor child, the court, during the pendency of the
8 action, at the final hearing, or any time during the minority of
9 the child, may make an order for the custody of the minor child
10 as may seem necessary or proper. In awarding the custody, the
11 court shall be guided by the following standards,
12 considerations, and procedures:

13 (1) Custody should be awarded to either parent or to both
14 parents according to the best interests of the child,
15 and the court may also consider frequent, continuing,
16 and meaningful contact of each parent with the child



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1 unless the court finds that a parent is unable to act
2 in the best interest of the child;

3 (2) Custody may be awarded to persons other than the
4 father or mother whenever the award serves the best
5 interest of the child. Any person who has had de
6 facto custody of the child in a stable and wholesome
7 home and is a fit and proper person shall be entitled
8 prima facie to an award of custody;

9 (3) If a child is of sufficient age and capacity to
10 reason, so as to form an intelligent preference, the
11 child's wishes as to custody shall be considered and
12 be given due weight by the court;

13 (4) Whenever good cause appears therefor, the court may
14 require an investigation and report concerning the
15 care, welfare, and custody of any minor child of the
16 parties. When so directed by the court, investigators
17 or professional personnel attached to or assisting the
18 court shall make investigations and reports [~~which~~
19 that shall be made available to all interested parties
20 and counsel before hearing, and the reports may be
21 received in evidence if no objection is made and, if
22 objection is made, may be received in evidence;



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1 provided the person or persons responsible for the
2 report are available for cross-examination as to any
3 matter that has been investigated;

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

12 (6) Any custody award shall be subject to modification or
13 change whenever the best interests of the child
14 require or justify the modification or change and,
15 wherever practicable, the same person who made the
16 original order shall hear the motion or petition for
17 modification of the prior award;

18 (7) Reasonable visitation rights shall be awarded to
19 parents, grandparents, siblings, and any person
20 interested in the welfare of the child in the
21 discretion of the court, unless it is shown that



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1 rights of visitation are detrimental to the best
2 interests of the child;

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

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



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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;



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- 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,



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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~~] shall provide:
15 a secure setting and specialized procedures for
16 supervised visitation and the transfer of children for
17 visitation and supervision by a person trained in
18 security and the avoidance of family violence.

19 (b) In determining what constitutes the best interest of
20 the child under this section, the court shall consider but not
21 be limited to the following:



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- 1 (1) Any history of sexual or physical abuse of a child by
2 a parent;
- 3 (2) Any history of neglect or emotional abuse of a child
4 by a parent;
- 5 (3) The overall quality of the parent-child relationship;
- 6 (4) The history of care giving or parenting by each parent
7 prior and subsequent to marital separation;
- 8 (5) Each parent's cooperation in developing and
9 implementing a plan to meet the child's ongoing
10 schedule, needs, and interests;
- 11 (6) The physical health needs of the child;
- 12 (7) The emotional needs of the child;
- 13 (8) The safety needs of the child;
- 14 (9) The educational needs of the child;
- 15 (10) The child's need for relationships with siblings;
- 16 (11) Each parent's willingness to allow the child to
17 maintain family connections through family events and
18 activities;
- 19 (12) Each parent's ability to separate the child's needs
20 from their own;
- 21 (13) Any history of or evidence of current drug or alcohol
22 abuse by a parent;



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- 1 (14) The mental health and psychological adjustment of the
2 parent;
- 3 (15) The areas and levels of conflict present within the
4 family; and
- 5 (16) Any parent's prior wilful misuse of the protection
6 from abuse process under chapter 586 in order to gain
7 a tactical advantage in any proceeding involving the
8 determination of custody of a minor. Such wilful
9 misuse may only be considered if established by clear
10 and convincing evidence, and if it is further found by
11 clear and convincing evidence that in the particular
12 circumstances of the parents and child that wilful
13 misuse tend to show that the acting parent will in the
14 future have lessened ability and willingness to
15 cooperate and work with the other parent in their
16 shared responsibilities for the child. The court
17 shall articulate findings of fact wherever relying
18 upon this factor as part of its determination of a
19 child's best interests. The voluntary dismissal of a
20 protection from abuse petition may not, taken alone,
21 be treated as evidence of the wilful misuse of the
22 protection from abuse process."



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1 SECTION 2. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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Exhibit B

S.B. NO.

DRAFT

Report Title:

Family Court; Child Custody Evaluator Training and Certification Program

Description:

Establishes the procedures and requirements for child custody evaluator training and certification.

Exhibit B



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 shall make investigations and
6 reports which shall be made available to all interested parties
7 and counsel before the hearing. This Act defines such court-
8 appointed investigators or professional personnel as child
9 custody evaluators, and establishes the procedures for
10 determining, and requirements for their education, experience,
11 training, methodology and certification. This includes
12 establishing related responsibilities for the board of family
13 court judges and the courts.

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding six new sections to be appropriately designated and to
16 read as follows:

17 "§ -1 Definitions.



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1 "Board" means the board of family court judges per section
2 571-5.

3 "Child custody evaluator" means all court-appointed
4 investigators or professional persons directed by the court to
5 make investigations and reports pursuant to section 571-46.

6 "Eligible training providers" includes the administrative
7 office of the courts and may include educational institutions,
8 professional associations, professional continuing education
9 groups, public or private for-profit or not-for-profit groups,
10 court-connected groups and any entity that provides a course or
11 seminar that may qualify for child custody evaluator continuing
12 education requirements.

13 "Mentor" means a person who meets all the education,
14 experience, training and other requirements and is certified as
15 a child custody evaluator under this chapter, and who oversees,
16 supervises and consults for a court-appointed child custody
17 evaluator who does not meet the experience requirements of this
18 chapter.

19 **§ -2 Board and family court responsibilities.** (a) On
20 or before January 1, 2010, the board shall establish and
21 maintain statewide policies and procedures that establish all
22 education, experience, training, methodology, ethical standards,



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1 certification and other requirements for all child custody
2 evaluators appointed pursuant to this chapter. These policies
3 and procedures shall also include:

4 (1) Comprehensive standards for investigations,
5 evaluations, and reporting, as related to child
6 custody;

7 (2) The monitoring and handling of complaints against
8 child custody evaluators and coordinating with
9 professional licensing boards;

10 (3) Disqualification or decertification of child custody
11 evaluators based upon convictions, criminal charges,
12 relevant civil actions or complaints, or ethical
13 violations; and

14 (4) An administrative appeal process for both parties and
15 child custody evaluators, as related to the
16 application of this chapter and established policies.

17 (b) The family court shall administer procedures for
18 certifying and decertifying child custody evaluators. The
19 family court shall certify that child custody evaluators meet
20 the necessary requirements of this chapter, and established
21 policies and procedures, and no person may be appointed as a



1 child custody evaluator unless certified or appointed pursuant
2 to this chapter.

3 **§ -3 Child custody evaluator annual declaration.** The
4 family court shall require a child custody evaluator to declare
5 annually under penalty of perjury:

6 (1) That he or she meets all of the required education,
7 experience, training and other requirements specified
8 in or derived from this section, and if applicable,
9 possesses a license in good standing; and

10 (2) Whether he or she has any convictions, criminal
11 charges, relevant civil actions or complaints, or
12 ethical violations lodged or filed against them.

13 **§ -4 Licensing requirements.** (a) No person may be a
14 child custody evaluator under this chapter unless the person
15 meets one or the following licensing criteria and is in good
16 standing as a:

- 17 (1) Social worker;
18 (2) Marriage and family therapist;
19 (3) Psychologist; or
20 (4) Psychiatrist.

21 This section shall not apply in any case where the court
22 determines that there are no child custody evaluators who meet



1 the criteria of this section who are willing and available,
2 within a reasonable period of time, to perform child custody
3 evaluations. In those cases, the parties may stipulate to an
4 individual who does not meet the criteria of this section,
5 subject to approval by the court.

6 (b) A child custody evaluator who is licensed shall be
7 subject to disciplinary action by that board for unprofessional
8 conduct, as defined in the licensing law applicable to that
9 licensee.

10 § -5 Education and experience. Every child custody
11 evaluator must meet minimum education and experience
12 requirements, as determined by the board.

13 (1) The board shall establish the minimum educational
14 standards for child custody evaluators. These
15 standards shall require all child custody evaluators
16 to utilize comparable interview, assessment, testing
17 and reporting methodologies and procedures for all
18 parties that are consistent with generally accepted
19 clinical, forensic, scientific, diagnostic, or medical
20 standards. These standards shall also require child
21 custody evaluators to inform each adult party of the
22 purpose, nature, and method of the evaluation.



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1 (2) The board shall establish the minimum experience
2 requirements for child custody evaluators. If any
3 experience requirements are lacking for a prospective
4 child custody evaluator, procedures for assigning a
5 mentor and defining his or her responsibilities toward
6 the prospective child custody evaluator may be used to
7 ensure qualified oversight exists during the custody
8 evaluation process.

9 (A) Mentors shall be assigned on a case by case
10 basis.

11 (B) Conditions on the continued use of mentors, by an
12 individual prospective child custody evaluator,
13 shall be established to ensure the necessary
14 experience requirements are completed in a timely
15 manner.

16 (C) No compensation for mentoring shall be charged to
17 the case or the parties.

18 **§ -6 Continuing training.** The board shall establish the
19 minimum child custody evaluator annual continuing training
20 requirements and policies for the use of eligible training
21 providers.



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1 (1) Training approved by professional licensing boards, or
2 by national or local eligible training providers, as
3 qualifying for child custody evaluator training, may
4 count towards these annual requirements.

5 (2) Eligible training providers shall:

6 (A) Develop procedures to verify that participants
7 complete the applicable education and training
8 program; and

9 (B) Distribute a statement or certificate of
10 completion to each person who has completed the
11 training.

12 The statement or certificate must document the number
13 of hours of training offered, the number of hours the
14 person completed, the dates of the training, and the
15 name of the training provider.

16 (3) Education and training courses that were taken between
17 January 1, 2007, and January 1, 2010, may be applied
18 toward the requirements of this section if they
19 addressed the required subjects and either were
20 certified or approved for continuing education credit
21 by a professional provider group or were offered as



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1 part of a related postgraduate degree or licensing
2 program."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

