



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Tuesday, June 30, 2020 at 9:46 a.m.
State Capitol, Conference Room 016

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1978, H.D, 1, Relating to Special Immigrant Juvenile Status.

Purpose: Specifies that the family court has jurisdiction in proceedings concerning the custody or guardianship of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18. Effective 12/31/2059. (HD1)

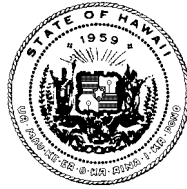
Judiciary's Position:

The Judiciary strongly supports this bill, which clarifies that the Hawai'i Family Court has jurisdiction to hear motions awarding custody or guardianship of immigrant children under the age of 21 who have been abused, neglected or abandoned, for purposes of granting them Special Immigrant Juvenile Status "SIJS" under federal law.

This bill does not expand or contract Family Court's current powers, but is being offered to address the requirements of section 101(a)(27)(J) of the federal Immigration and Nationality Act (codified in 8 U.S.C. section 1101(a)(27)(J)). As a result, the Judiciary does not anticipate requesting additional funding for the implementation of this bill.

Thank you for the opportunity to provide testimony on this measure.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96808

June 28, 2020

TO: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 1978 HD1 – Relating to Special Immigrant Juvenile Status**

Hearing: June 30, 2020 9:46 a.m.
Conference Room 016, State Capitol

DEPARTMENT’S POSITION: The Department of Human Services (DHS) supports this bill. The measure requires an effective date.

PURPOSE: This bill specifies that the family court has jurisdiction in proceedings concerning the custody or guardianship of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18. Effective 12/31/2059. (HD1)

Obtaining a juvenile court order issued by a state court for an individual who cannot be reunified with parents due to abuse, abandonment, or neglect, is one requirement for an immigrant juvenile to become eligible for Special Immigrant Juvenile classification per the Immigration and Nationality Act (INA). With the Special Immigrant Juvenile classification, the juvenile may adjust their immigration status and eventually become a lawful permanent resident and obtain a green card. The individual needs to apply for the classification before turning 21 years old.

Like the Violence Against Women Act of 1994, as amended, that sought to improve abused, immigrant women’s access to safety in the United States, this bill supports the protection and recovery of maltreated and neglected immigrant children. DHS currently provides foster care services for immigrant children who have been the victims of parental

abuse and neglect. DHS is committed to continue this work and supports efforts, like this bill, to increase immigrant safety, services, and protection.

Thank you for the opportunity to provide comments on this measure.

HB-1978-HD-1

Submitted on: 6/27/2020 11:15:44 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
amy agbayani	Testifying for Filipina Advocacy Network FAN	Support	No

Comments:

TESTIMONY IN SUPPORT OF HB1978 hd1

RELATING TO SPECIAL IMMIGRANT JUVENILE STATUS

TESTIMONY SUBMITTED BY AMY AGBAYANI, CO-CHAIR

FILIPINA ADVOCACY NETWORK (FAN)

The Filipina Advocacy Network (FAN) strongly supports HB1978 hd1 **RELATING TO SPECIAL IMMIGRANT JUVENILE STATUS**. FAN advocates for equity, non-discrimination, diversity, and inclusion of Filipinos in our multicultural community. We support HB1978 because this bill ensures that vulnerable immigrant youth are able to access protections afforded under federal law. FAN appreciates the support of the House Filipino legislative caucus for HB 1978 which addresses fairness, protection of vulnerable foreign-born youth in our state, including recent immigrants from the Philippines.

I respectfully request your support for HB1978 hd1 clarifying that the Hawai'i family court has jurisdiction over custody or guardianship as it relates to the federal Special Immigrant Juvenile Status (SIJS). SIJS provides a pathway to citizenship for immigrant children under 21 years of age who have been abused, neglected, or abandoned. To obtain SIJ status, an individual must receive an order from a state juvenile court awarding custody or guardianship. The bill is necessary because of a recent change by the administration to block certain SIJS petitions; the bill resolves the issue by clarifying the jurisdiction of the family court to hear the cases. Many states have passed laws expressly confirming that their family courts have jurisdiction.

Thank you for the opportunity to express our strong support for HB 1978 hd1.

Amy Agbayani



June 28, 2020

**Testimony in Support of House Bill 1978, HD 1–
Relating to Special Immigrant Juvenile Status**
Senate Committee on Judiciary

*An Affiliate of
National Justice
for Our Neighbors*

Aloha Chair Karl Rhoads; Vice-Chair Jarrett Kehokalole; and Members of the Committee:

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The Legal Clinic (“TLC”) provides this testimony in support of HB 1978, HD 1, which would allow certain of Hawai'i’s qualified children to be eligible for protection under the federal Special Immigrant Juvenile Status (“SIJS”). SIJS is a federal designation which provides protection for abused, neglected, and abandoned immigrant children. The Legal Clinic provides legal and related services to Hawai'i’s low-income immigrant community. We urge you to support this bill to ensure that Hawai'i’s affected immigrant children can enjoy this protection afforded by federal law.

Under Special Immigrant Juvenile Status (8 U.S.C. 1101(a)(27)(J)), immigrant children under 21 years of age who have been abused, neglected, or abandoned may be protected and potentially gain a pathway to US citizenship. However, confusion between U.S. Citizenship and Immigration Services and state courts has led to thousands of petitions being rejected nationally, simply because the state designation of “juvenile” does not match the federal designation. This has occurred in Hawai'i as well. SB 2677 would authorize Hawai'i’s family courts to make the required findings, where appropriate, and allow these children to enjoy the benefits under the federal status.

It should be readily apparent that Hawai'i should afford its affected residents the federal protections available under existing immigration law, as a number of other states have done (including California, Maryland, Colorado, New Jersey, Washington, Connecticut, Massachusetts and New York). Failure to do so could result in the deportation of these children and would impair their ability to function fully as contributing members of our society. Hawai'i should also encourage, and help facilitate, its immigrants in becoming citizens, especially its young population, who are part of the future of this State. A significant obstacle to this is the family court’s lack of authority to make the requisite qualifying findings. SB 2677 would remove this by amending Haw.Rev.Stat. section 571-11, concerning the jurisdiction of the family courts.

Nationwide, in 2018, there were 212,917 new applicants for SIJS, with 33,791 cases still pending. With so many young lives hanging in the balance, and facing potentially harmful or even deadly circumstances in their countries of origin, it is critical that Hawai'i take this small measure to support our children that call our state home.

Hawai'i has one of the largest immigrant populations, *per capita*, in the country and is largely built on its immigrants. HB 1978, HD 1, would help protect an especially vulnerable part of that immigrant community.

We urge you to pass HB 1978, HD 1, out of committee.

Thank you.

With Aloha,

A handwritten signature in black ink, appearing to read 'Corey Park', written in a cursive style.

Corey Park
President, Board of Directors
The Legal Clinic

Filipinos for Affirmative Action

TESTIMONY IN STRONG SUPPORT OF HB 1978, HD1

Senate Committee on Judiciary

June 20, 2020, 2020

9:45 am

Hawai'i State Legislature

Hawai'i State Capitol, Conference Room 016

To: Chair Karl Rhoads
Vice Chair Jarrett Keohokalole
Committee on Judiciary Members: Sen. Kurt Fevella, Sen. Mike Gabbard, Sen. Donna Mercado Kim

From: Agnes Malate, PhD
armalate@yahoo.com

The Filipinos for Affirmative Action's mission is to advocate for the civil rights of all in our multicultural community. We firmly support *HB 1978, HD1 Special Immigrant Juvenile Status (SIJS)* to ensure protection for vulnerable immigrant youth.

Special Immigrant Juvenile Status (SIJS) provides a pathway to citizenship for immigrant children under the age of 21 who have been abused, neglected, or abandoned. HB 1978, HD1 is needed because of a recent change by the administration to block certain SIJS petitions, which states specific provisions in state family court jurisdictional statutes are necessary. This bill resolves the issue by clarifying the jurisdiction of the family court to hear cases. Other states have passed similar legislation confirming their family courts have jurisdiction over victims of parental abuse, neglect, or abandonment between 18 and 20 years of age for purposes of SIJS factual finding hearings.

Thank you for your consideration of HB 1978, SD1 and the opportunity to express our strong support.

HB-1978-HD-1

Submitted on: 6/26/2020 4:52:04 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Pat McManaman	Individual	Support	No

Comments:

H.B. 1978 proposes a straightforward remedy to address recent changes by federal immigration courts that limit access to Special Immigrant Juvenile Status (SIJS). The federal provisions of SIJS, allow immigrant child victims of abuse, neglect or abandonment to secure legal permanent resident status (LPR). Recent immigration court rulings, however, now require states to explicitly authorize their state courts to enter orders concerning the custody or guardianship of an immigrant child and to make specific findings that the child was abused, neglected, or abandoned. Without this remedy, these vulnerable children may be subject to deportation/removal, experience limited access to public and educational benefits and denied work authorization.

During the many years I practiced immigration law, I represented multiple children and young adults eligible for SIJS. One individual was brought to the U.S. by his adoptive parents who owned a small farm. His family removed him from school during his early teens and he was compelled to work on the farm from dawn to dusk. He was taken into custody by child welfare services when his parents left him unattended on the family farm for an extended period of several months without food or money. After determining the adoptive parents never secured legal status for their son, he was eventually awarded LPR status through SIJS. With legal status in hand, he obtained a GED and employment on a Neighbor Island.

Our non-profit office was also involved in a case where a very young foreign-born child was sold, passed through several persons, and eventually brought to the United States. Human trafficking laws had not been enacted at that time and our office successfully employed the SIJS law to gain legal status for this young child.

Vulnerable children deserve our protection. Passage of this measure will ensure this remedy is not lost to immigrant children residing in Hawaii.

Thank you for your support of this measure.

TESTIMONY IN SUPPORT OF HB 1978

HEARING DATE: June 26, 2020

TO: Chair Karl Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary

FROM: Lisa Swartzfager

Chair Karl Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary,

I strongly urge passage of this bill, which aligns Hawaii law with federal requirements for Special Immigrant Juvenile Status (“SIJS”) to provide protections for vulnerable populations in the State.

SIJS was designed to protect some of the most vulnerable persons living among us -- immigrants under the age of 21 who have been abused, neglected, and/or abandoned by one or both parents. Policy changes have caused some youth who are 18-20 years old to fall through the cracks, depending on state laws regarding the jurisdiction of family courts. This bill will allow Hawaii to ensure that such 18-20 year olds living in Hawaii are able to seek relief that Congress has provided for them through the SIJS statute.

I have had the privilege to represent several teenagers seeking to obtain SIJS status. I also currently have one client who is 20 years old and would like to seek SIJS. Learning about the lives of my clients and other young immigrants has been both heartbreaking and incredibly inspiring. Many such persons, not only have to overcome traumatic events from their past, but also live in constant fear of being deported and separated from their families and loved ones. Some of these youth do not even remember another home. Additionally, 18-20 year-old immigrants without lawful status face challenges in attending colleges and obtaining jobs.

SIJS status often provides the only avenue for young immigrants to become lawful permanent residents (“LPR”) of the United States. A person with LPR status can live and work permanently in the United States, can travel outside of the United States, is eligible for certain scholarships and other benefits, and can ultimately apply for U.S. citizenship.

Through the passage of this bill, Hawaii can ensure that the protections of SIJS set forth under federal law are available to some of the State’s most vulnerable residents.

TESTIMONY IN SUPPORT OF HB 1978 AND REQUESTING AMENDMENT

HEARING DATE: June 26, 2020
TO: Chair Rhoads and Members of the Senate Judiciary Committee
FROM: Trever Asam

Chair Rhoads and Members of the Committee,

I urge passage of this bill with the following amendment to fix its defective date. In Section 4, I would respectfully request that the bill be amended to read as follows:

SECTION 4. This bill shall take effect **upon its approval.**

This bill aligns Hawaii law with federal requirements for Special Immigrant Juvenile Status (“SIJS”) to provide protections for vulnerable populations in the State and has the support of the State Judiciary, the State Department of Human Services, and numerous nonprofit organizations and individuals.

Special Immigrant Juvenile Status (“SIJS”) is a designation under federal law that protects young immigrants who have been abused, neglected, or abandoned. It provides a pathway to permanent residence for individuals who obtain an order from a state juvenile court awarding custody or guardianship over them and making certain findings of fact. Under procedures set forth in the Immigration and Nationality Act, juvenile immigrants under the age of 21 may seek a state juvenile court order finding that it is not in their best interest to be returned to their previous country of nationality and that their reunification with one or both parents is not viable because of abuse, neglect, abandonment, or a similar basis found under state law. 8 U.S.C. § 1101(a)(27)(J)(i-ii). Based on these findings, the juvenile immigrant is placed under the custody of a state, individual, or entity appointed by the juvenile court. *See* 8 U.S.C. § 1101(a)(27)(J)(i). This process, if successfully completed, permits the juvenile immigrant to apply for permanent legal residence within the United States of America.

Consistent with the language of the statute, United States Customs and Immigration Service (“USCIS”) has historically accepted applications from individuals under the age of 21 who obtained the requisite state court order. In 2018, however, USCIS began challenging applications of individuals ages eighteen to twenty on the ground that the state courts did not have authority to hear cases where petitioners had reached the age of majority. The result has been mass denials of SIJS petitions for juvenile immigrants over age eighteen.

To safeguard SIJS protections for their residents, several states have enacted SIJS statutes expressly providing state court jurisdiction over immigrants ages eighteen to twenty for purposes of issuing the required SIJS orders:

STATE	CITATION
New York	N.Y. Fam. Ct. Act § 661
Maryland	Md. Code Ann., Fam. Law § 1-201
California	Cal. Prob. Code § 1510.1
Washington	Wash. Rev. Code Ann. § 13.90.010
Nevada	Nev. Rev. Stat. Ann. § 3.2203
Massachusetts	Mass. Gen. Laws Ann. ch. 119, § 39M
Connecticut	Conn. Gen. Stat. Ann. § 45a-608n
Colorado	Colo. Rev. Stat. Ann. § 15-14-204(2.5)

This bill seeks to accomplish the same goal through an amendment to Hawaii's family court jurisdiction statute, Haw. Rev. Stat. § 571-11. As amended, that statute would read as follows:

Except as otherwise provided in this chapter, the court shall have exclusive original jurisdiction in proceedings . . .

(11) Concerning custody or guardianship of an immigrant child pursuant to a motion for special immigrant juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of eighteen years for purposes of section 101(a)(27)(I) of the federal Immigration and Nationality Act. For the purposes of this paragraph, "child" means an unmarried individual under the age of twenty-one years.

The addition of this language makes clear that the Hawaii family court has jurisdiction to hear the necessary motions and take the necessary action on behalf of individuals seeking SIJS.

This bill is modeled after the Maryland statute, which USCIS has indicated meets the requirements of the SIJS statute. *See Matter of E-D-J-B-F*, 2017 WL 2573348 (Administrative Appeals Office ["AAO"] June 5, 2017) (finding that the Maryland SIJS statute expanded jurisdiction over the custody and guardianship of persons under the age of 21 years); *Matter of R-A-C-M*, 2016 WL 2621477 (AAO Apr. 20, 2016) (recognizing the validity of the Maryland SIJS statute).

Through passage of this bill, Hawaii can ensure that the protections of SIJS set forth under federal law are available to some of the State's most vulnerable residents.

HB-1978-HD-1

Submitted on: 6/28/2020 1:51:32 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Egan	Individual	Support	No

Comments:

My name is John Egan and I am a practicing immigration lawyer here in the State of Hawaii. I also teach courses on Immigration Law at the Richardson School of Law. I am submitting this testimony in my personal capacity. As an attorney practicing in this field I can say from personal experience that there are quite a few young migrants here in Hawaii who will benefit from this bill if passed into law. These are some of the most vulnerable of all migrants, and the current system disadvantages them in ways that are inconsistent with the principle of the "best interests of the child." In particular, the systemic inefficiencies and delay inherent in the immigration process create far more "age-out" situations, where eligibility for a benefit is lost due to the passage of time in processing, than can reasonably be accepted by humane and compassionate observers. I strongly support the passage of this bill. Mahalo.

HB-1978-HD-1

Submitted on: 6/28/2020 3:41:36 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Aphirak Bamrungruan	Individual	Support	No

Comments:

My name is Aphirak Bamrungruan and I am a licensed attorney in State of Hawaii. I submit this testimony in my personal capacity in strong support of HB1978 HD1– Relating to Special Immigrant Juvenile Status.

HB 1978 HD1 clarifies that the Hawaii family court has jurisdiction to hear motions awarding custody or guardianship pursuant for purposes of federal Special Immigrant Juvenile Status (“SIJS”). SIJS is a designation under federal immigration law providing protection to abused, neglected, or abandoned children. This bill is necessary because the bill resolves the issue by clarifying the jurisdiction of the family court to hear the cases. It will also ensure that vulnerable immigrant youth are able to access protections afforded under federal law.

Thank you for the opportunity to provide testimony on this bill.

HB-1978-HD-1

Submitted on: 6/28/2020 8:44:04 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Liza Ryan Gill	Individual	Support	No

Comments:

Dear Chair Rhoads and Members of Judiciary Committee,

I am writing in **strong support of HB1978, HD1**. In my work as an advocate for immigrants in Hawai'i and other states I have had several friends that have suffered due to the misalignment between federal and state jurisdictions when it comes to Special Immigrant Juvenile visas.

One friend in particular lost his status when his mother died of cancer. He was only 12 years old and did not know that his status was dependent on his mom. He only became aware of his lack of status after he was 18 and applying for college. He received a full scholarship to a great school in Boston and then learned that he was undocumented. That same year the state of Massachusetts passed this same bill to extend the family court jurisdiction to 21. Because of this small tweak in the law he was able to apply for an SIJ visa and stay in the country, instead of being deported to a rapidly destabilizing Venezuela.

We do not have that many youth in Hawai'i that are in this particular situation, but for the ones that are, this bill can be the difference between a future and hope or being separated from family and their education. There are many tough decision when it comes to our extremely broken immigration system, this is not one of them. This is an easy fix that can give hope to those who have already faced extreme hardship and are without any other options.

Mahalo for your consideration,

Liza Ryan-Gill

Advocacy Committee Vice Chair

The Legal Clinic Hawai'i

808-498-8832

HB-1978-HD-1

Submitted on: 6/29/2020 9:34:11 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Elkin Pacheco	Individual	Support	No

Comments:

Statement of Elkin Pacheco Before the Committee on Human Services & Homelessness Friday March 13, 2020 at 9:00am State Capitol, Conference Room 329 In consideration of SB 2677 Relating to Special Immigrant Juvenile Status Rep. Joy A. San Buenaventura, Chair Rep. Nadine K. Nakamura, Vice Chair Rep. Della Au Belatti Rep. Calvin K.Y. Say Rep. Bertrand Kobayashi Rep. James Kunane Tokioka Rep. John M. Mizuno Rep. Gene Ward My name is Elkin “Ely” Pacheco Tabora. I support passage of SB 2677 and I want to share my story to inform your decision. I was born in Santa Rosa de Copan, Honduras on June 7, 2000. Our family was poor, so when I was three years old, my father left for the United States to support my mother and me. Over the next few years, he was able to send back enough money that she was able to build a house, and we were able to buy food, clothes and basic needs. I was able to do some work for money which helped. Over time, I managed to get a few cows and a mule which allowed me to help my mom and to save a small bit of money. However, my father never was able to come back. One of the local gang leaders began to take an interest in my mother. Because the criminal gangs have a lot of power and people are mostly afraid of them, he pushed his way into a relationship with her. Eventually, she went to live with him leaving me on my own. I do not think the relationship was really consensual, and I think he was abusive to her. However, once a gang leader takes an interest in someone, they either join them and have some protection, or they are targeted for trouble, including violence, rape and even murder. That is what happened with my mother. At that time I was 15 years old. I had a hard time supporting myself alone. I tried to make contact with my mother, to ask for some kind of help or guidance, however, the gang leader, would not allow any kind of contact. Once, gang members were hiding behind some bushes as I came around a curve in the pathway and they stepped out in front of me. They yelled out and then they just shot my mule dead. After the first shot the mule jumped and I was thrown off. Fortunately, I was able to scramble away from the guys and run around behind a nearby house. I heard more shots so I kept running. I did not go back to my house. I went to my grandmother and discussed what to do. In my town, the gangs have really taken over, the police station is closed after the gangs essentially chased them out. There’s really no one you can go to since there are more gang guys than the police, and they have more weapons. My relatives helped me sell a cow, and together with my savings and some contributions from them, arrangements were made for me to travel out of Honduras to the United States. They wanted to help me, but I also think they wanted me to get away so they would not get into any kind of trouble with gangs themselves if they were seen to be helping me there

in the town. I left Honduras in September 2016 and, after passing through Guatemala and Mexico, made it to the U.S. border in October. About two hours after crossing, the Border Patrol picked me up near McAllen, Texas. I received some assistance there and then was flown to Florida for a few days where there was a facility for young people like me. Eventually, they made contact with my father in Hawaii, and I was flown out to stay with him. I was checked in with the local immigration authorities and enrolled at Konawaena High. Upon enrolling, I worked diligently to learn English so that I could fully participate in my courses and join other school activities like the soccer team and Hula dance. For two years, I was able to focus on my studies like any other teenager. In the spring of my Senior Year, I received an immigration court notice. Instantly, I was back to living in fear of the gangs in Honduras compounded with the threat of the Immigration and Customs Enforcement. Just a few months before that, my father was deported and still cannot return to the U.S. I assumed many of my father's work responsibilities facilitating worksites. My school supported me with a modified schedule allowing me to work and complete my coursework. With the help of my teachers, I secured pro-bono legal representation; my immediate fear of deportation was halted. I went on to attend the prom and proudly graduate from high school. I currently work to provide for myself and serve my community. A year has passed and my legal team has taken a stand not just for me, but for kids like me. Kids who in spite of being abused, neglected or abandoned seize every opportunity to move forward and make a bright future in Hawaii. This legislation offers hope and the opportunity to participate fully in our communities. I hope you will advance this piece of legislation and Hawaii can lead the way in protecting vulnerable youth like me. I have worked together with my attorney and a Spanish language translator to develop the English version of this testimony as a true representation of my own story. I have worked together with my attorney and a Spanish language translator to develop the English version of this testimony as a true representation of my own story.