

**SB 958**

**SD 1**



*The Judiciary, State of Hawaii*

**Testimony to the Senate Committee on Ways and Means**

Senator David Y. Ige, Chair  
Senator Michelle Kidani, Vice Chair  
Tuesday, March 1, 2011, 9:20 a.m.  
State Capitol, Conference Room 211

by  
Glennard Fong  
Chief Court Administrator, First Circuit

**WRITTEN COMMENTS ONLY**

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**Bill No. and Title:** Senate Bill No. 958, S.D.1, Relating to Family Court

**Purpose:** Establishes a program in the family court for the registration of child custody evaluators; allows board of family court judges to adopt certification of child custody evaluators. Effective July 1, 2050. (SD1)

**Judiciary's Position:**

The Judiciary takes no position on Senate Bill No. 958, S.D. 1 and offers the following comments.

This bill seeks to limit the appointment of custody evaluators to a registry of persons who file annual declarations with the Court. These declarations would be retained by the Court and made available to the parties for no less than 12 years from the date of the filing of the initial declaration. This declaration includes such information on the custody evaluator as: 1) current license and expiration date; 2) any certification or qualifications from other states; 3) training; 4) experience, including the total number of investigations and reports performed and appointed acquired in the immediately preceding year; 5) specifics re specialized training; 6) any criminal convictions, pending criminal charges, civil actions to which the custody evaluator was or is a party, complaints to a professional licensing agency or ethics enforcement body resulting in public discipline, order of protection against the custody evaluator; 7) any disciplinary action,



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etc. A current annual declaration is a prerequisite to being qualified to testify in the court. The Board shall not accept for filing any incomplete declaration.

There must be some discretion to appoint an expert not listed in this registry. The facts of the case and/or needs of a child may require such appointment. For example, a nationally renowned expert in autistic children may provide critical insights to the Court, but would be excluded from testifying in a custody case unless that expert completed an annual declaration. Also, since private custody evaluators are paid for by the parties and not the state, the court should have the discretion to appoint a professional agreed upon by the parties. For practical purposes, there may be cases in which there is no custody evaluator on the registry who is available or willing to take the case for reasons such as the complexity of the case, the parties are unable to pay at the custody evaluators' rates, or the concerns regarding the children may be outside the expertise of the listed professionals.

Approximately 20 professionals on Oahu, 9 on Maui (including Molokai and Lanai), and 4 on the Big Island, have conducted custody evaluations in the past. Given the small number of available professionals on the neighbor islands, the practical implications of this bill may be that parties on the neighbor islands may need to select custody evaluators on Oahu, which will increase litigation costs.

The word, "certification," (page 8, line 11) should be deleted since, according to the bill itself, the Judiciary is not required to certify any professional on the list.

Court staff who conduct custody evaluations should be exempt from this bill. The Family Court of the First Circuit is the only circuit with a specialized unit of social workers who are trained to provide child custody evaluations in cases with parties who meet the indigency guidelines. Due to budget cuts, the Second Circuit (Maui) has a position who conducts custody evaluations for indigent parties on a half-time basis only. The First Circuit had a divorce caseload of 7,535 cases in Fiscal Year 09-10 and the Second Circuit had a divorce caseload of 996 cases.\* The other circuits (Hawaii and Kauai) do not have staff who perform such evaluations.

HRS Section 467E-6(2) exempts social workers employed by a federal, state or county government agency in a social work position from the licensing requirements. The Judiciary wishes to clarify that these Judiciary employees would be exempt from the policies in this bill and that such an exemption should be included in the definition of "child custody evaluator." Accordingly, we respectfully suggest the amendment noted below (p.2, Section 2, line 16):

"Child Custody Evaluator" means an investigator or professional, appointed by the court, to investigate and report concerning the care, welfare, and custody of



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any minor child of the parties under section 571-46(a)(4) [ .-] excluding social workers employed by the Judiciary.

Pursuant to Act 149 of 2008, the Judiciary convened and obtained the assistance of a child custody advisory task force to review and make findings and recommendations relating to court-appointed child custody evaluators. The task force concluded that there was not enough of a "demand" for this particular sub-specialty curriculum or course of study leading to certification or a degree, except as was discussed by the Association of Marriage and Family Therapists. Also, the Task Force determined that there were not enough practitioners performing these services to warrant findings and recommendations (including resource needs) regarding the minimal requirements for custody evaluators.

Thank you for the opportunity to provide testimony on this matter.

\* The Judiciary, State of Hawai'i, 2010 Annual Report – Statistical Supplement

February 28, 2011

To: Senator David Y. Ige, Chair  
Senator Michelle N. Kidani, Vice Chair  
Committee on Ways and Means

From: Tom Marzec

Subj: Testimony **IN STRONG SUPPORT** of **SB958 SD1** Child Custody Evaluator Registry

Hearing: Tuesday, March 1, 2011; 9:20 a.m.; Room 211, State Capitol

This bill was developed by a working group focused on improvements in family court. As a member of that working group, I urge you to pass this bill, in order to create a registry of child custody evaluators and to begin a process for developing standards of practice and certification for child custody evaluators.

The performance of effective custody evaluations is critical to the courts determination of what is in the best interests of the child. This bill does not establish those standards, but does start laying the groundwork to ensure our child custody evaluators meet the requirements to perform effective evaluations. The Custody Evaluator registry created in this bill provides the baseline data for continuing working group efforts to develop a training curriculum and course work. These efforts to develop standards and trained custody evaluators will be even more critical and necessary with the additional complexity of custody issues that civil unions may bring to family court.

Family Court previously kept a list of child custody evaluators and the registry created in this bill would benefit the public and the courts. Previous, a family court memo (no longer in effect for other reasons) required an annual declaration by child custody evaluators, very similar to the registry form annual declaration requirements in this bill. The burden is on the custody evaluators to submit the information required to be in this registry. The workload for maintaining these annual forms is minimal, was a function family court had performed previously and the registry can be provided to parents at an existing Kids First program.

The value of this registry to parents is enormous and will save having repeat unnecessary hearings to assign a custody evaluator to a case, because the custody evaluator registry information will be openly provided to both parties and complete information will result in more efficient decision-making.

The value of this registry and bill to parents and children, and for more efficient court case management purposes, far outweighs the associated very minor resource requirements.

Your consideration of these issues and support in improving family court child custody evaluation procedures is very much appreciated.

**To:** Senator David Y. Ige, Chair  
Senator Michelle Kidani, Vice Chair  
Committee on Ways and Means

**From:** Chris Lethem

**Subj:** Testimony IN STRONG SUPPORT of **SB958** which creates the  
Child Custody Evaluator Registry

Hearing: Tuesday, February 28, 2011; 9:20 a.m.; Room 211, State Capitol

This bill was developed by a working group focused on improvements in family court. As a member of that working group, I urge you to pass this bill, in order to create a registry of child custody evaluators and to begin a process for developing standards of practice and certification for child custody evaluators

- The Judiciary will likely need to assign someone to collect the data.
- This will take about one hour per week
- The Judiciary was doing this previously
- Information could be made available to parents at the Kids First Program
- Attorneys also would like to have this information available to them
- Would reduce the number of hearing associated with selecting a CGAL
  - 1 or 2 hearings instead of 3 to 4 hearings

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 28, 2011 12:32 PM  
**To:** WAM Testimony  
**Cc:** dr.la@aloha.net  
**Subject:** Testimony for SB958 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB958

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Dr. Laurette Schaller  
Organization: Individual  
Address:  
Phone:  
E-mail: [dr.la@aloha.net](mailto:dr.la@aloha.net)  
Submitted on: 2/28/2011

**Comments:**

I have worked with Senator Chun Oakland on the family court working group, as a representative of the Hawaii Association of Marriage and Family Therapists (HAMFT), for many years now. My private practice work includes Psychological and Court Services.

I strongly support SB958 SD1. Maintaining a list of custody evaluators is essential to improving custody decisions in contested cases. Family court used to require that custody evaluators submit annual declarations and a list of custody evaluators was maintained. The decreased number of required hearings and improved efficiency resulting from a custody evaluator registry would save court resources.

Dr. Laurette DeMandel-Schaller, MFT, Ph.D.  
Court Appointed CE, GAL, Senior Mediator former HAMFT Ethics Committee Chairperson

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 28, 2011 12:16 PM  
**To:** WAM Testimony  
**Cc:** stevekimlaw@gmail.com  
**Subject:** Testimony for SB958 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB958

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Steven Kim  
Organization: Individual  
Address:  
Phone:  
E-mail: [stevekimlaw@gmail.com](mailto:stevekimlaw@gmail.com)  
Submitted on: 2/28/2011

Comments:

I am a Honolulu attorney, and have been practicing for approximately 23 years. My practice is virtually all in the family law area. I support this bill because Family Court Custody Evaluators perform an extremely important quasi-judicial function. Judges who make custody and visitation decisions have to go through a significant selection process prior to appointment, through judicial selection and senate confirmation process. There is no similar procedure for Custody Evaluators, although CE's are routinely called upon to perform evaluations which the Judges rely upon in their decision making. Establishment of a Custody Evaluator Registry would assist the Court and the public by: (1) creation of an updated list of CE's that would be available for public review, which provides a basic informational purpose; and (2) providing the Court and parties with basic information that is relevant to appointment of each CE, their qualifications, and the types of cases each CE may be best suited to handle. This would help to promote greater public confidence in this method of decision making that affects so many of Hawaii's families and children.

I apologize that I cannot personally attend the hearing before your committee. Thank you very much for your consideration of this important bill.



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 28, 2011 11:45 AM  
**To:** WAM Testimony  
**Cc:** mskathrynrose@yahoo.com  
**Subject:** Testimony for SB958 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB958

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Kathy Rose  
Organization: Individual  
Address:  
Phone:  
E-mail: [mskathrynrose@yahoo.com](mailto:mskathrynrose@yahoo.com)  
Submitted on: 2/28/2011

**Comments:**

I am involved in family court custody issues, have used a custody evaluator, and strongly support this bill. Having this custody evaluator registry information available to parents, passed out at Kids First, will minimize adversarial hearings to pick and use custody evaluators.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 28, 2011 11:49 AM  
**To:** WAM Testimony  
**Cc:** LeslieMason65@yahoo.com  
**Subject:** Testimony for SB958 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB958

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Leslie Mason  
Organization: Individual  
Address:  
Phone:  
E-mail: [LeslieMason65@yahoo.com](mailto:LeslieMason65@yahoo.com)  
Submitted on: 2/28/2011

Comments:

As a mother who has witnessed the problems with family court custody processes and a Mental Health Professional with a Masters in psychology, I fully support SB957 SD1. Having better and complete information about custody evaluators is an important step forward in helping our children receive the best possible outcomes from family court..

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 28, 2011 4:16 PM  
**To:** WAM Testimony  
**Cc:** gfarstrup@msn.com  
**Subject:** Testimony for SB958 on 3/1/2011 9:20:00 AM

Testimony for WAM 3/1/2011 9:20:00 AM SB958

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Greg Farstrup  
Organization: Individual  
Address:  
Phone:  
E-mail: [gfarstrup@msn.com](mailto:gfarstrup@msn.com)  
Submitted on: 2/28/2011

Comments: