

**Subject:** Testimony in STRONG SUPPORT of HB2265 Best Interests of the Child Criteria, with Amendments, 1Feb10

**LATE  
Testimony**

**From:** Tom Marzec [mailto:adamtm@lava.net]

**Sent:** Wednesday, February 03, 2010 2:47 PM

**To:** mizuno1-Michael

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February 1, 2010

**To:** Rep. John M. Mizuno, Chair  
Rep. Tom Brower, Vice Chair  
Committee on Human Services

**From:** Tom Marzec

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

**Hearing:** Monday, February 1, 2010; 8:30 a.m.; Room 329, 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.