

JAN 21 2022

A BILL FOR AN ACT

RELATING TO COERCIVE CONTROL.

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

1 SECTION 1. The legislature finds that individuals who
2 abuse their intimate partners have been known to misuse court
3 proceedings to control, harass, intimidate, coerce, or
4 impoverish the abused partner. This litigation abuse occurs in
5 a variety of contexts. In family court, abusers have used cases
6 involving dissolution, legal separation, parenting plan action
7 or modification, a protection order, or child custody to harm or
8 exploit their partner and children's wellbeing. Abusers have
9 also filed meritless civil lawsuits alleging breach of contract,
10 defamation, or another tort to force the abused partner to spend
11 time, money, and emotional resources responding to the lawsuit.
12 Due to the lengthy nature of legal proceedings, litigation abuse
13 can extend long after the relationship has ended.

14 The legislature also finds that when child custody is under
15 consideration, courts should also be aware that coercive control
16 is a tactic that has been used by perpetrators to harm and
17 exploit their partner and children's wellbeing. When courts are



1 evaluating the best and safest way to issue custody orders, acts
2 of coercive control should be included in the analysis.

3 The purpose of this Act is to add coercive control to the
4 list of factors to be considered by the court in determining
5 what constitutes the best interest of the child.

6 SECTION 2. Section 586-1, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By adding a new definition to be appropriately inserted
9 and to read as follows:

10 "Litigation abuse" means:

11 (1) (A) The opposing parties have a current or former
12 intimate partner relationship;

13 (B) The party who is filing, initiating, advancing,
14 or continuing the litigation:

15 (i) Is a restrained party under a temporary
16 restraining order;

17 (ii) Has been arrested for violation of chapter
18 586 or 709; or

19 (iii) Has been the subject of an investigation by
20 child welfare services branch of the
21 department of human services; and



1 (C) The litigation is being initiated, advanced, or
2 continued primarily for the purpose of harassing,
3 intimidating, or maintaining contact with the
4 other party; and

5 (2) At least one of the following factors:

6 (A) Claims, allegations, and other legal contentions
7 made in the litigation are not warranted by
8 existing law or by a reasonable argument for the
9 extension, modification, or reversal of existing
10 law, or the establishment of new law;

11 (B) Allegations and other factual contentions made in
12 the litigation are without evidentiary support;

13 or

14 (C) The issue or issues that are the basis of the
15 litigation have previously been contested in one
16 or more courts and the actions have been
17 litigated and disposed of unfavorably to the
18 party filing, initiating, advancing, or
19 continuing the litigation."

20 2. By amending the definition of "coercive control" to
21 read as follows:



1 "Coercive control" means a pattern of threatening,
2 humiliating, or intimidating actions, which may include
3 assaults, or other abuse that is used to harm, punish, or
4 frighten an individual. "Coercive control" includes a pattern
5 of behavior that seeks to take away the individual's liberty or
6 freedom and strip away the individual's sense of self, including
7 bodily integrity and human rights, whereby the "coercive
8 control" is designed to make an individual dependent by
9 isolating them from support, exploiting them, depriving them of
10 independence, and regulating their everyday behavior including:

- 11 (1) Isolating the individual from friends and family;
- 12 (2) Controlling how much money is accessible to the
13 individual and how it is spent;
- 14 (3) Monitoring the individual's activities,
15 communications, and movements;
- 16 (4) Name-calling, degradation, and demeaning the
17 individual frequently;
- 18 (5) Threatening to harm or kill the individual or a child
19 or relative of the individual;
- 20 (6) Threatening to publish information or make reports to
21 the police or the authorities;



- 1 (7) Damaging property or household goods; [~~and~~]
2 (8) Forcing the individual to take part in criminal
3 activity or child abuse[~~-~~]; and
4 (9) Litigation abuse."

5 SECTION 3. Section 571-46, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

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

- 10 (1) Any history of sexual or physical abuse of a child by
11 a parent;
12 (2) Any history of neglect or emotional abuse of a child
13 by a parent;
14 (3) The overall quality of the parent-child relationship;
15 (4) The history of caregiving or parenting by each parent
16 prior and subsequent to a marital or other type of
17 separation;
18 (5) Each parent's cooperation in developing and
19 implementing a plan to meet the child's ongoing needs,
20 interests, and schedule; provided that this factor
21 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 evidence, and if it is further found by
7 clear and convincing evidence that in the particular
8 family circumstance the wilful misuse tends to show
9 that, in the future, the parent who engaged in the
10 wilful misuse will not be able to cooperate
11 successfully with the other parent in their shared
12 responsibilities for the child. The court shall
13 articulate findings of fact whenever relying upon this
14 factor as part of its determination of the best
15 interests of the child. For the purposes of this
16 section, when taken alone, the voluntary dismissal of
17 a petition for protection from abuse shall not be
18 treated as prima facie evidence that a wilful misuse
19 of the protection from abuse process has occurred[÷];
20 and



1 (17) Any history of coercive control of the child or a
2 parent of the child by the other parent. For the
3 purposes of this paragraph "coercive control" shall
4 have the same meaning as in section 586-1."

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

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

11
INTRODUCED BY: _____

Karl Rhoads



S.B. NO. 2395

Report Title:

Judiciary; Domestic Abuse; Coercive Control

Description:

Adds litigation abuse to the factors a court may consider in finding that a person illegally abused, harmed, punished, or frightened another individual.

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

