

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

Hearing date and time: March 27, 2008, 2:25pm, Room 325

RE: SB2054 SD2 HD1 Relating to Family Court – Best Interest of the Child

TO: Chair Waters, Vice Chair Oshiro and members of the Committee on Judiciary

FR: Ana Maring, Hawaii State Coalition Against Domestic Violence

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. Perpetrators of family violence often use visitation and custody as an opportunity to be violent or manipulate the victim.

Battered women frequently believe the court system will support them in their quest for safety but that is often not the case. "Compared to non-battering fathers, batterers are more likely to seek custody of their children, and they may misuse the legal system as a symbolic battleground for continuing abuse through harassing and retaliatory litigation." (Kendall Segel-Evans, Wife Abuse and Child Custody and Visitation by the Abuser 1989). Additionally, 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% of custody cases involving documented spousal abuse were decided in favor of the alleged batterers. 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.

The Coalition supports this bill's intent to have the courts and its associated personnel appropriately evaluate safety for children when addressing custody. Best interest of the child standards must only be applied when appropriate. 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 comment.

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JUDtestimony

From: Dara Carlin, M.A. [REDACTED]
Sent: Wednesday, March 26, 2008 12:16 PM
To: JUDtestimony
Subject: SB2054 SD2 HD1 to be heard 03/27 at 2:25pm in Room 325 by the House Judiciary Committee

TO: Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice-Chair
Judiciary Committee Members

FROM: Dara Carlin, M.A.
Oahu VOICES
716 Umi Street, Unit 210
Honolulu, HI 96819
[REDACTED]

DATE: Thursday - March 27, 2008

RE: SB2054 SD2 HD1

Statewide VOICES stands in support of this measure so long as the caveat in Standards 5 and 11 remain in place. The 16 standards that comprise the Best Interests Of a Child list have been thoroughly reviewed to account for an adequate amount of safety which needs to be assured in all cases where family violence has been raised as an issue. As long as the provisions in standards 5 and 11 remain unchanged, VOICES offers its support for this bill.

Thank you for this opportunity to provide testimony.

Respectfully,

Dara Carlin, M.A.
Oahu VOICES Representative

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000064

JUDtestimony

From: Adrienne King [REDACTED]
Sent: Thursday, March 27, 2008 7:07 AM
To: JUDtestimony; Rep. Thomas Waters; Rep. Blake Oshiro
Subject: Testimony in Support of HB2054 House JUD on Thursday, 03-27-08 at 2:25 pm in House conference room 325

To: Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair
Committee on Judiciary

From: Adrienne King

Subj: Testimony in Support
SB2054 SD2 HD1
re: factors the courts shall consider in determining the Best Interests of the Child

Hearing: Thursday, March 27, 2008; 2:25 p.m.; Room 325, State Capitol

As a member of the SR10 Working Group task force that crafted this legislation, I urge its passage. There is no question that some definition of "best interests" is needed for family court professionals to help people navigate the rocky shoals of custody and visitation matters. It will give much needed guidance to parents and professionals and the appellate courts and is long overdue.

Thank you for this opportunity to testify on this much needed legislation.

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JUDtestimony

From: Tom Marzec [REDACTED]
Sent: Wednesday, March 26, 2008 3:45 PM
To: JUDtestimony
Cc: [REDACTED]
Subject: SB2054 House JUD on Thursday, 03-27-08 at 2:25 pm in House conference room 325

March 26, 2008

To: Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair
Committee on Judiciary

From: Tom Marzec

Subj: Testimony IN STRONG SUPPORT of SB2054 SD2 HD1
re factors the courts shall consider in determining the best interests of the child

Hearing: Thursday, March 27, 2008; 2:25 p.m.; Room 325, State Capitol

First, I am extremely grateful and relieved that this bill, critical to improving family court custody decisions, is being given a hearing. Mahalo Rep. Waters and Rep. Oshiro!

Next, I strongly support SB2054 SD2 HD1. The current lack of standards in determining what is in the best interests of the child is not effective for making custody determinations and is harmful to children and families. Best interests of the child standards, created in this bill, give guidance to parents, the courts, custody evaluators, guardians, and others -- while also providing for discretion based on the facts and circumstances of each individual case.

This bill was carefully developed by the SR10 Family Court Legal Interventions Working Group. 2008 is the third legislative session where bills have been introduced defining criteria for the courts to use in "best interests" determinations. In 2006, best interests criteria (directly from an in-depth research study and model*) were incorporated into a bill. Subsequent years resulted in additional information, education, refinements and consensus regarding these criteria. This 3 year process has brought varied groups and interests together, in large part due to Senator Chun Oakland's leadership, and formed broad consensus for the criteria in the current bill. For example, SB2054 SD1 even had the criteria additionally reviewed and recommended by an attorney for the national parent organization of the Hawaii State Coalition Against Domestic Violence. Also, family law practitioners related that such best interests criteria would be helpful for themselves, their clients and the courts because a standard will raise the effectiveness of child custody processes. The HSBA Family Law Section Board recently voted to support this bill.

Judge Wong, in June 2007, issued a Custody Evaluation Standards and Procedures memo. On page 15 under XIV Guiding Principles, the memo states that "The child's best interest standard is paramount..."; yet, unfortunately offers no further definition or criteria regarding how this standard is to be determined or applied. Likewise, the appellate courts have declined

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3/27/2008

to define the "best interests" standard. That is why many other states have specific criteria, in statute, and this bill is necessary for the best interests of children.

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

* Jameson, B. J., Ehrenberg, M. F. & Hunter, M. A. (1997). Psychologists' ratings of the Best-Interests-of-the-Child Custody and Access Criterion: A family systems assessment model. Professional Psychology: Research and Practice, 28(3), 253-262.

000067