



TO: Chair Jon Riki Karamatsu
Vice Chair Ken Ito

FR: Nanci Kreidman, M.A.
Chief Executive Officer

RE: H.B. 2265, HD 1

Aloha. Please accept this testimony in opposition to H.B. 2265, HD 1. The law governing best interests of the child was amended recently after a great deal of community dialogue with perspectives shared, input from experts and research to best inform the discussion.

The Bill currently on the agenda is a surprising emergence following the leadership provided by Senator Chun Oakland and examination of the issues by various professionals and community members. Unless there is a compelling reason to further amend the statute, after such discourse and agreement, the introduction of this Bill appears to disregard previous efforts.

Thank you for entertaining divergent testimony.

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TESTIMONY VIA EMAIL TO: JUDtestimony@Capitol.hawaii.gov

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010
COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

HEARING

DATE: Thursday, February 25, 2010

TIME: 2:00 p.m.

PLACE: Conference Room 325

State Capitol 415 South Beretania Street State Capitol

HB 2265_ RELATING TO FAMILY COURTS.

Amends custody and visitation criteria and procedure to specify what courts will consider in determining the best interest of the child.

TESTIMONY FROM: Melinda (Chee) Franklin

Affiliation: Angel Group and Hawaii Children's Rights Council

email: cheem@umich.edu



**I write in STRONG SUPPORT OF
HB 2265:
RELATING TO FAMILY COURTS.**

**Amends custody and visitation criteria and
procedure to specify what courts will
consider in determining the best interest of
the child.**

Custody determinations have been recently commented upon by the Hawaii Intermediate Court of Appeals (ICA). On June 19, 2009, as a Pro Se party, I won my Appeal # 28843 in the ICA. The ICA's *Memorandum Opinion* discusses

custody determinations by the family court: ***“As evidenced by this case, custody disputes are particularly susceptible to dueling allegations of misconduct and abuse. Absent a true emergency, ex- parte custody proceedings can provide fertile ground for a misuse of the judicial process.”***

Background Information: I am a mother who was involved in protracted custody litigation. By profession, I am a licensed, board certified, nurse practitioner. I care for patients with cancer. I have been recognized by my alma mater, the University of Michigan, for humanitarianism and scholarly excellence.

Following my divorce from my ex-husband, Kevin Chee (a Honolulu attorney with Chee and Markham), our custody arrangement was Joint physical and legal. After our divorce our 4 children resided primarily with me on the mainland. Their father had liberal visitation. After 4 years, on the final day of his summer visitation, Kevin Chee did not send our children back to their primary residence with me on the mainland. He then maneuvered an Ex-Parte change of custody to Sole for himself, and attached a Temporary Restraining Order (TRO) blocking me from all contact with our 4 children. The TRO persisted for 7 years! Ongoing custody litigation left me with insurmountable debt.

In 2009, as a Pro-Se litigant, I finally won my Appeal # 28843 in the Hawai'i ICA. In their *Memorandum Opinion* pertinent to my Appeal, the ICA states: ***“Before the children’s relocation to Hawai’i pursuant to the 1999 stipulated custody order, Mother had been the primary caretaker for the children. Even after the children’s relocation, Mother enjoyed liberal***

time-sharing rights. By prohibiting all contact between Mother and her children, the November 2000 Ex Parte Orders effected a draconian change in the custodial arrangements. Yet, the family court permitted the November 2000 Ex Parte Orders to stand without ruling on the validity of the allegations on which the orders were based or the continued necessity for the orders. We further hold that, if a family court determines that an emergency situation requires an immediate change of custody, then the ex parte order changing custody must include notice of: (1) a post-deprivation hearing, promptly set; and (2) the grounds for this extraordinary measure. A parent deprived of custody in this manner must be given a prompt and meaningful opportunity to address the allegations supporting the immediate change of custody.

Here, with respect to the November, 2000 Ex-parte Orders, the family court did not comply with requirements set forth in Doe. The family court did not hold a prompt post-deprivation hearing to address the allegations supporting the change in custody over the children from joint to father's sole custody or the restraining orders prohibiting mother from any contact with the children. Indeed, despite Father's only seeking *temporary* sole custody of the children, and (presumably) *temporary* restraining orders prohibiting contact by Mother, the November 2000 Ex Parte Orders remained in effect for years without any substantive review by the family court. Thus the November 2000 Ex Parte Orders cannot stand."

Recommendation: I strongly urge HB2265 be passed. It amends custody and visitation criteria and procedure to specify what courts will consider in determining the best interest of the child.

In Chee v Chee, a change of custody occurred without a Custody Evaluation – or a hearing! The Judiciary ignored previous findings of domestic violence:

Honolulu Police (HPD) were called after my ex-husband, Kevin Chee, punched me while I was holding our 18 month old son. Kevin Chee was ordered out of our home by HPD. Following our divorce, Kevin Chee retaliated by obstructing contact between me and our 4 children years on end. He manipulated the Judiciary, as referenced above by the Opinion of the Hawai'i Intermediate Court of Appeals.

Unless there are standards of practice pertinent to custody awards and criteria regarding those appointed to evaluate child custody, the injustice my children and I have suffered continues with impunity.

Respectfully submitted,

Melinda (Chee) Franklin,

Member, Angel Group, and Hawai'i Children's Rights Council

“Injustice anywhere is a threat to justice everywhere”

Dr. Martin Luther King Jr.

karamatsu1-Kenji

From: Chris Lethem [crslethem@gmail.com]
Sent: Wednesday, February 24, 2010 4:17 PM
To: JUDtestimony
Cc: Rep. Angus McKelvey
Subject: Testimony in STRONG SUPPORT of HB2265 Best Interests of the Child Criteria, with Amendments
Attachments: image001.gif

February 24, 2010

To: Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair
Committee on Judiciary
Via email to: JUDtestimony@Capitol.hawaii.gov

From: Chris Lethem

Subj: Testimony in **STRONG SUPPORT** of **HB2265** Best Interests of the Child Criteria, **with Amendments**

Hearing: Thursday, February 25, 2010; 2:00 p.m.; Room 325, State Capitol

As I and others were a part of the group that developed the original best interests of the child criteria currently in statute, I am quite familiar with the background, details and history of the best interests criteria. A rebuttable presumption for joint custody should be added to this bill, to further the best interests of the child. The below proposed amendment has safeguards prior to the presumption being applied and if there are conflicts with the family violence presumption, then the court can still act in the child's best interests and make the necessary findings.

As the science continues to expand our knowledge of physiology and our understanding of how children develop their intellect and socialization skills, it is now quite apparent that both parents play critical roles in a child's intellectual and social development. Longitudinal studies that utilize the most sophisticated brain scanning technology available clearly confirm that markers used to identify child development provide quantifiable proof of the value of parental interaction by both parents. Simply put, shared custody provides greater continuity with less disruption to a child's development. This allows the child to continue to have the optimal social and intellectual growth that is so critical for ongoing success and achievement.

The other aspect of shared parenting is the "goodwill" component necessary for parents to cooperatively share parenting responsibilities and opportunities. Goodwill is too often destroyed in adversarial litigation when one or both parties make, or have to defend against, calculated and one-sided accusations designed mostly to gain a tactical advantage in custody litigation. Presumptions and best interest criteria help provide standards and consistency so a wild wild west atmosphere does not prevail in family court.

At the same time, much of this harmful tactical litigation is also driven by money. Many times custody is negotiated out by one party willing to offer money for a concession on a more favorable custody arrangement. But many families have spent their life savings and taken on great debt to preserve their right as parents. So no matter who gets custody, the child now lives in a financially disadvantaged scenario. Having some consistency in outcomes, based on prior parenting, would help reduce harmful tactical litigation.

Non-custodial parents who are otherwise good parents, unable to pay sometimes onerous child support (often within several years), are likely to leave Hawaii, abandoning their children, because they are unable to maintain a residence and keep up with these child support obligations. This leaves their children vulnerable, pushing them into much higher risk profiles. This doesn't even consider the children's emotional toll of losing a parent.

Custody evaluations are too often just picking one parent over the other, not based on a child's best interests or a complete and thorough evaluation, but **looking for fault with a parent and exaggerating their faults with hearsay and unsubstantiated facts and opinion.**

Custody evaluations are too often subjective, arbitrary and/or agenda driven. They are not based on a formal education of family dynamics or knowledge of child development.

For example; if they father has a good job and he is stable, he may be attacked for not being home enough, while it can be said the mother has more free time because she is unemployed or only works part-time. However, another evaluator may look at the same scenario and suggest the father have custody as he is stable and able to provide for the financial needs of the child and offers a consistent living situation.

Essentially the questions should be, how do we help these parents share parenting. Not who loses their kids and who gets money. Children who grow up without both parents having frequent, continuing and meaningful contact have far less chance of achieving a rewarding life as adults. Substance abuse, poor academic performance, poor socialization skills, gangs activity, sexual molestation (by 27 to 40 times) and prison, are the outcomes most likely to occur for these children.

I strongly support the best interest criteria in this bill, agree with the amendments to refine these criteria proposed in the House testimony, and recommend the following amendments be added to this bill. Please note that "meaningful contact" is already defined in Chapter 571-2 Definitions.

"Meaningful contact" means parent and child interactions, activities, and experiences, performed together, which nurture the parent-child attachment and relationship, while contributing to the child's development in a positive and effective manner.

SECTION

§571-46 Criteria and procedure in awarding custody and visitation; best interest of the child. (a) In actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court also may consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child;
- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If the parents or parties, prior to the action, exercised the equivalent of joint custody over the child whose custody is contested, and had a meaningful contact relationship with the child, then if either or both parents or parties request or apply for joint custody of the contested child, there shall be a rebuttable presumption

that joint custody of the contested child should continue pursuant to section 571-46.1, unless detailed findings by the court exist that show joint custody of the contested child is not in their best interests, to include the application of the family violence rebuttable presumption.

~~([3]4)~~ If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;

... (**subsequent sections to be renumbered**)

SECTION

§571-46.1 Joint custody. (a) Upon the application of either parent, joint custody may be awarded pursuant to section 571-46(a)(3) at [in] the discretion of the court. For the purpose of assisting the court in making a determination whether an award of joint custody should continue, or is appropriate, the court shall, upon the request of either party, direct that an investigation be conducted pursuant to the provisions of section 571-46(a)(~~[4]~~5). If such an investigation is ordered, a joint custody award pursuant to section 571-46(a)(3) shall not be delayed for investigation purposes, and the investigation will be conducted in parallel with existing custody awards.

(b) For the purposes of this section, "joint custody" means an order awarding legal custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents, pursuant to a parenting plan developed pursuant to section 571-46.5, in such a way as to assure the child or children of frequent, continuing, and meaningful contact with both parents; provided, however, that such order may award joint legal custody without awarding joint physical custody.

(c) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order.

(d) Any order for the custody of the minor child or children of a marriage entered by a court in this State or any other state may, subject to the jurisdictional requirements set forth in sections 583A-201 to 583A-204, be modified at any time to an order of joint custody in accordance with this section.

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Testimony of

Jamie Ayaka Moody

before the

COMMITTEE ON JUDICIARY

Representative Jon Riki Karamatsu, Chair

Representative Ken Ito, Vice Chair

SUPPORT FOR HB 2265 HD1, RELATING TO FAMILY COURTS

Date: February 25, 2010

Time: 2:00pm

Place: Conference Room 325

415 South Beretania Street

Chair Karamatsu, Vice Chair Ito and Committee Members:

My name is Jamie Ayaka Moody and I am testifying in support of HB 2265 HD1, Relating to Family Courts. Being a mother of a four year old boy, and having personally experienced the process of custody determination, I humbly ask for these amendments to be enacted in the existing statute.

Thank you for the opportunity to provide my testimony.

Respectfully yours,

Jamie Ayaka Moody

From: Tom Marzec [adamtm@lava.net]
Sent: Wednesday, February 24, 2010 7:10 AM
To: JUDtestimony
Subject: Testimony in STRONG SUPPORT of HB2265 Best Interests of the Child Criteria, with Amendments, hearing 25Feb10 at 2 pm

February 25, 2010

To: Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair
Committee on Judiciary
Via email to: JUDtestimony@Capitol.hawaii.gov

From: Tom Marzec

Subj: Testimony in **STRONG SUPPORT** of **HB2265** Best Interests of the Child Criteria,
with Amendments

Hearing: Thursday, February 25, 2010; 2:00 p.m.; Room 325, State Capitol

As part of the group that initially developed the best interests of the child criteria currently in statute, I am very familiar with the background, details and history of these best interests criteria. I recommend the following amendments.

Pg 1, line 16 add "activities" after "interests," To read:
"interests, activities and schedule; provided that this factor"

Rationale: Coordinating activities on the other parent's time can be a source of frustration when one parent does not support the activities the other parent does with the child. Children need to commit to play in games, compete in team activities or meet schedule requirements for their team mates and coaches -- regardless which parent's time that activity falls on. Otherwise, they may not be allowed to participate or their participation is less effective as they may more often sit on the bench. This issue needs added emphasis.

Pg 2, lines 21-22 and **Pg 3, line 8**. Combine these criteria into one line item which reads:
" (16) The child's views, preferences and fears about the current and prospective family situation, subject to subsection 571-46(a)(3); "

Rationale: HRS 571-46(a)(3) reads:

"(3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;"

These sections should remain consistent in that the trial court has discretion in determining if and how a child provides such evidence. Otherwise, the mandatory nature of this criteria, as currently written, dictates that every child be made a witness, subject to cross-examination by the other parent, or a Child Custody Evaluator (CE) or Guardian ad litem (GAL) must be appointed in every case to elicit such evidence. Older children may be confident in telling a judge or CE/GAL their views, but younger children must be carefully evaluated by a skilled professional as just asking a child to choose a parent can be very traumatic and inappropriate. By wording this criteria to give the trial court continuing discretion, the court and parents can address how to best determine and consider a child's views and preferences, if necessary and appropriate, by balancing the specific factors in each case.

Pg 3, line 3 make technical changes to read:

" (18) Preservation of assets so ~~athe~~ parents can financially "

Rationale: Financial preservation of assets should apply to both parents.

Pg 3, line 8 combine this item per above and renumber the remaining items.

Pg 3, line 9 add "demonstrated actions and" before "willingness" To read:

(24 20) Each parent's **demonstrated actions and** willingness to protect the child from

Rationale: Consistency with existing criteria, which use "actions demonstrating" is necessary. When the original criteria were developed, "demonstrated actions" were more provable, carried more weight and were easier for the court to evaluate than "willingness".

Your consideration of these issues, and interest in improving the criteria by which the courts determine custody and visitation, is very appreciated.