



The Judiciary, State of Hawai‘i

Testimony to the Thirty-First Legislature, 2021 Regular Session
House Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Friday, March 12, 2021 at 2:00 p.m.
State Capitol 325
VIA VIDEOCONFERENCE

by
Judge Christine E. Kuriyama
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 828, Relating to Divorce.

Purpose: Grants exclusive original jurisdiction in matters of divorce to the family court of the circuit in which an applicant is domiciled at the time the application is filed. Repeals the requirement that a person be domiciled or physically present in the State for a continuous period of at least six months before completing a divorce.

Judiciary's Position:

The Judiciary does not take a position on the policy of this bill, and offers the following comments:

1. To the extent property division is an issue in these divorce actions, resolving them may be difficult for the parties because Hawai‘i courts will not have jurisdiction over real property situated outside the State of Hawai‘i.
2. To the extent child custody is an issue in these divorce actions, the Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”) will apply and the court will not have jurisdiction over child custody issues. This would require cases to be filed in two jurisdictions, i.e., Hawai‘i and the home state of the children.
3. Additional divorces under this measure involving a plaintiff who may not have a significant connection or contact with the State of Hawai‘i will draw from the same court resources used to resolve local divorces; depending on the volume, this may impact time to resolve these matters.

Thank you for the opportunity to comment on this measure.

TESTIMONY OF THOMAS D. FARRELL
Regarding SB828, Relating to Divorce
Committee on Judiciary and Hawaiian Affairs
Rep. Mark Nakashima, Chair/Rep. Scott Matoyoshi, Vice Chair
Friday, March 12, 2021 10:30 a.m.
(via videoteleconference)

Chair Nakashima, and Members of the Committee:

SB 828 corrects a flaw in our divorce statutes and should pass without controversy. All it does is to provide that IF you can start a divorce in Hawaii, then you can finish it here. It does not change the requirement that you be domiciled in Hawaii at the time you file. It just allows you to finish a divorce if you can start one here. It helps people who have to move before the case is done, and as others have noted, this is a particular issue for DV victims, as well as the military community.

I reviewed the recent testimony of other stakeholders, and I note that many supporters do not understand what this bill will actually accomplish. They believe---mistakenly---that there is a six month durational residency requirement to file a divorce and that this bill repeals it. That is not true. There is no durational requirement to file for divorce. You need only be domiciled in Hawaii to file a divorce here; a day or even an hour will do. However, there is a durational requirement for the divorce to be granted. It can't be granted unless one party has been here for six months preceding the date it is granted. That is what this legislation would repeal.

The Judiciary continues to express concerns about this legislation, and here is my response.

1. The Judiciary is worried that this will increase the number of divorce cases filed. ***We have heard these "sky is falling" predictions from bureaucrats many times. The fact is that this bill doesn't allow anyone to file who can't already file for divorce here.*** It will not turn Hawaii into a "divorce Mecca." Maybe a few are currently deterred from filing because they know they won't be able to finish their case here, but that is not a good thing. Often, people are in desperate need of temporary orders for custody or support that they can only get from a divorce court. They may get those orders, but then, they have to leave before the divorce is finally granted. That may leave due to domestic violence, military orders, or various other reasons. Whatever the reason for leaving, their case will be dismissed (and the temporary orders go out the window). Many times, they can't

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immediately re-file in the new place because of durational residency requirements in the new locale. They wind up in a legal limbo unable to get judicial relief anywhere.

2. It has also been posited that in these cases the court will not have jurisdiction over real property situated outside the State of Hawai‘i. Aboslutely not true. If the defendant is served with the *Complaint* “within the state” or if the defendant submits to the personal jurisdiction of the court, the family court has jurisdiction to divide and distribute the property of the parties wherever in the world it may be situated. The problem is that under current law, the court loses jurisdiction to continue the divorce case to completion when the parties leave. This bill fixes that.

3. Another fallacious argument raised is that and the court will not have jurisdiction over child custody issues due to the Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”). Supposedly, this would require cases to be filed in two jurisdictions, i.e., Hawai‘i and the home state of the children. This is also completely false. Child custody subject matter jurisdiction is based on the presence of a child in the state at the time the action is filed. This bill addresses the people who can file here but have to leave before the case is completed. If the court had child custody jurisdiction at the time of filing, it retains it until the case is completed---so long as the court does not lose jurisdiction to complete the divorce because both parties move away.

4. Finally, the Judiciary has previously testified that the increase of filed cases will have a negative impact on the time frame in which divorce cases are resolved. They worry that new cases involving a plaintiff who may not have “a significant connection or contact with the State of Hawai‘i” will compete with all other cases for the same judicial resources. There are five thousand divorce cases filed in the Family Court of the First Circuit this year. My off-the-cuff estimate is that perhaps twenty cases get dismissed prior to completion because both parties move away. However, even if it is a hundred cases, that would be affected, that is two percent of the divorce calendar.

SB 828 is a minor---but necessary---change that will probably only affect a handful of people. If you can start a divorce here, you ought to be able to finish it here. That’s all this bill does. It deserves your support.

SB-828

Submitted on: 3/10/2021 3:44:41 PM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	AAUW of Hawaii	Support	No

Comments:

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of S.B. 828, which would repeal the requirement that a person be domiciled or physically present in the State for a continuous period of at least six months before completing a divorce. This requirement is another unnecessary obstacle to the survivors of domestic violence. Please pass this important measure and mahalo.

Younghee Overly, Public Policy Chair of AAUW of Hawaii



HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

March 12, 2021

Members of the House Committee on Judiciary & Hawaiian Affairs:

Chair Mark M. Nakashima
Vice Chair Scot Z. Matayoshi
Rep. Linda Ichiyama
Rep. Dale T. Kobayashi
Rep. Matthew LoPresti
Rep. Nicole E. Lowen
Rep. Angus L.K. McKelvey
Rep. Nadine K. Nakamura
Rep. Roy M. Takumi
Rep. Chris Todd
Rep. James Kunane Tokioka
Rep. Gene Ward

Re: SB828 Relating to Divorce – Strong Support

Dear Chair Nakashima, Vice Chair Matayoshi., and Members of the House Committee on Judiciary & Hawaiian Affairs:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) engages communities and organizations to end domestic violence through education, advocacy, and action for social justice. HSCADV is a private, not-for-profit organization and is a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 23 member programs statewide, I respectfully submit testimony in **strong support** of SB828. This bill removes the six-months residency requirement to file for a divorce in the State of Hawai'i resulting in the potential for increased safety for victims of domestic violence who are married. Requiring a victim to stay in the jurisdiction results in an unnecessary delay in safely fleeing their abuser and from connecting to their support networks.

Domestic violence is predicated in an abuser having power and control over their victim, including their ability to leave the relationship. When an abuser feels they are losing that control, their tactics become more aggressive and often the abuse increases. A study published in the American Journal of Public Health found that victims are at higher risk of femicide when they leave their abuser, especially after they have been living together¹. Being forced to remain in the jurisdiction while they wait for a divorce increases that potential for danger.

¹ "Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study," Jacquelyn C. Campbell, PhD, RN, et al., Am J Public Health 93(7): 1089–1097 (July 2003)



HAWAI'I STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

For the reasons stated above, we are in **strong support** of this measure. Thank you for the opportunity to testify on this important matter.

Sincerely,
Angelina Mercado
Executive Director, Hawai'i State Coalition Against Domestic Violence



Hawaii Women's Coalition

March 12, 2021

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Rep. Chris Todd

Rep. James Kunane Tokioka

Rep. Gene Ward

Re: SB828 Relating to Divorce - Support

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary & Hawaiian Affairs:

The Hawai'i Women's Coalition is a catalyst for progressive, social, economic and political change through action on critical issues facing Hawaii's women and girls. Members currently include 29 organizations and agencies (private, public, membership) as well as individuals. The coalition encourages the inclusion of interested parties and in achieving equitable representation.

We respectfully submit testimony in support of SB828. This bill removes the six-months residency requirement to file for a divorce in the State of Hawai'i resulting in the potential for increased safety for victims of domestic violence who are married. Requiring a victim to stay in the jurisdiction results in an unnecessary delay in safely fleeing their abuser and from connecting to their support networks.

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Hawaii Women's Coalition

Hawai'i Women's Coalition supports the passage of this bill. Thank you for the opportunity to submit testimony on this important matter.

Sincerely,

Hawai'i Women's Coalition

SB-828

Submitted on: 3/12/2021 11:23:56 AM

Testimony for JHA on 3/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
nanci kreidman	domestic violence action center	Support	No

Comments:

thank you.

love, nanci kreidman