



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

Thursday, March 14, 2019 at 9:30 AM

State Capitol, Conference Room 016

By

Christine E. Kuriyama

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: House Bill No. 295, House Draft 1, Relating to Domestic Abuse

Purpose: Amends the definition of domestic abuse under Hawaii's insurance laws and domestic abuse protective order statutes to include emotional abuse between family or household members. Defines emotional abuse. (HB295 HD1)

Judiciary's Position:

The Judiciary appreciates the Legislature's continued efforts to prevent, address, and protect the citizens of Hawai'i from domestic abuse. The bill expands the definition of "domestic abuse" under HRS Chapter 586 and as a result, the Judiciary anticipates the need for additional resources over and above our current budget in order to ensure timely processing of cases. The Judiciary respectfully offers the following comments with regard to Section 5 of the bill:

1. For context purposes, 3,211 Domestic Abuse Protective Order ("DAPO") petitions were filed and processed in fiscal year 2017-2018 in the First Circuit (Island of O`ahu), an increase from the 2,982 petitions which were filed and processed in the First Circuit in fiscal year 2016-2017. As the Legislature is aware, due to exigent time constraints, the court is required to hold a hearing within fifteen (15) days from the date of filing.
2. Based upon the proposed expansion of the definition of "domestic abuse," the Judiciary anticipates a significant increase in: (1) the amount of petitions filed; (2) the amount of



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Senate Committee on Judiciary
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temporary restraining orders granted (“TRO”) and set for hearing; and (3) contested hearings on the issue of whether the TRO should be extended.

3. Without additional funding, the foregoing increases will have a direct adverse impact on the ability of the court to process and adjudicate petitions in a timely manner.
4. In addition to the impact to the court, it should also be noted that the Judiciary provides the public with assistance in filing petitions through the court officers of the TRO/Domestic Violence Unit. Similar to the impacts on the court and without additional funding, the increase in cases will have a negative impact on the level and quality of service the TRO/Domestic Violence Unit provides to the public.

Although the intent of this bill is to expand the definition of domestic abuse and in turn, afford more protection to the public, it may be the case where such an expansion, without increased funding, will have an overall negative impact on DAPOs. The Judiciary respectfully requests that the Legislature consider the likely impacts on the court and consider whether it would be prudent to allocate additional resources over and above the Judiciary’s current budget to address the increase of cases.

Thank you for the opportunity to comment on this measure.

HB-295-HD-1

Submitted on: 3/11/2019 9:54:50 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 295 HD 1.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.
Chair
LGBT Caucus of the Democratic Party of Hawaii



TO: Chair Karl Rhoads
Vice Chair Glenn Wakai
Members of the Committee

FR: Nanci Kreidman, M.A.
CEO

RE: H.B. 295 Support

Aloha. There appears to be a need to clarify definitions of behaviors typically demonstrated in relationships where there is abuse; these are not one time incidents nor are they situational. The inclusion of definitions that can assist and guide practice, decision-making and procedures has the potential to increase safety, provide greater flexibility and improve options for survivors.

We support statutory change that improves options and increases safety for survivors.

Thank you.

hscadv



HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE
1164 Bishop Street, Suite 1609, Honolulu, HI 96813

March 12, 2019

To: Senate Committee on Judiciary

Chair Karl Rhoads

Vice Chair Glenn Wakai

Mike Gabbard

Donna Mercado Kim

Kurt Fevella

From: Hawaii State Coalition Against Domestic Violence

RE: Support HB295HD1

Dear Members of the Committee:

On behalf of the Hawaii State Coalition Against Domestic Violence and our 23 member programs statewide, we offer our support for HB295HD1 which amends the definition of domestic abuse under Hawaii's insurance laws and domestic abuse protective orders to include emotional abuse between family or household members while also defining emotional abuse.

So much of what advocates and survivors know about domestic violence is not the physical abuse- it is the coercive and controlling tactics that emerge as a pattern in the lives of survivors. Many survivors, when seen by clinicians, are diagnosed with varying levels of PTSD as a result of not only the physical abuse but also because of the emotional and psychological abuse they have been through. Words and actions carry enormous weight and we support the recognition of this in statute.

Thank you for the opportunity to testify.

Respectfully,

Carmen Golay

Member Service Manager

cgolay@hscadv.org

HB-295-HD-1

Submitted on: 3/12/2019 8:00:20 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rainbow	Testifying for Rainbow Family 808	Support	No

Comments:

Rainbow Family 808 acknowledges the gravity of Emotional Abuse that exists in all forms of Domestic Violence. The unseen suffering and damage of Emotional Abuse lingers on far after the physical abuse and is a stumbling block to complete healing inflicted by Domestic Abuse. Please pass HB295 HD1 with effective dates as soon as possible!

HB-295-HD-1

Submitted on: 3/12/2019 11:17:10 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Katrina Obleada	Testifying for Hawaii Psychological Association (HPA)	Support	No

Comments:

The Hawai'i Psychological Association supports the intent of this bill.



Institute for Rational and Evidence-Based Legislation

P. O. Box 41

Mountain View, Hawaii 96771

March 13, 2019

Committee on the Judiciary

Re: HB295, HD1

To be heard: March 14, 2019 9:30 AM

Chair, Vice-chair, and members,

Please **DEFER** HB295, HD1.

Here we have another case of “good intentions” having the “unintended consequences” of putting us on the infamous road to hell.

By expanding the definition of “domestic abuse” to include non-violent “emotional abuse” you will have opened up a Pandora's box of unlimited possibilities for legal action by anyone who, without any act of physical contact, let alone violent contact, renders the self-determined judgment that they have been “humiliated” or “intimidated” and thus “frightened”. Just so know that I'm not making that up, nor exaggerating, that's the actual definition in the bill of "coercive behavior".

"Coercive behavior" means a continuing act or a pattern of acts of assault, threats, humiliation, and intimidation or other abuse that is used to harm, punish, or frighten a person.

Other revised or newly minted definitions within the bill are likewise vague and nebulous and would greatly expand grounds for legal action based solely upon a person's claim that they “felt” “intimidated” or “frightened”, etc.

While I have no doubt that people can experience a state they self-label “frightened” or “intimidated” in response to a wide variety of stimuli, including the non-violent behavior of another human (such as a “glance” or “look”), I hardly think this should be the grounds for legal action. Why?

Because anyone familiar with human nature knows that a certain percentage of humans attempt to gain leverage over other humans, for emotional, financial, etc. reasons, in order for them to profit in one way or another independent of any just cause. That will no doubt be the case here. While some genuine cases of “domestic abuse” may be addressed via these expanded definitions that would otherwise not be so treated (though the laws already exist to deal with actual violent actions), the very real possibility

exists that, given human nature and what we already see in many domestic disputes, divorces, child custody litigation, etc., many people will be subjected to arrest and revocation of their rights (e.g. Second Amendment-protected rights) based solely upon claims of someone that they experienced certain “feelings” (which are mostly actually “judgments” or “evaluations” (“humiliation”, “intimidation”, etc.), with only “fear” being an actual “emotion”). Do we need more options for opportunists to take advantage of the system and wage lawfare on someone they have a grudge against? And, as I mentioned, there are already more than sufficient laws to prosecute someone who has engaged in physical violence in a domestic setting. Now a “glance” that someone interprets as “intimidation” is cause for arrest? (Person A: You shouldn't intimidate me with that kind of “look”! Person B: I wasn't trying to intimidate you. A: Yes you were! B: No I wasn't.)

The specific legal details and consequences have been addressed in previous testimony submitted to a previous committee hearing by attorney Thomas D. Farrell, who works in the field and details to possible abuses that could occur under these expanded definitions, given his experiences in dealing with human interactions in such domestic matters. Not knowing if Mr. Farrell intends to submit testimony to this committee, I have taken the liberty of attaching his previous testimony below.

Please **DEFER** the well-intentioned but seriously flawed HB295, HD1.

Thank you,

George Pace

TESTIMONY OF THOMAS D. FARRELL

Regarding HB 295, Relating to Domestic Abuse

Committee on Judiciary/Committee on Consumer Protection and Commerce
Representative Chris Lee, Chair/Representative Roy M. Takumi, Chair
Thursday, February 21, 2019 2:15 p.m.
Conference Room 329, State Capitol

Good afternoon Representatives Lee, Takumi and Members of the Committees:

I regret that a Family Court hearing in Kapolei this afternoon prevents me from delivering my testimony in person.

I should applaud any attempt to further expand the universe of conduct that can result in the filing of a Petition for Protection, because this will mean more family court cases and therefore more money for family court attorneys. However, I can't really endorse HB 295 as sound public policy.

For the most part, a Family Court Order for Protection requires the showing of some sort of physical harm or property damage. These are clear standards. There is also “Extreme Psychological Abuse,” which is somewhat more subjective but is defined by the hypothetical reasonable person, a concept well known to tort lawyers. “Extreme Psychological Abuse” is a course of conduct serving no legitimate purpose “and that would cause a reasonable person to suffer extreme emotional distress.”

I think existing law is good enough, but HB 295 would adopt a second psychic injury: “Emotional Abuse.” This would be defined as acts intended to coerce or control the behavior of the petitioner. And while the bill would further define coercive and controlling behavior, I can see all sort of practical problems attempting to apply this act.

Here are a few examples:

- If two spouses have an argument, one wants to leave, but the other takes the keys to the car, is that “controlling behavior?” It sounds like it because it deprives a person of the means to escape. What about if the one who wants to get in the car and leave is also drunk?

Testimony of Thomas D. Farrell

HB 295

February 21, 2019

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- As a divorce lawyer, I’ve seen some marriages where one spouse is a “gold-digger.” The other has substantial income and assets, and the first has none and doesn’t work. It would seem that a gold-digger spouse is exploiting the other’s resources and capacities for personal gain. This bill would make that the basis for an Order for Protection. What if the parties had agreed that the so-called “gold-digger” would be a stay-at-home parent? What if the moneyed spouse told the “gold-digger” “Get a job and start pulling your weight, or I’ll go file a petition for protection and get you thrown out of the house?”
- Chapter 586 also covers parent-child relationships. Parents try to control, punish and coerce behavior all the time. We currently have a “reasonable parental discipline” defense that the Supreme Court has carefully defined in the context of physical punishment. Will we now have to go to the Supreme Court to find out when and under what circumstances a parent may impound a defiant teenager’s smartphone?

I note that the insurance code adopts some, but not all of the Chapter 586 definition of domestic abuse. “Extreme Psychological Abuse,” is excluded. I wonder why and how that came to pass. Before we start tinkering with Chapter 586, it might be useful to know how the process works today. It is the most popular calendar in Family Court. I don’t have the current numbers, but I can tell you that it is bigger than divorce, bigger than paternity, and bigger than any other calendar there. And the process is very easy to engage; it was designed to be. Pretty much all you have to do is fill in a few blanks and check a few boxes on a pre-printed form. The temporary restraining order (“TRO”) is issued based solely on the petition. It is almost always granted. A judge who wants to deny a TRO has to go see the Senior Family Court Judge and get permission.

Once the TRO is served, the respondent becomes an instant homeless person who can’t go home or contact anyone living there. A week to ten days later, there will be a return hearing. Usually, there are three judges, and each has about three hours to sort through eight to twelve cases on each judge’s morning calendar; the same in the afternoon. Maybe there will be time to hold an actual trial for one or two of them. A few will settle. The rest will be continued for trial on another day that will be just as crowded as this one. Sometimes there will be a second continuance and another wasted morning at the courthouse. It can be a couple of months or more before there is actually a trial. I had one that took over six months to adjudicate.

In a case where there is nothing but the testimony of the two parties and no other evidence, petitioners usually win. For respondents, the consequences can be devastating. It is more than just a “stay away” order. Here are some of the things an unsuccessful respondent faces:

- Contact with any protected person in the order is a crime. This means that if any complaint is made by a protected person, you will be arrested and prosecuted.
- You can be ordered to have no contact with your children until they reach the age of 18.

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- You are presumptively disfavored for custody or even unsupervised visitation with your children if there is a later divorce or paternity action.
- The fact that you have been adjudged in civil court to be a domestic abuser is a matter of public record, easily accessible on Hoohiki. That’s something potential employers look at.
- You lose your constitutional right to own or possess firearms.

Now, I don’t dispute that there are some people who deserve all of that and more. My point, however, is that you should remember the serious consequences of being on the losing end of an Order for Protection before you significantly expand the reasons for granting one. If HB 295 passes, we have pretty much reached the point where anyone who feels victimized by an unhappy domestic relationship can file a petition in the Family Court.

I realize that this must be a very popular bill. After all, some fourteen legislators co-sponsored it, and no politician wants to be perceived as soft on domestic violence. I respectfully suggest, however, that if everything becomes “domestic abuse,” you will overwhelm the ability of Family Court to deal with it effectively (we are pretty much there, now). I also believe that laws such as this can backfire, and ultimately weaken public support for laws and programs aimed at preventing or addressing domestic violence.

HB-295-HD-1

Submitted on: 3/14/2019 4:50:16 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Reid	Testifying for NRA	Oppose	No

Comments:

On behalf of the National Rifle Association we are opposed to HB 295. We have significant concerns in expanding certain orders of protection to subjective instances of non-violent behavior as the basis for a suspension of a person's constitutional rights.

HB-295-HD-1

Submitted on: 3/11/2019 10:50:18 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

How does one prove a perceived injury like "emotional abuse?"

HB-295-HD-1

Submitted on: 3/12/2019 10:00:21 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

HB-295-HD-1

Submitted on: 3/12/2019 4:38:11 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Ota	Individual	Support	No

Comments:

Senator Karl Rhoads Chair and Senators of JDC
Hearing: March 14, 2019 at 9:30 am

Statute HB295 HD1 Position: SUPPORT

Dear Honorable Senator Rhoads and Senators of the JDC,

I am Dr. Barbara Ota, DAc, DACM, and an almost life-long resident of the state of Hawaii. I am in support of HB295 HD1.

Hawaii is unique in our multicultural blend of population. I want to know that all members of our society have the inherent right to express and receive all the benefits of making our "ohana's 'safe. HB295 HD1 expands our law to include this.

Domestic violence, physical and emotional, takes its toll on our state. I have been educated in domestic violence outside of my personal expertise in medicine by Dr. Barbara Gerbert, PhD, a national and international educator and expert in this field. I have volunteered my time and knowledge with the Joyful Heart Foundation and Light On Foundation.

There is a burden to our state when families are torn apart by abuse, emotional and physical. HB295 HD1's passing would open doors for education and safety for people in the state of Hawaii.

Clarity of mind knows that there would be judicial and health care costs to addressing emotional abuse but would not let that get in the way of strengthening families in our state, and thus, reducing costs to these systems in the long term.

Please, support HB295 HD1

Thank you,

Dr. Barbara Ota

OceanMed Urgent Care and Integrative Wellness

Otab83@gmail.com

DATE: March 12, 2019

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

And Esteemed Members of the Senate Judiciary Committee

FROM: Barbara Gerbert, PhD
Professor Emeritus, University of California, San Francisco

RE: HB295 HD1
Hearing scheduled Thursday, March 14, 2019, 9:30 a.m.

Dear Honorable Senators,

Aloha. My name is Barbara Gerbert, PhD, and I am Professor Emeritus at the University of California, San Francisco (UCSF), as well as a constituent from Hawai'i Island, where I've lived since 2012.

I am writing in support of HB295 HD1.

My 40-year career at UCSF began with entrance into a doctoral program in 1975. I earned my doctorate in Health Psychology there in 1982, and I served as tenured faculty and Chair of the Behavioral Sciences Division until my retirement.

My passion and expertise is in domestic violence. My academic work as a professor at UCSF highlighted research studies of the important role that health care professionals (specifically physicians and dentists) play, in addressing domestic violence (DV). I also developed tutorials to improve health care professionals' response to DV, including the "AVDR" (Ask, Validate, Document, and Refer) method I developed, which was funded by the National Institutes of Health.

I have published over 120 peer-reviewed manuscripts, many on domestic violence and simple ways that health care professionals (HCP) can ask patients about domestic violence in their lives and validate their experiences, offering hope and always leaving the door open for further discussion. My research has shown that minor changes in HCP behaviors can lead to big changes in the environment for victims of abuse.

In 2015, I was driving toward Waimea from the Kona coast, listening to National Public Radio. I heard a piece about a new law that had been enacted in England and Wales, targeting people who psychologically

and emotionally abuse their intimate partner or other family members. Shortly thereafter, Scotland added this law to their legislation as well.

I immediately pulled over to the side of the road, with tears in my eyes, a rapid heartbeat, and chicken skin. I had just given a presentation on domestic violence at Tutu's House in Waimea, emphasizing the long-lasting harm of emotional abuse. My audience, to a person, had experienced emotional abuse themselves or to friends, family members, and co-workers.

A law against emotional abuse, with all it entails, would be a godsend in Hawai'i!

I am very familiar with Scotland's groundbreaking work to alleviate DV. In 2009 Linda Borland, a police officer from Scotland's Violence Reduction Unit (VRU), contacted me, asking if she could use my AVDR (Ask, Validate, Document, and Refer) model. Not long after, Christine Goodall, an oral surgeon, updated me on Scotland's efforts to reduce violence, with AVDR as the centerpiece.*

Christine, as the founder and head of Medics against Violence Scotland (MAVScotland), focuses on the role of health care professionals parallel to my focus. She also encourages health care professionals to work with all professions in preventing and reducing DV.

In England, Scotland, and Wales, it is illegal to emotionally abuse an intimate partner. As a result, Scotland, once known internationally for high rates of violence, including gang violence, family violence, etc., is now a role model internationally for reducing violence. Glasgow went from being called the "murder capital of the world" to an exemplar of non-violence.

The enactment of HB295 HD1 would educate our Hawai'i citizens to the great burden that emotional abuse places on our people and our state, and abusers would learn that this abuse is not acceptable.

In my 6 years living fulltime in Hawai'i, I have observed the power of the family, the closeness and bonds of family, that create a warm, loving, kind, and gentle atmosphere. Once HB295 HD1 is in place, programs can be implemented to heal, nurture, and enhance this natural warmth of that family culture here in Hawai'i—and help reduce the emotional abuse and violence that destroy it.

Please VOTE YES on HB295 HD1.

Mahalo,

Barbara Gerbert, PhD
Professor Emeritus
University of California San Francisco
barbara.gerbert@ucsf.edu
415-385-9831

*This very powerful 5-minute training video developed by MAVScotland and the Violence Reduction Unit of the Scottish Police emphasizes AVDR, which I developed and distribute internationally (copyright UCSF).

“Harder” <https://m.youtube.com/watch?v=ay4dQy6vzPI>

Emotional abuse, while it leaves no marks, can sometimes be the hardest type of abuse to understand in a relationship. It's hard to imagine that someone who “loves you” could abuse you – and besides, **it's just words**, right? It's not like you're being BEATEN.

Sad truth is, while broken bones heal, the wounds left from emotional abuse can last a lifetime.

Emotional abuse is a form of abuse in which a partner uses verbal assault, fear, or humiliation to undermine the other person's self-esteem and self-worth.

Emotional abuse is every bit as damaging as physical abuse.

England And Wales Expand The Meaning Of Domestic Abuse 2015

- The new law [makes illegal all sorts of controlling and coercive behavior](#) in a relationship.
- Stealing money from a spouse
- Limiting financial freedom
- Internet stalking
- Restricting access to friends and family.
- Prosecutors will have to show a pattern of abuse and that it has real impact on a victim's life.
- Police around England and Wales are now being trained to spot signs of controlling behavior and enforce the law.
- Violators could face a sentence of up to five years behind bars.

Asking: Lessons from patients we've interviewed in our research

- Ask in non-judgmental way
- Ask in private
- Do take "no" for an answer
- "Identifying " cases in not the goal
- Asking and labeling in themselves help
- Normalize

Validation: Providing messages to patients that they are worth caring about.

- Sometimes when I see bruises like this, my friend may be being harmed at home. Can this be happening to you? Do you feel safe at home?
- Everyone deserves to feel safe at home.
- You didn't cause this. It isn't your fault.
- You do not deserve to be hit or hurt no matter what happened.
- There is no reason for anyone to hit you.
- I am concerned about your safety.

XX.

New Law England, Wales, Scotland

- Coercive Control Law 2015
- This covers subordination, humiliation, isolating a partner from friends, relatives and sources of support, and controlling or monitoring their day-to-day activities, including finances.

Examples of Convictions for Coercive Abuse

Adrian Lee, 21, was convicted at Liverpool Magistrates' Court on April 25 for engaging in controlling/coercive behaviour in an intimate/family relationship. He was sentenced to six months' imprisonment and a Restraining Order was imposed for two years.

Bedfordshire's first conviction for coercive control sees Ricky Pritchard Boyfriend, 22, who checked his girlfriend's phone calls, broke her SIM card so she couldn't contact anyone and insisted on going with her to a JOB interview is one of the first to be convicted for 'coercive control'

A Dundee boxer has been found guilty of carrying out controlling behaviour on his ex-partner. Ronnie "The Shark" Clark, 32, was put on trial in an English court over claims of harassment and coercion against Rebecca Graham, who he had formerly lived with.

HB-295-HD-1

Submitted on: 3/13/2019 8:25:26 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
steven a kumasaka	Individual	Oppose	No

Comments:

too easy to misuse "intimidation" and "controlling" as definition of a crime

HB-295-HD-1

Submitted on: 3/13/2019 8:32:59 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Austin White	Individual	Oppose	No

Comments:

I OPPOSE HB295

Aloha and thank you for allowing me to submit testimony against HB295.

What good would amending the current statute to include “emotional abuse”? Will it stop people from arguing? Or will it open up every discussion to legal disputes?

Here we have another case of “good intentions” having the “unintended consequences” of putting us on the infamous road to hell.

By expanding the definition of “domestic abuse” to include non-violent “emotional abuse” you will have opened up a Pandora's box of unlimited possibilities for legal action by anyone who, without any act of physical contact, let alone violent contact, renders the self-determined judgment that they have been “humiliated” or “intimidated” and thus “frightened”. Just so you know that I'm not making that up, nor exaggerating, that's the actual definition in the bill of "coercive behavior".

.....

Now a “glance” that someone interprets as “intimidation” is cause for arrest? (Person A: You shouldn't intimidate me with that kind of “look”! Person B: I wasn't trying to intimidate you. A: Yes you were! B: No I wasn't.)

* * * * *

I'd suggest people look at the testimony of an attorney, Thomas D. Farrell, who handles such matters, including divorce and child custody litigation, as submitted to a previous committee hearing on the bill (starts on page 6).

https://www.capitol.hawaii.gov/Session2019/Testimony/HB295_TESTIMONY_CPC-JUD_02-21-19_.PDF and to paraphrase; “If HB 295 passes, we have pretty much

reached the point where anyone who feels victimized by an unhappy domestic relationship can file a petition in the Family Court.”

Mahalo