



*The Judiciary, State of Hawai'i*

**Testimony to the Thirty-Second State Legislature  
2023 Regular Session**

**Senate Committee on Health & Human Services**

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

Monday, January 30, 2023 at 1:00 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

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**Bill No. and Title:** Senate Bill No. 29, Relating to Custody and Visitation.

**Purpose:** Adds coercive control and litigation abuse by a parent of a child to the list of factors the court shall consider in determining what constitutes the child's best interest when awarding custody and visitation rights to individuals. Defines "coercive control" and "litigation abuse".

**Judiciary's Position:**

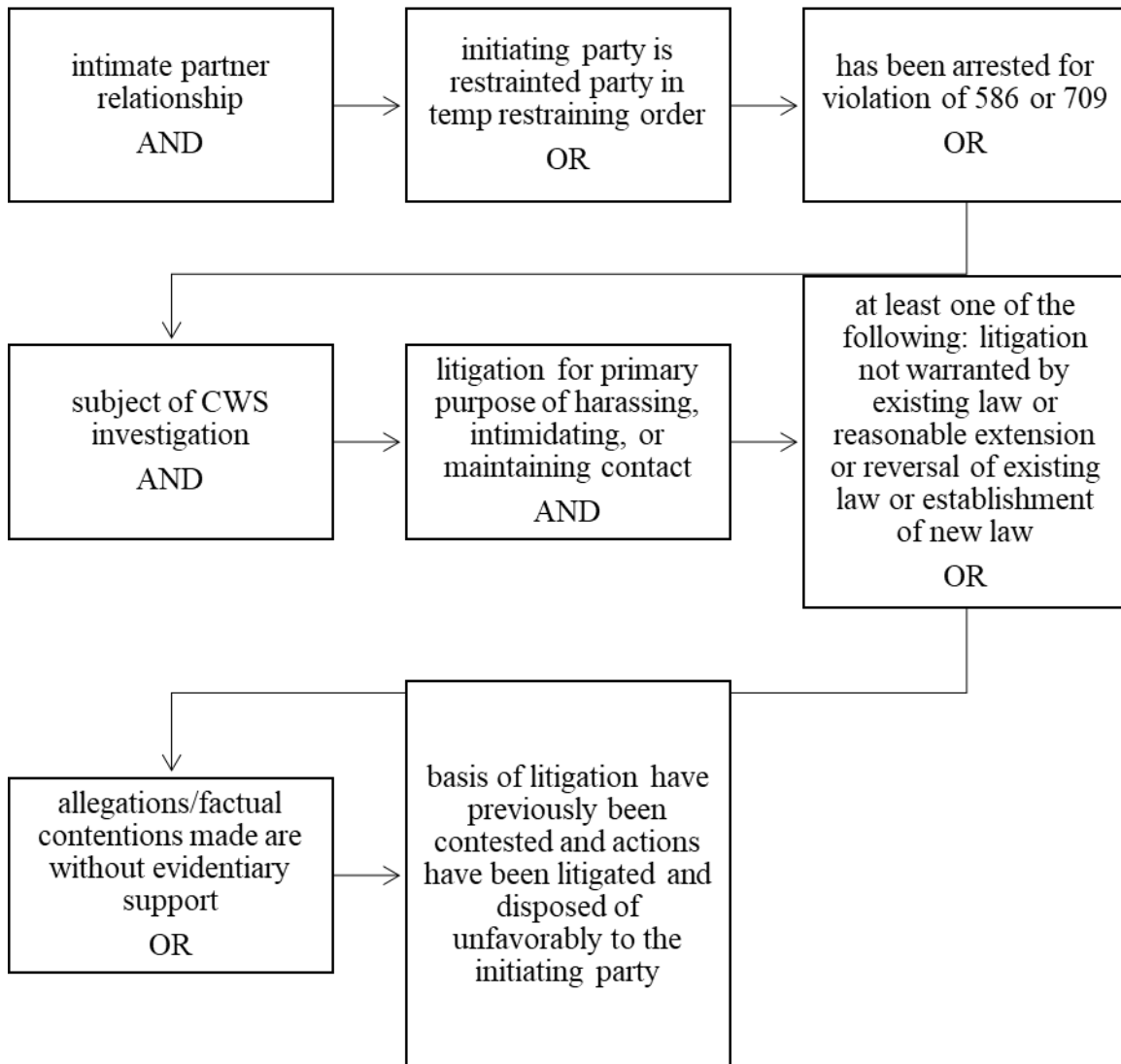
The Judiciary takes no position on Senate Bill No. 29, but respectfully offers the following comments for consideration.

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. 29 may be difficult. The definition of "litigation abuse" in Senate Bill No. 29



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. 29, Relating to Custody and Visitation  
Senate Committee on Health & Human Services  
Monday, January 30, 2023 at 1:00 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. 29 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.

# SB 29 - Coercive control & lit abuse

SB 29  
Coercive  
control &  
litigation  
abuse

**CARES**

COMMUNITY ADVOCACY RESEARCH EDUCATION SERVICES

to.

the Senate  
Committees  
HHS

The Hawaii State  
Legislature

Aloha Chair, Vice chair & the Committee of HHS,

The purpose of this act is to limit abusers who take advantage of a child custody situation in court by using emotional manipulation in the form of coercive control & litigation abuse. CARES testifies in strong support of SB 29.

from

Zhizi Xiong  
(Angela  
Melody  
Young)  
Creator

Coercive control & litigation abuse are important factors to consider by the court when the custody of a minor is under dispute. For the sake of the children's futures, children need the adults & guardians in their lives to be able to work through conflict especially when the courts are involved. The court proceedings should be fair, not excessive and free from abuse.

Coercive control is a very abusive pattern that occurs when an abuser is repeatedly threatening & humiliating a victim in a way designed to make the victim dependent by isolating the victim from support and exploiting the victim.

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# CARES

Litigation abuse occurs when an abuser uses the court system against a victim. Litigation abuse is hard to deal with because it is not easy to limit an abuser's right to file in court. However, there are other states, Washington, Idaho & Tennessee, that do allow for judges to issue an order to restrict someone's right to file if that person is suspected of litigation abuse and does not have good reason or merit to file excessive motions.

Thank you for the opportunity to testify.

Blessings,

A handwritten signature in purple ink, appearing to read 'Angela Melody Young', is centered on a light gray rectangular background.

**ANGELA MELODY YOUNG**

Zhizi Xiong



**LATE**

TO: Committee on Human Services  
FR: Nanci Kreidman, M.A.  
Chief Executive Officer  
RE: S.B. 29

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.

Within the most recent month, the [Domestic Violence Action Center](#) coordinated 2 Listening Sessions for Judges, with 4 survivors, one Session each week for 2 weeks. Three of the 4 survivors described the very tactic this Bill endeavors to examine through the thoughtful discussion with community stakeholders.

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.

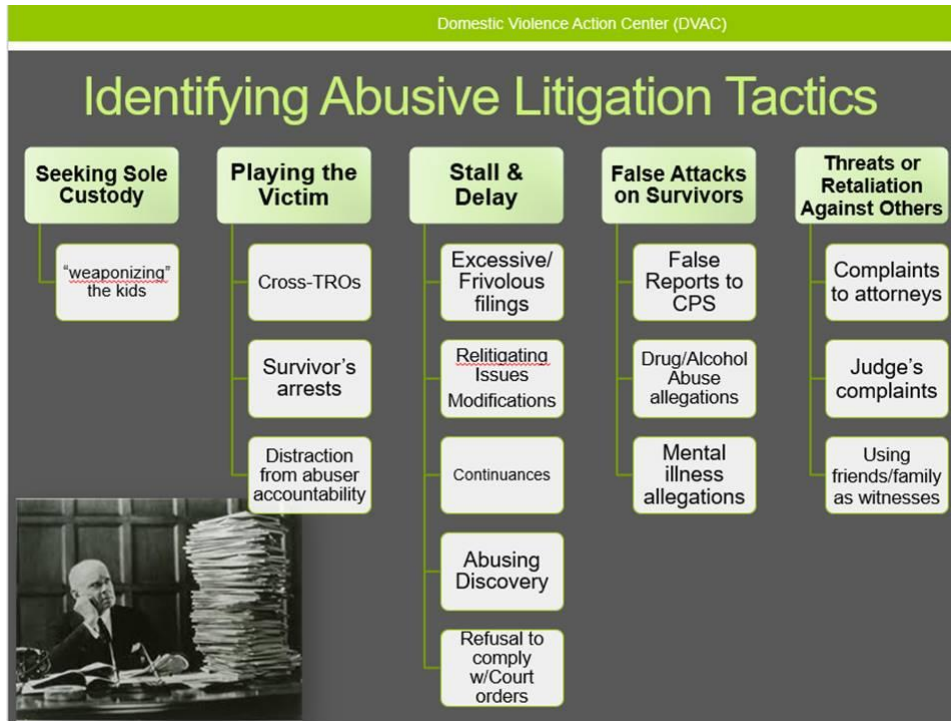
Coercive control is a pattern of behavior that can be aimed at continuing to control a partner even after the relationship has ended, and the children bind them together. Abusive partners will use the courts and the system to continue their pattern of abuse-bringing multiple motions, asking for multiple 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.

**DOMESTIC VIOLENCE ACTION CENTER**  
ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198  
LEGAL HELPLINE: (808) 531-3771  
TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200  
WEBSITE: [WWW.DOMESTICVIOLENCEACTIONCENTER.ORG](http://WWW.DOMESTICVIOLENCEACTIONCENTER.ORG)  
EMAIL: [DVAC@STOPTHEVIOLENCE.ORG](mailto:DVAC@STOPTHEVIOLENCE.ORG)



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.



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HAWAII STATE  
COALITION AGAINST  
DOMESTIC VIOLENCE

January 30, 2023

Members of the Senate Committee on Health and Human Services:

Chair Joy A. San Buenaventura  
Vice Chair Henry J.C. Aquino  
Sen. Sharon Y. Moriwaki  
Sen. Maile S.L. Shimabukuro  
Sen. Brenton Awa

Re: SB29 Relating to Custody and Visitation

Dear Chair San Buenaventura, Vice Chair Aquino and Members of the House Committee on Health and Human Services:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 29 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 is 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](#).





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

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

Sincerely,  
Angelina Mercado, Executive Director

**SB-29**

Submitted on: 1/27/2023 1:46:25 PM

Testimony for HHS on 1/30/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
pahnelopi mckenzie	Individual	Support	Written Testimony Only

Comments:

This needs for support of people suffering at the hands of abusive relationships and the battles of custody must be addressed. To many times women fleeing domestic violence are also at the hands of custody issues. These custody cases need to address and acknowledge the harms to the parents in these issues. I have watched women in violent situations fleeing for their life only to be brought into court for custody battles and the courts and abusers coercion being used against victims and the children.

The system needs to actively recognize abuse and neglect in the household at all times and the children that are affected by it. Factors as listed in this current bill are significant and should be treated as essential in custody cases. It is common place for a parent to be neglectful and then in custody try and pretend to the court that they are worthy of custody.

Recognizing the systems supports Domestic abuse with small slaps on the wrist, joint custody, and lame child support awards must be changed.

I support the changes to SB 29 and the acknowledgement of abuse and coercion in custody cases.

Thank you for your advocacy for children, Pannelopi McKenzie

TO: Chair San Buenaventura  
Vice Chair Aquino  
Health & Human Services Committee Members

FROM: Dara Carlin, M.A.  
Domestic Violence Survivor Advocate

DATE: Monday, January 30, 2023

RE: SB29

Good afternoon, Chair Buenaventura, Vice Chair Aquino and Health & Human Services Committee Members,

Although I am in general support of this proposal and completely against all forms of coercive control & litigation abuse, may I take a few moments point to out how much of SB29 could already be addressed in court proceedings IF existing measures were simply *enforced*, ie:

**Coercive control is child abuse.** Anyone who is implementing such tactics against a child (or anyone else for that matter) *is an abuser*.

Victim-litigants who are not abuse experts will often (mis)label and describe coercive control as "parental alienation" but what they're really trying to convey is that their child is being subjected to brainwashing & Stockholm syndrome techniques, operant conditioning (think "Clockwork Orange") and literal torture tactics (as defined and prohibited by the 1948 Universal Declaration of Human Rights & the 1949 Geneva Conventions on the treatment of victims of war) as imposed by the abuser *and* his/her supporters.

Since coercive control is child abuse, Child Welfare Services should be taking swift action against these grave breaches of child safety and working with law enforcement to ensure abusers who employ such tactics are put behind bars and prevented from further perpetrating such crimes. **Abuse is a crime, not a "personal problem"**.

Litigation abuse is covered under HRS634J describing the actions of a vexatious litigant and while specifying the definition of litigation abuse to include,

"The opposing parties have a current or former intimate partner relationship; 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"

is fine, (iii) which qualifies,

"Has been the subject of an investigation by the child welfare services branch of the department of human services"

deeply concerns me because one of the tactics of post-separation abuse is for the abuser to report false allegations to CWS and/or law enforcement agencies so that *the victim-survivor becomes the subject of CWS and/or HPD investigation.*

I have *many* cases where my DV survivor moms have been arrested, jailed, investigated, prosecuted, had their children taken from them & their lives turned upside down at great financial cost by their abuser's emphatic insistence to CWS & HPD with no reparations to them or repercussions for their abuser's false reporting, *even when the abuser's wrongdoing has been proven in courts of law* so (iii) should be removed from this list of definitions. (Moreover, I have yet to see anyone ever apply HRS710-1015 to deter false reporting, which should be expanded to cover false reporting to the courts as well as to Child Welfare Services.)

"The litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party" as described in Section 1(C) should be obvious to the presiding judge (as well as the team of professionals typically involved in these cases) where the judge can impose HRS607-14.5 re: frivolous claims to deter such behavior, but again, the key is for these existing remedies to be *recognized & used*.

**The over-arching problem in this entire mess is that abusive & non-abusive family court cases are being treated as equal/the same**, which forces the court to either forgive the abuser and overlook his/her historical & *ongoing* acts of abuse OR places unrealistic & unsympathetic standards on to trauma victim-survivors who are held to the same expectations as their abusers! Abuse is either outright ignored or treated as an issue to be litigated away with the passage of time, so abusers get rewarded long-term for the 3-ring circus they create while the victim-survivors eventually lose custody of their children to the parent they were trying to keep their children safe from (and was often the reason why they fled/ended the relationship) to begin with.

**Histories of domestic violence & coercive control need to be screened & assessed for at the start of every child custody case** so the courts will know what and what not to do with the parents that come before them because if there is domestic violence, HRS571-46(9) should be utilized & applied (but I rarely, if ever, see it used):

(9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court shall consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:

(A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;

(B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person;

IF HRS571-46(9) were used it's unlikely that SB29 would be needed.

Respectfully,

*Dara Carlin, M.A.*

Domestic Violence Survivor Advocate