



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: April 3, 2014

TO: The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
House Committee on Judiciary

FROM: Alana Peacott-Ricardos, Policy Research Associate
The Sex Abuse Treatment Center

RE: S.B. 2223, H.D. 1
Relating to Change of Name

Good afternoon Chair Rhoads, Vice Chair Har and members of the House Committee on Judiciary. My name is Alana Peacott-Ricardos and I am the Policy Research Associate for the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

SATC supports S.B. 2223, H.D. 1, allowing a family court to change the name of a minor child in a divorce proceeding of the parents if either parent has been convicted of sexual abuse against the child or if the court determines that the name change is in the best interests of the child when there has been no conviction of the parent for sexual abuse.

It is alarming to realize that children and youth consistently comprise the majority of sexual assault survivors seen through SATC. From 2001 to 2010, 58.2% of survivors receiving services from SATC were minors.ⁱ Of those minors, 42.8% were abused by a family member.ⁱⁱ In some cases, that family member was their own parent.

Child sexual abuse can have long-term impacts. Survivors may experience emotions such as fear, guilt, anger, and confusion well after the abuse. They may also experience a loss of self-esteem or depression and anxiety, and are at increased risk for suicide, eating disorders, substance abuse, and relationship difficulties.

In cases of intrafamilial sexual abuse, the effects can be even more pervasive as the abuse was perpetrated by someone who should have been a caretaker, a protector, a defender, but instead that person hurt, violated, and exploited the child. Sharing the same name as a perpetrator can serve as a constant reminder of the abuse.

We urge you to pass S.B. 2223, H.D. 1. This bill reflects a victim-sensitive approach and takes into consideration the potential for lasting trauma suffered by survivors of child sexual abuse perpetrated by a parent. Thank you for this opportunity to testify.

ⁱ THE SEX ABUSE TREATMENT CENTER, SEXUAL ASSAULT VICTIMS IN THE CITY AND COUNTY OF HONOLULU: 2001-2010 STATISTICAL PROFILE 1 (2013), available at <http://satchawaii.org/pdf/sexual-assault-victims-2001-2010-statistical-report.pdf>.

ⁱⁱ *Id.*



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TESTIMONY IN SUPPORT OF
SB2223 – Relating to Name Changes, Children, Sexual Abuse, Divorce

Senators Shimabukuro, Baker, Chun-Oakland

April 3, 2014 at 2:00 PM

The Legal Aid Society of Hawaii submits testimony in support of SB2223 – Relating to Name Changes, Children, Sexual Abuse, Divorce. This provision is necessary because although the Family Court Judge already has the authority to change a child's name, it requires a separate action to be filed. It cannot be done in the divorce as the law currently stands, yet the parties are all the same, the standard is the same (best interest of the child) and to require a new proceeding to be filed to change the child's name just increases the expense to all concerned. On the other hand, no such requirement is present in Paternity cases. Judges routinely change a child's name in Paternity actions – and they also routinely decide not to because to do so would not be in the child's best interest. Why should it be different in a divorce?

The Legal Aid Society of Hawaii is the largest non profit law firm in the State. We have offices Statewide serving Hawaii's low income population. Over the years we have helped many people get divorced and we have also helped many people establish paternity. In the paternity cases a request to change the child's name is often made. That request is either granted or not, depending upon the individual circumstances of each case. In the divorce cases we have handled, it is less common for a request to change the child's surname to be made. Yet sometimes a request is made. In a recent case the child had been a victim of child sexual abuse, perpetrated by a parent. At least that was the allegation. The court refused to reach the merits of the allegation though because it did not feel, quite correctly given the state of the law, that it had the power to change the child's name in a divorce. In other words the court never considered whether it would be in the child's best interest to change her name. We ask for your support in passing SB2223.

Thank you for this opportunity to provide testimony.

Sincerely,

Daniel E. Pollard, Esq.
Co-Managing Attorney

The Legal Aid Society of Hawaii (Legal Aid) is the only legal service provider with offices on every island in the state, and in 2011 provided legal assistance to over 10,000 Hawai'i residents in the areas of consumer fraud, public assistance, family law, the prevention of homelessness, employment, protection from domestic violence, and immigration. Our mission is to achieve fairness and justice through legal advocacy, outreach and education for those in need.



LATE

SB2223

Submitted on: 4/3/2014

Testimony for JUD on Apr 3, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Arvid Tadao Youngquist	About Face	Support	No

Comments: Chair, Rep. Karl Rhoads, House JUD Committee V.Chair, Rep. Sharon Har, House JUD Committee Right Honorable Members of the House JUD Committee We support the original intent of the measure and thank the co-sponsors (Keiki Caucus) Senators SHIMABUKURO, BAKER, & CHUN OAKLAND. We were unable to find a reason that a branch of the Bar Association provided testimony in opposition. Perhaps there was a concern about disinheritance of such a "child victim". Ordinarily, if we recall correctly, there is a \$500+ charge for a name change. With this legislation, a name change will be effective made by a Family Court justice (sic.?). If possible, without amendment, request that the Committee report address some of the concerns expressed by the Bar Association testimony, which, perhaps will be offered again, with or without the current amendment. Further amendments may actually negate the positive aspect of such a reform and in some respects a "sea change" in the consciousness of child protective actions. Thank you and we ask that the House JUD Committee pass this, stand up in Committee, and on the House Floor to support the Keiki, the Keiki Caucus, and the worthy efforts of all its stakeholders. Mahalo plenty!
Arvid Tadao Youngquist Founder, Administrator, & Spokesman

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

TO: Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice-Chair
House Committee on Judiciary

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE AND TIME: April 3, 2014 at 2:00 p.m.

RE: Testimony in Opposition to SB2223, HD1

Good afternoon Representative Rhoads, Representative Har, and members of the Committee. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice in Family Law for fifteen (15) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am submitting this testimony in opposition to SB2223, HD1.

This bill adds a subsection allowing a Family Court in a divorce case only the authority to change the name of a minor child if “the court determines that either parent has sexually abused the child and the change of name is in the child’s best interest”. While I recognize that this bill is well-intentioned, it is ill-advised and unnecessary.

The intent behind this bill is unclear. It appears to create a special status for parents in divorce cases of children who have been sexually abused. Why should only parents of victims of sexual abuse be allowed to have their child’s name changed? Why not a parent of a child who suffered physical abuse? Or mental abuse? Or emotional abuse? Why should only parents in divorce cases be allowed to have their child’s name changed? What paternity cases?

This bill seems intended to simply give “special treatment” to parents in a divorce case. My question is why? I believe this “special treatment” will only increase litigation in divorce cases by encouraging false allegations of sexual abuse. False allegations of abuse (all types of abuse) are already a problem in divorce cases because of the presumption created by HRS 571-46 that a parent who has committed family violence should not have custody (sole or joint). Some parents make false allegations of abuse in order

to obtain leverage in custody and visitation disputes. This bill will encourage this behavior even more by creating another “reward” – removing the other parent’s name from the child’s name, presumably in the hope of removing the parent from the child’s life as well.

Please note deleting “sexual abuse” as a component of this bill doesn’t resolve the problem, either. There is still special treatment being given to parents in divorce cases to try and change the name of their children. While it is true that children’s names are changed in adoption proceedings and paternity proceedings, that name change is done once and is done for obvious reasons. In an adoption proceeding, a child is being adopted by at least one and sometimes two (2) new parents. The child’s last name should be changed to match his or her parent’s last name(s). In a paternity proceeding, a child’s paternity (i.e. relationship with his or her father) is being established. As with adoption proceedings, it makes sense that the child’s last name reflect his or her father’s last name, sometime hyphenated with his or her mother’s last name.

SB2223, HD1 seeks to give the Court the authority to remove a parent’s last name in a divorce proceedings, not termination of parental rights proceedings or adoption proceedings. It simply makes no logical sense to me. Parents in divorce proceedings are divorcing each other. They aren’t divorcing their children. Children feel enough loss as a result of divorce proceedings, they shouldn’t face the prospect of losing their last name too.

Assuming for the sake of argument that a child has been abused (sexually or otherwise) by a parent, that is tragic. That fact, however, doesn’t necessarily mean that a child’s last name should be changed. I understand that a child who has been traumatized by abuse will have many challenges to overcome. I have no idea whether one of those challenges is their last name. I would assume that varies from child to child. This bill, however, gives a parent, not a child the right to ask for a name change. Moreover, as a matter of public policy, our laws call for reunification of children with parents even after abuse and/or neglect. This bill seems to undermine that public policy and in fact encourage a different policy.

I am also troubled by the fact that the bill does not require a conviction in a criminal court of sexual abuse a minor. It simply requires that the Family Court “determine” that a parent has sexually abused a child. The burden of proof required is unclear. Whether a parent will be afforded appropriate due process rights is unclear.

Importantly, the Family Court already has the authority to change a child’s name if it determines that doing so is in the child’s best interest. Whether the Court chooses to do so or not is obviously up to the Court. If the Court chooses not to do so, however, a child’s name can be changed once he or she reaches 18 years of age. There is simply no reason to allow such changes to be forced during a child’s minority and only in the context of a divorce case.

For all of these reasons, I object to SB2223, HD1.

Thank you for the opportunity to submit this testimony in opposition to SB2223, HD1.



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March 13, 2014

TO: Representative Karl Rhoads, Chair
Representative Sharon Har, Vice-Chair
Committee on Judiciary

FROM: Dyan K Mitsuyama
E-Mail: dyan@mitsuyamaandrebman.com
Phone: 545-7035

HEARING DATE: April 3, 2014 at 2:00 p.m.

RE: Testimony in Opposition to SB2223 HD1 Relating to Change of Name

Dear Chair Rhoads & Vice Chair Har and fellow committee members:

My name is Dyan K. Mitsuyama, a licensed attorney here in the State of Hawaii. I have practiced here in Hawaii for about 15 years now mostly concentrating in Family Law matters.

Today I not only speak for myself, but for the Family Law Section (FLS) of the Hawaii State Bar Association, which is comprised of approximately 136 licensed attorneys statewide all practicing or expressing an interest in practicing family law. I serve as the current Legislative Committee Chair as well as Treasurer of FLS

We are in opposition to this measure mainly because the proposed modification to the existing statute (HRS 574-5) is unnecessary and merely would increase conflict between divorcing spouses, which would not be in the child's best interest.

The bill first proposes to insert language to change a child's name if a parent has been convicted of child sexual abuse. This seems well-intended, but it is unclear if the parent is allowed basic due process rights as to notice and/or to oppose it.

Second, the bill proposes to insert language to change a child's name regardless if there is a conviction so long as the court determines that the change is in the child's best interest. Again, this seems well-intended as there may be appropriate situations to change a child's name, but

more often than not, there are divorcing spouses who make false allegations about the other in an effort to gain leverage (and ultimately succeed) in a battle over custody and/or visitation.

The Court already has tools to ensure the child's safety, including but not limited to barring/limiting visitation; not awarding physical/legal custody; and/or, terminating a parent's rights.

Too often people make allegations regarding abuse and most times the allegations are untrue. As such, it would be patently unfair to remove a child's middle or last name at the discretion of the Court particularly at a "best interest" standard.

If the purpose is to protect the child's identity, then it seems to miss the mark as the other party will be notified of a motion to change the child's name. The party will eventually know what the child's new name is either at the actual court hearing and/or later through court records as divorce files are considered public record. There are ways to ensure a child's safety without having to do something as drastic to change his/her legal name.

Historically, the ability to change a child's name relates to the establishment or termination of one's parental rights. This bill attempts to change that presumption and carve out an exception for sexual abuse or if in the child's best interest to change the name of a child and leave intact a parent's legal rights.

Thank you for your time.

NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.