



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2024 Regular Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Tuesday, February 13, 2024 at 2:00 p.m.
State Capitol, Conference Room 325 & Videoconference

by:

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

Bill No. and Title: House Bill No. 2657 – Relating to Abusive Litigation.

Purpose: Establishes judicial procedures to prevent and remedy abusive litigation.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 2657 and offers the following recommendations based on the family courts' extensive experience with domestic violence and its effects on the parties and their children. These recommendations were also presented to the Senate Committee on Judiciary on February 1, 2024, for the companion bill Senate Bill No. 2685. The Senate Committee adopted all of the following recommendations.

Recommendation #1 (page 3 from line 7):

§ -2 Definitions. As used in this chapter:

"Intimate partner" means:

- (1) Current or former spouses or reciprocal beneficiaries;
- (2) Persons who have a child in common regardless of whether they have been married or have lived together at any time [~~unless the child was conceived through sexual assault~~]; or
- (3) Persons who have or have had a dating relationship [~~where both persons are at least thirteen years of age or older~~];



(4) The term “intimate” has no romantic connotations.

Reasons: Sexual assault is an unfortunate occurrence domestic violence and it is not limited to strangers. Carving out an exception based on sexual assault is not necessary and will have the unintended consequence of excluding persons who would otherwise “fit” the population this bill seeks to protect. Similarly, limiting dating relationships to those thirteen years or older is not necessary and will exclude persons who would otherwise “fit” the population this bill seeks to protect. The new sub-section (4) makes it clear that abuse is not limited to those with romantic relationships.

Recommendation #2 (page 3, lines 17-18):

"Litigation" [~~has the same meaning as defined in section 634J-1.~~] means any civil action or proceeding, commenced, maintained, or pending in any state or federal court of record.

Reason: The suggested language is taken from section 634J-1. It is clearer to include the language and there does not appear to be any reason to refer to 634J, even though it is a statute with similar purposes (“Vexatious Litigants”).

Recommendation #3 (page 4, from line 1):

§ -3 Abusive litigation; defined.

(a) Abusive litigation occurs where the following apply:

(1) The opposing parties have a current or former intimate partner relationship or have filed on behalf of a minor or incapacitated person who has a current or former intimate partner relationship;

Reason: A significant number of cases are filed on behalf of minors and incapacitated persons including allegations of dating abuse and elder abuse.

Recommendation #4 (page 4, from line 5):

(2) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have committed domestic violence against the other party including by a temporary restraining order or order for protection that the court found was necessary due to domestic violence or [~~has~~] the parties had agreed to an order for protection in a case of domestic abuse;

Reason: We believe this change corrects a typographical error.



Recommendation #5 (page 5, from line 10):

(b) Litigation is harassing, intimidating, or maintaining contact with the other party when the litigation is filed with the intent or is primarily designed to, among other actions:

(1) Exhaust, deplete, impair, or adversely impact the other party's financial resources [~~unless punitive damages are requested and appropriate or a change in the circumstances of the parties provides a good faith basis to seek a change to a financial award, support, or distribution of resources~~];

Reason: The deleted phrase may be confusing and it is not necessary. The factual allegations would be incorporated in the petition or motion.

Recommendation #6 (page 5, from line 19, to page 6, line 3):

(2) Prevent or interfere with the ability of the other party to raise a child or children for whom the other party has sole or joint legal custody [~~in the manner the other party deems appropriate unless the party filing the litigation has a lawful right to interfere and a good faith basis for doing so~~];

Reasons: The deleted language “in the manner the other party deems appropriate” is redundant and not necessary. There’s no need to require proof of what the other party deems “appropriate.” The crux of problem in the prevention or interference with parenting. Similarly, the phrase “unless the party filing the litigation has a lawful right to interfere” is unnecessary. If a party has no standing or no legal connection with the child, the problem is much more fundamental than being “abusive.” The phrase “a good faith basis for doing so” is a determination to be made by the court as a basic finding throughout this bill.

Recommendation #7 (page 6, from line 10):

(4) Force, coerce, or attempt to force or coerce the other party to alter, engage in, or refrain from engaging in conduct when the conduct is lawful [~~and is conduct in which the other party has the right to engage~~];

Reason: The deleted language is redundant and not necessary.



Recommendation #8 (page 6, from line 16):

(6) Prevent, interfere, or adversely impact the ability of the other party to pursue or maintain a livelihood or lifestyle at the same or better standard as the other party enjoyed prior to the filing of the action [~~primarily for the purpose of harassing or maliciously injuring the civil action defendant~~];

Reason: The deleted language is redundant and not necessary.

Recommendation #9 (page 7, from line 8):

(8) Impair, diminish, or tarnish the other party's reputation in the community or alienate the other party's friends, colleagues, attorneys, or professional associates by, including but not limited to, subjecting parties without knowledge of or not reasonably relevant to the litigation to unreasonably or unnecessarily complex, lengthy, or intrusive interrogatories or depositions.

Reason: The added language recognizes that there are many ways to cause reputational damage (e.g., dissemination of AI generated false compromising images).

Recommendation #10 (page 9, from line 9):

§ -6 Presumptions. At the hearing conducted pursuant to this chapter, evidence of any of the following creates a rebuttable presumption that litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party:

(1) [~~The same or substantially similar issues between the same or substantially similar parties were litigated within the past five years in the same court or any other court of competent jurisdiction;~~]
Proffered legal claims are not based on existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;

(2) ~~The same or substantially similar issues between the same or substantially similar parties have been~~



~~raised, pled, or alleged in the past five years and were dismissed on the merits or with prejudice;~~
Allegations and other factual contentions are made without adequate evidentiary support or are unlikely to have evidentiary support after a reasonable opportunity for further investigation;

(3) An issue or issues that are the basis of the litigation have previously been filed in one or more other courts or jurisdictions and the actions have been litigated and disposed of unfavorably to the party filing, initiating, advancing, or continuing the litigation;

(~~3~~) 4) Within the last ten years, the party allegedly engaging in abusive litigation has been sanctioned by a court of law for filing one or more cases, petitions, motions, or other filings, that were found to have been frivolous, vexatious, intransigent, or brought in bad faith involving the same opposing party; or

(~~4~~) 5) A court of record in another judicial [~~district~~] circuit or jurisdiction has determined that the party allegedly engaging in abusive litigation has previously engaged in abusive litigation or similar conduct and has been subject to a court order imposing prefiling restrictions.

Reasons: The new language recommended for sub-sections (1), (2), and (3), are found in SB 2604, page 11, from line 16. We suggest this language because it more clearly delineates unsubstantiated legal issues, unsubstantiated factual allegations, and previous litigations. The change recommended in the new sub-section (5) makes a clearer distinction between the various judicial circuits of this state (we do not have judicial “districts”) and other jurisdictions.

Recommendation #11 (page 11, from line 11):

(3) Identify the party protected by the order restricting abusive litigation and impose prefiling restrictions upon the party found to have engaged in abusive litigation for a period of [~~not less than forty-eight months and~~] not more than seventy-two months. The time period can be extended beyond the maximum if the party found to have engaged in abusive litigation, since the effective date of the order,



has engaged in further abusive litigation and/or caused further abuse as defined by H.R.S. 586-1, including, "Coercive control", "Domestic abuse", "Extreme psychological abuse", and "Malicious property damage."

Reasons: While statutes cannot allow court orders of unlimited time periods, setting a minimum time period does not appear to be necessary. Therefore, the protected party should be able to ask for an order under 4 years of duration and a court should be able to make such an order if warranted by its findings. A maximum time period of 6 years is reasonable but the protected party should be able to seek an extension in the event that the original order has not deterred continuing abuses.

Recommendation #12 (page 12, from line 4):

§ -8 Filing of new case or motion by person subject to an order restricting abusive litigation.

(a) A person subject to an order restricting abusive litigation who wishes to initiate a new case or file a motion in an existing case during the time the person is under filing restrictions shall first file an application or motion ~~appear~~ before the court that imposed the order restricting abusive litigation to make a request to file. The court may examine witnesses, court records, and any other available evidence to determine if the proposed litigation is abusive litigation or if there are reasonable and legitimate grounds upon which the litigation is based.

Reason: The added language simply clarifies that a filing is needed rather than an appearance.

Recommendation #13 (page 12, lines 15 to 19):

(b) Based on reviewing the records as well as any evidence submitted as sworn statements from the person who is subject to the order restricting abusive litigation, if the court determines the proposed litigation is abusive litigation, then it is not necessary for the person protected by the order to appear or participate in any way.

Reason: The added language provides specific parameters for the type of “evidence” that should be presented to the court at this stage of proceedings.



House Bill No. 2657, Relating to Abusive Litigation
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Page 7

Recommendation #14 (page 16, lines 7 to 9):

SECTION 3. By ~~September 1, 2024~~, January 1, 2025, the courts shall create new forms for the motion for order restricting abusive litigation and develop relevant instructions.

Reason: Based on our experience, developing appropriate forms and clear and specific instructions for the motion may take more time than the bill currently allows.

Finally, in order to accommodate the filings and the hearings provided for in this bill, the Judiciary must make certain operational changes. These may include changes to the Judiciary Electronic Filing and Service System (JEFS) and Judiciary Information Management System (JIMS). To allow us sufficient time to address these operational issues, we respectfully request that this Act take effect on January 1, 2025.

Thank you for the opportunity to testify on this matter.



February 13, 2024

Members of the House Committee on Judiciary & Hawaiian Affairs:

Chair David A. Tarnas

Rep. Linda Ichiyama

Vice Chair Gregg Takayama

Rep. Greggor Ilagan

Rep. Luke A. Evslin

Rep. Sam Satoru Kong

Rep. Sonny Ganaden

Rep. Tyson K. Miyake

Rep. Daniel Holt

Rep. Kanani Souza

Re: HB2657 Relating to Abusive Litigation

Dear Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary & Hawaiian Affairs:

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 27 member programs statewide, I respectfully submit testimony in strong support of HB2657 and respectfully recommend the following amendments:**

HB2657 allows a domestic survivor to assert a claim of abusive litigation if the party filing or advancing the litigation was previously an intimate partner. Survivors of domestic violence, sexual assault, and stalking seek relief through civil and family courts in Hawai'i and other jurisdictions that should be recognized in abusive litigation. We recommend amending expanding the definition in § -3(2) to allow for those instances as follows:

(2) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have committed ~~domestic violence~~ intimate partner violence against the other party including by a temporary restraining order or order for protection that the court found was necessary due to domestic violence, or has agreed to an order for in a case of domestic violence; pursuant to:

(A) A criminal conviction or a plea of no contendere, in this State or any other jurisdiction for any of the crimes identified in section 709—906, section 711-1106.4, or section 711—1106.5; or a filing for any offense related to domestic violence offense;

(B) A pending criminal charge, in this State or any other jurisdiction, of domestic violence, as a result of which a court has imposed criminal conditions of release

pertaining to the safety of the victim;

(C) A temporary restraining order issued pursuant to section 586—4;

(D) An order for protection issued pursuant to section 586—3;

(E) A protective order issued pursuant to section 586—5.5;

(F) A no contact order pursuant to section 709- 906(4);

(G) A foreign protective order credited pursuant to section 586—21;

(H) An order or decree issued pursuant to section 571—46 or section 580—74; or

(I) A signed affidavit from a domestic violence or sexual assault agency that assists victims of domestic violence and sexual assault.

By replacing domestic violence with intimate partner violence above, we can include survivors of sexual assault and stalking.

We also recommend the following amendments to be more inclusive of the sexual assault survivors:

(2) Persons who have a child in common regardless of whether they have been married or have lived together at any time, ~~unless the child was conceived through sexual assault;~~ or

And amending “dating relationship” to within the definition of intimate partner in § -3(2) to conform with the statutory definition in section 568-1 as follows:

(3) Persons who have or have had a dating relationship as defined in section 586-1 ~~where both persons are at least thirteen years of age or older.~~

Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and close proximity to their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

HB2657 allows a domestic or sexual violence survivor or stalking victim may assert a claim of abusive litigation if the party filing or advancing the litigation was previously an intimate partner and has been found to have committed domestic violence, stalking, or sexual assault against the same victim/defendant in current litigation. At the same time, the court must find that the filing party's claims, allegations, and other legal contentions are not warranted under the law, or that the factual contentions are not supported by evidence, or that the issue presented was previously filed and disposed of unfavorably to the party advancing the claim.

This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation, which may be requested by party motion, motion response, petition, answer, or even by the court upon its own motion. Upon request, the court would set a motion hearing to determine whether the litigation meets the statutory definition of *abusive litigation*. If the court finds that a party is engaging in abusive litigation, the action would be denied. In addition, the court would enter an "order restricting abusive litigation," which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party.

Currently, five states have enacted legislation to address abusive litigation: Washington, Rhode Island, Vermont, Tennessee, and California. As proposed, this statute would not affect a person's right to access the courts. Instead, it would allow the courts additional discretion to terminate, mitigate, and address abusive litigation practices.

This legislation would provide a critical new protective tool for survivor safety, empowerment, financial independence, economic justice, and peace after surviving domestic or sexual violence.

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

Sincerely,
Angelina Mercado, Executive Director



**Parents And
Children Together**

**BUILDING THE RELATIONSHIPS
THAT MATTER MOST**

ParentsAndChildrenTogether.org

TESTIMONY IN SUPPORT OF HB 2657 RELATING TO ABUSIVE LITIGATION

TO: Chair Tarnas, Vice-Chair Takayama, & Members,
House Committee on Judiciary & Hawaiian Affairs
FROM: Ryan Kusumoto, President & CEO
DATE: February 13, 2024 at 2:00 PM

Parents and Children Together (PACT) supports HB 2657 Relating to abusive litigation, which establishes judicial procedures to prevent and remedy abusive litigation. *We support the position and requested amendments of the Hawaii State Coalition Against Domestic Violence, of which we are a member.*

Founded in 1968, PACT is a statewide community-based organization providing a wide array of innovative and educational social services to families in need. Assisting more than 15,000 people across the state annually, we help identify, address, and successfully resolve challenges through our 20 programs. Among our services are early education programs, domestic violence 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.

In relation to this bill, PACT's Family Peace Center has been providing domestic violence counseling for over 25 years and offers a comprehensive community-based program that includes prevention and intervention services. Services on Oahu and Maui strive to bring peace to Hawaii families through a service array that promotes safety, support and accountability to offenders, survivors, and their children. We also operate three domestic violence shelters and have extensive experience with keeping survivors safe.

Litigation abuse is a malicious form of abuse where a former abusive partner retaliates, intimidates and maintains control of a survivor by repeatedly forcing them back to court with baseless claims. Examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. Survivors are not the only victims of abusive litigation. Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

This legislation provides a critical new protective tool for survivor safety, empowerment, financial independence, economic justice, and peace after surviving domestic or sexual violence.

Thank you for the opportunity to testify. Please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.

HB-2657

Submitted on: 2/12/2024 3:48:48 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ann S Freed	American Association of University Women, Hawai'i	Support	Written Testimony Only

Comments:

Aloha Chair Rhodes, Vice Chair Gabbard and members,

We are in strong support of this measure which will prevent perpetrators of violence against women from using yet again another avenue of abuse - financial.

According to those with the most experience with this issue, where the rubber meets the road "Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and close proximity to their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation, which may be requested by party motion, motion response, petition, answer, or even by the court upon its own motion. Upon request, the court would set a motion hearing to determine whether the litigation meets the statutory definition of abusive litigation. If the court finds that a party is engaging in abusive litigation, the action would be denied. In addition, the court would enter an "order restricting abusive litigation," which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party."

Mahalo for allowing us to testify on this issue so critical the survival of victims of Domestic Violence.

Ann S. Freed

Member AAUW Policy Committee, State of Hawai`i

HB-2657

Submitted on: 2/13/2024 4:37:20 AM

Testimony for JHA on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shana Wailana Kukila	Individual	Support	Remotely Via Zoom

Comments:

I'm supporting this bill, however, in my experience and observations over the years, I have seen that the laws already on the books protecting abuse victims are not being upheld in the family courts here in Hawai'i and vulnerable women and children are being injured and die at the hands of their abusers.

Abusers are often able to manipulate judges into believing anything, and judges are not seeking justice for victims through these new laws. In the case of child welfare, abusers are often granted custody of children and judges just rubber stamp these dangerous decisions. Where is the critical, independent thinking of our judges? Why don't they do their jobs and protect those at risk? With all due respect, this is a systemic issue that more law's cannot fix.

In summary, it does no good to pass laws when in reality and when put to the test, those in positions of authority like judges do not actually follow them.

The hope and expectation for new laws like this is that judges will not revictimize those who come before them seeking justice and protection. Judges need to follow these laws in their courts, and use better discretion when dealing with manipulative abusers who use the courts to further abuse others.

Hopefully, the judiciary is listening. Mahalo.

Dennis M. Dunn

Kailua, Hawaii 96734

dennismdunn47@gmail.com

Re: HB 2657, Relating to Abusive Litigation

Date: February 13, 2024, 2:00 p.m.

To: House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Good afternoon, Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary and Hawaiian Affairs. My name is Dennis Dunn, and I am the retired Director of the Victim Witness Kokua Services in the Honolulu Prosecuting Attorney's Office. It is through the lens of my 45+ years of assisting crime victims that I am testifying in **strong support of HB 2657**, Relating to Abuse Litigation, with proposed amendments.

The provisions of HB 2657 are designed to protect victims of domestic violence from vicious and vindictive courses of litigation designed to harass and terrorize them. These "legal" attacks initiated by perpetrators of violence and threats against are often sophisticated attempts to continue their abuse, power, and control long after their criminal conduct that was initiated for the same purpose. Through Custody Litigation, Small Claims, and other legal maneuvers the perpetrators of abuse manufacture the means to maintain contact and inject disarray and uncertainty into the lives of their victims. Litigation abuse can go on for years and is often extended to the family, friends, and co-workers of a victim in an effort to intimidate others from offering the victim assistance and support. Abusive litigants also waste judiciary resources and ultimately employ public tax dollars to assist them in their nefarious course of conduct.

HB 2657 would permit a survivor of domestic abuse to assert a claim of abusive litigation if the party filing the litigation was previously an intimate partner or family or household member and has been found to have committed an act or acts of domestic violence against the other party. Under this Bill a finding must also be made by the presiding judge that the filing part's claims, allegations, or other legal contentions are not supported by the evidence, or that the issue presented was previously and disposed of unfavorably to the party putting forth the claim.

Further, under HB 2657 judges and courts are empowered to enter an order restricting abusive litigation. The Court may issue the order based on a motion of the party, a motion response, petition, answer, or by the Court *Sua Sponte* on its own motion. Upon request of the respondent

party the Court may set a hearing to determine whether the litigation meets the proposed definition for abusive litigation. Upon a finding that the party is engaging in abusive litigation the action or relief sought would be denied. Furthermore, the Court may require that an abusive litigant pay all costs and fees incurred by the respondent associated with the action that had been filed. In addition, the Court may impose a pre-filing restriction upon a party having been found to be an abusive litigant and may require them to seek Court approval before filing any future litigation against the party protected by the Court's order.

My only misgiving regarding HB 2657 is that unlike a similar measure, HB 1965, this bill does not provide similar relief to victims of stalking and sexual assault who are sometimes subjected to similar types of abusive litigation. I suggest that you consider amending this measure so that similar relief is provided to these other victims who are vulnerable to similar types of legal attacks and harassment.

The new protections and relief proposed in HB 2657 are sorely needed to protect innocent victims from repeated abusive litigation by parties with ill intent who endlessly pursue means to further harass, threaten, and control their former partner. The legal system must effectively serve as a shield to protect victims and not be allowed to be used by perpetrators as a sword to endlessly pursue victims with their ill intent.

For the above stated reasons, I urge the Committee to support HB 2657, with amendments that would expand this measure to include victims of Sexual Assault and Harassment by Stalking. Thank you for your time and consideration.

Mahalo!

HB-2657

Submitted on: 2/12/2024 12:24:04 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kawena Bagano	Individual	Support	Written Testimony Only

Comments:

Hearing Date: 2/13/24, 2:00pm

Committee: JHA

I respectfully submit testimony in strong support of HB2657.

Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and close proximity to their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation, which may be requested by party motion, motion response, petition, answer, or even by the court upon its own motion. Upon request, the court would set a motion hearing to determine whether the litigation meets the statutory definition of abusive litigation. If the court finds that a party is engaging in abusive litigation, the action would be denied. In addition, the court would enter an “order restricting abusive litigation,” which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to

have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party.

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

Kawena Bagano

HB-2657

Submitted on: 2/12/2024 12:27:59 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in SUPPORT

HB-2657

Submitted on: 2/12/2024 12:39:31 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Isabella Zingray	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in **strong support of HB2657 and the Hawai'i State Coalition Against Domestic Violence's recommended amendments.**

Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and close proximity to their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. **Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel.** This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation, which may be requested by party motion, motion response, petition, answer, or even by the court upon its own motion. Upon request, the court would set a motion hearing to determine whether the litigation meets the statutory definition of abusive litigation. If the court finds that a party is engaging in abusive litigation, the action would be denied. In addition, the court would enter an "order restricting abusive litigation," which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party.

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

HB-2657

Submitted on: 2/12/2024 12:50:21 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Denby Toci	Individual	Support	Written Testimony Only

Comments:

I am in 100% support of seeing this bill be approved. I support HB2657.

Time and time again I have witnessed cases where survivors are pulled into court by the offending respondent to intimidate, harass and use their power and control because they think its ok to do so.

Many of these cases, children are involved and the surviving parent is protecting the children and thier own welbeing from continued harm. Hawaii Judicial System needs to recognize the manipulation and hold the offending respondent accountable. Please pass HB2657. Thank you!

February 12, 2024

TO: The Members of the House Committee on Judiciary & Hawaiian Affairs

FROM: Jamie Newalu, LSW
Private Citizen

SUBJECT: **HB2657 Relating to Abusive Litigation**
Establishes judicial procedures to prevent and remedy abusive litigation.

Hearing: Tuesday, February 13, 2024 at 2:00pm

I respectfully submit testimony in **strong support** of **HB2657** and the Hawai'i State Coalition Against Domestic Violence's recommended amendments.

As a domestic violence advocate, I have witnessed abusive partners use litigation to continuously harass, stalk, terrorize, and deplete their victims. There is a sad quote that was once shared to me by a victim that stated, "If they are suing, they are not shooting." The victim who shared this quote to me shared that her ex-partner preferred to sue her and bleed her out slowly, as opposed to cold-blooded murder. The turmoil that this has caused her, and the impact to her financial stability and health, was immense. The abusive litigation got so bad for this victim, that she confessed that she wondered if being shot to death would have been the less cruel solution. Abusers who use litigation to haunt their victims often do not get strict penalty, and there is not much deterrent to using litigation if they have the financial means.

Abusive litigation does not only impact the victim, but it is also a poor use of court resources. It takes a lot of time and money to hear out a case after case, and valuable court resources are utilized for personal malicious vendettas in abusive litigation situations. The proposed bill HB2657 seeks to act as a deterrent against the abusive filing party, and allow judges and the courts to use their discretion on entering an order to restrict abusive litigation.

I am advocating today on behalf of all the victims of domestic violence that I serve, who were raked through the coals by abusive litigation. Thus, I am in full support of HB2657.

Thank you for the opportunity to provide testimony.



Jamie Newalu

HB-2657

Submitted on: 2/12/2024 2:27:44 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carol Gaylord	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in strong support of HB2657 and the Hawai‘i State Coalition Against Domestic Violence’s recommended amendments.

As an advocate both in the community and within the system, I have spent 25 years in Hawaii walking beside victims of Intimate Partner Violence. As a form of post separation abuse, litigation abuse is a particularly malicious form of abusive coercion where a former abusive partner harasses a survivor with baseless claims to maintain control through post separation abuse. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and close proximity to their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent to the weaponization of the courts!

This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation, which may be requested by party motion, motion response, petition, answer, or even by the court upon its own motion. Upon request, the court would set a motion hearing to determine whether the litigation meets the statutory definition of abusive litigation. If the court finds that a party is engaging in abusive litigation, the action would be denied. In addition, the court would enter an “order restricting abusive litigation,” which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party.

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

HB-2657

Submitted on: 2/12/2024 3:33:53 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lindsey A Drayer	Individual	Support	Written Testimony Only

Comments:

I respectfully submit testimony in strong support of HB2657 and the Hawai‘i State Coalition Against Domestic Violence’s recommended amendments.

Litigation abuse is a particularly malicious form of abuse where a former abusive partner keeps dragging a survivor back to court with baseless claims to maintain control and contact, retaliate, coerce, and intimidate a survivor. By forcing a survivor to appear at a specific courthouse, at a specific time and place, they are compelled to be together in the same room and close proximity to their former abuser. This occurs often in child custody cases when former partners have children together. Other examples of litigation abuse include suing survivors for reporting abuse and suing or threatening to sue anyone who helps the survivor. This re-victimizes and re-traumatizes them, bringing back the same fear and anxiety that existed for the survivor during the controlling abusive relationship.

Survivors are not the only ones impacted by abusive litigation. Prolonged abusive litigation wastes court resources, public funds, and the time of judges and court personnel. This bill is a deterrent against the filing party from weaponizing the courts to harass survivors while wasting the scarce resources of the judiciary.

This bill will empower judges and the courts with the discretion to enter an order restricting abusive litigation, which may be requested by party motion, motion response, petition, answer, or even by the court upon its own motion. Upon request, the court would set a motion hearing to determine whether the litigation meets the statutory definition of abusive litigation. If the court finds that a party is engaging in abusive litigation, the action would be denied. In addition, the court would enter an “order restricting abusive litigation,” which may impose all costs and reasonable attorney fees incurred and may impose a pre-filing restriction upon the party found to have engaged in the abusive litigation. The abusive litigator will be required to seek permission from the court before proceeding with future litigation against the other protected party.

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