



The Judiciary, State of Hawai'i

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

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, March 30, 2023 at 9:35 a.m.
Conference Room 016 & 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. 2, S.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. Effective 6/30/2050. (SD1)

Judiciary's Position:

The Judiciary supports House Bill No. 581, H.D. 2, S.D. 1.

We agree that custody evaluators and fact finders should be knowledgeable about the dynamics of domestic violence and its impact on children. We believe, therefore, that this bill is in the best interest of children who are the subject of child custody proceedings.

Thank you for the opportunity to testify on this measure.



HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

March 30, 2023

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Mike Gabbard
Sen. Brandon J.C. Elefante
Sen. Joy A. San Buenaventura
Sen. Brenton Awa

Re: HB581 HD2 SD1 Relating to Child Custody

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary:

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 HD2 SD1**. This bill 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.

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.

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



March 30, 2023

To: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Ohta, Hawai'i State Democratic Women's Caucus

RE: HB 581, HD2, SD1 Relating to Child Custody

Position: SUPPORT

Chair Rhoads, Vice Chair Gabbard and members of the committee, the Hawai'i State Democratic Women's Caucus writes in support of HB 581, HD2, SD1 Relating to Child Custody which requires custody evaluators and fact finders to be trained in the dynamics of domestic violence so that their recommendations on custody matters serve the best interest of survivors and their children.

The lack of domestic violence training for custody evaluators and fact finders too often result in inconsistent outcomes for survivors of domestic violence and their children. Survivors often feel re-victimized by their interactions with custody evaluators and fact finders and because of that some choose not to proceed with the custody process.

This measure is a priority of the Hawai'i State Democratic Women's Caucus. The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls.

We respectfully request that the Committees pass this measure and we thank you for the opportunity to submit our testimony in support.

HB-581-SD-1

Submitted on: 3/24/2023 8:22:10 PM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Lisa Engebretsen	Individual	Comments	Written Testimony Only

Comments:

Aloha,

I write to provide comments on this bill about custody evaluators generally. This bill is problematic, because Family Court has never defined standards of practice, ethics, policies, and procedures for Custody Evaluators, as required by HRS 571-46(4). Requiring custody evaluators to take some ambiguous domestic violence training every year is not going to cure the myriad of constitutional violations that litigants regularly face in Family Court because of the lack of constitutional safeguards permitted by the Family Court's failure to enact standards of practice, ethics, policies, and procedures. Most other states that allow custody evaluators have entire statutory chapters devoted to reigning in the practice.

As it stands right now, custody evaluators can investigate whatever they want, in whatever way they want, and charge whatever they want. Family Court does not regulate any part of the practice, nor does it even provide any recourse or avenue for complaint for litigants who have been subject to the abuses of custody evaluators.

I ask that the Legislature instead focus its attention on investigating the widespread constitutional problems posed by the current system of custody evaluators instead of approving this do-nothing bill. As it stands right now, custody evaluations are simply a way to circumvent the rules of evidence, constitutional due process, the constitutional right to confront witnesses against you, and it constitutes an unlawful delegation of judicial authority. Many of the approved Custody Evaluators are only social workers or family therapists; they are NOT legally trained as judges are, and they should not be weighing in on custody recommendations.

HB-581-SD-1

Submitted on: 3/25/2023 11:52:51 PM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Cards Pintor	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support this bill.

Mahalo nui,

Cards Pintor

HB-581-SD-1

Submitted on: 3/26/2023 12:36:23 PM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Shay Chan Hodges	Individual	Support	Written Testimony Only

Comments:

- ▶ 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.
- ▶ 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.

Mahalo!

Shay Chan Hodges

Haiku, Maui, Hawaii

HB-581-SD-1

Submitted on: 3/27/2023 4:26:19 AM

Testimony for JDC on 3/30/2023 9:35:00 AM

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

Comments:

I support HB581 HD2 SD1. Please support this bill.

TO: Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

FROM: Melinda L. Franklin, MS, MA (formerly Chee)
Neurosurgery Nurse Practitioner (Retired)
(Mother who won her Appeal in the Hawaii Intermediate Court of Appeals:
Chee v. Chee, 121 Haw.30, 211 P.3d88 (Haw.Ct.App.2009) **Custody
Evaluators : Marvin Acklin**, Sue Lehrke, Barbara Shintani, Kimberly S.
Towler)

DATE: March 30, 2023

RE: **Strong Opposition and Comments on HB 581, HD2, SD1**

It is widely recognized that Hawaii Family Court reform has long been needed. HB 581 is not a step in that direction.

Custody Evaluations are not trivial.

Recognize: Custody determinations have life changing, life threatening , consequences for families. Legislators have a duty to protect their constituents. Please proceed carefully and honorably.

*** The language in the bill is vague (likely intentional) and attempts to legitimize “certain individuals” as Custody Evaluators.** If this bill becomes law these “certain individuals” will proceed with impunity. Quite probably they were never qualified in the first place.

Who are these phantom “certain individuals”? We don’t know. It could be the dog catcher, pool boy, or Marvin Acklin’s cousin!

Speaking of Marvin Acklin (a current Hawaii custody evaluator): He indulged in foul activity when he did not disclose conflict of interest! He was employed by the father in a custody dispute: (See Beam v. Beam, 130 Haw. 346, 310 P.3d 1047 (Haw. Ct. App.2010). Furthermore, he was convicted of assault on his wife, record since expunged, yet the history endures.

*** The bill requires these “certain individuals” to complete a training course on the dynamics of domestic violence every 3 years to validate their “legitimate standing” as a custody evaluator.** Really? A brief, cursory, course every 3 years enables just anyone to make life altering, life threatening, decisions?

Letters (without notarization) and certificates of completion are of NO VALUE if proficiency in the subject matter cannot be demonstrated.

All these “certain individuals” need to do is attend a class (taught by whom?). There, they can sit inspecting their piko (umbilicus aka belly-button). Voila! The court gives them standing once a solicited (or self-generated) letter is submitted.

Legitimate professionals must demonstrate ongoing certification and frequent continuing education to retain licensure, and protect the public. Would you allow “certain individuals” to perform an appendectomy if no surgeon was available? What if they remove the liver instead of the inflamed appendix?

Recommendations / bill revisions:

1. Specify Custody Evaluator professional qualifications, and current credentials **without exceptions or exemptions.**
2. Mandate licensure to drive **honorable** performance
3. Create a legitimately qualified oversight board to approve and track training standards
4. Require evidence-based recommendations
5. Establish a system of peer-review

Then, we’ll be on the right track.

Thank you for your considerations.

Respectfully,

Melinda L. Franklin, MS, MA

Neurosurgery Nurse Practitioner (Retired)

Mother who won her Appeal in the Hawaii Intermediate Court of Appeals:

Chee v. Chee, 121 Haw.30, 211 P.3d88 (Haw.Ct.App.2009) **Custody Evaluators : Marvin Acklin**, Sue Lehrke, Barbara Shintani, Kimberly S. Towler)

HB-581-SD-1

Submitted on: 3/28/2023 10:51:57 AM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Ann S. Yabusaki	Individual	Support	Written Testimony Only

Comments:

I am writing in full support of HB581

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.

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.

I have witnessed neighbors and people I treat as a psychologist complain about feeling re-victimized during custody evaluations and fact finding situations. I also attended training in custody evaluations and one of the most complex issues is that of domestic violence. Training and retraining provides the guidance and support for custody evaluators. It helps them as well as families and children in some of the most stressful times. .

This bill not only helps families, it could help the evaluator in some difficult decision making cases.

Thank you for your consideration.

Ann S. Yabusaki, Ph.D., LMFT

HB-581-SD-1

Submitted on: 3/28/2023 11:17:38 AM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Sarah Fairchild	Individual	Support	Written Testimony Only

Comments:

I support this bill. Abusers are master manipulators and custody evaluators should have repetitive training to recognize the signs of domestic abuse.

HB-581-SD-1

Submitted on: 3/29/2023 8:48:53 AM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Tanya Philip	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in **strong support of HB581**. This bill 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.

I 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.

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.

HB-581-SD-1

Submitted on: 3/29/2023 9:02:47 AM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Dr. Faith Joyner	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in strong support of HB581. This bill 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.

I 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.

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,

Dr. Faith Joyner

HB-581-SD-1

Submitted on: 3/29/2023 6:32:10 PM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Deanna Espinas	Individual	Support	Written Testimony Only

Comments:

Please support this bill. Thank you.

HB-581-SD-1

Submitted on: 3/29/2023 7:23:29 PM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Bryana Turner	Individual	Support	Written Testimony Only

Comments:

Committee on Judiciary

Senator Karl Rhoads, Chair and Senator Mike Gabbard, Vice Chair

581 HB RELATING TO CHILD CUSTODY

Thursday, March 30, 2023 9:35 am

Conference Room 016 & Videoconference

State Capitol

415 South Beretania Street

Aloha Judiciary Committee,

I am in support of requiring certain individuals attempting to serve as child custody evaluators to complete a training course on the dynamic of domestic violence every three years and subsequently submit a certificate of completion to the family courts. Respectfully I am asking this committee to pass this bill. This proposal would expand the custody evaluator's knowledge of domestic violence tactics as well as power and control dynamics. The national average requires domestic violence counselors and service providers to have thirty five hours of training to ensure they are equipped with the necessary training to identify potential lethality.

In my work providing counseling and support to domestic violence Survivors over the past twelve years I can attest that these dynamics are sometimes subtle and require in-depth training to recognize. In working with the survivors, I have experienced first hand the effects on children who have witnessed domestic violence. Most importantly, this bill would also improve training for custody evaluators. Assisting them in making informed decisions regarding custody in the best interest of the child

Thank you for your consideration,

Bryana Turner

HB-581-SD-1

Submitted on: 3/29/2023 8:25:56 PM

Testimony for JDC on 3/30/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Oppose	Written Testimony Only

Comments:

Good Morning Senate Judiciary Committee Members,

While it seems that I should be in support of HB581 HB2 SD1 the main reason why I must OPPOSE it is because of:

“Certain individuals attempting to serve as child custody evaluators”.

My concerns, are not about domestic violence training, which I am all for, but the *legitimizing, empowering, authorizing and giving credibility to “certain individuals” who may not be fit to serve as Child Custody Evaluators.*

Letters and/or certificates of completion are absolutely worthless if proficiency in the subject matter cannot be proven.

Because former legislative sessions have all UNSUCCESSFULLY tried to establish CCE core criteria & training standards as well as provide safeguards for parents and place those into law, which have 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!

Many professions must prove subject matter proficiency in order to continue practicing or face fine, sanction, suspension or be delicensed for malpractice – 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.

Please establish CCE core criteria & training standards as well as provide safeguards for parents and place those into law *before* incorporating mandatory domestic violence training with proof of proficiency and then we’ll be on the right track and on the same page.

Thank you most sincerely for your time and consideration.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate