

SB 2054  
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the formerly battered women's caucus of hawaii

To: Senator Chun-Oakland, Chair  
Senator Ihara, Vice-Chair  
Human Services & Public Housing Committee Members

Date: January 24, 2008

Re: DANGEROUS STANDARD IN SB2054

For the past three years, I have come to the Legislature trying to educate, caution and forewarn everyone about the dangers of **domestic & post-separation violence** in the hope of preventing more tragedies like the ones we have seen recently. Too many of these murders occur after the victim has left her abuser (when she's supposed to be "safe" from him) and where divorce, custody and visitation issues have played a major role in the victim's murder.

Having spent approximately 20 years in the field of mental health, I have to tell you there are **significant clinical differences** between cases where violence is and is not a factor. It is absolutely irresponsible and negligent to treat both types of cases in the same manner and thus, to have one law to govern both types of cases. SAFETY will always be the long-term, primary concern in cases involving violence (as we've seen in just this past year's DV homicide cases) whereas safety is barely an issue in non-violent cases.

Of the 16 standards proposed in SB2054, only one presents a specific, long-term safety risk for domestic violence victims and their children whose marriages and families were torn apart by someone who they believed loved them. It reads: "Each parent's cooperation in developing and implementing a plan to meet the child's ongoing schedule, needs and interests". The problem with this standard is in one word: **cooperation** because in cases of domestic violence, there is no such thing as "cooperation". To foster, encourage or support "cooperation" between a victim and her abuser for any reason is to leave a legal open door for the abuser to continue his use of power and control tactics against her at best, and provide an opportunity for murder at worst.

To alleviate this problem, I am asking that the word "cooperation" be taken out from this standard and be replaced with the word "**ability**" - this would provide a victim with a small measure of safety in divorce, custody and visitation proceedings, where each parent would also be judged according to his/her own capacity. If the word "ability" cannot be switched for "cooperation" I would like to ask that this standard be stricken and excluded from all cases where domestic violence has been raised as a concern.

Thank you for your time and consideration.

*Dara Carlin, M.A.*  
Dara Carlin, M.A.

hawaii state coalition against domestic violence  
716 umi street suite 210 - honolulu, hawaii - 96819 - (808) 832-9316 ext 106



*Guy Yatsushiro, M.D.*

1914 South King Street, Suite #201 Honolulu, Hawaii 96826 (808) 946-7159

To: Senator Suzanne Chun-Oakland, Chair  
Senator Les Ihara, Vice Chair  
Members of the Committee on Human Services & Public Housing

From: Guy Yatsushiro, M.D.

Date: January 21, 2008

Subject: Strong Concern for SB2054

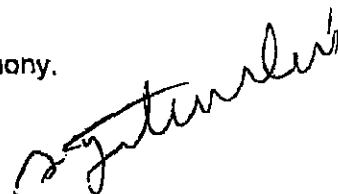
This is the third legislative session that my wife is participating in where she will be repeating herself in trying to warn everyone about the real dangers associated with family violence and domestic abuse. She's been a part of the SR10 Task Force that came up with this bill and despite her urging them to make a distinction between cases of violence and non-violence, they've chosen to ignore her and the thousands of people she represents AGAIN!

Think about the 5<sup>th</sup> consideration this bill proposes: "Each parent's cooperation in developing and implementing a plan to meet the child's ongoing schedule, needs and interests" – that sounds fine if one parent never abused or beat up the other parent, but how does this protect a woman and her children when she left the marriage because of domestic abuse?

Yes, there are restraining orders and protective orders and no contact orders but then you're going to tell her with all this in place to "cooperate" with him? How's that going to work? Are you going to take away the TRO so she can "cooperate" with him? Are you going to say her cooperating is more important than her safety? If she's still afraid of him because the tiger hasn't changed its stripes and she doesn't "cooperate" with him, it's going to count against her for not cooperating? This doesn't even make any sense!

Don't we tell the women "if he's hurting you leave, get away from him"? So she leaves, gets away from him and then you're going to tell the court to put them back together so they can "cooperate" over the kids? You're kidding, right? Did you see how those last two women were killed? If they were still alive, do you really think they could "cooperate" with those men? You really need to think about this one more before you just pass it on through.

Thank you for this opportunity to provide testimony.



**Testimony in strong Support of SB 2054 and SB 2055**

Hearing: January 24, 2008  
Time 1.30 p.m  
Room 016 State Capital

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**COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING**  
Senator SUZANNE CHUN OAKLAND, Chair  
Senator LES IHARA, JR. Vice Chair

**From: LAURETTE DEMANDEL-SCHALLER, MFT, Ph.D., C.E., G.A.L.  
Clinical Member Hawaii Assoc. of Marriage Family Therapists;  
Clinical Member American Assoc. for Marriage and Family  
Therapy; Custody Evaluator; Guardian Ad Litem;  
Mediator; Member of the Assoc. of Family and Conciliation  
Courts  
And The SR10 Taskforce**

**Subj: Testimony in strong Support of SB2054 and SB2055**

My name is Dr. Laurette Schaller, I have lived on the Island of Kauai for over 20 years, and have been a licensed Psychotherapist for 24 years, in California and Hawaii, providing treatment and forensic services to children and families.

The passage of SB 2054 and SB2055 will make the BEST INTEREST OF THE CHILD the cornerstone of judicial consideration when determining the award of custody to divorcing or never married parents. This is consistent with the mission of the Court to carry out its strategic plan to develop, support, and advocate for maximum parental involvement in the lives of their children. With the passage of SB2054 and SB2055 there will be a legal standard that is consistent with policy developed in other states across our nation, and also one

which will be appealable in the appellate courts. The passing of these Bills means progress for the people in the State of Hawaii.

I join with The Children's Rights Council, and members of the groups listed, we strongly believe that SB 2054 and SB 2055 should be supported.

## Testimony in strong Support of SB 2054

Hearing: January 24, 2008  
Time 1.30 p.m  
Room 016 State Capital

V

### COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

Senator SUZANNE CHUN OAKLAND, Chair

Senator LES IHARA, JR. Vice Chair

From: LAURETTE DEMANDEL-SCHALLER, MFT, Ph.D., C.E., G.A.L.  
**Clinical Member Hawaii Assoc. of Marriage Family Therapists;  
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Therapy; Custody Evaluator; Guardian Ad Litem;  
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appellate courts. The passing of this Bill means progress for the people in the State of Hawaii.

I join with The Children's Rights Council, and members of the groups listed, we strongly believe that SB 2054 should be supported.

**To:** Senator Suzanne Chun Oakland, Chair  
Senator Les Ihara, Jr., Vice Chair

Committee on Human Services and Public Housing

**From:** Bryan Freiberg

**Subj:** Testimony IN SUPPORT of **SB2054** which specifies what factors the courts shall consider in determining the best interest of the child.

I strongly support SB2054. As a father who has gone through Family Court custody hearings, I know first hand that there is a great need to define the criteria used for the best interests of the child determinations. This bill is a very good first step.

Given that HRS provides that the child's best interest is the sole criteria in determining custody, a definition of what best interest actually means is paramount. Definitive BIC criteria will aid judges in making decisions and articulating those decisions as needed in "findings of fact" and they may even help more separating couples reach consensus on custodial issues.

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**Ann S. Yabusaki, Ph.D.**

*California Psychologist PSY14443  
California Marriage and Family Counselor MFC 22558  
Hawaii Marriage and Family Therapist MFT-87*

The Honorable Senator Suzanne Chun Oakland  
Hawaii State Senate  
Hawaii State Capitol, Room 226  
415 South Beretania Street  
Honolulu, Hawaii 96813

RE: S.B. 2054 Family court; Custody  
Senate Committee on Human Services and Public Housing  
Hearing Scheduled: January 24, 2008, 1:30 pm

Dear Senator Chun Oakland:

I am writing in full support of S.B. 2054, a bill outlining criteria for awarding custody and visitation. As a psychologist and marriage and family therapist, I have treated many high-conflict couples and families. I have observed and participated in proceedings that create, in my opinion, unnecessary trauma and harm to families and their communities.

I am particularly grateful that this bill addresses the best interest of children because children are the victims of high-conflict families. I am grateful that it addresses family violence, alcohol and substance abuse, family dynamics in which parents use children for personal gain, and other harmful situations in which children are placed. By addressing areas to consider in the best interest of the child, my hope is that we will more fully address the larger contexts in which our children and families live.

Mahalo nui loa,



Ann S. Yabusaki, Ph.D.

To: Senator Suzanne Chun-Oakland (Chair)  
Senator Les Ihara (Vice chair)  
Members of the Senate Committee on Human Services and Public Housing

From: Ellen Sofio M.D.  
2708 Hipawai Place  
Honolulu, Hawaii 96822  
988-4003

Date of Hearing: Thursday, January 24 2008, 1:30 PM

Regarding: OPPOSITION to standard #5 in SB 2054

With the appalling recent rash of domestic violence related murders in our own community, including one of a 14 year old boy, it has been made more than apparent what worst case scenarios can evolve when women and children are vulnerable to an obsessed perpetrator. It is also well established in the psychological literature how detrimental it is to children to be witnesses to intense conflict in their homes, whether that conflict is labelled as domestic violence or otherwise and whether it occurs in marriage, during separation or post-divorce.

Of all marriages referred to court-based custody/visitation mediation programs, 50% go 80% involve domestic violence. (Family Court Review 37 (3)p.335). Therefore family court legislation must be tailored to care for the needs of victims. The cooperation clause in SB 2054 standard #5 does the opposite. For the legislature and the courts to doom children whose mothers are struggling to free themselves and their offspring from the vice grip of a violent relationship to grow up under a cloud of perpetual fear and trauma is most certainly not in their best interests. Standard #5 will handcuff victims to their perpetrator. Is this what we want as a community?

Legislation cannot alter the entrenched power and control obsession of an established perpetrator or instill sincere cooperative intent in an individual who often is hard wired by his own history of childhood neglect and abuse to dominate and inflict pain on his victims. Properly motivated and carefully crafted legislation does have the potential to decrease the vulnerability of those who have already been victimized psychologically or physically. Recent events cry out for a legislative task force explicitly deligated to enhance legal safeguards for victims in as proactive and comprehensive a way as possible.

The Model Code on Domestic and Family Violence requires Mediators to screen for domestic violence and recommends prohibiting mediation in certain cases and allowing for it in others, but only if there are victim safeguards in place (national Council of Juvenile and Family Court Judges). Standard #5 in SB 2054 as currently written creates a blanket mandate for "cooperation" which will clearly endanger many women and children at the most vulnerable time, the time of separation from a perpetrator, and will only facilitate longterm jeopardy to victims.

I am sure this committee does not want to bear personal responsibility for future tragic carnage like that we have witnessed recently or for associated longterm psychological or physical abuse of innocent children. Therefore I respectfully and urgently call upon the honorable chair, vice chair and committee members to either amend standard #5 to read "ability" instead of "cooperation" or to vote this bill down entirely.

Sincerely,

Ellen Sofio M.D.  
Family Practice Physician

To: Senator Chun-Oakland, Chair  
Senator Lesihara, Vice Chair  
Members of the Committee on Human Services & Public Housing

from; Jirivil Wood Kava'i Voices, Representative  
5825 Hala Kahiki Pl.  
Kapaa, Hi. 96746  
808 822-7743

Thursday, January 24, 2008

RE: Opposition to Standard # 5 in SB2054

I oppose the wording of standard # 5. I believe that perpetrators of family violence use every opportunity to inflict more pain & suffering on their victims. There is no way to safely "cooperate" with a batterer. Such standards imposed on battered women can result in even more fatalities.

Please do not act under the assumption that judges will offer appropriate protection to battered women and their children. The language in standard # 5 would cast blame upon the victims of Domestic Violence for their non-compliance with their perpetrators ongoing patterns of power & control. When I finally stood up and said "no" to my husband after years of being severely beaten and degraded, there were negative consequences for me and my children. The increased suffering arose not only from my husband's escalated post-separation violence, but from the misdirected efforts of court officials who lack the training or simply the willingness to identify the need for protection.

I ask that there be clarity & distinction between cases where there is Domestic Violence and cases where Domestic Violence is not a factor. I ask that standard # 5 be pre-faced with the words "Except in cases where there is Domestic Violence," ...

Thank you for your time & consideration on this very important matter. Changing this language can be a step in preventing abuse and making our families safe. Kava'i Voices Representative  
Jirivil Wood