

HB 1137, HD1

Measure Title: RELATING TO FAMILY COURT.

Report Title: Family Court; Child Custody Evaluators

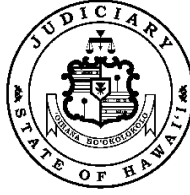
Description: Clarifies the appointment requirements and qualifications for child custody evaluators. Requires the Judiciary to establish a complaint process regarding a child custody evaluator appointed by the court. (HB1137 HD1)

Companion:

Package: None

Current Referral: HMS/JDL, WAM

Introducer(s): RHOADS



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

Testimony to the Senate Committee on Judiciary and Labor

The Hon. Clayton Hee, Chair

The Hon. Maile S.L. Shimabukuro, Vice Chair

Tuesday, March 19, 2013

1:30 p.m.

State Capitol, Conference Room 016

by

R. Mark Browning

Deputy Chief Judge/Senior Judge

Family Court of the First Circuit

Bill No. and Title: House Bill No.1137, H.D.1, Relating to Family Court

Purpose: To clarify appointment requirements, qualifications, and complaints process for child custody evaluators.

Judiciary's Position:

The Family Court takes **no position** on this bill but offers the following **comments**.

Page 4, lines 7-11: Except in the context of a specific case, the Judiciary has *no authority* to discipline the professionals listed in this bill. In response to the original HB1137, the Judiciary expressed a strong concern that the bill may raise false expectations and misunderstandings regarding the scope of the Judiciary's authority. These misunderstandings could result in a complainant unintentionally failing to file an effective complaint. HD1 appears to understand this distinction and appears to want (a) a regularized process for referring parties to the appropriate agency and (b) a master list of complaints made. Thus, we **suggest the following language:**



House Bill No. 1137, H.D.1, Relating to Family Court
Senate Committee on Human Services
Senate Committee on Judiciary and Labor
Tuesday, March 19, 2013
Page 2

(d) The judiciary shall establish a referral process. Upon notification by a party of an intent to file a complaint against a court-ordered custody evaluator, the judiciary shall refer the complainant to the appropriate licensing or certifying authority. The judiciary shall submit to the legislature an annual report regarding the number of complaints processed through this referral process."

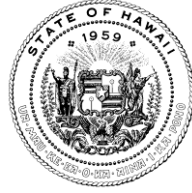
Page 2 from line 20: Many of the current custody evaluators are attorneys. These attorneys are generally chosen and agreed upon by both parties. However, under this bill, attorneys are not included in the list of licensed professionals who can be included in the "registry." Moreover, if there is no agreement, the party wanting the court to consider a specific attorney must also spend money so that one of the listed licensed professionals can "certify" the attorney.

Page 3, from line 19: Currently, the custody evaluators generally give recommendations to the court. Under this bill, when the parties stipulate to an evaluator who is not a listed licensed professional, then that evaluator can only act in the capacity of "a fact finding investigator to the court." The court will assume that this condition can be modified by agreement of the parties.

Page 4, from line 1: We take no position on keeping a "registry" but please be advised that this will be a compiled list of any person who requests inclusion in the list and who presents the relevant information required in lines 4-6. Furthermore, the "public accessibility" will be effected by use of the Judiciary's website.

Page 4, from 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.

Thank you for the opportunity to testify on this bill.



NEIL ABERCROMBIE
GOVERNOR

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**PRESENTATION OF THE PROFESSIONAL AND
VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON HUMAN SERVICES
AND
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Tuesday, March 19, 2013
1:30 p.m.

TESTIMONY ON HOUSE BILL NO. 1137, H.D. 1, RELATING TO FAMILY COURT.

TO THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR,
TO THE HONORABLE CLAYTON HEE, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Celia Suzuki, Licensing Administrator for the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to submit comments on House Bill No. 1137, H.D. 1, Relating to Family Court.

The purpose of House Bill No. 1137, H.D. 1, is to clarify the appointment requirements, qualifications, and complaints process for child custody evaluators. The Department is providing **comments only** on SECTION 2 of the bill, Page 4, lines 9 – 12,

and requests **suggested amendments**. Where it reads: “The judiciary shall refer the complaint to the appropriate licensing or certifying authority.”, we request that it read instead: “In addition, the judiciary may refer complaints involving persons appointed under subsection (a) to the appropriate licensing authority..” The reason for this amendment request is because the Department is the regulating body only for those professions listed in subsection (a) and not subsection (b).

Moreover, the Department notes that there may be instances in which certain conduct violates the Judiciary’s standards of practices, ethics, policies and procedures as provided for in Haw. Rev. Stat. §521-46 but not the standards of practice of the specific licensing law. The Department will defer to the Judiciary as to its determination of whether conduct that may have triggered a complaint constituted a violation of the Judiciary’s own standards of practice, ethics, policies or procedures. Thank you for the opportunity to provide suggested amendments to House Bill No. 1137, H.D. 1.

Testimony of
John M. Kirimitsu, Esq.

Before:

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

Senate Committee on Judiciary and Labor
The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

Tuesday, March 19, 2013
1:30 pm
Conference Room 016

Chairs, Vice Chairs, and committee members, thank you for this opportunity to provide testimony in **strong support** of HB 1137 HD1, relating to child custody evaluator standards.

HB 1137 HD1 clarifies the appointment requirements and qualifications of child custody evaluators (CCEs), establishes a transparent CCE registry for the benefit of consumers, and develops a much needed grievance process to maintain integrity within the CCE profession. This bill is an extension of Act 169 (2008) that required the court to develop standards of practice, ethics, policies and procedures to ensure that CCEs performed their duties in the best interests of the children. To date, the court has not acted and, in fact, very little has been done to address the problem of abusive and unethical practices by CCEs that have adversely impacted children of parents in highly contentious divorce cases involving custody and visitation.

The Child Custody Task Force appointed by the Judiciary to develop standards did not make any recommendations in its report to the legislature (2009); however, it did recognize a favorable California model establishing CCE criteria, standards and qualifications. The qualification standards proposed under HB 1137 HD1 is based upon this same California model, namely that only licensed (1) physicians (and either board certified psychiatrist or completed residency in psychiatry), (2) psychologists, (3) marriage and family therapists, or (4) clinical social workers, are qualified to be appointed custody evaluators. (See Rule 5.225, appointment requirements for custody evaluators, California Rules of Court).

HB 1137 HD1 provides CCE qualification standards. Since child custody evaluations provide the court with an objective and comprehensive information and assessment of the well-being of children in conflictual situations, CCEs require specialized education and professional training which includes, but not limited to, child development, child psychiatry or psychology, and mental health dynamics. Moreover, given that the CCE's expert report is usually taken at face value and is not subjected to cross-examination (unless allowed at a costly trial), high-quality professional and unbiased evaluations are essential. The California minimum qualifications

standard ensures the highest level of integrity and competence in its CCEs; and Hawaii deserves no less.

HB 1137 HD1 provides transparency in the court's use of CCEs. Parents and children under severe stress in conflicted divorce and custody cases need to find neutral, ethical, qualified professionals who can make a fair and comprehensive assessment to provide to the Judge who has to decide the fate of the child(ren). Currently, there is no process to assist the public in making an informed decision regarding the selection of a CCE (other than word of mouth or by attorneys who may be recommending fellow attorney colleagues as their "favorite" CCEs). The court has no systematic record or registry identifying who is available or their level of experience and competence. This lack of transparency in the selection of CCEs who make major recommendations (and decisions) affecting families is addressed in HB1137 HD1 by requiring the Judiciary to maintain a simple registry identifying the names and qualifications of available child custody evaluators. To make it more accessible to the public, it can also be posted on the Judiciary's website.

HB 1137 HD1 provides for the integrity and accountability of CCEs. Every profession must maintain ethical integrity and accountability within its industry and CCEs are no exception. To accomplish this, there should be an accessible mechanism for addressing alleged abuses or biased reports by CCEs. Currently, there is no process to assess the competence and integrity of those who provide information on which it makes decisions critical to the lives of our families. A complaint process would be a deterrent for those potential abuses and would ensure that CCEs provide high quality assessments in a most cost-effective and helpful manner in the best interest of the children. The complaint process would enable reporting of abuses and unethical violations to ensure that CEs, like any other profession, are performing within industry standards.

With the help of Senator Chun Oakland, in creating a work group to address these concerns, this bill is a collaborated effort by many, including myself, who have experienced unfair biases and a lack of quality reporting from certain CCEs in the family court setting, to create much needed (and long overdue) minimum standards for CCEs - which the family court has asked for direction from the legislature. For the best interest of the children and the families who are being victimized by these unethical and unqualified CCEs practices, I strongly urge the passage of this bill.

Thank you for the opportunity to testify.



National Association of Social Workers Hawai'i Chapter

March 15, 2013

TO: Senator Suzanne Chun-Oakland, Chair Senate Human Services Committee
Senator Josh Green M.D., Vice Chair
Senator Michelle Kidani
Senator Sam Slom
Senator Brian Taniguchi
and
Senator Clayton Hee, Chair Committee on Judiciary and Labor
Senator Maile S. L. Shimabukuro, Vice Chair
Senator Mike Gabbard
Senator Les Ihara Jr.
Sam Slom

Date: March 19, 2013 Time: 1:30 p.m. Location: Conference Room 016

FROM: Marty Oliphant, Executive Director
National Association of Social Workers, Hawaii Chapter

RE: HB 1137, HD1 Relating to Family Court - **SUPPORT**

Senator Suzanne Chun-Oakland Chair, Senator Josh Green M.D. Vice Chair, and members of the Senate Committee on Human Services, Senator Clayton Hee Chair, Senator Maile S.L. Shimabukuro Vice Chair, and members of the Senate Committee on Judiciary and Labor, my name is Marty Oliphant. I serve as the Executive Director of the National Association of Social Workers, Hawai'i Chapter (NASW). I strongly support HB 1137, HD1 relating to Family Court and Child Custody Evaluators.

It is with great pride that I support HB1137 for its recognition of the special education, training and qualifications that clinical social workers possess in order to complete fair and ethical custody evaluations when ordered by the court. As a profession, I believe clinical social workers are completely qualified to conduct custody evaluations and in fact, our national publishers, NASW Press has published a book, "Child Custody Evaluations by Social Workers Understanding the Five Stages of Custody," by Ken Lewis as a reference for social workers.

Additionally, social workers abide by a strict Code of Ethics, which are based on seven core values: Service, Social Justice, Dignity and Worth of the Person, Importance of Human Relationships, Integrity and Competence. Be assured that social workers conduct practice with the understanding that they provide fair, unbiased and objective evaluations, they value diversity and culture, they understand and assess family dynamics knowing that all relationships are valuable and most importantly, they only practice in areas that they are competently trained.

NASW Hawaii Chapter is committed to offering trainings in the area of conducting child custody evaluations and has actively participated in national and local trainings and conferences focused on this area. NASW Hawaii Chapter is strongly committed to supporting those social workers who work in the challenging area of child custody.

Please support HB1137. Thank you for your consideration.

Alethea K. Rebman, Esq.
Mitsuyama & Rebman LLLC
737 Bishop St., Ste. 1450
Honolulu, Hawaii 96813

March 18, 2013

Testimony regarding HB 1137, HD 1 RELATING TO FAMILY COURT

As an attorney whose practice is almost exclusively family law, I am writing in **strong opposition** to this bill.

It is inevitable in a contested child custody proceeding that one party will be disappointed, sometimes bitterly so. That does not mean that our current system of child custody evaluations needs to have most of its practitioners excised from the evaluations.

This bill means that the majority of our private custody evaluators, being attorneys who are trained in mental health rather than solely mental health practitioners, will be disqualified. This will be a blow to the functioning of the family court, which is already overburdened and understaffed, and to the administration of justice.

At any given moment, my family law practice usually has at least three or four cases with custody evaluators, all of whom are licensed attorneys with mental health training. These custody evaluators do good work, sometimes great work, and I find that without them, these families would be mired in even more extensive, expensive, and damaging litigation.

There is no indication that custody evaluations would be “better” in any way if performed by people without legal training or who hold one social work designation instead of another. Arbitrary designations of who can do this work serve family court litigants poorly. They need as many good, affordable choices as possible.

The bill is flawed in other ways, most notably in the exception given to a completely undefined set of people in the proposed § 571—(b) on page 3 of the bill. This gives disproportionate power to some as-yet-undesignated person to allow as-yet-unknown people to practice custody evaluations. This cannot be allowed to be made law.

Thank you for your attention to this matter.

From: mailinglist@capitol.hawaii.gov
To: [HMS Testimony](#)
Cc: adrienne@kingandking.com
Subject: Submitted testimony for HB1137 on Mar 19, 2013 13:30PM
Date: Thursday, March 14, 2013 4:57:03 PM

HB1137

Submitted on: 3/14/2013

Testimony for HMS/JDL on Mar 19, 2013 13:30PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Adrienne King	Individual	Support	No

Comments: This bill is one of a series of steps recently taken by the legislature to provide guidance to the Judiciary, and information to the public, regarding the family court's determination of legal and physical custody of children in contested cases. As a practitioner in Family Court for over 25 years, various issues surrounding the appointment and use of custody evaluators in this process have long been in need of resolution. This bill is necessary to address some of the problems in that process. I urge passage of this bill.

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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Cheri Tarutani, MSW, LCSW



P.O. Box 235351 • Honolulu, HI 96823 • Phone: (808) 391-6078
E-Mail: ctarutani@yahoo.com

March 15, 2013

March 19, 2013
1:30 pm

RE: **SUPPORT** OF HB1137/SB1226

Aloha Senators Chun Oakland, Green and Human Service Committee Members and Senators Hee, Shimabukuro and Judiciary and Labor Committee Members,

Thank you for addressing a small, but important category of professionals appointed by Family Court. Although only a small percentage of all cases will be referred to a custody evaluator, they are the most contentious and these are the families most in need of competent professionals. 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 HB1137/SB1226 for the following reasons:

- Judges hear legal arguments and points of view from parents' attorneys' and sometimes, guardian ad litem (also attorneys), but custody evaluators do not present another legal argument, rather they provide an evaluation and recommendation in the best interests of the children. These evaluations do not provide legal rationale for a recommendation, more precisely they are comprehensive assessments that involve interviewing, observing, assessing human behavior, including communication styles, safety and risk, parenting, child development and well-being, and addressing issues/allegations of child abuse and neglect, substance abuse, mental health, domestic violence and relocation, all of which licensed social workers are educated and trained to complete.
- Currently, parties mutually agree on a custody evaluator, whose name is provided by their attorneys. This has resulted in attorneys using custody evaluators they are already familiar with. A registry would allow newly trained custody evaluators to be considered by consumers and could possibly increase the available pool of custody evaluators.
- It is the nature of child custody disputes for one or both parties to be dissatisfied with a recommendation and therefore, a custody evaluator. 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. The University of Hawai'i Manoa Outreach program has offered a child custody workshop series in the past couple of years in both Honolulu and Hilo, which I have helped facilitate. There are also other local training opportunities through Institute on Violence, Abuse and Trauma and the National Association of Social Workers and national training opportunities through Association of Family and Conciliation Courts.

Thank you and please support HB1137/SB1226.

Respectfully submitted,

Cheri Tarutani, MSW, LCSW
Custody Evaluator

Hawaii State Legislature, 2013
Senate Human Services Committee
Senate Judiciary & Labor Committee
March 19, 2013, 1:30 pm, Rm 016

TO: Sen. Chun Oakland, Human Services Committee Chair
Sen. Hee, Judiciary & Labor Committee Chair

RE: HB 1137, HD1 -Clarifies the appointment and qualifications for child custody evaluators.

I support HB 1137, HD1 because it will help to increase the quality of service provided by Child Custody Evaluators (CCE's). Child custody evaluations seem to have become a rather lucrative industry for the child custody evaluators, however, the quality of the evaluations can range from mediocre to high quality. Paying a higher price for a child custody evaluation does not insure a higher quality investigation. For example, individuals who have been through a child custody evaluation complain that the CCE met with him or her only once and for a very short period of time while the other parent met with the CCE on a number of occasions; or the CCE spent very little or no time with the child.

The child 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 HB 1137, HD1 that will require the Judiciary to establish a complaint process. Inadequate CCE investigations can cause serious harm to a child's future so establishing a legitimate complaint process will empower the participants of the child custody evaluation process to have the authority to question the CCE's quality of work. Additionally, allowing the participants to file complaints against CCE'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

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To: Senator Suzanne Chun Oakland, Chair, and Members, Senate Human Services Committee
Senator Clayton Hee, Chair, and Members, Senate Judiciary Committee

RE: Hearing on March 19, 2013, 1:30 p.m. in Conference Room 016

In Strong Support of HB 1137 HD1, Relating to Family Court

I am Marvin W. Acklin, a licensed psychologist, experienced custody evaluator, and expert witness in Family Courts in all 5 circuits of the Hawaii Family Court. I have conducted over 275 custody evaluations and testified in court over 100 times. I have worked with children, adolescents, and adults as a counselor, custody evaluator, and parent coordinator over the past 23 years. 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.

HB 1137, HD1 establishes qualifications for custody evaluators in the Family Court. It will establish minimal professional qualifications and standards-based criteria for reports and testimony submitted to Family Court judges in matters involving disputed custody of a minor child(ren). The goal of these initiatives is to improve the quality of forensic family assessments and the findings and recommendations submitted to the Family Court.

A working group brought together by Senator Chun Oakland worked for over two years and took great pains to solicit information from a wide variety of stakeholders on the issue of custody evaluators. This bill is the result of hundreds of hours of work by many volunteers who came together to address this problem area.

HB 1137, HD1 identifies qualified custody evaluators as having the minimal requirement of licensure in a mental health discipline. This is important since the tradition has been to appoint individuals without minimal qualifications, for example, attorneys, whose education and training typically do 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.

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, the American Psychological Association, and American Academy of Child and Adolescent Psychiatry have developed practiced guidelines and standards for court involved mental health professionals, including custody evaluators, that can be used to the benefit of our families and children in conflicted and contested child custody battles.

HB1137, HD1 also provides for maintenance of a registry of custody evaluators with a listing of their qualifications that may be reviewed by the judge, counsel, and parties when an appointment is indicated. To date, the Family Court has not maintained a registry of custody evaluators. In my view, it is not only the court's responsibility but, I would submit, a responsible court's priority to require that those providing them information are qualified to produce credible and objective reports that will assist them in making sound and fair decisions for the benefit of our children. A registry will allow for greater transparency and accountability in the appointment of custody evaluators.

And, further, HB1137, HD1 provides for the integrity and accountability of child custody evaluators by providing an accessible process to address complaints of alleged abuses, unqualified custody evaluators, or biased reports. A complaint process would be a deterrent against those abuses; it would lead to cost-effective and better quality assessments.

I strongly support HB 1137, HD1, and urge you to advance this very important first step in reform and improvement of custody evaluations submitted to the Family Court in the best interests of our children.

Thank you for the opportunity to testify. I would have liked to be present to answer any questions your committees might have, but, regrettably, I will be on the mainland at the time of the hearing.

From: mailinglist@capitol.hawaii.gov
To: [HMS Testimony](#)
Cc: adamtm@lava.net
Subject: Submitted testimony for HB1137 on Mar 19, 2013 13:30PM
Date: Monday, March 18, 2013 2:31:30 AM

HB1137

Submitted on: 3/18/2013

Testimony for HMS/JDL on Mar 19, 2013 13:30PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Tom Marzec	Individual	Support	No

Comments: Aloha Chair Chun Oakland and Chair Hee, I strongly support HB1137 HD1 because it significantly improves the procedures involved in child custody evaluations. We have to get these custody evaluations right and it starts with having and knowing who the qualified professionals are that can properly do such evaluations. The HD1 amendment language sensitively addressed and mitigated concerns from prior testimony, including the Judiciary comments. The broad consensus for the value of this bill highlights the importance of improving an area so critical for our keiki. Mahalo! Tom Marzec

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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Submitted By	Organization	Testifier Position	Present at Hearing
John Schmidtke	Individual	Oppose	No

I have practiced family law for 30 years. Most of my work is in contested custody cases.

This bill puts an unnecessary restriction on a valuable resource that the family court needs. Physicians, psychologists, therapists, and social workers do not have any better training to make a custody recommendation that do attorneys or other people.

There is no test that physicians, psychologists, therapists, and social workers have in their professional toolbox that can accurately determine good or bad parenting. There is no test available exclusively to them that can determine the best interest of the children (BIOC). Those are subjective standards that ONLY the judge (an attorney) has the ability to decide.

The judge needs objective data from doctors, teachers, tutors, babysitters, coaches, neighbors, etc. That voluminous data is too hard to accumulate in a trial setting so the judge needs a reliable FACT FINDING Custody Evaluator to spend the hours necessary to accumulate and summarize that information in a way that can be used BY THE JUDGE to determine the BIOC.

Attorneys are often better at that than mental health professionals. Retired police officers would be better (and less expensive) than attorneys. Mental health professionals are trained to diagnose for treatment purposes, not to say that the children would be better off with one parent or the other or even to say what kind of time sharing arrangement would work best.

This bill concerns a real need for the family court but not in a helpful way.