



The Judiciary, State of Hawai‘i

**Testimony to the Thirty-First Legislature
2022 Regular Session**

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Monday, February 28, 2022 at 10:30 a.m.
Via Videoconference

WRITTEN TESTIMONY ONLY

by
Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No 2395, S.D.1, Relating to Coercive Control.

Purpose: Adds coercive control and litigation abuse by a parent of a child to the list of factors to be considered by the court in determining what constitutes the best interest of the child when awarding custody and visitation rights to individuals in actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child. Defines "coercive control" and "litigation abuse". (SD1)

Judiciary's Position:

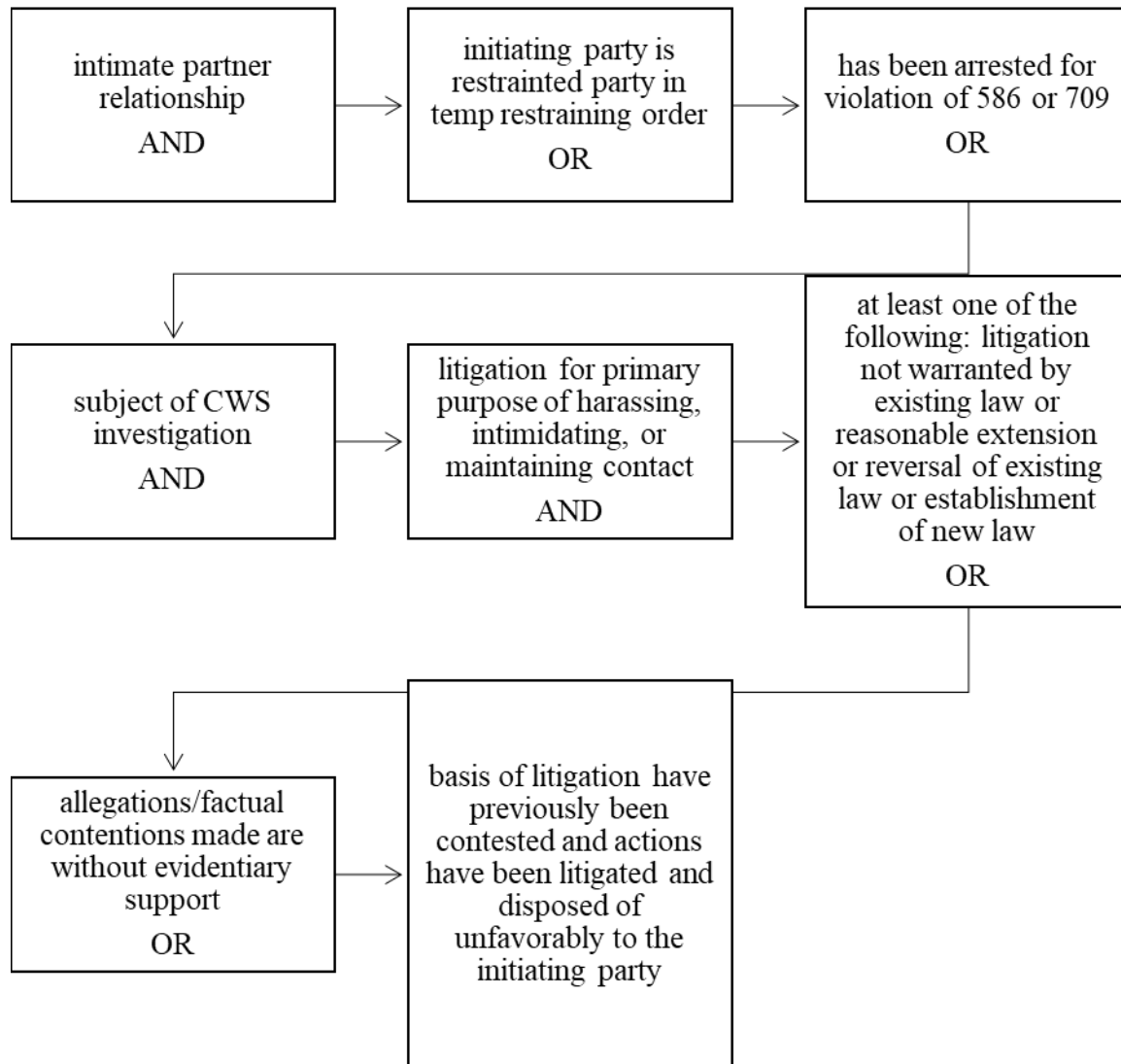
The Judiciary takes no position on Senate Bill No. 2395, S.D.1, but respectfully offers the following comments for consideration.

Amending the definition of “coercive control” to include “litigation abuse” may have unintended consequences and may turn out to be a sharp double-edged sword.

For example, proving (or defending against) a claim of “litigation abuse” as defined in Senate Bill No. 2395, S.D.1 may be difficult. The definition of “litigation abuse” in Senate Bill No. 2395, S.D.1 requires proof of predicate facts involving other proceedings and proof of



motives that can be quite complex and burdensome to establish. The following diagram summarizes the elements of “litigation abuse” under this bill:



Depending on the specific facts and circumstances, the claim may require the parties to have an extensive “trial within a trial.” These challenges may be difficult for a proponent of a litigation abuse claim to overcome, particularly if the proponent is self-represented. Moreover, the additional litigation would require victims of domestic abuse to spend more time in court away from work and their families and require many to pay more, perhaps significantly more, in



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attorneys' fees. These are costs that many domestic abuse victims cannot afford, financially or emotionally.

Another unintended consequence may be that a claim of "litigation abuse" could be made *against* a domestic abuse victim who is seeking court protection. Victims attempting to protect themselves and their children or to obtain financial assistance through the courts may actually find themselves being forced to defend against allegations of "litigation abuse". Even if the allegations were ultimately determined to be unfounded, having to defend against them could subject the victim to just the type of abuse Senate Bill No. 2395, S.D.1 seeks to deter.

We reiterate that the family court takes no position on this bill. We are seeking to share our judicial experience with this committee.

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

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2022
State of Hawai`i

February 28, 2022

RE: S.B. 2395, S.D. 1; RELATING TO COERCIVE CONTROL.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of S.B. 2395, S.D. 1.

The purpose of S.B. 2395, S.D. 1 is to add "litigation abuse" to the definition of coercive control, as that term is defined in HRS 586-1, when addressing the "best interests of the child" in civil cases or the petty misdemeanor offense of Abuse of a Family or Household Member (section 709-906, Hawaii Revised Statutes).

The Department appreciates the amendments made by the prior Senate Committee on Human Services, in removing "litigation abuse" from section 586-1 and its application to the five-year pilot project created by Act 19 (2020). The Department believes that these amendments will provide sufficient time for law enforcement to evaluate the effects of Act 19 (2020)—and now Act 238 (2021)—to assess the success of Act 19 (2020) as initially crafted, as well as any benefit gained from Act 238 (2021), and potential areas for improvement.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu support the passage of S.B. 2395, S.D. 1. Thank for you the opportunity to testify on this matter.



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TO: Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
And members of the Senate Committee on Judiciary

RE: SB 2395 SD1 Relating to Coercive Control

The Hawaii State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. The Women's Caucus SUPPORTS SB 2395 SD1 Relating to Coercive Control.

The purpose of this bill is to add "coercive control" and "litigation abuse" by a parent of a child to the list of factors to be considered by the court in determining what constitutes the best interest of the child when awarding custody and visitation rights to individuals in actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is a question as to the custody of a minor child.

According to domestic violence advocates, it is not uncommon for perpetrators to use the court system to further their abuse and demonstrate their power to control their partner by exhausting financial resources, wielding control over the survivor's time and emotional resources. Litigation abuse should be included in the definition of coercive control when child custody is being considered. Courts should be aware that coercive control is a tactic that has been used by perpetrators to harm their partner and children's wellbeing and should be included when evaluating the best and safest way to issue child custody orders.

We urge your favorable consideration of this measure.
Thank you for the opportunity to testify.

Members of Hawaii State Democratic Women's Caucus



HAWAI'I STATE
**COALITION AGAINST
DOMESTIC VIOLENCE**

February 28, 2022

Members of the Senate Committee on Judiciary:

Chair Karl Rhoads
Vice Chair Jarrett Keohokalole
Sen. Laura Acasio
Sen. Kurt Fevella
Sen. Mike Gabbard
Sen. Donna Mercado Kim
Sen. Chris Lee

Re: SB2395 SD1 Relating to Coercive Control

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

The Hawai'i State Coalition Against Domestic Violence (HSCADV) advances the safety and healing of victims, survivors and their families. We are the collective voice of a diverse network of organizations and individuals, working to eliminate all forms of domestic violence in Hawai'i by fostering partnership, increasing awareness of domestic violence, developing the capacity our member programs and community partners to address the needs of survivors and their families, and advocating for social justice and change.

On behalf of HSCADV and our 26 member programs statewide, we support this bill and recognize that coercive control is a real and serious problem experienced by victims of domestic violence, especially those who experience abusive practices involving the judicial system and courts.

Thank you for the opportunity to testify on this important matter.

Sincerely,

Angelina Mercado
Executive Director

LATE

SB-2395-SD-1

Submitted on: 2/27/2022 11:34:15 PM

Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lea Minton	Individual	Support	No

Comments:

I support SB2395SD1. Thank you