SB 2374

Measure Title:	RELATING TO CHILD WELFARE.
Report Title:	Child Custody Evaluator; Fact Finder; Qualifications
Description:	Increases training requirements for court appointed child custody evaluators. Establishes child custody fact finder requirements and duties.
Companion:	HB2491
Package:	None
Current Referral:	HMS/CPN, JDL
Introducer(s):	CHUN OAKLAND, Ihara

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To: Committee on Human Services
Senator Suzanne Chun-Oakland, Chair

Committee on Commerce and Consumer Protection
Senator Rosalyn Baker, Chair

From: Dyan K. Mitsuyama, Treasurer and current
Legislative Committee Chair for the
Family Law Section, Hawaii State Bar Association

Re: Testimony in Opposition to SB 2374
Hearing: Tuesday, February 11, 2014 at 1:15 p.m.
Place: Conference Room 16

Good afternoon, Chair Chun-Oakland, Chair Baker, and members of the Committees, I am Dyan K. Mitsuyama, a licensed attorney here in the State of Hawaii. I have practiced here in Hawaii for about 15 years now mostly concentrating my practice to Family Law. I am the current Treasurer of the Family Law Section of the Hawaii State Bar Assciation, which is comprised of approximately 136 licensed attorneys all practicing or expressing an interest in practicing family law.

I am here to testify in opposition to SB2374 Relating To Child Welfare.

If the bill is passed without any amendments, it will virtually wipe out the remaining Custody Evaluators (CE) or Child Custody Fact Finders (FF) that exist presently, particularly those that live here in Hawaii.

The training requirements seem rigorous and quite honestly expensive. Trainings in Hawaii are hard to come by and the extra cost to attend training(s) on the mainland for no less than possibly twenty-four (24) hours seems rigorous and demanding on one's professional as well as personal time. All day seminars, even here in Hawaii, although are scheduled for eight hours also include time for registration, breaks, and lunches, which result in less than eight hours of instructional time.

The training requirements are also contradictory and confusing within the bill itself. For FF's, 24 hours of annual training are required, but also 8 hours of "relevant continuing education to

update training" each year is also required. That seems to be a total of 32 hours then of mandatory training just to be a FF.

Even if one were ready, wiling, and able to be a CE or a FF with training completed, he/she still could not become a "qualified" court-appointed CE or FF because he/she would be required to perform evaluations for at least a year and would also be required to complete 3 child custody evaluations before becoming "qualified".

Right now there are a handful of CE's on the Court Registry. For example, on Oahu, the most populated island here in Hawaii, there are only seven (7) individuals registered as CEs. Of these seven (7) CEs, **three (3) reside on the Mainland**. Of the four (4) Oahu-based CEs, only one (1) is known for doing custody-related work (including custody evaluations and psychological evaluations, etc.). The other three (3) were not involved in doing custody evaluations for Family Court before July 1, 2013 and therefore, may become disqualified with the passage of SB2374 if they have not performed 3 child custody evaluations and have not had one year of experience in performing evaluations.

This is concerning for our community as a whole for several reasons. First, mainland experts, although highly trained and qualified are expensive and not readily available. The mainland experts' hourly rates are higher than the experts here and the mainland experts require the parties to pay for their travel expenses, something the "local" CEs or FFs do not even incur. To show you a cost comparison, prior to the enactment of the CE bill last year, CE retainers would range from $1,500-$5,000. Mainland experts have now retainers of at least $5,000 ***plus travel expenses***. I know of one mainland CE who recently quoted a family ***$16,000 plus expenses*** because it was a relocation case.

The mainland experts are also not readily available. Because they have other cases on the mainland and some maintain private practices, they sometimes decline appointments here because they are unable to fly here to do the interviews or the actual evaluation in a timely fashion.

For years, the CE program has been criticized and for good reason, but the CE program is also necessary. Many cases that involve CE's or FF's often end in settlement after the evaluations are complete and the reports are reviewed. Because the courts are overloaded and overwhelmed, CE's or FF's help to streamline process and reduce litigation time by presenting the Court with necessary information which otherwise would be obtained by each individual coming to court to testify. The elimination of the CE's or FF's would cause an increase in litigation and as such backlog in the Family Courts.

The CEs and FFs here are passionate about their work. They do it because they truly want to help families. It would be unfortunate to lose that type of commitment to work that often goes unappreciated and highly criticized.

For the reasons stated above, we ask that you refrain from passing this bill.

Thank you for the opportunity to testify in opposition to the passage of SB 2374.

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TESTIMONY OF DEAN A. SOMA
Regarding Senate Bill 2374, Relating to Child Welfare

Committee on Human Services
Senator Suzanne Chun-Oakland, Chair
Committee on Commerce and Consumer Protection
Senator Rosalyn Baker, Chair

Tuesday, February 11, 2014 1:15 p.m.
Conference Room 016, State Capitol

Dear Senators Chun-Oakland, Baker and Members of the Committees:

I am a family law attorney with the firm of Coates & Frey. I am opposed in part to SB 2374 as drafted.

Custody evaluators and custody fact-finders have been extremely helpful to the Family Court and its practitioners. As court appointed investigators, custody evaluators and custody fact-finders assist in determining what is in the "best interest of the child(ren)". They are able to interview the child(ren) as well as many of the collateral witnesses necessary to assist the court in making this determination. This is especially true of many of the witnesses that through either time or financial constraints cannot appear in court; for example teachers, counselors, doctors, therapists, social workers, etc. They are also able to observe the child(ren) in their respective households and interacting with the parents. This is something neither the legal practitioner nor the court can do. Many of these custody evaluators and custody fact-finders have years of experience in performing the duties of custody evaluators/fact-finders. Unfortunately, none of this experience is being counted as either a requirement or in lieu of training for which as far I know there are no national accredited programs. Until there is a national accreditation process for either custody evaluators or fact-finders, I do not believe that SB 2374 is either necessary or helpful.

Thank you for the opportunity to testify this afternoon.

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TESTIMONY OF THOMAS D. FARRELL
Regarding Senate Bill 2374, Relating to Child Welfare

Committee on Human Services
Senator Suzanne Chun-Oakland, Chair
Committee on Commerce and Consumer Protection
Senator Rosalyn Baker, Chair

Tuesday, February 11, 2014 1:15 p.m.
Conference Room 016, State Capitol

Dear Senators Chun-Oakland, Baker and Members of the Committees:

I am opposed to SB 2374 as drafted and urge you instead to adopt as Senate Draft 1 a bill that would repeal the provisions of Sections 571-45 and 46, Hawaii Revised Statutes which authorize social studies and/or custody evaluators. Custody evaluators, and these new so-called "custody fact finders" that this bill would create are a cancer on the Family Court and should be excised without delay.

Permit me to lay out the case against custody evaluators.

The adversarial system. The adversarial system is the pillar of Anglo-American justice. The adversarial system is based on the premise that, when there is a controversy, each side gets to present evidence and argument upon which the judge then makes a decision. The opposite of the adversarial system is the inquisitorial system of justice and, frankly, that doesn't work very well. The inquisitorial system is where the decision-maker launches his own investigation. That's essentially what happens when a judge appoints a custody evaluator. Suppose you had a murder case. Would you think it a good idea for the judge to appoint his own investigator to give him a recommendation on whether the defendant should be found guilty or innocent? I hope you recognize how crazy that would be. Instead, the prosecutor presents his evidence and argument, the defense does the same, and the judge or jury decides. Why should Family Court be any different?

Tipping the scales of justice. When a parent is on the losing end of a custody evaluation, the deck is stacked. Lawyers tell their clients all the time that they can go to trial, but the court is probably going to do what the CE recommended. After all, why would a judge bother to appoint one in the first place if she plans to ignore the CE's report? Many times the parent with an unfavorable custody evaluation throws in the towel and settles the case, but usually with a lingering resentment of the Family Court and the feeling that he never had his day in court.

*Certified by the National Board of Trial Advocacy. The Supreme Court of Hawaii grants Hawaii certification only to lawyers in good standing who have successfully completed a specialty program accredited by the American Bar Association.

Cost and delay. A custody evaluation runs about $5,000, and that's just to get a report. If the case goes to trial, the custody evaluator has to be paid for his or her time, and that can run another two or three thousand dollars. Who pays this? The parents do, even if one or both of them didn't want a custody evaluator. The fact that there is a custody evaluator also drives up the parties' attorneys' fees, because we have to help our clients fill out the custody evaluator's questionnaire, take the CE's deposition, appear for a CE return hearing, and prepare for the direct or cross-examination of the CE at trial. All this costs money. I have seen cases where the parties are so financially drained by paying for a custody evaluation that they can no longer afford to pay their lawyers, and wind up having to represent themselves at trial. Finally, CE's are frequently unable to produce their reports on time, which slows down a process that is already agonizingly slow. As a lawyer, you can't complain because you don't want the CE to get mad and take it out on your client.

No rules of evidence. In court, we have rules of evidence which are designed to promote fairness and exclude unreliable evidence. For example, the "Best Evidence Rule" says that a witness may not describe a picture if the picture itself can be produced. The Hearsay Rule excludes out-of-court statements because it is only fair that if someone is going to testify against your position, you should have the opportunity to cross-examine. There are many other examples, but the point is this: custody evaluators are not bound by any rules of evidence, and statements in their reports which would otherwise be inadmissible have to be admitted into evidence and considered by the judge. In fact, lawyers often want a custody evaluator appointed to be the vehicle through which inadmissible evidence can be admitted.

No verbatim record or identification of sources. Custody evaluators don't have to, and generally do not, make a verbatim record of what various sources tell them. Nor do they necessarily identify their sources in their reports. Suppose a CE report says "various sources confirmed that father has a drinking problem." How can father defend against that allegation if he doesn't know who said that, and exactly what was said?

Junk science. Child custody is not a science. There is no such thing as an "expert" in child custody. There is no universally accepted method of conducting a custody evaluation, and in practice, CE's methods vary considerably. When psychologists conduct them, they tend to subject parents to a lot of psychological testing, much of which is of very limited value as it is designed to diagnose psychological conditions for the purpose of treatment, not to evaluate parenting. When lawyers act as CE's, they rarely use psychological testing, preferring instead to do extensive interviews of friends, teachers, neighbors and relatives. In many cases, a recommendation boils down to the CE's gut instinct, and there is no objective and coherent explanation for a particular recommendation. Theories about child custody are constantly changing---when I began this work some twenty years ago, joint custody was in vogue, then it fell out of favor, and now it's making a comeback.

As you may recall, last year you passed legislation mandating standards and training for custody evaluators, and requiring the Family Court to maintain a registry of qualified CEs. I did not testify on that legislation because, frankly, I could not decide whether it was worse to support or oppose it. I feared that if the bill passed, a registry of qualified CEs would impart legitimacy to custody evaluators that they do not deserve. On the other hand, I also suspected the bill would pretty much kill off custody evaluators in Hawaii because there would be very few individuals who would be found to be qualified for the registry. That suspicion turned out to be true, and at last report only three people made it to the court's list (only one of whom resides in Hawaii). So, although it wasn't what you intended, in my opinion passage of the bill had a good effect. It's also a classic example of the law of unintended consequences.

SB 2374 proposes to "fix" the unintended consequence by creating a new class of junior custody evaluators to be called "custody fact finders." The qualifications have been dumbed down, so that more people will be able to get on this list. The trade-off is that, supposedly, they can only engage in "fact finding," but cannot make custody recommendations. That is an illusion. Not long ago, Judge Uale imposed one of these "custody fact finders" on me over my strenuous objection. This fact finder rendered a report in which he stated, as a finding of fact, that the best interest of the child would be served if he resided primarily with his mother. That sure sounds like a recommendation to me. I wasn't entirely upset by this because I represented the mother. However, the other side was certainly upset and they argued that the report should be stricken from the record. They also asked that the fact-finder be prohibited from testifying at trial because he had made recommendations even though his appointment order had specifically directed him not to do so and to be a mere "fact-finder." Guess what? The trial judge, Cathy Remigio, let the report in, let him testify, and followed his recommendation.

In any case in which the custody of a child is at issue, there should be but one fact-finder, and one custody evaluator: the Family Court Judge.

We are here today debating the regulation of an industry that should not be allowed to exist in the first place. If you repeal the statutory provisions that allow a judge to appoint a custody evaluator, your problem is solved. If I have convinced a majority of this combined committee to take that course of action, I will be very happy indeed to provide your staff with the language for a proposed SD 1 of this bill that will accomplish just that.

Thank you for the opportunity to testify this afternoon.

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TO: Senate Committee on Human Services
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice-Chair

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice-Chair

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
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HEARING DATE: February 11, 2014 at 1:15 p.m.

RE: Testimony in Opposition to SB 2374 Relating to Child Welfare

Good afternoon Senator Chun Oakland, Senator Baker, and members of the Committees. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice in Family Law for more than fifteen (15) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am submitting this testimony in strong opposition to SB 2374.

While I can appreciate the intent behind SB 2374, I believe it imposes such onerous training requirements that it will have the effect of legislating local child custody evaluators and child custody fact finders out of existence. That will leave our community with no recourse but to retain child custody evaluators and child custody fact finders from the Mainland which will not only increase the costs for the parties to the case but could affect the quality of reports generated as the "experts" being used have no expertise with our local culture and community.

Child Custody Evaluators

Since HRS §571-46.4 went into effect last July, it has drastically reduced the number of child custody evaluators ("CEs") because a CE can only be appointed by the Court over the objection of a party if they are a licensed psychiatrist, psychologist, marriage and family therapist, or clinical social worker. (Of course, parties can agree to the appointment of other CEs but one

party can simply refuse to enter into any agreement and the only people the Court can appoint would be those qualified under the terms of HRS §571-46.4.)

An examination of the Registry of Child Custody Evaluators maintained by the Judiciary shows the following:

- Oahu. There are now seven (7) individuals registered as CEs. (Until recently, there were five (5) or less registered CEs.) Of these seven (7) CEs, three (3) reside on the Mainland. Of the four (4) Oahu-based CEs, only one (1) is known for doing custody-related work (including custody evaluations and psychological evaluations, etc.). The other three (3) were not involved in doing custody evaluations for Family Court before July, 2013 and are, therefore, unknown quantities with unknown qualifications other than, of course, that they are mental health professionals.

- Maui. There are six (6) individuals registered as CEs. Of these six (6) CEs, four (4) reside on the Mainland and one (1) resides on Oahu. Only one (1) CE actually resides on Maui.

- Hawai'i. There are two (2) individuals registered as CEs. One (1) resides on the Mainland and one (1) resides on Oahu. There are no registered CEs for the Big Island who actually reside on the Big Island.

- Kaua'i. There are five (5) individuals registered as CEs. Of these five (5) CEs, three (3) reside on the Mainland. Of the two (2) CEs who reside on Kaua'i, I recently contacted one (1) who told me she was no longer going to be doing CE work. That leaves one (1) registered CE who actually resides on Kaua'i and I do not know if she is still working as a CE.

SB 2374 is now also requiring that CEs have 40 hours of training, have one (1) year of experience in doing custody evaluations and parenting plans, and have completed three (3) full custody evaluations. The 40 hours of training must include 15 specific areas, all of which appear to be required in addition to the fact finder training requirements, since they are listed as "and" not "or" training. At a minimum, SB 2374 should be modified on page 3, line 20 to change "and" to "or". SB 2374 also seems to require an additional eight (8) hours of annual training in addition to the thirty-two (32) hours of training required by fact finders (which is also required of CEs). To be frank, the training requirements alone are so confusing they may simply convince people to give up trying to do CE work altogether in Hawai'i.

In sum, I believe these new requirements may reduce the already low number of CEs who are "qualified" under the current statute (and listed on the registry) depending on their training and experience. Most importantly, however, I have no doubt that these requirements will ensure that locally-based CEs will not qualify unless they have moved here from the Mainland. **After all, if you can't perform a custody evaluation until you are "qualified" under HRS §571-46.4, but you can't be "qualified" under HRS §571-46.4 until you have**

completed three (3) custody evaluations and have one (1) year of experience as a CE, CEs will be caught in a circular requirement that they will never meet unless they have completed their requirements outside of Hawai'i.

Fact Finders

SB 2374 seeks to add a new subsection (c) to HRS §571-46.4 which would create and regulate a new category of professional - the child custody fact finder ("FF"). As with the CE training requirements, the annual training requirements for FFs also appear to be incredibly burdensome. SB 2374 requires 24 hours of training a year in 19 different areas. The bill currently requires training in all 19 areas. It is difficult to see how FFs would be able to attend enough training events in a single year that would cover all 19 topic areas. Much of the training for CEs and FFs occur on the Mainland and multiple trips to the Mainland every year could be cost prohibitive for some CEs and FFs. At a minimum, SB 2374 should be modified on page 7, line 21 to change the second "and" to "or".

In addition, the Committees should also carefully review and probably eliminate some of the 19 topic areas. For example,

- Subsection H (page 6, lines 21-22) requires FFs (and CEs) to complete annual training in "continuing education and staying current with relevant literature and research". This doesn't even make sense as it is written and I doubt that seminars are held on this topic.

- Subsection I (page 7, lines 1-4) requires FFs (and CEs) to complete annual training in "comparable interview procedures that meet generally accepted clinical, forensic, scientific, diagnostic or medical standard to all parties". Again, this doesn't even make sense as it is written.

- FFs and CEs are not mediators nor should they act as mediators. There is, therefore, no reason to require them to take mediation training. See subsection Q (page 7, line 18) .

The requirements of SB 2374 are so burdensome that it will do a grave disservice to our community by reducing the number of professionals who can serve as CEs and FFs.

I am aware that there are people who believe CEs and FFs should not be used at all and that trials should determine custody and visitation orders. First, CEs make recommendations not decisions. I disagree that judges automatically follow the recommendations of CEs. If a party disagrees with the recommendations of a CE, their choice is to go to trial. I have done so and convinced the trial judge to ignore the recommendation of the CE. Second, CE reports often encourage settlement because they accurately reflect what is going in a family. They serve a purpose and are a useful tool in resolving some cases. Third, full custody trials require weeks of trial time and resources. The

Family Court simply doesn't have the resources to conduct contested custody trials in every case. Fourth, custody trials are emotionally draining and expensive for parents. A good CE report can assist parents in settling their case and avoiding the consequences of a trial, both financial and non-financial.

The Senate Committee on Human Services is tasked with "programs relating to the promotion of the general well-being of Hawai'i's youth, families, and elderly population". Legislating out of existence a useful tool, such as CEs and FFs, would do great harm to the youth and families this committee is supposed to protect.

For all of these reasons, I recommend this bill be deferred until it can obtain further input (especially from CEs and potential FFs) about possible training requirements that will satisfy the concerns of the Committees but will not be so burdensome as to result in the complete elimination of CEs and FFs.

Thank you.

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To: Committee on Human Services
Senator Suzanne Chun-Oakland, Chair

Committee on Commerce and Consumer Protection
Senator Rosalyn Baker, Chair

From: Alethea K. Rebman & Dyan K. Mitsuyama
Email: info@mitsuyamaandrebman.com
Phone: 545-7035

Re: Testimony in Opposition to SB 2374
Hearing: Tuesday, February 11, 2014 at 1:15 p.m.
Place: Conference Room 16

Good afternoon, Chair Chun-Oakland, Chair Baker, and members of the Committees. We are partners at Mitsuyama & Rebman LLLC, a law firm concentrating in family law matters.

Although we are in favor of continuing professional education as a condition of court-appointed or court-related positions, we are in opposition to SB 2374 as drafted.

We work with custody evaluators and now with fact-finders in many of our cases. They are often invaluable in resolving the cases. While there is a platonic ideal of the pure adversarial system of justice of two sides litigating until only one is left standing, there are at least three problems with that in Family Court: extreme adversarial positions can be harmful to the families who are inextricably bound to each other through children; families can be financially drained by the protracted litigation that sometimes seems like their only option, and our courts simply do not have the resources to hear everyone's evidence. It is not uncommon to have 1.5 - 3 hours per parent for a final custody hearing, making it impossible to present all of the evidence that the court needs to make an informed decision. Custody evaluators and fact-finders bridge that gap.

As a starting point for this bill, a law regulating two types of investigations and different types of reports should have fuller definitions of each term. For example, California Rules of the Court Rule 5.225 Appointment requirements for child custody evaluators defines "child custody evaluation," a "full evaluation…," and a "partial

evaluation, investigation, or assessment." SB 2374 includes some but not all of the needed definitions.

The Custody Evaluator ("CE") choices available to our families have already been severely curtailed by the recent law changes in HRS § 571-464 that cut off many practicing CEs. Those changes have increased the price of CEs without (as yet – it may be too early to say) visible improvements in the CE system.

A custody evaluation prior to the implementation of those changes could cost between $1,500 - $5,000, with most being around $3,-4,000 or up to $6,000 + expenses in cases requiring mainland travel. This was bearable because expensive litigation was often on hold during the investigation, and families who had to choose between subpoenaing witnesses, dragging teachers and coaches in to court, and preparing for trial versus having a neutral professional go out and investigate the facts would often realize cost savings with a CE despite the initial cost.

A custody evaluation after the restrictions on CEs now starts around $4-5,000 and easily goes up to $8,000 and more. Surely this was an unintended consequence, but it is a real and deleterious one.

We are in favor of the requirement for an initial training, although 40 hours may be unneeded and unduly burdensome (read "expensive") given the experience in the field that LCSWs, therapists, and psychologists bring to the table. This bill's requirements for the minimum experience, however, does not specify where the experience will come from if a CE cannot practice without it. The cure for that may be worse then the lack, as a cottage industry of qualified CEs supervising incoming CEs will drive up prices and create an access bottleneck.

We are also in favor of the category of fact-finder <u>if</u> the law continues to foreclose those with Master's degrees in mental health and a juris doctorate and the requisite education in the field from acting as CEs. We think that the real-life difference between a marriage therapist and an attorney with a Master's degree in mental health does not speak to allowing one to be a CE and one to merely be a fact-finder and that the original change in the law to restrict CE practice has not been good for our family justice system, but while those restrictions exist, we need the category of fact-finder.

Thank you for the opportunity to testify in opposition to the passage of SB 2374.

Dara Carlin, M.A.
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February 11, 2014

Good Afternoon Senators and thank you for this opportunity to provide testimony in support of SB 2374 **with comments and suggestion**. This legislation is long overdue and finally addresses a frightening reality: that Custody Evaluators have been doing their jobs thus far without any of these basic standards in-place.

Before this measure was presented, I commented that one crucial piece was missing from this training: **knowledge of the relevant law and statues**. Although this appears to be addressed in 2(R) Extradition and reciprocity laws between countries that impact child custody, visitation, and custodial interference in Hawaii these were not what I was specifically calling attention to; **HRS 571-46(9)** was for the following reason:

A few years back I had a DV survivor mom who was told by the Custody Evaluator (a social worker) that if mom did not drop her divorce petition and attempt to save her marriage that the CE would recommend full physical/legal custody of their four young children - whom mom learned her husband was molesting (why she left and filed for divorce) - to her husband, the abuser.

The CE revealed that she had divorced her own husband but "had the decency to wait until" her "kids were older". Since the survivor mom's husband became physically violent when mom caught him molesting their daughter, she was adamant about not returning and sure enough, **the CE recommended full physical/legal custody to the abuser that was subsequently granted**. When I asked this CE about HRS 571-46(9) (the DV rebuttable presumption) she looked me square in the eye and asked, ***"What's that?"*** Subsequently at a conference in Honolulu, I passed out copies of HRS 571-46(9) to the audience, MANY of whom told me that they had never seen it before!

The intent behind HRS 571-46(9) and the research that supports it is clear so SB2374 must be just as clear: **if domestic violence is discovered or revealed through the fact finding or custody evaluation process HRS 571-46(9) takes precedence and the fact finding/custody evaluation process is immediately stopped.** Research comprehensively explains why DV cases should be exempt from the CE process with obituaries and orphans to remind us of why HRS 571-46(9) was put into law in the first place.

Thank you once again for this opportunity to provide testimony and comments.

TO:

COMMITTEE ON HUMAN SERVICES
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

DATE: Tuesday, February 11, 2014
TIME: 1:15 pm
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

FROM: John W. Schmidtke, Jr.
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RE: Testimony in Opposition to HB2374

My name is John Schmidtke. I have practiced exclusively in the field of family law since 1983. Over the years, I have written several versions of the Child Custody Section of the Hawai'i Divorce Manual. In the 1990s I chaired the Custody Guardian Ad Litem Committee that was created to help the judiciary when the state stopped doing child custody evaluations.

I submit this written testimony in opposition to HB2374.

HRS § 571-46.4 should be repealed and not amended. Nothing can qualify a psychiatrist, a psychologist, a marriage/family therapist, a social worker, or a trained fact finder to be a good source of information for the judiciary. Police officers are better trained at accumulating facts and reporting them accurately than any person listed in the statute or its proposed amendment.

The existing bill, with its proposed amendments, increases the administrative burden on the court for no good reason—there is no one who can ever be trained to reliably opine about what makes one parent better than the other because any opinion is based on the personal prejudices and personal experiences of the person stating the opinion. Likewise, the facts that a "fact finder" finds and reports to the court are colored by the fact finder's biases and personal opinions. The "facts" can be reported so that the recommendation is implied rather than expressed.

The proposed bill takes time and resources away from the judiciary as it trains, supervises, and qualifies people to do a job that can never be done properly.

We do not need custody evaluators or fact finders because under existing court rules parents can call witnesses and present testimony directly to judges, the only persons who are empowered to determine what custody and visitation arrangements are in a child's best interest.

We need more judges with more time to hear contested cases without time limitations than we need extra people, paid for by the litigants, who make recommendations or find facts that can be ignored by the court. Only judges are fact finders—free them up to do their job. If you cannot repeal a law that did not help, do not make matters worse by adding more bureaucracy.

Thank you for the opportunity to testify in opposition to HB2374.

SB2374
Submitted on: 2/5/2014
Testimony for HMS/CPN on Feb 11, 2014 13:15PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
adamtm@lava.net	Individual	Support	No

Comments: These changes are necessary in order to improve child custody evaluation procedures.