



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2395, RELATING TO COERCIVE CONTROL.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Tuesday, February 15, 2022 **TIME:** 3:10 p.m.

LOCATION: State Capitol, Room 225, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Cheuk Fu Lui, Deputy Attorney General

Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill but has the following concerns and comments.

The bill proposes to (1) add a definition of Litigation Abuse in section 586-1, Hawaii Revised Statutes (HRS); (2) include Litigation Abuse as a form of Coercive Control under the definition of Coercive Control in section 586-1, HRS; and (3) add Coercive Control in section 571-46, HRS, as a consideration in determining the best interest of a child for the purpose of awarding custody and visitation.

The Department has concerns because exercising coercive control over a family or household member, as currently defined in 586-1, is a petty misdemeanor offense under section 709-906(6), HRS. Therefore, adding litigation abuse into the definition of coercive control would make litigation abuse a criminal offense, which appears to be an unintended consequence of this bill. Making litigation abuse a criminal offense is problematic as it will be extremely difficult and perhaps practically impossible to prove. For example, section 2, page 3, lines 11-12 states one of the factors under litigation abuse is "[a]llegations and other factual contentions made in the litigation are without evidentiary support." But, domestic violence cases are often without evidentiary support aside from the victim's statement.

To avoid the unintended consequence of rendering litigation abuse a criminal offense, the Department recommends that section 586-1, HRS, not be amended, and

litigation abuse be added as a separate factor for the court to consider in section 571-46, HRS. We recommend the bill be amended as follows:

1. Delete section 2, from page 2, line 6, through page 5, line 4 and renumber the sections accordingly.
2. Amend page 8, lines 1-4, with the following suggested wording as follows:
 - (17) Any history of coercive control of the child or a parent of the child by the other parent. For the purposes of this paragraph "coercive control" shall have the same meaning as in section 586-1[-]; and
 - (18) Any history of litigation abuse by a parent of the child against the other parent.

For the purposes of this subsection "litigation abuse" means:

- (1)
 - (A) The opposing parties have a current or former intimate partner relationship;
 - (B) The party who is filing, initiating, advancing, or continuing the litigation:
 - (i) Is a restrained party under a temporary restraining order;
 - (ii) Has been arrested for violation of chapter 586 or 709;
or;
 - (iii) Has been the subject of an investigation by child welfare services branch of the department of human services; and
 - (C) The litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party; and
- (2) At least one of the following factors is present:
 - (A) Claims, allegations, and other legal contentions made in the litigation are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;
 - (B) Allegations and other factual contentions made in the litigation are without evidentiary support; or
 - (C) The issue or issues that are the basis of the litigation have previously been contested in one or more courts and the actions have been litigated and disposed of unfavorably to the party filing, initiating, advancing, or continuing the litigation.

The Department appreciates the opportunity to provide its comments.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY



**THE HONORABLE JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES**

**Thirty-First State Legislature
Regular Session of 2022
State of Hawai`i**

February 15, 2022

RE: S.B. 2395; RELATING TO COERCIVE CONTROL.

Chair San Buenaventura, Vice Chair Ihara, and members of the Senate Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony expressing concerns regarding S.B. 2395, with suggested amendments.

The purpose of S.B. 2395 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).

During the 2020 Legislative Session, the Legislature passed Act 19 (2020), creating a five-year pilot project aimed at strengthening state and county responses to domestic violence. As part of this pilot project, many stakeholders spent a great deal of time crafting language that would effectively address unlawful acts committed against a family or household member that do not cause bodily injury, similar to Harassment (HRS §711-1106). As a result of these efforts, the petty misdemeanor offense within HRS §709-906 went into effect on January 1, 2021.

During the 2021 Legislative Session, soon after the new offense and new pilot project were initiated,—and despite concerns raised by multiple stakeholders—the Legislature passed Act 238 (2021), which added "coercive control" to the pilot project, effective July 6, 2021. Because the petty misdemeanor created by Act 19 (2020) is a pilot project, the Department cautions against making any further changes prematurely, while data collection is already under way. Without sufficient time for law enforcement to evaluate the effects of Act 19 (2020)—and now Act 238 (2021)—the Department is concerned that it will be increasingly difficult 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.

Although the Department does not play an active role in child custody proceedings, we do support the intent and potential benefit of introducing “litigation abuse” in civil cases, when determining what is in the best interests of the child. Therefore, if this Committee sees appropriate and substantial merit in adding “litigation abuse” somewhere, the Department respectfully suggests that the Committee limit this change to HRS §571-46, and adopt these proposed amendments:

Page 2-3, Line 10-21, 1-19: Remove “litigation abuse” language from HRS §586-1, and insert into HRS §571-46.

Page 5, Line 4: Remove subsection-(9) litigation abuse from the definition of “Coercive Control”

Page 8, Line 1: Add a new subsection-(18) into HRS §571-46, to add “litigation abuse” as a standalone subsection, using the definition for “litigation abuse” from section 2.

“(18) Any history of litigation abuse by a parent of the child against the other parent. For the purposes of this subsection "litigation abuse" means:

(1) (A) The opposing parties have a current or former intimate partner relationship;
(B) The party who is filing, initiating, advancing, or continuing the litigation:

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

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

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

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

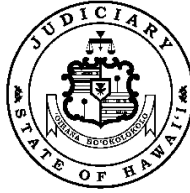
(2) At least one of the following factors:

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

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

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

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu expresses concerns regarding the passage of S.B. 2395, and asks that it be limited to civil cases or that the measure be deferred. Thank for you the opportunity to testify on this matter.



The Judiciary, State of Hawai‘i

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

Senate Committee on Human Services
Senator Joy A. San Buenaventura, Chair
Senator Les Ihara, Jr., Vice Chair

Tuesday, February 15, 2022 at 3:10 p.m.
State Capitol, Conference Room 225 & 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, Relating to Coercive Control.

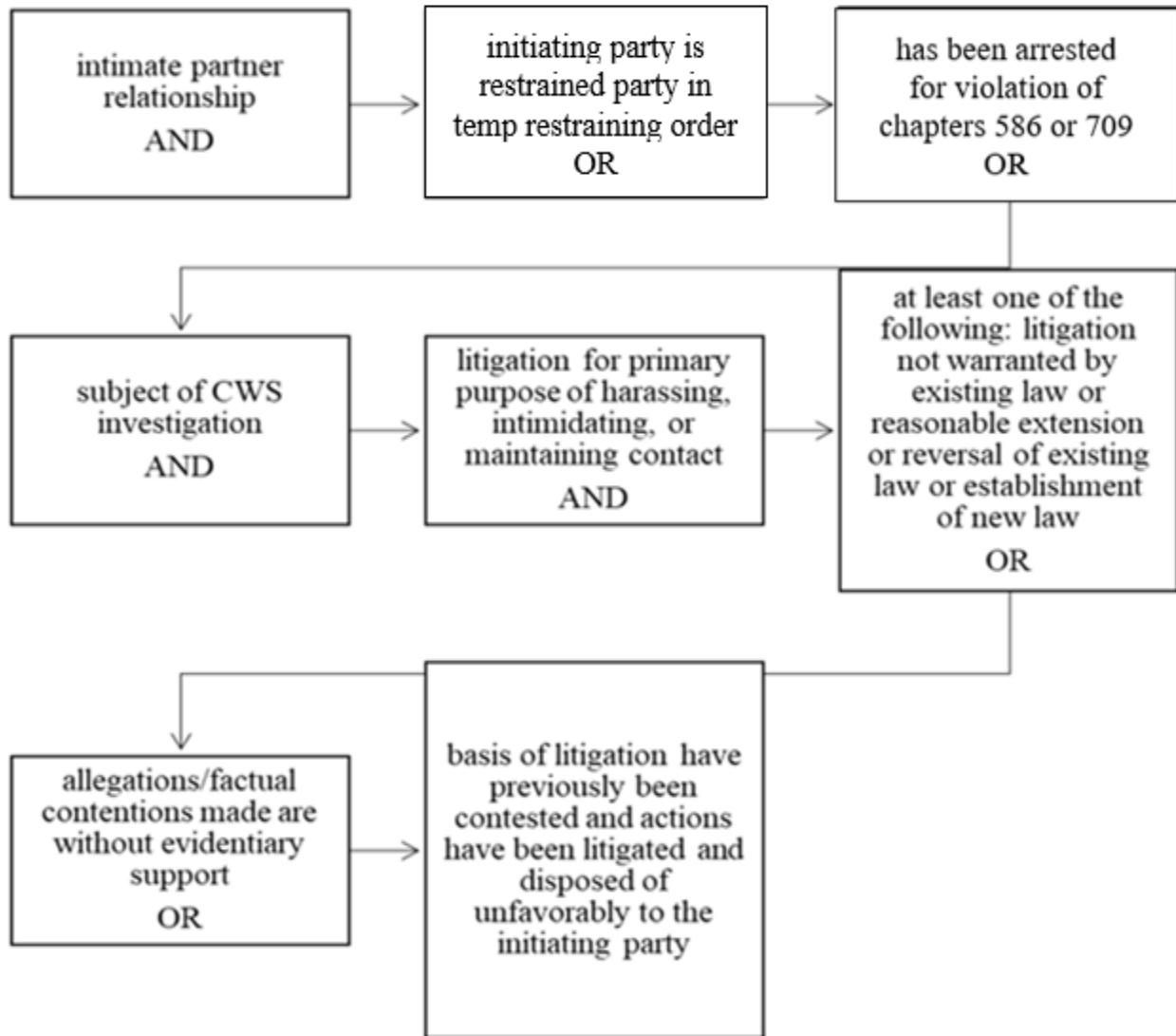
Purpose: Adds litigation abuse to the factors a court may consider in finding that a person illegally abused, harmed, punished, or frightened another individual.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 2395, 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 SB 2395 may be difficult. The definition of “litigation abuse” in SB 2395 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 attorneys’ fees. These are costs that many domestic abuse victims cannot afford, financially or emotionally.



Senate Bill No. 2395, Relating to Coercive Control
Senate Committee Human Services
Tuesday, February 15, 2022 at 3:10 p.m.
Page 3

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 seeks to deter.

As the family court has observed over the years, additional lists of considerations in order to assure safety and justice to victims of domestic abuse in all forms are often not the ideal way to provide that safety and justice.

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.



TO: Chair San Buenaventura
Vice Chair Ihara, Jr.
FR: Nanci Kreidman, M.A.
Chief Executive Officer
RE: S.B. 2395

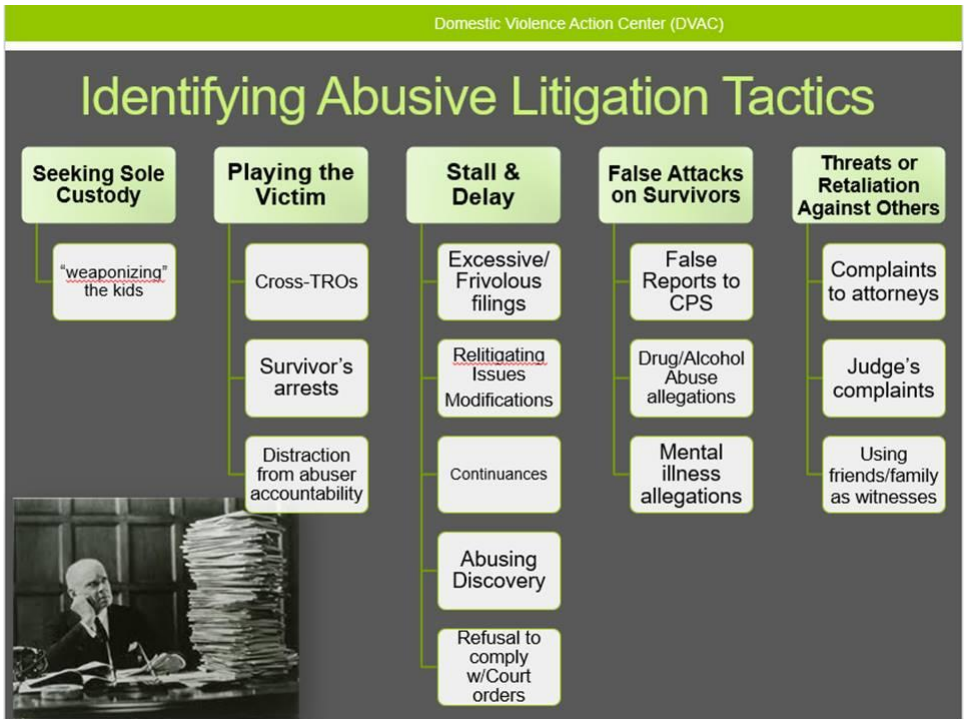
Thank you for hearing this important Bill. We thought it essential to have a community discussion about what we see occurring on domestic violence calendars. Our attorneys note that abusive partners are using the court system to further their abuse, exhausting financial resources, wielding control over the survivor's time and emotional resources, and proving they retain power to control their partner. Litigation abuse should be included in the definition of coercive control.

The challenges inherent in escaping, resolving partnership conflicts (property, needs and safety of children) and healing from the trauma experienced as a survivor are subtle (sometimes) and overwhelming. The many tactics used to maintain power over a partner can be difficult for an "outsider" to observe.

Coercive control is a pattern of behavior that can be aimed at continuing to control a partner even after the relationship has ended, and the children bind them together. Abusive partners will use the courts and the system to continue their pattern of abuse-bringing multiple motions, asking for multiple continuances, stalling or being unwilling to bring the court cases to conclusion. This is abuse. Litigation abuse. It creates untold anguish and terror for the victim survivor.

We'd like to have the legislature consider that this pattern of coercive control behavior should also be considered in the awarding of custody. When Courts are evaluating the best and safest way to issue custody orders, we believe it warrants an analysis of coercive control tactics acts of coercive control should be included in the analysis.

We appreciate the discussion and consideration.



DOMESTIC VIOLENCE ACTION CENTER

ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198

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TO: Chair San Buenaventura, Vice Chair Ihara, and Members of the Senate Committee on Human Services

FROM: Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)

DATE/LOCATION: February 15, 2022; 3:10 p.m., Conference Room 225/Video Conference

RE: TESTIMONY IN SUPPORT OF SB 2395 – RELATING TO COERCIVE CONTROL

We ask you to support SB 2395 which adds litigation abuse to the factors a court may consider in finding that a person illegally abused, harmed, punished, or frightened another individual.

Survivors of domestic abuse are often subjected to coercive control and abuse by their offenders especially during litigation. The physical, verbal, psychological, economic and mental abuse tactics, as well as threats and intimidation, and controlling and threatening acts are some of the many tactics used by abusers to continue to exert power and control over victims. This happens so frequently and is a key reason why a victim will not leave. This bill would include litigation abuse in coercive control and further support survivors by holding offenders accountable during an already stressful time in their journey.

Founded in 1968, Parents And Children Together (PACT) is one of Hawaii's not-for-profit organizations providing a wide array of innovative and educational social services to families in need. Assisting more than 17,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 20 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, childhood sexual abuse supportive group services, child and adolescent behavioral health programs, sex trafficking intervention, poverty prevention and community building programs.

Thank you for the opportunity to testify in **support of SB 2395**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.

SB-2395

Submitted on: 2/14/2022 10:43:19 PM

Testimony for HMS on 2/15/2022 3:10:00 PM

LATE

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Amy Monk	Testifying for Women's Caucus of the Democratic Party of Hawaii	Support	No

Comments:

Please add "litigation abuse" to the definition of "coercive control" and recognize it as a form of abuse. Abusers should not be able to use the Family Court system to continue abuse of their victims.

SB-2395

Submitted on: 2/15/2022 1:20:02 AM
Testimony for HMS on 2/15/2022 3:10:00 PM



Submitted By	Organization	Testifier Position	Remote Testimony Requested
PPC member name goes here	Testifying for AAUW of Hawaii	Support	No

Comments:

Aloha Chair San Buenaventura, Vice Chair Ihara and members,

Members of AAUW of Hawai`i thank you for this opportunity to testify in strong support of SB2395 that adds litigation abuse to the factors a court may consider in finding that a person illegally abused, harmed, punished, or frightened another individual.

According to our allies in the Domestic Violence treatment and advocacy community, perpetrators are using the Family Court system to continue their abuse of the victim and the court is blindly allowing it. Litigation abuse should be included and recognized as ‘coercive control’ on the part of the perpetrator.

The traumatic challenges inherent in escaping domestic violence, that can include resolving partnership conflicts (property, needs and safety of children) as well as the need to heal from the trauma experienced by a survivor, are overwhelming. The many tactics used to maintain power over a partner can be difficult for an “outsider” to observe.

Coercive control is a pattern of behavior that is aimed at continuing to control a partner even after the relationship has ended. Abusive partners will use the courts and the judicial system to continue their pattern of abuse, bringing multiple motions, asking for multiple continuances, stalling or being unwilling to bring the court cases to conclusion. Make no mistake - This Is Abuse! Albeit litigation abuse. It creates untold anguish and terror for the victim survivor. As such it should be included as evidence of abuse.

This pattern of coercive control behavior should also be considered in the awarding of custody.

Me ke aloha pumehana,

Ann S. Freed

Public Policy Committee, AAUW of Hawaii

publicpolicy-hi@aauw.net

The American Association of University Women (AAUW) of Hawaii is an all volunteer, statewide chapter of a national organization and is made up of six branches: Hilo, Honolulu, Kaua'i, Kona, Maui, and Windward Oahu. UH Hilo, UH Manoa, UH Maui College, and Windward Community College are also AAUW partners. AAUW's mission is to advance gender equity for equal opportunities in education, at workplace and for economic security, and in leadership.



HAWAI'I STATE
COALITION AGAINST
DOMESTIC VIOLENCE

February 15, 2022

LATE

Members of the Senate Committee on Human Services:

Chair Joy A. San Buenaventura
Vice Chair Les Ihara Jr.
Sen. Laura Acasio
Sen. Kurt Fevella
Sen. Bennette E. Misalucha

Re: SB2395 Relating to Coercive Control

Dear Chair Buenaventura, Vice Chair Ihara Jr., and Members of the Senate Committee on Human Services:

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 25 member programs statewide, we support the intent of 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. However, we are concerned that expanding the definition of coercive control to include litigation abuse in Section 586-1 of the Hawai'i Revised Statutes might have the unintended consequence of harming victims in the long run, without additional resources to support them in that harm.

We are concerned that those seeking help might be further victimized if their actions are construed as litigation abuse and thus used against them by abusers. This is particularly concerning because the system (law enforcement, judiciary and prosecutors) have not been extensively trained to recognize and investigate coercive control. Further, there is no mechanism in place to gather data on the effectiveness of other measures recently passed with respect to coercive control. Including an expanded, and perhaps harder to prove definition, without an appropriation for additional resources for system responders and advocacy, could result in more harm to victims. This a concern shared by advocates around the country in these reports by the [Battered Women's Justice Project](#) and [Washington State Coalition Against Domestic Violence](#).

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

Sincerely,

Angelina Mercado
Executive Director, HSCADV

SB-2395

Submitted on: 2/14/2022 9:54:11 AM

Testimony for HMS on 2/15/2022 3:10:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kau'i Baumhofer Merritt	Individual	Support	No

Comments:

Aloha. My name is Nicole Kau'i Merritt. I am a resident of Halawa Heights and also have a doctorate in epidemiology with specific expertise in Native Hawaiian health disparities. My cousin was a long time victim of domestic violence and died by suicide in April 2021. I first became (definitively) aware of her struggle with domestic violence when she called me for help in June 2020. I had suspected something had been wrong for years and had always begged her to tell me if she needed help. However, she said she had waited for a long time to ask for help because she wasn't sure if she was a victim of abuse because her partner had never hit her directly - he only screamed, called her names, belittled and berated her, and isolated her emotionally, physically and financially. Like many other Native Hawaiian women, she remained silent for far too long, unsure of her status as a survivor of domestic violence and terrified that telling anyone of her secret would result in an escalation of the abuse towards her and her children. Unfortunately, she died by hanging and will never be able to tell her story in her own words. This is why I've chosen to speak up and strongly support SB2395. Domestic violence comes in many forms, not just physical or sexual abuse. Litigation abuse is simply another tool that abusers use to terrify, control, and harass their victims. Please add your support to SB2395 and protect women like my cousin.

SB-2395

Submitted on: 2/14/2022 11:25:08 AM

Testimony for HMS on 2/15/2022 3:10:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in Support.

SB-2395

Submitted on: 2/14/2022 1:55:54 PM

Testimony for HMS on 2/15/2022 3:10:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mara Garcia	Individual	Support	No

Comments:

Litigation abuse should be included in the definition of coercive control.

The challenges inherent in escaping, resolving partnership conflicts (property, needs and safety of children) and healing from the trauma experienced as a survivor are subtle (sometimes) and overwhelming. The many tactics used to maintain power over a partner can be difficult for an “outsider” to observe.

Coercive control is a pattern of behavior that can be aimed at continuing to control a partner even after the relationship has ended, and the children bind them together. Abusive partners will use the courts and the system to continue their pattern of abuse-bringing multiple motions, asking for multiple continuances, stalling or being unwilling to bring the court cases to conclusion. This is abuse. Litigation abuse. It creates untold anguish and terror for the victim survivor.

Please consider that this pattern of coercive control behavior should also be considered in the awarding of custody. When Courts are evaluating the best and safest way to issue custody orders, we believe it warrants an analysis of coercive control tactics acts of coercive control should be included in the analysis.