

**LATE TESTIMONY**

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**From:** Tom Marzec [mailto:tom.marzec@1987.usna.com]  
**Sent:** Tuesday, March 11, 2008 7:13 AM  
**To:** HSHtestimony  
**Subject:** SB2054 SD2 HSH on Tuesday, 03-11-08 at 8:30 am in House CR #329  
**Importance:** High

March 10, 2008

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

From: Tom Marzec

**Subj:** Testimony **IN STRONG SUPPORT** of and **offering**  
**Amendments** to **SB2054 SD2**  
re factors the courts shall consider in determining the best interests of  
the child

Hearing: Tuesday, March 11, 2008; 8:30 a.m.; Room 329, State Capitol

I strongly support **SB2054 SD2**. 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. The following technical amendments are offered for the indicated reasons. The intent of offering these amendments is to improve or restore agreed upon language -- not to bypass the SR10 process, agreements or consensus. Unfortunately, as these proposed amendments were being initially discussed, there was not time to discuss them with all the members of the SR10 Working Group. This background is being provided to not upset the careful balance that went into drafting this bill, and to underscore the broad consensus and agreement that exists for this bill.

**Amendment #1:**

Page 8, lines 6-7, criteria (4), new wording not underlined, in a bold and larger font.

**(4) The history of care giving or parenting by each parent prior and subsequent to ~~the~~ a marital or other kind of separation;**

Rationale: Separations other than marital may occur, and the wording should be expanded to include any kind of separation between the parents which is relevant to this best interests evaluation.

**Amendment #2:**

Page 8, line 19, criteria (11), new wording not underlined, in a bold and larger font.

**(11) Each parent's willingness to actions demonstrating they allow the child to maintain family connections through family events and activities; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;**

Rationale: The word "willingness" is not specifically measurable or capable to be accurately determined and is therefore less important than demonstrated actions in evaluating this criteria. Specific actions by parents, related to a particular best interests criteria, are a better determinant of actual parenting than aspirational or unmeasurable conjecture, and are in keeping with legal requirements to meet a burden of proof based on specific evidence.

In addition, the word "willingness" was added in the bill drafting process and was not a word included in the original language approved by the SR10 Working Group.

**Amendment #3:**

Page 9, lines 3-4, criteria (12), new wording not underlined, in a bold and larger font.

**(12) Each parent's ~~ability to~~ actions demonstrating they separate the child's needs from the parent's needs;**

Rationale: The word "ability" is not specifically measurable or capable to

be accurately determined and is therefore less important than demonstrated actions in evaluating this criteria. Specific actions by parents, related to a particular best interests criteria, are a better determinant of actual parenting than aspirational or unmeasurable conjecture, and are in keeping with legal requirements to meet a burden of proof based on specific evidence.

**Amendment #4:**

Page 9, lines 7-8, criteria (14), new wording not underlined, in a bold and larger font.

**(14) The mental health and psychological ~~maturity~~ adjustment of the parent;**

Rationale: The word “adjustment” was inadvertently replaced by “maturity” in the SD1 version of this bill. The original SR10 Working Group approved and intended that this criteria include “psychological adjustment” and this amendment would restore that language and intent.

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 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. This bill also supports SB2055 SD2 which establishes a framework for child custody evaluation standards and policies.

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

Sincerely,  
Thomas A. Marzec

LATE TESTIMONY

-----Original Message-----

From: Dara Carlin, M.A. [mailto:breaking-the-silence@hotmail.com]  
Sent: Monday, March 10, 2008 10:45 PM  
To: HSHtestimony  
Subject: SB2054 SD2 to be heard Tuesday, 03/11/08 at 8:30am by the HSH  
Committee  
Importance: High

> TO: Representative Maile Shimabukuro, Chair  
> Representative Karl Rhoads, Vice Chair  
> Health & Human Services Committee Members  
>  
> FROM: Dara Carlin, M.A.  
> Oahu VOICES  
> 716 Umi Street, Suite 210  
> Honolulu, HI 96819  
>  
> DATE: March 11, 2008  
>  
> RE: Support for SB2054 SD2, Relating To Family Court  
>  
>  
> The Formerly Battered Womens Caucus, VOICES, stands in support of SB2054  
SD2 pertaining to the Best Interests Of The Child standards. These  
standards have been reviewed by VOICES members and language has been  
included that seems to assure safety for domestic violence victims,  
survivors and their children in potential standards of concern.  
>  
> Thank you for your time and consideration.  
>  
>  
>  
> Respectfully,  
>  
> Dara Carlin, M.A.  
> Oahu VOICES Representative

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## **Late Testimony**

**Date:** March 11, 2008

**To:** Representative Karen Leinani Awana  
Representative Della Au Belatti  
Representative Joe Bertram  
Representative Rida T.R. Cabanilla  
Representative Josh Green  
Representative John Mizuno  
Representative James Kunane Tokioka  
Representative Gene Ward

Human Services & Housing Committee

**From:** Chris Lethem

**Subj:** Testimony **IN STRONG SUPPORT** of **SB2054 SD1** re factors the courts shall consider in determining the best interests of the child

Hearing: Tuesday, March 11, 2008; 8:30 a.m.; Room 329, State Capitol

I strongly support **SB2054 SD1**. This bill creates standards which will help children and families as custody decisions are being made by the courts. As a participant in the process, which included various groups and interests, I can say that there was broad consensus for the best interests criteria in the current bill. From domestic violence groups to family law lawyers, people came together to support this bill because a standard is required for custody determinations. Many other states have specific criteria, in statute, and this bill is necessary for the best interests of children. This bill also supports SB2055 SD1 which establishes a framework for child custody evaluator standards and policies.