



The Judiciary, State of Hawai'i

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

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Friday, February 24, 2023 at 2:00 p.m.
Conference Room 325 & Via 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. 581, H.D.1, Relating to Child Custody.

Purpose: Requires certain individuals attempting to serve as child custody evaluators to complete a training course on the dynamics of domestic violence every three years. Requires individuals to submit a letter or certificate of completion to the family court. Establishes standards for evaluations and reports by child custody evaluators. Effective 7/30/3000. (HD1)

Judiciary's Position:

The Judiciary supported the original House Bill No. 581, agreeing with the need of continuing education for custody evaluators and fact finders regarding domestic violence. The Judiciary respectfully opposes those portions of House Bill No. 581, H.D. 1 which add a new purpose to this bill, that is, an attempt to ostensibly set "standards" for the work of the custody evaluators and fact finders by requiring a presumption in favor of "joint custody and equally shared parenting" as being "in the best interests of the child." (HB581 HD1, Section (d), page 5, lines 11-19). Adding a new purpose to the bill – to "[e]stablish standards for evaluations and reports by child custody evaluators in contested custody dispute cases" (page 3, lines 1-3) -- is highly problematic.



First, the proposed language in HD1 is not relevant to the original straightforward purposes of this bill as stated on page 2, lines 14-20, of House Bill No. 581:

- “(1) Require certain individuals attempting to serve as child custody evaluators to complete a training course on the dynamics of domestic violence every three years; and
- (2) Require individuals to submit a letter or certificate of completion to the family court.”

The proposed language does not impact professional *training* and would affect a whole range of child custody cases, regardless of the presence or absence of domestic violence allegations.

Second, the new language in HD1 impinges on the Family Court judges’ judicial role in deciding custody disputes, as well as the judges’ administrative role in defining the standards of practice of child custody evaluators under Hawai‘i Revised Statutes (HRS) §571-46(a)(4). We also note that, pursuant to HRS §571-46(a)(4), the Family Court has formed a committee, which is now at work, to define “the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts,” consistent with the statute, and relevant law governing the determination of child custody cases.

Third, at page 5, lines 14-16, HD1 mandates application of a legal standard to non-legal professionals and requires that they “shall begin with the presumption, rebuttable by clear and convincing evidence that joint custody and equally shared parenting is in the best interests of the child.” In fact, the judges expect that the custody evaluators and fact finders to be free of presumptions as they begin their work. Also, custody evaluators and fact finders have their own professional standards of ethics and conduct, some of which may prohibit applying presumptions at the start of a case.

Fourth, the new Section (d) of HD1 raises issues that are central to HRS §571-46, “Criteria and procedure in awarding custody and visitation; best interest of the child.” Section (d) raises issues and ideas that have been debated and modified over the years in HRS §571-46. This is not to say that new ideas cannot be raised with respect to that section. But the ideas in Section (d) are not new and have been addressed by the Legislature in recent years.

The new language in Section (d) is an example of the dangers of attempting to change one section of a statute by amending or creating another section. In many cases involving domestic violence, the current HRS §571-46 would not allow the participants to “begin with the presumption, rebuttable by clear and convincing evidence, that joint custody and equally shared parenting is in the best interests of the child.”

The proposed language in Section (d) is in direct conflict with the current HRS §571-46 that applies the “best interests of a child” standard and requires the weighing of numerous factors. The “best interests of the child” standard has existed for decades and withstood appellate review. The standard is not static; it has developed in response to societal changes and



House Bill No. 581, H.D. 1, Relating to Child Custody
House Committee on Judiciary & Hawaiian Affairs
Friday, February 24, 2023 at 2:00 p.m.
Page 3

our growing understanding of the myriad of factors that affect children. It has developed as the community has become more aware of the insidiousness of domestic violence.

We, therefore, respectfully oppose and request deleting the following from House Bill No. 581, H.D. 1:

Page 3, lines 1-3: “(3) Establish standards for evaluations and reports by child custody evaluators in contested custody dispute cases.”

Page 3, line 7: “standards.”

Page 5, lines 11 to and including 19: delete the entire Section (d).

We remain in support of the original House Bill No. 581. We are aware of the concerns stated in testimony regarding the sufficiency of the five hours minimum training requirement and the concerns about the quality of the training offered. While we are willing to collaborate on discerning best practices in this area as we all learn more in the future, we believe that this bill is a good start and that we should start.

Thank you for the opportunity to testify on this measure.



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

February 24, 2023

Members of the House Committee on Judiciary & Hawaiian Affairs

Chair David A. Tarnas

Vice Chair Gregg Takayama

Rep. Sonny Ganaden

Rep. Troy N. Hashimoto

Rep. Daniel Holt

Rep. Linda Ichiyama

Rep. Greggor Ilagan

Rep. Sam Satoru Kong

Rep. John M. Mizuno

Rep. Kanani Souza

Re: HB581 HD1 Relating to Child Custody

Dear Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary & Hawaiian Affairs:

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, I respectfully submit testimony in **strong support of HB581 and respectfully request the removal of lines 11-19 on page 5:**

(d) A person appointed as a child custody evaluator shall be fair and impartial to the mother and father when determining the best interests of a child in a contested custody dispute and shall begin with the presumption, rebuttable by clear and convincing evidence, that joint custody and equally shared parenting is in the best interests of the child. When making a report of the investigation, the child custody evaluator shall provide the evidence and reasons for the evaluator's determinations.

The purpose of this bill is to require custody evaluators and fact finders to receive a minimum of five hours of training in the dynamics of domestic violence, once every three years. The lack of domestic violence training for custody evaluators and fact-finders often results in inconsistent outcomes for survivors of domestic violence and their children. Survivors and their children are not justly served when custody evaluators and fact-finders are not trained to



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

recognize the dynamics of domestic violence and how the abusive parent could use power and control tactics in a custody case.

The language included in lines 11-19 on page 5 is not germane to the purpose of this measure because it establishes the standards of practice and ethics required of custody evaluators when making their recommendations to the court. However, Hawai'i's best interest of the child statute ([HRS §571-46.4](#)) requires the judiciary to define the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts. The judiciary has recently convened a working group to determine those standards of practice, ethics, policies, and procedures.

Finally, it is inappropriate to include a rebuttable presumption of joint custody with equal parenting time because it is not recommended in cases involving domestic violence. Survivor and child safety must be meaningfully considered in parenting time decisions.¹ A rebuttable presumption of joint custody has a chilling effect on survivors of domestic violence by invisibilizing their abuse in the courts,² requiring them to have to prove their victimization and lead to more litigation and its related expenses. Under-resourced survivors of domestic violence are already vulnerable to financial and litigation abuse.

In summary, we support this measure with the deletion of lines 11-19 on page 5.

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

Sincerely,
Angelina Mercado, Executive Director

¹ Jay Silverman. Child Custody Determinations in Cases involving Intimate Partner Violence. Am.J.Pulbic Health:2004 June 94(6):951-957.

² Joan S. Meier & Sean Dickson, Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation, 35 Law & Ineq. 311 (2017).

HB-581-HD-1

Submitted on: 2/22/2023 4:24:12 PM

Testimony for JHA on 2/24/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marilyn Yamamoto	Hawaii Coalition for Child Protective Reform	Oppose	Written Testimony Only

Comments:

Committee members,

5 hours of DV training is equivalent to two sessions of DV support groups for victims of DV.. That, in no way, certifies that a CE has enough training to evaluate parents in contested custody. The CADV testified that they require 40 hours of training for their staff. Quality training for domestic violence should be required by statute to guarantee that decisions are made by persons who have a thorough knowledge of the dynamics of abuse.

Marilyn Yamamoto

Hawaii Coalition for Child Protective Reform



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 Tarnas, Chair
Representative Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Re: HB581 HD1, relating to early child care
9:00 a.m., Feb. 9, 2023

Aloha Chair Tarnas, Vice Chair Takayama and committee members:

On behalf of Hawai'i Children's Action Network (HCAN) Speaks!, mahalo for the opportunity to **testify in SUPPORT of House Bill 581 HD1, relating to child custody and respectfully request amendments as proposed by the Hawai'i State Coalition Against Domestic Violence.**

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.

HB581 requires custody evaluators and fact finders to receive a minimum of five hours of training in the dynamics of domestic violence, once every three years. This 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.

We respectfully request the committee amend HB581 HD1 to remove (d) to §571-46.4 that would require evaluators "to begin with the presumption ... that joint custody and equally shared parenting is in the best interests of the child." This section is irrelevant to this section of the law. We support Hawai'i State Coalition Against Domestic Violence's recommended amendments.

Please amend HB581 HD1 and advance the important measure.

Mahalo,

Ke'ōpū Reelitz
Director of Early Learning and Health Policy



Hawaii Women's Coalition

February 24, 2023

Members of the House Committee on Judiciary & Hawaiian Affairs

Chair David A. Tarnas
Vice Chair Gregg Takayama
Rep. Sonny Ganaden
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Rep. Daniel Holt
Rep. Linda Ichiyama
Rep. Greggor Ilagan
Rep. Sam Satoru Kong
Rep. John M. Mizuno
Rep. Kanani Souza

Re: HB581 HD1 Relating to Child Custody

Dear Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary & Hawaiian Affairs:

The Hawai'i Women's Coalition is a catalyst for progressive, social, economic and political change through action on critical issues facing Hawai'i's women and girls. Members currently include 29 organizations and agencies (private, public, membership) as well as individuals. The coalition encourages the inclusion of interested parties and in achieving equitable representation.

We support HB581 HD1 and the recommended changes from the Hawai'i State Coalition Against Domestic Violence to delete lines 11-19 on page 5.

The purpose of this bill is to require custody evaluators and fact finders to receive a minimum of five hours of training in the dynamics of domestic violence, once every three years. The lack of domestic violence training for custody evaluators and fact-finders often results in inconsistent outcomes for survivors of domestic violence and their children. 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 use power and control tactics in a custody case.

The language included in lines 11-19 on page 5 is not germane to the purpose of this measure because it establishes the standards of practice and ethics required of custody evaluators when making their recommendations to the court. However, Hawai'i's best interest of the child statute ([HRS §571-46.4](#)) requires the judiciary to define the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts. The judiciary has recently convened a working group to determine those standards of practice, ethics, policies, and procedures.

Thank you for the opportunity to submit testimony on this important matter.

Sincerely,
Hawai'i Women's Coalition

TO: Representative David Tarnas, Chair
Representative Gregg Takayama, Vice Chair
House Judiciary & Hawaiian Affairs Committee Members

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

DATE: February 24, 2023

RE: Opposition & Comments on HB581 HD1

Good afternoon, Chair Tarnas, Vice Chair Takayama & House Judiciary & Hawaiian Affairs Committee Members,

Although it would appear that I should be in support of HB581 HD1, I must OPPOSE it because of *who* it pertains to: “Certain individuals attempting to serve as child custody evaluators” –

- 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

(not “*certain individuals attempting to serve as* child custody evaluators”) 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-581-HD-1

Submitted on: 2/22/2023 9:43:42 PM

Testimony for JHA on 2/24/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shantell Calarruda	Individual	Support	Written Testimony Only

Comments:

I support this bill.

HB-581-HD-1

Submitted on: 2/22/2023 9:50:33 PM

Testimony for JHA on 2/24/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Caroline Kunitake	Individual	Support	Written Testimony Only

Comments:

Please support HB581 HD1 with amendments.

Please remove the addition of a subsection (d) to §571-46.4 that would require evaluators "to begin with the presumption ... that joint custody and equally shared parenting is in the best interests of the child" or adopt the recommended changes from the Hawaii State Coalition Against Domestic Violence.

HB-581-HD-1

Submitted on: 2/23/2023 10:26:27 AM

Testimony for JHA on 2/24/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laurie Tochiki	Individual	Comments	Written Testimony Only

Comments:

As a member of the Hawaii Children's Action Network I strongly support domestic violence training for custody evaluators and fact finders. I respectfully request that the provision that adds a presumption of joint custody and equally shared parenting be removed. The starting point for any recommendation must be the best interests of the children.