

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

TO: Committee on Human Services and Housing

FR: Ana Maring, Hawaii State Coalition Against Domestic Violence amaring@hscadv.org

RE: Relating to Family Court HB2042 – January 31, 2008, 8:40am Room 329

Aloha, my name is Ana Maring and I represent the Hawaii State Coalition Against Domestic Violence (HSCADV). HSCADV is a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

Healthy and safe families have been the primary goal of the Battered Women's Movement. Frequently there is an assumption that the violence will end once the victim of abuse separates from the batterer. Multiple studies have shown this is the most dangerous time for women and their children. 75% of women who are murdered by a partner or former partner have recently separated or told their partner they are planning to leave. According to media accounts Janel Tupola had separated from her batterer prior to her death and co-workers of Jenny Hartsock say she was in the process of leaving her batterer.

Joint and shared/joint custody may be an appropriate parenting situation in non-violent families. When domestic violence has been present in the relationship, shared/joint custody and visitation can be dangerous for the victim and the children. Several studies suggest that up to half of spouse abusers are also violent with their children. Additionally, perpetrators of family violence often use visitation and custody as an opportunity to be violent or manipulate the victim. There tends to be a presumption that courts will not give custody to batterers but according to a Massachusetts survey (Jay Silverman, Harvard) conducted as recently as 2004, 54 percent of custody cases involving documented spousal abuse were decided in favor of the alleged batterers.

The Coalition **supports this bill with amendments**. To protect victims and their children the Coalition recommends the following change to Best Interest of the Child standard number 5: **"(5) Each parent's cooperation in developing and implementing a plan to meet the child's ongoing schedule, needs, and interests, except that this factor shall be excluded if a determination by the court has been made that family violence has been committed by a parent, pursuant to section 571-46(a)(9);"**. It is extremely important for Family Court to consider domestic violence cases separately for those of non-violent families.

Thank you for the opportunity to testify.

From: Tom Marzec [mailto:tom.marzec@1987.usna.com]

Sent: Tuesday, January 29, 2008 11:26 AM

To: HSHtestimony

Cc: tom.marzec@1987.usna.com

Subject: HB2042 hearing by HSH on Thursday, 01-31-08 at 8:40 am in House room 329

January 29, 2008

To: Rep. Maile S. L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair
Committee on Human Services & Housing

From: Tom Marzec

Subj: Testimony **IN STRONG SUPPORT** of **HB2042** re factors the courts shall consider in determining the best interest of the child

Hearing: Thursday, January 29, 2008; 8:40 a.m.; Room 329, State Capitol

I strongly support **HB2042**, and recommend two amendments. The current lack of standards in determining what is in the best interests of the child is not effective for making custody determinations. This hurts parents and children. Creating these best interests of the child standards, with this bill, gives guidance to parents, the courts, custody evaluators, guardians, and others -- while also providing discretion based on the facts and circumstances of each individual case.

In the development of this bill, there were concerns with criteria (5) (page 8, lines 8-10). The following proposed language, to replace the existing wording for criteria (5), was agreed to by Dara Carlin of VOICES, Ana Maring of the Hawaii State Coalition Against Domestic Violence, and myself.

"(5) Each parent's cooperation in developing and implementing a plan to meet the child's ongoing schedule, needs, and interests, except that this factor shall be excluded if a determination by the

court has been made that family violence has been committed by a parent, pursuant to section 571-46(a)(9);"

This wording was circulated to the entire SR10 Family Court Legal Interventions Working Group (FCLIWG), and no other feedback was received. Therefore, I recommend replacing the existing criteria (5) language with the above version.

One other minor grammatical correction is recommended: on page 7, lines 20-21, the phrase "but not be limited to" should be preceded and followed by commas.

These amendments were adopted by the Senate Committee on Human Services and Public Housing, when the companion bill, SB2054, was heard on January 24, 2008.

Your consideration of, and support for this bill is very appreciated!

Sincerely,

Thomas A. Marzec