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## A BILL FOR AN ACT

RELATING TO FAMILY COURT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 571-46, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3           "(b) In determining what constitutes the best interest of  
4 the child under this section, the court shall consider, but not  
5 be limited to, the following:

6           (1) Any history of sexual or physical abuse of a child by  
7 a parent;

8           (2) Any history of neglect or emotional abuse of a child  
9 by a parent;

10          (3) The overall quality of the parent-child relationship;

11          (4) The history of caregiving or parenting by each parent  
12 prior and subsequent to a marital or other type of  
13 separation;

14          (5) Each parent's cooperation in developing and  
15 implementing a plan to meet the child's ongoing needs,  
16 interests, and schedule; provided that this factor  
17 shall not be considered in any case where the court



- 1           has determined that family violence has been committed  
2           by a parent;
- 3           (6) The physical health needs of the child;
- 4           (7) The emotional needs of the child;
- 5           (8) The safety needs of the child;
- 6           (9) The educational needs of the child;
- 7           (10) The child's need for relationships with siblings;
- 8           (11) Each parent's actions demonstrating that they allow  
9           the child to maintain family connections through  
10           family events and activities; provided that this  
11           factor shall not be considered in any case where the  
12           court has determined that family violence has been  
13           committed by a parent;
- 14           (12) Each parent's actions demonstrating that they separate  
15           the child's needs from the parent's needs;
- 16           (13) Any evidence of past or current drug or alcohol abuse  
17           by a parent;
- 18           (14) The mental health of each parent;
- 19           (15) The areas and levels of conflict present within the  
20           family; and



1           (16) A parent's prior wilful misuse of the protection from  
2           abuse process under chapter 586 to gain a tactical  
3           advantage in any proceeding involving the custody  
4           determination of a minor. Such wilful misuse may be  
5           considered only if it is established by [~~clear and~~  
6           ~~convincing~~] preponderance of the evidence, and if it  
7           is further found by [~~clear and convincing~~]  
8           preponderance of the evidence that in the particular  
9           family circumstance the wilful misuse tends to show  
10          that, in the future, the parent who engaged in the  
11          wilful misuse will not be able to cooperate  
12          successfully with the other parent in their shared  
13          responsibilities for the child. The court shall  
14          articulate findings of fact whenever relying upon this  
15          factor as part of its determination of the best  
16          interests of the child. For the purposes of this  
17          section, when taken alone, the voluntary dismissal of  
18          a petition for protection from abuse shall not be  
19          treated as prima facie evidence that a wilful misuse  
20          of the protection from abuse process has occurred."



1 SECTION 2. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:



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JAN 29 2015



# H.B. NO. 1451

**Report Title:**

Family Court; Child Custody; Best Interests of the Child;  
Domestic Abuse Protective Orders

**Description:**

Changes the standard of proof from clear and convincing to preponderance of the evidence to establish whether a parent's prior willful misuse of domestic abuse protective orders were intended to gain a tactical advantage in a child custody case shall be considered in the family court's determination of the best interest of the child in awarding child custody and visitation.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

