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**Testimony of Julia Ward
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**Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia**

**Public Hearing on Bill 25-42, the “Grounds for Divorce, Legal Separation, and
Annulment Amendment Act of 2023”**

June 8, 2023

Legal Aid of the District of Columbia¹ submits the following testimony regarding B25-42 The Grounds for Divorce, Legal Separation, and Annulment Amendment Act of 2023 (hereafter “The Act”). This Act is a desperately needed reform to the District’s current laws which restrict access to divorces and do not provide adequate protections to domestic violence survivors. We ask the Council to approve this Bill.

¹ Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 91 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

The Act Removes Paternalistic Waiting Periods That Lead to Continued Unwanted Connection to a Spouse and Removes the Court’s Need to Inquire About Potentially Retraumatizing or Embarrassing Aspects of Parties’ Private Lives

Under the District’s current laws regarding divorce and separation, parties are subject to a six-month separation waiting period prior to a divorce being granted even if *both* parties consent to the divorce; parties are subject to a twelve-month separation waiting period if both parties do *not* consent to the divorce.² Similarly, if both parties do not consent to a legal separation, a party cannot seek this relief until after a twelve-month separation. D.C. is a “no-fault” jurisdiction. Therefore, this waiting period allows one spouse to effectively delay a divorce or legal separation from being granted simply because they will not consent to their spouse’s wishes to be divorced.

The current laws require that the parties live “separate and apart without cohabitation” for either six or twelve months, depending on the consent of one or both of the parties.³ However, given that not all married couples have the ability to physically move away from their marital home, the Court instead determines the parties’ satisfaction of the current separation waiting periods by hearing sworn testimony regarding when the parties last had “marital relations.”⁴ This means that parties must testify, under oath, in open and public court proceedings, when they last had sex with their spouse, in order for the court to determine their eligibility to end their marriage.

This aspect of the District’s current law leads to severe intrusion into people’s privacy, unnecessary embarrassment, and even the perpetuation of abuse by the nonconsenting spouse. It also forces the Court to resolve complex factual disputes underlying the separation requirements. Our office has handled and observed cases in which the Court had to adjudicate disputes regarding competing accounts of the parties’ last sexual encounters and in some cases even determine how the act of sex is defined. Not only is this invasive and complicated for the Court, but it is needlessly retraumatizing for survivors of domestic violence whose abuse often includes sexual violence. It is extremely distressing for a domestic violence survivor to be required to openly testify about their sexual experiences with an abusive spouse and can lead to increased shame that a survivor often already feels when attempting to leave an abusive relationship.

² See D.C. Code § 16–904.

³ *Id.*

⁴ *Id.*

The Act removes both the aspect of consent from either party when granting a divorce as well as any separation waiting period.⁵ These changes are consistent with national trends towards reducing or eliminating separation waiting periods for obtaining divorces and allowing the parties seeking divorces to be the ones who determine what is best for themselves and their families on their own timeframe.

The Act Enhances Protections for Survivors of Domestic Violence Seeking to End a Legal Relationship With an Abusive Spouse

The Act provides several needed changes to the District's current laws on obtaining a divorce, several of which directly address issues that survivors of domestic violence face. First and foremost, the elimination of a separation waiting period and the removal of any consideration of consent from the parties allows domestic violence survivors to leave an abusive marriage at any time with or without the consent of their abusive spouse.⁶ This ability to more quickly end a legal relationship allows domestic violence survivors to obtain safety and security and obtain other relief from the Court that may aid in their ability to flee a dangerous situation. Under the District's current laws, an abusive spouse can simply withhold their consent for a divorce and delay proceedings for at least six months.⁷ Survivors of domestic violence are often caught in this cycle with their abusive spouses where their spouse attempts to control and coerce them in any way possible. The District's current laws allow the court process to become part of the control/coercion dynamic that an abusive spouse utilizes against their spouse.

Legal Aid has represented many clients who were forced to wait an entire year because of their spouse's lack of consent and ultimately had to seek Civil Protection Orders because the violence escalated during this period of time after separation but before they could seek a divorce. Divorce can be a discernible intervention in the control/coercion cycle of a relationship involving domestic violence, and the Act's elimination of separation waiting periods is a concrete step forward. The new law would allow people to move safely away from abusive relationships before violence escalates, reducing the need for further court intervention - including possible criminal court intervention - into the lives of the parties.

⁵ Section 16-904(a) will be amended to read "A divorce from the bonds of marriage may be granted upon the assertion by one or both parties that they no longer wish to remain married." Grounds for Divorce, Legal Separation, and Annulment Amendment Act of 2023, as introduced on January 19, 2023 (Bill B25-42).

⁶ *Id.*

⁷ See D.C. Code § 16-904.

The Act Expands Available Relief for Survivors of Domestic Violence Seeking Divorce

The Act also addresses the forms of relief available to survivors of domestic violence when they are seeking a divorce. The Act adds language that states that the Court shall consider evidence of domestic violence when determining alimony and distribution of marital property or debt.⁸ This is consistent with the Court’s practice and interpretations of the District’s current laws, but the Act’s clarification that domestic violence shall be explicitly considered helps *pro se* survivors better understand their rights and options and ensure the relevant evidence is considered by the Court. The Court is already explicitly required to consider evidence of domestic violence in custody determinations, so this addition makes the statutes and analyses more uniform.⁹

Additionally, The Act explicitly states that the Court may, in its discretion, award exclusive use of a residence to either party during the pendency of the divorce proceedings.¹⁰ Explicitly making this an option for relief in the Domestic Relations Branch will make it clear for both the Court and the parties what relief can be sought and will allow domestic violence survivors to request this relief without having to file for a Civil Protection Order. This is an incredibly important option for survivors who can no longer safely live with the other party but may not want to file a Civil Protection Order case because of its potential interactions with the criminal legal system or for a myriad of other reasons.

⁸ Sections §§ 16-910(b) and 16-913(d) will include an additional paragraph that includes “evidence of an intrafamily offense as defined by § 16-1001(8).” Grounds for Divorce, Legal Separation, and Annulment Amendment Act of 2023, as introduced on January 19, 2023 (Bill B25-42).

⁹ See DC Code § 16-914(3)(F).

¹⁰ Section § 16-911(a) will include an additional paragraph to allow for the Court to “award exclusive use of the family home or any other dwelling unit which is available for use as a residence pendente lite to either of the parties as is just and equitable without regard to the respective interests of the parties in the property.” Grounds for Divorce, Legal Separation, and Annulment Amendment Act of 2023, as introduced on January 19, 2023 (Bill B25-42).

More than 83% of litigants in the Domestic Relations Branch are unrepresented by counsel.¹¹ These additions to the statute are critical clarifications that will make it easier for these *pro se* parties to understand what types of relief they can request and what evidence is useful to provide to the Court.

The Act Simplifies the Previously Complex Process for Ending a Legal Relationship With a Spouse for Both Litigants and the Court

The District's current laws surrounding divorce and legal separation are confusing for litigants. At Legal Aid, we field countless inquiries from confused and frustrated litigants for whom it is too early to file for divorce. Parties who do file too early then appear for a hearing only to have their case continued so that the requisite waiting period can toll. Parties are often confused about which waiting period applies to them, and some people do not know whether their spouse will consent to the divorce until they have their first court hearing. This confusion leads to the Court having to dismiss complaints, only for them to be re-filed later, or the dockets being congested with cases that simply require continuances. The separation waiting periods also cause delays in final adjudications when parties have "reset the clock" by engaging in sex while their cases are pending, thereby causing the parties and the Court to need to wait for the entire applicable waiting period to toll again. The Act's elimination of the separation waiting periods will greatly diminish this confusion for litigants, many of whom are navigating the divorce proceedings without the assistance of an attorney.¹² The Act's changes will also simplify administrative procedures for the Court and minimize the obstacles that the Court and parties face when seeking a divorce.

Finally, we note that the amended language will need to be reflected in other sections of the statute for the sake of consistency. We will follow up with the Committee on that and welcome the opportunity to work together.

Conclusion

Thank you for the opportunity to submit this testimony. We hope the Council will pass B25-42 The Grounds for Divorce, Legal Separation, and Annulment Amendment Act of 2023 to improve the process for District residents seeking to end a legal relationship with a spouse.

¹¹ District of Columbia Access to Justice Commission, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* (2019).

¹² 83% of plaintiffs and 93% of defendants in divorce and/or custody cases in Family Court are unrepresented. District of Columbia Access to Justice Commission, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* (2019).