

LATE

Testimony in strong Support of SB 1226

Hearing: February 5, 2013

Time 1:15 pm

Room 016 State Capital

COMMITTEE ON HUMAN SERVICES

Rep. Suzanne Chun Oakland, Chair

Rep. Josh Green, Vice Chair

Report Title: Family Court; Child Custody Evaluators

From: Chris Lethem

Subj: Testimony in **strong Support of SB1226**

I support this piece of legislation but it still leaves too much room for abusing the consumers of family court.

I would respectfully request language proposing a standard of **best practices** also be added to this bill.

Something akin to defining the evaluation process to first interview any children that are directly affected to determine their well-being. Once that evaluation of the children has been performed and documented. Subsequently parents are interviewed and their capacity to adequately meet the needs of their children is assessed. If it is found that both parents are capable of meeting the basic needs of their children. The evaluation should state that both parents can meet these basic needs and custody should be awarded equitably.

Parents both have an important role to fulfill. Having time to adequately parent their children is requisite to that end. Not the States children. Their Children!! The children until now they were parenting together. Now suddenly one of them isn't fit to continue to equitably participate in the further parenting of their own children? We are being terrorized by our own legal system. This is nonsense. I believe we can state in statute a process that should be followed through the adoption of a best practices approach to custody evaluation. After all, there is a best practice for the evaluation of rape victims or children that claim to have been or have been sexually assaulted.

Your consideration is appreciated.

Chris Lethem

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 9:55 AM
To: HMS Testimony
Cc: myrnam@hawaii.rr.com
Subject: Submitted testimony for SB1226 on Feb 5, 2013 13:15PM
Attachments: Testimony of Myrna B. Murdoch - SB 1226 Custody Eval.doc

SB1226

Submitted on: 2/5/2013

Testimony for HMS on Feb 5, 2013 13:15PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
myrna b. murdoch	Individual	Support	Yes

Comments:

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Testimony of
Myrna B. Murdoch

Before:
Senate Committee on Human Services
The Honorable Suzanne Chun Oakland, Chair
The Honorable Josh Green, Vice Chair

February 3, 2013
1:15 pm
Conference Room 016

Re: SB 1226 Relating to Family Court

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on SB 1226 relating to child custody evaluators. I acknowledge that this testimony is taken from the detailed and factual testimony of Attorney John Kirimitsu.

I strongly support the intent of this bill.

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 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, in California, supported the 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 specific licensing requirements for its child custody evaluators (adopted in 2007):

(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.

See, Rule 5.225, appointment requirements for custody evaluators, California Rules of Court. Since child custody evaluation is a unique specialty area, anyone performing such evaluations should have obtained the appropriate level of specialized education and professional training emphasizing child development, child psychiatry or psychology, and mental health dynamics. Notably, unlike Hawaii, California does not allow an attorney to be appointed as a custody evaluator, who is not qualified under the licensing requisites above.

Additionally, to maintain objectivity and control biases, California added uniform reporting requirements for all custody evaluator reports:

(e) Scope of evaluations

All evaluations must include:

(1) A written explanation of the process that clearly describes the:

(A) Purpose of the evaluation;

(B) Procedures used and the time required to gather and assess information and, if psychological tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(C) Scope and distribution of the evaluation report;

(D) Limitations on the confidentiality of the process; and

(E) Cost and payment responsibility for the evaluation.

(2) Data collection and analysis that are consistent with the requirements of Family Code section 3118; that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process may include:

(A) Reviewing pertinent documents related to custody, including local police records;

(B) Observing parent-child interaction (unless contraindicated to protect the best interest of the child);

(C) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

- (i) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;
 - (ii) History of involvement in caring for the child;
 - (iii) Methods for working toward resolution of the child custody conflict;
 - (iv) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and
 - (v) Psychological and social functioning;
- (D) Conducting age-appropriate interviews and observation with the children, both parents, stepparents, step- and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;
- (E) Collecting relevant corroborating information or documents as permitted by law; and
- (F) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.
- (3) A written or oral presentation of findings that is consistent with Family Code section 3111, Family Code section 3118, or Evidence Code section 730. In any presentation of findings, the evaluator must:
- (A) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;
 - (B) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;
 - (C) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and
 - (D) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendations to the court regarding a parenting plan.

See, Rule 5.220, Court-ordered child custody evaluations, California Rules of Court.

Therefore, taking into strong consideration the support and successful enactment of the California child custody evaluator counterpart, it makes sense that Hawaii should be in parity with California law for the same purpose of regulating the child custody evaluator's practice within its family court system. The questionable qualifications of a custody evaluator and any biases translated in the report could severely impact the safeguarding of the best interest of the

child. Clearly, the stress of divorce oftentimes results in anguish and tension for family members in contested divorce cases, and therefore, it is imperative that the evaluation process minimize the potential of harm through a standardized, uniform process, where the custody evaluator is prohibited from aggravating injury to the parties because of their attitudes, actions or comments. Clearly, if the custody evaluator maintains neutrality, equally consults with all parties, uses the same standard procedures, and handles the reporting data in a sensitive and controlled manner, it is hoped this goal of safeguarding the children's best interest can be attained. 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. Lastly, in order for custody evaluators to maintain an objective stance, and to adhere to professional practice parameters under their ethical guidelines, it is absolutely necessary to implement a grievance 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.

Thank you for the opportunity to comment.