



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Human Services**

Representative Mele Carroll, Chair

Representative Bertrand Kobayashi, Vice Chair

Tuesday, February 12, 2013

9:30 a.m.

State Capitol, Conference Room 329

**WRITTEN TESTIMONY ONLY**

by

R. Mark Browning

Deputy Chief Judge/Senior Judge

Family Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1137, Relating to Family Court

**Purpose:** Clarifies the appointment requirement and qualifications for child custody evaluators.

**Judiciary's Position:**

The Family Court takes no position on this bill but offers the following comments.

Page 4, line 1: We take no position on keeping a "registry" but please be advised that this will be a list of persons who have expressed the desire to perform these services and who are able to meet the requirements of this bill.

Page 4, line 2: The Family Court is able to ascertain whether a person meets the qualifications of this bill (e.g., whether a person has been certified as a doctor in this state). However, a determination of "qualified" under this bill does not "qualify" the person as an expert qualified to testify as an expert in a specific case. The latter determination is made only on a case-by-case basis. For example, a person who has been qualified in multiple past cases may not be qualified in a specific case that might require a different sort of professional specialty.

Page 4, lines 3-4: The Family Court assumes that "on call" means that the person will take a



House Bill No. 1137, Relating to Family Court  
House Committee on Human Services  
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case if he/she is available and wishes to take the case. In other words, "on call" does not mean that a person will be forced to take a case either at the last minute or unwillingly.

Page 4, lines 5-7: Except in the context of a specific case, the family court has no authority to discipline professionals. If the family court is given a responsibility to field complaints, the best we would be able to do is to refer the complainant to the appropriate professional certifying / governing body so that the complainant can file his/her own complaint. This would also be important since we would want to avoid false expectations and misunderstandings about the scope of what family court can do. If the professional board refuses to act because it determines that the custody evaluation is outside the scope of their authority, then the complainant would also have the option to sue the custody evaluator directly.

The court is unsure about the import of the new language found on page 6, line 18 to page 7, line 6. This language appears to limit the court's ability to appoint custody evaluators in cases which may have child abuse and neglect issues. Such a mandated change may severely hamper the court's ability to gain more information than what is provided by the disputing parents and/or their supporters.

Thank you for the opportunity to submit testimony on this bill.

Testimony of  
John M. Kirimitsu, Esq.

Before:  
House Committee on Human Services  
The Honorable Mele Carroll, Chair  
The Honorable Bernard Kobayashi, Vice Chair

February 12, 2013  
9:30 am  
Conference Room 329

**Re: HB 1137 Relating to Family Court**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on HB 1137 relating to child custody evaluators.

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. Although the Task Force could not make any recommendations in its report to the legislature in 2009, it recognized 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, in California, was a strong proponent of the California Rules of Court related to child custody evaluations.

Under California law, only licensed (1) physicians (and either board certified psychiatrist or completed residency in psychiatry), (2) psychologist, (3) marriage and family therapist, or (4) clinical social worker, are qualified to be appointed custody evaluators. See Rule 5.225, appointment requirements for custody evaluators, California Rules of Court. Notably, unlike Hawaii, California does not allow an attorney to be appointed as a custody evaluator, unless they also meet the aforementioned minimum qualification standards. Since child custody evaluation is a unique specialty area, anyone performing such evaluations needs to have the requisite level of specialized education and professional training emphasizing child development, child psychiatry or psychology, and mental health dynamics. Moreover, given that the custody evaluator’s expert report is usually taken at face value and is not subjected to cross-examination (unless allowed at a costly trial), there is an urgent need for high-quality professional work. Therefore, to ensure the highest level of integrity and competence in appointing custody evaluators, Hawaii law should mimic California’s minimum qualification standards for custody evaluators, as proposed in this bill.

Moreover, to ensure transparency in the selection process in determining who are the best qualified child custody evaluators, we propose that the Judiciary (rather than the Court) maintain

a simple registry identifying the names and qualifications of available child custody evaluators. Since the court appears to be overly burdened with a heavy caseload, we recommend that the Judiciary, instead of the Court, take ownership of this registry, and make it publicly accessible - possibly through its website.

Finally, to maintain integrity and accountability throughout the custody evaluator profession, it is imperative that a complaint process be implemented to report abuse and unethical violations amongst the custody evaluator profession. In order for custody evaluators to maintain an objective and neutral stance, and to adhere to professional practice parameters under their ethical guidelines, it is absolutely necessary to implement a complaint process to maintain integrity within the industry. It goes without saying that these custody evaluator decisions/reports severely impact lives, and as with any other professional licensing practice, they must be held accountable to minimum ethical standards. It goes without saying that the enactment of a formal complaint process will act as a deterrent for abuse and prejudicial biases by custody evaluators.

In collaborating with the working group on this proposed bill's language, with special thanks to Senator Chun-Oakland for organizing this concerted effort, and taking into consideration the written testimony on the companion bill, SB 1226, including the Judiciary's concerns, we propose the following amendments. The parts to be deleted are stricken and the proposed additions are bolded in capital letters. Thank you for this opportunity to comment.

**"§571- Child custody evaluators; qualification; registry; complaints.**

(c) The [~~court~~] **JUDICIARY** shall maintain a publicly accessible registry of [~~potential~~] child custody evaluators who are qualified pursuant to this section [~~and are willing to perform child custody evaluations on an on-call basis from time to time~~]. Professionals who are willing and available to perform child custody evaluations are responsible for providing the Judiciary with relevant information, including but not limited to contact information, qualifications, and fees.

(d) The [~~court~~] **JUDICIARY** shall establish a complaint process so that parties may file a [~~grievance~~] **COMPLAINT** with the [~~court~~] **JUDICIARY** regarding a child custody evaluator appointed by the court. **THE JUDICIARY SHALL REFER THE COMPLAINT TO THE APPROPRIATE LICENSING OR CERTIFYING AUTHORITY. THE JUDICIARY SHALL SUBMIT TO THE LEGISLATURE AN ANNUAL REPORT ON THE COMPLAINTS RECEIVED.**

SECTION 3. Section 571-46, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In

awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

(4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court, hereinafter referred to as child custody evaluators, shall make investigations and reports that shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated; and provided further that the court shall define, in accordance with section 571- , the requirements to be a court-appointed child custody evaluator, the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts, and the powers of the courts over child custody evaluators to effectuate the best interests of a child in a contested custody dispute pursuant to this section. Where there is no child custody evaluator available that meets the requirements and standards, or any child custody evaluator to serve indigent parties, the court may appoint a person otherwise willing and available [.] ~~in accordance with section 571-~~ . ~~[The appointment of a child custody evaluator, as opposed to a guardian ad litem, shall be reserved for the conducting of an objective investigation and analysis of the health, safety, welfare, and best interest of the child with regard to disputed custody and visitation issues in complex cases, where the risk to children is possible. A court shall not order such an evaluation unless there is credible information regarding possible harm to the child or impairment of parental abilities;]~~

Hawaii State Legislature, 2013  
House Human Services Committee  
February 12, 2013, 9:30 am, Rm 329

TO: Rep. Mele Carroll, Chair  
Rep. Bertrand Kobayashi, Vice Chair  
& House Human Services Committee

RE: HB 1137 -Clarifies the appointment and qualifications for child custody evaluators.

**I support HB 1137** because it will help to increase the quality of service provided by Child Custody Evaluators (CCE's). Child custody evaluations seem to have become a rather lucrative industry for the child custody evaluators, however, the quality of the evaluations can range from mediocre to high quality. Paying a higher price for a child custody evaluation does not insure a higher quality investigation. For example, individuals who have been through a child custody evaluation complain that the CCE met with him or her only once and for a very short period of time while the other parent met with the CCE on a number of occasions; or the CCE spent very little or no time with the child.

The child custody evaluation should reflect an objective and comprehensive review of the child's "biopsychosocial" environment that, at a minimum, should include investigating the child's physical and mental health, the important relationships in the child's life, the child's school and leisure environment and any cultural and religious influences in the child's life.

I strongly support the section in HB 1137 that will require the 'court' to establish a complaint process. Inadequate CCE investigations can cause serious harm to a child's future so establishing a legitimate complaint process will empower the participants of the child custody evaluation process to have the authority to question the CCE's quality of work. Additionally, allowing the participants to file complaints against CCE's who provide questionable quality of work will aid in standardizing the quality of service provided in the custody evaluation industry.

Finally, on a technical note, I would like to suggest that the word, "court" be changed to "Judiciary" in the sections related to *establishing a CCE registry* and *establishing a complaint process* because these functions would be more appropriately placed under the auspices of the Office of the Administrative Director of the Courts.

Thank you very much for your time and attention to this matter.

Laurie Hirohata, MSW, MEd

**kobayashi1-Joni**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 10, 2013 9:47 AM  
**To:** HUS testimony  
**Cc:** cheem@umich.edu  
**Subject:** Submitted testimony for HB1137 on Feb 12, 2013 09:30AM

**Categories:** Yellow Category

**HB1137**

Submitted on: 2/10/2013

Testimony for HUS on Feb 12, 2013 09:30AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melinda Franklin	Individual	Support	No

Comments: I strongly support HB1137. I have over a decade of experience with the Family Court. In my case, custody was changed without a hearing based on false, unsupported allegations from child psychologist Sue Lehrke, PhD. She has never laid eyes on me. My ex-husband was her paying client. I finally, (the process took years) reversed virtually all the Family Court orders when I won my Appeal as a pro-se litigant in the Intermediate Court of Appeals. This bill takes necessary steps toward a more fair and just process of custody evaluations which will serve to better the lives of keiki and their families. It helps to protect litigants from retaliation and judicial bias when family court errors are exposed. Tragically for my children and me, this was not our experience in the family court of Hawai'i.

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**kobayashi1-Joni**

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**From:** Tom Marzec [adamtm@lava.net]  
**Sent:** Monday, February 11, 2013 6:56 AM  
**To:** HUS testimony; Rep. Bert Kobayashi  
**Subject:** Fwd: Amended Submitted testimony for HB1137 on Feb 12, 2013 09:30AM

**Categories:** Yellow Category

Aloha Chair Carroll and Vice Chair Kobayashi,

Please accept my amended testimony fully supporting the SB1226 **SD1** amendments (the companion bill to HB1137) being processed by Senator Chun Oakland. The details of these amendments will be raised at your hearing. Your hearing this measure, which is very important to the well-being of children involved in custody disputes, is much appreciated.

Mahalo,  
Tom Marzec

----- Forwarded message -----

From: <[mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)>  
Date: Mon, Feb 4, 2013 at 1:08 PM  
Subject: Submitted testimony for HB1137 on Feb 12, 2013 09:30AM  
To: [HUS testimony@capitol.hawaii.gov](mailto:HUS testimony@capitol.hawaii.gov)  
Cc: [adamtm@lava.net](mailto:adamtm@lava.net)

**HB1137**

Submitted on: 2/4/2013  
Testimony for HUS on Feb 12, 2013 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Tom Marzec	Individual	Support	No

Comments: The arena of child custody evaluations needs significant improvement in standards and qualifications, along with a registry, so children affected by custody evaluations are much better served.

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**kobayashi1-Joni**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 08, 2013 8:19 AM  
**To:** HUS testimony  
**Cc:** tabraham08@gmail.com  
**Subject:** \*Submitted testimony for HB1137 on Feb 12, 2013 09:30AM\*

**Categories:** Yellow Category

**HB1137**

Submitted on: 2/8/2013

Testimony for HUS on Feb 12, 2013 09:30AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy Abraham	Individual	Support	No

**Comments:**

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February 11, 2013

RE: SUPPORT OF HB1137

Aloha Representatives Carroll and Kobayashi:

Thank you for addressing a small, but important category of professionals appointed by Family Court. Child Custody Evaluators are often faced with the most contentious divorce cases and are often called in for cases on Paternity and Domestic Violence calendars, which can be equally challenging. Custody and visitation decisions are difficult for not only the parents involved, but for the professionals involved in each case. For this reason, it is vital that child custody evaluators have the background and experience to ensure ethical, competent, and objective evaluations are submitted.

As a licensed clinical social worker, I strongly support HB1137 for the following reasons:

Mental health professionals are educated and trained to provide comprehensive assessments that involve human behavior, including communication styles, safety and risk, parenting, child development and well-being, and are well suited to make recommendations involving child abuse and neglect, relocation, substance abuse, mental health and/or domestic violence issues.

Providing the public with access to a list of available child custody evaluators allows parents to choose child custody evaluators based on information provided in a registry and may reduce the potential for complaints.

It is the nature of child custody disputes for one or both parties to be dissatisfied with a recommendation. However, if legitimate complaints about an evaluator's ethics or objectivity are in question, and a licensed mental health professional is not appointed, a protocol for complaints is appropriate to address those concerns.

I also believe future legislation might consider addressing minimum qualifications and training for custody evaluators.

Thank you for your time and consideration.

Respectfully,

Cheri Tarutani, MSW, LCSW  
Custody Evaluator