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LATE
Testimony

Committee: COMMITTEE ON HUMAN SERVICES
Representative John M. Mizuno, Chair
Representative Tom Brower, Vice Chair

Date: Monday, February 1, 2010, 8:30AM, Room 329

Subject: HB 2265 Relating to Family Courts (Best Interest of the Child)

Chair Mizuno, Vice Chair Brower and Committee Members:

I STRONGLY SUPPORT passage of this bill in any form. My daughter is the victim of severe domestic violence from her ex-husband. Father was found by Hawaii Family Court to be a perpetrator of domestic violence by clear and convincing evidence and my daughter was granted a 6-year protective order for herself and her two young children. The father then hired an aggressive attorney who convinced a judge to award joint physical custody and deny my daughter and my grandchildren relocation to a neighbor island. The judge denied my daughter's request that the father attend anger management and a parenting class. My grandson is 6 years old and my granddaughter is only 2 years old, yet the father has been awarded joint physical custody and equal-timesharing. Just yesterday, my 6-year old grandson was hiding under a table because he was so anxious about going to visit with his father. My grandson today called his mother crying on the phone. This is not acceptable and the children are suffering and unsafe.

The Family Court judge had such broad range in the ruling because **no legal criteria was in place** in determining "best interest of the child." Hawaii one of very few states that does NOT have a legal definition or criteria in determining "best interest of the child."

Please pass out HB 2265 to assist victims of domestic violence and their children in having a positive and safe environment.

I also respectfully request that the following objectives/amendments be incorporated into HB 2265:

1. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:

(A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;

(B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and

(C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;

2. In a visitation order, a court may:

(A) Order an exchange of a child to occur in a protected setting;

(B) Order visitation supervised by another person or agency;

(C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;

(D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;

(E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;

(F) Prohibit overnight visitation;

(G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;

(H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and

(I) Order the address of the child and the victim to be kept confidential.

Mahalo for your time and consideration.

Sincerely,

Santiago B. Gorospe

Testimony of

Jamie Ayaka Moody

before the

COMMITTEE ON HUMAN SERVICES

Representative John Mizuno, Chair

Representative Tom Brower, Vice Chair

SUPPORT FOR HB 2265, RELATING TO FAMILY COURTS

Date: February 1, 2010

Time: 8:30am

Place: Conference Room 329

415 South Beretania Street

Chair Mizuno, Vice Chair Brower and Committee Members:

My name is Jamie Ayaka Moody and I am testifying in support of HB 2265, 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

LATE
Testimony

TO: Representative John Mizuno, Chair
Representative Tom Brower, Vice Chair
Members of the Committee on Human Services

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place
Kailua, HI 96734

LATE Testimony

Sent: Sun 1/31/2010 4:11 PM
DATE: Monday, February 1, 2010

RE: Support for **HB2265**, Relating To Family Court, with comments

If a survivor of Domestic Violence "slipped through" the rebuttable presumption against sole or joint custody to a perpetrator of family violence statute, most of these proposed "best interests" standards wouldn't pose an unfair advantage over the survivor except for possibly two:

the contributions of a parent's new partner

and

the preservation of assets following the issuance of a divorce decree

Most survivors are not looking to recouple so quickly after escaping an abusive relationship; their priority is on their healing and on their children, not looking for a new husband. In this instance, an abuser with a "contributing" new wife/girlfriend is not necessarily a positive thing, especially if the new wife or girlfriend assists the abuser in undermining the survivor. Careful attention must be paid in assessment.

It is also an unusual situation for a DV survivor to be financially ok or to be able to preserve any assets following the issuance of a divorce decree from her abuser. Again, the professionals who would be considering these factors when determining a custody recommendation should be very well trained in assessing for Domestic Violence.

As Representative Ward wisely pointed out recently: "The best interests of a child doesn't mean anything if the child's basic need for safety isn't met". Thank you Representative Ward and thank you for this opportunity to provide testimony.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate