
A BILL FOR AN ACT

RELATING TO COERCIVE CONTROL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that individuals who
2 abuse their intimate partners have been known to misuse court
3 proceedings to control, harass, intimidate, coerce, or
4 impoverish the abused partner. This litigation abuse occurs in
5 a variety of contexts. In family court, abusers have used cases
6 involving dissolution, legal separation, parenting plan action
7 or modification, a protection order, or child custody to harm or
8 exploit their partner and children's wellbeing. Abusers have
9 also filed meritless civil lawsuits alleging breach of contract,
10 defamation, or another tort to force the abused partner to spend
11 time, money, and emotional resources responding to the lawsuit.
12 Due to the lengthy nature of legal proceedings, litigation abuse
13 can extend long after the relationship has ended.

14 The legislature also finds that when child custody is under
15 consideration, courts should also be aware that coercive control
16 is a tactic that has been used by perpetrators to harm and
17 exploit their partner and children's wellbeing. When courts are



1 evaluating the best and safest way to issue custody orders, acts
2 of coercive control should be included in the analysis.

3 The purpose of this Act is to add coercive control and
4 litigation abuse by a parent of a child to the list of factors
5 to be considered by the court in determining what constitutes
6 the best interest of the child when awarding custody and
7 visitation rights to individuals in actions for divorce,
8 separation, annulment, separate maintenance, or any other
9 proceeding where there is at issue, a dispute as to the custody
10 of a minor child.

11 SECTION 2. Section 571-46, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) In determining what constitutes the best interest of
14 the child under this section, the court shall consider, but not
15 be limited to, the following:

16 (1) Any history of sexual or physical abuse of a child by
17 a parent;

18 (2) Any history of neglect or emotional abuse of a child
19 by a parent;

20 (3) The overall quality of the parent-child relationship;



1 (4) The history of caregiving or parenting by each parent
2 prior and subsequent to a marital or other type of
3 separation;

4 (5) Each parent's cooperation in developing and
5 implementing a plan to meet the child's ongoing needs,
6 interests, and schedule; provided that this factor
7 shall not be considered in any case where the court
8 has determined that family violence has been committed
9 by a parent;

10 (6) The physical health needs of the child;

11 (7) The emotional needs of the child;

12 (8) The safety needs of the child;

13 (9) The educational needs of the child;

14 (10) The child's need for relationships with siblings;

15 (11) Each parent's actions demonstrating that they allow
16 the child to maintain family connections through
17 family events and activities; provided that this
18 factor shall not be considered in any case where the
19 court has determined that family violence has been
20 committed by a parent;



1 (12) Each parent's actions demonstrating that they separate
2 the child's needs from the parent's needs;

3 (13) Any evidence of past or current drug or alcohol abuse
4 by a parent;

5 (14) The mental health of each parent;

6 (15) The areas and levels of conflict present within the
7 family; [and]

8 (16) A parent's prior wilful misuse of the protection from
9 abuse process under chapter 586 to gain a tactical
10 advantage in any proceeding involving the custody
11 determination of a minor. Such wilful misuse may be
12 considered only if it is established by clear and
13 convincing evidence, and if it is further found by
14 clear and convincing evidence that in the particular
15 family circumstance the wilful misuse tends to show
16 that, in the future, the parent who engaged in the
17 wilful misuse will not be able to cooperate
18 successfully with the other parent in their shared
19 responsibilities for the child. The court shall
20 articulate findings of fact whenever relying upon this
21 factor as part of its determination of the best



1 interests of the child. For the purposes of this
2 section, when taken alone, the voluntary dismissal of
3 a petition for protection from abuse shall not be
4 treated as prima facie evidence that a wilful misuse
5 of the protection from abuse process has occurred[-];

6 (17) Any history of coercive control of the child or a
7 parent of the child by the other parent; and

8 (18) Any history of litigation abuse by a parent of the
9 child against the other parent.

10 As used in this subsection:

11 "Coercive control" shall have the same meaning as defined
12 in section 586-1.

13 "Litigation abuse" means:

14 (1) (A) The opposing parties have a current or former
15 intimate partner relationship;

16 (B) The party who is filing, initiating, advancing,
17 or continuing the litigation:

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

20 (ii) Has been arrested for violation of chapter
21 586 or 709; or



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

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

8 (2) At least one of the following factors is present:

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

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

16 or

17 (C) The issue or issues that are the basis of the
18 litigation have previously been contested in one
19 or more courts and the actions have been
20 litigated and disposed of unfavorably to the



1 party filing, initiating, advancing, or
2 continuing the litigation."

3 SECTION 3. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Judiciary; Domestic Abuse; Coercive Control

Description:

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

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