

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 10, 2014 4:00 PM
To: HMS Testimony
Cc: lhirohat@gmail.com
Subject: Submitted testimony for SB2374 on Feb 11, 2014 13:15PM

SB2374

Submitted on: 2/10/2014

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

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Hirohata	Individual	Support	No

Comments: This bill is needed to clarify the training qualifications for Child Custody Evaluators (CCE). Child Custody Evaluators get involved with the most contentious and difficult divorce cases so the CCE has to be well-trained and certified to protect the children from harm by unskilled or sloppy CCE's.

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.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 10, 2014 11:27 PM
To: HMS Testimony
Cc: acthalmann@gmail.com
Subject: *Submitted testimony for SB2374 on Feb 11, 2014 13:15PM*

SB2374

Submitted on: 2/10/2014

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

Submitted By	Organization	Testifier Position	Present at Hearing
alison thalman	Individual	Support	No

Comments:

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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 11, 2014 11:07 AM
To: HMS Testimony
Cc: crslethem@gmail.com
Subject: Submitted testimony for SB2374 on Feb 11, 2014 13:15PM

SB2374

Submitted on: 2/11/2014

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

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Lethem	Individual	Support	No

Comments: This bill is a continuation of legislation already passed that addresses so many issues related to Custody evaluators. By establishing an educational criteria for custody evaluators, you ensure that they perform work based upon an understanding of child development and family dynamics. Too many times in the past, child custody evaluators were operating with a gender biased agenda. Please consider the merits of this bill.

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LATE

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Senator Rosalyn Baker, Chair

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HEARING DATE: February 12, 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 Committee. My name is Trina Yamada. I have a solo law practice and have concentrated my practice in Family Law for over fifteen (15) years. I am also the founding and past Chair of the Child Law Section of the Hawaii State Bar from 2007 - 2010. I have practiced as a family mediator, custody evaluator, Guardian Ad Litem, parenting coordinator and custody evaluator. Besides being a licensed attorney, I also have a Masters of Social Work, am a licensed social worker and have worked as a social worker for the Child Protective Services. I have also provided training to potential custody evaluators through the outreach program at the University of Hawaii. I am here today to testify against SB 2374.

I oppose SB 2374 relating to child welfare.

While SB2374 purports to address the specific qualifications and training for child custody evaluators and child custody fact finders; what it potentially does is limit the number of professionals, although duly qualified through years of experience and knowledge, from becoming or continuing to conduct custody evaluations.

A divorce is emotionally charged. Parents may experience hurt feelings, mistrust, loss and abandonment. And the parents are not only are the ones involved in the divorce process. The children are often caught in the middle of their parents' disputes and emotions and also experience hurt

feelings, mistrust, loss and abandonment. While the parents may have outside support of family and friends to help them through the process; to whom do children turn to when they have problems or concerns? The parents. However, how can one expect a child go to a parent who is so emotionally charged with the divorce for fear of hurting a parent's feelings, for fear of causing more problems in the family or for the simple reason that the child does not believe that he or she is able to trust either parent?

While it would be so simple to lump all children going through divorce into one large category, this is unrealistic. Children are different. Families are different. And so, the services and the outreach that are provided to them must be different.

While some may argue that it might be beneficial to go straight to a judge and have a contested trial. But whom would that benefit: the parents, because they would not have to bear the cost for a custody evaluator; the courts, because there is only one choice of trial; or the children, because a decision for their care and welfare will be determined by a judge who listens to the "he said she said" arguments of the parents and attorneys?

Is not the most important consideration in a custody case what is in the best interests of the child? If the parents were able to come to an agreement as to the best interest of their own children, there would not be a need for contested custody battles and surely not the need for court involvement. However, parents in divorce are not always looking out for their children's best interests. Their attorneys are not always looking out for the children's best interest. Who then looks out for the children's best interest? For more than the last twenty (20) years the custody evaluators, custody guardian ad litem and guardian ad litem were doing just that.

SB 2374, as written provides for specific trainings that are not offered in the State of Hawaii on a regular basis, if offered at all.

For myself, I spend my time and finances attending conferences on the mainland, at least twice a year. Currently, there are a limited number of registered custody evaluators due to the recently enacted HRS 571-46.4. By mandating the specific training requirements that may not be necessary to be a custody evaluator, it can be speculated that there will be even fewer custody evaluators, and therefore SB 2374 is more restrictive.

The question then needs to be asked, what is the custody evaluator's role? A custody evaluator is a **forensic investigator** and **not a treating or clinical mental health professional**. That provides information for the court. However, the requirements to be a custody evaluator in Hawaii as stated in HRS 571-46.4 are based upon the requirement that these professionals have a clinical background while working in a forensic role.

Following the enactment of HRS 571-46.4 last year resulting in the following:

In the First Circuit, there are seven (7) approved and registered custody evaluators; three (3) are based in the mainland. In the Second Circuit, there are six (6) approved and registered custody evaluators; four (4) are based in the mainland. In the Third Circuit, there are two (2) approved and registered custody evaluators; one (1) is based on the mainland. In the Fifth Circuit there are five (5) approved and registered custody evaluators; three (3) are based on the mainland.

SB 2374 is a weak attempt to correct the lack of foresight that the enactment of HRS 571-46.4 resulted in. As written, the so-called "approved custody evaluators" in section 1 must:

- complete 40 hours of training,
- one (1) year of experience in conducting child custody evaluations and parenting plans,
- complete three (3) full child custody evaluations,
- complete and verify at least eight (8) additional hours of continuing education annually to update training and
- completes:
 - 24 hours of child custody fact finding training every year related to various issues and topics.

What the enactment of HRS 571-46.4 did last year was to create and niche market for non-local professionals. Passing SB 2374 with the extensive and unavailable training and educational requirements would be to further restrict the already limited available custody evaluators.

SB 2374 section (b) does carve out an exception that a person may be appointed as a child custody evaluator in the absence of a license under subsection (a) if the parties stipulate to a person who does not qualify as a child custody evaluator under subsection (a) and the court approves of that person.

This is only beneficial if the parties agree and prohibits the court from selecting a custody evaluator that does not meet the criteria in subsection (a) in the even that the parties are not in agreement. Let's not forget that these parties are in a divorce process and more than likely cannot or will not agree to anything that the other party wants or requests. So instead of helping the process, this hinders the process.

SB 2374 woefully fails to afford the court the discretion when the parties are not in agreement. In an adversarial process, is not the court the final decision-maker? Why then, would this body want to restrict this court's discretion when the parties are unable to reach an agreement on the selection of a custody evaluator?

It is nonsensical and rather arrogant to limit the authority of the very court that these custody evaluations are conducted for. The Family Court has discretion in almost all matters that involve children, except this one.

To allow the arrogance of a few to the detriment of the many is counterproductive to the best interests of the child. For the children of Hawaii, I hope that strong consideration be given to valid arguments and not the emotional criticisms of the few.

Thank you.