



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

House Committee on Human Services
Representative John M. Mizuno, Chair
Representative Terez Amato, Vice Chair

Thursday, February 9, 2023 at 9:00 a.m.
State Capitol, Conference Room 329 & Videoconference

by
Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 446, Relating to Child Custody

Purpose: Requires certain individuals attempting to serve as child custody evaluators to complete a training course on domestic violence issues every 3 years. Requires the Family Court to approve training courses and publish approved courses on the Judiciary website.

Judiciary's Position: The Judiciary does not oppose the intent of House Bill No. 446, but we have serious concerns about the bill's implementation plan. At page 4, from line 5, HB 446 requires that:

The training course shall be approved by the family court, and shall include a minimum of three hours of training. The family court shall publish a list of approved training courses on the judiciary's website.

The family court cannot approve training courses because we have neither the ability nor the expertise in training curriculum development to provide or find and then meaningfully "approve" said courses. Consequently, we could not publish a list of "approved training courses." Please note that a general Internet search for "domestic violence training courses" produces millions of results covering a myriad of professions.



House Bill No. 446, Relating to Child Custody
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We respectfully suggest that this committee adopt the language of House Bill No. 581 and Senate Bill No. 237, companion bills dealing with the same purposes as House Bill No. 446. Senate Bill No. 237 was heard by the Senate Committee on Health and Human Services. It was passed with amendments; however, S.D. 1 has not been posted at the date of this testimony. The Judiciary filed testimony in support of Senate Bill No. 237, and will file testimony in support of House Bill No. 581.

Thank you for the opportunity to testify in this matter.

Date: February 7th, 2023

To: House Committee on Human Services
Representative John M. Mizuno, Chair
Representative Terez Amato, Vice Chair

From: Early Childhood Action Strategy

Re: Testimony in Support of HB446– Relating to Child Custody Evaluators

Aloha and thank you for hearing this Bill. Early Childhood Action Strategy (ECAS) is a statewide cross-sector collaborative designed to improve the system of care for Hawai'i's youngest children and their families. ECAS partners work to align priorities for children prenatal to age eight, streamline services, maximize resources, and improve programs to support our youngest keiki.

ECAS supports HB446, requiring certain individuals attempting to serve as child custody evaluators to complete a training course on domestic violence every three years. **HB446** requires the Family Court to approve training courses and publish approved courses on the Judiciary website.

Family violence undermines the health and wellbeing of everyone in the home. Preventing violence in families is a key to healthy early childhood development. When community professionals are called upon to intervene, engage, support, and consider best interests/best outcomes for keiki, they must be trained on family violence, so that they can provide informed decision making on child custody cases.

Children have the greatest chance to develop to their full capacity when they live in safe, secure and nurturing homes. Young children who endure abuse and neglect and are exposed to intimate partner violence experience emotional, mental, and social damage that can affect their development, school readiness and longer-term school success.

Custody challenges are difficult enough for our keiki. We want to make sure that we are doing everything we can to ensure they are placed in safe and nurturing homes. Required training will contribute to strengthening the quality of our system.

Mahalo for your continued support to improve the health, safety and learning of our youngest keiki's. We appreciate you supporting **HB446**.



February 9, 2023

Members of the House Committee on Human Services:

Chair John M. Mizuno
Vice Chair Terez Amato
Rep. Della Au Belatti
Rep. Greggor Ilagan
Rep. Bertrand Kobayashi
Rep. Scott Y. Nishimoto
Rep. Jenna Takenouchi
Rep. Diamond Garcia

Re: HB446 Relating to Child Custody

Dear Chair Mizuno, Vice Chair Amato, and Members of the House Committee on Human Services:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 28 member programs statewide, we support the intent of bill HB446, and **prefer the language in HB581**.

HB446 establishes minimum domestic training requirements for custody evaluators and fact finders, once every three years. The language in HB581 requires a minimum of five hours of domestic violence training instead of three hours and does not include the requirement that the family court approve the domestic violence training (lines 5-6, page 4 of HB446). As indicated by the Judiciary in prior testimony on this matter, "the family court cannot approve training courses because we have neither the ability nor the expertise in training curriculum development to provide or find and then meaningfully 'approve' said courses".

We recognize that the lack of domestic violence training for custody evaluators and fact finders too often results in inconsistent outcomes for survivors of domestic violence and their children. Survivors report feeling re-victimized by their interactions with custody evaluators and fact finders and some choose not to proceed with the custody process at all.



HAWAI'I STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

Survivors and their children are not justly served when custody evaluators and fact finders are not trained to recognize the dynamics of domestic violence and how the abusive parent could be using tactics of power and control in a custody case.

Thank you for the opportunity to testify on this important matter.

Sincerely,
Angelina Mercado, Executive Director

HB-446

Submitted on: 2/8/2023 1:04:54 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Midwives Alliance of Hawaii	Midwives Alliance of Hawaii	Support	Written Testimony Only

Comments:

Please support HB446.

Midwives Alliance of Hawaii



Hawai'i Children's Action Network Speaks! is a nonpartisan 501c4 nonprofit committed to advocating for children and their families. Our core issues are safety, health, and education.

To: Representative Mizuno, Chair
Representative Amato, Vice Chair
House Committee on Human Services

Re: HB446, relating to child custody
9:00 a.m., Feb. 9, 2023

Aloha Chair Mizuno, Vice Chair Amato and committee members:

On behalf of Hawai'i Children's Action Network (HCAN) Speaks!, mahalo for the opportunity to testify on House Bill 446, relating to child custody. **HCAN Speaks! supports the intent of the bill and offers comments.**

Survivors and their children deserve a system that does not re-victimize them. This is a both a matter of justice and practicality. Feelings of re-victimization can persuade survivors to halt necessary legal proceedings. Additionally, even when they proceed, a lack of domestic violence training for custody evaluators and fact finders too often results in inconsistent outcomes for survivors of domestic violence and their children.

Requiring custody evaluators and fact finders to receive training in the dynamics of domestic violence is an important step forward. Survivors and their children are not justly served when custody evaluators and fact finders are not trained to recognize the dynamics of domestic violence and how the abusive parent could be using tactics of power and control in a custody case.

While we support the intent of bill HB446, **we prefer the language in HB581**. The language in HB581 requires a minimum of five hours of domestic violence training instead of three hours and does not include the requirement that the family court approve the domestic violence training (lines 5-6, page 4 of HB446). As indicated by the Judiciary in prior testimony on this matter, "the family court cannot approve training courses because we have neither the ability nor the expertise in training curriculum development to provide or find and then meaningfully 'approve' said courses"

Mahalo for opportunity to provide testimony.

Ke'ōpū Reelitz
Director of Early Learning and Health Policy

**Testimony to the Thirty-Second State Legislature
2023 Regular Session**

House Committee on Human Services

Representative John M. Mizuno, Chair
Representative Terez Amato, Vice Chair

Members:

Della Au Belatti
Greggor Ilagan
Bertrand Kobayashi
Scott Y. Nishimoto
Jenna Takenouchi
Diamond Garcia

Tuesday, February 7, 2023 at 9:00 am.
State Capitol, Conference Room 225 & Videoconference

WRITTEN TESTIMONY

by: Troy Fujii
Special Education Teacher
State of Hawaii, Department of Education

Bill No. and Title: House Bill No. 446, Relating to Child Custody

Purpose: The purpose of this Act is to require certain individuals who wish to act as child custody evaluators to complete a training course on domestic violence issues every three years .

My Position:

On House Bill No. 446, I am recommending the following amendments to be considered for inclusion into the bill.

Amending the purpose of the bill to include the following: There shall be a presumption, rebuttable by clear and convincing evidence, that joint custody and equally shared parenting time is in the best interests of the child. If a deviation from equal parenting time is warranted the court shall construct a parenting time schedule that maximizes the time each parent or de facto custodian has with the child, consistent with ensuring the child's welfare.

In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex or disability of the parent and, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child. Unless parental rights are terminated, both parents shall continue to have equal rights.

According to Equality for Children:

Equal Shared Parenting Benefits EVERYONE



Reduces Conflict

Equal shared parenting reduces conflict, court costs, and using children as pawns in an adult dispute.



Children Feel Loved

Studies have shown that children feel loved when they share equal time with both parents and children have fears that the non-custodial parents do not want them in unequal time that leads to poor mental and physical health.



Equality

Mothers and fathers must equally share in parenting to move society forward and to show our children that men and women are equal at both home and work.

PERSONAL EXPERIENCE

I am a 51 year old father born and raised on Kauai in a traditional household but live and work in Hilo since 1991. I graduated with a Bachelor's degree in Sociology from the University of Hawai'i at Hilo and then got my certification in special education. I also earned a Masters Degree in Kinesiology and Leisure Science with an emphasis in Adapted Physical Education. I got married at the age of 29 and have two sons ages 21 and 16 as well as a 5 year old daughter with my current partner. I've been employed with the DOE for the past 26+ years working with Special Education students at all levels. I am currently working at the elementary level the past 16+ years. I have volunteered my spare time to coach both my son's baseball teams from 2005 to 2018 and coached at a high school for 6 years during that time.

I feel pretty accomplished with my life thus far, however no one goes without fault. In 2011, my ex-wife and I separated and I then filed for divorce in 2013 and it was finalized in 2014.

I initially agreed to my ex-wife having full physical custody at the time. I didn't have a permanent residence to provide the best living situation for my children and felt it was in their best interest to live with their mother in her home so that they could adjust to the divorce. However, in 2016, I did establish a permanent home and filed for joint custody of my children. That is when my life along with my children's lives have been in complete turmoil.

My ex-wife did not agree to joint custody and we have been in a vicious conflict. I went into seeking joint custody with high hopes as I couldn't think of any reason why I shouldn't have my children half of the time. I have come to realize the sneaky and evil reality of the family court system. I have been falsely accused of numerous things, I have been blindsided with rulings, visitations are not being enforced or complied with and I get penalized by having to pay more child support because my ex is retaliating against my request for seeking joint custody and the list goes on and on.

Realization has set in, and I now know that no matter what, I will not win. Hilo is a small town and people talk. Speaking with many people I found that I am not the only one suffering in a custody battle. There are numerous mothers and fathers who feel the same exact way I do and basically the word that sums it up is UNFAIR. I used to think what am I doing wrong? Am I a bad father? I drove myself crazy thinking of ways to better myself and my relationship with my kids. No matter what, even if I won father of the year, I still would not get awarded joint custody and the reason is simple, child custody law is flawed and outdated.

There is no denying this fact as I am aware of a ruling where a therapist have recommended visitations with a father who sexually abused their children be revoked and it got denied. It is ludicrous, however sadly true. I do not do drugs, I do not smoke or drink, there was no history of violence or abuse in my marriage but that does not matter. I have two questions, "what could I have done to attain joint physical custody of my children?" and "why is my ex-wife allowed to be in contempt of the decree and get no consequences for it, but yet I could not get equal time with my two boys?"

If the law for child custody called for equal shared parenting, there would be less conflict between parents. All I am fighting for is equal rights and fairness for both parents. If they are both willing and able to provide a stable and loving environment for their children, then equal shared parenting should be the law of the land.

Thank you.

HB-446

Submitted on: 2/8/2023 1:09:29 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Melissa W. Chong	Individual	Support	Written Testimony Only

Comments:

Support HB446

HB-446

Submitted on: 2/8/2023 9:55:32 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ashley Vanvlymen	Individual	Support	Written Testimony Only

Comments:

I am in support of this bill.

Domestic violence occurs more often than people like to believe. When it comes to domestic abuse the victims and survivors often try to hide the abuse that is being done and victims often have a hard time leaving a domestic abuse relationship especially when children are involved. When domestic violence is in the home where children reside and are involved, it can have traumatic and tremendous negative effects on them. When it comes to child custody and doing right in the child's best interest, most of the decision comes from the court custody evaluators whose decisions weighs heavy with the courts. Child custody evaluators should have the training and education on domestic violence and have it available and approved so they can keep themselves educated. By implementing a training on domestic violence be done every three years this allows the information to be fresh in their brain and get any new education at the next training that they may not have already learned and apply it to their practice. I am in support of this bill because it can help many families who struggle with domestic violence and help kids escape the traumas.

Mahalo,

Ashley Vanvlymen

HB-446

Submitted on: 2/8/2023 10:33:40 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Cynthia Texeira	Individual	Support	Written Testimony Only

Comments:

I am in strong support of HB446 and believe it is an imperative measure to adopt.

HB-446

Submitted on: 2/8/2023 10:41:16 AM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Doris Segal Matsunaga	Save Medicaid Hawaii	Comments	Written Testimony Only

Comments:

Save Medicaid Hawaii position: HB581 is preferred over HB446

TO: Representative John Mizuno, Chair
Representative Terez Amato, Vice Chair
House Human Services Committee Members

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate

DATE: February 9, 2023

RE: Opposition & Comments on HB446

Good Morning Chair Mizuno, Vice Chair Amato & House Human Services Committee Members, and my apologies for the following Late Testimony.

While it seems that I should be in support of HB446, please let me explain why I must OPPOSE it:

“Certain individuals attempting to serve as child custody evaluators” – this says it all right here:

- Certain individuals
- attempting to serve
- as child custody evaluators

Determining the custody of children should require the skill set of Sherlock Holmes, the wisdom of Solomon & the heart of Mother Theresa, yet that’s not what the parents & children of Hawaii get when a Child Custody Evaluator (CCE) is imposed upon them. Under HRS571-46.4, Child Custody Evaluators are supposed to be licensed:

- Physicians or board certified psychiatrists;
- Psychologists;
- Marriage and family therapists; or
- Clinical social workers

BUT “A person may be appointed as a child custody evaluator in the absence of a license under subsection (a) if:

- (1) The individual has obtained education and training that meet nationally recognized competencies and standards of practice in child custody evaluation; provided that there are no child custody evaluators enumerated under subsection (a) who are willing and available, within a reasonable period of time, to perform child custody evaluations; or
- (2) The parties stipulate to a person who does not qualify as a child custody evaluator under subsection (a) and the court approves that person as a fact-finding investigator to the court.”

Parents going through a contested child custody process (who typically don’t even know what a CCE is initially) are stressed enough as it is and often discover too late and after much expense, both emotionally & financially, that the professional expertise of their CCE is anything but professional – then insult to injury, they learn that:

“A complaint against a court-appointed child custody evaluator not qualified under subsection (a) may be resolved through civil litigation.”

Because former legislative sessions have all UNSUCCESSFULLY tried to establish CCE core criteria & training standards as well as provide safeguards for parents (see notes from Senator Chun-Oakland's 2009 Family Court Interventions Working Group below) and place those into law, which has not yet been achieved, asking for "certain individuals attempting to serve as child custody evaluators" (are they even CCEs?) to complete a training course on the dynamics of domestic violence every three years is validating their "legitimate standing" as a CCE that they may not even have to begin with.

I'm all for everyone being trained on the dynamics of domestic violence but what I'm vehemently against is empowering, authorizing and giving credibility to "certain individuals" who may not be fit to serve as CCEs, and because no minimum requirements of proficiency, standards or ethics have been established/required of CCEs first or yet (all defeated in previous legislative sessions) this training is likely to only cause more harm and damage to Hawaii families.

I remain that letters and/or certificates of completion are absolutely worthless if *proficiency in the subject matter cannot be proven*. Anyone can get a certificate of completion – you just have to show up – but *proving* that you know what you're doing is an entirely different matter.

Many professions must prove subject matter proficiency in order to continue practicing or face fine, sanction, suspension or be delicensed – considering the critically important nature of work involving children & families, where one wrong decision or judgment call could cost a life or lives, all individuals "attempting to serve" in the lives of children & families in Hawaii should be subject to proof of proficiency before they're permitted to serve.

Respectfully,

Dara Carlin, M.A.

Domestic Violence Survivor Advocate

Notes from Senator Chun-Oakland's 2009 Family Court Interventions Working Group:
Child Custody Evaluators (CCE)

1. Report and Discussion:

a. A proposed bill to establish a registry for child custody evaluators and to develop statewide policies, procedures, and other standards was discussed with the following revisions proposed:

(1) Proposed declaration in Section-C(7) should be revised as follows:

"Any criminal convictions, pending criminal charges, civil actions to which the child custody evaluator was a party, and complaints to a professional licensing agency or ethics enforcement body resulting in public discipline, or order for protection issued against the child custody evaluator."

(2) Proposed declaration in Section –F should add "child custody evaluator" for continuing training

(3) Proposed declaration in Section –G should follow Act 149 language and revise "may" to "shall" regarding establishment of child custody evaluator standards.

b. A proposed resolution to convene a working group to assist the court in developing child custody evaluation standards and training curriculum was presented. After extensive discussion, it was decided that, while there was agreement on the concept, it needed clarification regarding the work requested of the working group.

HB-446

Submitted on: 2/8/2023 3:30:40 PM

Testimony for HUS on 2/9/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Kyle Shelly	Individual	Support	Written Testimony Only

Comments:

I am testifying in support of H.B. 446 as an individual citizen. The Family Court system uses Custody Evaluators and/or Best Interest Fact Finders to render opinions regarding physical and/or legal custody of children. It is imperative that these individuals be regularly trained on the dynamics of domestic violence, especially its impact on children, or they should not be appointed by the Court in such circumstances.

Through personal experience, I believe this Bill will help to reduce inconsistent outcomes for families and produce safer custody decisions for Children.

Thank you for hearing this Bill and for your service to the State of Hawaii.

Kyle J Shelly