



## *The Judiciary, State of Hawai'i*

### **Testimony to the Thirty-Second Legislature, 2024 Regular Session**

#### **Committee on Judiciary and Hawaiian Affairs**

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

Wednesday, January 31, 2024 at 2:00 p.m.  
State Capitol, Conference Room 325 & Videoconference

by:

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

#### **WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill 1965 – Relating to Abusive Litigation.

**Description:** Establishes a court's authority to issue an order restricting abusive litigation.

#### **Judiciary's Position:**

The Judiciary takes no position on House Bill No. 1965. Very similar bills regarding abusive litigation are House Bill No. 2657 and its companion bill Senate Bill No. 2685.

We respectfully suggest that House Bill No. 1965 be held by the Committee and allow House Bill No. 2657 to proceed. Both bills are designed to protect abused partners by deterring and controlling the abusive partners' use of the legal system as an extension of personal power and control dynamics.

House Bill No. 2657 and Senate Bill No. 2685 are more closely similar to statutes already promulgated by Tennessee (TN ST § 29-41-101, *et seq.*) and Washington state (WA ST 26.51.010, *et seq.*). These two bills appear to provide a clearer template for the court to follow.

House Bill No. 1965 is sound. In fact, in the Judiciary's testimony to be filed for Senate Bill No. 2685 before the Senate Committee on Judiciary on February 1, 2024, we suggest the use



of certain language from House Bill No. 1965. However, House Bill No. 2657 and Senate Bill No. 2685 are more streamlined and have already been accepted by two other state legislatures.

Furthermore, there are features in House Bill No. 1965 that appear problematic and warrant further attention:

(1) At page 3, lines 14-17, and more specifically at page 4, line 15-19:

(2) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have abused, stalked, or sexually assaulted the other party pursuant to:

...

(H) 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;

When a criminal charge is pending, no court has yet to “find” that the defendant has committed the crimes alleged. The conditions of release will continue only until an acquittal or the sentencing.

(2) At page 4, from line 20, to page 5, line 2:

(I) A signed affidavit from a domestic violence or sexual assault advocate or counselor working on behalf of an agency that assists victims of domestic violence and sexual assault;

Such an affidavit from a third party would be insufficient for the court to base its finding of abuse.

(3) At page 8, lines 16-17, and at page 9, lines 5-8:

(b) A party may request an order finding and restricting abusive litigation:

...

(c) In the event that no formal complaint, motion, petition, or other pleading has been filed, the intermediate court of appeals shall have jurisdiction to hear the request and issue an order restricting abusive litigation.

Subdivision (c) should be stricken. The Intermediate Court of Appeals is an appellate court that generally reviews decisions by trial courts and administrative agencies, based upon a written record of proceedings in the underlying case. If a party has not requested relief in the underlying case, there would be no record for the Intermediate Court of Appeals to review. In addition, the Intermediate Court of Appeals is not a court of original jurisdiction and does not



House Bill No. 1965, Relating to Abusive Litigation  
Committee on Judiciary and Hawaiian Affairs  
Wednesday, January 31, 2024 at 2:00 p.m.  
Page 3

conduct evidentiary hearings or fact-finding, making it unable to hear a request for relief in the first instance.

Thank you for the opportunity to testify on this matter.

To: House Committee on Judiciary & Hawaiian Affairs  
Re: **HB 1965 – Abusive Litigation**  
Hawai'i State Capitol & Via Videoconference  
January 31, 2024, 2:00 PM

Dear Chair Tarnas, Vice Chair Takayama, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT of HB 1965**. This bill establishes a court's authority to issue an order restricting abusive litigation against survivors of domestic violence, sexual assault, dating violence and stalking.

The intention of this bill is to stop abusive and controlling litigation -- where an abuser will take a person, their friends and family to court over and over again, in order to control, harass, intimidate, coerce, and impoverish the survivor. Survivors with children are particularly susceptible to this practice through child custody battles.

This bill would give the courts options to recognize and respond to controlling abusive litigation for domestic violence, sexual assault, stalking and dating violence survivors. If found to be an abusive litigant, the courts can order the financial compensation to survivors for lost wages, child care, transportation, court fees and attorneys fees. Additionally, abusive litigants will be subject to future prefiling requirements.

Mahalo for the opportunity to provide this testimony. Please pass this bill.

Thank you,

Nicole Woo  
Director of Research and Economic Policy



HAWAI'I STATE  
COALITION AGAINST  
DOMESTIC VIOLENCE

**LATE**

January 31, 2024

Members of the House Committee on Judiciary & Hawaiian Affairs

Chair David A. Tarnas

Vice Chair Gregg Takayama

Rep. Luke A. Evslin

Rep. Sonny Ganaden

Rep. Daniel Holt

Rep. Linda Ichiyama

Rep. Greggor Ilagan

Rep. Sam Satoru Kong

Rep. Tyson K. Miyake

Rep. Kanani Souza

Re: HB1965 Re 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 HB1965 and request the following amendments that would we believe would improve implementation and reduce harm:**

**Section 1 (2): adding "or agreed to any of the following protection orders pursuant to" so that the section reads:**

**"(2) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have abused, stalked, or sexually assaulted the other party, or agreed to any of the following protection orders pursuant to:"**

**Section 2 (2): adding "or agreed to any of the following protection orders pursuant to" so that the section reads:**

**"(2) The opposing party who is filing, initiation, or advancing, or continuing litigation has been found by a court to have abused, stalked, or sexually assaulted the requesting party, or agreed to any of the following protection orders pursuant to:"**



We have learned from many advocates and survivors that respondents agree to a protection order on the advice of their attorneys so that it does not affect custody cases later.

**Section 2 (2)(E) the word should “issued” should be replaced with “credited”** since protection orders from other jurisdictions are credited to the state of Hawai`i in the full faith and credit process.

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 in close proximity with 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.

HB1965 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 or family or household member 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



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

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. testify on this important matter.

Sincerely,

Angelina Mercado, Executive Director

**HAWAI'I  
PACIFIC  
HEALTH**

**KAPI'OLANI**  
THE SEX ABUSE  
TREATMENT CENTER



**LATE**

Date: January 30, 2024

To: Representative David Tarnas, Chair  
Representative Gregg Takayama, Vice-Chair  
Members of the Committee on Judiciary and Hawaiian Affairs

From: Lynn Costales Matsuoka, Executive Director  
The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony on HB 1965  
Relating to Abusive Litigation

Hearing: January 31, 2024, Conference Room 325, 2:00pm

Good Afternoon, Chair Tarnas, Vice Chair Takayama and Members of the Judiciary and Hawaiian Affairs Committee:

The Sex Abuse Treatment Center (SATC) is in support of HB 1965..

The bill seeks to provide victims of domestic violence, sexual assault and stalking, an added layer of protection from their abusers/offenders.

It is well documented that in cases of intimate partner or domestic violence, the ability of a victim to cleanly walk away from a broken relationship is complicated, by the power and control behavior often exhibited by the abuser/offender. It is also well documented that sexual violence is also another form of abuse suffered by victims in IPV/DV relationships.

Abusive litigation is yet another form of abuse used by offenders/abusers to exhibit their control over a victim, by requiring them to attend court hearings, forcing continuing contact between the parties, despite how the victim feels. Another opportunity for the abuser/offender to force the victim to see them and engage with them. With abusive litigation, victims are threatened with economic sanctions, fear of losing custody of children, and in some cases contempt of court, should they choose to not respond to litigation filed by the offender. With the possibility of dire consequences looming, victims are forced to engage with an abuser/offender, feeding the power and control offenders crave over their victims.

With this bill, the courts are positioned to assess and determine whether the filing litigant is using the judicial system to exact further abuse on a victim. Safeguards are built into the bill, to assure judicial access for legitimate purposes is not denied, or infringed upon, by requiring a finding that similar litigation was filed within 5 years, was deemed by the court to be frivolous, vexatious, was previously filed and ruled upon unfavorably against the abusive litigant, or deemed meritless based on the law or evidence, among other things. Essentially this bill seeks to address a pattern of conduct where the judicial system is used as weapon against a victim of domestic violence, sexual assault or stalking exact further abuse.



The SATC supports HB1965 and the rights of victims to be free of further abuse, and to ensure the court system is not used as means to control the victim for improper, even malicious purposes by the abuser/offender.

Thank you for the opportunity to submit testimony in support of HB 1965. We respectfully ask that this committee pass this measure.

Dennis M. Dunn

Kailua, Hawaii 96734

[dennismdunn47@gmail.com](mailto:dennismdunn47@gmail.com)

**LATE**

**Re: HB 1965, Relating to Abusive Litigation**

**Date: January 31a, 2023, 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 1965**, Relating to Abusive Litigation.

The provisions of HB 1965 would create legal procedures to protect victims of domestic violence, sexual assault, and stalking 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 employs public tax dollars to assist them in their nefarious course of conduct.

HB 1965 would permit a survivor of domestic abuse, sexual violence, and stalking 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, sexual assault, or stalking against the same victim/defendant. 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 1965 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.

The new protection and relief proposed in HB 1965 is 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 1965. Thank you for your time and consideration.

Mahalo!



Subject: Testimony in Support of HB 1965 JHA Abusive Litigation

I respectfully submit my testimony in **strong support HB 1965**, recognizing its vital role in curbing abusive litigation. As a survivor and Advocacy Manager at DVAC, I've witnessed the devastating impact abusive litigation has on individuals and families.

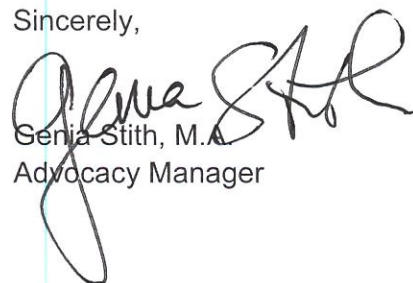
Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm on survivors. HB 1965 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes in a fair and efficient manner.

At DVAC, I have worked closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. I have seen survivors deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. I have seen the stress of court proceedings lead to job losses, as survivors struggle to balance the demands of the legal system with their employment responsibilities. I have witnessed survivors fall victim to debilitating depression and even suicide because of this issue. Abusive litigation is a sinister form of post-separation abuse employed to exert control over victims through the court system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles. Your support for HB 1965 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hindering the misuse and weaponization of legal proceedings for the purpose of harassment, intimidation, or coercion.

HB 1965 is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation. Please support HB 1965 for a legal environment that prioritizes survivors' health and safety and insures the fair administration of justice. Thank you for your time and consideration.

Sincerely,



Genia Stith, M.A.  
Advocacy Manager

**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)



eliminating racism  
empowering women  
**ywca**  
Kaua'i



3094 Elua Street  
Lihu'e, HI 96766  
T: 808-245-5959  
F: 808-245-5961  
[ywcakauai.org](http://ywcakauai.org)

January 30, 2024

**LATE**

Re: HB1965 JHA Abusive Litigation

Aloha kākou,

I am writing to express YWCA Kaua'i's endorsement of House Bill 1965 (HB1965), which aims to combat the egregious issue of abusive litigation, particularly in cases involving survivors of domestic or sexual violence. However, the impact of abusive litigation extends beyond survivors, effectively becoming a drain on court resources and the valuable time of judges and court personnel. HB1965 serves as a deterrent against the misuse of the legal system to harass survivors while simultaneously safeguarding the judiciary's resources.

Abuse through the legal system is a deeply troubling phenomenon, wherein abusive partners exploit the court system to force the use of time, finances, and emotional resources by the survivor of abuse. Not only do these cases generally require the abused party to physically appear in court, they mandate survivors incur the cost of litigation regardless of validity or outcome. In our work as the County of Kaua'i's primary provider of domestic violence and sexual assault services, we frequently observe the devastating impact of abusive litigation on survivors and their children. The misuse of legal proceedings exacerbates the trauma experienced by survivors, adding an additional layer of financial and emotional hardship and yet another obstacle to healing and moving forward.

This proposed legislation empowers survivors by allowing them to assert a claim of abusive litigation if the filing party has a history of intimate partner violence, stalking, or sexual assault against the survivor involved in the current litigation. Abusive litigation legislation has been successfully enacted in five states – Washington, Rhode Island, Vermont, Tennessee, and California. HB1965 provides courts with the tools to respond to, and mitigate the harm of, abusive litigation tactics while upholding litigants' constitutional right to access the court system. The bill includes a provision for the court to assess the validity of a claim of abusive litigation through motions, petitions, responses, or even by the court's own initiative. If abusive litigation is confirmed, the court is empowered to deny the action and issue orders restricting further litigation.

In sum, this legislation is a critical protective tool for survivor safety, empowerment, financial independence, and economic justice following the trauma of domestic or sexual violence. We urge you to consider and support HB1965, thereby taking a significant step towards eliminating abusive litigation and its harmful repercussions in our court system and survivors' lives.

Thank you for your consideration of this important matter.

Sincerely,

Renaé Hamilton-Cambeilh, Executive Director

**LATE**

**HB-1965**

Submitted on: 1/30/2024 3:47:49 PM

Testimony for JHA on 1/31/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Monique R. Ibarra	Domestic Violence Action Center	Support	Written Testimony Only

Comments:

Subject: Testimony in Support of

HB 1965 Abusive Litigation

I respectfully submit my testimony in **strong support HB 1965**, recognizing its vital role in curbing abusive litigation.

Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm for survivors. HB 1965 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes in a fair and efficient manner.

As the Chief Executive Officer for the Domestic Violence Action Center, (DVAC), I have verified data that the staff work closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. The staff have stories where survivors have done such things as deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. There are stories of survivors struggling to balance the demands of the legal system with their employment responsibilities, where numerous court proceedings have led to job losses. Abusive litigation is a threatening form of post-separation abuse employed to exert coercive control over victims through the judicial system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles. Your support for HB 1965 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hindering the misuse and weaponization of legal proceedings for the purpose of harassment, intimidation, or coercion.

HB 1965 is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation. Please support HB 1965 for a legal environment that prioritizes survivors' health and safety and ensures the fair administration of justice. Thank you for your time and consideration.

Sincerely,

Monique R. Ibarra

Chief Executive Officer



**LATE**

**HB-1965**

Submitted on: 1/30/2024 4:00:27 PM

Testimony for JHA on 1/31/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kyle Shelly	Domestic Violence Action Center	Support	Written Testimony Only

Comments:

I respectfully submit my testimony in **strong support HB 1965**, recognizing its vital role in curbing abusive litigation.

Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm for survivors. HB 1965 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes in a fair and efficient manner.

As a member of the Board of Directors the Domestic Violence Action Center, (DVAC), I have verified data that the staff work closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. The staff have stories where survivors have done such things as deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. There are stories of survivors struggling to balance the demands of the legal system with their employment responsibilities, where numerous court proceedings have led to job losses. Abusive litigation is a threatening form of post-separation abuse employed to exert coercive control over victims through the judicial system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

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**LATE**

**HB-1965**

Submitted on: 1/30/2024 4:44:26 PM

Testimony for JHA on 1/31/2024 2:00:00 PM

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

Comments:

Stand in Support

**LATE**

**HB-1965**

Submitted on: 1/30/2024 4:49:19 PM

Testimony for JHA on 1/31/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Luanna Peterson	HSCADV	Support	Written Testimony Only

Comments:

HB1965 JHA Abusive Litigation

I respectfully submit testimony in strong support of HB1965.

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 in close proximity with 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.

HB1965 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 or family or household member 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.



Subject: Testimony in Support of HB1965 Abusive Litigation

I respectfully submit my testimony in **strong support of HB1965**, recognizing its vital role in curbing abusive litigation.

Abusive litigation not only threatens our legal system's integrity but also inflicts unwarranted and repeated harm to survivors. HB1965 is a pivotal step in addressing this issue by ensuring the legal process serves its intended purpose of resolving disputes fairly and efficiently. This bill discourages abusive litigation by imposing reasonable restrictions and penalties on abusive litigants and is imperative for shielding survivors and innocent parties from unnecessary legal battles.

As a member of the Board of Directors of the Domestic Violence Action Center (DVAC), I am aware that the DVAC staff work closely with numerous survivors who have grappled with the financial and emotional toll of abusive litigation. The staff has stories where survivors have done such things as deplete their retirement funds and accumulate significant debt simply to defend themselves in court, to keep their children safe, and to fight for what is rightfully theirs. There are stories of survivors struggling to balance the demands of the legal system with their employment responsibilities, where numerous court proceedings have led to job losses. Abusive litigation is a threatening form of post-separation abuse employed to exert coercive control over victims through the judicial system. I appreciate steps being taken to empower survivors and provide judges with the tools necessary to curb this detrimental behavior.

Your support for HB1965 acknowledges the urgency of addressing this issue by fostering an environment that upholds fair and responsible litigation and hinders the misuse and weaponization of legal proceedings for harassment, intimidation, or coercion of victims and survivors.

HB1965 regarding Abusive Litigation is pivotal for justice, fairness, and the protection of survivors. I urge you to join Washington, Rhode Island, Vermont, Tennessee, and California who have already enacted legislation addressing abusive litigation. Please support HB1965 for a legal environment that prioritizes survivors' health and safety and ensures the fair administration of justice. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn L.M. Benton'.

Shawn L.M. Benton  
Pronouns: She/Her/Hers  
Board Member  
Board of Directors of the Domestic Violence Action Center



**LATE**

**HB-1965**

Submitted on: 1/31/2024 7:48:48 AM

Testimony for JHA on 1/31/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jaelyse Raneses	Individual	Support	Written Testimony Only

Comments:

I support this bill as a means to help defend victims from further harassment by their abuser. In recent months, I have seen, up close, the devastation caused when our judicial system is weaponized in an effort to exert control when the abuser feels it slipping out of their hands (i.e. when the relationship is ended, communication is cut off, etc.). Busy courts can fail to review all the evidence provided, and/or fail to validate the legitimacy of the abuser's claims, allowing for the legal persecution of the abused. This both harms the current victim and, in cases involving children, can create new victims and inflict additional traumas upon the innocent. Then, the burden of the process to achieve resolution is thrust upon relatives who are subject to the slow progress of overwhelmed civil servants who make referrals to government programs with weeks long waiting lists, if the referrals are submitted at all.

I implore you to pass this bill and remove the ability for abusers to weaponize the system in service of their ego; not to would be the opposite of justice.

**HB-1965**

Submitted on: 1/29/2024 8:27:09 PM

Testimony for JHA on 1/31/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Shana Wailana Kukila	Individual	Comments	Written Testimony Only

Comments:

JANUARY 29, 2024

TO: HOUSE JUDICIARY AND HAWAIIAN AFFAIRS COMMITTEE

RE: HEARING FOR HB1965, RELATING TO LITIGATION ABUSE

POSITION: COMMENTS ONLY

Aloha Honorable Members of the House Judiciary and Hawaiian Affairs Committee,

House Bill 1965 is well-intentioned and is a good start towards justice for domestic violence and sexual assault victims in the court system. However, it could use some amendments, and even then, should be used with caution. The gaps and deficiencies in the judicial system regarding domestic violence and sexual assault are still not fixed, and the addition or more laws is not the answer. When victims are in the judicial system, we are often between a rock and a hard place with nowhere to turn if we do not have access to legal counsel.

Often, in my experience and observations, judges and other court staff are not all trained, educated, or compassionate towards domestic violence victims, and the system often turns against us when we are the target of abuse and our abuser weaponizes the system against us.

What we need more than this kind of bill is funding for access to more specialized free or reduced cost legal assistance and advocacy for domestic violence and sexual assault victims across all circuits in the state. Without experts in domestic violence dynamics and law who are court appointed to advocate for victims, we will continue to lose in court to our abusers and lose our children to the child welfare system when our abusers imperil our families and we are not able to defend ourselves in court.

The fact that litigation abuse occurs means that there are abusers who see the legal system as a means to abuse their victims because they know that victims often do not have the means to pay an attorney to fight for us in court. The abuser has become far more savvy, and the weaponizing of the justice system has become one more way to assert their power and control over their families and partners.

The one caution to this bill is that abusers can easily turn the court against a victim that is actually trying to get justice in the courts. Abusers are great manipulators, and in my own personal experience and observations of other cases, they are able to easily manipulate their children, extended family members, the courts, the police, and other government officials who are not keen or experts in the dynamics of power and control and how it works when an abuser isolates their target this way. There are many studies and research that shows how this occurs and how this is one of the most effective ways to abuse a victim without leaving any marks on their bodies. Without a skilled attorney who understands domestic violence and sexual assault law, a victim would probably never be successful in getting their case won in court when trying to stop litigation abuse.

When an abuser uses the judicial system against their victim, what their victim needs is an expert attorney to fight for them in court. Someone who knows about the tactics abusers use in courts and can defeat those tactics in defense of victims.

If the Legislature is serious about assisting victims going through the court system and helping us to survive our abuse and properly protect ourselves and our children from abuse, then the Legislature should put money towards a legal fund that focuses only on domestic violence and sexual assault victims. It could be part of the Hawaii Coalition Against Domestic Violence cadre of services to the community. This could be partly funded by perpetrators as part of their penalty for abuse of a household member. Similar to how this bill is proposing, but the perpetrator pays for legal fees up front. It is also similar to the Victim Witness fund, in which all perpetrators of violence pay their fines and a portion goes to victims of crime.

Free or low cost, professional, qualified legal assistance for victims/survivors of domestic violence and sexual assault is a far more effective way to properly address this issue.

This kind of legal help is not like legal aid. It is focused on the specialty of abuse. My suggestion is also to better train local attorneys working in the family courts in any capacity be trained yearly in domestic violence and sexual assault laws and the rights of victims. This should be required of anyone working in the family court system throughout the state, even private attorneys. It should be a professional requirement, not an option. Somewhat like the qualifications of other professions who require trainings to update one's skills. This training should be required of all staff in the judiciary across the state, including and especially judges who, in my experience, do not understand the dynamics of domestic violence and sexual assault. It is imperative that they make qualified and educated decisions based on a true knowledge of the dynamics of power and control. Otherwise, all these laws and protections will mean nothing and victims will continue to lose in court and for some, lose their lives.

After a meeting with his lawyer, a man who "seemed ok" violently killed his wife at Pearlridge Shopping Center, then took his own life. This was all in violation of a Temporary Restraining Order. According to the man's lawyer, Attorney Michael Green, "They don't teach you this stuff in lawyer school." That says it all.