



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, February 15, 2011, 9:30 a.m.

State Capitol, Conference Room 016

by

Janice Yamada

Deputy Chief Court Administrator

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First Circuit Court

Bill No. and Title: Senate Bill No. 958, Relating to Family Court.

Purpose: Requires the Board of Family Court Judges to establish a child custody registry.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 958 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. 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. 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.

The word, "certification," (page 8, line 10) 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 Courts employ social workers who are trained to provide child custody evaluations in cases with indigent parties. The Family Court of the First Circuit has a specialized unit. 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



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that these Judiciary employees would be exempt from the policies in this bill and that such a provision would be included in the definition of "child custody evaluator." Accordingly, we respectfully suggest the amendment noted below (p.2, Section 2, lines 13-16)

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

LATE TESTIMONY



**TESTIMONY OF THE FAMILY LAW SECTION, HAWAII STATE
BAR ASSOCIATION, AGAINST SENATE BILL NO. 958,
RELATING TO FAMILY COURT**

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Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Conference Room 016, State Capitol
February 15, 2011, 9:30 a.m.

Good morning Senators:

My name is Steven L. Hartley and I am the Vice Chair/Chair Elect of the Family Law Section of the Hawaii State Bar Association. I submit this written testimony on behalf of the Family Law Section.

The Family Law Section is comprised of over one hundred attorneys who practice law in the Family Court. The majority of us handle all types of family law matters, including divorce, paternity, domestic violence and guardianship cases. As a Section, our testimony represents the views of our members.

We support the primary purpose of the Bill to develop standards of practice for Custody Evaluators through the creation of a Custody Evaluator Registry. However, we have the following serious concerns:

- a. What are the costs necessary for the establishment and maintenance of the Custody Evaluator Registry?
- b. The creation of the Registry may inadvertently decrease the number of Custody Evaluators available for use in contested custody cases.
- c. What will the Custody Evaluator certification program consist of?
- d. How will the Custody Evaluation standards be determined by the Board of Judges?

Thank you for allowing us to present our testimony.

Testimony of
John M. Kirimitsu, Esq.
Attorney At Law

Before:
Senate Committee on Judiciary and Labor
The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

February 15, 2011
9:30 am
Conference Room 016

Re: SB 958 Relating to Family Court

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on SB 958 relating to child custody evaluators.

I strongly support the intent of this bill, with suggested amendments.

This issue of attempting to establish qualification criteria and standards of practice for custody evaluators has a long history before the legislature. During the 2008 legislative session, SB 2005 attempted to add a new “child custody evaluators” section to HRS § 571-46, including professional licensing and other mandatory requirements for custody evaluators, but the issue was deferred to The Child Custody Task Force, established by the Judiciary pursuant to Act 149. Although the Working Group could not make any recommendations in its report to the legislature in 2009, it cited that Robert Geffner, Ph.D., Founding President of the Family Violence and Sexual Assault Institute and Founding President of Alliant International University’s Institute on Violence, Abuse and Trauma, both located in California, conducted a presentation to the Working Group and distributed information on child custody evaluation training and California Rules of Court related to child custody evaluations.

In facing similar reports of child custody evaluator abuse, California enacted the following child custody evaluator criteria in 2005:

(c) Licensing requirements

A person appointed as a child custody evaluator meets the licensing criteria established by Family Code section 3110.5(c)(1)-(5), if:

(1) The person is licensed as a:

(A) Physician and is either a board certified psychiatrist or has completed a residency in psychiatry;

- (B) Psychologist;
- (C) Marriage and family therapist; or
- (D) Clinical social worker.

Before appointment, a child custody evaluator must complete 40 hours of education and training, which must include all the following topics:

- (1) The psychological and developmental needs of children, especially as those needs relate to decisions about child custody and visitation;
- (2) Family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships;
- (3) The effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and interparental conflict on the psychological and developmental needs of children and adults;
- (4) The assessment of child sexual abuse issues required by Family Code section 3118; local procedures for handling child sexual abuse cases; the effect that court procedures may have on the evaluation process when there are allegations of child sexual abuse; and the areas of training required by Family Code section 3110.5(b)(2)(A)-(F), as listed below:
 - (A) Children's patterns of hiding and disclosing sexual abuse in a family setting;
 - (B) The effects of sexual abuse on children;
 - (C) The nature and extent of sexual abuse;
 - (D) The social and family dynamics of child sexual abuse;
 - (E) Techniques for identifying and assisting families affected by child sexual abuse; and
 - (F) Legal rights, protections, and remedies available to victims of child sexual abuse;
- (5) The significance of culture and religion in the lives of the parties;
- (6) Safety issues that may arise during the evaluation process and their potential effects on all participants in the evaluation;
- (7) When and how to interview or assess adults, infants, and children; gather information from collateral sources; collect and assess relevant data; and recognize the limits of data sources' reliability and validity;
- (8) The importance of addressing issues such as general mental health, medication use, and learning or physical disabilities;
- (9) The importance of staying current with relevant literature and research;

- (10) How to apply comparable interview, assessment, and testing procedures that meet generally accepted clinical, forensic, scientific, diagnostic, or medical standards to all parties;
- (11) When to consult with or involve additional experts or other appropriate persons;
- (12) How to inform each adult party of the purpose, nature, and method of the evaluation;
- (13) How to assess parenting capacity and construct effective parenting plans;
- (14) Ethical requirements associated with the child custody evaluator's professional license and rule 5.220;
- (15) The legal context within which child custody and visitation issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator;
- (16) The importance of understanding relevant distinctions among the roles of evaluator, mediator, and therapist;
- (17) How to write reports and recommendations, where appropriate;
- (18) Mandatory reporting requirements and limitations on confidentiality;
- (19) How to prepare for and give court testimony;
- (20) How to maintain professional neutrality and objectivity when conducting child custody evaluations; and
- (21) The importance of assessing the health, safety, welfare, and best interest of the child or children involved in the proceedings.

(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (e); previously amended effective January 1, 2005.)

(e) Additional training requirements

In addition to the requirements described in this rule, before appointment, child custody evaluators must comply with the basic and advanced domestic violence training requirements described in rule 5.230.

(Subd (e) adopted effective January 1, 2007.)

These specific licensing and certification criteria should likewise be recognized in Hawaii to regulate the child custody evaluator's involvement in family court. The questionable qualifications of a custody evaluator should not be left up to a board using a "best practices" standard, which is currently being proposed under § 571-E of SB 958. Obviously, there is mass confusion as to what constitutes the "best practices" in our family court system, which is why there has been so many episodes of custody evaluator abuse and the need for current legislation. Without such licensure and certification, there is no available remedy to pursue custody evaluator abuse. We need clear and unequivocal rules setting forth strict standards for licensure

and certification, without leaving it up to the discretion of the court or a judiciary board. Furthermore, the proposed annual declaration of the custody evaluators, proposed under § 571-C of SB 958 does nothing to substantiate mandatory qualifications for a custody evaluator, but instead, acts a mere self serving reporting of one's own credentials, which is useless absent a uniform standard or criteria to measure it against. Basically, all the annual reporting does is allow the custody evaluator to convince the court to accept lesser qualifications on a case-by-case basis.

For these reasons, I support this bill, but would like to offer an amendment to include the following specific licensing and education criteria, similar to the California model, to qualify as a custody evaluator:

Licensing requirements. (a) No person may be a child custody evaluator under this chapter unless the person meets one of the following licensing criteria and is in good standing as a:

- (1) Social worker;
- (2) Marriage and family therapist;
- (3) Psychologist; or
- (4) Physician specializing in psychiatry.

The licensing requirements of this section shall not apply in any case where the court determines that there are no child custody evaluators who meet the criteria of this section who are willing and available to perform child custody evaluations. In those cases, the parties may stipulate to a child custody evaluator who does not meet the criteria of this section, subject to approval by the court.

(b) 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.

Education and experience. Every child custody evaluator shall meet minimum education and experience requirements, as determined by the board.

- (1) Educational standards which shall require all child custody evaluators to utilize comparable interview, assessment, testing and reporting methodologies and procedures for all parties that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. These standards shall also require child custody evaluators to inform each adult party of the purpose, nature, and method of the evaluation; and
- (2) Experience; provided that if any experience requirements are lacking for a prospective child custody evaluator, procedures for assigning a mentor and defining the mentor's responsibilities toward the prospective child custody evaluator may be used to ensure qualified oversight exists during the custody evaluation process; provided further that:
 - (A) Mentors shall be assigned on a case by case basis;
 - (B) Conditions on the continued use of mentors by an individual prospective child custody evaluator shall be established to ensure the necessary experience requirements are completed in a timely manner; and
 - (C) No compensation for mentoring shall be charged to the case or the parties.

Continuing training. The board shall establish the minimum child custody evaluator annual continuing training requirements and policies for the use of eligible training providers.

- (1) Training approved by professional licensing boards, or by national or local eligible training providers, as qualifying for child custody evaluator training, may count towards the annual continuing education requirements for child custody evaluators.
- (2) Eligible training providers shall:
 - (A) Develop procedures to verify that participants complete the applicable education and training program; and
 - (B) Distribute a statement or certificate of completion to each person who has completed the training; provided that the statement or certificate [must] shall document the number of hours of training offered, the number of hours of training the person completed, the dates of the training, and the name of the training provider.
- (3) Education and training courses that were taken between January 1, 2007, and January 1, 2010, may be applied toward the requirements of this section if the courses addressed the required subjects and either were certified or approved for continuing education credit by a professional provider group or were offered as part of a related postgraduate degree or licensing program."

Thank you for the opportunity to comment.

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Monday, February 14, 2011 12:10 PM
To: JDLEstimony
Subject: FW: SB957 to be heard Tuesday, 02/15/11, at 9:30am in Room 016

LATE TESTIMONY

TO: Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Members of the Judiciary & Labor Committee

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place
Kailua, HI 96734

DATE: February 15, 2011

RE: SUPPORT WITH SUGGESTION for SB958

Good Morning Senators and thank you for this opportunity to provide testimony on this measure.

To be entrusted with the life of a child is an honor that I've never forgotten is and will always be MY honor. I had to go through years of training before I could even come near a child professionally but I well understood the precautionary process that ensured that only well-qualified and well-trained professionals be allowed to work with a child, since children are our most precious resource.

While all children should have the God-given human right to be safe from abuse, the fact of the matter is that we have more stringent assurances, protections and severe consequences for crimes against animals than we do against children and while we tout that "children are our highest priorities", things like furlough days and educational funding cuts illustrate that our words do not match our actions and believe me, this is NOT missed on our children.

One would think that a professional holding the title of Child Custody Evaluator would be our top-of-the-line best expert since that professional literally has the power to determine the rest of a child's childhood as they submit their professional findings and recommendations to a court of law but sadly - as this measure shows - this is not the case. This proposal is essentially requiring that Child Custody Evaluators be actually trained to ADEQUATELY do the job being entrusted to them and that they be held to professional standards. We need legislation to ensure that the people doing a job are actually trained to do it? Well, yes, and here's some real-life examples of why:

- When asked about the application of state statute 571-46(9) to a domestic violence case, the Custody Evaluator (CE) replied "What's that?"
- The CE thought the mom was making a poor choice in filing for divorce so told her if she didn't reconcile with her husband that she'd recommend full physical/legal custody of the children to him. Mom did not withdraw her divorce petition and the CE made good on her threat.
- While interviewing a teenager, the CE asked if the teen recalled a particularly violent episode. The teen, thinking the CE was out of her mind for asking such a stupid question, laughed sarcastically and replied "Yea"; the CE determined that the violent episode never occurred because the teen laughed at the question.
- A diagnostic error on a parent's Psychological Evaluation was subsequently copied on the CE's report that tainted the entire case resulting with inappropriate decisions, rulings and orders. (The CE didn't "catch" that the diagnosis was incongruent to its numerical assignment.)

When you think about the consequences of these errors on the children, you'll see the need and urgency for the development of professional standards and regulation. An issue for regulation - and my suggestion that really **MUST** be adapted is that **anyone with a conviction, plea, settlement or acknowledgment as a perpetrator of abuse of**

February 14, 2011

To: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

LATE TESTIMONY

From: Chris Lethem

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

Hearing: February 15, 2011; 9:30 a.m.; Room 016, State Capitol

As a member of the "Family Court Interventions Working Group" we were able to develop this compromise language. Having firsthand experience in dealing with custody evaluators, I found the quality of the work done, wanting. I urge you to pass this bill, to create a registry of child custody evaluators. This would be a beginning to developing standards and certification for child custody evaluators.

Family court as one time maintained a list of custody evaluators. This bill simply implements a formalized process of maintaining a custody evaluator registry.

Currently the work done by custody evaluators isn't based on any consistent object standards. There is no process to ensure the custody evaluators have the appropriate educational background or to ensure they are doing any kind of continuing education directed toward child development or family dynamics. This bill does not establish these standards. But again it is a beginning. If or when civil union dissolutions are also adjudicated by family court, additional complexities will have to be addressed.

I don't believe there is a valid argument either for excluding Judiciary social workers from submitting this registry form as they are not restricted in any way from performing their duties. Their training and education background is a vital and should be considered when the working group develops a training curriculum and course work for custody evaluators, as Judiciary social workers would benefit as well.

The registry requires minimal resources and was a function family court had performed previously. The value of this registry and bill to parents and children far outweighs the very minor resources required.

Please consider these issues and support in improving family court child custody evaluation process.