

# **SB 1226**

Measure Title: RELATING TO FAMILY COURT.

Report Title: Family Court; Child Custody Evaluators

Description: Clarifies the appointment requirements and qualifications for child custody evaluators. Requires the courts to establish a complaint process. Reserves the appointment of a child custody evaluator for the conducting of an investigation and analysis of the best interest of the child regarding disputed custody and visitation issues in complex cases, where there is a possible risk to children, and that the court shall not order such an evaluation unless there is credible information regarding possible harm to the child or impairment of parental duties.

Companion:

Package: None

Current Referral: HMS, JDL

Introducer(s): CHUN OAKLAND, Ihara, Wakai



*The Judiciary, State of Hawaii*

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

The Hon. Suzanne Chun Oakland, Chair

The Hon. Josh Green, Vice Chair

Tuesday, February 5, 2013

1:15 p.m.

State Capitol, Conference Room 016

by

R. Mark Browning

Deputy Chief Judge/Senior Judge

Family Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 1226, 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.



Senate Bill No. 1226, Relating to Family Court  
Senate Committee on Human Services  
Tuesday, February 5, 2013  
Page 2

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

# COMMITTEE ON HUMAN SERVICES

Senator Suzanne Chun Oakland, Chair

Senator Josh Green, Vice Chair

## HEARING

DATE: Tuesday, February 5, 2013 at 1:15 pm Conference Room 016

SB 1226 RELATING TO FAMILY COURT. Clarifies the appointment requirements and qualifications for child custody evaluators. Requires the courts to establish a complaint process.

[http://www.capitol.hawaii.gov/measure\\_index.aspx?billtype=SB&billnumber=1226&year=2013](http://www.capitol.hawaii.gov/measure_index.aspx?billtype=SB&billnumber=1226&year=2013)

### **Testimony**

#### **I support SB 1226 if certain amendments are included (detailed below).**

I have close to 2 decades experience with the Hawaii Family Court. My case is over. Almost a decade after custody was changed without a hearing and a “Temporary” Restraining Order (TRO) of 7 years duration was vacated, I won my Appeal (# 28843, July 10, 2009) in the Hawaiian Intermediate Court of Appeals as a Pro se litigant. That ruling overturned virtually every prior judgment by the Hawaii Family Court in my case. Please allow me to share some observations and suggestions:

Custody was changed from joint to sole for my ex-husband, Honolulu attorney, Kevin Chee, after he solicited a letter from child psychologist, Sue Lehrke, PhD. She sent a letter to the court in which she “diagnosed” me with Parental Alienation Syndrome (PAS). PAS is regarded as “junk science”. Lehrke did not disclose she has never laid eyes on me. She did not disclose Chee was one of her paying clients. Letter in hand, Chee filed a motion for change of custody at 9:30 am. It was heard at 9:31 am. Custody was changed to sole for Chee, and a standing divorce decree of 4 years was overturned in less than 10 minutes.

I had no opportunity to say good bye to my precious children. Empowered by an ex-parte change of custody, Guardian ad litem (GAL) Kim Towler and Chee traveled together to get our youngest daughter (then age 9). GAL Towler and Chee slept together, and then went to our daughter's elementary school in Ann Arbor, Michigan, Towler grabbed her and they drove off with her. As they sped down Interstate 94, according to the police report, our distraught daughter attempted to jump out of their speeding car. Upon her arrival in Hawaii, Dr. Marvin Acklin arranged for her to have electro-shock treatments.

My case could not go forward until the judge (Allene Suemori) was removed from the bench. This was accomplished by diligent, persistent efforts by me and many others. Suemori was back-filled by Judge Browning. With a new judge, Chee appointed new counsel, his cousin Darwin Ching (“*a good friend of the Family Court*”, according to Judge Browning). When my case came up for hearing, Judge Browning continually postponed it for months into the future. Thus, contact with my children was not permitted for years. While Judge Browning saw this as “*no problem*”, for my children and me it was nightmarish.

It took me almost a decade, and exorbitant indebtedness, to clear my good name and vacate the unconstitutional court orders. Prior to the ex-parte change of custody, I was the primary parent for our 4 children, a room mother, soccer mom, and Registered Nurse at Queens. Finally, 4 days before our youngest child reached 18 years of age, the TRO blocking contact with my children was vacated. Time lost can never be replaced. We missed birthdays, first proms, soccer games, and all aspects of family life.

### **Recommended Amendments to SB 1226**



1). Establish a statutory presumption of shared parent-child time and ongoing family bonds. Time lost can never be replaced. Specify joint custody/shared parenting time unless the parents negotiate an alternative agreement or there is objective evidence of domestic violence/abuse.

**Rationale:**

The Fourteenth Amendment’s Due Process Clause has a substantive component that “provides heightened protection against government interference with certain fundamental rights and liberty interests,” *Washington v. Glucksberg*, 521 U.S. 702, 720, including parents’ fundamental right to make decisions concerning the care, custody, and control of their children, see, e.g., *Stanley v. Illinois*, 405 U.S. 645, 651. Pp. 5—8.

2). Please soften the term *custody award*. Substitute: "Defined Parenting/family Time". This honors the family unit (unless there is domestic violence, etc).

3). Page 4 item (d). Include this caveat with regard to "quasi-judicial immunity" for custody evaluators.

**Rationale: Beltran Decision** (No. 05-16976 CV-03-03767-RMW). Custody Evaluators' role does not entitle them to absolute immunity from claims pertinent to fabricated evidence during an investigation or false statements made in a dependency petition affidavit, signed under penalty of perjury. Absolute immunity does not pertain if evidence is fabricated, or if false statements are made in sworn affidavit.

Please consider including this, or similar language, on the CE report/disclosure form (it may enhance CE/GAL ethics):

**Rules / Standards to be considered in CE Report:**

I, \_\_\_\_\_, serving as Custody Evaluator for \_\_\_\_\_ understand this role does not entitle me to absolute immunity from claims pertinent to fabricated evidence during an investigation or false statements made in a dependency petition affidavit, signed under penalty of perjury.

**Absolute immunity does not pertain if evidence is fabricated, or if false statements are made in sworn affidavit. I understand I do not have absolute immunity from prosecution under these circumstances. <sup>1</sup>**

Signed: \_\_\_\_\_

Notarized: \_\_\_\_\_ Date: \_\_\_\_\_

**<sup>1</sup> Based upon the Beltran v Santa Clara decision.**

4). Disallow reports from social workers employed by the Family court. In Hawai’i, social workers who do not have a license may not purport to be a social worker unless they are employed by a state agency. Without a license to protect, court “social workers” like Barbara Shintani, fabricate reports. There is no way to protect the public without licensing board oversight or a complaint process within the court to assure ethics.

Respectfully submitted,  
Melinda L. Franklin

January 31, 2013

RE: SUPPORT OF SB1226

Aloha Senators Chun-Oakland, Ihara and Wakai:

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 SB1226 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 rather than relying on family court attorneys, who may have little knowledge of what makes a custody evaluator an appropriate choice.
- 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

## SB 1226 Testimony

I would like to submit testimony in **strong** support of SB 1226. In the absence of clear guidelines for child custody evaluations and/or grievance processes for litigants facing unethical evaluators, the family courts of Hawai'i will continue committing egregious errors during contested divorce/child custody cases. Since the status quo is to rely heavily on an evaluator's recommendations, the family court has allowed some unethical and seemingly profit-seeking professionals to prey on unsuspecting clients for far too long.

My children and I have been the victims of incredibly unethical actions by one forensic psychologist and also "friend" of the family court, Marvin Acklin, PhD. Under peer review, two other psychologists stated, "There are so many minor and major problems with this evaluation that a very lengthy report could cover just the ethical concerns about this forensic evaluation". Basing his reports and recommendations on the principles of Parental Alienation Syndrome(PAS), junk science that has yet to be supported by the American Psychological Association, Dr. Acklin strongly recommended my children's father gain sole custody and went even further to recommend they have extremely limited contact with me, their mother and primary caretaker. These actions were the exact actions recommended by the founder of PAS, in cases where the "syndrome" was identified. Though PAS does not meet either the Daubert or Frye standards, Dr. Acklin's recommendations were adopted by the family court. As a result, my children went 15 months with seeing their mother for only two hours – during a supervised visit – many months after the devastating change of custody. They were never allowed to say goodbye to their mother, stepfather, friends, or even baby sister. They were not allowed any psychotherapeutic opportunity to help them understand how dramatically their lives would change or even why it would be changing. Some might consider this could never happen in America, but unfortunately it happens regularly within Hawai'i's family court system.

I have since regained custody of my children as a result of litigation in another state, as all parties involved have since moved away from Hawai'i. My reason for supporting this bill is out of concern for the ohana and keiki who currently reside in Hawai'i. Please do not continue to allow other unsuspecting clients of the family court to go through the nightmarish situation my children and I had to endure. Results of my case were so devastating that my young teenage daughter became suicidal due to feelings of helplessness and overwhelming grief. She could have been spared from these feelings had just one person allowed a grievance against the actions being recommended in our case. SB 1226 is needed. It could save lives and spare Hawai'i's citizens from being the victims of unethical professionals, such as my family endured.

Thank you for allowing my testimony.

Sincerely,  
Catina L. Stefanik

**MARVIN W. ACKLIN, PH.D.**

*Diplomate in Clinical & Forensic Psychology*  
*American Board of Professional Psychology*  
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Testimony in Support for SB 1226 addressed to the Senate Human Services Committee  
Twenty Seventh Legislature, Regular Session 2013

This testimony is submitted in support of SB 1226 which establishes qualifications for the appointment of custody evaluators in the Family Court. Further, the framework provided by the bill will establish standards-based criteria for reports and testimony submitted to Family Court judges in matters involving disputed custody of a minor child. The goal of these initiatives is improvement in the quality of forensic family assessments with findings and recommendations submitted to the Family Court.

The undersigned is an experienced custody evaluator and expert witness in Family Courts in all 5 circuits of the Hawaii Family Court. I have conducted over 400 custody evaluations and testified in court hundreds of times. I conduct research in custody evaluations, present at national conferences on the conduct and behavioral science of custody evaluations, and stay current with the professional literature.

Nationwide, many jurisdictions have moved to professionalize custody evaluations to improve the quality of investigations in matters of great import to parents and courts. Improvement in the quality of custody evaluations will require establishing minimal requirements for the appointment of evaluators and standards-based criteria for reports and testimony submitted in court.

Several professional organizations, including the Association of Family and Conciliation Courts and the American Psychological Association have developed practiced guidelines and standards for court involved mental health professionals, including custody evaluators.

The work group which produced this bill took great pains to solicit information from a wide variety of stake holders in the issue of qualifications of custody evaluators.

The proposed bill identifies qualified custody evaluators as having the minimal requirement of licensure in a mental health discipline plus supplemental qualifications sufficient to qualify for testimony under the Rules of Evidence used in the Hawaii Courts (using an education, training, and experience criterion). This is important since the tradition has been to appoint individuals without minimal qualifications, for example, attorneys, whose education and training typically does not include any of the core competencies necessary for custody evaluations, including child and adult development,

clinical interviewing of children and adults, family systems theory, assessment of parenting, mental health assessments, and behavioral science focused on children and families undergoing divorce.

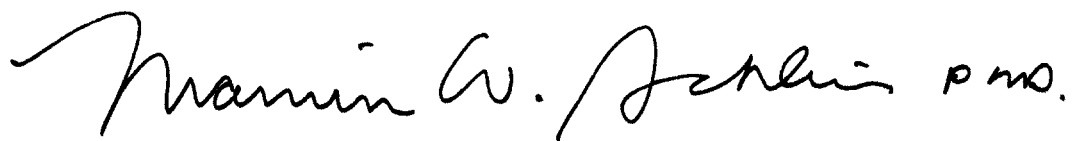
As written the bill provides *minimal* educational qualifications. Mere licensure in a mental health discipline, similar to graduation from law school, does not automatically qualify a custody evaluator. Custody evaluators require advanced subspecialty education and training. The legislation will need further work to establish the *minimal* training and experiential criteria, including continuing education, for appointment and annual renewal for status on the registry maintained by the court.

Until now the Family Court has not maintained a registry of custody evaluators. In my view, it is the court's responsibility to insure that custody evaluators are qualified to be appointed as expert witnesses and produce reports that will meet Rules of Evidence admissibility requirements. Custody evaluators should be viewed as the court's witnesses. The bill provides for maintenance of a registry of custody evaluators with a comprehensive listing of their qualifications that may be reviewed by the judge, counsel, and parties when the appointment is indicated. Furthermore, the registry may be used in identifying *advanced* qualifications in specialty cases. A registry will allow for greater transparency and accountability in the appointment of custody evaluators who are available for appointment.

I strongly encourage the adoption of this legislation as a first step in reform and improvement of custody evaluations submitted to the Family Court.

Thank you for your consideration of my testimony.

Sincerely yours,

A handwritten signature in black ink that reads "Marvin W. Acklin Ph.D." The signature is written in a cursive style with a large, sweeping initial 'M'.

Marvin W. Acklin, Ph.D., ABPP  
Clinical & Forensic Psychologist

Hawaii State Legislature, 2013  
Senate Human Services Committee  
February 5, 2013, 1:15 pm

TO: Sen. Suzanne Chun Oakland, Chair  
Sen. Josh Green, Vice Chair  
& Senate Human Services Committee

RE: SB 1226-Clarifies the appointment and qualifications for child custody evaluators.

I am in support of SB 1226 because it will help to increase the quality of service provided by Custody Evaluators (CE's). Custody evaluations seem to have become a rather lucrative industry for the custody evaluators; however the quality of the evaluations can range from mediocre to high quality. Paying a higher price for a custody evaluation does not insure a higher quality investigation. For example, individuals who have been through a custody evaluation complain that the CE met with him or her only once and for a very short period of time while the other parent met with the CE on a number of occasions; or the CE spent very little or no time with the child.

The 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 SB 1226 that will require the courts to establish a complaint process. Inadequate CE investigations can cause serious harm to a child's future so establishing a legitimate complaint process will empower the participants of the custody evaluation process to have the authority to question the CE's quality of work. Allowing the participants to file complaints against CE's who provide questionable quality of work will aid in standardizing the quality of service provided in the custody evaluation industry.

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

Laurie Hirohata, MSW, MEd

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HMS Testimony](#)  
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**Subject:** Submitted testimony for SB1226 on Feb 5, 2013 13:15PM  
**Date:** Monday, February 04, 2013 1:07:17 PM

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SB1226

Submitted on: 2/4/2013

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

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.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)